

# Constitution Act 1902 No 32

[1902-32]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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## Contents

<b>Long title</b> .....	7
<b>Part 1 Preliminary</b> .....	7
1 Name of Act .....	7
2 Repeals and savings .....	7
3 Definitions .....	7
4 Application of Act .....	7
<b>Part 2 Powers of the Legislature</b> .....	8
5 General legislative powers .....	8
5A Disagreement between the two Houses—appropriation for annual services .....	8
5B Disagreements—referendum .....	8
5C Words of enactment .....	10
6 (Repealed) .....	10
7 Power to alter constitution of Legislative Council or Legislative Assembly .....	10
7A Referendum for Bills with respect to Legislative Council and certain other matters .....	11
7B Special provision as to referendum with respect to provisions relating to Legislative Assembly elections .....	12
8 (Repealed) .....	13
8A Assent to Bills .....	13
9 (Repealed) .....	13
<b>Part 2A The Governor</b> .....	13
9A Appointment of Governor .....	13

9B Appointment of Lieutenant-Governor and Administrator.....	13
9C Administration of government by Lieutenant-Governor or Administrator.....	14
9D Deputy for Governor during short illness or absence.....	15
9E Oaths or Affirmations of Allegiance and of Office.....	16
9F Letters Patent and Instructions cease to have effect.....	16
9G Continuation of existing Commissions, appointments etc.....	16
9H Public Seal of the State.....	17
9I Governor's salary.....	17

### **Part 3 The Legislative Council and Legislative Assembly.....** 18

#### **Division 1 General provisions.....** 18

10 Powers of Governor.....	18
11 One session of Parliament to be held in each year.....	18
11A Elections to be held pursuant to writs.....	18
11B Compulsory voting.....	18
12 No Member to sit or vote until he has taken the oath of allegiance.....	18
13 Disqualifications.....	19
13A Further disqualifications.....	20
13B Office of profit or pension from Crown.....	21
13C Member of one House ineligible for other.....	22
13D Abatement of salary of Members receiving pension or superannuation as public servants.....	22
14 Summons or election of disqualified persons.....	23
14A Disclosure of pecuniary interests and other matters by Members.....	23
15 Standing Rules and Orders to be laid before Governor.....	24

#### **Division 2 Special provisions relating to the Legislative Council.....** 25

16 Definitions.....	25
17 Reconstitution of the Legislative Council.....	25
17A–21 (Repealed).....	26
22 Eligibility to vote at periodic Council elections.....	26
22A Conduct of periodic Council elections.....	26
22B Term of service of Members of Legislative Council.....	26
22C (Repealed).....	27
22D Filling of casual vacancies in seats of Members of Legislative Council by joint sitting of both Houses	

.....	27
22E Members elected at joint sittings of both Houses of Parliament.....	28
22F Suspension of Legislative Council business for general election of the Legislative Assembly .....	29
22G President.....	29
22H Quorum .....	30
22I Determination of questions .....	30
22J Resignation of seats in the Legislative Council .....	30
<b>Division 3 Special provisions relating to the Legislative Assembly .....</b>	<b>30</b>
23 Convocation of Assembly .....	30
24 Duration of Assembly .....	30
24A (Repealed).....	30
25 Number of Members of Legislative Assembly .....	30
26 Single Member electorates .....	30
27 Distribution of New South Wales into electoral districts .....	30
28 Number of voters in electoral districts .....	31
28A Special distribution to maintain equal number of voters in each electoral district.....	31
29 Conduct of Legislative Assembly elections .....	32
30 Assembly may proceed to business although writs not exceeding five shall not have been returned .....	32
31 Election of the Speaker.....	32
31A Absence of Speaker from New South Wales .....	32
32 Quorum division casting vote .....	32
33 Resignation of seats in the Assembly .....	33
34 (Repealed) .....	33
<b>Part 4 The Executive .....</b>	<b>33</b>
<b>Division 1 Preliminary .....</b>	<b>33</b>
35 Definitions .....	33
35A Preservation of certain conventions etc relating to advice to Governor .....	33
<b>Division 2 The Executive Council .....</b>	<b>33</b>
35B Continuation of Executive Council .....	33
35C Members of the Executive Council .....	33

35D Meetings of the Executive Council .....	34
<b>Division 3 Appointment of Ministers of the Crown</b> .....	34
35E Appointment of Ministers.....	34
35F Maximum number of Ministers .....	34
<b>Division 4 Functions of Ministers of the Crown</b> .....	34
36 Authority for Minister of the Crown to act for and on behalf of another Minister of the Crown.....	34
37 Unavailability of Minister of the Crown .....	35
37A Provisions ancillary to sections 36 and 37 .....	35
38 Limitation as to exercise of Attorney-General’s functions.....	35
38A Powers of Ministers to speak in Legislative Council .....	36
<b>Part 4A Parliamentary Secretaries</b> .....	36
38B Appointment of Parliamentary Secretaries .....	36
38C Functions of Parliamentary Secretary .....	36
38D How Parliamentary Secretary ceases to hold office .....	36
38E Restrictions relating to Parliamentary Secretaries .....	37
<b>Part 5 The Consolidated Fund</b> .....	37
39 Consolidated Fund .....	37
40 Expenses of collection .....	37
41–44 (Repealed) .....	37
45 Appropriation of Consolidated Fund.....	37
46 Money Bills to be recommended by Governor .....	37
<b>Part 6 Officers and departments</b> .....	38
47 Appointment of officers .....	38
48 Absent officers.....	38
49 Departments .....	39
49A Demise of the Crown .....	39
<b>Part 7 Enrolment of Acts</b> .....	39
50 Enrolment of Acts .....	39
<b>Part 8 Local government</b> .....	39

51 Local government.....	39
<b>First Schedule</b> .....	40
<b>Second-Fifth Schedules (Repealed)</b> .....	40
<b>Sixth Schedule Conduct of Legislative Council elections</b> .....	40
<b>Seventh Schedule Conduct of Legislative Assembly elections</b> .....	45

# 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

This Act may be cited as the *Constitution Act 1902*.

### 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:

**Periodic Council election** means an election held for the return of 21 Members of the Legislative Council.

**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, if the *Constitution Further Amendment (Referendum) Act 1930* or any other Act relating to the manner in which the referendum shall be held and conducted is in force, in accordance with that Act or with any other such Act, but if that Act is not in force and no such other Act is in force 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, 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 (Repealed)**

### **7 Power to alter constitution of Legislative Council or Legislative Assembly**

The Legislature may, by any Act, alter the laws in force for the time being under this Act or otherwise concerning the Legislative Council or Legislative Assembly.

