

**CONSTITUTION FURTHER  
AMENDMENT (LEGISLATIVE  
COUNCIL ELECTIONS) ACT.**

---

Act No. 5, 1933.

George V,  
No. 5, 1933.

An Act to make certain provisions for carrying into effect the Constitution Amendment (Legislative Council) Act, 1932; to amend the Constitution Further Amendment (Referendum) Act, 1930, and certain other Acts; and for purposes connected therewith. [Assented to, 17th July, 1933.]

**B**E 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:—

PART I.

PRELIMINARY.

Short title.

**1.** (1) This Act may be cited as the "Constitution Further Amendment (Legislative Council Elections) Act, 1932."

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

27

No. 5, 1933.

1932," and shall be read and construed with the Constitution Act, 1902, as amended by subsequent Acts, including the Constitution Amendment (Legislative Council) Act, 1932.

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

**2.** This Act is divided into Parts as follows:—

Division  
into Parts.

PART I.—PRELIMINARY.

PART II.—LEGISLATIVE COUNCIL ELECTIONS.

DIVISION 1.—*Preliminary.*

DIVISION 2.—*Returning officer.*

DIVISION 3.—*Writs.*

DIVISION 4.—*Duties of returning officer on receipt of writ.*

DIVISION 5.—*Nominations.*

DIVISION 6.—*Ballot-papers.*

DIVISION 7.—*The taking of the ballot.*

DIVISION 8.—*Invalid ballot-papers.*

DIVISION 9.—*Ascertainment of result of election.*

DIVISION 10.—*Secrecy of officers.*

DIVISION 11.—*Disputed elections.*

DIVISION 12.—*Offences.*

DIVISION 13.—*Regulations.*

DIVISION 14.—*Special provisions for first election of sixty Members.*

PART III.—MISCELLANEOUS PROVISIONS.

FIRST SCHEDULE.

SECOND SCHEDULE.

**3.** The Act mentioned in the First Schedule to this Act is, to the extent therein expressed, hereby repealed.

---

PART

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

No. 5, 1933.

PART II.

LEGISLATIVE COUNCIL ELECTIONS.

DIVISION 1.—*Preliminary.*

**Commence-  
ment.**

**4.** This Part of this Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

The day so appointed shall not be earlier than fourteen days after the date upon which His Majesty's Assent to the Constitution Amendment (Legislative Council) Act, 1932, is signified.

**Interpre-  
tation.**

**5.** In this Part, unless the context or subject-matter otherwise indicates or requires,—

“ Assembly ” means the Legislative Assembly of New South Wales.

“ Council ” means the Legislative Council of New South Wales.

“ Election ” means an election of a Member or Members of the Legislative Council held in pursuance of the Principal Act.

“ Elector ” means a person who for the time being is a Member of the Legislative Council or a Member of the Legislative Assembly.

“ Prescribed ” means prescribed by this Part or by regulations made thereunder.

“ This Part ” means this Part of this Act, and includes the Second Schedule to this Act.

“ Writ ” means a writ for an election.

DIVISION 2.—*Returning officer.*

**Clerk of the  
Parliaments  
to be return-  
ing officer.**

**6.** (1) At every election the Clerk of the Parliaments shall be the returning officer.

(2) It shall be the duty of the returning officer to take all necessary steps to conduct the election, to count the votes cast thereat and to ascertain and declare the result thereof in accordance with this Part, and to do such other matters and things in respect of the election as he is required by this Part to do.

(3)

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

29

No. 5, 1933.

(3) The returning officer may with the approval of the permanent head of the department concerned make use of the services of any of the officers of the Public Service for the purpose of carrying out the duties imposed upon the returning officer by this Part.

DIVISION 3.—*Writs.*

**7.** (1) For the purposes of any election a writ may be issued by the Governor. Writ to be  
issued by  
Governor.

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 writ.

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

(2) Every writ shall be directed to the returning officer.

(3) In every writ shall be appointed—

- (a) the day (in this Part referred to as the “day of nomination”) on or before which all nominations of candidates at the election shall be made;
- (b) the day (in this Part referred to as the “day of the return of the writ”) upon which the writ shall be returnable to the Governor.

(4) In every writ there shall be appointed—

- (a) a day upon which a sitting of the Members of the Council and a sitting of the Members of the Assembly shall be held for the purposes of taking the votes of those Members in the respective Houses of the Parliament;
- (b) an hour at which the taking of votes at such sittings shall commence;
- (c) an hour at which the taking of votes at such sittings shall terminate.

The day so appointed is in this Part referred to as the “day of the ballot.”

The same day and hours shall be appointed in respect of the sitting of the Members of the Council and of the sitting of the Members of the Assembly.

(5) The day of nomination shall be a day not earlier than the seventh and not later than the twenty-first day from the date of the issue of the writ.

(6)

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

No. 5, 1933.

(6) The day of the ballot shall be a day not later than the fortieth day from the date of the issue of the writ.

(7) The day of the return of the writ shall be a day not later than the sixtieth day from the date of the issue of the writ.

(8) The writ for an election to fill the seats of those Members of the Council whose seats become vacant by the expiration of their term of service shall be returnable not later than the day immediately preceding the date of the expiration of such terms of service.

President  
of Council  
to notify  
vacancy.

**8.** When and so often as the seat of an elected Member of the Council becomes vacant before the expiration of his term of service, the President of the Council shall notify the Governor of the vacancy. Upon receipt of the notification the Governor shall issue a writ for the election of a Member to fill the vacancy.

*DIVISION 4.—Duties of returning officer on receipt of writ.*

Duties of  
returning  
officer on  
receipt of  
writ.

