

**CONSTITUTION (AMENDMENT) ACT, 1979, No. 38**

**New South Wales**



ANNO VICESIMO OCTAVO

**ELIZABETHÆ II REGINÆ**

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**Act No. 38, 1979.**

An Act to amend the Constitution Act, 1902, with respect to voting at elections of Members of the Legislative Assembly and the distribution of New South Wales into electoral districts for the purposes of those elections; and for other purposes. [Assented to, 30th April, 1979.]

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See also Parliamentary Electorates and Elections (Constitution) Amendment Act, 1979.

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*Constitution (Amendment).*

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**BE** it enacted by the Queen'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 :—

1. This Act may be cited as the "Constitution (Amendment) Act, 1979". Short title.

2. The Constitution Act, 1902, is amended in the manner set forth in Schedule 1. Amendment  
of Act No.  
32, 1902.

3. (1) The electoral districts existing at the date of assent to this Act shall be the electoral districts of New South Wales for the purposes of all elections until the date on which the first proclamation under section 15 (2) of the Parliamentary Electorates and Elections Act, 1912, after that date of assent is published in the Gazette. Saving.

(2) Notwithstanding subsection (1), the electoral districts existing at the date of assent to this Act shall, for the purposes of any by-election, as defined in section 3 (1) of the Parliamentary Electorates and Elections Act, 1912, to be held before the dissolution or expiry of the Legislative Assembly occurring next after that date of assent, be the electoral districts of New South Wales.

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SCHEDULE 1.

Sec. 2.

AMENDMENTS TO THE CONSTITUTION ACT, 1902.

(1) Section 6—

Omit the section.

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*Constitution (Amendment).*


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 SCHEDULE 1—*continued.*

 AMENDMENTS TO THE CONSTITUTION ACT, 1902—*continued.*

## (2) Section 7—

After “Council”, insert “or Legislative Assembly”.

## (3) Section 7B—

After section 7A, insert :—

Special  
provision  
as to  
referendum  
with respect  
to provisions  
relating to  
Legislative  
Assembly  
elections.

7B. (1) A Bill that expressly or impliedly repeals or amends section 11B, 26, 27, 28 or 29, the Seventh Schedule or this section shall not be presented to the Governor for Her Majesty’s assent until the Bill has been approved by the electors in accordance with this section.

(2) On a day not sooner than two months after the passage of the Bill through both Houses of the Legislature the Bill shall be submitted to the electors entitled to vote at a general election of Members of the Legislative Assembly.

(3) The day referred to in subsection (2) shall be appointed by the Governor under and in accordance with the Constitution Further Amendment (Referendum) Act, 1930, and any Act amending or replacing that Act.

(4) When the Bill is submitted to the electors the vote shall be taken under and in accordance with the Constitution Further Amendment (Referendum) Act, 1930, and any Act amending or replacing that Act.

(5) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for Her Majesty’s assent.

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*Constitution (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE CONSTITUTION ACT, 1902—*continued.*

(6) Nothing contained in this section affects the operation of section 5B and a Bill to which this section would otherwise apply which has been submitted to the electors under and in accordance with section 5B and has been approved by a majority of the electors voting may be presented to the Governor for Her Majesty's assent as if this section had not been enacted.

(7) The provisions of this section do not apply to a provision of a Bill, being a provision which would, upon its coming into operation, be a law referred to in section 29 (2).

(4) Section 11B—

After section 11A, insert :—

11B. A person who is entitled to vote at a periodic Council election or the election of a Member of the Legislative Assembly shall vote at the election and if he does not do so shall be liable to such penalty as may be provided by law.

Compul-  
sory  
voting.

(5) Sections 25–29—

After section 24A, insert :—

25. Every Legislative Assembly shall consist of 99 Members.

Number of  
Members  
of Legisla-  
tive  
Assembly.

26. Each Member of a Legislative Assembly shall be elected to represent one electoral district only.

Single  
Member  
electorates.

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*Constitution (Amendment).*


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 SCHEDULE 1—*continued.*

 AMENDMENTS TO THE CONSTITUTION ACT, 1902—*continued.*

Distribu-  
tion of  
New South  
Wales into  
electoral  
districts.

27. (1) A distribution of New South Wales into electoral districts shall be made—

- (a) forthwith after the date of assent to the Constitution (Amendment) Act, 1979;
- (b) forthwith after the enactment of any Act for the alteration of the number of Members of the Legislative Assembly;
- (c) forthwith after a general election of Members of the Legislative Assembly if the next previous distribution applied for the purpose of that general election and the next previous such general election; and
- (d) at such additional times as may be provided by law.

(2) The number of electoral districts into which New South Wales shall be distributed upon any such distribution shall be the number that is equal to the number, provided by law, of Members of the Legislative Assembly to be returned at the general election of Members of the Legislative Assembly to be held next after that distribution.

