

CONSTITUTION (AMENDMENT) ACT 1992 No. 106

NEW SOUTH WALES

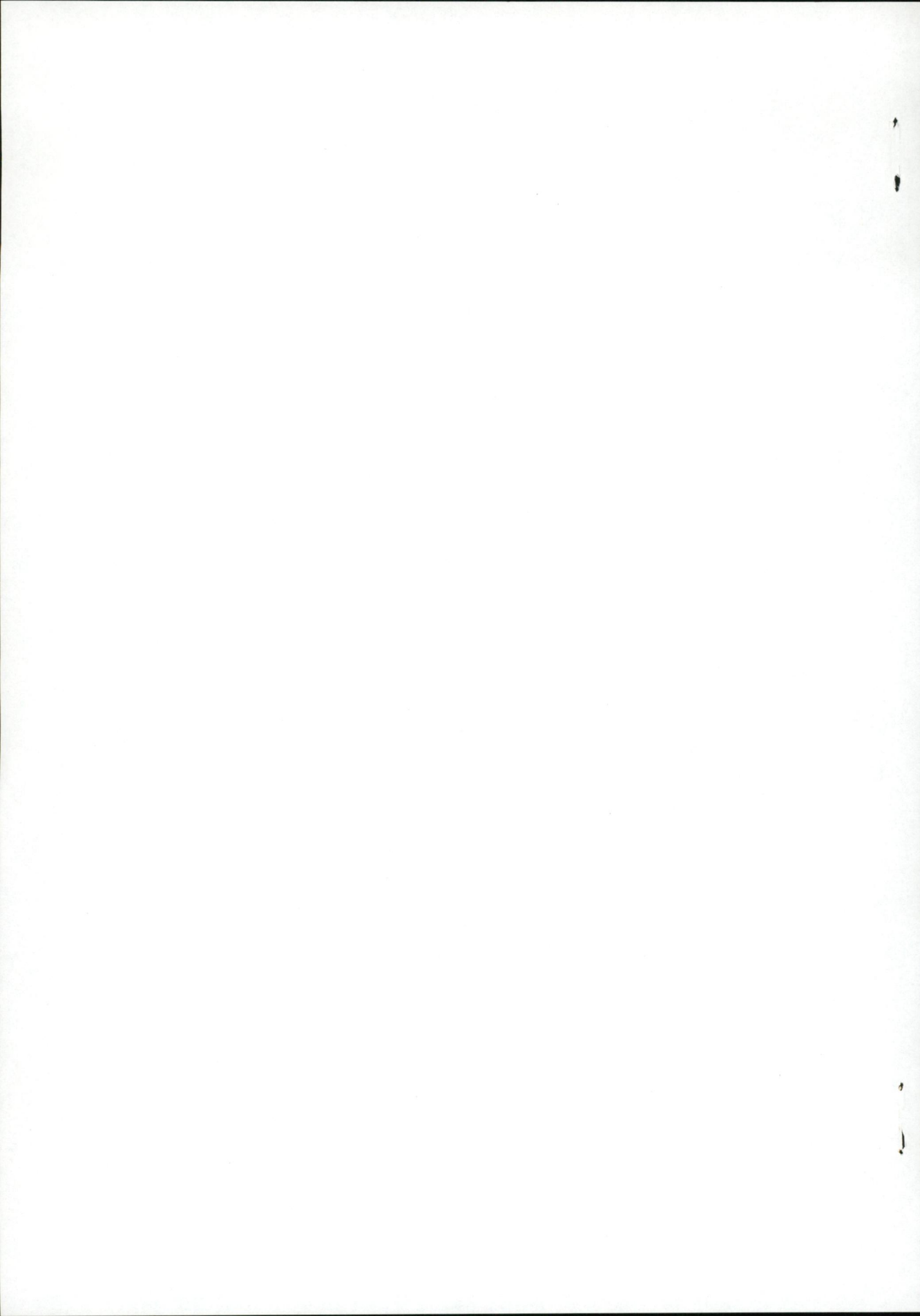


TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Constitution Act 1902 No. 32
4. Consequential amendment of Judicial Officers Act 1986 No. 100
5. Transitional provisions

SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902

SCHEDULE 2—AMENDMENT OF JUDICIAL OFFICERS ACT 1986



CONSTITUTION (AMENDMENT) ACT 1992 No. 106

NEW SOUTH WALES



Act No. 106, 1992

An Act to amend the Constitution Act 1902 to secure the independence of the judiciary, to give statutory recognition to the offices of President of the Legislative Council and Speaker of the Legislative Assembly and to provide for the election of the Speaker by secret ballot; and for other purposes. [Assented to 8 December 1992]

See also Constitution (Entrenchment) Amendment Bill 1992.