**9.** (1) The returning officer shall, upon the receipt by him of any writ indorse thereon the day of the receipt, and shall forthwith give public notice of the purport of the writ, of the day of nomination, the day of the ballot, the hour at which the sittings of the respective Houses of the Parliament are to commence, the hour at which the taking of the votes at such sittings is to terminate, the day of the return of the writ, and of the place at which he will receive the nomination papers.

(2) For the purposes of this section "public notice" shall mean notice in the Gazette, and in two or more daily newspapers.

Substitute  
returning  
officer, etc.

**10.** (1) The returning officer shall forthwith on the receipt by him of any writ appoint by writing under his hand some fit person to be the substitute returning officer for the election.

(2) The returning officer shall in person or by such substitute attend at all reasonable hours in the  
daytime

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

31

No. 5, 1932.

daytime in the interval between the receipt of the writ and noon on the day of nomination at the place appointed for receiving the nomination papers.

(3) If at any time during such interval the returning officer is absent at the time or place appointed for the doing or suffering by him of any act or thing relating to the election, then the substitute returning officer may and shall do or suffer such act or thing, or if the returning officer by reason of sickness or other disability is unable to do or suffer any acts or things relating to the election and the same is notified to the substitute returning officer, or if the returning officer dies, then the substitute at any time may and shall as and for the returning officer do and suffer all such acts and things, and subject in every such case to the like provisions as if he were the returning officer.

**11.** The returning officer shall, upon each day between the receipt by him of any writ and noon on the day of nomination for the election mentioned in the writ, exhibit and keep exhibited at the place for receiving the nomination papers the names and residences of all persons who have duly become candidates for the election.

Returning officer to exhibit names of candidates.

DIVISION 5.—*Nominations.*

**12.** (1) Every nomination of a candidate shall be made by delivering to the returning officer or to the substitute returning officer (who, if required, shall give a receipt for the same) a nomination paper at some time after the issue of the writ and before noon on the day of nomination.

Nominations.

(2) The nomination paper shall be in or to the effect of the following form, namely:—

We, the undersigned, do hereby nominate (*here state name in full, occupation, and place of residence of the person nominated*) for election as a Member of the Legislative Council.

The said \_\_\_\_\_ is an elector entitled to vote at elections of Members of the Legislative Assembly in and for the Electoral District of \_\_\_\_\_ (or is a person

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

person entitled to become an elector in and for the Electoral District of ..... or a person who on the date upon which His Majesty's Assent to the Constitution Amendment (Legislative Council) Act, 1932, was signified was a Member of the Legislative Council).

And we do hereby respectively certify each for himself that we have not previously signed a nomination paper for this election.

Signatures.

State whether a Member of the  
Legislative Council or of the  
Legislative Assembly.

-----  
-----

Dated this ..... day of ..... 19.....

(3) Every nomination paper shall be accompanied by a written statement signed by the person nominated and signifying his consent to the nomination.

The statement shall be in or to the effect of the following form:—

I (*here state name in full, occupation, and place of residence*)  
..... do hereby consent to my  
nomination by (*here state names of electors who signed the  
nomination paper*) ..... as a candidate for  
election as a Member of the Legislative Council at  
the election to be held on .....

Signature .....

Dated this ..... day of ..... 19.....

(4) No person shall be deemed to be nominated or to be a candidate for election pursuant to this Part unless the provisions of this section have been observed in relation to his nomination.

The returning officer shall decide whether the provisions of this section have been observed in relation to the nomination of any person, and the decision of the returning officer shall be final for all purposes.

(5)

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

**33**

**No. 5, 1933.**

(5) Any elector who by signing more than one nomination paper for any election contravenes the provisions of subsection five of section 17c of the Principal Act shall be liable to a penalty of five hundred pounds, to be recovered by any person who sues for the same in the Supreme Court of New South Wales.

**13.** (1) If at any election the number of candidates for election does not exceed the number to be elected, the returning officer shall, at noon on the day of nomination at the place of receiving the nomination papers, declare all the candidates to be duly elected, shall publish such declaration in the Gazette, and shall make his return accordingly.

Proceed-  
ings on  
nomination.

(2) If at any election the number of candidates for election exceeds the number to be elected, a ballot shall be taken; and the returning officer shall at noon on the day of nomination and at the place for receiving the nomination papers, announce that a ballot will be taken, and the names of the persons who have become candidates, and shall also forthwith publish in the Gazette and in one or more daily newspapers a like announcement.

(3) The following candidates at an election if elected at that election shall be declared to be so elected and shall (without prejudice to the power of a court having jurisdiction to hear and determine election petitions) be deemed to have been duly elected and to vacate their seats immediately after the commencement of their term of service, that is to say—

- (a) every elected candidate who dies before the commencement of his term of service, whether he so dies before, during, or after the election;
- (b) every elected candidate who on the day of nomination for the election is not qualified to become a Member of the Council whether he does or does not become so qualified before the commencement of his term of service;
- (c) every elected candidate who at the commencement of his term of service is disqualified from being



**Constitution Further Amendment (Legislative  
Council Elections) Act.**

No. 5, 1932.

being a Member of the Council or is incapable of sitting or voting in the Council whether he becomes so disqualified before, during, or after the election.

DIVISION 6.—*Ballot-papers.*

Ballot-  
papers.

**14.** (1) Where a ballot is to be taken at any election, the returning officer shall provide a ballot-box and a sufficient number of ballot-papers for each House of the Parliament.

cf. Act No.  
41, 1912,  
s. 83.

