

New South Wales.



ANNO VICESIMO QUARTO

GEORGI V REGIS.

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Act No. 8, 1933.

An Act to make further provision for the election of Members of the Legislative Council; to amend the Constitution Act, 1902, the Constitution Further Amendment (Legislative Council Elections) Act, 1932, and certain other Acts; and for purposes connected therewith. [Assented to, 25th September, 1933.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**1.** (1) This Act may be cited as the "Constitution Amendment (Legislative Council Elections) Act, 1933." Short title and citation.

(2).

Constitution Amendment (Legislative Council Elections).

(2) The Constitution Further Amendment (Legislative Council Elections) Act, 1932, as amended by this Act may be cited as the Constitution (Legislative Council Elections) Act, 1932-1933.

Amendment  
of Act  
No. 5, 1933.

Sec. 5.  
(Defini-  
tions.)

Sec. 7 (6).  
(Day of  
ballot.)

Sec. 9 (1).  
(Correction.)

Sec. 13.  
(Proceed-  
ings on  
nomination.)

Further  
amendment of  
Act No. 5, 1933.

Sec. 14.  
(Ballot-  
papers.)

**2.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is amended—

- (a) by omitting from the definition of the expression “This Part” in section five the words “Second Schedule” and by inserting in lieu thereof the words “Second, Third and Fourth Schedules”;
- (b) by inserting in subsection six of section seven after the word “day” where secondly occurring the words “not earlier than the seventh day after the day of nomination and”;
- (c) by omitting from subsection one of section nine the words “the hour at which the sittings of the respective Houses of the Parliament are to commence” and by inserting in lieu thereof the words “the hour at which the taking of the votes at the sittings of the respective Houses of the Parliament is to commence”;
- (d) (i) by inserting in subsection one of section thirteen after the words “day of nomination” the words “or as soon as practicable thereafter”;
- (ii) by inserting in subsection two of the same section after the words “day of nomination” the words “or as soon as practicable thereafter.”

**3.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

- (a) (i) by omitting from subsection two of section fourteen the words “prescribed form” and by inserting in lieu thereof the words “form set out in the Third Schedule to this Act”;
- (ii) by inserting after paragraph (c) of subsection three of the same section the following new paragraph:—

(c1) the names of the candidates may be printed either in one continuous column

Constitution Amendment (Legislative Council Elections).

column or in such other manner (without departing from the said alphabetical order) as, in the opinion of the returning officer, is best calculated to facilitate the marking and counting of votes;

- (iii) by omitting from paragraph (d) of the same subsection the words "a square shall be printed opposite" and by inserting in lieu thereof the words "a rectangle shall be printed opposite and to the left";
- (iv) by inserting after subsection four of the same section the following subsection:—

(5) The returning officer shall deliver to the Clerk of the Assembly, and himself retain, such numbers respectively of the ballot-papers (with counterfoils attached) as are sufficient for the use of Members of the Assembly and Members of the Council, as the case may be, in the taking of the ballot; and the returning officer and the Clerk of the Assembly shall keep an exact account of all such ballot-papers and counterfoils;

*cf. Act No. 41, 1912, s. 89.*

- (b) by inserting after the Second Schedule the following new Schedule:—

Third Schedule.

THIRD SCHEDULE.

Sec. 14 (2).

CONSTITUTION (LEGISLATIVE COUNCIL ELECTIONS) ACT, 1932-1933.

BALLOT-PAPER.

Election of (*here insert number of candidates to be elected*) Member(s) of the Legislative Council.

CANDIDATES.

- |  |  |
|--|--|
| <input type="checkbox"/> ABBOTT, John    | <input type="checkbox"/> HUGHES, Alfred  |
| <input type="checkbox"/> ADAMSON, Joseph | <input type="checkbox"/> HUGHES, David   |
| <input type="checkbox"/> ALLEN, Charles  | <input type="checkbox"/> KENNEDY, Andrew |
| <input type="checkbox"/> BAKER, William  | <input type="checkbox"/> MURPHY, Patrick |
| <input type="checkbox"/> CARR, Henry     | <input type="checkbox"/> PETERS, Albert  |
| <input type="checkbox"/> CLARKE, Herbert | <input type="checkbox"/> SMITH, Aubrey   |
| <input type="checkbox"/> DOUGLAS, Robert | <input type="checkbox"/> THOMSON, Edward |
| <input type="checkbox"/> EDWARDS, George | <input type="checkbox"/> WOOD, Arthur    |
| <input type="checkbox"/> GRACE, Thomas   | <input type="checkbox"/> YOUNG, Geoffrey |

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*Constitution Amendment (Legislative Council Elections).*

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Further  
amendment of  
Act No. 5, 1933.

4. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

Sec. 15.  
New subsection  
(4).

(a) by inserting after subsection three of section fifteen the following new subsection:—

Rules—  
Fourth  
Schedule.

(4) The Special Rules set out in Division I of the Fourth Schedule to this Act shall apply to and in respect of the conduct of proceedings of the Legislative Council at or in relation to any sitting held for the purpose of taking the votes of Members at any election.

The Special Rules set out in Division II of the Fourth Schedule to this Act shall apply to and in respect of the conduct of proceedings of the Legislative Assembly at or in relation to any sitting held for the purpose of taking the votes of Members at any election.

Fourth  
Schedule.

(b) by inserting after the Third Schedule (as inserted in the Constitution Further Amendment (Legislative Council Elections) Act, 1932, by section three of this Act) the following new Schedule:—

FOURTH SCHEDULE.

DIVISION I—LEGISLATIVE COUNCIL.

*Special Rules for Regulating the Conduct of Proceedings at a sitting held for the purpose of taking the Votes of Members of the Legislative Council at any Election under the Constitution (Legislative Council Elections) Act, 1932-1933.*

1. The Standing Rules and Orders of the Legislative Council for the time being in force, so far as they are not inconsistent with the rules in this Division of this Schedule, shall apply to and in respect of the conduct of proceedings of the Legislative Council at or in relation to any sitting held for the purpose of taking the votes of Members at an election; and in this Division of this Schedule a reference to a sitting shall be construed as a reference to such a sitting.

2. Where a Message addressed to the President of the Legislative Council in pursuance of subsection one of section seven of this Act is received, the President, after reporting the Message, shall direct the Clerk to read the Writ.

The

Sec. 15 (4).

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*Constitution Amendment (Legislative Council Elections).*

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The President shall direct that the taking of the votes of Members shall be set down as an Order of the Day for the day or days of the ballot appointed in such Writ, and on such day or days the taking of the votes shall take precedence of all other business.

3. At a sitting, the President may give such directions and take such steps as he may deem necessary for the proper and expeditious taking of the votes and for the preservation of order throughout the proceedings.

4. At a sitting, no matter other than the taking of the votes of Members shall be raised or entertained before the close of the ballot.

5. For the purposes of a sitting the Chamber and the floor of the House shall be deemed to extend to and include the voting compartments provided for the purpose of marking ballot-papers.

6. A sitting shall proceed notwithstanding that before the close of the ballot a less number of Members than that necessary to constitute a quorum is present.

7. The President may record his vote at any time during the progress of the ballot, provided that a Deputy occupies the Chair during his temporary absence therefrom.

8. Before the commencement of the taking of the votes the President shall direct the Clerk to read the Order of the Day.

Upon the Order of the Day being read, the Clerk shall duly display the ballot-box.

The President shall then declare the ballot open.

9. A Member desiring to vote shall, when called by the President, come forward to the Table and obtain his ballot-paper from the Clerk.

He shall forthwith retire alone to one of the unoccupied voting compartments and mark his ballot-paper, and having marked his ballot-paper he shall deposit it in the ballot-box and resume his seat or retire from the Chamber.

10. After receiving his ballot-paper, no Member shall leave the Chamber unless and until his ballot-paper has been deposited in the ballot-box.

No Member shall attempt to enter any voting compartment while it is occupied.

11. At the hour appointed in the Writ for the termination of the taking of the votes at a sitting, the President shall announce that such hour has arrived and shall direct that the doors be locked.

The doors having been locked, the President shall then inquire whether there is any Member present who has not yet received a ballot-paper and desires to vote.

Every such Member shall rise in his place, and his name shall be recorded by one of the Clerks at the Table upon a List, which shall be handed to the President.

The

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*Constitution Amendment (Legislative Council Elections).*

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The President shall then direct that the doors be unlocked.

An opportunity to record their votes shall be given to such Members, and also to any other Members who, having received their ballot-papers before the hour appointed in the writ for the termination of the taking of the votes, have not at that hour completed the recording of their votes.

After such opportunity has been given the President shall declare the ballot closed.

12. After the close of the ballot any Member of the Government may forthwith move the adjournment of the House.

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DIVISION II.—LEGISLATIVE ASSEMBLY.

*Special Rules for Regulating the Conduct of Proceedings at a sitting held for the purpose of taking the Votes of Members of the Legislative Assembly at any Election under the Constitution (Legislative Council Elections) Act, 1932-1933.*

1. The Standing Rules and Orders of the Legislative Assembly for the time being in force, so far as they are not inconsistent with the rules in this Division of this Schedule, shall apply to and in respect of the conduct of proceedings of the Legislative Assembly at or in relation to any sitting held for the purpose of taking the votes of Members at an election; and in this Division of this Schedule a reference to a sitting shall be construed as a reference to such a sitting.

2. Where a Message addressed to the Speaker of the Legislative Assembly in pursuance of subsection one of section seven of this Act is received, the Speaker, after reporting the Message, shall direct the Clerk to read the Writ.

The Speaker shall then direct that the taking of the votes of Members shall be set down as an Order of the Day for the day or days of the ballot appointed in such Writ, and on such day or days the taking of the votes shall take precedence of all other business.

3. At a sitting, the Speaker may give such directions and take such steps as he may deem necessary for the proper and expeditious taking of the votes and for the preservation of order throughout the proceedings.

4. At a sitting, no matter other than the taking of the votes of Members shall be raised or entertained before the close of the ballot.

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*Constitution Amendment (Legislative Council Elections).*

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5. For the purposes of a sitting, the Chamber and the floor of the House shall be deemed to extend to and include the voting compartments provided for the purpose of marking ballot-papers.

6. A sitting shall proceed notwithstanding that before the close of the ballot a less number of Members than that necessary to constitute a quorum is present.

7. The Speaker may record his vote at any time during the progress of the ballot, provided a Deputy occupies the Chair during his temporary absence therefrom.

8. Before the commencement of the taking of the votes the Speaker shall direct the Clerk to read the Order of the Day.

Upon the Order of the Day being read, the Clerk shall duly display the ballot-box.

The Speaker shall then declare the ballot open.

9. A Member desiring to vote shall, when called by the Speaker, come forward to the Table and obtain his ballot-paper from the Clerk.

He shall forthwith retire alone to one of the unoccupied voting compartments and mark his ballot-paper, and having marked his ballot-paper, he shall deposit it in the ballot-box and resume his seat or retire from the Chamber.

10. After receiving his ballot-paper no Member shall leave the Chamber unless and until his ballot-paper has been deposited in the ballot-box.

No Member shall attempt to enter any voting compartment while it is occupied.

11. At the hour appointed in the Writ for the termination of the taking of the votes at a sitting, the Speaker shall announce that such hour has arrived, and shall direct that the doors be locked.

The doors having been locked, the Speaker shall then inquire whether there is any Member present who has not yet received a ballot-paper and desires to vote.

Every such Member shall rise in his place, and his name shall be recorded by one of the Clerks at the Table upon a list, which shall be handed to the Speaker.

The Speaker shall then direct that the doors be unlocked.

An opportunity to record their votes shall be given to such Members, and also to any other Members who, having received their ballot-papers before the hour appointed in the writ for the termination of the taking of the votes, have not at that hour completed the recording of their votes.

After such opportunity has been given the Speaker shall declare the ballot closed.

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*Constitution Amendment (Legislative Council Elections).*

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12. After the close of the ballot, any Member of the Government may forthwith move the adjournment of the House.

**5.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

Further amendment of Act No. 5, 1933.

Sec. 18.  
(Issue of ballot-papers.)

- (a) by omitting from section eighteen the words “corresponding to that counterfoil, and having marked the ballot-paper on both sides with the prescribed official mark,” and by inserting in lieu thereof the words “attached to that counterfoil, and the Clerk having marked the ballot-paper on the back with his signature”;

Sec. 19.  
(Marking of votes.)

- (b) (i) by inserting in subsection one of section nineteen after the word “forthwith” the words “retire alone to one of the unoccupied voting compartments provided for the purpose, and there in private”;
- (ii) by omitting from the same subsection the words “square opposite,” and by inserting in lieu thereof the words “rectangle opposite and to the left of”;
- (iii) by omitting from the same subsection the words “squares respectively opposite” wherever occurring, and by inserting in lieu thereof the words “rectangles respectively opposite and to the left of”;
- (iv) by omitting from subsection two of the same section the words “official mark,” and by inserting in lieu thereof the words “signature of the Clerk”;

Sec. 20.  
(Parcels.)

- (c) (i) by omitting paragraph (a) of section twenty and by inserting in lieu thereof the following paragraph:—

- (a) make up in one parcel the ballot-papers which have remained unused at the taking of the ballot, the spoilt ballot-papers (if any) and the counterfoils of all ballot-papers which were retained by him as returning officer or delivered to him by the returning



Constitution Amendment (Legislative Council Elections).

returning officer (as the case may be) in pursuance of subsection five of section fourteen; and in a second separate parcel all other papers and records used by the Clerk in connection with the taking of the ballot;

- (ii) by inserting in paragraph (c) of the same section after the word "election," the words "the number of spoilt ballot-papers";
- (d) by inserting at the end of section twenty-two the following new subsection:—

Sec. 22.

(Offences.)

(4) This section shall not extend to the display of a ballot-paper to the Clerk for the purpose of satisfying him, in accordance with subsection three of section nineteen of this Act, that the ballot-paper has been spoilt by mistake or accident.

**6.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended:—

Further amendment of Act No. 5, 1933.

- (a) (i) by omitting from paragraph (a) of section twenty-three the words "prescribed official mark," and by inserting in lieu thereof the words "signature of the Clerk";
- (ii) by inserting at the end of the same section the following new subsection:—
- (2) A ballot-paper shall not be invalid for any reason other than the reasons specified in this section, but shall have effect according to the elector's intention, so far as his intention is clear.
- (b) (i) by inserting in paragraph (a) of sub-section one of section twenty-four after the word "presence" the words "and subject to the inspection";
- (ii) by inserting at the end of subsection one of section twenty-four the following paragraphs:—
- No person other than a candidate or a person authorised by the returning officer, shall be entitled to be present at the proceedings referred to in paragraph (a) of this subsection.

Sec. 23.

(Invalid ballot-papers.)

cf. C'with. Electoral Act, 1918-1928, s. 133 (2).

Sec. 24 (1) (a).

cf. Act No. 41, 1912, s. 120.

Sec. 24.

(Proceedings to ascertain result.)

Any

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*Constitution Amendment (Legislative Council Elections).*

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Any person present at such proceedings who interferes with any ballot-papers, documents or records, in use at such proceedings, or obstructs the conduct of the proceedings, or distracts the attention of the returning officer or any of his assistants, and who refuses on being required by the returning officer, or any person acting under the direction or authority of the returning officer, to desist from such interference, obstruction or distraction may be removed by or under the direction of the returning officer from the place at which such proceedings are being conducted, and shall be liable on summary conviction to a penalty not exceeding ten pounds.