Constitution (Amendment) Act 1992 No. 106

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Constitution (Amendment) Act 1992.

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 Judicial Officers Act 1986 No. 100

4. The Judicial Officers Act 1986 is amended as set out in Schedule 2.

Transitional provisions

5. (1) Nothing in this Act affects the tenure of office of the person holding office as President of the Legislative Council immediately before the commencement of this Act.

(2) The person holding office as Speaker of the Legislative Assembly immediately before the commencement of this Act is taken to have been elected as Speaker in accordance with the Constitution Act 1902 as amended by this Act. This subsection does not apply to elections held after the commencement of this Act.

(3) Any provision of the Standing Rules and Orders of the Legislative Assembly in force at the commencement of this Act ceases to have effect to the extent to which it is inconsistent with any amendment made by this Act.

SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902

(Sec. 3)

(1) Section 22G (**President**):

(a) At the beginning of section 22G, insert:

(1) There shall be a President of the Legislative Council, who is the Presiding Officer of the Legislative Council and is recognised as its independent and impartial representative.

Constitution (Amendment) Act 1992 No. 106

SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902—
continued

- (b) Renumber the remaining subsections of section 22G as subsections (2)–(8).
 - (c) From section 22G (7) as renumbered, omit “(3)”, insert instead “(5)”.
- (2) Section 31 (**Speaker**):
- (a) At the beginning of section 31, insert:
 - (1) There shall be a Speaker of the Legislative Assembly, who is the Presiding Officer of the Legislative Assembly and is recognised as its independent and impartial representative.
 - (b) Renumber the remaining subsections of section 31 as subsections (2) and (3).
- (3) Section 31B:

After section 31A insert:

Manner of election of Speaker

31B. (1) The election of the Speaker shall be conducted by secret ballot. A ballot is not required if only one candidate is validly nominated, and that candidate shall be declared elected.

(2) Nominations shall be made in writing, and the identity of the nominators and seconders shall not be disclosed by the Clerk of the Legislative Assembly or other person presiding at the election. A nomination is not validly made unless the person nominated accepts nomination, by endorsement on the instrument of nomination.

(3) Nominations shall not be closed until a reasonable opportunity has been given for the Members of the Legislative Assembly desiring to do so to make nominations. Further nominations may not be made between ballots.

(4) The candidates with the smallest number of votes shall be successively withdrawn one by one, and a fresh ballot shall take place after each withdrawal, until one candidate receives the votes of at least two-thirds of the number of Members of the Legislative Assembly for the time being or (if there are only two candidates validly nominated or there are only two candidates left) a majority of the number of Members voting at that ballot. That candidate shall be declared elected.

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SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902—
continued

(5) If there is an equality of votes among the candidates with the smallest number of votes, the ballot shall be taken again, and if again there is such an equality of votes, the Clerk of the Legislative Assembly or other person presiding at the election shall determine, by lot, which of the candidates with the same number of votes shall be withdrawn, as if that candidate had received the smallest number of votes.

(6) If there are only two candidates validly nominated or there are only two candidates left, and if there is an equality of votes among the two candidates, the ballot shall be taken again, and if again there is an equality of votes, the Clerk of the Legislative Assembly or other person presiding at the election shall determine, by lot, which of the candidates is taken to have received the smaller number of votes. The other candidate shall be declared elected.

(7) The Standing Rules and Orders of the Legislative Assembly may make provision, not inconsistent with this section, for or with respect to the manner of election of the Speaker and associated matters.

(8) In the absence of relevant Standing Rules and Orders at the time of such an election, the election is to be conducted (subject to this section and to any necessary adaptations) in accordance with the provisions of the Standing Orders of the Senate of the Parliament of the Commonwealth that relate to the election of the President of the Senate.

