

Constitution Act 1902 No 32

[1902-32]



New South Wales

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Constitution Act 1902 No 32



New South Wales

An Act to consolidate the Acts relating to the Constitution.

Part 1 Preliminary

1 Name of Act and division

This Act may be cited as the *Constitution Act 1902*, and is divided into Parts and Divisions, as follows:

PART 1.—*Preliminary*—ss. 1-4.

PART 2.—*Powers of the Legislature*—ss. 5-9.

PART 3.—*The Legislative Council and Legislative Assembly*—

DIVISION 1.—*General Provisions*—ss. 10-15.

DIVISION 2.—*Special Provisions relating to the Legislative Council*—ss. 16-22.

DIVISION 3.—*Special Provisions relating to the Legislative Assembly*—ss. 23-34.

PART 4.—*Executive Councillors' Functions*—ss. 35-38.

PART 5.—*The Consolidated Revenue Fund*—ss. 39-46.

PART 6.—*Appointment of officers*—s. 47.

2 Repeals and savings

- (1) The Acts mentioned in the First Schedule to this Act are, to the extent therein expressed, hereby repealed.
- (2) All persons appointed under the Acts hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed hereunder.
- (3) All standing rules and orders made under the authority of the Acts hereby repealed, and being in force at the commencement of this Act, shall be deemed to have been made under the authority of this Act.

3 Definition

In this Act, unless the context or subject-matter otherwise indicates or requires:

The Legislature means His Majesty the King, with the advice and consent of the Legislative Council and Legislative Assembly.

4 Application of Act

For the purposes of this Act, the boundaries of New South Wales shall comprise all that portion of Australia lying between the one hundred and twenty-ninth and one hundred and fifty-fourth degrees of east longitude, reckoning from the meridian of Greenwich and northward of the fortieth degree of south latitude, including all the islands adjacent in the Pacific Ocean within the latitude aforesaid, and also including Lord Howe Island, save and except the territories comprised within the boundaries of South Australia, Victoria, and Queensland, as at present established.

Part 2 Powers of the Legislature

5 General legislative powers

The Legislature shall, subject to the provisions of the Commonwealth of Australia Constitution Act, have power to make laws for the peace, welfare, and good government of New South Wales in all cases whatsoever:

Provided that all Bills for appropriating any part of the public revenue, or for imposing any new rate, tax or impost, shall originate in the Legislative Assembly.

6 Power to alter system of representation

The Legislature may by any Act alter the number and extent of the electorates or Electoral Districts represented in the Legislative Assembly, and establish new electorates or districts, and alter the apportionment of representatives to be chosen by the said electorates or districts, and alter the number of representatives in the said Assembly, and may alter and regulate the appointment of returning officers, and make new provisions for the issuing and return of writs for the election of Members to serve in the said Assembly, and the time and place of holding such elections.

7 Power to alter constitution of Legislative Council

The Legislature may, by any Act, alter the laws in force for the time being under this Act or otherwise concerning the Legislative Council, and may provide for the nomination or election of another Legislative Council to consist of such members to be appointed or elected by such persons and in such manner as by any such Act is determined:

Provided that every Bill passed for any such purpose shall be reserved for the signification of His Majesty's pleasure thereon, and a copy of such Bill shall be laid before both Houses of the Imperial Parliament thirty days at least before His Majesty's pleasure thereon is

signified.

8 Crown lands

The Legislature may make laws regulating the sale, letting, disposal and occupation of the waste lands of the Crown in New South Wales.

9 Shipping dues

It shall not be lawful for the Legislature to enforce any dues or charges upon shipping contrary to or at variance with any treaty concluded by His Majesty with any Foreign Power.

Part 3 The Legislative Council and Legislative Assembly

Division 1 General provisions

10 Powers of Governor

The Governor may fix the time and place for holding every Session of the Legislative Council and Assembly, and may change or vary such time or place as he may judge advisable and most consistent with general convenience and the public welfare, giving sufficient notice thereof. He may also prorogue the Legislative Council and Assembly, and dissolve the said Assembly by proclamation or otherwise whenever he deems it expedient.