- (iii) by omitting from subsection four of the same section the words "in or to the effect of the prescribed form";
- (iv) by omitting subsection five of the same section and by inserting in lieu thereof the following subsection:—

(5) The returning officer shall indorse upon, or attach to, the writ, a copy of the certificate, and (in the case of an election at which more than one seat is to be filled) shall also attach a copy of the result sheet mentioned in the Second Schedule to this Act, and shall return the writ, with the documents (if any) so attached, to the Governor, within the time specified in the writ.

**7.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

- (a) (i) by omitting from section thirty-one the words "election of the sixty Members who are to be elected in pursuance of section 17A of the Principal Act for the first constitution of the Legislative Council" and by inserting in lieu thereof the words "four elections referred to in section 17D of the Principal Act";

(ii).

Further  
amendment of  
Act No. 5, 1933.

Sec. 31.

(First  
elections.)

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*Constitution Amendment (Legislative Council Elections).*


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- (ii) by inserting at the end of the same section the words "and such modifications and amendments shall apply to and in respect of those four elections only";
- (b) by omitting from subsection two of section thirty-two the words "referred to in section 17D of the Principal Act"; Sec 32. (One writ.)
- (c) by inserting at the end of subsection one of section thirty-four the following words "and the day of the ballot for the first of the four elections shall be a day not earlier than the seventh day after the day of nomination"; Sec. 34 (1). (Days of ballot.)
- (d) by inserting next after section thirty-five the following new section:— New sec. 35A.
- 35A. (1) The returning officer shall at noon on the day of nomination, or as soon as practicable thereafter, and at the place for receiving the nomination papers, announce that ballots for each of the four elections will be taken, and the names of the persons who have become candidates for the four elections, and shall also forthwith publish in the Gazette and in one or more daily newspapers a like announcement. Proceedings on nomination.
- (2) Subsection one of this section shall be read in lieu of subsection two of section thirteen of this Act.
- (e) (i) by omitting from subsection one of section thirty-six the words "in or to the effect of the prescribed form"; Sec. 36. (Return of writ.)
- (ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection:—
- (2) The returning officer shall attach to the writ a copy of the certificate, and shall also attach a copy of the result sheet mentioned in the Second Schedule to this Act relating to each of the four elections, and shall return the writ with the documents so attached, to the Governor, within the time specified in the writ.

(f).

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*Constitution Amendment (Legislative Council Elections).*

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New sec.  
36A.

Governor  
may alter  
days of  
third and  
fourth  
ballots.

(f) by inserting after section thirty-six the following new section:—

36A. (1) The Governor may, by proclamation published in the Gazette at any time after the day of the ballot for the first of the four elections and before the day of the ballot for the second of the four elections, amend the writ issued for the four elections, by altering the days of the ballot appointed by such writ for the second, third, and fourth elections respectively. The proclamation may fix a later but not an earlier date for the day of the ballot for the second of the four elections, and may fix either earlier or later dates for the days of the ballot for the third and fourth of the four elections than those respectively appointed by the writ. Upon publication of the proclamation in the Gazette the writ shall be deemed to be amended accordingly.

(2) The Governor shall by message addressed to the President of the Legislative Council and to the Speaker of the Legislative Assembly respectively, inform both Houses of the Parliament of the issue of the proclamation.

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

Further  
amendment of  
Act No. 5, 1933.

Sec. 27.

(Disputed  
elections.)

8. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

(a) by inserting after subsection one of section twenty-seven the following new subsections:—

(1A) No election of a candidate shall be declared void by reason only of the fact that at any of the relevant times mentioned in subsection three of section thirteen of this Act, such candidate died or was not qualified to become a Member of the Council, or was disqualified from being a Member of the Council, or was incapable of sitting or voting in the Council, but the Court trying the election petition may declare that he vacated his seat in accordance with the provisions of that subsection.

(1B)

Constitution Amendment (Legislative Council Elections).

(1B) The validity of any election or return shall not be disputed otherwise than in accordance with this section.

- (b) (i) by omitting from subsection one of section thirty-seven the words "within forty days after" and by inserting in lieu thereof the words "not earlier than"; Sec. 37. (Petitions.)
- (ii) by inserting at the end of the same subsection the words "and not later than the fortieth day after the day so appointed";

- (c) by inserting after subsection two of section thirty-seven the following new subsections:— Sec. 37. (Powers of court.)

(3) Where in accordance with the provisions of paragraph (a) of subsection one of section twenty-seven of this Act, the Court declares the election of a candidate at any of the four elections to be void, the Court shall declare that such one as justice may require of the candidates not returned as elected at that election, was elected; and if the candidate so declared by the Court to have been elected was returned as elected at another of the four elections, the Court shall declare the seat to which he was so returned as elected to be vacant.

(4) Subsection three of this section shall be read in lieu of paragraph (b) of subsection one of section twenty-seven of this Act.

**9.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

Further amendment of Act No. 5, 1933.

- (a) (i) by inserting at the end of paragraph (b) of Rule four of Division 1 of the Second Schedule the following proviso— Second Schedule, Division 1, Rule 4.

Provided that where there is a break in the consecutive numbering of preferences marked on a ballot-paper (other than a break rendering the ballot-paper invalid in pursuance of paragraph (e) of subsection one of section twenty-three of this Act), only those preferences preceding the break shall be taken into account.

(ii)

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*Constitution Amendment (Legislative Council Elections).*

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Second  
Schedule,  
Division 1,  
Rule 7.

(ii) by omitting from Rule seven of Division 1 of the same Schedule the words "The expression 'determine by lot' shall have the meaning ascribed to it in Division 2 of this Schedule" and by inserting in lieu thereof the following words:—

"The expression 'determine by lot' means determine in accordance with the following direction:—

The names of the candidates concerned having been written on similar slips of paper, and the slips having been folded so as to prevent identification and mixed and drawn at random, the candidate or candidates shall be excluded in the order in which their names are drawn."

Division 2,  
Rule 3.

(b) by inserting at the end of Rule three of Division 2 of the same Schedule the following definition:—

In this rule "number" includes nil.

New  
Rule 3A.

(c) (i) by inserting after Rule three of Division 2 of the same Schedule the following new rule:—

3A. (a) Except as provided in paragraph (b) of this rule it shall not be necessary to arrange on the order of preferences the names of candidates for whom no first preferences have been recorded.

(b) (i) If a value is credited to any such candidate at the end of any count, the name of that candidate shall be placed on the order of preferences next after the last name already appearing thereon.

(ii) If two or more such candidates are credited for the first time with a value at the same count, and the values so credited to those candidates are unequal, the candidates shall be arranged on the order of preferences in the order of the values so credited

Candidates  
with no  
first pre-  
ferences.

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*Constitution Amendment (Legislative Council Elections).*

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credited to them, beginning with the candidate who has the highest value so credited to him.

(iii) If two or more such candidates are credited for the first time with a value at the same count, and the values so credited to those candidates are equal, the returning officer shall arrange those candidates as amongst themselves on the order of preferences in accordance with the method provided by rule three in relation to equal candidates.

- (ii) by inserting in Rule ten of the same Division after the words "the returning officer shall exclude" the words "in one operation, all candidates who have no value then credited to them, and such operation shall be deemed to be a separate count. He shall then exclude";
- (iii) by omitting from Rule thirteen of the same Division the words "to each candidate at the end of that count" and by inserting in lieu thereof the words "at the end of that count to each candidate whose value was affected at that count";
- (iv) by inserting at the end of paragraph (c) of Rule fourteen of the same Division the following proviso:—

Provided that where there is a break in the consecutive numbering of preferences marked on a ballot-paper (other than a break rendering a ballot-paper invalid in pursuance of paragraph (e) of subsection one of section twenty-three of this Act), only those preferences preceding the break shall be taken into account.

- (v) by omitting from the definition of the expression "determine by lot" in paragraph (k) of Rule fourteen of the same Division all words following the words "slip drawn first";

(vi)



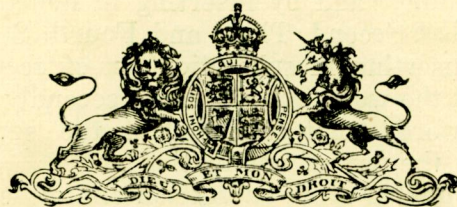


*I Certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

C. H. H. CALVERT,  
*Clerk of the Parliaments.*

*Legislative Council Chamber,  
Sydney, 7th September, 1933.*

## New South Wales.



ANNO VICESIMO QUARTO

# GEORGI V REGIS.

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## Act No. 8, 1933.

An Act to make further provision for the election of Members of the Legislative Council; to amend the Constitution Act, 1902, the Constitution Further Amendment (Legislative Council Elections) Act, 1932, and certain other Acts; and for purposes connected therewith. [Assented to, 25th September, 1933.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**1.** (1) This Act may be cited as the "Constitution Amendment (Legislative Council Elections) Act, 1933." Short title and citation.

(2)

Constitution Amendment (Legislative Council Elections).

(2) The Constitution Further Amendment (Legislative Council Elections) Act, 1932, as amended by this Act may be cited as the Constitution (Legislative Council Elections) Act, 1932-1933.

Amendment  
of Act  
No. 5, 1933.  
Sec. 5.  
(Defini-  
tions.)

**2.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is amended—

Sec. 7 (6).  
(Day of  
ballot.)

(a) by omitting from the definition of the expression “This Part” in section five the words “Second Schedule” and by inserting in lieu thereof the words “Second, Third and Fourth Schedules”;

Sec. 9 (1).  
(Correction.)

(b) by inserting in subsection six of section seven after the word “day” where secondly occurring the words “not earlier than the seventh day after the day of nomination and”;

(c) by omitting from subsection one of section nine the words “the hour at which the sittings of the respective Houses of the Parliament are to commence” and by inserting in lieu thereof the words “the hour at which the taking of the votes at the sittings of the respective Houses of the Parliament is to commence”;

Sec. 13.  
(Proceed-  
ings on  
nomination.)

(d) (i) by inserting in subsection one of section thirteen after the words “day of nomination” the words “or as soon as practicable thereafter”;

(ii) by inserting in subsection two of the same section after the words “day of nomination” the words “or as soon as practicable thereafter.”

Further  
amendment of  
Act No. 5, 1933.

**3.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

Sec. 14.  
(Ballot-  
papers.)

(a) (i) by omitting from subsection two of section fourteen the words “prescribed form” and by inserting in lieu thereof the words “form set out in the Third Schedule to this Act”;

(ii) by inserting after paragraph (c) of subsection three of the same section the following new paragraph:—

(c1) the names of the candidates may be printed either in one continuous  
**column**

Constitution Amendment (Legislative Council Elections).

column or in such other manner (without departing from the said alphabetical order) as, in the opinion of the returning officer, is best calculated to facilitate the marking and counting of votes;

(iii) by omitting from paragraph (d) of the same subsection the words "a square shall be printed opposite" and by inserting in lieu thereof the words "a rectangle shall be printed opposite and to the left of";

(iv) by inserting after subsection four of the same section the following subsection:—

(5) The returning officer shall deliver to the Clerk of the Assembly, and himself retain, such numbers respectively of the ballot-papers (with counterfoils attached) as are sufficient for the use of Members of the Assembly and Members of the Council, as the case may be, in the taking of the ballot; and the returning officer and the Clerk of the Assembly shall keep an exact account of all such ballot-papers and counterfoils;

cf. Act No. 41, 1912, s. 89.

(b) by inserting after the Second Schedule the following new Schedule:—

Third Schedule.

THIRD SCHEDULE.

Sec. 14 (2).

CONSTITUTION (LEGISLATIVE COUNCIL ELECTIONS)  
ACT, 1932-1933.

BALLOT-PAPER.

Election of (*here insert number of candidates to be elected*) Member(s) of the Legislative Council.

CANDIDATES.

- |  |  |
|--|--|
| <input type="checkbox"/> ABBOTT, John    | <input type="checkbox"/> HUGHES, Alfred  |
| <input type="checkbox"/> ADAMSON, Joseph | <input type="checkbox"/> HUGHES, David   |
| <input type="checkbox"/> ALLEN, Charles  | <input type="checkbox"/> KENNEDY, Andrew |
| <input type="checkbox"/> BAKER, William  | <input type="checkbox"/> MURPHY, Patrick |
| <input type="checkbox"/> CARR, Henry     | <input type="checkbox"/> PETERS, Albert  |
| <input type="checkbox"/> CLARKE, Herbert | <input type="checkbox"/> SMITH, Aubrey   |
| <input type="checkbox"/> DOUGLAS, Robert | <input type="checkbox"/> THOMSON, Edward |
| <input type="checkbox"/> EDWARDS, George | <input type="checkbox"/> WOOD, Arthur    |
| <input type="checkbox"/> GRACE, Thomas   | <input type="checkbox"/> YOUNG, Geoffrey |

Constitution Amendment (Legislative Council Elections).

Further amendment of Act No. 5, 1933. **4.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

Sec. 15. (a) by inserting after subsection three of section New subsection (4). fifteen the following new subsection:—

Rules— Fourth Schedule. (4) The Special Rules set out in Division I of the Fourth Schedule to this Act shall apply to and in respect of the conduct of proceedings of the Legislative Council at or in relation to any sitting held for the purpose of taking the votes of Members at any election.

The Special Rules set out in Division II of the Fourth Schedule to this Act shall apply to and in respect of the conduct of proceedings of the Legislative Assembly at or in relation to any sitting held for the purpose of taking the votes of Members at any election.

Fourth Schedule. (b) by inserting after the Third Schedule (as inserted in the Constitution Further Amendment (Legislative Council Elections) Act, 1932, by section three of this Act) the following new Schedule:—

Sec. 15 (4).

FOURTH SCHEDULE.

DIVISION I—LEGISLATIVE COUNCIL.

*Special Rules for Regulating the Conduct of Proceedings at a sitting held for the purpose of taking the Votes of Members of the Legislative Council at any Election under the Constitution (Legislative Council Elections) Act, 1932-1933.*

1. The Standing Rules and Orders of the Legislative Council for the time being in force, so far as they are not inconsistent with the rules in this Division of this Schedule, shall apply to and in respect of the conduct of proceedings of the Legislative Council at or in relation to any sitting held for the purpose of taking the votes of Members at an election; and in this Division of this Schedule a reference to a sitting shall be construed as a reference to such a sitting.

2. Where a Message addressed to the President of the Legislative Council in pursuance of subsection one of section seven of this Act is received, the President, after reporting the Message, shall direct the Clerk to read the Writ.

The

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*Constitution Amendment (Legislative Council Elections).*

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The President shall direct that the taking of the votes of Members shall be set down as an Order of the Day for the day or days of the ballot appointed in such Writ, and on such day or days the taking of the votes shall take precedence of all other business.

3. At a sitting, the President may give such directions and take such steps as he may deem necessary for the proper and expeditious taking of the votes and for the preservation of order throughout the proceedings.

4. At a sitting, no matter other than the taking of the votes of Members shall be raised or entertained before the close of the ballot.

5. For the purposes of a sitting the Chamber and the floor of the House shall be deemed to extend to and include the voting compartments provided for the purpose of marking ballot-papers.

6. A sitting shall proceed notwithstanding that before the close of the ballot a less number of Members than that necessary to constitute a quorum is present.

7. The President may record his vote at any time during the progress of the ballot, provided that a Deputy occupies the Chair during his temporary absence therefrom.

8. Before the commencement of the taking of the votes the President shall direct the Clerk to read the Order of the Day.

Upon the Order of the Day being read, the Clerk shall duly display the ballot-box.

The President shall then declare the ballot open.

9. A Member desiring to vote shall, when called by the President, come forward to the Table and obtain his ballot-paper from the Clerk.

He shall forthwith retire alone to one of the unoccupied voting compartments and mark his ballot-paper, and having marked his ballot-paper he shall deposit it in the ballot-box and resume his seat or retire from the Chamber.

