

25<sup>o</sup> VICTORIÆ, 1862.

---

---

## A BILL

To place the Constitution of the Legislative Council on an  
Elective Basis.

[MR. HARGRAVE;—4 June, 1862.]

---

---

**W**HEREAS it is expedient to provide for the constitution of a Preamble.  
Legislative Council to consist of Members elected in manner  
hereinafter enacted Be it therefore enacted by the Queen's Most  
Excellent Majesty by and with the advice and consent of the Legislative  
5 Council and Legislative Assembly of New South Wales in Parliament  
assembled and by the authority of the same as follows :—

1. In the construction of this Act the following terms in inverted  
commas shall bear the meanings set against them respectively— Interpretation.

10 " Constitution Act "—Constitution Act assented to by Her  
Majesty under the Imperial Act eighteenth and nineteenth  
Victoria cap. 54.

" Council District "—District fixed by this Act for the Election  
of any Member of the Legislative Council.

15 " Assembly District "—Electoral District fixed by the Electoral  
Act of 1858.

" President "—The President of the Legislative Council for the  
time being.

" Council Roll "—The Roll of Electors in any Council District.

20 2. So much of the first section of the Constitution Act as relates Repeal of provisions  
concerning present  
Council.  
to the manner thereafter prescribed of constituting and composing the  
Legislative Council and also the second third fourth fifth sixth seventh  
and eighth sections of the same Act are hereby repealed.

25 3. It shall be lawful for the Governor at such place and at such Future Legislative  
Council to be  
Elective.  
time not being later than six months after the day on which this Act  
shall come into operation and thereafter from time to time as occasion  
shall require in Her Majesty's name by Instrument under the Great Seal  
of the Colony to summon and call together a Legislative Council in and  
for

for the Colony which shall be constituted and composed solely of Members to be elected as hereinafter prescribed And such Legislative Council shall meet for the despatch of business on the same day as the Legislative Assembly.

Number of Members of Council.

4. The Legislative Council so to be constituted and composed shall consist of Thirty Members elected by ballot. 5

Council Districts.

5. For the Election of Members to serve in the Legislative Council the Colony shall be divided into the following Council Districts:—

Bourke	Mulgoa	
Gipps	Roxburgh	10
The Hamlets	Macquarie	
Cumberland	Phillip	
Petersham	Wellesley	
West Camden	Clinton	
East Camden	Nelson	15
Wollondilly	Maitland	
Auckland	Campbell	
St. Vincent	Brisbane	
King	Denison	
Darling	Namoi	20
Wynyard	Armidale	
Cook	Richmond	

And the said Council Districts shall respectively comprise and consist of the several Assembly Districts and shall respectively return the number of Members set against the names of such Council Districts respectively 25 in the Schedule hereto marked A.

Schedule A.

Qualification of Members.

6. Every person qualified to be elected a Member of the Legislative Assembly and registered on the Council Roll and being of the full age of thirty-five years shall be qualified to be elected a Member of the Legislative Council Provided that no person being a Member of the Legislative Assembly shall be capable of being elected a Member of the Legislative Council. 30

Members of Assembly not eligible to Council.

Qualification of Electors.

7. Every person duly registered on a Council Roll shall be qualified to vote at the Election of Members to serve in the Legislative Council. 35

Council Rolls.

8. The Returning Officers of the several Council Districts shall respectively register in one Alphabetical Roll all the Electors registered in the several Rolls of the Assembly Districts comprised in such respective Council Districts and such Alphabetical Rolls shall respectively be the Council Rolls for such Council Districts respectively And to this end the Returning Officer of every Assembly District shall within one month after the passing of this Act and thereafter on or before the Twelfth day of May in every year deliver a copy of the Roll of his Assembly District to the Returning Officer of the Council District of which it forms a part But nothing herein shall affect any provision of the Electoral Act of 1858 relating or incidental to the preparation or completion of any Assembly Roll. 45

ELECTION WRITS.

Governor to issue Writs in certain cases.

9. For the purpose of every General Election of Members to serve in the Legislative Council—and also in the case of any vacancy of a seat by death written resignation to the Governor or otherwise after such General Election and before the meeting of Parliament—the Writs for the several Council Districts shall be issued by the Governor. 50

President to issue Writs to fill vacancies.

10. When and so often as a vacancy shall occur in the Legislative Council upon a resolution by the Council declaring such vacancy and the causes thereof the President shall cause a Writ to be issued for supplying such vacancy Provided that in case of any such vacancy by death or resignation the President may issue such Writ without such preceding resolution when the Legislative Council is not in Session or when such vacancy occurs during any adjournment for a longer period than seven days. 55

11.

11. If at the time of the occurrence of any such vacancy caused by death or resignation there be no President and the Legislative Council be not in Session or if the President be absent from the Colony the Governor shall if satisfied of the existence of such vacancy issue a Writ for the Election of a Member to serve in the seat so vacated. If no President Governor to issue Writ.
12. The Governor with the advice of the Executive Council may appoint by writing under his hand a fit person to be the Returning Officer of each Council District such person being at the time of his appointment registered as an elector on the Roll of the Council District for which he is to act and every such appointment shall be notified in the *Gazette* And in case of sickness or other accident disabling any Returning Officer from acting at any Election the Governor with the advice aforesaid may appoint some person so qualified to be and to act as Returning Officer in his stead. Returning Officers for Council Districts.
13. Every person appointed Returning Officer Presiding Officer or Poll Clerk under this Act shall before he enter on the duties of such office make and subscribe a declaration before some Justice of the Peace in the form of the Schedule hereto marked B And such Justice shall transmit the declaration so made by the first convenient opportunity to the Colonial Secretary. Returning Officers and other officers to make declaration. Schedule B.
14. No inquiry shall be permitted at the time of polling as to the right of any person to vote except only as follows that is to say the Presiding Officer shall if he think fit or if required by any Candidate or Scrutineer put to any Elector before he shall have voted and not afterwards the following questions or either of them and no other that is to say— Questions to voters.
- 1st. Are you the same person whose name appears as (A B No.—) in the Council Roll in force for this Council District?
- 2nd. Have you already voted either here or elsewhere at the present Election for this Council District?
15. The eighteenth and nineteenth sections of the Constitution Act and the several Enactments of the Electoral Act of 1858 which relate to the appointment and duties of Presiding Officers—to the course of Proceeding respecting the Ballot and otherwise before and at and after Elections—to the answering of questions and making the declaration of Electors and the consequences of making false answers or declarations—to the transmission of Ballot Papers after the Election—to the not questioning or avoiding of Elections for defects—to the Remedy for informalities—to Bribery and its consequences—to any misconduct of Returning and other Officers—to the Committee of Elections and Qualifications and Petitions against Returns—and all other the Enactments of the said Act—so far as any such Enactments as aforesaid are or can be made applicable to the purposes of this Act and so far as the same are not repealed or varied hereby—shall apply to and be deemed to be hereby again enacted for the purposes of this Act and be acted upon accordingly Provided that the said sections and other enactments so far as they apply to the Legislative Assembly or to the Speaker thereof shall for the purposes of this Act apply respectively to the Legislative Council and to the President And so far as they apply to the Electoral Districts and Electoral Rolls shall for the purposes of this Act apply respectively to Council Districts and Council Rolls Provided also that every Ballot Paper under this Act shall be in the form of the Schedule hereto marked C and that the declaration of Scrutineers under this Act shall be in the form of the Schedule hereto marked D Constitution Act sections 18 & 19 and Electoral Act of 1858 sections 34, to 45, 47, to 49, 51, to 86, inclusive adopted so far as applicable. Schedule C. Schedule D.
- Provided also that during the Polling no Candidate shall be present in any Polling Booth or Polling Place or in any compartment or Ballot Room thereof Provided further that if any person being able to read and write shall state to the Presiding Officer at any Election that he is not so able and shall thereupon express his wish to have the names of certain candidates struck out from his Ballot Paper such person shall be deemed guilty

guilty of a misdemeanor And provided lastly that whenever in accordance with the forty-third section of the said Electoral Act it shall be the duty of the Presiding Officer himself to strike out from the Ballot Paper of any Elector unable to read or blind the names of such Candidates as such Elector shall express his wish to have struck out such Presiding Officer shall do so openly in the presence of all persons then lawfully present in the Booth or Polling Place. 5

President.

16. The Members of the Legislative Council shall upon their first assembling after their first Election and every subsequent General Election forthwith by vote elect one of their number to be President and shall upon any and every vacancy by the death resignation or removal of the President in like manner elect another of their number to be President And the President shall preside at every meeting of the Legislative Council except as provided for by the Standing Rules and Orders of such Council. 10 15

Periodical retirement of Members.

17. Immediately after such Election of President and before proceeding to any other business the Legislative Council shall determine by lot the order in which the names of the several Members shall be entered upon a list to be called "The Members' Roll" and at the end of two years from the date of such determination and thereafter at the end of every succeeding second year the Ten Members first on such Roll shall vacate their seats and Ten Members shall be elected to supply such vacancies who shall immediately after taking their seats be placed at the foot of such Roll in the order to be then also determined by lot and in every case of a single Member elected to fill any vacancy his name shall be placed last on the Members' Roll Provided that every Member going out in rotation or by reason of his accepting any office of profit under the Crown shall if not disqualified be capable of re-election as a Member of the Legislative Council and of being placed at the foot of the said Roll And provided that every Member elected to fill any vacancy occasioned by death resignation or other extraordinary cause shall be placed on the said Roll in the order in which the Member creating such vacancy stood at the time of its occurrence. 20 25 30

Quorum &c.

18. The presence of at least Twelve Members of the Legislative Council exclusive of the President shall be necessary for despatch of business And every question shall be decided by the majority of votes of the Members present exclusive of the President Provided that in case of equality of votes he shall decide the same by his casting vote. 35

Provision for delayed return of Writs or non-election.

19. The Legislative Council may proceed to despatch of business at any time appointed by the Governor for that purpose notwithstanding the non-return of any Writs not exceeding three or the failure of the Electors in any Council District to have elected a Member to serve in the said Council. 40

Resignation of Seat.

20. Any Member of the Legislative Council may after the time allowed by law for Petitions against his return by writing under his hand addressed to the President resign his seat and upon receipt of such resignation by the President such seat shall become vacant Provided that if there be no President a like resignation addressed to the Governor shall have the like effect. 45

Grounds of vacating Seats.

21. If any Member of the Legislative Council shall for one whole Session of Parliament without the permission of the Legislative Council entered upon its Journals fail to give his attendance in the said Council his seat in the said Council shall thereby become vacant. 50

Grounds of incapacity.

22. Any person who shall take any Oath or make any Declaration of Allegiance to any Foreign Prince or Power or become a Subject or Citizen of any Foreign State or a Bankrupt or Insolvent Debtor under the laws relating to Bankrupts or Insolvent Debtors or a Public Defaulter or be attainted of Treason or convicted of Felony or any Infamous Crime shall be incapable of sitting in or being elected a Member of the Legislative Council. 55

23. All the Enactments of the Constitution Act relating to the Legislative Council as constituted thereunder except as repealed or varied hereby shall apply to the Legislative Council as constituted under this Act And the said Council shall except as herein otherwise enacted possess and may exercise all the powers vested in the Legislative Council by the said Constitution Act.

Powers of Legislative Council.

24. No prosecution or other legal proceeding for any offence alleged to be committed or for the recovery of any penalty alleged to be incurred under this Act shall be commenced after the expiration of six months from the commission of such offence or the incurring of such penalty.

Limitation of Prosecutions.

25. It shall be lawful for the Governor with the advice aforesaid to make regulations for carrying into complete effect all the provisions of this Act in particular not expressly provided for by enactment And all such regulations and details so far as they are not repugnant to or inconsistent with any provision of this Act shall when published in the *Gazette* have the force of law And copies thereof shall be laid before both Houses of Parliament forthwith if then sitting and if not then within fourteen days next after the opening of the next Session.

Regulations for matters in detail.

26. Whenever any matter or thing shall by this Act be directed to be done or to take place on a certain day and that day happen to be Sunday Good Friday Christmas Day or any public holiday such matter or thing may be done or take place on the next day not being any such as aforesaid And all further changes of time rendered necessary by any such alteration may also lawfully be made.

Postponement of things chancing to fall on Sundays or holidays.

27. This Act shall be styled and may be cited as the "Legislative Council Act of 1862."

Short Title.

SCHEDULES.

SCHEDULE A.