(2) The ballot-papers shall be printed, and shall be in or to the effect of the prescribed form.

(3) In printing the ballot-papers—

- (a) the names of all candidates shall be printed in alphabetical order according to their surnames; such surnames shall be printed in more conspicuous type than that used for the christian names;
- (b) if there are two or more candidates of the same surname, their names shall be printed according to the alphabetical order of their christian names, or if their christian names are the same, then according to the alphabetical order of their residences, arranged and stated on the ballot-paper;
- (c) where similarity in the names of two or more candidates is likely to cause confusion, the returning officer may arrange the names with such description or addition as will distinguish them from one another;
- (d) a square shall be printed opposite the name of each candidate.

(4) A counterfoil shall be attached to each ballot-paper.

DIVISION 7.—*The taking of the ballot.*

Application  
of this  
Division.

**15.** (1) The provisions of this Division shall apply equally to the proceedings for taking the ballot at the sitting of Members of the Council and at the sitting of Members of the Assembly.

(2)

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

**35**

No. 5, 1923.

(2) In the application of this Division to proceedings at the sitting of Members of the Council, a reference to "the Clerk" shall be construed as a reference to the Clerk of the Parliaments or the officer acting in his place; and a reference to "a Member" shall be construed as a reference to a Member of the Council present at the sitting.

(3) In the application of this Division to proceedings at a sitting of Members of the Assembly, a reference to "the Clerk" shall be construed as a reference to the Clerk of the Assembly or the officer acting in his place; and a reference to "a Member" shall be construed as a reference to a Member of the Assembly present at the sitting.

**16.** (1) Upon the day of the ballot the taking of the votes shall commence and terminate at the hours respectively appointed therefor in the writ for the election: Hours of taking of ballot.

Provided that if at the hour appointed for the termination of the taking of the votes there are any Members present at the sitting who desire to vote, the votes of such Members shall be taken.

(2) Immediately before proceeding to take the votes the Clerk shall exhibit for the inspection of the Members the ballot-box open and empty, and shall immediately afterwards close and lock the ballot-box and shall keep the same unopened in full view of the Members until the conclusion of the sitting. cf. Act No. 41, 1912, s. 94.

**17.** (1) Each Member shall vote only once at any election. Voting.

(2) Each Member shall vote in person at the sitting and the voting shall be by secret ballot.

**18.** The Clerk shall enter on the counterfoil of a ballot-paper the name of a Member desiring to vote and shall then tear off the ballot-paper corresponding to that counterfoil, and having marked the ballot-paper on both sides with the prescribed official mark shall deliver it to the Member. Issue of ballot-paper.

The Clerk shall retain the counterfoil.

**19.**

**19.** (1) On receiving a ballot-paper a Member shall forthwith mark his vote on the ballot-paper as follows:—

He shall vote for not less than the prescribed number of candidates by placing the figure “ 1 ” in the square opposite the name of the candidate for whom he votes as his first preference, and by placing the figures “ 2,” “ 3,” “ 4 ” (and so on as the case requires) in the squares respectively opposite the names of so many other candidates as will, with the candidate for whom he votes as his first preference, complete the prescribed number.

The elector may in addition indicate the order of his preference for as many more candidates as he pleases by placing in the squares respectively opposite their names other figures next in numerical order after the figures already placed by him on the ballot-paper.

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.

(2) Having marked his vote on the ballot-paper, the Member shall then fold the ballot-paper so as to conceal the names of the candidates and to show the official mark. The Member shall exhibit the ballot-paper so folded to the Clerk, and shall forthwith openly, and without unfolding it, deposit it in the ballot-box.

(3) If a Member, before his ballot-paper is deposited in the ballot-box, satisfies the Clerk that he has spoiled his ballot-paper by mistake or accident, and surrenders the spoiled ballot-paper to the Clerk, the Clerk shall deliver another ballot-paper to such Member and retain the spoiled ballot-paper.

The spoiled ballot-paper shall be immediately cancelled, and the fact of the cancellation shall be noted upon the counterfoil corresponding to the spoiled ballot-paper.

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

37

No. 5, 1933.

**20.** As soon as is practicable after the hour appointed for the termination of the taking of votes at the sitting, the Clerk shall—

Proceedings  
after close  
of ballot.

- (a) make up in one parcel the counterfoils of the ballot-papers which have been used in the taking of the ballot, and in a second separate parcel the ballot-papers which have remained unused in the taking of the ballot, and in a third separate parcel such papers and records used in connection with the taking of the ballot as may be prescribed;
- (b) seal up the separate parcels and indorse the same severally with a description of the contents and the date of the taking of the ballot, and sign with his name the indorsement;
- (c) prepare an account setting out the number of ballot-papers originally received by him as returning officer, or delivered to him by the returning officer, as the case may be, the number handed to and used by members voting at the election, and the number left unused;
- (d) keep in his custody as returning officer or deliver or cause to be delivered to the returning officer, as the case may be, the parcels and account, together with the ballot-box used at the taking of the ballot.

**21.** (1) The Legislative Council and the Legislative Assembly may prepare and adopt respectively standing rules and orders not inconsistent with this Part regulating the conduct of proceedings at any sitting held for taking the votes of Members at any election.

Standing  
rules and  
orders.

(2) Such rules and orders shall by such Council and Assembly respectively be laid before the Governor, and being by him approved shall become binding and of force.

**22.** (1) No person shall directly or indirectly induce any Member to display his ballot-paper after he shall have marked the same so as to make known to such person or to any other person the name of any candidate for whom he has marked his vote on such ballot-paper or the manner in which he has marked such vote.