(4) Part 9:

After Part 8, insert:

PART 9—THE JUDICIARY

Definition and application

52. (1) In this Part:

“**judicial office**” means the office of any of the following:

- (a) Chief Justice, President of the Court of Appeal, Judge of Appeal, Judge or Master of the Supreme Court;
- (b) Chief Judge, Deputy Chief Judge or Judge of the Industrial Court;

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SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902—
continued

- (c) Chief Judge or Judge of the Land and Environment Court;
- (d) Chief Judge or Judge of the District Court;
- (e) Chief Judge or Judge of the Compensation Court;
- (f) Chief Magistrate, Deputy Chief Magistrate or Magistrate of the Local Courts; Senior Children's Magistrate or Children's Magistrate of the Children's Court; Chief Industrial Magistrate or Industrial Magistrate; Chairman, Deputy Chairman or Licensing Magistrate of the Licensing Court.

(2) For the purposes of this Part:

- (a) the Supreme Court, the Industrial Court and the Land and Environment Court are taken to be courts of equivalent status, and are of higher status than the courts referred to in paragraphs (b) and (c); and
- (b) the District Court and the Compensation Court are taken to be courts of equivalent status, and are of higher status than the court referred to in paragraph (c); and
- (c) the holders of the judicial offices referred to in paragraph (f) of the definition of "judicial office" are taken to constitute one court; and
- (d) the relative status of any other court is to be as determined by legislation.

(3) This Part extends to the removal or suspension of judicial officers after the commencement of this Part because of matters arising before that commencement.

Removal from judicial office

53. (1) No holder of a judicial office can be removed from the office, except as provided by this Part.

(2) The holder of a judicial office can be removed from the office by the Governor, on an address from both Houses of Parliament in the same session, seeking removal on the ground of proved misbehaviour or incapacity.

(3) Legislation may lay down additional procedures and requirements to be complied with before a judicial officer may be removed from office.

Constitution (Amendment) Act 1992 No. 106

SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902—
continued

(4) This section extends to term appointments to a judicial office, but does not apply to the holder of the office at the expiry of such a term.

(5) This section extends to acting appointments to a judicial office, whether made with or without a specific term.

Suspension from judicial office

54. (1) No holder of a judicial office can be suspended from the office, except in accordance with legislation.

(2) A suspended judicial officer is entitled to be paid remuneration as a judicial officer during the period of suspension, at the current rate applicable to the office from which he or she is suspended.

Retirement

55. (1) This Part does not prevent the fixing or a change of age at which all judicial officers, or all judicial officers of a court, are required to retire by legislation.

(2) However, such a change does not apply to a judicial officer holding office when the change takes effect, unless the judicial officer consents.

Abolition of judicial office

56. (1) This Part does not prevent the abolition by legislation of a judicial office.

(2) The person who held an abolished judicial office is entitled (without loss of remuneration) to be appointed to and to hold another judicial office in the same court or in a court of equivalent or higher status, unless already the holder of such an office.

(3) That right remains operative for the period during which the person was entitled to hold the abolished office, subject to removal or suspension in accordance with law. The right lapses if the person declines appointment to the other office or resigns from it.

(4) This section applies whether the judicial office was abolished directly or whether it was abolished indirectly by the abolition of a court or part of a court.

**SCHEDULE 2—AMENDMENT OF JUDICIAL OFFICERS
ACT 1986**

(Sec. 4)

(1) Section 4 (**Tenure of judicial office**):

Omit the section.

(2) Section 40 (**Suspension of judicial officers**):

Omit section 40 (3).

(3) Section 41:

Omit the section, insert instead:

Removal of judicial officers

41. (1) A judicial officer may not be removed from office in the absence of a report of the Conduct Division to the Governor under this Act that sets out the Division's opinion that the matters referred to in the report could justify parliamentary consideration of the removal of the judicial officer on the ground of proved misbehaviour or incapacity.

(2) The provisions of this section are additional to those of section 53 of the Constitution Act 1902.