10. After receiving his ballot-paper, no Member shall leave the Chamber unless and until his ballot-paper has been deposited in the ballot-box.

No Member shall attempt to enter any voting compartment while it is occupied.

11. At the hour appointed in the Writ for the termination of the taking of the votes at a sitting, the President shall announce that such hour has arrived and shall direct that the doors be locked.

The doors having been locked, the President shall then inquire whether there is any Member present who has not yet received a ballot-paper and desires to vote.

Every such Member shall rise in his place, and his name shall be recorded by one of the Clerks at the Table upon a List, which shall be handed to the President.

The

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*Constitution Amendment (Legislative Council Elections).*

---

The President shall then direct that the doors be unlocked.

An opportunity to record their votes shall be given to such Members, and also to any other Members who, having received their ballot-papers before the hour appointed in the writ for the termination of the taking of the votes, have not at that hour completed the recording of their votes.

After such opportunity has been given the President shall declare the ballot closed.

12. After the close of the ballot any Member of the Government may forthwith move the adjournment of the House.

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DIVISION II.—LEGISLATIVE ASSEMBLY.

*Special Rules for Regulating the Conduct of Proceedings at a sitting held for the purpose of taking the Votes of Members of the Legislative Assembly at any Election under the Constitution (Legislative Council Elections) Act, 1932-1933.*

1. The Standing Rules and Orders of the Legislative Assembly for the time being in force, so far as they are not inconsistent with the rules in this Division of this Schedule, shall apply to and in respect of the conduct of proceedings of the Legislative Assembly at or in relation to any sitting held for the purpose of taking the votes of Members at an election; and in this Division of this Schedule a reference to a sitting shall be construed as a reference to such a sitting.

2. Where a Message addressed to the Speaker of the Legislative Assembly in pursuance of subsection one of section seven of this Act is received, the Speaker, after reporting the Message, shall direct the Clerk to read the Writ.

The Speaker shall then direct that the taking of the votes of Members shall be set down as an Order of the Day for the day or days of the ballot appointed in such Writ, and on such day or days the taking of the votes shall take precedence of all other business.

3. At a sitting, the Speaker may give such directions and take such steps as he may deem necessary for the proper and expeditious taking of the votes and for the preservation of order throughout the proceedings.

4. At a sitting, no matter other than the taking of the votes of Members shall be raised or entertained before the close of the ballot.

5.

*Constitution Amendment (Legislative Council Elections).*

5. For the purposes of a sitting, the Chamber and the floor of the House shall be deemed to extend to and include the voting compartments provided for the purpose of marking ballot-papers.

6. A sitting shall proceed notwithstanding that before the close of the ballot a less number of Members than that necessary to constitute a quorum is present.

7. The Speaker may record his vote at any time during the progress of the ballot, provided a Deputy occupies the Chair during his temporary absence therefrom.

8. Before the commencement of the taking of the votes the Speaker shall direct the Clerk to read the Order of the Day.

Upon the Order of the Day being read, the Clerk shall duly display the ballot-box.

The Speaker shall then declare the ballot open.

9. A Member desiring to vote shall, when called by the Speaker, come forward to the Table and obtain his ballot-paper from the Clerk.

He shall forthwith retire alone to one of the unoccupied voting compartments and mark his ballot-paper, and having marked his ballot-paper, he shall deposit it in the ballot-box and resume his seat or retire from the Chamber.

10. After receiving his ballot-paper no Member shall leave the Chamber unless and until his ballot-paper has been deposited in the ballot-box.

No Member shall attempt to enter any voting compartment while it is occupied.

11. At the hour appointed in the Writ for the termination of the taking of the votes at a sitting, the Speaker shall announce that such hour has arrived, and shall direct that the doors be locked.

The doors having been locked, the Speaker shall then inquire whether there is any Member present who has not yet received a ballot-paper and desires to vote.

Every such Member shall rise in his place, and his name shall be recorded by one of the Clerks at the Table upon a list, which shall be handed to the Speaker.

The Speaker shall then direct that the doors be unlocked.

An opportunity to record their votes shall be given to such Members, and also to any other Members who, having received their ballot-papers before the hour appointed in the writ for the termination of the taking of the votes, have not at that hour completed the recording of their votes.

After such opportunity has been given the Speaker shall declare the ballot closed.

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*Constitution Amendment (Legislative Council Elections).*

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12. After the close of the ballot, any Member of the Government may forthwith move the adjournment of the House.

Further  
amendment of  
Act No. 5, 1932.

Sec. 18.  
(Issue of  
ballot-  
papers.)

5. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

(a) by omitting from section eighteen the words “corresponding to that counterfoil, and having marked the ballot-paper on both sides with the prescribed official mark,” and by inserting in lieu thereof the words “attached to that counterfoil, and the Clerk having marked the ballot-paper on the back with his signature”;

Sec. 19.  
(Marking of  
votes.)

(b) (i) by inserting in subsection one of section nineteen after the word “forthwith” the words “retire alone to one of the unoccupied voting compartments provided for the purpose, and there in private”;

(ii) by omitting from the same subsection the words “square opposite,” and by inserting in lieu thereof the words “rectangle opposite and to the left of”;

(iii) by omitting from the same subsection the words “squares respectively opposite” wherever occurring, and by inserting in lieu thereof the words “rectangles respectively opposite and to the left of”;

(iv) by omitting from subsection two of the same section the words “official mark,” and by inserting in lieu thereof the words “signature of the Clerk”;

Sec. 20.  
(Parcels.)

(c) (i) by omitting paragraph (a) of section twenty and by inserting in lieu thereof the following paragraph:—

(a) make up in one parcel the ballot-papers which have remained unused at the taking of the ballot, the spoilt ballot-papers (if any) and the counterfoils of all ballot-papers which were retained by him as returning officer or delivered to him by the returning



Constitution Amendment (Legislative Council Elections).

returning officer (as the case may be) in pursuance of subsection five of section fourteen; and in a second separate parcel all other papers and records used by the Clerk in connection with the taking of the ballot;

- (ii) by inserting in paragraph (c) of the same section after the word "election," the words "the number of spoilt ballot-papers";
- (d) by inserting at the end of section twenty-two the following new subsection:—

Sec. 22.  
(Offences.)

(4) This section shall not extend to the display of a ballot-paper to the Clerk for the purpose of satisfying him, in accordance with subsection three of section nineteen of this Act, that the ballot-paper has been spoilt by mistake or accident.

**6.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended:—

Further amendment of Act No. 5, 1933.

- (a) (i) by omitting from paragraph (a) of section twenty-three the words "prescribed official mark," and by inserting in lieu thereof the words "signature of the Clerk";

Sec. 23.  
(Invalid ballot-papers.)

- (ii) by inserting at the end of the same section the following new subsection:—

(2) A ballot-paper shall not be invalid for any reason other than the reasons specified in this section, but shall have effect according to the elector's intention, so far as his intention is clear.

cf. C'wlth. Electoral Act, 1918-1928, s. 133 (2).

- (b) (i) by inserting in paragraph (a) of sub-section one of section twenty-four after the word "presence" the words "and subject to the inspection";

Sec. 24 (1) (a).  
cf. Act No. 41, 1912, s. 120.

- (ii) by inserting at the end of subsection one of section twenty-four the following paragraphs:—

Sec. 24.  
(Proceedings to ascertain result.)

No person other than a candidate or a person authorised by the returning officer, shall be entitled to be present at the proceedings referred to in paragraph (a) of this subsection.

Any

Constitution Amendment (Legislative Council Elections).

Any person present at such proceedings who interferes with any ballot-papers, documents or records, in use at such proceedings, or obstructs the conduct of the proceedings, or distracts the attention of the returning officer or any of his assistants, and who refuses on being required by the returning officer, or any person acting under the direction or authority of the returning officer, to desist from such interference, obstruction or distraction may be removed by or under the direction of the returning officer from the place at which such proceedings are being conducted, and shall be liable on summary conviction to a penalty not exceeding ten pounds.

- (iii) by omitting from subsection four of the same section the words "in or to the effect of the prescribed form";
- (iv) by omitting subsection five of the same section and by inserting in lieu thereof the following subsection:—

(5) The returning officer shall indorse upon, or attach to, the writ, a copy of the certificate, and (in the case of an election at which more than one seat is to be filled) shall also attach a copy of the result sheet mentioned in the Second Schedule to this Act, and shall return the writ, with the documents (if any) so attached, to the Governor, within the time specified in the writ.

Further  
amendment of  
Act No. 5, 1933.  
Sec. 31.  
(First  
elections.)

7. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

- (a) (i) by omitting from section thirty-one the words "election of the sixty Members who are to be elected in pursuance of section 17A of the Principal Act for the first constitution of the Legislative Council" and by inserting in lieu thereof the words "four elections referred to in section 17D of the Principal Act";

(ii)

Constitution Amendment (Legislative Council Elections).

- (ii) by inserting at the end of the same section the words "and such modifications and amendments shall apply to and in respect of those four elections only";
- (b) by omitting from subsection two of section thirty-two the words "referred to in section 17D of the Principal Act"; Sec 32. (One writ.)
- (c) by inserting at the end of subsection one of section thirty-four the following words "and the day of the ballot for the first of the four elections shall be a day not earlier than the seventh day after the day of nomination"; Sec. 34 (1). (Days of ballot.)
- (d) by inserting next after section thirty-five the following new section:— New sec. 35A.
- 35A. (1) The returning officer shall at noon on the day of nomination, or as soon as practicable thereafter, and at the place for receiving the nomination papers, announce that ballots for each of the four elections will be taken, and the names of the persons who have become candidates for the four elections, and shall also forthwith publish in the Gazette and in one or more daily newspapers a like announcement. Proceedings on nomination.
- (2) Subsection one of this section shall be read in lieu of subsection two of section thirteen of this Act.
- (e) (i) by omitting from subsection one of section thirty-six the words "in or to the effect of the prescribed form"; Sec. 36. (Return of writ.)
- (ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection:—
- (2) The returning officer shall attach to the writ a copy of the certificate, and shall also attach a copy of the result sheet mentioned in the Second Schedule to this Act relating to each of the four elections, and shall return the writ with the documents so attached, to the Governor, within the time specified in the writ.
- (f)

Constitution Amendment (Legislative Council Elections).

New sec.  
36A.

Governor  
may alter  
days of  
third and  
fourth  
ballots.

(f) by inserting after section thirty-six the following new section:—

36A. (1) The Governor may, by proclamation published in the Gazette at any time after the day of the ballot for the first of the four elections and before the day of the ballot for the second of the four elections, amend the writ issued for the four elections, by altering the days of the ballot appointed by such writ for the second, third, and fourth elections respectively. The proclamation may fix a later but not an earlier date for the day of the ballot for the second of the four elections, and may fix either earlier or later dates for the days of the ballot for the third and fourth of the four elections than those respectively appointed by the writ. Upon publication of the proclamation in the Gazette the writ shall be deemed to be amended accordingly.

(2) The Governor shall by message addressed to the President of the Legislative Council and to the Speaker of the Legislative Assembly respectively, inform both Houses of the Parliament of the issue of the proclamation.

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

Further  
amendment of  
Act No. 5, 1933.

Sec. 27.  
(Disputed  
elections.)

8. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

(a) by inserting after subsection one of section twenty-seven the following new subsections:—

(1A) No election of a candidate shall be declared void by reason only of the fact that at any of the relevant times mentioned in subsection three of section thirteen of this Act, such candidate died or was not qualified to become a Member of the Council, or was disqualified from being a Member of the Council, or was incapable of sitting or voting in the Council, but the Court trying the election petition may declare that he vacated his seat in accordance with the provisions of that subsection.

(1B)

Constitution Amendment (Legislative Council Elections).

(1B) The validity of any election or return shall not be disputed otherwise than in accordance with this section.

- (b) (i) by omitting from subsection one of section thirty-seven the words "within forty days after" and by inserting in lieu thereof the words "not earlier than";
- (ii) by inserting at the end of the same subsection the words "and not later than the fortieth day after the day so appointed";

- (c) by inserting after subsection two of section thirty-seven the following new subsections:—

(3) Where in accordance with the provisions of paragraph (a) of subsection one of section twenty-seven of this Act, the Court declares the election of a candidate at any of the four elections to be void, the Court shall declare that such one as justice may require of the candidates not returned as elected at that election, was elected; and if the candidate so declared by the Court to have been elected was returned as elected at another of the four elections, the Court shall declare the seat to which he was so returned as elected to be vacant.

(4) Subsection three of this section shall be read in lieu of paragraph (b) of subsection one of section twenty-seven of this Act.

**9.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

- (a) (i) by inserting at the end of paragraph (b) of Rule four of Division 1 of the Second Schedule the following proviso—

Provided that where there is a break in the consecutive numbering of preferences marked on a ballot-paper (other than a break rendering the ballot-paper invalid in pursuance of paragraph (e) of subsection one of section twenty-three of this Act), only those preferences preceding the break shall be taken into account.

(ii)

Further amendment of Act No. 5, 1933.

Second Schedule, Division 1, Rule 4.

Constitution Amendment (Legislative Council Elections).

Second  
Schedule,  
Division 1,  
Rule 7.

(ii) by omitting from Rule seven of Division 1 of the same Schedule the words "The expression 'determine by lot' shall have the meaning ascribed to it in Division 2 of this Schedule" and by inserting in lieu thereof the following words:—

"The expression 'determine by lot' means determine in accordance with the following direction:—

The names of the candidates concerned having been written on similar slips of paper, and the slips having been folded so as to prevent identification and mixed and drawn at random, the candidate or candidates shall be excluded in the order in which their names are drawn."

Division 2,  
Rule 3.

(b) by inserting at the end of Rule three of Division 2 of the same Schedule the following definition:—

In this rule "number" includes nil.

New  
Rule 3A.

(c) (i) by inserting after Rule three of Division 2 of the same Schedule the following new rule:—

3A. (a) Except as provided in paragraph (b) of this rule it shall not be necessary to arrange on the order of preferences the names of candidates for whom no first preferences have been recorded.

(b) (i) If a value is credited to any such candidate at the end of any count, the name of that candidate shall be placed on the order of preferences next after the last name already appearing thereon.

(ii) If two or more such candidates are credited for the first time with a value at the same count, and the values so credited to those candidates are unequal, the candidates shall be arranged on the order of preferences in the order of the values so credited

Candidates  
with no  
first pre-  
ferences.

(iv)

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*Constitution Amendment (Legislative Council Elections).*

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credited to them, beginning with the candidate who has the highest value so credited to him.

(iii) If two or more such candidates are credited for the first time with a value at the same count, and the values so credited to those candidates are equal, the returning officer shall arrange those candidates as amongst themselves on the order of preferences in accordance with the method provided by rule three in relation to equal candidates.

(ii) by inserting in Rule ten of the same Division after the words "the returning officer shall exclude" the words "in one operation, all candidates who have no value then credited to them, and such operation shall be deemed to be a separate count. He shall then exclude";

(iii) by omitting from Rule thirteen of the same Division the words "to each candidate at the end of that count" and by inserting in lieu thereof the words "at the end of that count to each candidate whose value was affected at that count";

(iv) by inserting at the end of paragraph (c) of Rule fourteen of the same Division the following proviso:—

Provided that where there is a break in the consecutive numbering of preferences marked on a ballot-paper (other than a break rendering a ballot-paper invalid in pursuance of paragraph (e) of subsection one of section twenty-three of this Act), only those preferences preceding the break shall be taken into account.

(v) by omitting from the definition of the expression "determine by lot" in paragraph (k) of Rule fourteen of the same Division all words following the words "slip drawn first";

(vi)

Constitution Amendment (Legislative Council Elections).

