

FIRST PRINT

CONSTITUTION (LEGISLATIVE COUNCIL) AMENDMENT  
BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to reduce the number of politicians in the Legislative Council from 45 to 40, and to reduce their maximum term of office from 12 to 8 years.

It will be necessary, in accordance with section 7A of the Constitution Act 1902, for the Bill to be submitted to a referendum and approved by a majority of the electors before the Bill is presented to the Governor for Her Majesty's assent.

At present the Legislative Council consists of 45 Members, with 15 Members being elected at each general election. Members serve for 3 terms of the Legislative Assembly. At the time of the last reconstitution of the Legislative Council in 1978, the term of office of a Member of the Legislative Council was a maximum of 9 years, but because of the extension of the term of the Legislative Assembly to 4 years the term of office is now a maximum of 12 years.

Under the Bill:

- (a) 20 Members will be elected at each general election and will serve for 2 terms of the Legislative Assembly - resulting in a Legislative Council consisting of 40 Members each serving a maximum period of 8 years;
- (b) the Legislative Council is to be reconstituted after the general election held after the approval of the Bill at a referendum and, during the first period after its reconstitution, will consist of the 20 Members elected at that general election, the 15 Members elected at the previous general election and the first 5 Members elected at the next previous general election;
- (c) the quota of votes a candidate requires for election to the Legislative Council will be reduced from 6.25% to 4.76%;
- (d) voters at a general election will be required to vote for a minimum of 15 candidates for the Legislative Council instead of 10 candidates; and

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(e) other minor consequential changes are made.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on the date of assent.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Constitution Act 1902.

Clause 4 is a formal provision that gives effect to the Schedule of consequential amendments to the Parliamentary Electorates and Elections Act 1912.

**SCHEDULE 1 - AMENDMENT OF CONSTITUTION ACT 1902**

Schedule 1 (1) is consequential on the proposed requirement that 20 instead of 15 Members of the Legislative Council are to be elected at each general election.

Schedule 1 (2) omits an obsolete reference to the continuing Members in relation to the reconstitution of the Legislative Council in 1978.

Schedule 1 (3) replaces the existing sections of the Constitution Act 1902 relating to the constitution of the Legislative Council with the following proposed sections:

Proposed section 16 contains definitions. In particular, "continuing Member of the Legislative Council" is defined to mean the 15 Members elected at the last Legislative Council general election before the proposed reconstitution of the Council, together with the first 5 Members elected at the previous general election. If the Bill is duly approved by the electors before the next general election, the continuing Members comprise 9 members of the Liberal and National Parties, 9 members of the Labor Party, 1 member of the Australian Democrats Party and 1 member of the Call to Australia Party.

Proposed section 17 provides for the reconstitution of the Legislative Council on the day of the return of the writs for the general election held after the commencement of the proposed Act. The reconstituted Council will consist of 40 Members.

Proposed section 18 makes special provision for the first reconstituted Legislative Council by providing that it is to consist of the 20 Members elected at the general election held at that time together with the 20 continuing Members.

Schedule 1 (4) omits obsolete provisions relating to the holding of the first Legislative Council general election after the reconstitution of the Council in 1978.

Schedule 1 (5) provides that the term of office of Members of the Legislative Council is to be 2 terms of the Legislative Assembly, namely a maximum of 8 years. However, in order that 20 Members may be elected at Legislative Council general elections, special provision is made for the term of office of the continuing Members to expire after only 1 term of the Legislative Assembly.

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Schedule 1 (6) (a) and (7) make minor consequential changes.

Schedule 1 (6) (b) enables a casual vacancy in the office of any of the 5 continuing Members of the Legislative Council referred to above to be filled by one of the other 10 Members who cease to be Members because of the reconstitution.

Schedule 1 (8) omits an obsolete provision relating to the first election of the President of the Legislative Council in 1978.

Schedule 1 (9) omits an obsolete Schedule to the Principal Act which contains the names of continuing Members in relation to the reconstitution of the Legislative Council in 1978.

Schedule 1 (10) (a) provides for Legislative Council general elections to return 20 Members instead of 15 Members.