**7A Referendum for Bills with respect to Legislative Council and certain other matters**

- (1) The Legislative Council shall not be abolished or dissolved, nor shall:
  - (a) its powers be altered,
  - (b) section 11A, Division 2 of Part 3 (sections 22G, 22H, 22I and 22J excepted), the Sixth Schedule or this section be expressly or impliedly repealed or amended,
  - (c) any provision with respect to the persons capable of being elected or of sitting and voting as Members of either House of Parliament be enacted, or
  - (d) any provision with respect to the circumstances in which the seat of a Member of either House of Parliament becomes vacant be enacted,except in the manner provided by 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 do not apply to:
  - (a) a Bill for the repeal, the amendment from time to time or the re-enactment from time to time with or without modifications of:
    - (i) any of the provisions of section 15 or 38A, or
    - (ii) any provision for the time being in force so far as it relates to the subject-matter dealt with in any of the provisions referred to in subparagraph (i),
  - (b) a provision of a Bill, being a provision which would, upon its coming into operation, be a law referred to in section 22A (5),
  - (c) a provision of a Bill, being a provision with respect to the capacity of a person who holds or accepts an office of profit under the Crown specified in the Bill to be elected or to sit and vote as a Member of either House of Parliament,

- (d) a provision with respect to the persons capable of being elected or of sitting and voting as Members of either House of Parliament which applies in the same way to the persons capable of being elected or of sitting and voting as Members of the other House of Parliament, or
  - (e) a provision with respect to the circumstances in which the seat of a Member of either House of Parliament becomes vacant which applies in the same way to the circumstances in which the seat of a Member of the other House of Parliament becomes vacant.
- (7) (Repealed)
- (8) In this section a reference to the Legislative Council shall be construed as a reference to the Legislative Council as reconstituted from time to time in accordance with this Act.

**7B Special provision as to referendum with respect to provisions relating to Legislative Assembly elections**

- (1) A Bill that:
- (a) expressly or impliedly repeals or amends section 11B, 26, 27, 28 or 29, the Seventh Schedule or this section, or
  - (b) contains any provision to extend the time during which any Legislative Assembly shall exist and continue beyond 4 years from the day of the return of the writs for choosing it,
- 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.
- (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).

## **8 (Repealed)**

### **8A Assent to Bills**

- (1) Except as otherwise provided by this Act, every Bill:
- (a) shall be presented to the Governor for Her Majesty's assent after its passage through the Legislative Council and the Legislative Assembly, and
  - (b) shall become an Act of the Legislature when it is assented to by the Governor in the name and on behalf of Her Majesty.
- (2) Nothing in subsection (1) (b) precludes Her Majesty from assenting to a Bill while Her Majesty is personally present in the State.

## **9 (Repealed)**

## **Part 2A The Governor**

### **9A Appointment of Governor**

- (1) There shall continue to be a Governor of the State.
- (2) The appointment of a person to the office of Governor shall be during Her Majesty's pleasure by Commission under Her Majesty's Sign Manual and the Public Seal of the State.
- (3) Before assuming office, a person appointed to be Governor shall take the Oath or Affirmation of Allegiance and the Oath or Affirmation of Office in the presence of the Chief Justice or another Judge of the Supreme Court.

### **9B Appointment of Lieutenant-Governor and Administrator**

- (1) There shall continue to be:
- (a) a Lieutenant-Governor of the State, and
  - (b) an Administrator of the State.
- (2) The appointment of a person to the office of Lieutenant-Governor shall be during Her Majesty's pleasure by Commission under Her Majesty's Sign Manual and the Public Seal of the State.

(3) The Administrator shall be:

(a) the Chief Justice of the Supreme Court, or

(b) if the Chief Justice is the Lieutenant-Governor or in the event of a vacancy in the office of Chief Justice or the absence from the State or the incapacity of the Chief Justice—the next most senior Judge of the Supreme Court who is for the time being not absent from the State or incapacitated,

and shall be deemed to have been appointed as Administrator during Her Majesty's pleasure.

(4) A person may be appointed as Administrator during Her Majesty's pleasure by Commission under Her Majesty's Sign Manual and the Public Seal of the State and, where such an Administrator has been appointed and is not absent from the State or incapacitated, subsection (3) does not apply.

(5) The Lieutenant-Governor or Administrator shall not assume the administration of the government of the State or act as deputy to the Governor unless the Lieutenant-Governor or Administrator, as the case may be, has taken on that occasion, or has previously taken, the Oath or Affirmation of Allegiance and the Oath or Affirmation of Office in the presence of the Chief Justice or another Judge of the Supreme Court.

### **9C Administration of government by Lieutenant-Governor or Administrator**

(1) The Lieutenant-Governor or Administrator shall, subject to this section, assume the administration of the government of the State in the event of:

(a) a vacancy in the office of Governor,

(b) the assumption by the Governor of the administration of the government of the Commonwealth,

(c) the absence from the State of the Governor, or

(d) the incapacity of the Governor.

(2) The Governor shall not, for the purposes of this section, be regarded as being absent from the State or incapacitated at any time when there is a subsisting appointment of a deputy under section 9D.

(3) The Administrator shall not assume the administration of the government of the State except in the event of a vacancy in the office of Lieutenant-Governor or the absence from the State or the incapacity of the Lieutenant-Governor.

(4) The Lieutenant-Governor or Administrator shall, upon assuming the administration of the government of the State, notify:

(a) the Premier, or

- (b) in the event that the Premier is not available to be notified—the next most senior Minister of the Crown who is available to be notified.
- (5) The powers and functions of the Governor vest in the Lieutenant-Governor or Administrator during the administration of the government of the State by the Lieutenant-Governor or Administrator, as the case may be.
- (6) The Lieutenant-Governor shall cease to administer the government of the State when:
  - (a) a person is appointed to fill the vacancy in the office of Governor and has taken the required oaths or affirmations,
  - (b) the Governor ceases to administer the government of the Commonwealth, or
  - (c) the absence from the State or the incapacity of the Governor has ceased,as the case requires, and the Lieutenant-Governor has been notified accordingly.
- (7) The Administrator shall cease to administer the government of the State when:
  - (a) a person is appointed to fill the vacancy in the office of Governor or Lieutenant-Governor and has taken the required oaths or affirmations,
  - (b) the Governor ceases to administer the government of the Commonwealth, or
  - (c) the absence from the State or the incapacity of the Governor or Lieutenant-Governor has ceased,as the case requires, and the Administrator has been notified accordingly.