(vi) by omitting the appendix to the Second Schedule and by inserting in lieu thereof the following appendix:—

**APPENDIX.**

**FORM OF RESULT SHEET.**

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

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

| Candidate.                                      | Number of First Preference Votes. | Indication of Exclusion or Election of Candidates.   |  | First Count—Value of Votes. | * Here indicate nature of operation, whether distribution of a surplus or exclusion of a candidate. |             |             | * Here indicate nature of operation, whether distribution of a surplus or exclusion of a candidate. |             |             | Check Total. |
|---|-----------------------------------|--|--|-----------------------------|---|-------------|-------------|---|-------------|-------------|--------------|
|   |                                   | Insert word Excluded or Elected as may be necessary. | No. of Count at which Exclusion was effected or at which Election was secured. |                             | Count No. *   | Count No. * | Count No. * | Count No. *   | Count No. * | Count No. * |              |
|   |                                   |  |  | Count No.                   | Value of Transferred Votes.   | Result.     | Count No.   | Value of Transferred Votes.   | Result.     |             |              |
| Value of non-transferable papers not effective. |                                   |  |  |                             |   |             |             |   |             |             |              |
| Loss of value owing to disregard of fractions.  |                                   |  |  |                             |   |             |             |   |             |             |              |
| Totals.....                                     |                                   |  |  |                             |   |             |             |   |             |             |              |

(Signature) .....Returning Officer.

*In the name and on behalf of His Majesty I assent to this Act.*

PHILIP GAME,  
 Governor.  
 Government House,  
 Sydney, 25th September, 1933.



CONSTITUTION AMENDMENT (LEGISLATIVE COUNCIL ELECTIONS)  
BILL.

*Schedule of the Legislative Assembly's amendments.*

Page 5, clause 4, lines 32, 33. *Omit* "unless he desires his vote to be marked in accordance with section 19A of this Act."

Page 5, clause 4, lines 38 to 41 (both inclusive). *Omit* all words on these lines.

Page 6, clause 4, lines 9 to 11 (both inclusive). *Omit* all words on these lines *insert*

**"An opportunity to record their votes shall be given to such Members, and also to any other Members who, having received their ballot-papers before the hour appointed in the writ for the termination of the taking of the votes, have not at that hour completed the recording of their votes.**

**"After such opportunity has been given the President shall declare the ballot closed."**

Page 7, clause 4, lines 27, 28. *Omit* "unless he desires his vote to be marked in accordance with section 19A of this Act."

Page 7, clause 4, lines 33 to 36 (both inclusive). *Omit* all words on these lines.

Page 8, clause 4, lines 6 to 8 (both inclusive). *Omit* all words on these lines *insert*

**"An opportunity to record their votes shall be given to such Members, and also to any other Members who, having received their ballot-papers before the hour appointed in the writ for the termination of the taking of the votes, have not at that hour completed the recording of their votes.**

**"After such opportunity has been given the Speaker shall declare the ballot closed."**

Page 8, clause 5, lines 29 to 35 (both inclusive). *Omit* all words on these lines *insert*

**"(b) (i) by inserting in subsection one of section nineteen after the word 'forthwith' the words 'retire alone to one of the unoccupied voting compartments provided for the purpose, and there in private';**

Page 9, clause 5, lines 10 to 26 (both inclusive). *Omit* all words on these lines.

Page 10, clause 5, lines 14 to 16. *Omit* the words "nor shall this section operate to preclude the marking of a vote pursuant to section 19A of this Act."

Page 10, clause 6, line 30. *Insert* new sub-paragraph.

**(b) (i) by inserting in paragraph (a) of subsection one of section twenty-four after the word "presence" the words "and subject to the inspection"** Sec. 24 (1) (a).  
cf. Act No. 41,  
1912, s. 120.

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OF THE COURT

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It is ordered that the most exacting... of...

*This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.*

C. H. H. CALVERT,  
*Clerk of the Parliaments.*

*Legislative Council Chamber,  
Sydney, 23rd August, 1933.*

*The LEGISLATIVE ASSEMBLY has this day agreed to this Bill with Amendments.*

W. R. McCOURT,  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 7 September, 1933.*

## New South Wales.



ANNO VICESIMO QUARTO

## GEORGII V REGIS.

\*\*\*\*\*

Act No. , 1933.

An Act to make further provision for the election of Members of the Legislative Council; to amend the Constitution Act, 1902, the Constitution Further Amendment (Legislative Council Elections) Act, 1932, and certain other Acts; and for purposes connected therewith.

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**1.** (1) This Act may be cited as the "Constitution Amendment (Legislative Council Elections) Act, 1933." Short title and citation.

11185 c 1—A (2)

NOTE.—The words to be omitted are ruled through; those to be inserted are printed in black letter.

Constitution Amendment (Legislative Council Elections).

(2) The Constitution Further Amendment (Legislative Council Elections) Act, 1932, as amended by this Act may be cited as the Constitution (Legislative Council Elections) Act, 1932-1933.

5 **2.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is amended—

- (a) by omitting from the definition of the expression "This Part" in section five the words "Second Schedule" and by inserting in lieu thereof the words "Second, Third and Fourth Schedules";
- 10 (b) by inserting in subsection six of section seven after the word "day" where secondly occurring the words "not earlier than the seventh day after the day of nomination and";
- 15 (c) by omitting from subsection one of section nine the words "the hour at which the sittings of the respective Houses of the Parliament are to commence" and by inserting in lieu thereof the words "the hour at which the taking of the votes at the sittings of the respective Houses of the Parliament is to commence";
- 20 (d) (i) by inserting in subsection one of section thirteen after the words "day of nomination" the words "or as soon as practicable thereafter";
- 25 (ii) by inserting in subsection two of the same section after the words "day of nomination" the words "or as soon as practicable thereafter."

30 **3.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

- (a) (i) by omitting from subsection two of section fourteen the words "prescribed form" and by inserting in lieu thereof the words "form set out in the Third Schedule to this Act";
- 35 (ii) by inserting after paragraph (c) of subsection three of the same section the following new paragraph:—
- 40 (c1) the names of the candidates may be printed either in one continuous column

Constitution Amendment (Legislative Council Elections).

5 column or in such other manner  
(without departing from the said  
alphabetical order) as, in the opinion  
of the returning officer, is best calcu-  
lated to facilitate the marking and  
counting of votes;

(iii) by omitting from paragraph (d) of the same  
subsection the words "a square shall be  
printed opposite" and by inserting in lieu  
thereof the words "a rectangle shall be  
printed opposite and to the left of";

(iv) by inserting after subsection four of the  
same section the following subsection:—

15 (5) The returning officer shall deliver to  
the Clerk of the Assembly, and himself  
retain, such numbers respectively of the  
ballot-papers (with counterfoils attached) as  
are sufficient for the use of Members of the  
Assembly and Members of the Council, as  
20 the case may be, in the taking of the ballot;  
and the returning officer and the Clerk of the  
Assembly shall keep an exact account of all  
such ballot-papers and counterfoils;

cf. Act  
No. 41, 1912,  
s. 89.

(b) by inserting after the Second Schedule the fol-  
25 lowing new Schedule:—

Third  
Schedule.

THIRD SCHEDULE.

Secj 14 (2)

CONSTITUTION (LEGISLATIVE COUNCIL ELECTIONS)  
ACT, 1932-1933.

BALLOT-PAPER.

30 Election of (here insert number of candidates to be  
elected) Member(s) of the Legislative Council.

CANDIDATES.

- |  |  |
|--|--|
| <input type="checkbox"/> ABBOTT, John    | <input type="checkbox"/> HUGHES, Alfred  |
| <input type="checkbox"/> ADAMSON, Joseph | <input type="checkbox"/> HUGHES, David   |
| <input type="checkbox"/> ALLEN, Charles  | <input type="checkbox"/> KENNEDY, Andrew |
| <input type="checkbox"/> BAKER, William  | <input type="checkbox"/> MURPHY, Patrick |
| <input type="checkbox"/> CARR, Henry     | <input type="checkbox"/> PETERS, Albert  |
| <input type="checkbox"/> CLARKE, Herbert | <input type="checkbox"/> SMITH, Aubrey   |
| <input type="checkbox"/> DOUGLAS, Robert | <input type="checkbox"/> THOMSON, Edward |
| <input type="checkbox"/> EDWARDS, George | <input type="checkbox"/> WOOD, Arthur    |
| <input type="checkbox"/> GRACE, Thomas   | <input type="checkbox"/> YOUNG, Geoffrey |

*Constitution Amendment (Legislative Council Elections).*

4. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

Further amendment of Act No. 5, 1933.

(a) by inserting after subsection three of section fifteen the following new subsection:—

Sec. 15. New subsection (4).

5 (4) The Special Rules set out in Division I of the Fourth Schedule to this Act shall apply to and in respect of the conduct of proceedings of the Legislative Council at or in relation to any sitting held for the purpose of taking the votes of Members at any election.

Rules—Fourth Schedule.

10 The Special Rules set out in Division II of the Fourth Schedule to this Act shall apply to and in respect of the conduct of proceedings of the Legislative Assembly at or in relation to any sitting held for the purpose of taking the votes of Members at any election.

15 (b) by inserting after the Third Schedule (as inserted in the Constitution Further Amendment (Legislative Council Elections) Act, 1932, by section three of this Act) the following new Schedule:—

Fourth Schedule.

FOURTH SCHEDULE.

Sec. 15 (4).

DIVISION I—LEGISLATIVE COUNCIL.

25 *Special Rules for Regulating the Conduct of Proceedings at a sitting held for the purpose of taking the Votes of Members of the Legislative Council at any Election under the Constitution (Legislative Council Elections) Act, 1932-1933.*

30 1. The Standing Rules and Orders of the Legislative Council for the time being in force, so far as they are not inconsistent with the Rules in this Division of this Schedule, shall apply to and in respect of the conduct of proceedings of the Legislative Council at or in relation to any sitting held for the purpose of taking the votes of Members at an election; and in this Division of this Schedule a reference to a sitting shall be construed as a reference to such a sitting.

35 2. Where a Message addressed to the President of the Legislative Council in pursuance of subsection one of section seven of this Act is received, the President, after reporting the Message, shall direct the Clerk to read the Writ.

The

*Constitution Amendment (Legislative Council Elections).*

The President shall direct that the taking of the votes of Members shall be set down as an Order of the Day for the day or days of the ballot appointed in such Writ, and on such day or days the taking of the votes shall take precedence of all other business.

3. At a sitting, the President may give such directions and take such steps as he may deem necessary for the proper and expeditious taking of the votes and for the preservation of order throughout the proceedings.

4. At a sitting, no matter other than the taking of the votes of Members shall be raised or entertained before the close of the ballot.

5. For the purposes of a sitting the Chamber and the floor of the House shall be deemed to extend to and include the voting compartments provided for the purpose of marking ballot-papers.

6. A sitting shall proceed notwithstanding that before the close of the ballot a less number of Members than that necessary to constitute a quorum is present.

7. The President may record his vote at any time during the progress of the ballot, provided that a Deputy occupies the Chair during his temporary absence therefrom.

8. Before the commencement of the taking of the votes the President shall direct the Clerk to read the Order of the Day.

Upon the Order of the Day being read, the Clerk shall duly display the ballot-box.

The President shall then declare the ballot open.

9. A Member desiring to vote shall, when called by the President, come forward to the Table and obtain his ballot-paper from the Clerk.

~~Unless he desires his vote to be marked in accordance with section 19A of this Act, he shall forthwith retire alone to one of the unoccupied voting compartments and mark his ballot-paper, and having marked his ballot-paper he shall deposit it in the ballot-box and resume his seat or retire from the Chamber.~~

~~Where the ballot paper of a Member is marked in accordance with section 19A of this Act, and deposited in the ballot-box, the Member shall resume his seat or retire from the Chamber.~~

10. After receiving his ballot-paper, no Member shall leave the Chamber unless and until his ballot-paper has been deposited in the ballot-box.

No Member shall attempt to enter any voting compartment while it is occupied.

11. At the hour appointed in the Writ for the termination of the taking of the votes at a sitting, the President shall announce that such hour has arrived and shall direct that the doors be locked.

The

Constitution Amendment (Legislative Council Elections).

The doors having been locked, the President shall then inquire whether there is any Member present who has not yet received a ballot-paper and desires to vote.

Every such Member shall rise in his place, and his name shall be recorded by one of the Clerks at the Table upon a List, which shall be handed to the President.

The President shall then direct that the doors be unlocked.

~~After opportunity has been given to such Members to record their votes the President shall declare the ballot closed.~~

**An opportunity to record their votes shall be given to such Members, and also to any other Members who, having received their ballot-papers before the hour appointed in the writ for the termination of the taking of the votes, have not at that hour completed the recording of their votes.**

**After such opportunity has been given the President shall declare the ballot closed.**

12. After the close of the ballot any Member of the Government may forthwith move the adjournment of the House.

DIVISION II.—LEGISLATIVE ASSEMBLY.

*Special Rules for Regulating the Conduct of Proceedings at a sitting held for the purpose of taking the Votes of Members of the Legislative Assembly at any Election under the Constitution (Legislative Council Elections) Act, 1932-1933.*

1. The Standing Rules and Orders of the Legislative Assembly for the time being in force, so far as they are not inconsistent with the rules in this Division of this Schedule, shall apply to and in respect of the conduct of proceedings of the Legislative Assembly at or in relation to any sitting held for the purpose of taking the votes of Members at an election; and in this Division of this Schedule a reference to a sitting shall be construed as a reference to such a sitting.

2. Where a Message addressed to the Speaker of the Legislative Assembly in pursuance of subsection one of section seven of this Act is received, the Speaker, after reporting the Message, shall direct the Clerk to read the Writ.

The Speaker shall then direct that the taking of the votes of Members shall be set down as an Order of the Day for the day or days of the ballot appointed in such Writ, and on such day or days the taking of the votes shall take precedence of all other business.



*Constitution Amendment (Legislative Council Elections).*

3. At a sitting, the Speaker may give such directions and take such steps as he may deem necessary for the proper and expeditious taking of the votes and for the preservation of order throughout the proceedings.

5 4. At a sitting, no matter other than the taking of the votes of Members shall be raised or entertained before the close of the ballot.

10 5. For the purposes of a sitting, the Chamber and the floor of the House shall be deemed to extend to and include the voting compartments provided for the purpose of marking ballot-papers.

6. A sitting shall proceed notwithstanding that before the close of the ballot a less number of Members than that necessary to constitute a quorum is present.

15 7. The Speaker may record his vote at any time during the progress of the ballot, provided a Deputy occupies the Chair during his temporary absence therefrom.

20 8. Before the commencement of the taking of the votes the Speaker shall direct the Clerk to read the Order of the Day.

Upon the Order of the Day being read, the Clerk shall duly display the ballot-box.

The Speaker shall then declare the ballot open.

25 9. A Member desiring to vote shall, when called by the Speaker, come forward to the Table and obtain his ballot-paper from the Clerk.

30 ~~Unless he desires his vote to be marked in accordance with section 19A of this Act, he shall forthwith retire alone to one of the unoccupied voting compartments and mark his ballot-paper, and having marked his ballot-paper, he shall deposit it in the ballot-box and resume his seat or retire from the Chamber.~~

35 ~~Where the ballot-paper of a Member is marked in accordance with section 19A of this Act and deposited in the ballot-box the Member shall resume his seat or retire from the Chamber.~~

10. After receiving his ballot-paper no Member shall leave the Chamber unless and until his ballot-paper has been deposited in the ballot-box.

40 No Member shall attempt to enter any voting compartment while it is occupied.

45 11. At the hour appointed in the Writ for the termination of the taking of the votes at a sitting, the Speaker shall announce that such hour has arrived, and shall direct that the doors be locked.

