

# Constitution Act 1902 No 32

[1902-32]



New South Wales

## Status Information

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### Provisions in force

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### Authorisation

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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 4A.—*Parliamentary Secretaries*—ss. 38B-38E.

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- (1) The Acts mentioned in the First Schedule are, to the extent therein expressed, hereby repealed.
- (2) All persons appointed under the Acts hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed hereunder.
- (3) All standing rules and orders made under the authority of the Acts hereby repealed, and being in force at the commencement of this Act, shall be deemed to have been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

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.

#### **5A Disagreement between the two Houses—appropriation for annual services**

- (1) If the Legislative Assembly passes any Bill appropriating revenue or moneys for the ordinary annual services of the Government and the Legislative Council rejects or fails to pass it or returns the Bill to the Legislative Assembly with a message suggesting any amendment to which the Legislative Assembly does not agree, the Legislative Assembly may direct that the Bill with or without any amendment suggested by the Legislative Council, be presented to the Governor for the signification of His Majesty's pleasure thereon, and shall become an Act of the Legislature upon the Royal Assent being signified thereto, notwithstanding that the Legislative Council has not consented to the Bill.
- (2) The Legislative Council shall be taken to have failed to pass any such Bill, if the Bill is not returned to the Legislative Assembly within one month after its transmission to the Legislative Council and the Session continues during such period.
- (3) If a Bill which appropriates revenue or moneys for the ordinary annual services of the Government becomes an Act under the provisions of this section, any provision in

such Act dealing with any matter other than such appropriation shall be of no effect.

**5B Disagreements—referendum**

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

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

No vote shall be taken at the joint sitting.

- (2) After the joint sitting and either after any further communication with the Legislative Council in order to bring about agreement, if possible, between the Legislative Council and the Legislative Assembly, or without any such communication the Legislative Assembly may by resolution direct that the Bill as last proposed by the Legislative Assembly and either with or without any amendment subsequently agreed to by the Legislative Council and the Legislative Assembly, shall, at any time during the life of the Parliament or at the next general election of Members of the Legislative Assembly, be submitted by way of referendum to the electors qualified to vote for the election of Members of the Legislative Assembly.

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

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

pass a Bill if the Bill is not returned to the Legislative Assembly within two months after its transmission to the Legislative Council and the Session continues during such period.

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

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

- (a) the submission of the Bill to the electors by way of referendum in accordance with this section shall be a sufficient compliance with the provisions of section 7A which require the Bill to be submitted to the electors,
- (b) the referendum under this section shall, notwithstanding anything contained in section 7A, be held upon a day which shall be appointed by the Governor in such manner as may be provided by law, and
- (c) the day so appointed shall, notwithstanding anything contained in subsection (2), be a day during the life of the Parliament and not sooner than two months after the Legislative Assembly has passed a resolution in accordance with that subsection for the purposes of such referendum.
- (6) A joint sitting of the Members of the Legislative Council and the Members of the Legislative Assembly for the purposes of this section may be convened by the Governor by message to both Houses of the Parliament.

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

## **5C Words of enactment**

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

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

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

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



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

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

## **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.

### **7A Special provision as to referendum**

- (1) The Legislative Council shall not be abolished nor, subject to the provisions of subsection (6), shall its constitution or powers be altered except in the manner provided in this section.
- (2) A Bill for any purpose within subsection (1) shall not be presented to the Governor for His Majesty's assent until the Bill has been approved by the electors in accordance with this section.
- (3) 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 qualified to vote for the election of members of the Legislative Assembly.

Such day shall be appointed by the Legislature.

- (4) When the Bill is submitted to the electors the vote shall be taken in such manner as

the Legislature prescribes.

- (5) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for His Majesty's assent.
- (6) The provisions of this section shall extend to any Bill for the repeal or amendment of this section, but shall not apply to any Bill for:
  - (a) the repeal, or
  - (b) the amendment from time to time, or
  - (c) the re-enactment from time to time with or without modifications,of any of the following sections of this Act, namely, sections 13, 14, 15, 17B, 17C, 18, 19, 20, 21, 22 and 38A, or of any provision for the time being in force so far as it relates to the subject-matter dealt with in any of those sections.
- (7) In any case in relation to which the expression "as may be provided by law" is used in the *Constitution Amendment (Legislative Council) Act 1932*, the law may be made as if this section were not in force, and may be so made at any time either before or after the appointed day.
- (8) In this section a reference to the Legislative Council shall be construed as a reference to the Legislative Council as reconstituted in accordance with this Act.

## **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.

In this section the word **demise** shall include abdication.

### **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 of New South Wales shall be incapable of being 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 in subsection (1) or (2) 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.