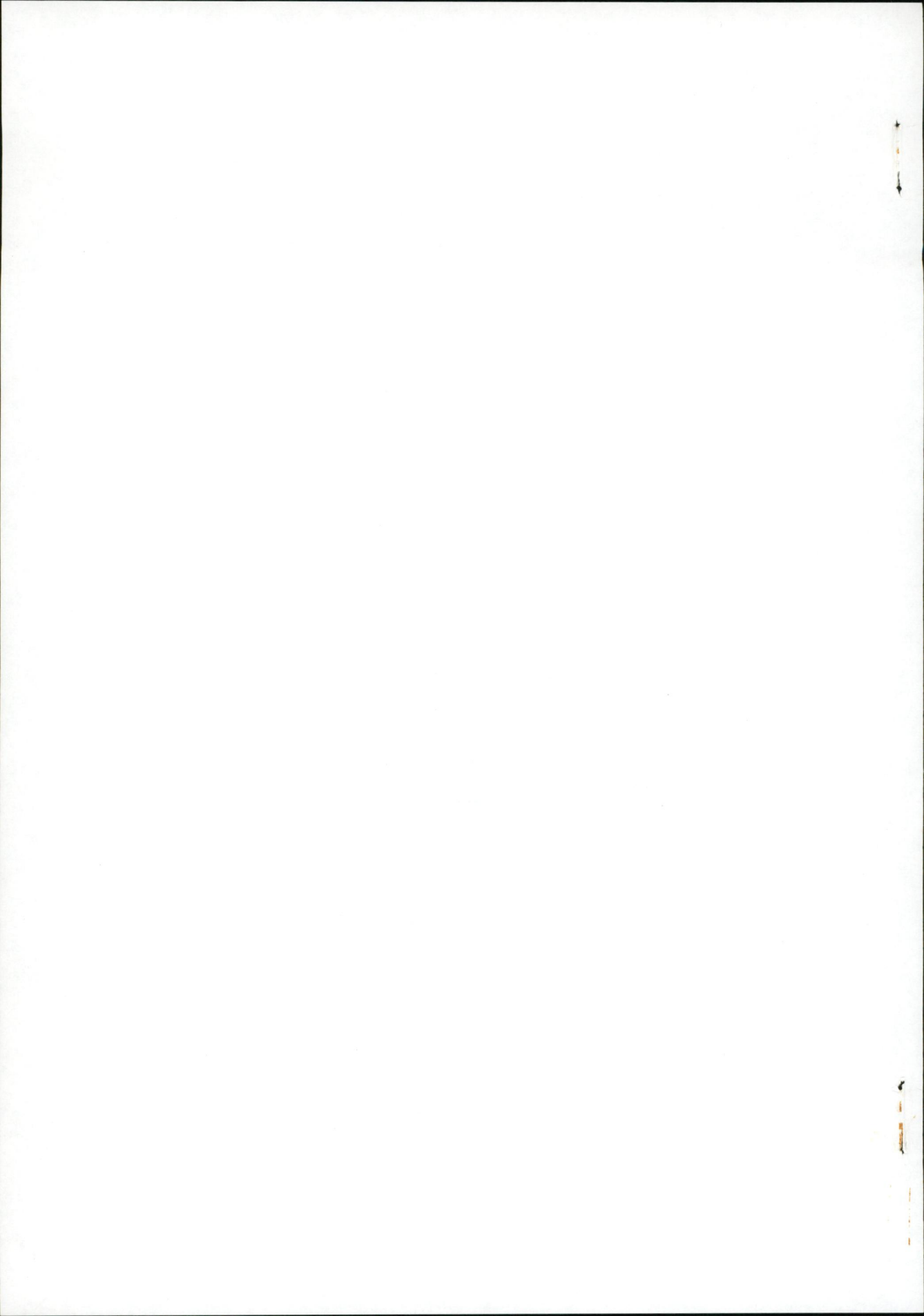
(4) Section 44 (**Retirement of judicial officers**):

Omit section 44 (4).

[Minister's second reading speech made in—

Legislative Assembly on 17 November 1992

Legislative Council on 27 November 1992]