COUNCIL DISTRICTS.	ELECTORAL DISTRICTS OF WHICH COMPOSED.	NUMBER OF MEMBERS.
30 BOURKE .....	East Sydney .....	2
GIPPS .....	West Sydney.....	2
THE HAMLETS .....	Paddington—Newtown—and The Glebe .....	1
CUMBERLAND .....	Parramatta and Central Cumberland... ..	1
35 PETERSHAM .....	Canterbury and St. Leonard's .....	1
COOK .....	Windsor and The Hawkesbury .....	1
MULGOA .....	The Nepean and Narellan.....	1
ROXBURGH .....	Bathurst and East Macquarie .....	1
MACQUARIE .....	Carcoar and West Macquarie .....	1
40 PHILLIP .....	Mudgee and Hartley.....	1
WELLESLEY .....	Wellington—Orange—and The Bogan .....	1
WEST CAMDEN .....	Camden .....	1
EAST CAMDEN .....	Illawarra and Kiama.....	1
WOLLONDILLY .....	Goulburn and Argyle .....	1
45 AUCKLAND .....	Monaro and Eden .....	1
ST. VINCENT .....	Braidwood and Shoalhaven .....	1
KING .....	Yass and Queanbeyan .....	1
DARLING .....	{ The Hume—The Murray—The Murrumbidgee } and Balranald .....	1
WYNYARD .....	The Tumut and the Lachlan.....	1
50 CLINTON .....	Newcastle and Northumberland .....	1
NELSON .....	Lower Hunter and The Williams.....	1
MAITLAND .....	East Maitland and West Maitland .....	1
CAMPBELL .....	Morpeth and Paterson .....	1
BRISBANE .....	Patrick's Plains and Upper Hunter .....	1
55 DENISON .....	The Hunter and Wollombi .....	1
NAMOI .....	Liverpool Plains and the Gwydir .....	1
ARMIDALE .....	New England and Tenterfield .....	1
RICHMOND .....	The Clarence and The Hastings ..	1

SCHEDULE B.

## SCHEDULE B.

## DECLARATION OF RETURNING OFFICER &amp;c.

I do hereby declare that I accept the Office of Returning Officer (*or other Office as the case may be*) for the Council District of and I do hereby promise and declare that I will faithfully perform the duties of my Office 5 to the best of my understanding and ability and that I will not attempt to ascertain for whom any Elector shall vote and that I will not by any word or action directly or indirectly aid in the discovery of the same and that I will keep secret all knowledge of the mode in which any Elector has voted which I may obtain in the exercise of my Office unless in answer to any question which I am legally bound to answer. 10

(Signed)

Declared before me at  
this                      day                      186 .

(Signature)

Justice of the Peace. 15

## SCHEDULE C.

## BALLOT PAPER.

## COUNCIL DISTRICT OF

*Polling Day the*                      *day of*                      186

## NAMES OF CANDIDATES. 20

A. B. of

C. D. of

E. F. of

G. H. of

## SCHEDULE D. 25

## DECLARATION TO BE MADE BY SCRUTINEERS.

I a Scrutineer appointed by a Candidate for Election to serve in the Legislative Council for the Council District of do hereby declare that I will faithfully assist at such Election and that I will not attempt to ascertain for whom any Elector shall vote and that I will not by any word or action 30 directly or indirectly aid in discovering the same And that I will keep secret all knowledge of the mode in which any Elector has voted which I may obtain in the exercise of my Office unless in answer to any question which I am legally bound to answer.

(Signed)

Declared before me at  
this                      day of                      186 .

(Signature)

Justice of the Peace. 35

LEGISLATIVE COUNCIL BILL.

(Clauses embodying Mr. Hare's system of election submitted to the Select Committee on this Bill by MR. HOLDEN.)

1. In the construction of this Act the following terms in inverted commas shall bear the meanings set against them respectively :—

“ Constitution Act”—Constitution Act assented to by Her Majesty under the Imperial Act 18 and 19 Victoria cap. 54.

“ Electoral Act”—The Electoral Act of 1858 regulating elections for the Legislative Assembly.

“ Quota”—The number (rejecting fractions if any) resulting from a division of the number of votes polled at any Election by that of the Members to be then elected.

“ Sitting Members”—Members entitled for the time being to sit and vote in the Council.

“ Reserve Members”—Additional Members provisionally elected to supply contingent vacancies.

2. So much of the first section of the Constitution Act as relates to the manner thereafter prescribed of constituting and composing the Legislative Council and also the second third fourth fifth sixth seventh and eighth sections of the same Act are hereby repealed.

3. It shall be lawful for the Governor at such place and at such time not being later than calendar months after the first Electoral Roll shall have been completed under this Act and thereafter from time to time as occasion shall require in Her Majesty's name by instrument under the Great Seal of the Colony to summon a Legislative Council for the Colony which shall be constituted solely of Members to be elected as hereinafter provided And such Legislative Council shall meet for despatch of business on the same day as the Legislative Assembly.

4. (This clause omitted because it has no necessary connection with Mr. Hare's plan of election and is left open for discussion.)

5. (Omitted for same reason but the remaining clauses are adapted to the case of a qualification differing from that of the Lower House because otherwise the Bill would be imperfect in its details in the event of such distinct qualification being adopted.)

Clerk of Petty Sessions to invite claimants to notify their qualifications.

6. The Clerk of Petty Sessions in each Police District shall on day of next after the passing of this Act and whensoever hereafter required by the Governor preparatory to a future election under the provisions of this Act cause to be fixed on or near the door of the Court House and also on or near the doors of all the Churches and Chapels within such Police District or if there be no Church or Chapel therein then in some conspicuous place therein a notice in the form numbered 1 in the Schedule hereto marked B requiring all persons entitled to vote in the election of a Member to serve in the Council residing within such district to deliver or transmit to such Clerk of Petty Sessions on or before the expiration of twenty-eight days from the day when the said notice shall be affixed as aforesaid a notice of their claims in the form numbered 2 in the same Schedule Provided that after the formation of any list to be made pursuant to this Act no person whose name shall be upon such list shall be required thereafter to make any such claim as aforesaid so long as he shall retain the same or a like qualification And the Clerk of Petty Sessions shall forthwith cause copies to be printed or fairly transcribed of every such list and shall deliver a copy thereof to any person requiring the same on payment of a reasonable price and shall cause a copy thereof to be fixed on the Court House and in such other public places as may by the Court of Petty Sessions be directed during fourteen days at the least ending with the twenty-eighth day next after the last day appointed by the delivery or transmission of claims as aforesaid.

Provisions of Electoral Act as to the revision of lists of Assembly Electors to apply to lists prepared under this Act.

7. For the purpose of amending completing and revising the lists prepared under the preceding provisions the Clerk and Justices of Petty Sessions of each Police District and the Returning Officer of each Electoral District shall possess and fulfil the same powers jurisdiction and duties respectively as they are entitled and required to exercise and fulfil in regard to the lists of electors for the Legislative Assembly under the said Electoral Act of 1858 except with regard in the periods of time therein appointed for the notifying of claims and objections and of holding Courts (which periods shall in relation to proceedings under this Act be specially appointed by the Governor on each occasion and notified in the *Government Gazette*) Provided however and it is hereby declared that the framing of separate lists for each Electoral District of the Legislative Assembly shall not constitute any distinction of electorates in regard to choice of Members but shall apply only to the more convenient construction of lists and polling of votes and that all the lists of electors resident in each district shall when completed be transmitted by the Returning Officer to the Registrar General in Sydney who shall frame therefrom a general Roll of Electors for the whole Colony which Roll shall be kept in his office and open to inspection by any person on payment of a fee of

8. The Returning Officers from time to time appointed under the Electoral Act of 1858 shall without any other appointment or authority have and exercise within the area of the Electoral Districts appertaining to the Legislative Assembly for which they are appointed all such powers and duties as are required to carry out the provisions of this Act in regard to such of the electors for the Legislative Council as are resident within such districts respectively in regard to the completion of local lists of electors and also in regard to receiving votes at elections. But all such lists and votes respectively shall be transmitted to the Registrar General in Sydney in manner hereinbefore and hereinafter directed.

Returning Officers under Electoral Act to perform the duties required under this Act.

9. Thirty sitting Members and fifteen additional Members as a reserve for vacancies shall be returned at the first election under this Act and at every future election so many sitting Members as will make up when added to those retaining seats thirty sitting Members and fifteen reserve Members.

Number of Council.

10. The Members returned at each election shall be placed in a list to be called the list of precedence and to be prepared as hereafter directed in the order of their respective majorities of votes. But if the votes for any be equal their precedence on the said list shall be determined by lot.

List of precedence according to majorities.

11. The thirty Members first in order on the said list shall be the sitting Members of Council for the time being after the first election and after every future election so many Members in the like order of precedence as will complete together with the Members retaining seats a House of thirty Members. And if and so often as a vacancy shall arise therein before a new election shall take place the Governor shall summon the reserve Member next in order on the said list to fill such vacancy.

Thirty members to sit.

Fifteen to be in reserve for vacancies.

12. At the end of five years from the date of the first election as many Members (being the lowest in order on the said list of precedence) shall vacate their seats as will reduce the number retaining seats to fifteen and thereupon a new election shall take place for the return of thirty candidates of whom fifteen shall forthwith take their seats and fifteen be held in reserve for vacancies as aforesaid.

All above fifteen to retire in five years and new election to take place.

13. The like vacating of seats and new elections shall take place periodically at the end of every five years except that in future cases the Members vacating their seats shall be those who have sat the longest. Provided however that of any who have sat for an equal period the lowest in order on the list of precedence shall retire first.

The like periodically.

The like if number  
be previously re-  
duced below twenty.

14. The like vacating of seats and new election shall at any time take place notwithstanding the ordinary period of five years shall not then have expired if and whenever the number of the House shall be reduced below the number of twenty without any sufficient reserve Members remaining available to complete that number. But in that case the next ensuing period of five years shall be computed from the period of such special election.

Retiring Members to  
be re-eligible.

15. At every new election retiring Members shall be re-eligible.

President to be  
elected.

16. The Members of Council shall upon their first and at every subsequent election forthwith by vote elect one of their number to be President and shall upon any and every vacancy by the death resignation or removal of the President in like manner elect another of their number to be President. And the President shall preside at every meeting of the Council unless when otherwise provided by the standing rules and orders thereof.

Quorum.

17. The presence of at least ten sitting Members of the Council shall be necessary for despatch of business and every question shall be decided by majority of votes of the Members present exclusive of the President. Provided that in case of an equality of votes the President shall decide the question by his casting vote.

Resignation of seat.

18. Any Member of Council may by writing under his hand addressed to the President resign his seat and upon receipt by the President of such resignation such seat shall become vacant. Provided that if there be no President a like resignation addressed to the Governor shall have the like effect.

Every quota of votes  
to return one  
Member.

19. Every candidate who shall obtain the votes of a quota of electors (such quota being ascertained by dividing the number of votes polled by that of the Members to be elected) shall be returned as the Member of their unanimous choice to represent them in the Council and the surplus votes for such Member beyond the quota shall not be counted in his election.

Contingent votes  
allowed to prevent  
their loss as sur-  
plusage.

20. The electors giving surplus votes for any Member may prevent their being thrown away and render them respectively contributory to the quotas of other candidates by marking other names on their voting papers under the directions printed thereon. But the transfer for this purpose of a surplus vote shall not prevent its being computed for the purpose of ascertaining precedence in the list of Members in favour of the candidate first chosen.

21. If full quotas of votes be not obtained by a sufficient number of candidates to complete the required return of Members the deficiency shall be supplied by returning a sufficient number of those who although polling less than a quota have obtained a higher number of votes than any other candidate.

If sufficient Members be not elected by quotas the number to be completed by majorities.

22. Whenever occasion shall arise for a new election under the preceding provisions the President of the Council for the time being or if that office be vacant the Governor of the Colony for the time being shall ascertain what sitting Members are liable under the provisions of this Act to vacate their seats and shall cause the names of such Members to be notified in the *Government Gazette* and thereupon such seats shall be vacated accordingly and all right of succession acquired by any reserve Members returned at the previous election who shall not then have taken their seats shall determine without any such notification.

Mode of notifying vacated seats before new elections.

23. At some convenient time or times within the year next preceding each periodical election appointed by this Act and also whenever there shall have arisen or there shall appear reason to apprehend such deficiency of Members as to require a special election within the twelve calendar months next ensuing under the provision in that behalf herein contained the Governor shall cause and require that a new Roll of Electors be prepared in manner hereinbefore provided.

Electoral Rolls to be prepared before each election.

24. Within one calendar month after the first Roll of Electors shall be completed under this Act and within one calendar month after any such notification in the *Gazette* as aforesaid if there shall then be subsisting a Roll of Electors prepared within the twelve calendar months then last preceding and if not then within one calendar month after the next Roll of Electors shall be completed The Governor shall by Proclamation in the *Government Gazette* appoint a day for the election of Members under the provisions aforesaid not being less than one nor more than three calendar months after the date of such Proclamation.

Days of election to be appointed by Proclamation.

25. If at any time after the said Proclamation and not less than fourteen days before the day of election any person qualified to be elected a Member of the Legislative Council or any elector qualified to vote for such Member shall with his consent signified in writing transmit to the Registrar General a requisition signed by not less than qualified electors desiring that he may be nominated as a candidate for election the name and address of such candidate shall be inserted by the Registrar in a list of candidates which shall be published in a complete form seven days at least before the date of election.

Candidature.

Functionaries under  
Electoral Act to con-  
duct elections under  
this Act.