- (4) It is hereby declared that nothing in subsection (1) or (2) extends to:
- (a) a contract or agreement for or in respect of a loan to the Treasurer or to a body authorised to borrow by Act of Parliament,
  - (b) a contract or agreement the benefit or burden of which or any interest in which devolves upon a person:
    - (i) as beneficiary under a will or as a person entitled to share in the estate of an intestate—until he has been in possession of the benefit, burden or interest, as the case may be, for one year from the date of commencement of the [Constitution \(Amendment\) Act 1962](#) or from the date of the devolution, whichever is the later date,
    - (ii) as executor, administrator or trustee—until he has been in possession of the benefit, burden or interest, as the case may be, for three years from the date of commencement of the [Constitution \(Amendment\) Act 1962](#) or from the date of the devolution, whichever is the later date,
  - (c) a compromise or settlement in respect of compensation or other money payable by Her Majesty or a statutory body representing Her Majesty,
  - (d) a lease, licence for occupation, sale, purchase or exchange of land, or a contract or agreement for such a lease, sale, purchase or exchange or for the occupation of land or for an easement; or a gift or an agreement for a gift by any person of land to or for Her Majesty or a statutory body representing Her Majesty,
  - (e) a contract or agreement for the supply or provision by or to or for Her Majesty or a statutory body representing Her Majesty of goods, wares or merchandise or services (including the provision of insurance or indemnity) where the goods, wares or merchandise or services (including the provision of insurance or indemnity) are supplied or provided on the like terms as those on which they are ordinarily supplied or provided to members of the public,
  - (f) a loan by Her Majesty or a statutory body representing Her Majesty to any person upon the security of a mortgage, bill of sale, lien or other security upon and subject to the like terms as those ordinarily imposed by Her Majesty or the statutory body on loans made to members of the public.

Notice of any such compromise or settlement as is referred to in paragraph (c) that takes place after the commencement of the [Constitution \(Amendment\) Act 1962](#) shall be published in the Gazette within two months from the date of the compromise or settlement, as the case may be.

- (5) In this section, **statutory body representing Her Majesty** includes any statutory body that is part of, or that exercises any function that is a function of, the Public Service of New South Wales.

#### **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, elected and returned as a Member to serve in the said Council or the said Assembly, such 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 one thousand dollars 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, 17 (Repealed)**

#### **17A Constitution of Legislative Council**

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

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

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

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

- (3) Elections of Members of the Legislative Council shall wherever the election is contested, and more than one seat is to be filled, be according to the principle of proportional representation, each voter having one transferable vote, and where only one seat is to be filled, be according to a preferential system.
- (4) The voting at any such election shall be by secret ballot.
- (5) Each voter at any such election shall be required to indicate the order of his preferences for not less than the prescribed number of candidates.

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

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

#### **17B Qualifications etc**

- (1) Subject to the disqualifications set out in this Act any person whether male or female, married or unmarried:
  - (a) who is an elector entitled to vote at the election of Members of the Legislative Assembly, or a person entitled to become such elector, or a person who on the date upon which His Majesty's Assent to the [Constitution Amendment \(Legislative Council\) Act 1932](#), is signified is a member of the Legislative Council, and
  - (b) who has been for three years at the least resident within the limits of the Commonwealth of Australia, and
  - (c) who is a natural-born or naturalized subject, of the King,shall be capable of being elected as a Member of the Legislative Council and of sitting and voting therein.
- (2) No person being a Member of the Legislative Assembly shall be capable of being elected or of sitting or voting as a Member of the Legislative Council.

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

Provided that nothing in this subsection shall extend to:

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

### **17C Nominations**

- (1) A person shall not be a candidate at any election of a Member or Members of the Legislative Council unless he is nominated for election.
- (2) Every nomination of a candidate shall be in writing, and shall be made by means of a nomination paper which shall be in or to the effect of such form as may be provided by law.
- (3) A nomination paper shall contain the name of one candidate and one candidate only.
- (4) A nomination paper shall be invalid unless the person nominated therein has consented to the nomination in such manner as may be provided by law.
- (5) Each nomination paper shall be signed by two and not more than two electors.

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

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

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

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

### **17D Elections for the first constitution of the Legislative Council**

- (1) For the purposes of the election of the sixty Members who are to be elected in

pursuance of sections 17A, 17B and 17C for the first constitution of the Legislative Council, there shall be four separate elections at each of which fifteen Members shall be elected, but nominations shall be made as if the four elections formed one election, and notwithstanding the provision of subsection (5) of section 17C:

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

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

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

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

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

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

#### **17E Where candidates are insufficient, a further election to be held**

- (1) If at any election the number of candidates for election does not exceed the number of persons required to be elected all the candidates shall be declared elected.
- (2) If at any election the number of candidates for election is less than the number of persons required to be elected, a fresh election shall be held to fill the vacancies.