11 One session of Parliament to be held in each year

There shall be a Session of the Legislative Council and Assembly once at least in every year, so that a period of twelve months shall not intervene between the last sitting of the Legislative Council and Assembly in one Session and the first sitting of the Legislative Council and Assembly in the next Session.

12 No Member to sit or vote until he has taken the oath of allegiance

No Member either of the Legislative Council or of the Legislative Assembly shall be permitted to sit or vote therein until he has taken and subscribed before the Governor, or before some person authorised by the Governor to administer the same, the oath of allegiance in the form prescribed by the [Oaths Act 1900](#). And whensoever the demise of His present Majesty (whom may God long preserve) or of any of His Successors to the Crown of the United Kingdom shall be notified by the Governor to the said Council and Assembly respectively, the Members of the said Council and Assembly shall, before they are permitted to sit and vote therein, take and subscribe the like oath of allegiance to the Successor for the time being to the said Crown:

Provided that every person authorised by law to make an affirmation instead of taking an oath may make such affirmation in every case in which an oath is hereinbefore required to be taken.

13 Disqualifications

- (1) Any person who directly, or indirectly, himself, or by any person whatsoever in trust for him or for his use or benefit or on his account, undertakes, executes, holds, or enjoys in the whole or in part any contract or agreement for or on account of the Public Service shall be incapable of being summoned or elected or of sitting or voting as a Member of the Legislative Council or Legislative Assembly during the time he executes, holds or enjoys any such contract or any part or share thereof or any benefit or emolument arising from the same.
- (2) If any person being a Member of such Council or Assembly enters into any such contract or agreement, or, having entered into it, continues to hold it, his seat shall be declared by the said Legislative Council or Legislative Assembly, as the case may require, to be vacant, and thereupon the same shall become and be vacant accordingly.
- (3) Provided that nothing herein contained shall extend to any contract or agreement made, entered into, or accepted by any incorporated company, or any trading company consisting of more than twenty persons, where such contract or agreement is made, entered into, or accepted, for the general benefit of such incorporated or trading company.

14 Summons or election of disqualified persons

- (1) If any person by this Act disabled or declared to be incapable to sit or vote in the Legislative Council or Legislative Assembly is, nevertheless, 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 election and return shall be declared by the said Council and Assembly, as the case may require, to be void, and thereupon the same shall become and be void to all intents and purposes whatsoever.
- (2) If any person under any of the disqualifications mentioned in the last preceding section presumes, whilst so disqualified, to sit or vote as a Member of the said Council or Assembly, such person shall forfeit the sum of five hundred pounds to be recovered by any person who sues for the same in the Supreme Court of New South Wales.

15 Standing Rules and Orders to be laid before Governor

- (1) The Legislative Council and Legislative Assembly shall, as there may be occasion, prepare and adopt respectively Standing Rules and Orders regulating:
 - (a) the orderly conduct of such Council and Assembly respectively, and
 - (b) the manner in which such Council and Assembly shall be presided over in case of the absence of the President or the Speaker, and
 - (c) the mode in which such Council and Assembly shall confer, correspond, and

communicate with each other relative to Votes or Bills passed by, or pending in, such Council and Assembly respectively, and

- (d) the manner in which Notices of Bills, Resolutions and other business intended to be submitted to such Council and Assembly respectively at any Session thereof may be published for general information, and
- (e) the proper passing, entitling, and numbering of the Bills to be introduced into and passed by the said Council and Assembly, and
- (f) the proper presentation of the same to the Governor for His Majesty's Assent.

(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.

Division 2 Special provisions relating to the Legislative Council

16 Appointment of Legislative Councillors

It shall be lawful for His Majesty, by an instrument under the Sign-Manual, to authorise the Governor to summon to the Legislative Council by instrument under the Great Seal any person he thinks fit, and every person so summoned shall thereby become a Member of the Legislative Council:

Provided that no person shall be summoned to the Legislative Council who is not of the full age of twenty-one years, and a natural-born subject of His Majesty, or naturalised in Great Britain or in New South Wales:

Provided also, that not less than four-fifths of the Members so summoned shall consist of persons not holding any office of emolument under the Crown; but officers in His Majesty's sea and land forces on full or half-pay, and retired officers on pensions, shall not be deemed to be persons holding an office of emolument under the Crown within the meaning of this section.