The doors having been locked, the Speaker shall then inquire whether there is any Member present who has not yet received a ballot-paper and desires to vote.

Every

Constitution Amendment (Legislative Council Elections).

Every such Member shall rise in his place, and his name shall be recorded by one of the Clerks at the Table upon a list, which shall be handed to the Speaker.

The Speaker shall then direct that the doors be unlocked.

5

~~After an opportunity has been given to such Members to record their votes, the Speaker shall declare the ballot closed.~~

10

**An opportunity to record their votes shall be given to such Members, and also to any other Members who, having received their ballot-papers before the hour appointed in the writ for the termination of the taking of the votes, have not at that hour completed the recording of their votes.**

15

**After such opportunity has been given the Speaker shall declare the ballot closed.**

12. After the close of the ballot, any Member of the Government may forthwith move the adjournment of the House.

20

**5. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—**

Further amendment of Act No. 5, 1933.

(a) by omitting from section eighteen the words "corresponding to that counterfoil, and having marked the ballot-paper on both sides with the prescribed official mark," and by inserting in lieu thereof the words "attached to that counterfoil, and the Clerk having marked the ballot-paper on the back with his signature";

Sec. 18.  
(Issue of ballot-papers.)

25

(b) (i) by omitting from subsection one of section nineteen the word "forthwith" and by inserting in lieu thereof the words "subject to section 19A of this Act, forthwith retire alone to one of the unoccupied voting compartments provided for the purpose, and there in private";

Sec. 19.  
(Method of voting.)

30

(b) (i) by inserting in subsection one of section nineteen after the word "forthwith" the words "retire alone to one of the unoccupied voting compartments provided for the purpose, and there in private";

Sec. 19.  
(Marking of votes.)

40

(ii) by omitting from the same subsection the words "square opposite," and by inserting in lieu thereof the words "rectangle opposite and to the left of";

(iii)

Constitution Amendment (Legislative Council Elections).

5 (iii) by omitting from the same subsection the words "squares respectively opposite" wherever occurring, and by inserting in lieu thereof the words "rectangles respectively opposite and to the left of";

(iv) by omitting from subsection two of the same section the words "official mark," and by inserting in lieu thereof the words "signature of the Clerk";

10 (e) by inserting after section nineteen the following new section:—

New sec.-19a.

15 19a. If any Member to whom a ballot paper has been delivered is blind or is incapacitated by any physical cause, so that he is unable to mark his vote in the usual way, he may produce a certificate to that effect signed by a legally qualified medical practitioner, and thereupon the Clerk shall, at the request of such Member and for him, mark the ballot paper in accordance with the instruction of such Member, and shall forthwith cause the ballot paper of such Member to be deposited in the ballot box.

Blind or incapacitated voter.

20 The instruction of a Member under this section may be given by handing to the Clerk a statement in writing indicating the manner in which the Member desires his vote to be marked.

25 (c) (d) (i) by omitting paragraph (a) of section twenty and by inserting in lieu thereof the following paragraph:—

Sec. 20. (Parcels.)

30 (a) make up in one parcel the ballot-papers which have remained unused at the taking of the ballot, the spoilt ballot-papers (if any) and the counterfoils of all ballot-papers which were retained by him as returning officer or delivered to him by the returning officer (as the case may be) in pursuance of subsection five of section fourteen; and in a second separate

35

Constitution Amendment (Legislative Council Elections).

separate parcel all other papers and records used by the Clerk in connection with the taking of the ballot;

- 5 (ii) by inserting in paragraph (c) of the same section after the word "election," the words "the number of spoilt ballot-papers";
- (d) ~~(e)~~ by inserting at the end of section twenty-two the following new subsection:— Sec. 22.  
(Offences.)
- 10 (4) This section shall not extend to the display of a ballot-paper to the Clerk for the purpose of satisfying him, in accordance with subsection three of section nineteen of this Act, that the ballot-paper has been spoilt by mistake or accident; ~~nor shall this section operate to preclude the marking of a vote pursuant to section 19A of this Act.~~
- 15 **6.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended:— Further amendment of Act No. 5, 1933.
- 20 (a) (i) by omitting from paragraph (a) of section twenty-three the words "prescribed official mark," and by inserting in lieu thereof the words "signature of the Clerk"; Sec. 23.  
(Invalid ballot-papers.)
- (ii) by inserting at the end of the same section the following new subsection:—
- 25 (2) A ballot-paper shall not be invalid for any reason other than the reasons specified in this section, but shall have effect according to the elector's intention, so far as his intention is clear. cf. C'wth. Electoral Act, 1918-1928, s. 133 (2).
- 30 (b) (i) **by inserting in paragraph (a) of sub-section one of section twenty-four after the word "presence" the words "and subject to the inspection";** Sec. 24 (1) (a).  
cf. Act No. 41, 1912, s. 120.
- 35 ~~(b)~~ ~~(i)~~ (ii) by inserting at the end of subsection one of section twenty-four the following paragraphs:— Sec. 24.  
(Proceedings to ascertain result.)
- 40 No person other than a candidate or a person authorised by the returning officer, shall be entitled to be present at the proceedings referred to in paragraph (a) of this subsection.

Any,

Constitution Amendment (Legislative Council Elections).

5 Any person present at such proceedings who interferes with any ballot-papers, documents or records, in use at such proceedings, or obstructs the conduct of the proceedings, or distracts the attention of the returning officer or any of his assistants, and who refuses on being required by the returning officer, or any person acting under the direction or authority of the returning officer, to desist from such interference, obstruction or distraction may be removed by or under the direction of the returning officer from the place at which such proceedings are being conducted, and shall be liable on summary conviction to a penalty not exceeding ten pounds.

10 (iii) ~~(ii)~~ by omitting from subsection four of the same section the words "in or to the effect of the prescribed form";

20 (iv) ~~(iii)~~ by omitting subsection five of the same section and by inserting in lieu thereof the following subsection:—

25 (5) The returning officer shall indorse upon, or attach to, the writ, a copy of the certificate, and (in the case of an election at which more than one seat is to be filled) shall also attach a copy of the result sheet mentioned in the Second Schedule to this Act, and shall return the writ, with the documents (if any) so attached, to the Governor, within

30 the time specified in the writ.

7. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

35 (a) (i) by omitting from section thirty-one the words "election of the sixty Members who are to be elected in pursuance of section 17A of the Principal Act for the first constitution of the Legislative Council" and by inserting in lieu thereof the words "four elections referred to in section 17D of the Principal Act";

40

Further amendment of Act No. 5, 1933.

Sec. 31.

(First elections.)

(ii)

Constitution Amendment (Legislative Council Elections).

- (ii) by inserting at the end of the same section the words "and such modifications and amendments shall apply to and in respect of those four elections only";
- 5 (b) by omitting from subsection two of section thirty-two the words "referred to in section 17D of the Principal Act"; Sec. 32. (One writ.)
- 10 (c) by inserting at the end of subsection one of section thirty-four the following words "and the day of the ballot for the first of the four elections shall be a day not earlier than the seventh day after the day of nomination"; Sec. 34 (1). (Days of ballot.)
- 15 (d) by inserting next after section thirty-five the following new section:— New sec. 35A.

35A. (1) The returning officer shall at noon on the day of nomination, or as soon as practicable thereafter, and at the place for receiving the nomination papers, announce that ballots for each of the four elections will be taken, and the names of the persons who have become candidates for the four elections, and shall also forthwith publish in the Gazette and in one or more daily newspapers a like announcement. Proceedings on nomination.

(2) Subsection one of this section shall be read in lieu of subsection two of section thirteen of this Act.
- 20
- 25 (e) (i) by omitting from subsection one of section thirty-six the words "in or to the effect of the prescribed form"; Sec. 36. (Return of writ.)
- 30 (ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection:—
  - (2) The returning officer shall attach to the writ a copy of the certificate, and shall also attach a copy of the result sheet mentioned in the Second Schedule to this Act relating to each of the four elections, and shall return the writ with the documents so attached, to the Governor, within the time specified in the writ.
- 35
- 40 (f)

Constitution Amendment (Legislative Council Elections).

(f) by inserting after section thirty-six the following new section:— New sec. 36A.

5 36A. (1) The Governor may, by proclamation published in the Gazette at any time after the day of the ballot for the first of the four elections and before the day of the ballot for the second of the four elections, amend the writ issued for the four elections, by altering the days of the ballot appointed by such writ for the second, third, and fourth elections respectively. Governor may alter days of third and fourth ballots.  
10 The proclamation may fix a later but not an earlier date for the day of the ballot for the second of the four elections, and may fix either earlier or later dates for the days of the ballot (b)  
15 for the third and fourth of the four elections than those respectively appointed by the writ. Upon publication of the proclamation in the Gazette the writ shall be deemed to be amended accordingly.

20 (2) The Governor shall by message addressed to the President of the Legislative Council and to the Speaker of the Legislative Assembly respectively, inform both Houses of the Parliament of the issue of the proclamation.

25 The message shall be accompanied by a copy of the proclamation.

8. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended— Further amendment of Act No. 5, 1933.

(a) by inserting after subsection one of section twenty-seven the following new subsections:— Sec. 27. (Disputed elections.)

30 (1A) No election of a candidate shall be declared void by reason only of the fact that at any of the relevant times mentioned in subsection three of section thirteen of this Act, such candidate died or was not qualified to become a Member of the Council, or was disqualified from being 38  
35 a Member of the Council, or was incapable of sitting or voting in the Council, but the Court trying the election petition may declare that he vacated his seat in accordance with the provisions of that subsection. 02

(1B)

Constitution Amendment (Legislative Council Elections).

(1B) The validity of any election or return shall not be disputed otherwise than in accordance with this section.

- 5 (b) (i) by omitting from subsection one of section thirty-seven the words "within forty days after" and by inserting in lieu thereof the words "not earlier than";
- (ii) by inserting at the end of the same subsection the words "and not later than the fortieth day after the day so appointed";
- 10 (c) by inserting after subsection two of section thirty-seven the following new subsections:—
- (3) Where in accordance with the provisions of paragraph (a) of subsection one of section twenty-seven of this Act, the Court declares the election of a candidate at any of the four elections to be void, the Court shall declare that such one as justice may require of the candidates not returned as elected at that election, was elected; and if the candidate so declared by the Court to have been elected was returned as elected at another of the four elections, the Court shall declare the seat to which he was so returned as elected to be vacant.
- 15 (4) Subsection three of this section shall be read in lieu of paragraph (b) of subsection one of section twenty-seven of this Act.
- 20
- 25

9. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

- 30 (a) (i) by inserting at the end of paragraph (b) of Rule four of Division 1 of the Second Schedule the following proviso—
- Second  
Schedule,  
Division 1,  
Rule 4.
- 35 Provided that where there is a break in the consecutive numbering of preferences marked on a ballot-paper (other than a break rendering the ballot-paper invalid in pursuance of paragraph (e) of subsection one of section twenty-three of this Act), only those preferences preceding the break
- 40 shall be taken into account.

(ii)



Constitution Amendment (Legislative Council Elections).

- 5 (ii) by omitting from Rule seven of Division 1 of the same Schedule the words "The expression 'determine by lot' shall have the meaning ascribed to it in Division 2 of this Schedule" and by inserting in lieu thereof the following words:—
- Second  
Schedule,  
Division 1,  
Rule 7.
- "The expression 'determine by lot' means determine in accordance with the following direction:—
- 10 The names of the candidates concerned having been written on similar slips of paper, and the slips having been folded so as to prevent identification and mixed and drawn at random, the candidate or
- 15 candidates shall be excluded in the order in which their names are drawn."
- (b) by inserting at the end of Rule three of Division 2 of the same Schedule the following definition:—
- Division 2,  
Rule 3.
- 20 In this rule "number" includes nil.
- (c) (i) by inserting after Rule three of Division 2 of the same Schedule the following new rule:—
- New  
Rule 3A.
- 25 3A. (a) Except as provided in paragraph (b) of this rule it shall not be necessary to arrange on the order of preferences the names of candidates for whom no first preferences have been recorded.
- Candidates  
with no  
first pre-  
ferences.
- 30 (b) (i) If a value is credited to any such candidate at the end of any count, the name of that candidate shall be placed on the order of preferences next after the last name already appearing thereon.
- 35 (ii) If two or more such candidates are credited for the first time with a value at the same count, and the values so credited to those candidates are unequal, the candidates shall be arranged on the order of preferences in the order of the values so credited to them, beginning with the candidate who has the highest value so credited to
- 40 him.

(iii)

Constitution Amendment (Legislative Council Elections).

- 5 (iii) If two or more such candidates are credited for the first time with a value at the same count, and the values so credited to those candidates are equal, the returning officer shall arrange those candidates as amongst themselves on the order of preferences in accordance with the method provided by rule three in relation to equal candidates.
- 10 (ii) by inserting in Rule ten of the same Division after the words "the returning officer shall exclude" the words "in one operation, all candidates who have no value then credited to them, and such operation shall be deemed to be a separate count. He shall then
- 15 exclude";
- (iii) by omitting from Rule thirteen of the same Division the words "to each candidate at the end of that count" and by inserting in lieu thereof the words "at the end of that count to each candidate whose value was affected at that count";
- 20
- (iv) by inserting at the end of paragraph (c) of Rule fourteen of the same Division the following proviso:—
- 25
- 30 Provided that where there is a break in the consecutive numbering of preferences marked on a ballot-paper (other than a break rendering a ballot-paper invalid in pursuance of paragraph (e) of subsection one of section twenty-three of this Act), only those preferences preceding the break shall be taken into account.
- 35 (v) by omitting from the definition of the expression "determine by lot" in paragraph (k) of Rule fourteen of the same Division all words following the words "slip drawn first";

(vi)



LECTIONS)

... these lines  
... their lines found  
... and also  
... before the hour  
... have not  
... the ballot

|                         |     |     |     |     |
|-------------------------|-----|-----|-----|-----|
| ...                     | ... | ... | ... | ... |
| ... before the hour     | ... | ... | ... | ... |
| ... the votes have not  | ... | ... | ... | ... |
| ... declares the ballot | ... | ... | ... | ... |
| ... these lines found   | ... | ... | ... | ... |
| ... after the hour      | ... | ... | ... | ... |

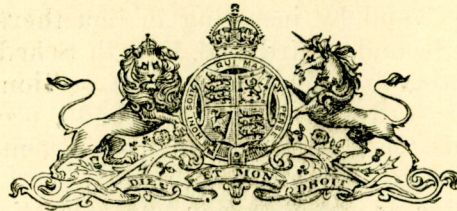
... in the inspection of Act No. 41, 1902, s. 130.

*This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.*

C. H. H. CALVERT,  
*Clerk of the Parliaments.*

*Legislative Council Chamber,  
Sydney, 23rd August, 1933.*

## New South Wales.



ANNO VICESIMO QUARTO

## GEORGI V REGIS.

\*\*\*\*\*

Act No. , 1933.

An Act to make further provision for the election of Members of the Legislative Council; to amend the Constitution Act, 1902, the Constitution Further Amendment (Legislative Council Elections) Act, 1932, and certain other Acts; and for purposes connected therewith.

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Constitution Amendment (Legislative Council Elections) Act, 1933." Short title and citation.

11185 C 1—A

(2)

*Constitution Amendment (Legislative Council Elections).*

(2) The Constitution Further Amendment (Legislative Council Elections) Act, 1932, as amended by this Act may be cited as the Constitution (Legislative Council Elections) Act, 1932-1933.

5 **2.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is amended—

Amendment  
of Act  
No. 5, 1933.