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NEW SOUTH WALES

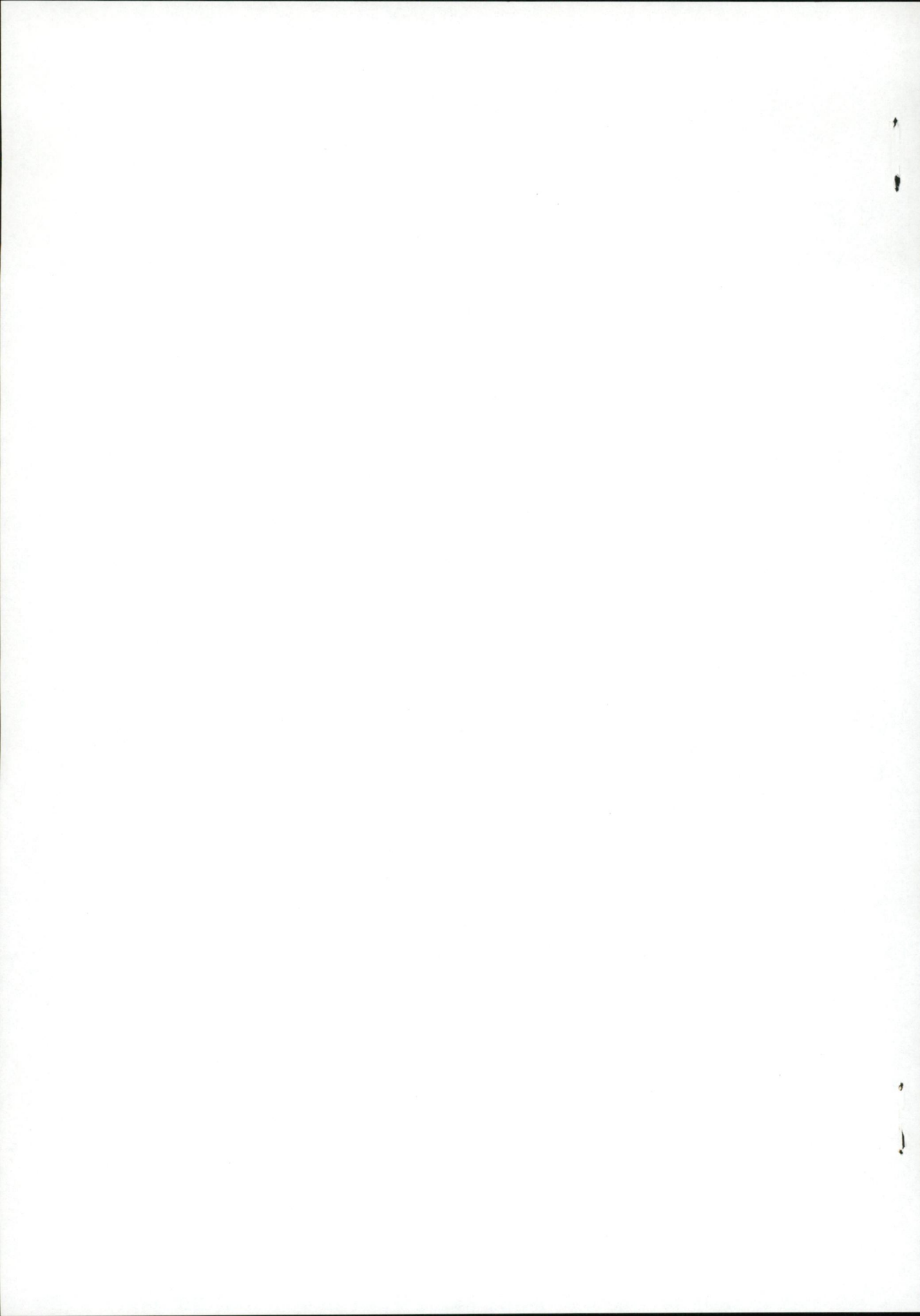


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NEW SOUTH WALES



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(2) The person holding office as Speaker of the Legislative Assembly immediately before the commencement of this Act is taken to have been elected as Speaker in accordance with the Constitution Act 1902 as amended by this Act. This subsection does not apply to elections held after the commencement of this Act.

(3) Any provision of the Standing Rules and Orders of the Legislative Assembly in force at the commencement of this Act ceases to have effect to the extent to which it is inconsistent with any amendment made by this Act.

SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902

(Sec. 3)

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Constitution (Amendment) Act 1992 No. 106

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- (b) Renumber the remaining subsections of section 22G as subsections (2)–(8).
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After section 31A insert:

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31B. (1) The election of the Speaker shall be conducted by secret ballot. A ballot is not required if only one candidate is validly nominated, and that candidate shall be declared elected.

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(4) The candidates with the smallest number of votes shall be successively withdrawn one by one, and a fresh ballot shall take place after each withdrawal, until one candidate receives the votes of at least two-thirds of the number of Members of the Legislative Assembly for the time being or (if there are only two candidates validly nominated or there are only two candidates left) a majority of the number of Members voting at that ballot. That candidate shall be declared elected.

Constitution (Amendment) Act 1992 No. 106

SCHEDULE 1—AMENDMENT OF CONSTITUTION ACT 1902—
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(5) If there is an equality of votes among the candidates with the smallest number of votes, the ballot shall be taken again, and if again there is such an equality of votes, the Clerk of the Legislative Assembly or other person presiding at the election shall determine, by lot, which of the candidates with the same number of votes shall be withdrawn, as if that candidate had received the smallest number of votes.

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[Minister's second reading speech made in—

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