**9D Deputy for Governor during short illness or absence**

- (1) In the event that:
  - (a) the Governor is to be absent from the State or absent from Sydney but not the State or is suffering from illness, and
  - (b) the Governor has reason to believe that the duration of the absence or illness will not exceed 4 weeks,the Governor may, by instrument in writing, appoint the Lieutenant-Governor or Administrator to be the Governor's deputy during that absence or illness and in that capacity to exercise and perform on behalf of the Governor such of the powers and functions of the Governor as are specified or described in the instrument during the period specified or described in the instrument.
- (2) The Administrator shall not be appointed as deputy under this section except in the event of a vacancy in the office of Lieutenant-Governor or the absence from the State or the incapacity of the Lieutenant-Governor.

- (3) The Governor shall not appoint a deputy under this section except with the concurrence of:
  - (a) the Premier, or
  - (b) in the event that the Premier is not available to give that concurrence—the next most senior Minister of the Crown who is available to give that concurrence.
- (4) The appointment of a person as deputy under this section may be revoked by the Governor at any time.
- (5) The powers and functions of the Governor shall not be abridged, altered or in any way affected by the appointment of a person as deputy under this section.

#### **9E Oaths or Affirmations of Allegiance and of Office**

For the purposes of this Part:

- (a) a reference to the Oath or Affirmation of Allegiance is a reference to an Oath or Affirmation swearing or affirming to be faithful and bear true allegiance to Her Majesty and Her Majesty's heirs and successors according to law, and
- (b) a reference to the Oath or Affirmation of Office is a reference to an Oath or Affirmation swearing or affirming well and truly to serve Her Majesty and Her Majesty's heirs and successors in the particular office and to do right to all manner of people after the laws and usages of the State, without fear or favour, affection or ill-will.

#### **9F Letters Patent and Instructions cease to have effect**

The Letters Patent dated 29 October 1900, as amended, relating to the office of Governor of the State and all Instructions to the Governor cease to have effect on the commencement of the [Constitution \(Amendment\) Act 1987](#).

#### **9G Continuation of existing Commissions, appointments etc**

- (1) Any existing Commission or appointment given or made pursuant to Letters Patent or pursuant to Instructions referred to in section 9F shall continue in force until revoked or terminated.
- (2) A person who holds office under any such Commission or appointment as:
  - (a) the Governor,
  - (b) the Lieutenant-Governor,
  - (c) a Minister of the Crown,
  - (d) a member of the Executive Council, or
  - (e) the Vice-President of the Executive Council,



shall, on the commencement of the *Constitution (Amendment) Act 1987*, be deemed to have been appointed to that office under this Act.

- (3) The *Constitution (Amendment) Act 1987* does not affect anything done in pursuance of any such Commission or appointment.
- (4) Any oath or affirmation taken before the commencement of the *Constitution (Amendment) Act 1987* for the purposes of any such Commission or appointment shall be deemed to have been taken pursuant to this Act.
- (5) Subsection (1) does not continue in force:
  - (a) a provision of any such Commission or appointment that is inconsistent with any law, or
  - (b) the dormant Commission appointing an Administrator of the government of the State dated 16 October 1933.

#### **9H Public Seal of the State**

- (1) The Governor shall provide, keep and use the Public Seal of the State.
- (2) The seal which, immediately before the commencement of the *Constitution (Amendment) Act 1987*, was used as the Public Seal of the State shall continue to be so used until a new seal is provided by the Governor.

#### **9I Governor's salary**

- (1) The annual amount payable for the salary of a Governor appointed to that office is \$80,000 or such greater amount as is determined from time to time by regulation.
- (2) Such a regulation may be made by a Governor (whether or not his or her salary is thereby affected), or by any person for the time being administering the Government, or by a deputy in accordance with section 9D.
- (3) (Repealed)
- (4) The salary of a Governor as provided for from time to time under this section is not capable of being reduced by the making, amendment, operation, expiry or repeal (otherwise than on disallowance) of a regulation.
- (5) The salary of a Governor as provided for from time to time under this section is payable out of the Consolidated Fund, which is accordingly appropriated to the necessary extent.
- (6) Salary is not payable under this section to a Governor for any period for which he or she is entitled to salary from the Commonwealth in respect of his or her administration of the Government of the Commonwealth.

## **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.

#### **11A Elections to be held pursuant to writs**

Every general election of Members of the Legislative Assembly and every periodic Council election shall be held pursuant to writs issued by the Governor.

#### **11B Compulsory voting**

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.

#### **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.

(4A) Nothing in:

- (a) subsection (1) applies so as to prevent a person who holds an office of profit under the Crown or has a pension from the Crown during pleasure or for a term of years from being elected or of sitting or voting as a Member of either House of Parliament, or
- (b) subsection (2) requires or permits the seat of a Member of either House of Parliament who accepts such an office or such a pension to be declared to be, or to become or be, vacant,

by reason only of his holding or accepting that office of profit or his having or accepting that pension.

(4B) In subsection (4A), **office of profit under the Crown** includes any office or place of profit under the Crown which, by any Act, is declared or deemed not to be an office or place of profit under the Crown for the purposes of any Act or of this Act, whether in those terms or in terms to the like effect.

(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.

### 13A Further disqualifications

If a Member of either House of Parliament:

- (a) fails for one whole Session of the Legislative Council and Assembly to give his attendance in the House of which he is a Member, unless excused in that behalf by

the permission of that House entered upon its journals,

- (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,
  - (c) becomes bankrupt or takes the benefit of any law for the relief of bankrupt or insolvent debtors,
  - (d) becomes a public defaulter, or
  - (e) is attainted of treason or convicted of felony or any infamous crime,
- his seat as a Member of that House shall thereby become vacant.