Schedule 1 (10) (b) requires voters at Legislative Council general elections to vote for at least 15 candidates instead of 10 candidates. The amendment is a consequence of the increase in the number of members to be elected at each such election.

Schedule 1 (10) (c) makes the necessary changes to the method of determining an election quota at Legislative Council general elections.

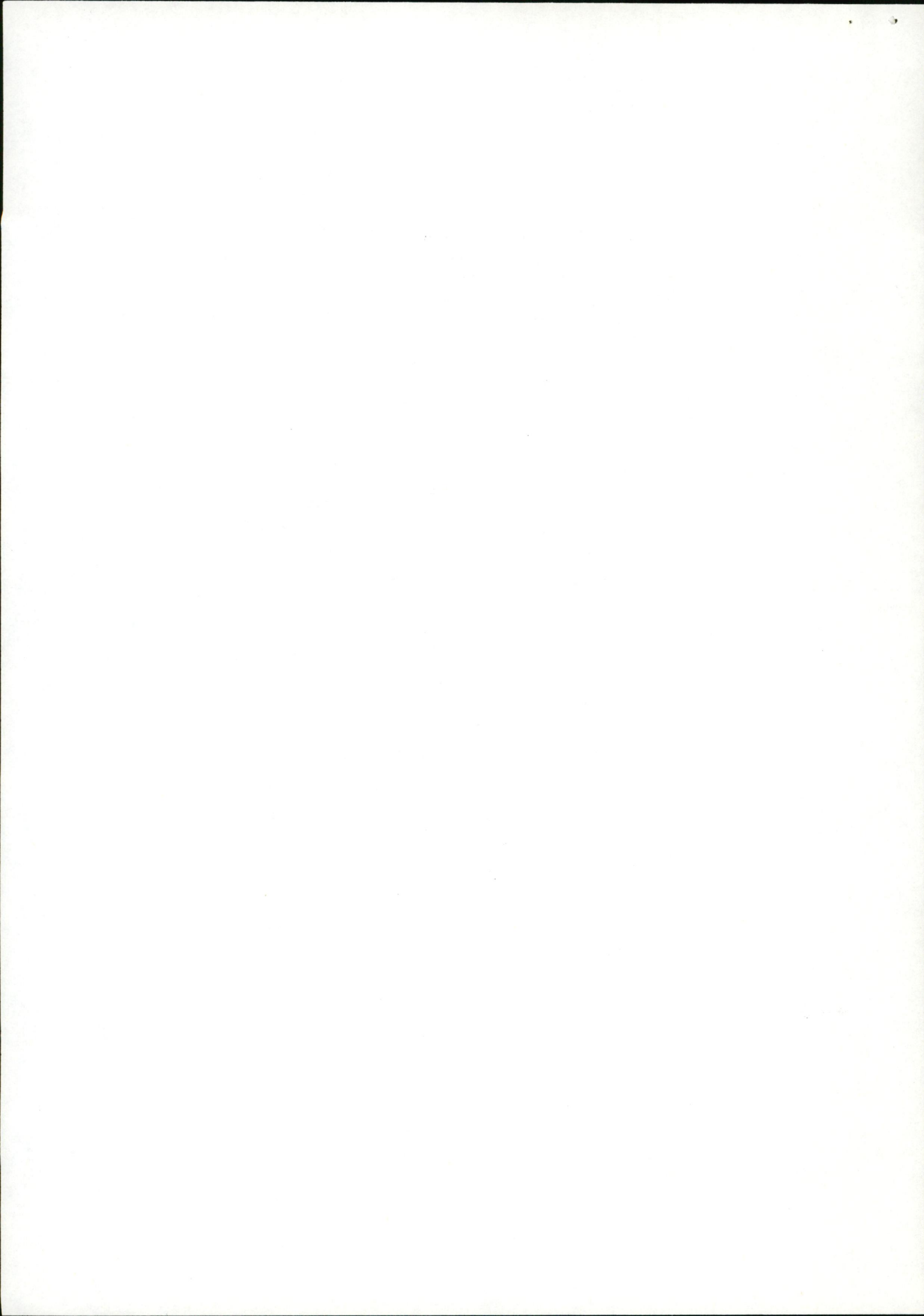
**SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF  
PARLIAMENTARY ELECTORATES AND ELECTIONS ACT 1912**

Schedule 2 (1) is consequential on the proposed requirement that 20 instead of 15 Members of the Legislative Council are to be elected at each general election.