The word **person** in this section shall be construed as including a woman whether married or unmarried.

17 Tenure of office

Members of the Legislative Council shall, subject to the provisions in this Act contained, hold their seats therein for the term of their natural lives.

18 Resignation of Councillors

Any Member of the Legislative Council may resign his seat therein by a letter to the Governor, and, upon the receipt of such letter by the Governor, the seat of such Legislative Councillor shall become vacant.

19 Vacation of seat

If any Legislative Councillor:

- (a) fails for two successive Sessions of the Legislature to give his attendance in the Legislative Council unless excused in that behalf by the permission of His Majesty or of the Governor signified by the Governor to the Legislative Council, or
- (b) takes any oath or makes any declaration or acknowledgment of allegiance, obedience, or adherence to any foreign prince or power, or
- (c) does, concurs in, or adopts any act whereby he may become a subject or citizen of any foreign state or power, or whereby he may become entitled to the rights, privileges, or immunities of a subject or citizen of any foreign state or power, or
- (d) becomes bankrupt, or takes the benefit of any law relating to insolvent debtors, or
- (e) becomes a public contractor or defaulter, or
- (f) is attainted of treason, or convicted of felony or infamous crime,

his seat in such Council shall thereby become vacant.

20 Trial of questions of vacancy

Any question which arises respecting any vacancy in the Legislative Council on occasion of any of the matters aforesaid shall be referred by the Governor to the said Legislative Council to be by the said Legislative Council heard and determined:

Provided that either the person respecting whose seat such question arises, or the Attorney-General on His Majesty's behalf, may appeal from the determination of the said Council in such case to His Majesty, and that the judgment of His Majesty, given with the advice of His Privy Council thereon, shall be final and conclusive to all intents and purposes.

21 President

- (1) The Governor may, by an instrument under the Great Seal, appoint one Member of the Legislative Council to be President thereof.
- (2) The said President may take part in any debate or discussion which may arise in the Legislative Council.

22 Quorum and voting

- (1) The presence of at least one-fourth of the Members of the Legislative Council exclusive of the President shall be necessary to constitute a quorum for the despatch of business:

Provided that if the whole number of Members constituting the Legislative Council is

not exactly divisible by four, the quorum of the Legislative Council shall consist of such whole number as is next greater than one-fourth of the Members.

- (2) All questions arising in the Legislative Council shall be decided by a majority of the votes of the Members present other than the President, and when the votes are equal the President shall have a casting vote.

Division 3 Special provisions relating to the Legislative Assembly

23 Convocation of Assembly

The Governor may, as occasion requires, in the name of His Majesty, by instrument under the Great Seal, summon and call together a Legislative Assembly.

24 Duration of Assembly

Every such Legislative Assembly shall exist and continue for three years from the day of the return of the writs for choosing the same and no longer, subject nevertheless to be sooner prorogued or dissolved by the Governor.

25 Disqualification of members of the Legislative Council

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

26 Offices of profit

No person:

- (a) holding an office of profit under the Crown other than one or more of the offices enumerated in the Second Schedule hereto, or
- (b) having a pension from the Crown during pleasure, or for any term of years,

shall be capable of being elected or of sitting or voting as a Member of the Legislative Assembly, but the holders for the time being of the offices enumerated in the said Schedule shall be so capable:

Provided that the holder of any office of profit under the Crown created by Act of Parliament as an office of the Executive Government shall be capable of being elected and of sitting and voting as a Member of the said Assembly.

27 Effect of acceptance of office of profit

If any Member of the said Assembly accepts any office of profit under the Crown, or pension from the Crown, during pleasure or for a term of years, his election shall thereupon become void, and a writ shall forthwith issue for a new election:

Provided that nothing in this or the last preceding section shall extend to:

- (a) any person in receipt only of pay, half-pay, or a pension as an officer in His Majesty's navy or army, or who receives any new or other commission in the army or navy, or any increase of pay on such commission, or
- (b) any of the officers enumerated in the Second Schedule hereto, or referred to in the last preceding section, who accept any other office of the Executive Government referred to in the said section or enumerated in the said Schedule,
- (c) Any member of the Legislative Assembly who accepts 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.