Number of  
voters in  
electoral  
districts.

28. Upon any distribution of New South Wales into electoral districts, the boundaries of each proposed electoral district shall be so determined that, at the time the distribution is made, the number of persons entitled to vote at a general election of Members of the Legislative Assembly in each proposed electoral district is equal to the quotient obtained by dividing the number of persons entitled at that time to vote at any such general election in all of the proposed electoral districts by the number of those proposed electoral districts, but subject to a margin of allowance not exceeding 10 per cent more or less of that quotient.

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*Constitution (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE CONSTITUTION ACT, 1902—*continued.*

29. (1) Elections of Members of the Legislative Assembly shall be conducted in accordance with the provisions of the Seventh Schedule. Conduct of Legislative Assembly elections.

(2) Subsection (1) does not limit the power of the Legislature to make laws (being laws that do not expressly or impliedly repeal or amend any of the provisions of the Seventh Schedule and are not inconsistent with any of those provisions) for or with respect to the conduct of elections of Members of the Legislative Assembly.

(6) Seventh Schedule—

After the Sixth Schedule, insert :—

SEVENTH SCHEDULE. Section 29.

CONDUCT OF LEGISLATIVE ASSEMBLY ELECTIONS.

PART 1.

METHOD OF VOTING.

1. At a poll for the election of a Member of the Legislative Assembly, a voter shall be required to record his vote for 1 candidate and no more but shall be permitted to record his vote for as many more candidates as he pleases, so as to indicate in such manner as may be provided by law the candidates for whom he votes and the order of his preferences for them.

PART 2.

COUNTING OF VOTES AT ELECTIONS.

2. (1) In this Part of this Schedule—

“continuing candidate”, in relation to a count, means a candidate not excluded at a previous count;

## Act No. 38, 1979.

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*Constitution (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CONSTITUTION ACT, 1902—*continued.*

“returning officer” means the person for the time being appointed by law to conduct an election of a Member of the Legislative Assembly.

(2) A reference in this Part of this Schedule to an exhausted ballot-paper in relation to any count is a reference to a ballot-paper on which there is not recorded a vote for a continuing candidate.

(3) For the purposes of subclause (2) of this clause, where—

- (a) the same preference (other than a first preference) has been recorded on a ballot-paper for more than 1 candidate, the ballot-paper shall be treated as if those preferences and any subsequent preferences had not been recorded on the ballot-paper; or
- (b) there is a break in the order of preferences recorded on a ballot-paper, the ballot-paper shall be treated as if any subsequent preference had not been recorded on the ballot-paper.

3. The method of counting the votes to ascertain the result of an election of a Member of the Legislative Assembly shall be as provided in this Part of this Schedule.

4. At the close of the poll the returning officer shall ascertain the total number of first preference votes recorded for each candidate on all ballot-papers not rejected by him as informal.

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*Constitution (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE CONSTITUTION ACT, 1902—*continued.*

5. If a candidate has a majority of the first preference votes, he shall be elected.

6. If no candidate is elected under clause 5, the returning officer shall make a second count.

7. (1) On the second count, the candidate who has the fewest first preference votes shall be excluded, and each of his ballot-papers that is not exhausted shall be transferred to the candidate next in the order of the voter's preference and counted to him as a vote.

(2) If, on the second count, a candidate has a majority of the votes remaining in the count, he shall be elected.

8. (1) If, on the second count, no candidate has a majority of the votes remaining in the count, the process of excluding the candidate who has the fewest votes, transferring each of his ballot-papers that is not exhausted to the continuing candidate next in the order of the voter's preference and counting it to him as a vote shall be repeated by the returning officer until 1 candidate has a majority of the votes remaining in the count.

(2) The candidate who, in accordance with sub-clause (1) of this clause, has a majority of the votes remaining in the count shall be elected.

9. Notwithstanding clause 7 (1) or 8 (1), the process of transferring to a continuing candidate each of the ballot-papers that is not exhausted and counting it to him as a vote shall not be repeated where there is only 1 continuing candidate, but that 1 continuing candidate shall be elected.



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*Constitution (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CONSTITUTION ACT, 1902—*continued.*

10. (1) Where, on any count at which the candidate with the fewest number of votes has to be excluded, 2 or more candidates have an equal number of votes (that number being fewer than the number of votes that any other candidate has or those candidates being the only continuing candidates)—

- (a) such one of those candidates as had the fewest number of votes at the last count at which they did not have an equal number of votes shall be excluded; or
- (b) if they had an equal number of votes at all preceeding counts, the candidate whose name is on a slip drawn in accordance with subclause (2) of this clause shall be excluded.

(2) For the purposes of subclause (1) of this clause, the names of the candidates who have an equal number of votes having been written on similar slips of paper by the returning officer and the slips having been folded by him so as to prevent the names being seen and having been mixed, 1 of those slips shall be drawn at random by him.

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