Schedule 2 (2) requires claims by candidates for the Legislative Council to be grouped on the ballot-paper to be kept for 2 terms of the Legislative Assembly instead of 3 terms. The claims are used to verify the "next unelected candidate on the list" for the purposes of filling casual vacancies.

Schedule 2 (3), (4) and (5) are consequential on the proposed requirement that electors vote for at least 15 candidates instead of at least 10 candidates.

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NEW SOUTH WALES



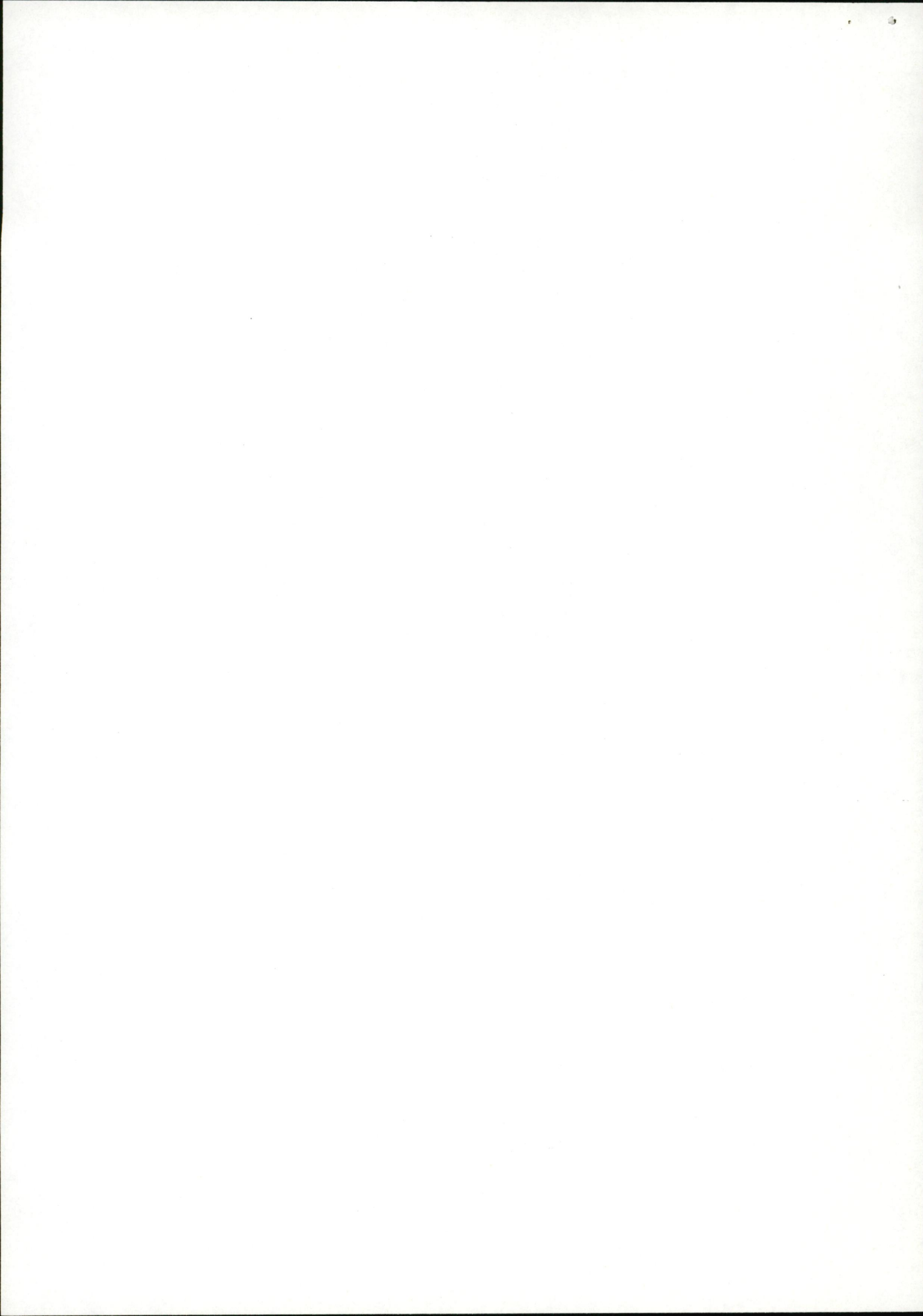
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SCHEDULE 1 - AMENDMENT OF CONSTITUTION ACT 1902