28 Allowances to Members of the Legislative Assembly

Every Member of the Legislative Assembly now serving or hereafter to serve therein shall, unless he is one of the persons specified or referred to in the next following section, be entitled to receive, by way of reimbursement for expenses incurred by him in the discharge of his Parliamentary duties, an allowance at the rate of eight hundred and seventy-five pounds per annum.

The Leader of the Opposition shall be entitled to receive an additional allowance of two hundred and fifty pounds per annum.

Such allowance shall be charged on the Consolidated Revenue Fund, and shall be payable monthly at the rate aforesaid to every such Member from the time of his taking his seat, and, in every case, until he resigns or his seat is vacated, or, where Parliament has been dissolved or has expired by effluxion of time, until the day appointed for taking the poll for the next general election:

Provided that in the case of every member elected after the first day of May, one thousand nine hundred and seven, such allowance shall be reckoned from the day of his election.

All moneys accruing due to any member under this Act, not drawn within seven days after the close of any Parliament, either by dissolution or by effluxion of time, shall revert to the Treasury.

29 Exceptions

- (1) No such Member shall be entitled to the said allowance, or any portion thereof, whilst:
 - (a) he holds any office of profit specified in the Second Schedule hereto, or
 - (b) he holds any other office of profit under the Crown the acceptance of which would render vacant the seat of the person accepting the same, or
 - (c) he is in receipt of any official salary as Speaker of the said Assembly, or as Chairman of Committees thereof.

- (2) Any Member in receipt of any pension or allowance granted under any Act authorising the grant of superannuation allowances or pensions to officers in the Public Service shall be entitled to the allowance authorised by the last preceding section, subject to its abatement by the amount he receives or is entitled to as such pension or superannuation allowance.

30 Assembly may proceed to business although writs not exceeding five shall not have been returned

Upon any general election the Legislative Assembly shall be competent to proceed to the despatch of business at the time appointed by the Governor for that purpose notwithstanding that any of the writs of election (not exceeding five) have not been returned, or that in any of the electoral districts the electors have failed to elect a Member to serve in the said Assembly.

31 Election of the Speaker

- (1) The Members of the Legislative Assembly shall upon the first assembling after every general election proceed forthwith to elect one of their number to be Speaker; and in case of his death, resignation, or removal by a vote of the said Legislative Assembly, the said Members shall forthwith proceed to elect another of such Members to be such Speaker.
- (2) The Speaker so elected shall preside at all meetings of the said Legislative Assembly except as may be provided by the Standing Rules and Orders hereinafter authorised to be made.

32 Quorum division casting vote

- (1) The presence of at least twenty Members of the Legislative Assembly, exclusive of the Speaker, shall be necessary to constitute a meeting of the said Assembly for the despatch of business.
- (2) All questions (except as herein is excepted) which arise in the said Assembly shall be decided by the majority of votes of the Members present other than the Speaker, and when the votes are equal the Speaker shall have the casting vote.

33 Resignation of seats in the Assembly

Any Member of the Legislative Assembly may, by writing under his hand, addressed to the Speaker, resign his seat therein, and upon the receipt of such resignation by the Speaker, the seat of such Member shall become vacant.

34 Vacation of seats of Members of Assembly

If any Member of the Legislative Assembly:

- (a) fails for one whole Session of the Legislature to give his attendance in the said

Assembly, unless excused in that behalf by the permission of the Assembly entered upon its journals, or

- (b) takes any oath or makes any declaration or acknowledgment of allegiance, obedience, or adherence to any foreign prince or power, or does or concurs in or adopts any act whereby he may become a subject or citizen of any foreign state or power, or become entitled to the rights, privileges, or immunities of a subject of any foreign state or power, or
 - (c) becomes bankrupt or an insolvent debtor within the meaning of the law in force for the time being relating to bankrupts or insolvent debtors, or
 - (d) becomes a public defaulter, or
 - (e) is attainted of treason or convicted of felony or any infamous crime,
- his seat in such Assembly shall thereby become vacant.