**13B Office of profit or pension from Crown**

(1) A person:

- (a) holding an office of profit under the Crown, or
- (b) having a pension from the Crown during pleasure or for a term of years,

shall not, if he is elected as a Member of either House of Parliament, be capable of sitting and voting as a Member of the House to which he is elected, and his seat as a Member shall become vacant, after the expiration of the period commencing with his election and ending on the expiration of 7 sitting days of that House after notice of his holding that office or having that pension has been given to that House in accordance with its Standing Rules and Orders, unless that House has previously passed a resolution indicating that it is satisfied that that person has ceased to hold that office or, as the case may be, that the right of that person to that pension has ceased or is suspended while he is a Member of that House.

(2) If a Member of either House of Parliament accepts any office of profit under the Crown or pension from the Crown during pleasure or for a term of years, his seat as a Member of that House shall become vacant upon the expiration of the period commencing with his acceptance of the office or the pension and ending on the expiration of 7 sitting days of that House after notice of his accepting that office or pension has been given to that House in accordance with its Standing Rules and Orders, unless that House has previously passed a resolution indicating that it is satisfied that that Member has ceased to hold that office or, as the case may be, that the right of that Member to that pension has ceased or is suspended while he is a Member of that House.

(3) Notwithstanding subsection (1) or (2):

(a) a person:

- (i) who holds or accepts the office of Minister of the Crown or any office of profit under the Crown created by an Act as an office of the Executive Government,
- (ii) who holds or accepts an office of profit under the Crown in respect of which he is not entitled to any remuneration, except either fees payable to him, as a member of a body, in respect of his attendance at meetings of that body or an allowance for reasonable expenses incurred or to be incurred in carrying out the duties of the office, or both those fees and such an allowance,
- (iii) who holds or accepts an office of profit under the Crown, other than the Crown in right of the State of New South Wales, but not being an office as a member of any legislature of a country other than New South Wales, or
- (iv) who has or accepts a pension, referred to in subsection (1) (b) or (2), from the Crown, other than the Crown in right of the State of New South Wales,

shall be capable of being elected and of sitting and voting as a Member of either House of Parliament,

(b) a person who holds or accepts the office of Vice-President of the Executive Council shall be capable of being elected and of sitting and voting as a Member of either House of Parliament, and

(c) a person who holds or accepts the office of Parliamentary Secretary shall be capable of being elected and of sitting and voting as a Member of either House of Parliament.

(4) For the purposes of subsections (1) and (2), sitting days shall be counted, whether or not they occur during the same session of Parliament.

### **13C Member of one House ineligible for other**

A Member of either House of Parliament shall not be capable of being elected or of sitting or voting as a Member of the other House.

### **13D Abatement of salary of Members receiving pension or superannuation as public servants**

A Member of either House of Parliament in receipt of any allowance or pension 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 that allowance or pension.

#### **14 Summons or election of disqualified persons**

- (1) If any person by this Act, except section 13B, 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 section 13 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.

#### **14A Disclosure of pecuniary interests and other matters by Members**

- (1) The Governor may, subject to subsections (4) and (5), make regulations for or with respect to:
  - (a) the disclosure by Members of either House of Parliament of all or any of the following pecuniary interests or other matters:
    - (i) real or personal property,
    - (ii) income,
    - (iii) gifts,
    - (iv) financial or other contributions to any travel,
    - (v) shareholdings or other beneficial interests in corporations,
    - (vi) partnerships,
    - (vii) trusts,
    - (viii) positions (whether remunerated or not) held in, or membership of, corporations, trade unions, professional associations or other organisations or associations,
    - (ix) occupations, trades, professions or vocations,
    - (x) debts,
    - (xi) payments of money or transfers of property to relatives or other persons by, or under arrangements made by, Members,
    - (xii) any other direct or indirect benefits, advantages or liabilities, whether pecuniary or not, of a kind specified in the regulations,

- (b) prescribing the manner in which, and the times at which, pecuniary interests or other matters shall be disclosed and providing for the verification by statutory declaration or otherwise of any such disclosure, and
  - (c) the compilation and maintenance of registers of pecuniary interests or other matters disclosed by Members of either House of Parliament and the inspection and publication of any such register.
- (2) If a Member of either House of Parliament wilfully contravenes any regulation made under subsection (1), that House may, in accordance with subsection (3), declare his seat vacant and the seat of the Member shall thereupon become vacant.
- (3) A declaration under subsection (2) shall:
- (a) specify the circumstances that constitute the contravention,
  - (b) declare that the House is of the opinion that the contravention is of such a nature as to warrant the seat of the Member being declared vacant, and
  - (c) be made in accordance with such Standing Rules and Orders of the House as may regulate the making of the declaration.
- (4) A regulation shall not be made under subsection (1) for or with respect to the disclosure by Members of either House of Parliament of pecuniary interests or other matters unless it applies in the same way to the disclosure by Members of the other House of Parliament of pecuniary interests or other matters.
- (5) The Governor shall, before making a regulation under subsection (1):
- (a) afford any committee of either House of Parliament established for the purpose an opportunity of considering and making representations with respect to the proposed regulation, and
  - (b) take into account any such representations.
- (6) Notwithstanding anything to the contrary in the *Interpretation Act 1987* or any other Act, a regulation made under subsection (1), or any part thereof, shall not cease to have effect upon its disallowance by either House of Parliament unless it has previously been disallowed by the other House of Parliament.
- (7) The publication, pursuant to any regulation made under subsection (1), of a register of pecuniary interests or other matters disclosed by Members of either House of Parliament shall, for the purpose of the *Parliamentary Papers (Supplementary Provisions) Act 1975*, be deemed to have been authorised by that House.

## **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, and
- (g) any other matter that, by or under this Act, is required or permitted to be regulated by Standing Rules and Orders.

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

## **Division 2 Special provisions relating to the Legislative Council**

### **16 Definitions**

In this Division:

**periodic Council election** includes an election for the return of 15 Members of the Legislative Council held after the commencement of the [Constitution and Parliamentary Electorates and Elections \(Amendment\) Act 1978](#) and before the commencement of the 1991 reconstitution Act.

**the 1991 reconstitution Act** means the [Constitution \(Legislative Council\) Amendment Act 1991](#).

### **17 Reconstitution of the Legislative Council**

- (1) On the commencement of the 1991 reconstitution Act, the Legislative Council is reconstituted.
- (2) On and from that commencement, the Legislative Council shall (subject to this Division) consist of 42 Members elected at periodic Council elections.
- (3) The following Members of the Legislative Council cease to be Members on the

commencement of the 1991 reconstitution Act:

- (a) the last 3 Members of the Legislative Council elected at the third-last periodic Council election held before that commencement,
- (b) if the seat of such a Member has become vacant since that periodic Council election—a Member of the Legislative Council who is the successor (whether immediate, intermediate or ultimate) of that Member.