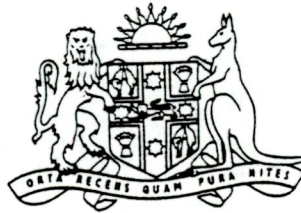
SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF PARLIAMENTARY  
ELECTORATES AND ELECTIONS ACT 1912

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CONSTITUTION (LEGISLATIVE COUNCIL) AMENDMENT  
BILL 1990

NEW SOUTH WALES



No. , 1990

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**A BILL FOR**

An Act to reduce the number of politicians in the Legislative Council from 45 to 40, and to reduce their maximum term of office from 12 to 8 years.

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*Constitution (Legislative Council) Amendment 1990*

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, with the approval of the electors as required by the Constitution Act 1902, and by the authority of the same, as follows:

**Short title**

1. This Act may be cited as the Constitution (Legislative Council) Amendment Act 1990.

**Commencement**

2. This Act commences on the date of assent.

**Amendment of Constitution Act 1902 No. 32**

3. The Constitution Act 1902 is amended as set out in Schedule 1.

**Consequential amendment of Parliamentary Electorates and Elections Act 1912 No. 41**

4. The Parliamentary Electorates and Elections Act 1912 is amended as set out in Schedule 2.

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**SCHEDULE 1 - AMENDMENT OF CONSTITUTION ACT 1902**  
(Sec. 3)

(1) Section 3 (**Definitions**):

(a) Omit the definition of "Periodic Council election", insert instead:

**"Periodic Council election"** means an election held for the return of 20 Members of the Legislative Council.

(b) Omit the definition of "The 1978 reconstitution Act".

(2) Section 7A (**Referendum for Bills with respect to Legislative Council and certain other matters**):

From section 7A (1) (b), omit "Fifth or".



SCHEDULE 1 - AMENDMENT OF CONSTITUTION ACT  
1902 - *continued*

(3) Sections 16-21:

Omit the sections, insert instead:

**Definitions**

16. In this Division:

**"continuing Member of the Legislative Council"** means:

- (a) one of the 15 Members of the Legislative Council elected at the last periodic Council election held before the date of assent to the 1990 reconstitution Act; or
- (b) one of the first 5 Members of the Legislative Council elected at the previous periodic Council election,

who is a Member of the Legislative Council immediately before the reconstitution day, and, if a vacancy has occurred in the seat of any such Member or of the successor (whether immediate, intermediate or ultimate) of any such Member, includes a person who is elected to fill the vacancy and who is a Member of the Legislative Council immediately before the reconstitution day;

**"group"** means a group constituted in accordance with clause 3 of the Sixth Schedule;

**"periodic Council election"** includes an election held after the date of assent to the 1978 reconstitution Act and before the date of assent to the 1990 reconstitution Act for the return of 15 Members of the Legislative Council;

**"reconstitution day"** means the day on which the writ for the first periodic Council election held after the date of assent to the 1990 reconstitution Act is returnable;

**"the 1978 reconstitution Act"** means the Constitution and Parliamentary Electorates and Elections (Amendment) Act 1978;

SCHEDULE 1 - AMENDMENT OF CONSTITUTION ACT  
1902 - *continued*

**"the 1990 reconstitution Act"** means the Constitution (Legislative Council) Amendment Act 1990.

**Reconstitution of the Legislative Council**

17. (1) On the reconstitution day the Legislative Council is reconstituted.

(2) On and from that day the Legislative Council shall, subject to this Division, consist of 40 Members elected at periodic Council elections.

(3) Until that day the Legislative Council shall be constituted in accordance with this Division, as in force immediately before the date of assent to the 1990 reconstitution Act.