Displaying  
ballot-paper.

(2)

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

No. 5, 1933.

(2) A Member who has marked his vote on his ballot-paper shall not display such ballot-paper to any person so as to make known to such person or to any other person the name of any candidate for whom the Member has marked his vote, or the manner in which he has marked his vote.

(3) Whosoever contravenes any provision of this section shall be liable to a penalty of five hundred pounds, to be recovered by any person who sues for the same in the Supreme Court of New South Wales.

DIVISION 8.—*Invalid ballot-papers.*

**23.** A ballot-paper shall be invalid and shall not be counted if—

Invalid  
ballot-paper.

- (a) it does not bear the prescribed official mark referred to in section eighteen of this Act; or
- (b) the figure "1" standing alone indicating a first preference for some candidate is not placed on the ballot-paper; or
- (c) the figure "1" standing alone indicating a first preference is placed opposite the name of more than one candidate; or
- (d) it has upon it any mark or writing by which in the opinion of the returning officer the voter can be identified; or
- (e) it has no vote indicated on it or it does not indicate the elector's first preference for one candidate and his consecutive preferences for so many other candidates as will, with the candidate for whom he votes as his first preference, be equal in number to the prescribed number as defined in subsection one of section nineteen of this Act.

DIVISION 9.—*Ascertainment of result of election.*

**24.** (1) As soon as is practicable after the taking of the ballot has been completed the returning officer shall—

Ascertain-  
ment of  
result of  
election.

- (a) in the presence of such candidates as may be in attendance, and with such assistants as he may deem necessary, open the ballot-boxes, count the votes

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

39

No. 5, 1933.

votes, and ascertain the result of the election in accordance with this Part, and in particular the rules contained in the Second Schedule to this Act;

(b) declare to be elected the candidates who are so ascertained to be elected.

(2) The returning officer shall so far as practicable proceed continuously with the counting of the votes.

(3) The decision of the returning officer as to any question arising on the ballot-papers, or any other matter arising on the counting of the votes, shall be final, subject only to review by the court having jurisdiction to hear and determine election petitions.

(4) As soon as is practicable after the result of the election has been declared the returning officer shall prepare and sign a certificate in or to the effect of the prescribed form setting out the names of the candidates declared to be elected.

(5) The returning officer shall indorse upon the writ a copy of the certificate, and shall return the writ to the Governor within the time specified in the writ.

(6) A copy of the certificate (and in the case of an election at which more than one seat is to be filled a copy of the result sheet mentioned in the Second Schedule to this Act) shall be published in the Gazette, and shall be laid before both Houses of Parliament.

**25.** (1) Upon the completion of the counting of the votes at an election the returning officer shall seal up in separate parcels the counted ballot-papers and the ballot-papers rejected as invalid, and shall indorse the parcels severally with a description of the contents and the date of the taking of the ballot, and sign with his name the indorsement.

Preservation  
of ballot-  
papers.

(2) The returning officer shall retain for a period of twelve months from the day of the ballot the several parcels referred to in this section and in section twenty of this Act, and shall at the end of that period destroy them unless a court having jurisdiction to hear and determine election petitions otherwise orders.

(3)

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

No. 5, 1933.

(3) No person shall be allowed to inspect any of the sealed parcels so retained or any of the contents save under and in accordance with an order of such court.

DIVISION 10.—*Secrecy of officers.*

Preservation  
of secrecy  
of voting.

**26.** (1) The returning officer, the substitute returning officer, and every officer, clerk, and assistant concerned in the taking of the ballot or the counting of ballot-papers at an election, and every candidate present at such counting, shall maintain and aid in maintaining the secrecy of the voting at the election, and shall not at any time communicate to any person any information which he may have obtained at or in connection with such ballot or counting as to the candidate for whom any elector has voted.

(2) Every person who acts in contravention of this section shall be guilty of an offence, and shall be liable on summary conviction to a penalty not exceeding one hundred pounds or to imprisonment for any term not exceeding six months.

DIVISION 11.—*Disputed elections.*

Determina-  
tion of  
questions.

**27.** (1) 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, 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 the Principal Act, or respecting any vacancy in the Legislative Council as so reconstituted, with the following modifications, that is to say—

- (a) the court trying an election petition in relation to an election at which more than one seat is to be filled shall not have power to declare the whole election to be void, but may declare the election of any one or more of the candidates returned as elected at the election to be void or to be valid as justice may require:

(b)

**Constitution Further Amendment (Legislative Council Elections) Act.**

41

No. 5, 1933.

- (b) where the court so declares the election of a candidate to be void the court shall declare that such one as justice may require of the candidates not returned as elected was elected;
- (c) the court shall have power to make such amendments as may be necessary to give effect to its decisions in the certificate of the returning officer of the result of the election;
- (d) references to the Legislative Assembly shall be construed as references to the Legislative Council, references to the Speaker of the Legislative Assembly shall be construed as references to the President of the Legislative Council, and references to the Clerk of the Legislative Assembly shall be construed as references to the Clerk of the Parliaments.

(2) No person who has voted at an election shall, in any legal proceedings to question the election or return of any candidate at such election, be required to state for whom he has voted.

**28.** No election of a candidate at an election shall be declared void by reason only of a non-compliance with the rules contained in the Second Schedule to this Act, or by reason of any mistake in the use of any form prescribed by or under this Part, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in this Part, and that such non-compliance or mistake did not affect the result of the election.

Non compliance with rules.