26. The appointment of Returning Officers and of their deputies and of all other functionaries required in the conduct of elections shall be made by the like authority and in like manner as is provided by the Electoral Act in regard to elections for Members of the Assembly and all powers and regulations regarding such last-mentioned elections shall subsist and be applicable to elections for Members of the Legislative Council so far as the same are of like nature and requirement and not altered by this Act.

Voting papers—  
Method of voting.

27. Within a convenient time before the day of any election the Registrar General shall cause voting papers comprising lists of all the candidates to be prepared in the form of a Schedule hereunto annexed marked A and shall cause one such voting paper to be delivered to each elector inscribed with his name and number as appearing on the Roll of Electors and each such elector shall be entitled to vote by marking the said list and subscribing the said voting paper in conformity to the directions printed thereon and to the provisions of this Act in the presence of the Returning Officer who shall forthwith after attesting the signature place the voting paper in the presence of the voter or shall permit him to place the same in the presence of the said officer within a box to be provided with an appropriate aperture but in other respects securely closed and one of which boxes shall be supplied by the Registrar General to each Returning Officer fastened by a lock of which the Registrar General shall retain the key and over which he shall also place his seal of office and every such box shall at the close of the voting in each district be transmitted to the Registrar General by such messenger or in such manner as he shall direct.

Scrutiny.

28. The Registrar General shall as soon as practicable after the receipt of all the voting papers in any election appoint a time and place for scrutiny of votes and shall give not less than two days notice thereof to the President and Chairman of Committees and Chief Clerk of at the first election the expired Legislative Council and at every subsequent election of the Legislative Council for the time being and the said President and Chairman or one of them shall attend and watch the scrutiny and the Registrar General shall together with the said Chief Clerk of the Council be also present at the scrutiny and jointly superintend the same and take part therein assisted by a sufficient number of clerks to be appointed by the President of the Council all of whom shall before entering upon the scrutiny take and subscribe the following oath—

I A B do solemnly swear that I will to the best of my skill and ability and without favour or affection to any or either of the candidates perform the duty of a scrutineer of votes

in

in the pending election for Members of the Legislative Council according to the provisions of the Act of the Legislature in that behalf So help me God

Signed [A B]

And the said President or in his absence the Chairman of Committees present at the said scrutiny is hereby authorized to administer the said oath.

29. Whenever the votes for any candidate marked 1 shall exceed the quota the voting papers in excess of such quota shall be allotted to the candidates therein respectively marked 2 unless such last-named candidates shall otherwise have polled a full quota and in that case to the candidate marked 3 and so on successively until as many Members shall have thus been returned as have obtained a full quota of votes.

Surplus votes to be allotted to other candidates.

30. The voting papers to be allotted to each candidate in making up his quota in case of a surplus shall be taken first from those (if any) containing a plumper or one marked name only and next and successively until the quota be completed from those containing the smallest number of marked names—and in case of equality in this respect shall be taken indifferently by lot.

Rules for separating surplus votes from quota.

31. When after appropriating all surplus votes to the candidates entitled thereto under the above rules it shall be found that no quota can thereby be completed in favour of any further candidate then if the full number required to complete the return of Members shall not have obtained quotas the scrutineers shall sort and arrange all the voting papers not used in the quotas already completed and shall allot them to such remaining candidates as shall respectively stand highest thereon (disregarding the names of candidates who have already completed their quotas) and shall compute the number of votes so allotted to each remaining candidate and so many of such candidates as shall together with those who have obtained full quotas of votes be sufficient to make up the number of Members required to be elected shall be returned as shall be found to have obtained a greater number of votes than any other of the remaining candidates And in case of an equality of votes between competing candidates the preference shall be decided by lot The scrutiny shall in all other respects be conducted according to such rules and in such manner (not being inconsistent with any of the provisions of this Act) as shall be from time to time prescribed by the Legislative Council after the formation thereof or previously thereto namely at the first election by the Governor with the advice of the Executive Council.

After applying all attainable quotas election to be completed by majorities. Other rules for scrutineers.

32. At the close of the scrutiny the Registrar General and the Clerk of the Legislative Council shall prepare a list of the Members elected naming them in the order of their respective majorities as regards their primary

Final return.

primary votes marked 1 and stating the number of such primary votes given to each of them respectively and in case of an equality of votes the order of precedency of the respective Members receiving the same shall be determined by lot And the said list shall be transmitted to the Colonial Secretary signed by the Registrar General and also by the said President and Chairman of Committees or by such one of them as shall (if one only) have attended the scrutiny and the same shall be published in the *Government Gazette* for general information.

SCHEDULE A.

ELECTION FOR LEGISLATIVE COUNCIL.

Name of Elector .....  
 Polling District.....  
 No. on Roll ... ..

I the above-named elector hereby vote for the first in numeral order of the candidates I have marked 1 2 and upwards in the within list who shall require my vote to make up the quota for his election.

Signed by the above-named }  
 elector in my presence }

(Signature) A. B.

C. D. Returning Officer.

As soon as this vote is taken the voter should see it placed in the sealed vote chest to await transmission to the Registrar General The Returning Officer is not to inspect the inner fold of this paper without the voter's permission.

LIST OF CANDIDATES.

Names and Designations.	Voting column.
A. B. C. D. <i>et seq.</i>	

Direction to Voter.

First insert in the voting column against the name of the candidate you prefer the figure 1 You are then at liberty to mark 2 3 and upwards in the order of your preference against the names of any other candidates the effect of which will be to allot your vote successively to some candidate marked with a lower figure if it turn out unnecessary for completing the quota of the one marked with a higher figure Those unmarked with figures will be considered wholly rejected but you are recommended to fix a cross (x) against rejected names The following is an example of a voting paper filled up :—

List of 12 Candidates.	V. C.	Here the primary vote is given for Edmund Burke If not required for him it is allotted to Henry Brougham (marked 2) If he also has a quota of other votes it is allotted to William Wilberforce (marked 3) and may so descend to Henry Grattan (marked 6) if not required for those marked with the intervening numbers It thus cannot be thrown away by forming part of an useless surplus until all the approved candidates have been returned by full quotas.
Henry Brougham.....	2	
Thomas Smith ... ..	x	
George Canning .....	x	
Edward Jones .....	x	
William Wilberforce .....	3	
Edmund Burke.....	1	
Henry Johnson.....	x	
James Macintosh .....	4	
William Green .....	x	
John Bright .....	5	
John Douglass .....	x	
Henry Grattan.....	6	

**NOTE.**—As the forms of notices and claims in Schedule B will depend on the nature of the voter's qualification to be therein referred to, these are at present omitted for the reason before specified. (See clauses 4 and 5.)

---

# A BILL

## To amend the Constitution of the Legislative Council.

(As agreed to in Select Committee.)

---

**W**HEREAS it is expedient to provide for the constitution of a Preamble.  
Legislative Council to consist of Members elected and summoned in  
manner hereinafter enacted Be it therefore enacted by the Queen's Most  
Excellent Majesty by and with the advice and consent of the Legislative  
5 Council and Legislative Assembly of New South Wales in Parliament  
assembled and by the authority of the same as follows :—

1. In the construction of this Act the following terms in inverted Interpretation.  
commas shall bear the meanings set against them respectively—

10 “ Constitution Act ”—Constitution Act assented to by Her  
Majesty under the Imperial Act eighteenth and nineteenth  
Victoria cap. 54.

“ Electoral Act ”—The Electoral Act of 1858 regulating elec-  
tions for the Assembly (22 Vic. No. 20.)

15 “ Assembly Districts ”—Electoral Districts for the return of  
Members of the Legislative Assembly under the Electoral  
Act in force for the time being.

“ President ”—The President of the Legislative Council for the  
time being.

20 “ Council Roll ”—The General Roll of Electors qualified to vote  
for the election of Members of the Legislative Council  
under this Act.

“ District List ”—The List made up within each Assembly  
District of electors qualified within such District to vote  
for the election of Members of the Legislative Council.

25 “ Quota ”—The number (rejecting fractions) resulting from a  
division of the whole number of votes at any election by  
that of the Members to be then elected.

30 “ Primary votes ”—The votes marked No. 1 on the voting  
papers being those recorded for the candidates of first  
preference.

“Contingent votes”—The votes marked No. 2 and upwards which are to take effect only in the event of the primary or previous vote not being required to make up the quota for the candidate of earlier preference.

Repeal of provisions concerning present Council.

2. So much of the first section of the Constitution Act as relates to the manner thereafter prescribed of constituting and composing the Legislative Council and also the second third seventh and eighth sections of the same Act are hereby repealed.

Legislative Council to be summoned as hereby constituted.

3. It shall be lawful for the Governor at such time not being later than six months after the day on which this Act shall come into operation in Her Majesty's name by instrument under the Great Seal of the Colony to dissolve the present Legislative Council on and from a day therein named and summon and call together a Legislative Council in and for the Colony which shall be constituted and composed as hereinafter prescribed.

Thirty Members to be elected.

4. Thirty Members shall be elected to serve in the Legislative Council in manner hereinafter directed.

Triennial election of ten Members.

5. At the expiration of every three years there shall be an election of at least ten Members that is to say all vacancies which may have occurred since the previous election shall be then filled up and if they shall not amount to ten then so many of the existing Members shall retire as will make the vacancies amount to that number—the Members so to retire being always those lowest on the list of priority to be prepared as herein directed.

Additional Members qualified by special public services may be appointed by the Crown (not exceeding one third of elected Members.)

6. In addition to the elective Members it shall be lawful for Her Majesty by instrument under the sign manual to authorize the Governor in Her Majesty's name by instrument under the Great Seal of the Colony to summon to the Legislative Council such other persons as the said Governor shall see fit not being at any time of greater number than ten and being of some or one of the following descriptions viz :—

- (1.) Any retired Judge of the Supreme Court. 30
- (2.) Any person who has been for two years a Member of the Executive Council.
- (3.) Any person who has held the office of President of the Legislative Council or of Speaker of the Legislative Assembly or of Chairman of Committees in either House of Parliament. 35
- (4.) Any person who has served for seven years as an elected Member of the Legislature.

Who shall hold their seats for life.

And every person summoned as last aforesaid shall retain his seat for life unless the same be vacated by resignation disqualification or otherwise pursuant to the provisions of the Constitution Act in regard to Members appointed by virtue thereof. 40

7. If at any time there shall not be in the Legislative Council two or more Members of the Executive Council it shall be lawful for the Governor with the advice of the Executive Council by instrument under the Great Seal of the Colony to appoint as additional Members of the Legislative Council any of the Members of the Executive Council not being Members of the Legislative Assembly Provided that not more than two Members shall hold seats in the Legislative Council by virtue of such appointment at any one time and that every Member so appointed shall vacate his seat on his ceasing to be a Member of the Executive Council.

Governor may  
appoint two respon-  
sible Ministers.

8. Every male subject of Her Majesty of the full age of twenty-one years being natural born or who being a naturalized subject shall reside and have resided in the Colony for three years shall if qualified as hereinafter prescribed and registered on the Council Roll and not disqualified or incapacitated for some cause hereinafter specified be entitled to vote at any election for Members of the Legislative Council and shall have one vote for every Assembly District in respect of which he shall be so qualified and registered but not exceeding five votes in any case that is to say :—every such person who at the time of making out the Electoral Roll and for six months previously shall hold and have held land in possession for an estate either of freehold or leasehold for an unexpired term of not less than twenty-one years of the clear value above all charges and outgoings of three hundred pounds or of like clear annual value of twenty pounds or a leasehold estate in possession for a term of less than twenty-one years of the like clear annual value of fifty pounds or who shall occupy and have occupied for a like period of six months any house warehouse counting-house office shop room or building either separately or jointly with any land occupied therewith at a yearly rental or joint rentals of fifty pounds such occupation being either continuously of the same premises or successively of any two or more respectively of the whole required value—or who shall hold and have held for a like period of six months a Crown lease or license to depasture lands at a rental to the Crown exclusive of assessment of not less than twenty pounds—or who shall be a Graduate of any University in the British Dominions a Barrister or Solicitor of the Supreme Court a legally qualified Medical Practitioner an officiating Minister of Religion or an Officer or retired Officer of Her Majesty's Land or Sea Forces not being on actual service at the time of the election.

Qualification of  
electors.

9. Every person nevertheless shall be disqualified who at the time either of making out the Council roll or of the election shall be of unsound mind or in the receipt of aid from any charitable institution or who has been attainted or convicted of treason felony or other infamous offence

Disqualifications.

offence in any part of Her Majesty's Dominions unless he have received a free or conditional pardon for such offence or have undergone the sentence passed on him.

Other incapacities.