**Members of the Legislative Council as first reconstituted**

18. (1) On the reconstitution day the Members of the Legislative Council shall, subject to this Division, consist of:

- (a) the 20 continuing Members of the Legislative Council; and
- (b) the 20 Members elected at the first periodic Council election held after the date of assent to the 1990 reconstitution Act.

(2) On the reconstitution day, the Members of the Legislative Council (other than the Members referred to in subsection (1)) cease to be Members of the Legislative Council.

- (4) Section 22A (**Conduct of periodic Council elections**):
  - (a) Omit section 22A (2).
  - (b) From section 22A (3), omit ", other than the first such election,".
  - (c) From section 22A (4), omit "(2) or".
- (5) Section 22B (**Term of service of Members of Legislative Council**):

Omit section 22B (2) and (3), insert instead:

SCHEDULE 1 - AMENDMENT OF CONSTITUTION ACT  
1902 - *continued*

(2) Subject to subsection (4), the term of service of a Member of the Legislative Council (other than a continuing Member of the Legislative Council) shall expire on the day of the termination, either by dissolution or expiry, of the Legislative Assembly next preceding the second general election of Members of the Legislative Assembly to be held after his or her election as a Member of the Legislative Council.

(3) Subject to subsection (4), the term of service of a continuing Member of the Legislative Council shall expire on the day of the termination, either by dissolution or expiry, of the Legislative Assembly next preceding the first general election of Members of the Legislative Assembly to be held after the reconstitution day.

(6) **Section 22C (Filling of casual vacancies in the Legislative Council from same group):**

(a) From section 22C (1), omit "an elected Member", insert instead "a Member".

(b) At the end of section 22C (2), insert:

In the case of a vacancy in the seat of a continuing Member of the Legislative Council, a person who ceases to be a Member of that Council by the operation of section 18 (2) is not ineligible to make such an application merely because the person has, since being included in the relevant group, been a Member of the Legislative Council.

(7) **Section 22D (Filling of casual vacancies in the Legislative Council by joint sitting of both Houses):**

From section 22D (1), omit "an elected Member" wherever occurring, insert instead "a Member".

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SCHEDULE 1 - AMENDMENT OF CONSTITUTION ACT  
1902 - *continued*

- (8) Section 22G (**President**):  
Omit section 22G (1) (a).
- (9) Fifth Schedule (**Continuing Members of the Legislative Council**):  
Omit the Schedule.
- (10) Sixth Schedule (**Conduct of Legislative Council Elections**):
  - (a) From clause 1, omit "15 Members", insert instead "20 Members".
  - (b) From clause 2, omit "10" wherever occurring, insert instead "15".
  - (c) From clause 7, omit "16", insert instead "21".

SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF  
PARLIAMENTARY ELECTORATES AND ELECTIONS  
ACT 1912

(Sec. 4)

- (1) Section 81H (**Proceedings after close of nominations**):  
Omit "15 candidates" wherever occurring, insert instead "20 candidates".
- (2) Section 81I (**Retention of claims for grouping**):  
From section 81I (1), omit "third termination", insert instead "second termination".
- (3) Section 83C (**Group voting tickets**):
  - (a) From section 83C (2) (a), omit "10 candidates", insert instead "15 candidates".
  - (b) From section 83C (2) (b), omit "11", insert instead "16".

SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF  
PARLIAMENTARY ELECTORATES AND ELECTIONS ACT  
1912 - *continued*

(4) Section 103 (**Vote, how given**):

Omit section 103 (3), insert instead:

(3) In the case of a periodic Council election, a voter shall record his vote for at least 15 candidates by placing the numbers "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14" and "15" in the squares opposite the names of 15 candidates in the order of his preferences for them and may, if he wishes, vote for additional candidates by placing consecutive numbers beginning with the number "16" in the squares opposite the names of those additional candidates in the order of his preferences for them.

(5) Schedules 4A (**Ballot-paper**) and 15A (**Postal ballot-paper**):

- (a) Omit "15 Members" wherever occurring, insert instead "20 Members".
  - (b) Omit "and "10" in the squares opposite the names of 10 candidates" wherever occurring, insert instead ", "10", "11", "12", "13", "14" and "15" in the squares opposite the names of 15 candidates".
  - (c) Omit "11" wherever occurring, insert instead "16".
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