**17A-21 (Repealed)**

**22 Eligibility to vote at periodic Council elections**

The persons who would, if a periodic Council election were a general election of Members of the Legislative Assembly, be entitled to vote at that general election, and only those persons, shall be entitled to vote at that periodic Council election.

**22A Conduct of periodic Council elections**

- (1) Periodic Council elections shall be conducted in accordance with the provisions of the Sixth Schedule.
- (2) (Repealed)
- (3) A writ for a periodic Council election shall not be issued until after the issue of the writs for the general election of Members of the Legislative Assembly held next after the immediately preceding periodic Council election and, when issued, shall name as the day for the taking of the poll the same day as the day for the taking of the poll at that general election.
- (4) A reference in subsection (3) to a writ does not include a reference to a writ issued by reason of the failure of an election, including a failure of an election by reason of its being declared void in accordance with law.
- (5) 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 Sixth Schedule and are not inconsistent with any of those provisions) for or with respect to the conduct of periodic Council elections.

**22B Term of service of Members of Legislative Council**

- (1) A Member of the Legislative Council shall cease to be a Member of the Legislative Council:
  - (a) on the day of his death,
  - (b) on the day on which his seat as such a Member becomes vacant, otherwise than by reason of paragraph (c), or

(c) on the day on which his term of service as a Member expires under subsection (2), (3) or (4),

whichever first occurs.

- (2) Subject to subsection (4), the term of service of a Member of the Legislative Council (other than a long-term continuing Member) shall expire on the day of the termination, either by dissolution or expiry, of the Legislative Assembly next preceding the second general election of Members of the Legislative Assembly to be held after his or her election as a Member of the Legislative Council.
- (3) Subject to subsection (4), the term of service of a long-term continuing Member shall expire on the day of the termination, either by dissolution or expiry, of the Legislative Assembly next preceding the third general election of Members of the Legislative Assembly to be held after his or her election as a Member of the Legislative Council.
- (4) The term of service of a Member of the Legislative Council elected to fill the seat of another Member which has become vacant otherwise than by reason of subsection (1) (c) shall expire on the day on which that other Member's seat would have become vacant by reason of subsection (1) (c).
- (5) In this section, ***long-term continuing Member*** means:
- (a) a Member of the Legislative Council who was one of the first 12 Members elected at the third-last periodic Council election held before the commencement of the 1991 reconstitution Act, or
  - (b) a Member of the Legislative Council who was one of the first 6 Members elected at the second-last periodic Council election held before that commencement, or
  - (c) if the seat of a Member referred to in paragraph (a) or (b) has become vacant since the periodic Council election concerned—a Member of the Legislative Council who is the successor (whether immediate, intermediate or ultimate) of that Member.

## **22C (Repealed)**

## **22D Filling of casual vacancies in seats of Members of Legislative Council by joint sitting of both Houses**

- (1) Whenever:
- (a) a vacancy occurs in the seat of a Member of the Legislative Council otherwise than by reason of section 22B (1) (c), or
  - (b) a vacancy occurs in the seat of a Member of the Legislative Council by reason of section 22B (1) (c) and that vacancy is not filled by reason that insufficient Members of the Legislative Council are elected at the periodic Council election

next following the occurrence of the vacancy,

the Governor, by message to both Houses of Parliament, shall convene a joint sitting of the Members of the Legislative Assembly and the Members of the Legislative Council to be held at a place and time specified in the message for the purpose of the election of a person to fill the vacant seat.

- (2) A person may not be nominated at any such joint sitting for election to fill a vacant seat of an elected Member of the Legislative Council if he is not eligible to be so nominated under subsection (3) or, if applicable, subsection (4).
- (3) A person is not eligible to be so nominated if, were he a Member of the Legislative Council, he would be disqualified from sitting or voting as such a Member.
- (4) Where:
  - (a) a Member of the Legislative Council was elected at a periodic Council election and was, at the time of his election, publicly recognised by a particular political party as being an endorsed candidate of that party and publicly represented himself to be such a candidate, and
  - (b) the vacancy (not being a vacancy referred to in subsection (1) (b)) to be filled is in the seat of that Member or of the successor (whether immediate, intermediate or ultimate) of that Member,a person is not eligible to be so nominated unless he is a member of that party, except where there is no member of that party available to be so nominated.
- (5) This section does not apply to or in respect of a vacancy that occurs by reason that a periodic Council election is declared void in accordance with law.

## **22E Members elected at joint sittings of both Houses of Parliament**

- (1) The oath or affirmation required to be taken and subscribed or made by a Member of the Legislative Council under section 12 shall not be taken or made by a person elected at a joint sitting to fill a vacancy referred to in section 22D (1) (a) until the expiration of 2 days after his election.
- (2) If, before a person elected at a joint sitting to fill a vacancy referred to in section 22D (1) (a) takes and subscribes the oath or makes the affirmation required to be taken and subscribed or made under section 12, he ceases to be a member of the political party membership of which was necessary under section 22D (4) for him to be eligible to be nominated for that election, he shall be deemed not to have been elected at that joint sitting and the vacant seat of the Member which he was elected to fill shall, when he so ceases to be a member of that party, again be vacant.
- (3) More than one vacancy may be filled at the one joint sitting.

## **22F Suspension of Legislative Council business for general election of the Legislative Assembly**

The Legislative Council shall not be competent to dispatch any business during the period commencing on the day of the termination, either by dissolution or expiry, of any Legislative Assembly and ending on the day fixed for the return of the writ for the periodic Council election held next after that termination.