10. Every person shall be incapable of voting who at the time either of making out such roll or of such election shall be in the naval or military 5 service on full pay not being in any militia or volunteer corps only And no Inspector General or Metropolitan Superintendent of Police or paid Police Magistrate or Superintendent of Police nor any Clerk of Petty Sessions nor any Clerk Chief or other constable or person belonging to the Police or Constabulary Force shall during the time he shall continue 10 in any such office be capable of voting for the election of a Member to serve in the Legislative Council nor shall by word message writing or in any other manner endeavour to persuade any elector to give or dissuade any elector from giving his vote for any candidate And every person incapacitated as last aforesaid who shall offend herein shall forfeit the 15 sum of *one hundred* pounds to be recovered by any person who shall sue for the same by action of debt to be commenced within six months after the commission of the offence.

Qualification of elective Members.

11. Every person being on the Council roll and of the full age of thirty years shall be qualified to be elected a Member of the Legislative 20 Council Provided that if any Member of the Legislative Assembly shall with his consent as hereinafter provided be elected a Member of the Legislative Council his seat in the Assembly shall become vacant on the notification of such election in the *Gazette*.

Mode of preparation of first Council roll.

12. With all convenient speed after this Act shall come into opera- 25 tion the Governor shall fix a time within which the Courts of Petty Sessions of the several Police Districts shall appoint collectors and shall appoint such collectors accordingly for the purpose of making out alphabetical lists of all persons qualified to vote in the election of Members of the Legislative Council in respect of any qualification 30 within such District and such collectors and the Clerks and Justices of Petty Sessions of each Police District and the Returning Officer of each Assembly District and all electors and other persons shall possess and fulfil in regard to the making amending completing and revising of the said lists the like powers jurisdiction privileges and 35 duties respectively as they are entitled and required to exercise and fulfil in regard to the lists of electors for the Legislative Assembly under the said Electoral Act of 1858 except with regard to the periods of time therein appointed for the notifying of claims and objections and of holding Courts which periods shall in relation to proceedings under this Act so 40 far as they are not hereby fixed be specially appointed by the Governor and

and notified in the *Gazette* Provided however that the framing of separate Council lists for each Assembly District shall not constitute any distinction of Electorates in regard to choice of Members of Council but shall apply only to the more convenient making out of lists and polling of votes and all the lists of electors registered in each District shall when completed be transmitted by the Returning Officer of each Assembly District to the Registrar General in Sydney And the said Registrar General shall with as little delay as possible frame therefrom a general Council roll for the whole Colony wherein all the electors shall be named in alphabetical order and numbered in regular arithmetical progression And if the name of the same elector shall be entered in more than one District list his name shall first be placed and numbered on the Council roll in respect of some qualification held personally or in the District wherein he shall reside and then in respect of his qualifications in other Districts in consecutive numbers not exceeding five in all And the Council roll when so prepared shall be kept by the said Registrar General in his office and open to inspection by any person on payment of a fee of one shilling And the Registrar General shall cause copies of the said Council roll to be printed and sold at a reasonable price and shall also cause one of such printed copies to be transmitted to the Clerk of Petty Sessions in each Police District which shall be kept in his office and open for inspection by any person on payment of the like fee of one shilling.

13. During the third year after the first election under this Act and during the third year after each succeeding election a new Council roll shall be prepared in the same manner as provided in the last preceding clause except as hereinafter mentioned that is to say instead of the list for the making out of such roll being prepared in each Police District by paid collectors as in the case of the first Council roll the same shall be prepared by revision of the previous roll in manner following namely The Clerk of Petty Sessions of each Police District shall on or before some day to be fixed by the Governor not being less than six months before the expiration of the third year from the last preceding election cause so much of the existing Council roll as relates to each Police District to be submitted for provisional revision to a Court of Petty Sessions convened for that purpose And the said Court shall direct the omission of the names of any electors who shall to their knowledge or from satisfactory proof afforded them be dead And the said Clerk shall cause copies of the list so provisionally revised to be affixed to the Court House of the District and such other places as the Petty Sessions may direct and shall at the same time cause to be affixed

of Separate lists not to imply distinct Electorates.

As to preparation of future rolls.

affixed therewith a notice according to the form numbered 1 in the Schedule hereto marked A which said list and notice shall be kept so affixed for the period of six weeks. And every qualified person whose name shall not be on such list or who shall be entitled to have his name inserted on the Council roll in respect of some qualification other than or in addition to that already appearing may at any time before the expiration of the said six weeks claim to have his name so inserted by giving or transmitting by post to the said Clerk notice thereof in writing according to the form numbered 2 in the said Schedule A accompanied by a declaration in the form thereto annexed verifying the qualification stated in the claim which declaration shall be made and signed before a Justice of the Peace. And upon the expiration of such period of six weeks the said Clerk shall forthwith prepare a list of such claims according to the form numbered 3 in the said Schedule A and shall cause copies thereof together with the first named list and together with a notice in the form numbered 4 in the said Schedule A to be affixed to the said Court and other public places as aforesaid during the eighth and three following weeks. And any person named in either of such lists objecting to any other person as not entitled to be on the Council roll shall before the expiration of the four last mentioned weeks give or transmit by post to the said clerk and to the person objected to at his address as inserted in the list wherein the name of the person so objected to appears notice thereof in writing according to the form numbered 5 in the said Schedule A. And the said clerk shall prepare a list of such objections in the form numbered 6 in the said Schedule and shall cause copies thereof to be affixed to the said Court House and other public places during the fourteen days then next following. And the said clerk shall furnish copies of the said several lists or of any claims or objections to any person requiring the same on payment of a reasonable price for such copies and shall at all reasonable times permit qualified electors to peruse in his presence any original claims or objections without payment of any fee. Provided that no person claiming in manner mentioned in this Act to have his name inserted on any District list shall be bound to give proof of such claim at any Revision Court unless duly objected to under the provisions of this Act or unless he be specially called upon by the Court to give such proof in which case reasonable time shall be allowed him in that behalf.

Council roll first prepared to be used at first election.

14. The Council roll to be prepared pursuant to clause twelve of this Act shall be the roll of electors at the first election and every Council roll to be prepared pursuant to clause thirteen of this Act shall be the roll of electors at each triennial election next following the completion

completion thereof Provided that if at the time of any election such roll shall not have been regularly made out or shall not have been perfected the preceding roll shall wholly or in part as the case may require be used as the roll for such election.

If new roll imperfect old roll used *pro tanto*.

5 15. For the election of Members to the Legislative Council the whole Colony shall form one Electorate.

The Colony to form one Electorate.

16. The election of such Members shall be by quotas and comparative majorities that is to say—Every candidate who shall receive a full quota of votes shall be declared to be duly elected and if a sufficient number of Members be not so returned the complement shall be made up by majorities as hereinafter provided.

Elections to be by quotas and comparative majorities.

17. The Governor shall within one month after the completion of the first Council roll under this Act and the President of the Council or if that office be vacant the Governor shall within the like time after the expiration of three years from the day of the first election and within the like period after the expiration of three years from the day of each succeeding election issue a writ to the Registrar General stating the number of Members to be elected and requiring him forthwith to invite a nomination of candidates for such election to be made to him within a period of time to be therein fixed and further requiring him if the candidates nominated shall exceed the required number of Members to cause an election to be held for the return of such Members at the several polling places established under the provisions of the Electoral Act on a further day to be named in the said writ.

The Governor to fix the day of election in each third year.

18. Before the said President or the Governor as the case may be shall issue the second or any subsequent writ of election under this Act he shall ascertain the number if any of existing Members whose retirement is required under the fifth section of this Act and shall cause to be published in the *Gazette* the names of such Members being those who are lowest on the list of the required number And such Members shall vacate their seats on the notification in the *Gazette* of the return of the Members elected in their stead.

Names of Members retiring by rotation to be published.

19. Upon receipt of the said writ the Registrar General shall notify the same in the *Gazette* for general information and shall invite the nomination of candidates for election according to the provisions of this Act setting forth the requirements thereof in regard to such nomination And at any time after the issue of the said writ and within the time

Mode of nominating and declaring candidates.

time thereby limited any person qualified to be elected a Member of the Legislative Council or any qualified elector may with his consent signified in writing transmit to the Registrar General a requisition signed by not less than twelve qualified electors nominating him as a candidate for election and the names and addresses of all candidates shall be inserted by the Registrar General in the order of the receipt of such requisitions respectively in a list of candidates which he shall cause to be published from time to time when received in each *Gazette* for general information on the ordinary days of publication thereof and in a complete form in the first *Gazette* published after the expiration of the time limited for such nominations by the said writ. 5

If candidates do not exceed the number to be elected the whole to be declared duly elected.

20. If the candidates who shall be duly nominated in manner aforesaid within the time limited for that purpose shall not exceed the number of members to be elected the Registrar General shall on the day following the expiration of that time return to the Governor or to the President of the Council as the case may be the names of the candidates so nominated by certifying the same under his hand in a list indorsed upon the said writ and the said Governor or President shall cause such list to be published in the *Gazette* and the candidates therein named to be declared duly elected Members of the Legislative Council in the order of their notification as candidates. 15

If candidates exceed required number of Members Registrar to notify election in *Gazette*.

21. If the candidates shall exceed the number to be elected the Registrar General shall cause a list of such candidates to be published in the *Gazette* once at least in every week which shall elapse before the day appointed in the said writ for the general election and shall together therewith publish a notice naming the said day of election and specifying the several polling places in each District (which polling places shall be the same as appointed for elections to the Legislative Assembly) at which the electors are required to attend and calling upon all Returning Officers and other persons upon whom any duties are imposed by the Electoral Act in regard to elections thereunder to fulfil the like duties in the election appointed to take place under this Act with such modifications and additions as are hereby directed. 25

Returning Officer to preside and appoint deputies &c.

22. Each Returning Officer shall preside at one polling place and shall appoint Presiding Officers at other polling places in the Assembly District for which he was appointed and the requisite Poll Clerks as in the case of elections for the Assembly and the course of proceeding shall be the same as in such elections except so far as altered by this Act. 35

23. Each candidate shall be entitled to nominate one person at <sup>Mode of appointing Scrutineers.</sup> each polling place to hold his proxy in regard to the office of Scrutineer which nomination shall be by writing signed by the candidate and delivered or transmitted to the Presiding Officer before the election. And in <sup>5</sup> case the holders of proxies of the several candidates present at any polling place at the opening of the poll shall not exceed four they shall themselves be entitled to act as Scrutineers. But if they exceed that number then any persons not exceeding four at each polling place shall be entitled to act as Scrutineers who shall be appointed respectively under the authority <sup>10</sup> of not less than one-fourth in number (rejecting fractions) of the candidates there represented by such proxies as aforesaid. And in making such appointment any person holding a proxy may exercise the same either in his own favour or in favour of any other person but no proxy from any candidate shall be exercised more than once or contribute towards the <sup>15</sup> appointment of more than one Scrutineer.

24. A convenient voting room shall be set apart for the preparation <sup>Voting room to be provided.</sup> of voting papers in which one or more Poll Clerks shall be in attendance for the purpose of assisting therein and in which such number of electors as can be readily accommodated may be admitted during the actual <sup>20</sup> preparation of their votes but at no other time and no other persons shall be admitted except the Returning or Presiding Officer and such Scrutineers as may desire to attend.

25. Voting papers shall be prepared by the Registrar General in <sup>Voting papers to be delivered to each voter on making declaration of identity &c.</sup> the form contained in the Schedule B to this Act which shall be <sup>25</sup> transmitted by him to the several Returning Officers and other Presiding Officers in such numbers as they shall be likely to require for the supply of voters at their respective polling places and who shall distribute them to the electors at such time and such manner as may be deemed convenient.

26. Each elector upon giving his vote shall bring with him a <sup>Mode of preparing voting paper.</sup> <sup>30</sup> voting paper in the form aforesaid with the names of the candidates for whom he desires to record his vote entered thereon in the order of his preference and signed by him before his vote shall be received and his name and number shall be entered on the voting paper by the Presiding Officer or Poll Clerk if not already noted thereon and the elector shall make the <sup>35</sup> declaration thereon before the Presiding Officer who shall attest the same with his initials or a stamp.

27. The Returning Officers Presiding Officers Poll Clerks and <sup>Declaration by Officers and Scrutineers.</sup> <sup>Scrutineers</sup> before entering upon their duties under this Act shall respectively make and subscribe the declarations contained in the

Schedules hereto annexed that is to say every Returning Officer Presiding Officer and Poll Clerk the declaration in the Schedule marked C which shall be made before a Justice and every Scrutineer the declaration in the Schedule marked D which shall be made before the Presiding Officer.

5

Electors to vote in the district in which they reside.

28. Every elector shall vote at some polling place in the district wherein he resides.

Voting papers to be transmitted to Registrar General.

29. At the close of the poll every Returning Officer and every other Presiding Officer shall cause to be made a list of all the voting papers taken by him distinguishing them by reference to each voter's number on the roll He shall then seal up such voting papers in the presence of a Polling Clerk and of such of the Scrutineers as shall choose to attend and shall with all convenient speed transmit the same together with the said list (which shall be signed by him and countersigned by a Poll Clerk) to the Registrar General.

15

*twenty eight*  
Registrar General after <sup>^</sup> days to proceed to examine voting papers and ascertain the elections.