*DIVISION 12.—Offences.*

**29.** The provisions of sections one hundred and forty-seven to one hundred and fifty-two, both inclusive, of the Parliamentary Electorates and Elections Act, 1912-1929, shall, mutatis mutandis, apply to and in respect of any election under this Part.

Application of Act No. 41, 1912.

*DIVISION 13.—Regulations.*

**30.** (1) The Governor may make regulations not inconsistent with this Part prescribing all matters which are

Regulations.

are



**Constitution Further Amendment (Legislative  
Council Elections) Act.**

No. 5, 1933.

are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Part.

cf. Act No.  
41, 1912,  
s. 176 (3).

(2) Where the time allowed to do any act is insufficient, and an alteration or extension of such time and any alteration of dates consequent thereon is expedient, the regulations may declare that such alteration shall be made, and thereupon the same shall be made and take effect accordingly.

(3) The regulations shall be published in the Gazette, and shall take effect from the date of publication or from a later date to be specified in the regulations.

(4) The regulations shall be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(5) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House, disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

DIVISION 14.—*Special provisions for first election of  
sixty Members.*

First  
elections.

**31.** In the application of the provisions of sections four to thirty (both inclusive) of this Part to the 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, those provisions shall be subject to the modifications and amendments set out in this Division of this Part.

One writ to  
suffice for  
four elec-  
tions.

**32.** (1) The provisions of subsection one of section seven of this Act shall be read subject to this section.

(2) It shall not be necessary for the Governor to issue separate writs for each of the four elections referred to in section 17D of the Principal Act. One writ shall suffice for all four of such elections.

**33.**

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

43

No. 5, 1933.

**33.** (1) The Governor shall in and by the writ appoint—

Appointment  
by the writ  
of days  
for sittings  
of both  
Houses.

- (a) four separate days upon each of which respectively a sitting of the Members of the Council and a sitting of the Members of the Assembly shall be held for the purposes of taking the votes of those Members in the respective Houses of the Parliament;
- (b) the hour at which the taking of votes at such sittings shall respectively commence on each of the days so appointed;
- (c) the hour at which the taking of votes at such sittings shall respectively terminate on each of the days so appointed.

A reference in this Part to “ the day of the ballot ” shall include a reference to each of the days appointed under paragraph (a) of this subsection.

The same days and hours shall in each case be appointed in respect of the sittings of the Members of the Council and of the sittings of the Members of the Assembly.

(2) The provisions of subsection one of this section shall be read in lieu of the provisions of subsection four of section seven of this Act.

**34.** (1) The days of the ballot appointed under subsection one of section thirty-three of this Act shall not be later than the eightieth day from the date of the issue of the writ.

Ballot and  
return of  
writ.

(2) The day of the return of the writ shall be a day not later than the one hundredth day from the date of the issue of the writ.

(3) The provisions of subsections one and two of this section shall be read in lieu of the provisions of subsections six and seven of section seven of this Act.

**35.** (1) The nomination paper shall be in or to the effect of the following form, namely:—

Nomina-  
tions.

We, the undersigned, do hereby nominate (*here state name in full, occupation, and place of residence of the person nominated*) for election as a Member of the Legislative Council.

**The**

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

The said \_\_\_\_\_ is an elector entitled to vote at elections of Members of the Legislative Assembly in and for the Electoral District of \_\_\_\_\_ (or is a person entitled to become an elector in and for the Electoral District of \_\_\_\_\_, or is a person who on the date upon which His Majesty's Assent to the Constitution Amendment (Legislative Council) Act, 1932, was signified, was a Member of the Legislative Council).

And we do hereby respectively certify each for himself that we have not previously signed more than one nomination paper for this election.

Signatures.

State whether a Member of the  
Legislative Council or of the  
Legislative Assembly.

-----  
-----

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_.

(2) Any elector who by signing more than two nomination papers for the election contravenes the provisions of subsection one of section 17D of the Principal Act shall be liable to a penalty of *five hundred* pounds, to be recovered by any person who sues for the same in the Supreme Court of New South Wales.

(3) Subsections one and two of this section shall respectively be read in lieu of subsections two and five of section twelve of this Act.

Return of  
writ.

**36.** (1) As soon as is practicable after the result of the fourth of the four elections has been declared, the returning officer shall prepare and sign a certificate in or to the effect of the prescribed form setting out the names of the candidates declared to be elected at each of the four elections respectively.

(2) The returning officer shall indorse upon the writ a copy of the certificate, and shall return the writ to the Governor within the time specified in the writ.

(3)

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

45

No. 5, 1933.

(3) A copy of the certificate and of the result sheets mentioned in the Second Schedule to this Act relating to each of the four elections shall be published in the Gazette, and shall be laid before both Houses of Parliament.

(4) Subsections one, two, and three of this section shall respectively be read in lieu of subsections four, five, and six of section twenty-four of this Act.

**37.** (1) A petition to the Court of Disputed Returns disputing any election or return at the 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, shall be filed with the Prothonotary of the Supreme Court within forty days after the day appointed for the reconstitution of the Legislative Council in pursuance of subsection one of section 17A of the Principal Act.

Petition to  
Court of  
Disputed  
Returns.

(2) Subsection one of this section shall be read as an additional paragraph (e) to subsection one of section twenty-seven of this Act.

---

PART III.

MISCELLANEOUS PROVISIONS.

**38.** This Part of this Act shall commence upon the day appointed for the reconstitution of the Legislative Council in pursuance of subsection one of section 17A of the Principal Act.

Commence-  
ment.

**39.** In this Part of this Act unless the context or subject-matter otherwise indicates or requires,—

Interpreta-  
tion.