#### **17F Term of service etc**

- (1) Subject to the provisions of subsections (3) and (6), the term of service of a Member of the Legislative Council shall expire at the end of twelve years from its commencement.
- (2) One-fourth of the Members of the Legislative Council shall be elected every three years.



- (3) The term of service of the Members elected under section 17D shall expire as follows:
  - (a) in the case of the fifteen who are elected at the first election under that section—at the end of twelve years from the commencement of such term,
  - (b) in the case of the fifteen who are elected at the second election under that section—at the end of nine years from the commencement of such term,
  - (c) in the case of the fifteen who are elected at the third election under that section—at the end of six years from the commencement of such term,
  - (d) in the case of the fifteen who are elected at the fourth election under that section—at the end of three years from the commencement of such term.
- (4) A Member of the Council whose term of service is about to expire shall, if not otherwise disqualified, be capable of being re-elected.
- (5) An election to fill the seats of Members of the Council whose terms of service are about to expire shall be held during the period of six months immediately preceding the date of the expiration of such terms of service.
- (6) Where the seat of a Member becomes vacant before the expiration of his term of service the term of service of the person elected to fill such casual vacancy shall expire at the date of the expiration of the term of service of the Member whose seat he is elected to fill.
- (7) For the purposes of this section:
  - (a) the term of service of a Member elected for the first constitution of the Legislative Council shall be taken to commence on the appointed day,
  - (b) the term of service of a Member elected to fill a seat which becomes vacant by the expiry of the holder's term of service shall be taken to commence on such expiry.

**17G, 17H (Repealed)**

**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 defaulter, or
- (f) is attainted of treason, or convicted of felony or infamous crime,

his seat in such Council shall thereby become vacant.

## **20 Determination of questions of elections etc**

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

## **21 President**

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

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

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

- (2) Before or during the absence of the President, the Legislative Council may choose one of their number to perform the duties of the President during his absence.
- (3) The President or presiding member may take part in any debate or discussion which may arise in the Legislative Council.

## **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 or the presiding Member, and when the votes are equal the President or the presiding Member 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.

### **24A Special provision as to referendum**

- (1) A Bill containing any provision to extend the time during which any such Legislative Assembly shall exist and continue beyond three years from the day of the return of the writs for choosing the same shall not be presented to the Governor for His 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 qualified to vote for the election of Members of the Legislative Assembly.

Such day 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.

- (3) 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.

- (4) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for His Majesty's assent.
- (5) The provisions of this section shall extend to any Bill for the repeal or amendment of this section.
- (6) Nothing contained in this section affects the operation of section 5B of this Act and a Bill to which this section would otherwise apply which has been submitted to the electors under and in accordance with section 5B of this Act and has been approved by a majority of the electors voting may be presented to the Governor for His Majesty's assent as if this section had not been enacted.

## **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, 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.

Provided further that a person holding office as Parliamentary Secretary is 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, 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, or any office of profit under the Crown created by Act of Parliament as an office of the Executive Government, or the office of Parliamentary Secretary.

## **28, 28A (Repealed)**

## **29 Exceptions**

- (1) No Member of the Legislative Assembly shall be entitled to any remuneration payable under the *Parliamentary Remuneration Tribunal Act 1975* whilst:
  - (a) (Repealed)
  - (b) he holds any office of profit under the Crown the acceptance of which would render vacant the seat of the person accepting the same, or
  - (c) (Repealed)
- (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 salary authorised by the *Parliamentary Remuneration Tribunal Act 1975*, 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.

### **31A Absence of Speaker from New South Wales**

- (1) During the absence from New South Wales of the Speaker the Chairman of Committees of the Legislative Assembly shall act in his place, and for all purposes, whether of this Act or otherwise, shall have and may exercise and perform all the powers, authorities, duties and functions of the Speaker.
- (2) Without prejudice to the generality of subsection (1) the Chairman of Committees of the Legislative Assembly, while acting in the place of the Speaker under that subsection, shall be deemed to be the Speaker for the purposes of section 71 of the *Parliamentary Electorates and Elections Act 1912-1935*.

### **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 Definitions**

In this Part:

**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.

**Functions** include powers, authorities and duties.

**Unavailable**, in relation to an Executive Councillor, means unavailable by reason of the Executive Councillor's absence or disability or for any other reason.