30. An interval of twenty-eight days after the day of election shall be allowed for transmission of the voting papers to the Registrar General And no voting papers thereafter received shall be counted in the election and upon the twenty-ninth day or sooner if the voting papers from all the polling places shall have been received the Registrar General shall open and examine all the voting papers so received by him and shall with the assistance of as many clerks as shall be necessary ascertain and declare therefrom in manner hereinafter directed the candidates who have been elected and before entering upon such examination the said Registrar General and every clerk to be employed in assisting him therein shall make and subscribe a declaration in the form of the Schedule hereto marked E And the said declaration shall be made before any Justice and shall be forwarded by such Justice to the Colonial Secretary to be filed of record.

25

Rules for conducting examination of votes.

31. The voting papers shall be examined and the elections ascertained therefrom as follows viz. :—

- (1.) The whole number of votes shall be ascertained and such number divided by that of the Members to be elected for the purpose of ascertaining the quota.
- (2.) The number of primary votes entered on all the voting papers for the respective candidates shall be ascertained and a list of the candidates prepared placing them in the order of their majorities in reference to such primary votes and stating the number received by each.

40

(3.)

- (3.) If any of the candidates shall have received primary votes in excess of the quota so many of the voting papers only which contain the same shall be allotted to each such candidate as will make up the quota and his name shall be cancelled on the remainder of such voting papers.
- 5
- (4.) Each remaining voting paper on which the first name has been cancelled under rule three shall be allotted to the candidate named thereon to whom the contingent vote marked two has been given unless or until such last mentioned candidate shall also have obtained a quota of votes in which case his name shall also be cancelled on such voting paper which shall then be allotted to the candidate named thereon to whom the contingent vote marked three has been given and so on successively until the vote has been received by some candidate whose quota is not otherwise completed or until all the contingent votes marked thereon shall be exhausted.
- 10
- 15
- (5.) The following rule shall be adopted in the selection of the voting papers retained for the quota of any candidate namely those voting papers shall first be taken which contain one candidate only and next in succession those which contain the fewest names of candidates and in the event of the numbers being equal on any two or more voting papers then they shall be taken in the order of the voter's number on the Council roll beginning with the lowest number.
- 20
- 25
- (6.) When after appropriating all surplus votes to the candidates entitled thereto under the above rules it shall be found that no quota can thereby be completed in favour of any further candidate then if the full number required to complete the return of Members to be then elected shall not have obtained quotas the examiners shall sort and arrange all the voting papers not used in the quotas already completed and shall allot them to such remaining candidates as shall respectively stand highest on such voting paper and so many of such candidates as shall be sufficient to make up the required number of Members shall be returned as shall be found to have obtained the greater number of votes. And in case of an equality of votes between competing candidates the candidate highest on the list of candidates published in the *Gazette* shall be returned.
- 30
- 35
- Rule for selecting voting papers to make up the quota.
- After applying all attainable quotas election to be completed by majorities.

Voting papers to be sealed up and preserved as evidence.

32. So soon as the voting papers applicable to the election of any candidate shall have been ascertained they shall be set apart and sealed up in a separate packet by the Registrar General and at the close of the examination the votes ultimately appropriated to each candidate whether sufficient for his election or not shall be in like manner set apart and sealed up in a separate packet. And such packets shall be endorsed with the names of the respective candidates and shall be retained in the office of the Registrar General until the close of the first Session of Parliament and shall then be transmitted to the Clerk of the Legislative Council. 5

Registrar to make return of elected Members.

33. At the close of the examination the Registrar General shall after the first election transmit to the Governor and after any subsequent election to the President of the Council or the Governor as the case may be a return certified under his hand indorsed upon the writ of election received by him of the candidates ascertained to have been elected in manner aforesaid and shall place their names in order of priority according to the votes received by them that is to say—As regards the Members elected by full quotas according to the number of primary votes received by them as appearing on the list prepared under rule two aforesaid and as regards the Members elected by comparative majorities in the order of such majorities with regard to the whole number of their votes whether primary or contingent. And in case of an equal number of votes in any case the priority shall be given to the candidates highest on the list published in the *Gazette*. 10 15 20

If election of any Member invalidated Registrar General to return the candidate next in order on the poll.

34. If the election of any candidate returned by the Registrar General shall by the decision of a Committee of Elections and Qualifications be declared void for bribery or otherwise the Registrar General shall upon such decision being notified to him by the Clerk of the Council make a supplementary return of another candidate being the next in order of majority of votes to the lowest on the previous list of elected Members to supply the place of the candidate whose election has been invalidated and such return shall be transmitted to the Governor or President of the Council respectively as in the case of the former return at the same election. 25 30

If candidates lose votes by rejection on scrutiny the benefit of surplus votes to be retained in adjusting their position on the poll.

35. In case any of the votes retained under the Regulations aforesaid to make up the quota of a candidate whose votes have exceeded the quota shall be rejected upon any scrutiny before an Election Committee no reduction in the number of his votes thus occasioned shall be computed to his prejudice until the votes so rejected shall exceed the number of voting papers which shall have been withdrawn from him as superfluous and then only to the extent of such excess. Provided nevertheless that nothing 35 40

nothing herein shall prejudice the election of any other candidate whose quota shall have been aided by the transfer of any such apparently superfluous votes if in themselves valid.

36. The several enactments of the Electoral Act of 1858 which Certain provisions of the Electoral Act of 1858 adopted so far as applicable.  
 5 relate to the appointment and duties of Presiding Officers—to the course  
 of proceeding before and at and after elections—to the not questioning or  
 avoiding of elections for defects—to the remedy for informalities—to  
 bribery and its consequences—to any misconduct of Returning and other  
 Officers—to the Committee of Elections and Qualifications and petitions  
 10 against returns—and all other the enactments of the said Act—so far as  
 any such enactments as aforesaid are or can be made applicable to the  
 purposes of this Act and so far as the same are not repealed or varied  
 hereby—shall apply to and be deemed to be hereby again enacted for the  
 purposes of this Act and be acted upon accordingly Provided that the  
 15 said sections and other enactments so far as they apply to the Legislative  
 Assembly or to the Speaker thereof shall for the purposes of this Act  
 apply respectively to the Legislative Council and to the President And  
 so far as they apply to the Assembly electoral rolls shall for the purposes  
 of this Act apply respectively to Council rolls.

20 37. The Legislative Council shall at its first meeting and before President.  
 proceeding to the despatch of business elect one Member of the said  
 Council to be President thereof and as often as the place of the said  
 President shall become vacant by death resignation vote of the Council  
 or otherwise shall forthwith proceed to elect some other Member to be  
 25 President And the President shall preside at the meetings of the  
 Council except as provided by the Standing Rules and Orders and may  
 take part in any debate or discussion And the election of every such President to take part in debates.  
 President shall be forthwith notified to the Governor by the said Council.

38. The presence of at least ten Members of the Legislative Quorum &c.  
 30 Council exclusive of the President shall be necessary for despatch of  
 business And every question shall be decided by the majority of votes of  
 the Members present exclusive of the President Provided that in case of  
 equality of votes he shall decide the same by his casting vote.

39. No deficiency in the number of elected Members whether Election in special cases.  
 35 arising from defective election or from vacancies occurring during any  
 intervals of periodical election shall invalidate any proceeding of the  
 Council provided the number of Members required for despatch of business  
 be present thereat But if at any time during the first two years of such  
 interval the number of elected Members shall be less than fifteen a new  
 writ

writ shall issue for a special election to fill the vacancies and the same course of proceeding shall be adopted at such election as at any other election except that the Council roll for the preceding election shall be used thereat And after any such special election the next triennial period of election shall be computed from the date thereof and the times for 5 preparing the next and future Council roll and other incidents of and preparatory to future elections altered accordingly.

Resignation of seat.

40. Any Member of the Legislative Council may after the time allowed by law for petitions against his return by writing under his hand addressed to the President resign his seat and upon receipt of such resig- 10 nation by the President such seat shall become vacant Provided that if there be no President a like resignation addressed to the Governor shall have the like effect.

Grounds of vacating seats.

41. If any Member of the Legislative Council shall for two whole Sessions of Parliament without the permission of the Legislative Council 15 entered upon its Journals fail to give his attendance in the said Council his seat in the said Council shall thereby become vacant.

Grounds of incapacity.

42. Any person who shall take any oath or make any declaration of allegiance to any Foreign Prince or Power or become a subject or citizen of any Foreign State or a bankrupt or insolvent debtor under the 20 laws relating to bankrupts or insolvent debtors or a public defaulter or be attainted of treason or convicted of felony or any infamous crime shall be incapable of sitting in or being elected a Member of the Legislative Council.

Clerk to be styled "Clerk of the Parliaments."

43. The present and every future Clerk of the Legislative Council shall be styled "Clerk of the Parliaments." 25

Salaries of President Chairman and Officers of Legislative Council.

44. The salaries and allowances of the President and Chairman of the Legislative Council shall be at least equal in all respects to the salaries and allowances of the Speaker and Chairman of the Legislative Assembly respectively the salary and allowances of the Clerk of the Parliaments shall be at least equal in all respects to the salary and 30 allowances of the Clerk of the Legislative Assembly and the salaries and allowances of all other Officers already appointed or at any time hereafter to be appointed to offices in the Legislative Council Department shall be at least equal in all respects to those of the Officers at the time holding corresponding offices in the Department of the Legislative Assembly. 35

Powers of Legislative Council.

45. All the enactments of the Constitution Act relating to the Legislative Council as constituted thereunder except as repealed or varied hereby shall apply to the Legislative Council as constituted under this Act And the said Council shall except as herein otherwise enacted

possess

possess and may exercise all the powers vested in the Legislative Council by the said Constitution Act.

46. Every person who shall make a declaration wilfully false in regard to any of the matters wherein a declaration is required to be made under this Act shall be guilty of a misdemeanor and being thereof convicted shall be liable to the punishment imposed by law upon persons found guilty of perjury. False declaration made punishable.

47. No prosecution or other legal proceeding for any offence alleged to be committed or for the recovery of any penalty alleged to be incurred under this Act shall be commenced after the expiration of six months from the commission of such offence or the incurring of such penalty. Limitation of prosecutions.

48. It shall be lawful for the Governor with the advice aforesaid to make regulations for carrying into complete effect all the provisions of this Act in particulars not expressly provided for or intrusted to other authority by enactment. And all such regulations and details so far as they are not repugnant to or inconsistent with any provision of this Act shall when published in the *Gazette* have the force of law. And copies thereof shall be laid before both Houses of Parliament forthwith if then sitting and if not then within fourteen days next after the opening of the next Session. Regulations for matters in detail.

49. Whenever any matter or thing shall by this Act be directed to be done or to take place on a certain day and that day happen to be Sunday Good Friday Christmas Day or any public holiday such matter or thing may be done or take place on the next day not being any such as aforesaid. And all further changes of time rendered necessary by any such alteration may also lawfully be made. Postponement of things chancing to fall on Sundays or holidays.

50. Nothing herein contained shall be deemed or construed to abrogate or in any way interfere with the powers possessed by the Legislative Council as at present constituted until the same shall be dissolved under the authority conferred by the third section of this Act. Present Legislative Council to continue until writs for election be issued.

51. This Act shall be styled and may be cited as the "Legislative Council Act of 1862."

SCHEDULE A. [Section 13.]

No. 1.

*Notice to be given by Clerk of Petty Sessions upon renewing Electoral Lists in 1865 and triennially thereafter.*

EVERY person entitled to vote in the election of Members for the Legislative Council in respect of any qualification within the Police District of \_\_\_\_\_ and whose name is not inserted in the accompanying list Also every person named thereon and being so entitled the place of whose residence or nature of whose qualification has been altered since the making up of the last Roll of Electors is invited to give or transmit to me by post notice in writing of any such claim or alteration respectively according to or to the effect of one of the forms of notice herewith.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 186 .  
(Signed)

*Clerk of Petty Sessions.*

No. 2.

*To the Clerk of Petty Sessions at*

I hereby give you notice that I claim to have my name inserted in the List of Electors for the Legislative Council by virtue of the following qualification :—

*(Insert qualification.)*

And I solemnly and sincerely declare that I hold the above qualification and that the particulars thereof are truly stated.

(Signed)

Elector.

Declared before me this \_\_\_\_\_ day of \_\_\_\_\_ 18 .  
J. P.

or

that in consequence of a change in my [*place of residence*] or [*qualification as an elector*] since the preparation of the last Electoral Council Roll the following alteration is required therein :—

*(State nature of alteration.)*

And I solemnly and sincerely declare that I hold the above qualification and that the particulars thereof are truly stated.

(Signed)

Elector.

Declared before me this \_\_\_\_\_ day of \_\_\_\_\_ 18 .  
J. P.

No. 3.

*List of persons claiming to be published by Clerk of Petty Sessions.*

The following persons have claimed to have their names inserted on the list of Council electors prepared within the District of \_\_\_\_\_

Christian and Surname.	Residence.	Qualification claimed.	Where situate or arising.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 186 .  
(Signed)

*Clerk of Petty Sessions.*

No. 4.