- (a) by omitting from the definition of the expression  
10 "This Part" in section five the words "Second  
Schedule" and by inserting in lieu thereof the  
words "Second, Third and Fourth Schedules";
- (b) by inserting in subsection six of section seven  
after the word "day" where secondly occurring  
the words "not earlier than the seventh day  
after the day of nomination and";
- 15 (c) by omitting from subsection one of section nine  
the words "the hour at which the sittings of the  
respective Houses of the Parliament are to com-  
mence" and by inserting in lieu thereof the  
words "the hour at which the taking of the votes  
at the sittings of the respective Houses of the  
Parliament is to commence";
- (d) (i) by inserting in subsection one of section  
thirteen after the words "day of nomina-  
tion" the words "or as soon as practicable  
thereafter";
- 25 (ii) by inserting in subsection two of the same  
section after the words "day of nomination"  
the words "or as soon as practicable there-  
after."

Sec. 5.  
(Defini-  
tions.)

Sec. 7 (6).  
(Day of  
ballot.)

Sec. 9 (1).  
(Correction.)

Sec. 13.  
(Proceed-  
ings on  
nomination.)

30 **3.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

Further  
amendment of  
Act No. 5, 1933.

- (a) (i) by omitting from subsection two of section  
fourteen the words "prescribed form" and  
by inserting in lieu thereof the words "form  
set out in the Third Schedule to this Act";
- 35 (ii) by inserting after paragraph (c) of sub-  
section three of the same section the follow-  
ing new paragraph:—
- (c1) the names of the candidates may be  
40 printed either in one continuous  
column

Sec. 14.  
(Ballot-  
papers.)

Constitution Amendment (Legislative Council Elections).

5 column or in such other manner (without departing from the said alphabetical order) as, in the opinion of the returning officer, is best calculated to facilitate the marking and counting of votes;

10 (iii) by omitting from paragraph (d) of the same subsection the words "a square shall be printed opposite" and by inserting in lieu thereof the words "a rectangle shall be printed opposite and to the left of";

(iv) by inserting after subsection four of the same section the following subsection:—

15 (5) The returning officer shall deliver to the Clerk of the Assembly, and himself retain, such numbers respectively of the ballot-papers (with counterfoils attached) as are sufficient for the use of Members of the Assembly and Members of the Council, as the case may be, in the taking of the ballot; and the returning officer and the Clerk of the Assembly shall keep an exact account of all such ballot-papers and counterfoils;

25 (b) by inserting after the Second Schedule the following new Schedule:—

THIRD SCHEDULE.

CONSTITUTION (LEGISLATIVE COUNCIL ELECTIONS) ACT, 1932-1933.

BALLOT-PAPER.

30 Election of (here insert number of candidates to be elected) Member(s) of the Legislative Council.

CANDIDATES.

- |   |  |
|---|--|
| <input type="checkbox"/> ABBOTT, John       | <input type="checkbox"/> HUGHES, Alfred  |
| <input type="checkbox"/> ADAMSON, Joseph    | <input type="checkbox"/> HUGHES, David   |
| 35 <input type="checkbox"/> ALLEN, Charles  | <input type="checkbox"/> KENNEDY, Andrew |
| <input type="checkbox"/> BAKER, William     | <input type="checkbox"/> MURPHY, Patrick |
| <input type="checkbox"/> CARR, Henry        | <input type="checkbox"/> PETERS, Albert  |
| <input type="checkbox"/> CLARKE, Herbert    | <input type="checkbox"/> SMITH, Aubrey   |
| <input type="checkbox"/> DOUGLAS, Robert    | <input type="checkbox"/> THOMSON, Edward |
| 40 <input type="checkbox"/> EDWARDS, George | <input type="checkbox"/> WOOD, Arthur    |
| <input type="checkbox"/> GRACE, Thomas      | <input type="checkbox"/> YOUNG, Geoffrey |

Constitution Amendment (Legislative Council Elections).

4. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

Further amendment of Act No. 5, 1933.

(a) by inserting after subsection three of section fifteen the following new subsection:—

Sec. 15. New subsection (4):

5 (4) The Special Rules set out in Division I of the Fourth Schedule to this Act shall apply to and in respect of the conduct of proceedings of the Legislative Council at or in relation to any sitting held for the purpose of taking the votes of Members at any election.

Rules—Fourth Schedule.

10 The Special Rules set out in Division II of the Fourth Schedule to this Act shall apply to and in respect of the conduct of proceedings of the Legislative Assembly at or in relation to any sitting held for the purpose of taking the votes of Members at any election.

15 (b) by inserting after the Third Schedule (as inserted in the Constitution Further Amendment (Legislative Council Elections) Act, 1932, by section three of this Act) the following new Schedule:—

Fourth Schedule.

FOURTH SCHEDULE.

Sec. 15 (4).

DIVISION I—LEGISLATIVE COUNCIL.

25 *Special Rules for Regulating the Conduct of Proceedings at a sitting held for the purpose of taking the Votes of Members of the Legislative Council at any Election under the Constitution (Legislative Council Elections) Act, 1932-1933.*

30 1. The Standing Rules and Orders of the Legislative Council for the time being in force, so far as they are not inconsistent with the Rules in this Division of this Schedule, shall apply to and in respect of the conduct of proceedings of the Legislative Council at or in relation to any sitting held for the purpose of taking the votes of Members at an election; and in this Division of this Schedule a reference to a sitting shall be construed as a reference to such a sitting.

35 2. Where a Message addressed to the President of the Legislative Council in pursuance of subsection one of section seven of this Act is received, the President, after reporting the Message, shall direct the Clerk to read the Writ.

The



*Constitution Amendment (Legislative Council Elections).*

The President shall direct that the taking of the votes of Members shall be set down as an Order of the Day for the day or days of the ballot appointed in such Writ, and on such day or days the taking of the votes shall take precedence of all other business.

3. At a sitting, the President may give such directions and take such steps as he may deem necessary for the proper and expeditious taking of the votes and for the preservation of order throughout the proceedings.

4. At a sitting, no matter other than the taking of the votes of Members shall be raised or entertained before the close of the ballot.

5. For the purposes of a sitting the Chamber and the floor of the House shall be deemed to extend to and include the voting compartments provided for the purpose of marking ballot-papers.

6. A sitting shall proceed notwithstanding that before the close of the ballot a less number of Members than that necessary to constitute a quorum is present.

7. The President may record his vote at any time during the progress of the ballot, provided that a Deputy occupies the Chair during his temporary absence therefrom.

8. Before the commencement of the taking of the votes the President shall direct the Clerk to read the Order of the Day.

Upon the Order of the Day being read, the Clerk shall duly display the ballot-box.

The President shall then declare the ballot open.

9. A Member desiring to vote shall, when called by the President, come forward to the Table and obtain his ballot-paper from the Clerk.

Unless he desires his vote to be marked in accordance with section 19A of this Act, he shall forthwith retire alone to one of the unoccupied voting compartments and mark his ballot-paper, and having marked his ballot-paper he shall deposit it in the ballot-box and resume his seat or retire from the Chamber.

Where the ballot-paper of a Member is marked in accordance with section 19A of this Act, and deposited in the ballot-box, the Member shall resume his seat or retire from the Chamber.

10. After receiving his ballot-paper, no Member shall leave the Chamber unless and until his ballot-paper has been deposited in the ballot-box.

No Member shall attempt to enter any voting compartment while it is occupied.

11. At the hour appointed in the Writ for the termination of the taking of the votes at a sitting, the President shall announce that such hour has arrived and shall direct that the doors be locked.

The

Constitution Amendment (Legislative Council Elections).

The doors having been locked, the President shall then inquire whether there is any Member present who has not yet received a ballot-paper and desires to vote.

5 Every such Member shall rise in his place, and his name shall be recorded by one of the Clerks at the Table upon a List, which shall be handed to the President.

The President shall then direct that the doors be unlocked.

10 After opportunity has been given to such Members to record their votes the President shall declare the ballot closed.

12. After the close of the ballot any Member of the Government may forthwith move the adjournment of the House.

## DIVISION II.—LEGISLATIVE ASSEMBLY.

*Special Rules for Regulating the Conduct of Proceedings at a sitting held for the purpose of taking the Votes of Members of the Legislative Assembly at any Election under the Constitution (Legislative Council Elections) Act, 1932-1933.*

25 1. The Standing Rules and Orders of the Legislative Assembly for the time being in force, so far as they are not inconsistent with the rules in this Division of this Schedule, shall apply to and in respect of the conduct of proceedings of the Legislative Assembly at or in relation to any sitting held for the purpose of taking the votes of Members at an election; and in this Division of this Schedule a reference to a sitting shall be construed as a reference to such a sitting.

30 2. Where a Message addressed to the Speaker of the Legislative Assembly in pursuance of subsection one of section seven of this Act is received, the Speaker, after reporting the Message, shall direct the Clerk to read the Writ.

35 The Speaker shall then direct that the taking of the votes of Members shall be set down as an Order of the Day for the day or days of the ballot appointed in such Writ, and on such day or days the taking of the votes shall take precedence of all other business.

40 3. At a sitting, the Speaker may give such directions and take such steps as he may deem necessary for the proper and expeditious taking of the votes and for the preservation of order throughout the proceedings.

45 4. At a sitting, no matter other than the taking of the votes of Members shall be raised or entertained before the close of the ballot.

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*Constitution Amendment (Legislative Council Elections).*

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5. For the purposes of a sitting, the Chamber and the floor of the House shall be deemed to extend to and include the voting compartments provided for the purpose of marking ballot-papers.

5 6. A sitting shall proceed notwithstanding that before the close of the ballot a less number of Members than that necessary to constitute a quorum is present.

10 7. The Speaker may record his vote at any time during the progress of the ballot, provided a Deputy occupies the Chair during his temporary absence therefrom.

8. Before the commencement of the taking of the votes the Speaker shall direct the Clerk to read the Order of the Day.

15 Upon the Order of the Day being read, the Clerk shall duly display the ballot-box.

The Speaker shall then declare the ballot open.

9. A Member desiring to vote shall, when called by the Speaker, come forward to the Table and obtain his ballot-paper from the Clerk.

20 Unless he desires his vote to be marked in accordance with section 19A of this Act, he shall forthwith retire alone to one of the unoccupied voting compartments and mark his ballot-paper, and having marked his ballot-paper, he shall deposit it in the ballot-box and resume his seat or retire from the Chamber.

25 Where the ballot-paper of a Member is marked in accordance with section 19A of this Act and deposited in the ballot-box the Member shall resume his seat or retire from the Chamber.

30 10. After receiving his ballot-paper no Member shall leave the Chamber unless and until his ballot-paper has been deposited in the ballot-box.

No Member shall attempt to enter any voting compartment while it is occupied.

35 11. At the hour appointed in the Writ for the termination of the taking of the votes at a sitting, the Speaker shall announce that such hour has arrived, and shall direct that the doors be locked.

40 The doors having been locked, the Speaker shall then inquire whether there is any Member present who has not yet received a ballot-paper and desires to vote.

Every such Member shall rise in his place, and his name shall be recorded by one of the Clerks at the Table upon a list, which shall be handed to the Speaker.

45 The Speaker shall then direct that the doors be unlocked.

After an opportunity has been given to such Members to record their votes, the Speaker shall declare the ballot closed.

Constitution Amendment (Legislative Council Elections).

12. After the close of the ballot, any Member of the Government may forthwith move the adjournment of the House.

5 **5.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

Further amendment of Act No. 5, 1933.

- 10 (a) by omitting from section eighteen the words “corresponding to that counterfoil, and having marked the ballot-paper on both sides with the prescribed official mark,” and by inserting in lieu thereof the words “attached to that counterfoil, and the Clerk having marked the ballot-paper on the back with his signature”;
- 15 (b) (i) by omitting from subsection one of section nineteen the word “forthwith” and by inserting in lieu thereof the words “subject to section 19A of this Act, forthwith retire alone to one of the unoccupied voting compartments provided for the purpose, and there in private”;
- 20 (ii) by omitting from the same subsection the words “square opposite,” and by inserting in lieu thereof the words “rectangle opposite and to the left of”;
- 25 (iii) by omitting from the same subsection the words “squares respectively opposite” wherever occurring, and by inserting in lieu thereof the words “rectangles respectively opposite and to the left of”;
- 30 (iv) by omitting from subsection two of the same section the words “official mark,” and by inserting in lieu thereof the words “signature of the Clerk”;
- 35 (c) by inserting after section nineteen the following new section:—
- 19A. If any Member to whom a ballot-paper has been delivered is blind or is incapacitated by any physical cause, so that he is unable to mark his vote in the usual way, he may produce

Sec. 18.  
(Issue of ballot-papers.)

Sec. 19.  
(Method of voting.)

New sec. 19A.

Blind or incapacitated voter.

Constitution Amendment (Legislative Council Elections).

5 a certificate to that effect signed by a legally qualified medical practitioner, and thereupon the Clerk shall, at the request of such Member and for him, mark the ballot-paper in accordance with the instruction of such Member, and shall forthwith cause the ballot-paper of such Member to be deposited in the ballot-box.

10 The instruction of a Member under this section may be given by handing to the Clerk a statement in writing indicating the manner in which the Member desires his vote to be marked.

(d) (i) by omitting paragraph (a) of section twenty Sec. 20.  
and by inserting in lieu thereof the following (Parcels.)  
paragraph:—

15 (a) make up in one parcel the ballot-papers which have remained unused at the taking of the ballot, the spoilt ballot-papers (if any) and the counterfoils of all ballot-papers which were retained by him as returning officer or delivered to him by the returning officer (as the case may be) in pursuance of subsection five of section fourteen; and in a second  
20 separate parcel all other papers and records used by the Clerk in connection with the taking of the ballot;

30 (ii) by inserting in paragraph (c) of the same section after the word "election," the words "the number of spoilt ballot-papers";

(e) by inserting at the end of section twenty-two Sec. 22.  
the following new subsection:— (Offences.)

35 (4) This section shall not extend to the display of a ballot-paper to the Clerk for the purpose of satisfying him, in accordance with subsection three of section nineteen of this Act, that the ballot-paper has been spoilt by mistake or accident; nor shall this section operate to preclude the marking of a vote pursuant to section  
40 19A of this Act.

Constitution Amendment (Legislative Council Elections).

**6.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended:—

Further amendment of Act No. 5, 1933.

5 (a) (i) by omitting from paragraph (a) of section twenty-three the words "prescribed official mark," and by inserting in lieu thereof the words "signature of the Clerk";

Sec. 23.

(Invalid ballot-papers.)

(ii) by inserting at the end of the same section the following new subsection:—

10 (2) A ballot-paper shall not be invalid for any reason other than the reasons specified in this section, but shall have effect according to the elector's intention, so far as his intention is clear.

cf. C'wlth. Electoral Act, 1918-1928, s. 133 (2).

15 (b) (i) by inserting at the end of subsection one of section twenty-four the following paragraphs:—

Sec. 24.

(Proceedings to ascertain result.)

20 No person other than a candidate or a person authorised by the returning officer, shall be entitled to be present at the proceedings referred to in paragraph (a) of this subsection.

25 Any person present at such proceedings who interferes with any ballot-papers, documents or records, in use at such proceedings, or obstructs the conduct of the proceedings, or distracts the attention of the returning officer or any of his assistants, and who refuses on being required by the returning officer, or any person acting under the direction or authority of the returning officer, to desist from such interference, obstruction or distraction may be removed by or under the direction of the returning officer from the place at which such proceedings are being conducted, and shall be liable on summary conviction to a penalty not exceeding ten pounds.

30 (ii) by omitting from subsection four of the same section the words "in or to the effect of the prescribed form";

40

(iii)

Constitution Amendment (Legislative Council Elections).