## **22G President**

- (1) A person shall be chosen to be President of the Legislative Council:
  - (a) before the Legislative Council proceeds to the dispatch of any other business at its first meeting following a periodic Council election, and
  - (b) at any other time when the office of President of the Legislative Council becomes vacant.
- (2) The person so chosen shall cease to hold office as President of the Legislative Council immediately before the Legislative Council assembles for the dispatch of business at its first meeting following a periodic Council election, and shall also cease to hold that office:
  - (a) if he ceases to be a Member of the Legislative Council,
  - (b) if he is removed from that office by a vote of the Legislative Council, or
  - (c) if he resigns his office by writing under his hand addressed to the Governor.
- (2A) Until Standing Rules and Orders of the Legislative Council otherwise provide, the President of the Legislative Council shall be chosen in accordance with the procedure for the time being for choosing the President of the Senate of the Parliament of the Commonwealth.
- (3) The President shall preside at all meetings of the Legislative Council except as may be provided by the Standing Rules and Orders of the Legislative Council.
- (4) The President or other Member presiding may take part in any debate or discussion which may arise in the Legislative Council.
- (5) Subject to subsection (3), during the absence from New South Wales of the President, the Chairman of Committees of the Legislative Council shall act in his place and shall, for all purposes, whether of this Act or otherwise, have and may exercise and perform all the powers, authorities, duties and functions of the President.
- (6) Whenever a vacancy occurs in the seat of a Member of the Legislative Council otherwise than by reason of section 22B (1) (c), the President may notify the Governor of the vacancy.

## **22H Quorum**

The presence of at least 8 Members of the Legislative Council (in addition to the President or other Member presiding) shall be necessary to constitute a meeting of the Legislative Council for the dispatch of business.

## **22I Determination of questions**

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 other Member presiding and when the votes are equal the President or other Member presiding shall have a casting vote.

## **22J Resignation of seats in the Legislative Council**

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

# **Division 3 Special provisions relating to the Legislative Assembly**

## **23 Convocation of Assembly**

The Governor may, as occasion requires, by proclamation or otherwise, summon and call together a Legislative Assembly.

## **24 Duration of Assembly**

Every such Legislative Assembly shall exist and continue for 4 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 (Repealed)**

## **25 Number of Members of Legislative Assembly**

Every Legislative Assembly shall consist of 99 Members.

## **26 Single Member electorates**

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

## **27 Distribution of New South Wales into electoral districts**

(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.

## **28 Number of voters in electoral districts**

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.

### **28A Special distribution to maintain equal number of voters in each electoral district**

(1) A distribution of New South Wales into electoral districts shall be made forthwith after more than one-quarter of the number of electoral districts has been malapportioned for a period of more than 2 months.

(2) For the purposes of this section, an electoral district is malapportioned at any particular time if the number of persons then entitled to vote at a general election of Members of the Legislative Assembly in the electoral district differs from the average electoral district enrolment at that time to a greater extent than 5 per cent more or less.

(3) The average electoral district enrolment is the quotient obtained by dividing the number of persons entitled to vote at a general election of Members of the Legislative Assembly in all electoral districts by the number of those districts.

(4) A distribution shall not be made under this section if:

(a) the distribution would commence within 1 year before the expiry of the Legislative Assembly by the effluxion of time, or

(b) a distribution has already been made since the last general election of Members of the Legislative Assembly (whether under this section or not), or

(c) a distribution is required to be made apart from this section.

## **29 Conduct of Legislative Assembly elections**

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

## **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 herein 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 (Repealed)**

## **Part 4 The Executive**

### **Division 1 Preliminary**

#### **35 Definitions**

In this Part:

**functions** includes powers, authorities and duties.

**unavailable**, in relation to a Minister of the Crown, means unavailable by reason of the Minister's absence or disability or for any other reason.

#### **35A Preservation of certain conventions etc relating to advice to Governor**

The enactment of the *Constitution (Amendment) Act 1987* does not affect any law or established constitutional convention relating to the exercise or performance of the functions of the Governor otherwise than on the advice of the Executive Council.

### **Division 2 The Executive Council**

#### **35B Continuation of Executive Council**

There shall continue to be an Executive Council to advise the Governor in the government of the State.

#### **35C Members of the Executive Council**

- (1) The Executive Council shall consist of such persons as may be appointed by the Governor, from time to time, as members of the Executive Council.
- (2) The members of the Executive Council shall hold office during the Governor's pleasure.
- (3) The Governor may appoint one of the members of the Executive Council as Vice-President of the Executive Council.

### **35D Meetings of the Executive Council**

- (1) The Governor shall preside at meetings of the Executive Council.
- (2) The Vice-President of the Executive Council or, in the absence of the Vice-President, the senior member present shall preside at any meeting of the Executive Council from which the Governor is absent.
- (3) The quorum for a meeting of the Executive Council is 2 members.
- (4) For the purposes of this section, the seniority of members of the Executive Council shall be determined according to the order of their respective appointments as members of the Executive Council.

## **Division 3 Appointment of Ministers of the Crown**

### **35E Appointment of Ministers**

- (1) The Premier and other Ministers of the Crown for the State shall be appointed by the Governor from among the members of the Executive Council.
- (2) The Premier and other Ministers of the Crown shall hold office during the Governor's pleasure.

### **35F Maximum number of Ministers**

The number of persons who may hold office as Ministers of the Crown shall not exceed 20 at any one time.

## **Division 4 Functions of Ministers of the Crown**

### **36 Authority for Minister of the Crown to act for and on behalf of another Minister of the Crown**

- (1) The Governor may, from time to time, authorise a Minister of the Crown to act for and on behalf of another Minister of the Crown for any period specified or described by the Governor.
- (2) Where a Minister of the Crown is authorised under this section to act for and on behalf of another Minister of the Crown, any function appertaining or annexed to the office of that other Minister may, while the authority remains in force, be exercised or performed from time to time by the Minister so authorised instead of by that other Minister.
- (3) An authority under this section may be revoked by the Governor.
- (4) A Minister of the Crown may be authorised under this section by reference to his name or by reference to the title of the office which he holds as Minister of the Crown.

- (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 Minister of the Crown**

A Minister of the Crown may exercise or perform for and on behalf of another Minister of the Crown a function appertaining or annexed to the office of that other Minister if the firstmentioned Minister is satisfied that that other Minister is unavailable and that any Minister of the Crown 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 a Minister of the Crown, 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 a Minister of the Crown while acting for or on behalf of another Minister of the Crown:
  - (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 Minister.
- (3) In all proceedings and before all persons acting judicially, it shall be presumed, in the absence of evidence to the contrary, that a Minister of the Crown who purports to act for or on behalf of another Minister of the Crown 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 a Minister of the Crown 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 Minister of the Crown 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 Minister of the Crown 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 either House of Parliament 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 either House of Parliament 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 of Members of the Legislative Assembly 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 Fund**

### **39 Consolidated Fund**

- (1) Except as otherwise provided by or in accordance with any Act, all public moneys (including securities and all revenue, loans and other moneys whatsoever) collected, received or held by any person for or on behalf of the State shall form one Consolidated Fund.
- (2) Without limiting the generality of subsection (1), all territorial, casual and other revenues of the Crown (including all royalties), from whatever source arising, within New South Wales, and as to the disposal of which the Crown may otherwise be entitled absolutely, conditionally or in any other way shall form part of the Consolidated Fund.