No. 4.

*Notice by Clerk of Petty Sessions inviting Objections.*

Every qualified Elector at the Election of Members of the Legislative Council within the Police District of \_\_\_\_\_ objecting to the retaining of the name of any other person on the accompanying Lists either on account of any original error therein or any change of circumstances is invited to give or transmit to me by post notice in writing of any such objection according to or to the effect of the form of notice herewith.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 186 .  
(Signed)

*Clerk of Petty Sessions.*

No. 5.

*Form of Notice of Objection.*

To the Clerk of Petty Sessions at \_\_\_\_\_

I hereby give you notice that I object to the retaining on the List of Electors for the Legislative Council (or the list of persons claiming to be upon the Council Roll as the case may be) of the name of \_\_\_\_\_ now appearing thereon number \_\_\_\_\_ for the following reason:—

(State ground of objection.)

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 186 .  
(Signature in full)

J.S.

(Place of abode.)

No. 6.

*List of persons objected to, to be published by Clerk of Petty Sessions.*

The following persons have been objected to as not being entitled to have their names on the list of Council electors prepared within the District of \_\_\_\_\_

Christian and Surname.	Residence.	Qualification claimed.	Where situate or arising.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 186 .  
(Signed)

*Clerk of Petty Sessions.*

SCHEDULE B. [Section 25.]

*Voting Paper.*

Election for \_\_\_\_\_ Members of Legislative Council.

Polling Place.....

Date of Election .....

Name of Elector .....

No. on Council Roll .....

*Declaration to be made by Elector.*

I hereby solemnly declare that I am the elector named and numbered on the roll as above, and that I have not before voted at this election in virtue of the qualification entered on the roll under the said number.

Attested by \_\_\_\_\_ (Signed)

Presiding Officer.

Electors.

I the said Elector hereby vote for the Candidates whose names are hereunder written in the order of preference set against their names respectively,—

Order of Preference.	Candidates voted for.	Order of Preference.	Candidates voted for.
1	A. B.	7	N. O.
2	C. D.	8	P. Q.
3	E. F.	9	R. S.
4	G. H.	10	T. V.
5	I. K.	11	W. X.
6	L. M.	12	Y. Z.
		&c.	

(Signed) \_\_\_\_\_  
Elector.

#### SCHEDULE C. [Section 27.]

*Declaration to be made by Returning Officer (or other Officer under this Act.)*

I do hereby declare that I accept the office of Returning Officer (or other office as the case may be) for the election of Members of the Legislative Council and I promise and declare that I will faithfully perform the duties of my office to the best of my understanding and ability and that I will not attempt by any word or action directly or indirectly to influence the vote of any elector.

Declared before me this \_\_\_\_\_ day of \_\_\_\_\_ 186 .  
(Signed) A. B.  
*Justice of the Peace.*

#### SCHEDULE D. [Section 27.]

*Declaration to be made by Scrutineer.*

I a Scrutineer duly appointed to act at the polling place situate at \_\_\_\_\_ in the election for Members of the Legislative Council hereby solemnly declare that I will faithfully assist at such election and that I will not attempt by any word or action directly or indirectly to influence the vote of any elector.

Declared before me this \_\_\_\_\_ day of \_\_\_\_\_ 186 .  
C. D.  
*Returning Officer or Presiding Officer.*

#### SCHEDULE E. [Section 30.]

*Declaration to be made by Registrar General and Examining Clerks.*

I do solemnly declare that I will to the best of my skill and ability and without favour or affection to any or either of the candidates perform the duty of examining voting papers and ascertaining and declaring elections to the Legislative Council according to the provisions of the Legislative Council Act 1862.

(Signed) A. B.

## LEGISLATIVE COUNCIL BILL.

*Draft amended Clauses founded on Resolutions of Select Committee.**(Printed for consideration and revision of the Committee.)*

1. In the construction of this Act the following terms in inverted **Interpretation.**  
commas shall bear the meanings set against them respectively—

5 “ Constitution Act ”—Constitution Act assented to by Her Majesty under the Imperial Act eighteenth and nineteenth Victoria cap. 54.

“ Electoral Act ”—The Electoral Act of 1858 regulating elections for the Assembly (22 Vic. No. 20.)

10 “ Assembly Districts ”—Electoral Districts for the return of Members of the Legislative Assembly under the Electoral Act in force for the time being.

“ President ”—The President of the Legislative Council for the time being.

15 “ Council Roll ”—The General Roll of Electors qualified to vote for the election of Members of the Legislative Council under this Act.

“ District List ”—The List made up within each Assembly District of electors qualified within such District to vote for the election of Members of the Legislative Council.

20 “ Quota ”—The number (rejecting fractions) resulting from a division of the whole number of votes at any election by that of the Members to be then elected.

“ Primary votes ”—The votes marked No. 1 on the voting papers being those recorded for the candidates of first preference.

25 “ Contingent votes ”—The votes marked No. 2 and upwards which are to take effect only in the event of the primary or previous vote not being required to make up the quota for the candidate of earlier preference.

2. So much of the first section of the Constitution Act as relates **Repeal of provisions concerning present Council.**  
30 to the manner thereafter prescribed of constituting and composing the Legislative Council and also the second third seventh and eighth sections of the same Act are hereby repealed.

Legislative Council  
to be summoned as  
hereby constituted.

3. It shall be lawful for the Governor at such time not being later than six months after the day on which this Act shall come into operation in Her Majesty's name by instrument under the Great Seal of the Colony to dissolve the present Legislative Council on and from a day therein named and summon and call together a Legislative Council in and for the Colony which shall be constituted and composed as hereinafter prescribed.

Thirty Members to  
be elected.

4. Thirty Members shall be elected to serve in the Legislative Council in manner hereinafter directed.

Triennial election of  
ten Members.

5. At the expiration of every three years there shall be an election of at least ten Members that is to say all vacancies which may have occurred since the previous election shall be then filled up and if they shall not amount to ten then so many of the existing Members shall retire as will make the vacancies amount to that number—the Members so to retire being always those lowest on the list of priority to be prepared as herein directed.

Additional Members  
qualified by special  
public services may  
be appointed by the  
Crown (not exceed-  
ing one third of  
elected Members.)

6. In addition to the elective Members it shall be lawful for Her Majesty by instrument under the sign manual to authorize the Governor in Her Majesty's name by instrument under the Great Seal of the Colony to summon to the Legislative Council such other persons as the said Governor shall see fit not being at any time of greater number than ten and being of some or one of the following descriptions viz :—

- (1.) Any retired Judge of the Supreme Court.
- (2.) Any person who has been for two years a Member of the Executive Council.
- (3.) Any person who has held the office of President of the Legislative Council or of Speaker of the Legislative Assembly or of Chairman of Committees in either House of Parliament.
- (4.) Any person who has served for seven years as an elected Member of the Legislature.

Who shall hold their  
seats for life.

And every person summoned as last aforesaid shall retain his seat for life unless the same be vacated by resignation disqualification or otherwise pursuant to the provisions of the Constitution Act in regard to Members appointed by virtue thereof.

Governor may  
appoint two respon-  
sible Ministers.

7. If at any time there shall not be in the Legislative Council two or more Members of the Executive Council it shall be lawful for the Governor with the advice of the Executive Council by instrument under the Great Seal of the Colony to appoint as additional Members of the Legislative Council any of the Members of the Executive Council not being Members of the Legislative Assembly Provided that not more than two Members shall hold seats in the Legislative Council by virtue of such appointment at any one time and that every Member so appointed shall vacate his seat on his ceasing to be a Member of the Executive Council.

8. Every male subject of Her Majesty of the full age of <sup>Qualification of</sup> twenty-one years being natural born or who being a naturalized subject <sup>electors.</sup> shall reside and have resided in the Colony for three years shall if qualified as hereinafter prescribed and registered on the Council Roll  
 5 and not disqualified or incapacitated for some cause hereinafter specified be entitled to vote at any election for Members of the Legislative Council and shall have one vote for every Assembly District in respect of which he shall be so qualified and registered but not exceeding five votes in any case that is to say :—every such person who at the time of making out the  
 10 Electoral Roll and for six months previously shall hold and have held land in possession for an estate either of freehold or leasehold for an unexpired term of not less than twenty-one years of the clear value above all charges and outgoings of two hundred pounds or of like clear annual value of twenty pounds or a leasehold estate in possession for a term of less than twenty-one  
 15 years of the like clear annual value of fifty pounds or who shall occupy and have occupied for a like period of six months any house warehouse counting-house office shop room or building either separately or jointly with any land occupied therewith at a yearly rental or joint rentals of fifty pounds such occupation being either continuously of the same premises  
 20 or successively of any two or more respectively of the whole required value —or who shall hold and have held for a like period of six months a Crown lease or license to depasture lands at a rental to the Crown exclusive of assessment of not less than ten pounds—or who shall be a Graduate of any University in the British Dominions a Barrister or Solicitor of the  
 25 Supreme Court a legally qualified Medical Practitioner an officiating Minister of Religion or an Officer or retired Officer of Her Majesty's Land or Sea Forces not being on actual service at the time of the election.

9. Every person nevertheless shall be disqualified who at the  
 30 time either of making out the Council roll or of the election shall be of unsound mind or in the receipt of aid from any charitable institution or who has been attainted or convicted of treason felony or other infamous offence in any part of Her Majesty's Dominions unless he have received a free or conditional pardon for such offence or have undergone the  
 35 sentence passed on him.

10. Every person shall be incapable of voting who at the time either of making out such roll or of such election shall be in the naval or military service on full pay not being in any militia or volunteer corps only And no Inspector General or Metropolitan Superintendent of Police or paid  
 40 Police Magistrate or Superintendent of Police nor any Clerk of Petty Sessions

Sessions nor any Clerk Chief or other constable or person belonging to the Police or Constabulary Force shall during the time he shall continue in any such office be capable of voting for the election of a Member to serve in the Legislative Council nor shall by word message writing or in any other manner endeavour to persuade any elector to give or dissuade any elector from giving his vote for any candidate. And every person incapacitated as last aforesaid who shall offend herein shall forfeit the sum of *one hundred* pounds to be recovered by any person who shall sue for the same by action of debt to be commenced within six months after the commission of the offence. 10

Qualification of  
elective Members.

11. Every person being on the Council roll and of the full age of thirty years shall be qualified to be elected a Member of the Legislative Council. Provided that if any Member of the Legislative Assembly shall with his consent as hereinafter provided be elected a Member of the Legislative Council his seat in the Assembly shall become vacant on the notification of such election in the *Gazette*. 15

Mode of preparation  
of first Council roll.

12. With all convenient speed after this Act shall come into operation by proclamation of the Royal Assent the Governor shall fix a time within which the Courts of Petty Sessions of the several Police Districts shall appoint collectors for the purpose of making out alphabetical lists of all persons qualified to vote in the election of Members of the Legislative Council in respect of any qualification within such District and such collectors and the Clerks and Justices of Petty Sessions of each Police District and the Returning Officer of each Assembly District shall possess and fulfil in regard to the making amending completing and revising of the said lists the same powers jurisdiction and duties respectively as they are entitled and required to exercise and fulfil in regard to the lists of electors for the Legislative Assembly under the said Electoral Act of 1858 except with regard to the periods of time therein appointed for the notifying of claims and objections and of holding Courts which periods shall in relation to proceedings under this Act be specially appointed by the Governor and notified in the *Gazette*. Provided however that the framing of separate Council lists for each Assembly District shall not constitute any distinction of Electorates in regard to choice of Members but shall apply only to the more convenient construction of lists and polling of votes and all the lists of electors registered in each District shall when completed be transmitted by the Returning Officer of each Assembly District to the Registrar General in Sydney who shall with as little delay as possible frame therefrom a general Council roll for the whole Colony wherein all the electors shall be named 40

Separate lists not to  
imply distinct Electorates.

in

in alphabetical order and numbered in regular arithmetical progression And if the name of the same elector shall be entered in more than one District list his name shall first be placed and numbered on the Council roll in respect of some qualification held personally or in the District wherein he shall reside and then in respect of his qualifications in other Districts in consecutive numbers not exceeding five in all And the Council roll when so prepared shall be kept by the said Registrar General in his office and open to inspection by any person on payment of a fee of one shilling And the Registrar General shall cause copies of the said Council roll to be printed and sold at a reasonable price and shall also cause one of such printed copies to be transmitted to the Clerk of Petty Sessions in each Police District which shall be kept in his office and open for inspection by any person on payment of the like fee of one shilling.