“Clerk” means the Clerk of the Legislative Council.

“Member” means a Member of the Legislative Council.

“President” means the President of the Legislative Council.

**40.** (1) On the first day of the meeting of the Legislative Council after the commencement of this Part for the despatch of business the Clerk shall announce the list of the members elected at the elections referred to in section 17D of the Principal Act.

Members to  
be sworn.

The

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

No. 5, 1933.

The Clerk shall also announce the name or names of the Commissioner or Commissioners appointed by the Governor for swearing Members and shall read the Commission.

Members shall then be sworn or make affirmation as prescribed by law and shall sign the roll.

The President shall then be chosen in accordance with section forty-two of this Act.

Standing  
rules and  
orders  
regulating  
choosing the  
President.

**41.** The conduct of proceedings of the Legislative Council in choosing the President shall be regulated by Standing Rules and Orders prepared, adopted, and approved in accordance with section fifteen of the Principal Act; and until such Standing Rules and Orders are so prepared, adopted, and approved, such proceedings shall be conducted in accordance with section forty-two of this Act.

Provision  
for choosing  
President.

**42.** (1) For the purpose of the choosing of a President, the Clerk shall act as Chairman of the Legislative Council, and in any debate at such choosing shall decide which Member is entitled to address the House.

(2) After the Members present have been sworn, a Member addressing himself to the Clerk, shall propose some other Member, then present, to the House for their President, and move "That ——— do take the Chair of this House as President," which motion must be seconded.

(3) (a) If only one Member be proposed and seconded as President, he shall be called to the Chair of the House without a question being put.

(b) Such Member, on being called to the Chair, shall stand up in his place, and express his sense of the honor proposed to be conferred upon him, and submit himself to the House.

(c) Being again called to the Chair he shall be conducted from his seat to the Chair by the Members who proposed and seconded his election.

(4) If two or more Members be proposed as President a motion shall be made and seconded regarding each such Member, "That ——— do take the Chair of this House as President," and each Member so proposed shall address himself to the House.

(5)

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

47

No. 5, 1933.

(5) The Clerk shall then, in the order in which the Members have been proposed, put the question, "That \_\_\_\_\_ do take the Chair of this House as President"; and if resolved in the affirmative the Member shall be conducted to the Chair as provided in paragraph (c) of subsection three of this section, but if in the negative, or in the event of the numbers being equal, the question shall then be put by the Clerk "That (*the Member next proposed*) do take the Chair of this House as President," and so on until a majority has been recorded in favour of one of the candidates.

(6) Having been conducted to the Chair, the Member so elected, standing on the step, shall return his acknowledgments to the House for the honor conferred upon him and take the Chair.

**43.** Where the Legislative Assembly in pursuance of the provisions of section 5B of the Principal Act, directs that a Bill shall be submitted by way of referendum to the electors, the referendum shall be held and conducted in accordance with Part III of the Constitution Further Amendment (Referendum) Act, 1930, and if the Bill so directed to be submitted to the electors is a Bill to which section 7A of the Principal Act applies, the day upon which the referendum shall be held shall be appointed in and by the writ for the referendum issued by the Governor in accordance with section six of the Constitution Further Amendment (Referendum) Act, 1930.

Referendum  
after dis-  
agreement.

SCHEDULES.

FIRST SCHEDULE.

Sec. 3.

Reference to Act.	Short Title.	Extent of Repeal.
Act No. 2, 1930 ...	Constitution Further Amendment (Referendum) Act, 1930.	Sections forty-three to seventy-seven, both inclusive, also the Third Schedule and the appendix thereto.

SECOND

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

No. 5, 1933.

Secs. 24,  
28, 36.

SECOND SCHEDULE.

DIVISION 1.

*Where one candidate only is to be elected—Preferential System.*

1. The rules in this Division of this Schedule shall be observed in the counting of the votes for the purpose of ascertaining the result of an election at which only one seat of a Member of the Council is to be filled.

2. (a) The returning officer shall after rejecting any ballot-papers which are invalid count the total number of first preference votes given for each candidate.

(b) The candidate who has received the largest number of first preference votes shall, if that number constitutes an absolute majority of votes, be elected.

(c) If no candidate has received an absolute majority of first preference votes the returning officer shall make a second count.

(d) On the second count the candidate who has received the fewest first preference votes shall be excluded, and each unexhausted ballot-paper counted to him shall be counted to the candidate next in the order of the voter's preference.

(e) If a candidate then has an absolute majority of votes he shall be declared elected, but if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the fewest votes and counting each of his unexhausted ballot-papers to the continuing candidate next in the order of the voter's preference shall be repeated by the returning officer until one candidate has received an absolute majority of votes.

(f) The candidate who has received an absolute majority of votes shall be declared elected.

3. In the process of counting, exhausted ballot-papers shall be set aside as finally dealt with, and shall thenceforth not be taken into account in ascertaining the result of the poll.

4. (a) When a candidate is excluded, each ballot-paper counted to him shall be deemed to be exhausted if there is not indicated upon it a next preference for one continuing candidate.

(b) "Next preference" in the last preceding paragraph includes the first of the subsequent preferences marked on the ballot-paper which is not given to an excluded candidate.

5. In this Division of this Schedule "continuing candidate" means a candidate not already excluded from the count.

6. If on any count two or more candidates have an equal number of votes, and one of them has to be excluded, the returning officer shall determine by lot which shall be excluded.

7. In this Division of this Schedule—

The expression "an absolute majority of votes" means a greater number than one-half of the whole number of ballot-papers other than invalid and exhausted ballot-papers.