### **40 Expenses of collection**

The Consolidated 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.

### **41-44 (Repealed)**

### **45 Appropriation of Consolidated Fund**

The Consolidated Fund 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**

- (1) 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 Consolidated 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.

- (2) A Governor's message is not required under this section or under the Standing Rules and Orders of the Legislative Assembly for a Bill introduced by, or a vote or resolution proposed by, a Minister of the Crown.

## Part 6 Officers and departments

### 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.

### 48 Absent officers

- (1) In this section:

**functions** includes powers, authorities and duties.

**officer** means an officer in the service of the Crown or of an authority of the State, but does not include the Governor, the Lieutenant-Governor or other officer administering the government of the State, a member of the Executive Council, a Minister of the Crown or the holder of a judicial office.

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

- (2) Where, by any Act or statutory or other instrument, any function is conferred or imposed on an officer in his capacity as an officer, the function may be exercised or performed by another officer whom the Governor has directed to exercise the functions of the firstmentioned officer during any period when he is unavailable in the same manner and to the same extent in all respects as those functions might have been exercised or performed by the firstmentioned officer.
- (3) Any act, matter or thing done or omitted by an officer while acting pursuant to a direction given as referred to in subsection (2) in relation to the functions of another officer shall be as valid and effectual as if the act, matter or thing had been done or omitted by that other officer.
- (4) This section is in addition to and not in derogation of any other provision made for the

exercise of the functions of an unavailable officer (whether by way of temporary appointment or otherwise).

#### **49 Departments**

(1) In this section:

**branch** means a branch or other part of a Department.

**Department** means a Department of the Government.

(2) The Governor may, by proclamation published in the Gazette:

(a) establish, abolish or change the name of any Department or branch of any Department,

(b) remove a branch from any Department, or

(c) add a branch to any Department.

#### **49A Demise of the Crown**

(1) The holding of any office under the Crown shall not be affected nor shall any fresh appointment thereto be rendered necessary by the demise of the Crown.

(2) It shall not be necessary for the holder of any office under the Crown who, before any demise of the Crown, has taken any oath prescribed or provided for by any Act or law again to take that oath after any such demise but, where that oath relates only to the then reigning Sovereign, it shall be deemed to relate to the Sovereign for the time being.

(3) In this section:

**demise of the Crown** includes a demise of the Crown by or on abdication.

### **Part 7 Enrolment of Acts**

#### **50 Enrolment of Acts**

All Acts enacted by the Legislature shall, within 10 days from the day on which they respectively become law, be transmitted to and enrolled and recorded in the office of the Registrar-General.

### **Part 8 Local government**

#### **51 Local government**

(1) There shall continue to be a system of local government for the State under which duly elected or duly appointed local government bodies are constituted with responsibilities for acting for the better government of those parts of the State that

are from time to time subject to that system of local government.

- (2) The manner in which local government bodies are constituted and the nature and extent of their powers, authorities, duties and functions shall be as determined by or in accordance with laws of the Legislature.
- (3) The reference in subsection (2) to laws of the Legislature shall be read as a reference to laws that have been enacted by the Legislature, whether before or after the commencement of this section, and that are for the time being in force.
- (4) For the purposes of this section, the Western Lands Commissioner, the Lord Howe Island Board, and an administrator with all or any of the functions of a local government body, shall be deemed to be local government bodies.

## 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-Fifth Schedules (Repealed)

## Sixth Schedule Conduct of Legislative Council elections

(Sections 16, 22A)

### Part 1 System of election

- 1** At a periodic Council election, the whole of the State of New South Wales shall be a single electoral district for the return of 21 Members of the Legislative Council.

**2**



- (1) At a poll for a periodic Council election, a voter shall be required to record his vote for 15 candidates 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.
- (2) Notwithstanding subclause (1) of this clause, a ballot-paper on which the voter has recorded not less than 15 votes is not informal by reason only that:
  - (a) the same preference (other than his first preference) has been recorded on the ballot-paper for more than 1 candidate, but 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 his preferences, but the ballot-paper shall be treated as if any subsequent preference had not been recorded on the ballot-paper.
- 3 For the purpose of a periodic Council election, 2 or more candidates may, in the manner provided by law, be included in a group in such order as may be determined by them.

## Part 2 Counting of votes at elections

- 4
  - (1) In this Part of this Schedule:

**continuing candidate** means a candidate not already elected or not excluded from the count.

**Council returning officer** means the person for the time being appointed by law to conduct periodic Council elections.
  - (2) In relation to any stage of the scrutiny, a reference in this Part of this Schedule to the surplus votes of an elected candidate is a reference to the number at that stage by which the elected candidate's votes exceed the quota, reduced by the excess, if any, of the number at that stage of the elected candidate's votes on which a next available preference for a continuing candidate is not indicated over the quota.
- 5 The method of counting the votes to ascertain the result of a periodic Council election shall be as provided in this Part of this Schedule.
- 6 At the close of the poll the Council 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 and the total of all such votes.
- 7 The Council returning officer shall then determine a quota by dividing the total number of first preference votes for all candidates by 22 and by increasing the quotient so obtained (disregarding

any remainder) by 1.