15 13. During the third year after the first election under this Act <sup>As to preparation of future rolls.</sup> and during the third year after each succeeding election a new Council roll shall be prepared in the same manner as provided in the last preceding clause except as hereinafter mentioned that is to say instead of the list for the construction of such roll being prepared 20 in each Police District by paid collectors as in the case of the first Council roll the same shall be prepared by revision of the previous roll in manner following namely The Clerk of Petty Sessions of each Police District shall on or before some day to be fixed by the Governor not being less than six months before the expiration of the 25 third year from the last preceding election cause copies of so much of the existing Council roll as relates to such Police Districts respectively to be submitted to a Court of Petty Sessions convened by him for the provisional revision of the said list And the said Court shall direct the omission of the names of any electors who shall to their knowledge 30 be dead and the said Clerk shall cause the list so provisionally revised to be printed and transmitted and affixed to the Court House or other public place in like manner as directed in the Electoral Act with regard to lists prepared by collectors and each such Clerk of Petty Sessions shall also at the same time cause to be affixed to the same Court House or 35 other public place a notice in the form of the Schedule hereto marked A And every person whose name shall not be placed upon the existing Council roll or District list but entitled to have his name inserted thereon either in consequence of any omission therein or in consequence of any qualification acquired since the preparation thereof or any other elector of 40 the District may for him on or before the expiration of six weeks from the

the

the day of affixing the said notice give or transmit by post notice in writing thereof to the Clerk of Petty Sessions which notice shall be accompanied by a declaration verifying the qualification thereby claimed according to the form in the said Schedule and which declaration shall be signed and made before a Justice And every person named 5 in any Council roll or District list objecting to any person as not entitled to have or continue his name thereon shall on or before the expiration of eight weeks from the same day give or transmit by post to the Clerk of Petty Sessions and to the person objected to at his address as inserted in the Council roll or District list notice thereof in writing 10 according to the form of the Schedule marked E in the said Electoral Act And such Clerk shall include the names of all persons so claiming to be inserted in a paper according to the Schedule in the said Electoral Act marked F and shall cause copies of such claims to be fixed on the Court House or other public place during the fourteen days succeeding 15 the sixth week after the affixing of the said notice And shall also cause copies of such objections to be affixed on the said Court House or other public place during the fourteen days succeeding the eighth week after the affixing of the said first notice And shall also keep copies of such objections respectively to be perused by any person without payment 20 of any fee at all reasonable hours during the fourteen days (Sundays excepted) succeeding the said eighth week And shall deliver a copy of either of such papers to any person requiring the same on payment of a reasonable price for each copy Provided that no person claiming in manner mentioned in this Act to have his name inserted on the Council 25 roll of any District list shall be bound to give proof of such claim at any Revision Court unless duly objected to under the provisions of this Act or unless he be specially called upon by the Court to give such proof in which case reasonable time shall be allowed him in that behalf.

14. The Council roll to be prepared pursuant to clause twelve 30 of this Act shall be the roll of electors at the first election and every Council roll to be prepared pursuant to clause thirteen of this Act shall be the roll of electors at each triennial election next following the completion thereof Provided that if at the time of any election such roll shall not have been regularly made out or shall not have been perfected 35 the preceding roll shall wholly or in part as the case may require be used as the roll for such election.

The Colony to form  
one Electorate.

15. For the election of Members to the Legislative Council the whole Colony shall form one Electorate.

16. The election of such Members shall be by quotas and comparative majorities that is to say—Every candidate who shall receive a full quota of votes shall be declared to be duly elected and if a sufficient number of Members be not so returned the complement shall be made up **5** by majorities as hereinafter provided.

Elections to be by quotas and comparative majorities.

17. The Governor shall within one month after the completion of the first Council roll under this Act and the President of the Council or if that office be vacant the Governor shall within the like time after the expiration of three years from the day of the first election and within the **10** like period after the expiration of three years from the day of each succeeding election issue a writ to the Registrar General stating the number of Members to be elected and requiring him forthwith to invite a nomination of candidates for such election to be made to him within a period of time to be therein fixed and further requiring him if the **15** candidates nominated shall exceed the required number of Members to cause an election to be held for the return of such Members at the several polling places established under the provisions of the Electoral Act on a further day to be named in the said writ.

The Governor to fix the day of election in each third year.

18. Before the said President or the Governor as the case may be **20** shall issue the second or any subsequent writ of election under this Act he shall ascertain the number if any of existing Members whose retirement is required under the fifth section of this Act and shall cause to be published in the *Gazette* the names of such Members being those who are lowest on the list of the required number And such Members shall **25** vacate their seats on the notification in the *Gazette* of the return of the Members elected in their stead.

Names of Members retiring by rotation to be published.

19. Upon receipt of the said writ the Registrar General shall notify the same in the *Gazette* for general information and shall invite the nomination of candidates for election according to the provisions of this **30** Act setting forth the requirements thereof in regard to such nomination And at any time after the issue of the said writ and within the time thereby limited any person qualified to be elected a Member of the Legislative Council or any qualified elector may with his consent signified in writing transmit to the Registrar General a requisition signed by not **35** less than twelve qualified electors nominating him as a candidate for election and the names and addresses of all candidates shall be inserted by the Registrar General in the order of the receipt of such requisitions respectively in a list of candidates which he shall cause to be published from time to time when received in each *Gazette* for general information on the ordinary days of publication

Mode of nominating and declaring candidates.

publication thereof and in a complete form in the first *Gazette* published after the expiration of the time limited for such nominations by the said writ.

If candidates do not exceed the number to be elected the whole to be declared duly elected.

20. If the candidates who shall be duly nominated in manner aforesaid within the time limited for that purpose shall not exceed the number of members to be elected the Registrar General shall on the day following the expiration of that time return to the Governor or to the President of the Council as the case may be the names of the candidates so nominated by certifying the same under his hand in a list indorsed upon the said writ and the said Governor or President shall cause such list to be published in the *Gazette* and the candidates therein named to be declared duly elected Members of the Legislative Council in the order of their notification as candidates. 5 10

If candidates exceed required number of Members Registrar to notify election in *Gazette*.

21. If the candidates shall exceed the number to be elected the Registrar General shall cause a list of such candidates to be published in the *Gazette* once at least in every week which shall elapse before the day appointed in the said writ for the general election and shall together therewith publish a notice naming the said day of election and specifying the several polling places in each District (which polling places shall be the same as appointed for elections to the Legislative Assembly) at which the electors are required to attend and calling upon all Returning Officers and other persons upon whom any duties are imposed by the Electoral Act in regard to elections thereunder to fulfil the like duties in the election appointed to take place under this Act with such modifications and additions as are hereby directed. 15 20 25

Returning Officer to preside and appoint deputies &c.

22. Each Returning Officer shall preside at one polling place and shall appoint Presiding Officers at other polling places in the Assembly District for which he was appointed and the requisite Poll Clerks as in the case of elections for the Assembly and the course of proceeding shall be the same as in such elections except so far as altered by the following sections or otherwise by this Act. 30

Mode of appointing Scrutineers.

23. Each candidate shall be entitled to nominate one person at each polling place to hold his proxy in regard to the office of Scrutineer which nomination shall be by writing signed by the candidate and delivered or transmitted to the Presiding Officer before the election. And in case the holders of proxies of the several candidates present at any polling place at the opening of the poll shall not exceed four they shall themselves be entitled to act as Scrutineers. But if they exceed that number then any persons not exceeding four at each polling place shall be entitled to act as Scrutineers who shall be appointed respectively under the authority of not less than one-fourth in number (rejecting fractions) of the candidates

there

there represented by such proxies as aforesaid. And in making such appointment any person holding a proxy may exercise the same either in his own favour or of that of any other person but no proxy from any candidate shall be exercised more than once or contribute towards the  
5 appointment of more than one Scrutineer.

24. A convenient voting room shall be set apart for the preparation  
of voting papers in which one or more Poll Clerks shall be in attendance  
for the purpose of assisting therein and in which such number of electors  
as can be readily accommodated may be admitted during the actual  
10 preparation of their votes but at no other time and no other persons shall  
be admitted except the Returning or Presiding Officer and such Scruti-  
neers as may desire to attend. Voting room to be provided.

25. Voting papers shall be prepared by the Registrar General in  
the form contained in the Schedule B to this Act which shall be  
15 transmitted by him to the several Returning Officers and other Presiding  
Officers in such numbers as they shall be likely to require for the supply  
of voters at their respective polling places and who shall distribute them  
to the electors at such time and such manner as may be deemed convenient. Voting papers to be delivered to each voter on making declaration of identity &c.

26. Each elector upon giving his vote shall bring with him a  
20 voting paper in the form aforesaid with the names of the candidates for  
whom he desires to record his vote entered thereon in the order of his  
preference and signed by him before his vote shall be received his name  
and number shall be entered on the voting paper by the Presiding Officer  
or Poll Clerk if not already noted thereon and the elector shall make the  
25 declaration thereon before the Presiding Officer who shall attest the same  
with his initials or a stamp. Mode of preparing voting paper.

27. The declaration required by the Electoral Act to be made by  
Returning Officers Presiding Officers Poll Clerks and Scrutineers  
30 respectively before entering upon their duties under the said Act shall  
not apply to such officers respectively in regard to their duties under this  
Act. But they shall respectively make and subscribe before entering on  
their duties under this Act the declarations contained in the Schedules  
hereto annexed that is to say every Returning Officer Presiding Officer  
and Poll Clerk the declaration in the Schedule marked C which shall  
35 be made before a Justice and every Scrutineer the declaration  
in the Schedule marked D which shall be made before the Presiding  
Officer. Declaration by Officers and Scrutineers.

28. Every elector shall vote at some polling place in the district  
wherein he resides. Electors to vote in the district in which they reside.

Voting papers to be transmitted to Registrar General.

29. At the close of the poll every Returning Officer and every other Presiding Officer shall cause to be made a list of all the voting papers taken by him distinguishing them by reference to each voter's number on the roll. He shall then seal up such voting papers in the presence of a Polling Clerk and of such of the Scrutineers as shall choose to attend and shall with all convenient speed transmit the same together with the said list (which shall be signed by him and countersigned by a Poll Clerk) to the Registrar General.

Registrar General after days to proceed to examine voting papers and ascertain the elections.

30. An interval of twenty-eight days after the day of election shall be allowed for transmission of the voting papers to the Registrar General. And no voting papers thereafter received shall be counted in the election and upon the twenty-ninth day or sooner if the voting papers from all the polling places shall have been received the Registrar General shall open and examine all the voting papers so received by him and shall with the assistance of as many clerks as shall be necessary ascertain and declare therefrom in manner hereinafter directed the candidates who have been elected and before entering upon such examination the said Registrar General and every clerk to be employed in assisting him therein shall make and subscribe a declaration in the form of the Schedule hereto marked E. And the said declaration shall be made before any Justice and shall be forwarded by such Justice to the Colonial Secretary to be filed of record.

Rules for conducting examination of votes.

31. The voting papers shall be examined and the elections ascertained therefrom as follows viz. :—

- (1.) The whole number of votes shall be ascertained and such number divided by that of the Members to be elected for the purpose of ascertaining the quota.
- (2.) The number of primary votes entered on all the voting papers for the respective candidates shall be ascertained and a list of the candidates prepared placing them in the order of their majorities in reference to such primary votes and stating the number received by each.
- (3.) If any of the candidates shall have received primary votes in excess of the quota so many of the voting papers only which contain the same shall be allotted to each such candidate as will make up the quota and his name shall be cancelled on the remainder of such voting papers.
- (4.) Each remaining voting paper on which the first name has been cancelled under rule three shall be allotted to the candidate named thereon to whom the contingent vote marked

two has been given unless or until such last mentioned candidate shall also have obtained a quota of votes in which case his name shall also be cancelled on such voting paper which shall then be allotted to the candidate named thereon to whom the contingent vote marked three has been given and so on successively until the vote has been received by some candidate whose quota is not otherwise completed or until all the contingent votes marked thereon shall be exhausted.

5  
10  
15  
(5.) The following rule shall be adopted in the selection of the voting papers retained for the quota of any candidate namely those voting papers shall first be taken which contain one candidate only and next in succession those which contain the fewest names of candidates and in the event of the numbers being equal on any two or more voting papers then they shall be taken in the order of the voter's number on the Council roll beginning with the lowest number.

Rule for selecting voting papers to make up the quota.

20  
25  
30  
(6.) When after appropriating all surplus votes to the candidates entitled thereto under the above rules it shall be found that no quota can thereby be completed in favour of any further candidate then if the full number required to complete the return of Members to be then elected shall not have obtained quotas the examiners shall sort and arrange all the voting papers not used in the quotas already completed and shall allot them to such remaining candidates as shall respectively stand highest on such voting paper and so many of such candidates as shall be sufficient to make up the required number of Members shall be returned as shall be found to have obtained the greater number of votes And in case of an equality of votes between competing candidates the candidate highest on the list of candidates published in the *Gazette* shall be returned.

After applying all attainable quotas election to be completed by majorities.

32. So soon as the voting papers applicable to the election of any candidate shall have been ascertained they shall be set apart and sealed up in a separate packet by the Registrar General and at the close of the examination the votes ultimately appropriated to each candidate whether sufficient for his election or not shall be in like manner set apart and sealed up in a separate packet And such packets shall be endorsed with the names of the respective candidates and shall be retained in the office of the Registrar General until the close of the first Session of Parliament and shall then be transmitted to the Clerk of the Legislative Council.