Part 4 Executive Councillors' functions

35 Definition

In this Part of this Act:

Executive Councillor means any member of the Executive Council appointed and sworn in as such member and being also a Minister of the Crown, but does not include the Governor or officer administering the government of the State.

36 Governor may change administrative duties

The Governor may authorise any Executive Councillor to exercise the powers and perform the official duties and be responsible for the obligations appertaining or annexed to any other Executive Councillor in respect to the administration of any department of the Public Service, whether such powers, duties, or obligations were created by virtue of the terms (express or implied) of any Act or are sanctioned by official or other custom:

Provided that no such authority shall be granted under this section in respect of the powers, duties, and obligations by law annexed or incident to the office of the Attorney-General.

37 Authority to be recorded

Every such authority shall be in such terms and subject to such conditions as the Governor thinks fit and shall be duly recorded by the officer in charge of the records of the Executive Council.

38 Signatures by one Executive Councillor in the absence of another

Subject to the proviso of section thirty-six, any official document, minute, instrument, or

paper, of what kind soever, which, according to official custom or to the requirements of any Act, requires or appears to require the signature of any particular Executive Councillor, shall, in the absence or disability of such Executive Councillor, be valid and effectual to all intents and purposes if signed by any other Executive Councillor.

Part 5 The Consolidated Revenue Fund

39 Consolidated Revenue Fund

All taxes, imposts, rates, and duties, and all territorial, casual, and other revenues of the Crown (including royalties), from whatever source arising within New South Wales, and over which the Legislature has power of appropriation, shall form one Consolidated Revenue Fund, to be appropriated for the Public Service of New South Wales, in the manner and subject to the charges hereinafter mentioned.

40 Expenses of collection

The Consolidated Revenue Fund shall be permanently charged with all the costs, charges, and expenses incident to the collection, management, and receipt thereof; such costs, charges, and expenses being subject nevertheless to be reviewed and audited in such manner as may be directed by any Act.

41 Civil List payable to His Majesty

- (1) There shall be payable in every year to His Majesty, his heirs and successors, out of the Consolidated Revenue Fund, the several sums not exceeding in the whole the sum of twenty-two thousand three hundred and forty-five pounds for defraying the expense of the several services and purposes named in the Third and Fourth Schedules to this Act.
- (2) The Colonial Treasurer shall issue the said several sums in discharge of such warrants as shall be from time to time directed under the hand of the Governor, and the said Treasurer shall account to His Majesty for the same through the Lords Commissioners of His Majesty's Treasury in such manner and form as His Majesty shall be graciously pleased to direct.
- (3) Provided that for such time as there exist ministers of religion whose claims to stipends or allowances payable out of the sum set apart by Schedule C to the Constitution Act were preserved by the [Grants for Public Worship Prohibition Act of 1862](#), and who are under the said Act legally entitled for the time being to claim stipends or allowances from the public funds, there shall be payable in every year to His Majesty, his heirs and successors, out of the Consolidated Revenue Fund, in addition to the sums aforesaid, such sum as may be necessary to meet the payments of such stipends or allowances, and all payments out of such sum shall be made and accounted for in manner last aforesaid.

42 Civil List to be accompanied by surrender of all revenues of the Crown

The said several sums mentioned in the said Schedules shall be accepted and taken by His Majesty, his heirs and successors, by way of civil list, instead of all territorial, casual, and other revenues of the Crown (including all royalties), from whatever source arising, within New South Wales, and to the disposal of which the Crown may be entitled either absolutely or conditionally or otherwise howsoever.

43 Pensions to Judges

- (1) Not more than four thousand five hundred and fifty pounds in each year shall be payable for pensions to the judges of the Supreme Court out of the sum set apart in the Fourth Schedule to this Act.
- (2) Not more than three thousand five hundred pounds in each year shall be payable out of the said sum for pensions to superannuated officers, and the amount of such pensions shall be according to the several scales and rates fixed by the Imperial Act four and five William the Fourth, chapter twenty-four:

Provided that the said sum of three thousand five hundred pounds shall in each year be paid to the Civil Service Superannuation Account, in accordance with and subject to the provisions of the [Civil Service Act 1884](#), and that a list of all pensions granted under this Act and of the persons to whom the same have been granted shall be laid in every year before both Houses of the Legislature.