The expression "determine by lot" shall have the meaning ascribed to it in Division 2 of this Schedule.

DIVISION

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

49

No. 5, 1933.

DIVISION 2.

*Where more than one candidate is to be elected—Proportional  
Representation.*

1. The following rules shall be observed in the counting of the votes for the purpose of ascertaining the result of an election at which more than one seat of a Member of the Legislative Council is to be filled.

Application of rules.

2. The returning officer shall reject any ballot-papers which are invalid.

Rejection of invalid ballot-papers.

3. The returning officer shall then ascertain the number of first preferences recorded on the valid ballot-papers for each candidate, and shall then arrange the candidates on a list (in this Division of this Schedule referred to as "the order of preferences") in the order of the number of first preferences recorded for each candidate, beginning with the candidate for whom the greatest number of first preferences is recorded.

The order of preferences.

If the number of first preferences recorded for any two or more candidates (in this Division of this Schedule referred to as "equal candidates") is equal, the returning officer shall ascertain the number of second preferences recorded on all the ballot-papers for each of the equal candidates, and shall arrange the equal candidates as amongst themselves on the order of preferences in the order of the second preferences recorded for each such candidate, beginning with the candidate for whom the greatest number of second preferences is recorded.

If the number of first and second preferences recorded for any two or more equal candidates is equal, the returning officer shall, in like manner, ascertain the number of third preferences recorded on all the ballot-papers for each of such last-mentioned equal candidates and arrange such candidates on the order of preferences accordingly, and so on until all the candidates are arranged in order on the order of preferences.

If the number of first, second, third, and all other preferences recorded for any two or more equal candidates is equal, the returning officer shall determine by lot the order in which such candidates are to be arranged on the order of preferences.

4. The returning officer shall then arrange the ballot papers in parcels according to the first preferences recorded for each candidate.

Arrangement in parcels.

5. For the purpose of facilitating the processes prescribed by these rules, each valid ballot-paper shall be deemed to be of the value of one thousand.

Value of each ballot-paper.

6. The returning officer shall count the number of ballot-papers in each parcel, and in accordance with rule five credit each candidate with the value of the valid ballot-papers on which a first preference has been recorded for such candidate.

Crediting values of first preferences.

7. The returning officer shall then add together the values in all the parcels and divide the full total value by a number exceeding by one the number of seats to be filled.

Ascertainment of quota.

The



**Constitution Further Amendment (Legislative  
Council Elections) Act.**

No. 5, 1933.

The result increased by one, any fractional remainder being disregarded, shall be the value sufficient to secure the return of a candidate.

This value is in this Division of this Schedule referred to as the "quota."

Candidates  
with quota  
deemed elected.

8. If at the end of any count or at the end of the transfer of any parcel or subparcel of an excluded candidate the value credited to a candidate is equal to or greater than the quota, that candidate shall be deemed to be elected.

Transfer of  
surplus.

9. If at the end of any count the value credited to a candidate (in this rule referred to as the "elected candidate") is greater than the quota, the surplus shall be transferred to the continuing candidate or candidates indicated on the ballot-papers in the parcel or subparcel of the elected candidate, according to the next available preferences recorded thereon, and the following provisions shall apply to the making of such transfer, that is to say:—

- (a) if the value credited to the elected candidate arises out of original votes only, the returning officer shall examine all the ballot-papers in the parcel of the elected candidate, and shall arrange the transferable papers therein in subparcels according to the next available preferences recorded thereon and shall make a separate subparcel of the non-transferable papers;
- (b) if the value credited to the elected candidate arises partly out of original and partly out of transferred votes, or out of transferred votes only, the returning officer shall examine the ballot-papers contained in the subparcel last received by the elected candidate, and shall arrange the transferable papers therein in further subparcels according to the next available preferences recorded thereon and shall make a separate subparcel of the non-transferable papers;
- (c) in either of the cases referred to in paragraphs (a) and (b) of this rule, the returning officer shall ascertain the number of ballot-papers and their total value in each subparcel of transferable papers and in the subparcel of non-transferable papers;
- (d) if the total value of the papers in all the subparcels of transferable papers is equal to or less than the said surplus, the returning officer shall transfer each subparcel of transferable papers to the continuing candidate indicated thereon as the voter's next available preference, each paper being transferred at the value at which it was received by the elected candidate and (where the said total value is less than the said surplus), the non-transferable papers shall be set aside as not effective, at a value which is equal to the difference between the said surplus and the said total value;
- (e) if the total value of the papers in all the subparcels of transferable papers is greater than the said surplus the returning officer shall transfer each paper in each subparcel of transferable papers to the continuing candidate indicated thereon as  
the

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

**51**

**No. 5, 1933.**

the voter's next available preference, and the value at which each paper shall be transferred shall be ascertained by dividing the surplus by the total number of transferable papers, fractional remainders being disregarded, except that the consequential loss of value shall be noted on the result sheet;

- (f) a surplus which arises on the completion of any count shall be dealt with before a surplus which arises at a subsequent count;
- (g) when two or more surpluses arise out of the same count, the largest shall be first dealt with and the others shall be dealt with in the order of their magnitude;
- (h) if two or more candidates have an equal surplus arising out of the same count, the surplus of the candidate credited with the greatest value at the earliest count at which the values credited to those candidates were unequal shall be first dealt with, and where the values credited to such candidates were equal at all counts, the returning officer shall deal first with the surplus of the candidate who is highest in the order of preferences.