### **36 Authority for Executive Councillor to act for and on behalf of another Executive Councillor**

- (1) The Governor may, from time to time, authorise an Executive Councillor to act for and on behalf of another Executive Councillor for any period specified or described by the Governor.
- (2) Where an Executive Councillor is authorised under this section to act for and on behalf of another Executive Councillor, any function appertaining or annexed to the office of that other Executive Councillor may, while the authority remains in force, be exercised or performed from time to time by the Executive Councillor so authorised instead of by that other Executive Councillor.
- (3) An authority under this section may be revoked by the Governor.
- (4) An Executive Councillor may be authorised under this section by reference to his name or by reference to the title of the office which he holds as Executive Councillor.
- (5) Notice of an authority under this section, or the revocation of such an authority, may be published in the Gazette at any time, and, where such a notice is so published, judicial notice shall be taken of the notice and of the authority or revocation, as the case may be.
- (6) Every authority under this section shall be recorded by the officer in charge of the records of the Executive Council.

### **37 Unavailability of Executive Councillor**

An Executive Councillor may exercise or perform for and on behalf of another Executive Councillor a function appertaining or annexed to the office of that other Executive

Councillor if the firstmentioned Executive Councillor is satisfied that that other Executive Councillor is unavailable and that any Executive Councillor authorised under section 36 to exercise or perform that function is unavailable.

**37A Provisions ancillary to sections 36 and 37**

- (1) Sections 36 and 37 apply to the functions appertaining or annexed to the office of an Executive Councillor, whether those functions are conferred or imposed by the terms (express or implied) of an Act or instrument under an Act, or by or under any other law, or by official or other custom, but do not apply to the functions appertaining or annexed to that office by virtue of an authority under section 36.
- (2) Any act, matter or thing done or omitted by an Executive Councillor while acting for or on behalf of another Executive Councillor:
  - (a) under an authority under section 36, or
  - (b) under the authority of section 37,shall be as valid and effectual and shall have the same consequences as if the act, matter or thing had been done or omitted by that other Executive Councillor.
- (3) In all proceedings and before all persons acting judicially, it shall be presumed, in the absence of evidence to the contrary, that an Executive Councillor who purports to act for or on behalf of another Executive Councillor was authorised by or under section 36 or 37 so to act.

**38 Limitation as to exercise of Attorney-General's functions**

- (1) Nothing in section 36, 37 or 37A authorises an Executive Councillor to exercise any function that is by an Act or any other law annexed or incident to the office of the Attorney-General.
- (2) Where a function is annexed or incident to the office of the Attorney-General by reason only of the fact that the Attorney-General administers an Act or part of an Act, subsection (1) does not apply in relation to that function unless the administration of that Act or part is expressly vested in the Attorney-General by any Act.

**38A Powers of Ministers to speak in Legislative Council**

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



authority of this section to sit in the Legislative Council.

## **Part 4A Parliamentary Secretaries**

### **38B Appointment of Parliamentary Secretaries**

- (1) The Premier may, from time to time, appoint a Member or Members of the Legislative Assembly to hold office as Parliamentary Secretary.
- (2) Section 47 does not apply to or in respect of the office of Parliamentary Secretary.

### **38C Functions of Parliamentary Secretary**

- (1) A Parliamentary Secretary shall have and may perform such functions as the Premier may, from time to time, determine in respect of him.
- (2) Nothing in this section authorises a Parliamentary Secretary to perform any functions that may, by the terms (express or implied) of an Act or instrument under an Act, or by or under any other law, only be performed by some other person.

### **38D How Parliamentary Secretary ceases to hold office**

- (1) A person holding office as Parliamentary Secretary ceases to hold that office:
  - (a) if he dies,
  - (b) if the person by whom he was appointed as such ceases to be Premier,
  - (c) if he resigns his office as such by writing under his hand addressed to the Premier,
  - (d) if he is removed from office as such by the Premier,
  - (e) if his seat as a Member of the Legislative Assembly becomes vacant, otherwise than by reason of the fact that the Legislative Assembly has been dissolved or has expired by the effluxion of time, or
  - (f) upon the day appointed for the taking of the poll for the general election next following his appointment to hold that office.
- (2) The Premier may, for any cause which appears to him to be sufficient, remove any person from office as Parliamentary Secretary.

### **38E Restrictions relating to Parliamentary Secretaries**

- (1) A person shall not be appointed to hold office as Parliamentary Secretary if he is a Minister of the Crown or a member of the Executive Council.
- (2) A person shall not be appointed as a Minister of the Crown or a member of the Executive Council if he is a Parliamentary Secretary.

## **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.
- (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.
- (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

The Premier.

The Attorney-General.

Seventeen 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
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## 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 <a href="#">Civil Service Act 1884</a> )	3,500	0	0
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£	8,050	0	0
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## Fifth Schedule (Repealed)