44 Issue of public revenue

No part of His Majesty's revenue in New South Wales arising from any of the sources aforesaid shall be issued, or shall be made issuable, except in pursuance of warrants under the hand of the Governor directed to the Colonial Treasurer.

45 Appropriation of consolidated revenue

After and subject to the payments to be made under the provisions hereinbefore contained, all the Consolidated Revenue Fund hereinbefore mentioned shall be subject to be appropriated to such specific purposes as may be prescribed by any Act in that behalf.

46 Money Bills to be recommended by Governor

It shall not be lawful for the Legislative Assembly to originate or pass any vote, resolution, or Bill for the appropriation of any part of the said Consolidated Revenue Fund, or of any other tax or impost to any purpose which has not been first recommended by a message of the Governor to the said Assembly during the Session in which such vote, resolution, or Bill shall be passed.

Part 6 Appointment of officers

47 Appointment of officers

Subject to the provisions of the *Public Service Act 1902* and of all other enactments relating to the appointment of officers and being in force at the passing of this Act, the appointment of all public offices under the Government, whether such offices are salaried or not, shall be vested in the Governor with the advice of the Executive Council, with the exception of the appointments of the officers liable to retire from office on political grounds as hereinbefore mentioned, which appointments shall be vested in the Governor alone:

Provided that this enactment shall not extend to minor appointments which by any Act or by order of the Governor and Executive Council are vested in heads of departments or other officers or persons.

First Schedule

| Reference to Act | Title or short title | Extent of repeal |
|------------------|--|----------------------------|
| 17 Vic No 41 | The Constitution Act. | The unrepealed portion. |
| 20 Vic No 18 | An Act to grant to Her Majesty certain sums in addition to the present Civil List for the adequate remuneration of the Colonial Treasurer. | The whole. |
| 37 Vic No 7 | An Act to limit the duration of Parliaments to three years. | The whole. |
| 44 Vic No 6 | Executive Councillors (Functions Substitution) Act. | The whole. |
| 47 Vic No 5 | <i>Constitution Act Amendment Act of 1884.</i> | The whole. |
| 53 Vic No 12 | Parliamentary Representatives' Allowance Act. | The whole. |
| 54 Vic No 1 | <i>Constitution Act Amendment Act of 1890.</i> | The whole. |
| Act No 40, 1901 | <i>Governor's Salary Act 1901.</i> | Section 2, subsection (4). |

Second Schedule

(Sections 27, 29)

The Premier,
The Attorney-General,
Nine other Ministers of the Crown, being members of the Executive Council.

Third Schedule

(Section 41)

| | £ | s | d |
|--|----------|----------|----------|
| To be placed at the disposal of His Majesty for the Salary of the Governor if His Majesty sees fit, otherwise to revert to the Consolidated Revenue Fund | 5,000 | 0 | 0 |
| One Chief Justice | 2,000 | 0 | 0 |
| Two Puisne Judges | 3,000 | 0 | 0 |
| Auditor-General | 2,000 | 0 | 0 |
| Solicitor-General | 1,945 | 0 | 0 |
| Governor's Private Secretary | 350 | 0 | 0 |
| £ | 14,295 | 0 | 0 |

Fourth Schedule

(Sections 41, 43)

| | £ | s | d |
|---|----------|----------|----------|
| Pensions to Judges on their ceasing to hold office (Any unclaimed portion of this amount to revert to the Consolidated Revenue Fund) | 4,550 | 0 | 0 |
| Pensions to Officers of Government not liable on political grounds to retire or be released from office according to the scales and rates fixed by the <i>Superannuation Act</i> of the Imperial Parliament 4 and 5 W IV c 24 (This amount to be paid in each year to the Civil Service Superannuation Account, in accordance with and subject to the provisions of the <i>Civil Service Act 1884</i>) | 3,500 | 0 | 0 |
| £ | 8,050 | 0 | 0 |