- 8** Any candidate who has received a number of first preference votes equal to or greater than the quota so determined shall be elected.
- 9** Where the number of first preference votes received by a candidate is equal to the quota, the whole of the ballot-papers containing those votes shall be set aside as finally dealt with.
- 10** Unless all vacancies have been filled, the surplus votes of each elected candidate shall be transferred to the continuing candidates, in proportion to the voters' preferences, as follows:
- (a) The Council returning officer shall divide the number of the elected candidate's surplus votes by the number of first preference votes (excluding any first preference votes indicated on ballot-papers which do not bear a next available preference for a continuing candidate) received by him and the resulting fraction shall, for the purposes of this clause, be the transfer value of that candidate's surplus votes.
  - (b) The Council returning officer shall take all of the ballot-papers of the elected candidate on which a next available preference is indicated for a continuing candidate and arrange them in separate parcels for the continuing candidates according to the next available preference indicated on them.
  - (c) The Council returning officer shall ascertain, from the parcel referred to in paragraph (b) in respect of each continuing candidate, the total number of ballot-papers of the elected candidate which bear the next available preference for that continuing candidate and shall, by multiplying that total by the transfer value of the elected candidate's surplus votes, determine the number of votes to be transferred from the elected candidate to each continuing candidate.
  - (d) If, as a result of the multiplication, any fraction results, so many of those fractions, taken in the order of their magnitude, beginning with the largest, as are necessary to ensure that the number of votes transferred equals the number of the elected candidate's surplus votes shall be reckoned as of the value of unity and the remaining fractions shall be ignored.
  - (e) The Council returning officer shall then determine the number of ballot-papers to be transferred from the elected candidate to each continuing candidate.
  - (f) The Council returning officer shall then, in respect of each continuing candidate, forthwith take at random, from the parcel referred to in paragraph (b) containing the ballot-papers of the elected candidate which bear the next available preference for that continuing candidate, the number of ballot-papers determined under paragraph (e) and transfer those ballot-papers to the continuing candidate.
  - (g) The ballot-papers containing the first preference votes of the elected candidate which have not been transferred (that is, the ballot-papers containing the number of votes equal to the quota) shall be set aside as finally dealt with.

**11**

- (1) When the surplus votes of all elected candidates have been transferred to the continuing candidates as provided by clause 10, any continuing candidate who has

received a number of votes equal to or greater than the quota shall be elected.

- (2) Unless all the vacancies have been filled, the surplus votes of the elected candidate shall be transferred to the continuing candidates in accordance with the provisions of clause 10, but, in the application of those provisions, only those ballot-papers which have been transferred to the elected candidate from a candidate previously elected shall be taken into consideration.

**12**

- (1) If, as a result of the transfer of the surplus votes of a candidate elected in pursuance of clause 11 or elected at a later stage of the scrutiny, a continuing candidate has received a number of votes equal to or greater than the quota, he shall be elected.
- (2) Unless all the vacancies have been filled, the surplus votes of the elected candidate shall be transferred to the continuing candidates in accordance with the provisions of clause 10, but, in the application of those provisions, only those ballot-papers which have been transferred to the elected candidate from the candidate or candidates elected at the last preceding count shall be taken into consideration.

- 13** The ballot-papers containing the first preference votes of a candidate who has been elected in pursuance of the provisions of clause 11 or 12, together with the ballot-papers transferred to him from a candidate previously elected or excluded which have not been further transferred, shall be set aside as finally dealt with.

**14**

- (1) If, after the transfer of the surplus votes of the elected candidates, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes shall be excluded and the whole of his ballot-papers shall be transferred to the continuing candidates next in order of the voters' available preferences.
- (2) If thereupon, or as the result of the exclusion of a candidate at any subsequent stage of the scrutiny, a continuing candidate has received a number of votes equal to or greater than the quota, he shall be elected.
- (3) Unless all the vacancies have then been filled, the surplus votes of the elected candidate shall be transferred to the continuing candidates in accordance with the provisions of clause 10, but, in the application of those provisions, only those ballot-papers which have been transferred to the elected candidate from the candidate last excluded shall be taken into consideration.
- (4) The ballot-papers containing the first preference votes of the elected candidate, together with the ballot-papers transferred to him from a candidate previously elected or excluded which have not been further transferred, shall be set aside as finally dealt with.

- (5) If no continuing candidate has then received a number of votes equal to the quota, the process of excluding the candidate with the fewest votes and the transferring of ballot-papers containing those votes to the continuing candidates shall be repeated until a continuing candidate has received a number of votes equal to the quota or, in respect of the last vacancy, a majority of the votes remaining in the count, but the process of excluding candidates shall not be repeated after the number of continuing candidates is equal to the number of unfilled vacancies.
- (6) A ballot-paper that under this clause is, pursuant to the exclusion of a candidate, required to be transferred to a continuing candidate shall be set aside as finally dealt with if it does not indicate a next available preference for a continuing candidate.

**15** After all the candidates who have received a number of votes equal to the quota are elected:

- (a) where there is 1 remaining unfilled vacancy—the candidate who has received a majority of the votes remaining in the count, or
- (b) where the number of continuing candidates is equal to the number of remaining unfilled vacancies—those candidates,

shall be elected.

**16** Where, on the count of the first preference votes, or at the same time at any subsequent stage of the scrutiny, 2 or more candidates are elected by reason of their having received a number of votes equal to or greater than the quota, any transfer of the surplus votes of those candidates shall be carried out in the order, first of the candidate with the largest surplus, second of the candidate with the next largest surplus and so on.

**17**

- (1) Notwithstanding anything contained in this Part of this Schedule, a transfer of the surplus votes of an elected candidate shall be deferred (but without affecting the order of that transfer) so long as the total number of those surplus votes and any other surplus votes not transferred is less than the difference between the total votes of the 2 continuing candidates with the fewest votes.
- (2) In any such case, unless all vacancies have been filled, the candidate with the fewest votes shall be first excluded and the ballot-papers containing his votes shall be transferred to the continuing candidates as provided in clause 14 (1).

**18**

- (1) If, on any count, 2 or more candidates have an equal number of votes, and 1 of them has to be excluded, the candidate whose name is on the slip drawn in accordance with subclause (4) of this clause shall be excluded.
- (2) If, at the time of their election, 2 or more candidates have an equal number of votes that is more than the quota, the candidate whose name is on the slip drawn in accordance with subclause (4) of this clause shall, for the purposes of clause 16, be

deemed to have had the larger or largest surplus.

- (3) If, on the final count for filling the last vacancy, 2 candidates have an equal number of votes, 1 candidate shall be excluded in accordance with subclause (1) of this clause and the other shall be elected.
- (4) For the purposes of subclauses (1) and (2) 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 Council returning officer and the slips having been folded by him so as to prevent the description being seen and having been mixed, 1 of those slips shall be drawn at random by him.

## Seventh Schedule Conduct of Legislative Assembly elections

(Section 29)

### 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.

**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.
- 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 subclause (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.
- 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 preceding 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.