10. If at the end of any count no candidate has a surplus and one or more seats remain unfilled, the returning officer shall exclude the candidate (in this rule referred to as the "excluded candidate") then credited with the lowest value and shall transfer his papers to the continuing candidates respectively indicated on the ballot-papers in the parcel or subparcels of the excluded candidate as the voter's next available preference, and shall credit such continuing candidates with the value of the papers so transferred, and the following provisions shall apply to the making of such transfer, that is to say:—

Exclusion of  
candidates.

- (a) the parcel containing original votes shall first be transferred, the transfer value of each paper being one thousand;
- (b) the subparcels containing transferred votes shall then be transferred in the order in which and at the value at which the excluded candidate received them;
- (c) for the purpose of determining whether a candidate is a continuing candidate the transfer of each parcel or subparcel shall be regarded as a separate count;
- (d) in the transfer of each parcel or subparcel a separate subparcel shall be made of the non-transferable papers, which shall be set aside at the value at which the excluded candidate received them;
- (e) if, when a candidate has to be excluded under this rule, two or more candidates are each then credited with the same value and are lowest, regard shall be had to the total value of original votes credited to each of those candidates, and the candidate

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

**No. 5, 1933.**

candidate with the smallest such total value shall be excluded, and where such total values are equal, regard shall be had to the total value of votes credited to each of those candidates at the earliest count at which they had unequal values, and the candidate with the smallest such total value at that count shall be excluded, and if those candidates were each credited with the same total value of votes at all counts, that one of those candidates who is lowest on the order of preferences shall be excluded.

**Disposal of  
papers after  
any transfer.**

11. On every transfer made under these rules, each subparcel of papers transferred shall be placed on top of the parcel or subparcel (if any) of papers of the candidate to whom the transfer is made, and that candidate shall be credited with a value ascertained in accordance with these rules of the papers so transferred to him.

**Filling the  
last seats.**

12. (1) If at the end of any count the number of elected candidates is equal to the number of seats to be filled, no further transfer shall be made.

(2) When at the end of any count the number of continuing candidates is equal to the number of seats remaining unfilled, the continuing candidates shall thereupon be deemed to be elected.

(3) When only one seat remains unfilled, and the value credited to some one continuing candidate exceeds the total of the values credited to the other continuing candidates, together with any surplus not transferred, that candidate shall thereupon be deemed to be elected.

(4) When the last seats can be filled under this rule, no further transfer shall be made.

**Result sheet.**

13. At the end of every count the returning officer shall record on a result sheet which may be in accordance with the form set out as an Appendix to this Schedule or in a form to the like effect, the total of the values credited to each candidate at the end of that count and also the value of the non-transferable papers not effective on that count, and the loss of value on that count owing to disregard of fractions.

**Definitions.**

14. In these rules—

- (a) the expression "continuing candidate" means any candidate not deemed to be elected and not excluded;
- (b) the expression "first preference" means the figure "1" standing alone, the expression "second preference" means the figure "2" standing alone in succession to the figure "1," and the expression "third preference" means the figure "3" standing alone in succession to the figures "1" and "2," set opposite the name of any candidate, and so on;
- (c) the expression "next available preference" means a second or subsequent preference recorded in consecutive numerical order for a continuing candidate, the preferences next in order on the ballot-paper for candidates already deemed to be elected or excluded being ignored;

(d)

**Constitution Further Amendment (Legislative  
Council Elections) Act.**

**53**

**No. 5, 1933.**

- (d) the expression "transferable paper" means a ballot-paper on which, following any preference, a subsequent preference is recorded in consecutive numerical order for a continuing candidate;
- (e) the expression "non-transferable paper" means a ballot-paper on which no subsequent preference is recorded in consecutive numerical order for a continuing candidate;
- (f) the expression "original vote" in regard to any candidate means a vote derived from a ballot-paper on which a first preference is recorded for that candidate;
- (g) the expression "transferred vote" in regard to any candidate means a vote derived from a ballot-paper on which a second or subsequent preference is recorded for that candidate;
- (h) the expression "surplus" means the number by which the total value of the votes, original and transferred, credited to any candidate exceeds the quota;
- (i) the expression "count" means (as the context may require) either—
  - (i) all the operations involved in the counting of the first preferences recorded for candidates; or
  - (ii) all the operations involved in the transfer of the surplus of an elected candidate; or
  - (iii) all the operations involved in the transfer of the votes of an excluded candidate;
- (j) the expression "deemed to be elected" means deemed to be elected for the purpose of counting, but without prejudice to the declaration of the result of the election;
- (k) the expression "determine by lot" means determine in accordance with the following directions, that is to say—

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 candidates concerned shall, as amongst themselves, be arranged on the order of preferences in the order in which the slips containing their names are drawn, beginning with the candidate whose name is on the slip drawn first, be excluded in the order in which their names are drawn, and, in cases of surpluses, the surpluses shall be transferred in the order in which the names are drawn.

---

**APPENDIX.**

**Constitution Further Amendment (Legislative Council Elections) Act.**

No. 5, 1933.

**APPENDIX.**

FORM OF RESULT SHEET.

*Election of Members of the Legislative Council—Result Sheet.*

Number of valid votes.....  
Full total value of valid votes .....  
Number of Members to be elected.....  
Quota (value sufficient to secure the election of a candidate).....

Names of Candidates.	First Count.		Second Count.		Third Count.		—		—		Names of Candidate Elected.
	Value of Votes.	Transfer of	Result.	Transfer of	Result.	Transfer of	Result.	Transfer of	Result.		
Value of non-transferable papers not effective. } Loss of value owing to disregard of fractions. }											
Totals											

(Signature).....Returning Officer.

SYDNEY