(iii) by omitting subsection five of the same section and by inserting in lieu thereof the following subsection:—

5 (5) The returning officer shall indorse upon, or attach to, the writ, a copy of the certificate, and (in the case of an election at which more than one seat is to be filled) shall also attach a copy of the result sheet mentioned in the Second Schedule to this Act, and shall return the writ, with the documents (if any) so attached, to the Governor, within the time specified in the writ.

7. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

15 (a) (i) by omitting from section thirty-one the words "election of the sixty Members who are to be elected in pursuance of section 17A of the Principal Act for the first constitution of the Legislative Council" and by inserting in lieu thereof the words "four elections referred to in section 17D of the Principal Act";

20 (ii) by inserting at the end of the same section the words "and such modifications and amendments shall apply to and in respect of those four elections only";

25 (b) by omitting from subsection two of section thirty-two the words "referred to in section 17D of the Principal Act";

30 (c) by inserting at the end of subsection one of section thirty-four the following words "and the day of the ballot for the first of the four elections shall be a day not earlier than the seventh day after the day of nomination";

35 (d) by inserting next after section thirty-five the following new section:—

35A. (1) The returning officer shall at noon on the day of nomination, or as soon as practicable thereafter

Further amendment of Act No. 5, 1933.

Sec. 31. (First elections.)

Sec. 32. (One writ.)

Sec. 34 (1). (Days of ballot.)

New sec. 35A.

Proceedings on nomination.

Constitution Amendment (Legislative Council Elections).

thereafter, and at the place for receiving the nomination papers, announce that ballots for each of the four elections will be taken, and the names of the persons who have become candidates for the four elections, and shall also forthwith publish in the Gazette and in one or more daily newspapers a like announcement.

(2) Subsection one of this section shall be read in lieu of subsection two of section thirteen of this Act.

(e) (i) by omitting from subsection one of section thirty-six the words "in or to the effect of the prescribed form";

Sec. 36.  
(Return of writ.)

(ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection:—

(2) The returning officer shall attach to the writ a copy of the certificate, and shall also attach a copy of the result sheet mentioned in the Second Schedule to this Act relating to each of the four elections, and shall return the writ with the documents so attached, to the Governor, within the time specified in the writ.

(f) by inserting after section thirty-six the following new section:—

New sec.  
36A.

36A. (1) The Governor may, by proclamation published in the Gazette at any time after the day of the ballot for the first of the four elections and before the day of the ballot for the second of the four elections, amend the writ issued for the four elections, by altering the days of the ballot appointed by such writ for the second, third, and fourth elections respectively. The proclamation may fix a later but not an earlier date for the day of the ballot for the second of the four elections, and may fix either earlier or later dates for the days of the ballot

Governor may alter days of third and fourth ballots.

for



Constitution Amendment (Legislative Council Elections).

5 for the third and fourth of the four elections than those respectively appointed by the writ. Upon publication of the proclamation in the Gazette the writ shall be deemed to be amended accordingly.

10 (2) The Governor shall by message addressed to the President of the Legislative Council and to the Speaker of the Legislative Assembly respectively, inform both Houses of the Parliament of the issue of the proclamation.

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

8. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended— Further amendment of Act No. 5, 1933.

15 (a) by inserting after subsection one of section twenty-seven the following new subsections:— Sec. 27. (Disputed elections.)

20 (1A) No election of a candidate shall be declared void by reason only of the fact that at any of the relevant times mentioned in subsection three of section thirteen of this Act, such candidate died or was not qualified to become a Member of the Council, or was disqualified from being a Member of the Council, or was incapable of sitting or voting in the Council, but the Court trying the election petition may declare that he vacated his seat in accordance with the provisions of that subsection.

25 (1B) The validity of any election or return shall not be disputed otherwise than in accordance with this section.

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(b) (i) by omitting from subsection one of section thirty-seven the words "within forty days after" and by inserting in lieu thereof the words "not earlier than"; Sec. 37. (Petitions.)

35 (ii) by inserting at the end of the same subsection the words "and not later than the fortieth day after the day so appointed";

(c)

Constitution Amendment (Legislative Council Elections).

(c) by inserting after subsection two of section thirty-seven the following new subsections:— Sec. 37.  
(Powers of court.)

5 (3) Where in accordance with the provisions of paragraph (a) of subsection one of section twenty-seven of this Act, the Court declares the election of a candidate at any of the four elections to be void, the Court shall declare that such one as justice may require of the candidates not returned as elected at that election, was elected; and if the candidate so declared by the Court to have been elected was returned as elected at another of the four elections, the Court shall declare the seat to which he was so returned as elected to be vacant.

10 (4) Subsection three of this section shall be read in lieu of paragraph (b) of subsection one of section twenty-seven of this Act.

**9.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended— Further amendment of Act No. 5, 1933.

20 (a) (i) by inserting at the end of paragraph (b) of Rule four of Division 1 of the Second Schedule the following proviso— Second Schedule, Division 1, Rule 4.

25 Provided that where there is a break in the consecutive numbering of preferences marked on a ballot-paper (other than a break rendering the ballot-paper invalid in pursuance of paragraph (e) of subsection one of section twenty-three of this Act), only those preferences preceding the break shall be taken into account.

30 (ii) by omitting from Rule seven of Division 1 of the same Schedule the words "The expression 'determine by lot' shall have the meaning ascribed to it in Division 2 of this Schedule "

Constitution Amendment (Legislative Council Elections).

Schedule” and by inserting in lieu thereof the following words:—

5 “The expression ‘determine by lot’ means determine in accordance with the following direction:—

10 The names of the candidates concerned having been written on similar slips of paper, and the slips having been folded so as to prevent identification and mixed and drawn at random, the candidate or candidates shall be excluded in the order in which their names are drawn.”

15 (b) by inserting at the end of Rule three of Division 2 of the same Schedule the following definition:— Division 2, Rule 3,

In this rule. “number” includes nil.

20 (c) (i) by inserting after Rule three of Division 2 of the same Schedule the following new rule:— New Rule 3A.

3A. (a) Except as provided in paragraph (b) of this rule it shall not be necessary to arrange on the order of preferences the names of candidates for whom no first preferences have been recorded. Candidates with no first preferences.

25 (b) (i) If a value is credited to any such candidate at the end of any count, the name of that candidate shall be placed on the order of preferences next after the last name already appearing thereon.

30 (ii) If two or more such candidates are credited for the first time with a value at the same count, and the values so credited to those candidates are unequal, the candidates shall be arranged on the order of preferences in the order of the values so credited to them, beginning with the candidate who has the highest value so credited to him.

35 (iii)

Constitution Amendment (Legislative Council Elections),

- 5 (iii) If two or more such candidates are credited for the first time with a value at the same count, and the values so credited to those candidates are equal, the returning officer shall arrange those candidates as amongst themselves on the order of preferences in accordance with the method provided by rule three in relation to equal candidates.
- 10 (ii) by inserting in Rule ten of the same Division after the words "the returning officer shall exclude" the words "in one operation, all candidates who have no value then credited to them, and such operation shall be deemed to be a separate count. He shall then
- 15 exclude";
- (iii) by omitting from Rule thirteen of the same Division the words "to each candidate at the end of that count" and by inserting in lieu thereof the words "at the end of that count to each candidate whose value was affected at that count";
- 20 (iv) by inserting at the end of paragraph (c) of Rule fourteen of the same Division the following proviso:—
- 25
- 30 Provided that where there is a break in the consecutive numbering of preferences marked on a ballot-paper (other than a break rendering a ballot-paper invalid in pursuance of paragraph (e) of subsection one of section twenty-three of this Act), only those preferences preceding the break shall be taken into account.
- 35 (v) by omitting from the definition of the expression "determine by lot" in paragraph (k) of Rule fourteen of the same Division all words following the words "slip drawn first";
- (vi)



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Legislative Council.

No. , 1933.

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## A BILL

To make further provision for the election of Members of the Legislative Council; to amend the Constitution Act, 1902, the Constitution Further Amendment (Legislative Council Elections) Act, 1932, and certain other Acts; and for purposes connected therewith.

[MR. MANNING;— *August, 1933.*]

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**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**1.** (1) This Act may be cited as the "Constitution Amendment (Legislative Council Elections) Act, 1933."

Short title  
and citation.

11185 c 1—A (1)

(2)

(2) The Constitution Further Amendment (Legislative Council Elections) Act, 1932, as amended by this Act may be cited as the Constitution (Legislative Council Elections) Act, 1932-1933.

Amendment of Act No. 5, 1933. **2.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is amended— **5**

Sec. 5. (Definitions.) (a) by omitting from the definition of the expression "This Part" in section five the words "Second Schedule" and by inserting in lieu thereof the words "Second, Third and Fourth Schedules"; **10**

Sec. 7 (6). (Day of ballot.) (b) by inserting in subsection six of section seven after the word "day" where secondly occurring the words "not earlier than the seventh day after the day of nomination and";

Sec. 9 (1). (Correction.) (c) by omitting from subsection one of section nine the words "the hour at which the sittings of the respective Houses of the Parliament are to commence" and by inserting in lieu thereof the words "the hour at which the taking of the votes at the sittings of the respective Houses of the Parliament is to commence"; **15**

Sec. 13. (Proceedings on nomination.) (d) (i) by inserting in subsection one of section thirteen after the words "day of nomination" the words "or as soon as practicable thereafter"; **20**

(ii) by inserting in subsection two of the same section after the words "day of nomination" the words "or as soon as practicable thereafter."

Further amendment of Act No. 5, 1933. **3.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended— **30**

Sec. 14. (Ballot-papers.) (a) (i) by omitting from subsection two of section fourteen the words "prescribed form" and by inserting in lieu thereof the words "form set out in the Third Schedule to this Act"; **35**

(ii) by inserting after paragraph (c) of subsection three of the same section the following new paragraph:—

(c1) the names of the candidates may be printed either in one continuous **40**  
column



5 column or in such other manner (without departing from the said alphabetical order) as, in the opinion of the returning officer, is best calculated to facilitate the marking and counting of votes;

(iii) by omitting from paragraph (d) of the same subsection the words "a square shall be printed opposite" and by inserting in lieu thereof the words "a rectangle shall be printed opposite and to the left of";

(iv) by inserting after subsection four of the same section the following subsection:—

15 (5) The returning officer shall deliver to the Clerk of the Assembly, and himself retain, such numbers respectively of the ballot-papers (with counterfoils attached) as are sufficient for the use of Members of the Assembly and Members of the Council, as the case may be, in the taking of the ballot; and the returning officer and the Clerk of the Assembly shall keep an exact account of all such ballot-papers and counterfoils;

cf. Act No. 41, 1912, s. 89.

25 (b) by inserting after the Second Schedule the following new Schedule:—

Third Schedule.

THIRD SCHEDULE.

Sec. 14 (2).

CONSTITUTION (LEGISLATIVE COUNCIL ELECTIONS) ACT, 1932-1933.

BALLOT-PAPER.

30 Election of (here insert number of candidates to be elected) Member(s) of the Legislative Council.

CANDIDATES.

- |  |  |
|--|--|
| <input type="checkbox"/> ABBOTT, John    | <input type="checkbox"/> HUGHES, Alfred  |
| <input type="checkbox"/> ADAMSON, Joseph | <input type="checkbox"/> HUGHES, David   |
| <input type="checkbox"/> ALLEN, Charles  | <input type="checkbox"/> KENNEDY, Andrew |
| <input type="checkbox"/> BAKER, William  | <input type="checkbox"/> MURPHY, Patrick |
| <input type="checkbox"/> CARR, Henry     | <input type="checkbox"/> PETERS, Albert  |
| <input type="checkbox"/> CLARKE, Herbert | <input type="checkbox"/> SMITH, Aubrey   |
| <input type="checkbox"/> DOUGLAS, Robert | <input type="checkbox"/> THOMSON, Edward |
| <input type="checkbox"/> EDWARDS, George | <input type="checkbox"/> WOOD, Arthur    |
| <input type="checkbox"/> GRACE, Thomas   | <input type="checkbox"/> YOUNG, Geoffrey |

Further amendment of Act No. 5, 1933.

Sec. 15. New subsection (4).

Rules—Fourth Schedule.

Fourth Schedule.

Sec. 15 (4):

4. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

(a) by inserting after subsection three of section fifteen the following new subsection:—

(4) The Special Rules set out in Division I of the Fourth Schedule to this Act shall apply to and in respect of the conduct of proceedings of the Legislative Council at or in relation to any sitting held for the purpose of taking the votes of Members at any election. 5 10

The Special Rules set out in Division II of the Fourth Schedule to this Act shall apply to and in respect of the conduct of proceedings of the Legislative Assembly at or in relation to any sitting held for the purpose of taking the votes of Members at any election. 15

(b) by inserting after the Third Schedule (as inserted in the Constitution Further Amendment (Legislative Council Elections) Act, 1932, by section three of this Act) the following new Schedule:— 20

FOURTH SCHEDULE.

DIVISION I—LEGISLATIVE COUNCIL.

Special Rules for Regulating the Conduct of Proceedings at a sitting held for the purpose of taking the Votes of Members of the Legislative Council at any Election under the Constitution (Legislative Council Elections) Act, 1932-1933. 25

1. The Standing Rules and Orders of the Legislative Council for the time being in force, so far as they are not inconsistent with the Rules in this Division of this Schedule, shall apply to and in respect of the conduct of proceedings of the Legislative Council at or in relation to any sitting held for the purpose of taking the votes of Members at an election; and in this Division of this Schedule a reference to a sitting shall be construed as a reference to such a sitting. 30 35

2. Where a Message addressed to the President of the Legislative Council in pursuance of subsection one of section seven of this Act is received, the President, after reporting the Message, shall direct the Clerk to read the Writ. 40

The

5 The President shall direct that the taking of the votes of Members shall be set down as an Order of the Day for the day or days of the ballot appointed in such Writ, and on such day or days the taking of the votes shall take precedence of all other business.

3 3. At a sitting, the President may give such directions and take such steps as he may deem necessary for the proper and expeditious taking of the votes and for the preservation of order throughout the proceedings.

10 4. At a sitting, no matter other than the taking of the votes of Members shall be raised or entertained before the close of the ballot.

15 5. For the purposes of a sitting the Chamber and the floor of the House shall be deemed to extend to and include the voting compartments provided for the purpose of marking ballot-papers.

6. A sitting shall proceed notwithstanding that before the close of the ballot a less number of Members than that necessary to constitute a quorum is present.

20 7. The President may record his vote at any time during the progress of the ballot, provided that a Deputy occupies the Chair during his temporary absence therefrom.

25 8. Before the commencement of the taking of the votes the President shall direct the Clerk to read the Order of the Day.

Upon the Order of the Day being read, the Clerk shall duly display the ballot-box.

The President shall then declare the ballot open.

30 9. A Member desiring to vote shall, when called by the President, come forward to the Table and obtain his ballot-paper from the Clerk.

35 Unless he desires his vote to be marked in accordance with section 19A of this Act, he shall forthwith retire alone to one of the unoccupied voting compartments and mark his ballot-paper, and having marked his ballot-paper he shall deposit it in the ballot-box and resume his seat or retire from the Chamber.

40 Where the ballot-paper of a Member is marked in accordance with section 19A of this Act, and deposited in the ballot-box, the Member shall resume his seat or retire from the Chamber.

10. After receiving his ballot-paper, no Member shall leave the Chamber unless and until his ballot-paper has been deposited in the ballot-box.

45 No Member shall attempt to enter any voting compartment while it is occupied.

50 11. At the hour appointed in the Writ for the termination of the taking of the votes at a sitting, the President shall announce that such hour has arrived and shall direct that the doors be locked.

The doors having been locked, the President shall then inquire whether there is any Member present who has not yet received a ballot-paper and desires to vote.

Every such Member shall rise in his place, and his name shall be recorded by one of the Clerks at the Table upon a List, which shall be handed to the President. 5

The President shall then direct that the doors be unlocked.

After opportunity has been given to such Members to record their votes the President shall declare the ballot closed. 10

12. After the close of the ballot any Member of the Government may forthwith move the adjournment of the House. 15

DIVISION II.—LEGISLATIVE ASSEMBLY.

*Special Rules for Regulating the Conduct of Proceedings at a sitting held for the purpose of taking the Votes of Members of the Legislative Assembly at any Election under the Constitution (Legislative Council Elections) Act, 1932-1933.* 20

1. The Standing Rules and Orders of the Legislative Assembly for the time being in force, so far as they are not inconsistent with the rules in this Division of this Schedule, shall apply to and in respect of the conduct of proceedings of the Legislative Assembly at or in relation to any sitting held for the purpose of taking the votes of Members at an election; and in this Division of this Schedule a reference to a sitting shall be construed as a reference to such a sitting. 25 30

2. Where a Message addressed to the Speaker of the Legislative Assembly in pursuance of subsection one of section seven of this Act is received, the Speaker, after reporting the Message, shall direct the Clerk to read the Writ. 35

The Speaker shall then direct that the taking of the votes of Members shall be set down as an Order of the Day for the day or days of the ballot appointed in such Writ, and on such day or days the taking of the votes shall take precedence of all other business. 40

3. At a sitting, the Speaker may give such directions and take such steps as he may deem necessary for the proper and expeditious taking of the votes and for the preservation of order throughout the proceedings.

4. At a sitting, no matter other than the taking of the votes of Members shall be raised or entertained before the close of the ballot. 45

*Constitution Amendment (Legislative Council Elections).*

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5. For the purposes of a sitting, the Chamber and the floor of the House shall be deemed to extend to and include the voting compartments provided for the purpose of marking ballot-papers.

5 6. A sitting shall proceed notwithstanding that before the close of the ballot a less number of Members than that necessary to constitute a quorum is present.

10 7. The Speaker may record his vote at any time during the progress of the ballot, provided a Deputy occupies the Chair during his temporary absence therefrom.

8. Before the commencement of the taking of the votes the Speaker shall direct the Clerk to read the Order of the Day.

15 Upon the Order of the Day being read, the Clerk shall duly display the ballot-box.

The Speaker shall then declare the ballot open.

9. A Member desiring to vote shall, when called by the Speaker, come forward to the Table and obtain his ballot-paper from the Clerk.

20 Unless he desires his vote to be marked in accordance with section 19A of this Act, he shall forthwith retire alone to one of the unoccupied voting compartments and mark his ballot-paper, and having marked his ballot-paper, he shall deposit it in the ballot-box and resume his seat or retire from the Chamber.

25 Where the ballot-paper of a Member is marked in accordance with section 19A of this Act and deposited in the ballot-box the Member shall resume his seat or retire from the Chamber.

30 10. After receiving his ballot-paper no Member shall leave the Chamber unless and until his ballot-paper has been deposited in the ballot-box.

No Member shall attempt to enter any voting compartment while it is occupied.

35 11. At the hour appointed in the Writ for the termination of the taking of the votes at a sitting, the Speaker shall announce that such hour has arrived, and shall direct that the doors be locked.

40 The doors having been locked, the Speaker shall then inquire whether there is any Member present who has not yet received a ballot-paper and desires to vote.

Every such Member shall rise in his place, and his name shall be recorded by one of the Clerks at the Table upon a list, which shall be handed to the Speaker.

45 The Speaker shall then direct that the doors be unlocked.

After an opportunity has been given to such Members to record their votes, the Speaker shall declare the ballot closed.

12. After the close of the ballot, any Member of the Government may forthwith move the adjournment of the House.

Further amendment of Act No. 5, 1933.

5. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

Sec. 18.  
(Issue of ballot-papers.)

- (a) by omitting from section eighteen the words “corresponding to that counterfoil, and having marked the ballot-paper on both sides with the prescribed official mark,” and by inserting in lieu thereof the words “attached to that counterfoil, 10 and the Clerk having marked the ballot-paper on the back with his signature”;

Sec. 19.  
(Method of voting.)

- (b) (i) by omitting from subsection one of section nineteen the word “forthwith” and by inserting in lieu thereof the words “subject 15 to section 19A of this Act, forthwith retire alone to one of the unoccupied voting compartments provided for the purpose, and there in private”;
- (ii) by omitting from the same subsection the 20 words “square opposite,” and by inserting in lieu thereof the words “rectangle opposite and to the left of”;
- (iii) by omitting from the same subsection the words “squares respectively opposite” 25 wherever occurring, and by inserting in lieu thereof the words “rectangles respectively opposite and to the left of”;
- (iv) by omitting from subsection two of the same section the words “official mark,” and 30 by inserting in lieu thereof the words “signature of the Clerk”;

New sec. 19A.

Blind or incapacitated voter.

- (c) by inserting after section nineteen the following new section:—

19A. If any Member to whom a ballot-paper 35 has been delivered is blind or is incapacitated by any physical cause, so that he is unable to mark his vote in the usual way, he may produce

a certificate to that effect signed by a legally qualified medical practitioner, and thereupon the Clerk shall, at the request of such Member and for him, mark the ballot-paper in accordance with the instruction of such Member, and shall forthwith cause the ballot-paper of such Member to be deposited in the ballot-box.

5

The instruction of a Member under this section may be given by handing to the Clerk a statement in writing indicating the manner in which the Member desires his vote to be marked.

10

(d) (i) by omitting paragraph (a) of section twenty and by inserting in lieu thereof the following paragraph:—

Sec. 20.

(Parcels.)

15

(a) make up in one parcel the ballot-papers which have remained unused at the taking of the ballot, the spoilt ballot-papers (if any) and the counterfoils of all ballot-papers which were retained by him as returning officer or delivered to him by the returning officer (as the case may be) in pursuance of subsection five of section fourteen; and in a second separate parcel all other papers and records used by the Clerk in connection with the taking of the ballot;

20

(ii) by inserting in paragraph (c) of the same section after the word "election," the words "the number of spoilt ballot-papers";

30

(e) by inserting at the end of section twenty-two the following new subsection:—

Sec. 22.

(Offences.)

35

(4) This section shall not extend to the display of a ballot-paper to the Clerk for the purpose of satisfying him, in accordance with subsection three of section nineteen of this Act, that the ballot-paper has been spoilt by mistake or accident; nor shall this section operate to preclude the marking of a vote pursuant to section 19A of this Act.

40

Further  
amendment of  
Act No. 5, 1933.

**6.** The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended:—

Sec. 23.  
(Invalid  
ballot-  
papers.)

(a) (i) by omitting from paragraph (a) of section twenty-three the words "prescribed official mark," and by inserting in lieu thereof the words "signature of the Clerk"; 5

(ii) by inserting at the end of the same section the following new subsection:—

cf. C'wlth.  
Electoral  
Act, 1918-  
1928, s. 133  
(2).

(2) A ballot-paper shall not be invalid for any reason other than the reasons specified in this section, but shall have effect according to the elector's intention, so far as his intention is clear. 10

Sec. 24.  
(Proceed-  
ings to  
ascertain  
result.)

(b) (i) by inserting at the end of subsection one of section twenty-four the following paragraphs:— 15

No person other than a candidate or a person authorised by the returning officer, shall be entitled to be present at the proceedings referred to in paragraph (a) of this subsection. 20

Any person present at such proceedings who interferes with any ballot-papers, documents or records, in use at such proceedings, or obstructs the conduct of the proceedings, or distracts the attention of the returning officer or any of his assistants, and who refuses on being required by the returning officer, or any person acting under the direction or authority of the returning officer, to desist from such interference, obstruction or distraction may be removed by or under the direction of the returning officer from the place at which such proceedings are being conducted, and shall be liable on summary conviction to a penalty not exceeding *ten* pounds. 25 30 35

(ii) by omitting from subsection four of the same section the words "in or to the effect of the prescribed form";

(iii), 40



(iii) by omitting subsection five of the same section and by inserting in lieu thereof the following subsection:—

5 (5) The returning officer shall indorse upon, or attach to, the writ, a copy of the certificate, and (in the case of an election at which more than one seat is to be filled) shall also attach a copy of the result sheet mentioned in the Second Schedule to this Act, and shall return the writ, with the documents  
10 (if any) so attached, to the Governor, within the time specified in the writ.

7. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

15 (a) (i) by omitting from section thirty-one the words "election of the sixty Members who are to be elected in pursuance of section 17A of the Principal Act for the first constitution of the Legislative Council" and by inserting  
20 in lieu thereof the words "four elections referred to in section 17D of the Principal Act";

(ii) by inserting at the end of the same section the words "and such modifications and  
25 amendments shall apply to and in respect of those four elections only";

(b) by omitting from subsection two of section thirty-two the words "referred to in section 17D of the  
Principal Act";

30 (c) by inserting at the end of subsection one of section thirty-four the following words "and the day of the ballot for the first of the four elections shall be a day not earlier than the seventh day after the day of nomination";

35 (d) by inserting next after section thirty-five the following new section:—

\* 35A. (1) The returning officer shall at noon on the day of nomination, or as soon as practicable  
thereafter

Further amendment of Act No. 5, 1933.

Sec. 31. (First elections.)

Sec 32. (One writ.)

Sec. 34 (1). (Days of ballot.)

New sec. 35A.

Proceedings on nomination.

Constitution Amendment (Legislative Council Elections).

thereafter, and at the place for receiving the nomination papers, announce that ballots for each of the four elections will be taken, and the names of the persons who have become candidates for the four elections, and shall also forthwith publish in the Gazette and in one or more daily newspapers a like announcement. 5

(2) Subsection one of this section shall be read in lieu of subsection two of section thirteen of this Act. 10

Sec. 36. (Return of writ.)

(e) (i) by omitting from subsection one of section thirty-six the words "in or to the effect of the prescribed form";

(ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection:— 15

(2) The returning officer shall attach to the writ a copy of the certificate, and shall also attach a copy of the result sheet mentioned in the Second Schedule to this Act relating to each of the four elections, and shall return the writ with the documents so attached, to the Governor, within the time specified in the writ. 20

New sec. 36A.

(f) by inserting after section thirty-six the following new section:— 25

Governor may alter days of third and fourth ballots.

36A. (1) The Governor may, by proclamation published in the Gazette at any time after the day of the ballot for the first of the four elections and before the day of the ballot for the second of the four elections, amend the writ issued for the four elections, by altering the days of the ballot appointed by such writ for the second, third, and fourth elections respectively. 30

The proclamation may fix a later but not an earlier date for the day of the ballot for the second of the four elections, and may fix either earlier or later dates for the days of the ballot for 35

for the third and fourth of the four elections than those respectively appointed by the writ. Upon publication of the proclamation in the Gazette the writ shall be deemed to be amended accordingly.

(2) The Governor shall by message addressed to the President of the Legislative Council and to the Speaker of the Legislative Assembly respectively, inform both Houses of the Parliament of the issue of the proclamation.

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

8. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

Further amendment of Act No. 5, 1932.

(a) by inserting after subsection one of section twenty-seven the following new subsections:—

Sec. 27. (Disputed elections.)

(1A) No election of a candidate shall be declared void by reason only of the fact that at any of the relevant times mentioned in subsection three of section thirteen of this Act, such candidate died or was not qualified to become a Member of the Council, or was disqualified from being a Member of the Council, or was incapable of sitting or voting in the Council, but the Court trying the election petition may declare that he vacated his seat in accordance with the provisions of that subsection.

(1B) The validity of any election or return shall not be disputed otherwise than in accordance with this section.

(b) (i) by omitting from subsection one of section thirty-seven the words "within forty days after" and by inserting in lieu thereof the words "not earlier than";

Sec. 37. (Petitions.)

(ii) by inserting at the end of the same subsection the words "and not later than the fortieth day after the day so appointed";

(c)

Sec. 37.  
(Powers of  
court.)

(c) by inserting after subsection two of section thirty-seven the following new subsections:—

(3) Where in accordance with the provisions of paragraph (a) of subsection one of section twenty-seven of this Act, the Court declares the election of a candidate at any of the four elections to be void, the Court shall declare that such one as justice may require of the candidates not returned as elected at that election, was elected; and if the candidate so declared by the Court to have been elected was returned as elected at another of the four elections, the Court shall declare the seat to which he was so returned as elected to be vacant. 5 10

(4) Subsection three of this section shall be read in lieu of paragraph (b) of subsection one of section twenty-seven of this Act. 15

Further  
amendment of  
Act No. 5, 1933.

9. The Constitution Further Amendment (Legislative Council Elections) Act, 1932, is further amended—

Second  
Schedule,  
Division 1,  
Rule 4.

(a) (i) by inserting at the end of paragraph (b) of Rule four of Division 1 of the Second Schedule the following proviso— 20

Provided that where there is a break in the consecutive numbering of preferences marked on a ballot-paper (other than a break rendering the ballot-paper invalid in pursuance of paragraph (e) of subsection one of section twenty-three of this Act), only those preferences preceding the break shall be taken into account. 25 30

*Ibid.* Rule 7.

(ii) by omitting from Rule seven of Division 1 of the same Schedule the words "The expression 'determine by lot' shall have the meaning ascribed to it in Division 2 of this Schedule"

Schedule” and by inserting in lieu thereof the following words:—

5 “ The expression ‘ determine by lot ’ means determine in accordance with the following direction:—

10 The names of the candidates concerned having been written on similar slips of paper, and the slips having been folded so as to prevent identification and mixed and drawn at random, the candidate or candidates shall be excluded in the order in which their names are drawn.”

15 (b) by inserting at the end of Rule three of Division 2 of the same Schedule the following definition:—

Division 2,  
Rule 3.

In this rule “number” includes nil.

20 (c) (i) by inserting after Rule three of Division 2 of the same Schedule the following new rule:—

New  
Rule 3A.

3A. (a) Except as provided in paragraph (b) of this rule it shall not be necessary to arrange on the order of preferences the names of candidates for whom no first preferences have been recorded.

Candidates  
with no  
first pre-  
ferences.

25 (b) (i) If a value is credited to any such candidate at the end of any count, the name of that candidate shall be placed on the order of preferences next after the last name already appearing thereon.

30 (ii) If two or more such candidates are credited for the first time with a value at the same count, and the values so credited to those candidates are unequal, the candidates shall be arranged on the order of preferences in the order of the values so credited to them, beginning with the candidate who has the highest value so credited to him.

35

(iii)

(i)

(iii) If two or more such candidates are credited for the first time with a value at the same count, and the values so credited to those candidates are equal, the returning officer shall arrange those candidates as amongst themselves on the order of preferences in accordance with the method provided by rule three in relation to equal candidates. 5

(ii) by inserting in Rule ten of the same Division after the words "the returning officer shall exclude" the words "in one operation, all candidates who have no value then credited to them, and such operation shall be deemed to be a separate count. He shall then exclude"; 10 15

(iii) by omitting from Rule thirteen of the same Division the words "to each candidate at the end of that count" and by inserting in lieu thereof the words "at the end of that count to each candidate whose value was affected at that count"; 20

(iv) by inserting at the end of paragraph (e) of Rule fourteen of the same Division the following proviso:— 25

Provided that where there is a break in the consecutive numbering of preferences marked on a ballot-paper (other than a break rendering a ballot-paper invalid in pursuance of paragraph (e) of subsection one of section twenty-three of this Act), only those preferences preceding the break shall be taken into account. 30

(v) by omitting from the definition of the expression "determine by lot" in paragraph (k) of Rule fourteen of the same Division all words following the words "slip drawn first"; 35

(vi)