Voting papers to be sealed up and preserved as evidence.

Registrar to make  
return of elected  
Members.

33. At the close of the examination the Registrar General shall after the first election transmit to the Governor and after any subsequent election to the President of the Council or the Governor as the case may be a return certified under his hand indorsed upon the writ of election received by him of the candidates ascertained to have been elected in manner aforesaid 5 and shall place their names in order of priority according to the votes received by them that is to say—As regards the Members elected by full quotas according to the number of primary votes received by them as appearing on the list prepared under rule two aforesaid and as regards the Members elected by comparative majorities in the order of such majorities 10 with regard to the whole number of their votes whether primary or contingent And in case of an equal number of votes in any case the priority shall be given to the candidates highest on the list published in the *Gazette*.

If election of any  
Member invalidated  
Registrar General to  
return the candidate  
next in order on the  
poll.

34. If the election of any candidate returned by the Registrar 15 General shall by the decision of a Committee of Elections and Qualifications be declared void for bribery or otherwise the Registrar General shall upon such decision being notified to him by the Clerk of the Council make a supplementary return of another candidate being the next in order of majority of votes to the lowest on the previous list of elected Members 20 to supply the place of the candidate whose election has been invalidated and such return shall be transmitted to the Governor or President of the Council respectively as in the case of the former return at the same election.

If candidates lose  
votes by rejection on  
scrutiny the benefit  
of surplus votes to  
be retained in ad-  
justing their position  
on the poll.

35. In case any of the votes retained under the Regulations a fore 25 said to make up the quota of a candidate whose votes have exceeded the quota shall be rejected upon any scrutiny before an Election Committee no reduction in the number of his votes thus occasioned shall be computed to his prejudice until the votes so rejected shall exceed the number of voting papers which shall have been withdrawn from him as superfluous 30 and then only to the extent of such excess Provided nevertheless that nothing herein shall prejudice the election of any other candidate whose quota shall have been aided by the transfer of any such apparently superfluous votes if in themselves valid.

Certain provisions of  
the Electoral Act of  
1858 adopted so far  
as applicable.

36. The several enactments of the Electoral Act of 1858 which 35 relate to the appointment and duties of Presiding Officers—to the course of proceeding before and at and after elections—to the not questioning or avoiding of elections for defects—to the remedy for informalities—to bribery and its consequences—to any misconduct of Returning and other Officers—to the Committee of Elections and Qualifications and petitions 40 against returns—and all other the enactments of the said Act—so far as

any

any such enactments as aforesaid are or can be made applicable to the purposes of this Act and so far as the same are not repealed or varied hereby—shall apply to and be deemed to be hereby again enacted for the purposes of this Act and be acted upon accordingly. Provided that the said sections and other enactments so far as they apply to the Legislative Assembly or to the Speaker thereof shall for the purposes of this Act apply respectively to the Legislative Council and to the President. And so far as they apply to the Assembly electoral rolls shall for the purposes of this Act apply respectively to Council rolls.

37. The Members of the Legislative Council shall upon their first assembling after their first election and every triennial election forthwith by vote elect one of their number to be President and shall upon any and every vacancy by the death resignation or removal of the President in like manner elect another of their number to be President. And the President shall preside at every meeting of the Legislative Council except as provided for by the Standing Rules and Orders of such Council.

38. The presence of at least one-third of the Members of the said Legislative Council exclusive of the President shall be necessary to constitute a quorum for the despatch of business and all questions which shall arise in the said Legislative Council shall be decided by a majority of votes of the Members present other than the President and when the votes shall be equal the President shall have the casting vote. Provided always that if the whole number of Members constituting the said Legislative Council shall not be exactly divisible by three the quorum of the said Legislative Council shall consist of such whole number as is next greater than one-third of the Members of the said Legislative Council.

39. Any Member of the Legislative Council may after the time allowed by law for petitions against his return by writing under his hand addressed to the President resign his seat and upon receipt of such resignation by the President such seat shall become vacant. Provided that if there be no President a like resignation addressed to the Governor shall have the like effect.

40. If any Member of the Legislative Council shall for two whole Sessions of Parliament without the permission of the Legislative Council entered upon its Journals fail to give his attendance in the said Council his seat in the said Council shall thereby become vacant.

41. Any person who shall take any oath or make any declaration of allegiance to any Foreign Prince or Power or become a subject or citizen of any Foreign State or a bankrupt or insolvent debtor under the laws

laws relating to bankrupts or insolvent debtors or a public defaulter or be attainted of treason or convicted of felony or any infamous crime shall be incapable of sitting in or being elected a Member of the Legislative Council.

Powers of Legislative Council.

42. All the enactments of the Constitution Act relating to the Legislative Council as constituted thereunder except as repealed or varied 5 hereby shall apply to the Legislative Council as constituted under this Act And the said Council shall except as herein otherwise enacted possess and may exercise all the powers vested in the Legislative Council by the said Constitution Act.

43. Every person who shall make a declaration wilfully false in 10 regard to any of the matters wherein a declaration is required to be made under this Act shall be guilty of a misdemeanor and being thereof convicted shall be liable to the punishment imposed by law upon persons found guilty of perjury.

Limitation of prosecutions.

44. No prosecution or other legal proceeding for any offence 15 alleged to be committed or for the recovery of any penalty alleged to be incurred under this Act shall be commenced after the expiration of six months from the commission of such offence or the incurring of such penalty.

Regulations for matters in detail.

45. It shall be lawful for the Governor with the advice aforesaid 20 to make regulations for carrying into complete effect all the provisions of this Act in particulars not expressly provided for or intrusted to other authority by enactment And all such regulations and details so far as they are not repugnant to or inconsistent with any provision of this Act shall when published in the *Gazette* have the force of law And copies 25 thereof shall be laid before both Houses of Parliament forthwith if then sitting and if not then within fourteen days next after the opening of the next Session.

Postponement of things chancing to fall on Sundays or holidays.

46. Whenever any matter or thing shall by this Act be directed to be done or to take place on a certain day and that day happen to be 30 Sunday Good Friday Christmas Day or any public holiday such matter or thing may be done or take place on the next day not being any such as aforesaid And all further changes of time rendered necessary by any such alteration may also lawfully be made.

Present Legislative Council to continue until writs for election be issued.

47. Nothing herein contained shall be deemed or construed to 35 abrogate or in any way interfere with the powers possessed by the Legislative Council as at present constituted until the same shall be dissolved under the authority conferred by the third section of this Act.

Short title.

48. This Act shall be styled and may be cited as the "Legislative Council Act of 1862." 40

SCHEDULE A.

Notice to be given by Clerk of Petty Sessions upon renewing Electoral Lists in 1865 and triennially thereafter.

EVERY person entitled to vote in the election of Members for the Legislative Council in respect of any qualification within the Police District of \_\_\_\_\_ and whose name is not inserted in the accompanying list Also every person named thereon and being so entitled the place of whose residence or nature of whose qualification has been altered since the making up of the last Roll of Electors Also every elector objecting to the retaining of the name of any other person on the said list either in consequence of any original error therein or any change of circumstances is invited to give or transmit to me by post notice in writing of any such claim alteration or objection respectively according to or to the effect of one of the forms of notice herewith.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 186 . Clerk of Petty Sessions.

15 To the Clerk of Petty Sessions at \_\_\_\_\_

I hereby give you notice that I claim to have my name inserted in the List of Electors for the Legislative Council by virtue of the following qualification :—

(Insert qualification—if land or runs state where situate.)

or

20 that in consequence of a change in my [place of residence] or [qualification as an elector] since the preparation of the last Electoral Council Roll the following alteration is required therein :—

(State nature of alteration.)

or

25 that I object to the retaining on the Roll of Electors for the Legislative Council of the name of \_\_\_\_\_ now appearing thereon number \_\_\_\_\_ for the following reason :—

(State ground of objection.)

(Signature in full) J.S.

30 \_\_\_\_\_ (Place of abode.)

SCHEDULE B.

Voting Paper.

Election for \_\_\_\_\_ Members of Legislative Council.

35 Polling Place.....

Date of Election .....

Name of Elector .....

No. on Council Roll .....

Declaration to be made by Elector.

40 I hereby solemnly declare that I am the elector named and numbered on the roll as above, and that I have not before voted at this election in virtue of the qualification entered on the roll under the said number.

Attested by \_\_\_\_\_ (Signed)

Presiding Officer.

Electors.

I the said Elector hereby vote for the Candidates whose names are hereunder written in the order of preference set against their names respectively,—

Order of Preference.	Candidates voted for.	Order of Preference.	Candidates voted for.
1	A. B.	7	N. O.
2	C. D.	8	P. Q.
3	E. F.	9	R. S.
4	G. H.	10	T. V.
5	I. K.	11	W. X.
6	L. M.	12	Y. Z.
		&c.	

(Signed) \_\_\_\_\_ Elector. 10

#### SCHEDULE C.

*Declaration to be made by Returning Officer (or other Officer under this Act.)*

I \_\_\_\_\_ do hereby declare that I accept the office of Returning Officer (or other office as the case may be) for the election of Members of the Legislative Council and I promise and declare that I will faithfully perform the duties of my office to the best of my understanding and ability and that I will not attempt by any word or action directly or indirectly to influence the vote of any elector.

Declared before me this \_\_\_\_\_ day of \_\_\_\_\_ 186 .  
(Signed) \_\_\_\_\_ A. B.  
*Justice of the Peace.* 20

#### SCHEDULE D.

I \_\_\_\_\_ a Scrutineer duly appointed to act at the polling place situate at \_\_\_\_\_ in the election for Members of the Legislative Council hereby solemnly declare that I will faithfully assist at such election and that I will not attempt by any word or action directly or indirectly to influence the 25 vote of any elector.

Declared before me this \_\_\_\_\_ day of \_\_\_\_\_ 186 .  
C. D.  
*Returning Officer or Presiding Officer.*

#### SCHEDULE E. 39

*Declaration to be made by Registrar General and Examining Clerks.*

I \_\_\_\_\_ do solemnly declare that I will to the best of my skill and ability and without favour or affection to any or either of the candidates perform the duty of examining voting papers and ascertaining and declaring elections to the Legislative Council according to the provisions of the Legislative Council Act 1862. 35

(Signed) \_\_\_\_\_ A. B.

Legislative Council.

26<sup>o</sup> VICTORIÆ, 1862.

---

---

# A BILL

*(As amended in Committee of the Whole.)*

## To amend the Constitution of the Legislative Council.

---

---

**W**HEREAS it is expedient to provide for the constitution of a Preamble.  
Legislative Council to consist of Members elected and summoned  
in manner hereinafter enacted Be it therefore enacted by the Queen's Most  
Excellent Majesty by and with the advice and consent of the Legislative  
5 Council and Legislative Assembly of New South Wales in Parliament  
assembled and by the authority of the same as follows :—

1. In the construction of this Act the following terms in inverted Interpretation.  
commas shall bear the meanings set against them respectively—

10 " Constitution Act "—Constitution Act assented to by Her  
Majesty under the Imperial Act eighteenth and nineteenth  
Victoria cap. 54.

" Electoral Act "—The Electoral Act of 1858 regulating elec-  
tions for the Assembly (22 Vic. No. 20.)

15 " Assembly Districts "—Electoral Districts for the return of  
Members of the Legislative Assembly under the Electoral  
Act in force for the time being.

" President "—The President of the Legislative Council for the  
time being.

20 " Council Roll "—The General Roll of Electors qualified to vote  
for the election of Members of the Legislative Council  
under this Act.

c 26—A

" District

*Legislative Council.*

- “ District List ”—The List made up within each Assembly District of electors qualified within such District to vote for the election of Members of the Legislative Council.
- 5 “ Quota ”—The number (rejecting fractions) resulting from a division of the whole number of votes at any election by that of the Members to be then elected.
- “ Primary votes ”—The votes marked No. 1 on the voting papers being those recorded for the candidates of first preference.
- 10 “ Contingent votes ”—The votes marked No. 2 and upwards which are to take effect only in the event of the primary or previous vote not being required to make up the quota for the candidate of earlier preference.
2. So much of the first section of the Constitution Act as relates 15 to the manner thereafter prescribed of constituting and composing the Legislative Council and also the second third seventh and eighth sections of the same Act are hereby repealed. Repeal of provisions concerning present Council.
3. It shall be lawful for the Governor at such time not being later 20 than six months after the day on which this Act shall come into operation in Her Majesty's name by instrument under the Great Seal of the Colony to dissolve the present Legislative Council on and from a day therein named and summon and call together a Legislative Council in and for the Colony which shall be constituted and composed as hereinafter prescribed. Legislative Council to be summoned as hereby constituted.
4. Thirty Members shall be elected to serve in the Legislative 25 Council in manner hereinafter directed. Thirty Members to be elected.
5. At the expiration of every three years there shall be an election 30 of at least ten Members that is to say all vacancies which may have occurred since the previous election shall be then filled up and if they shall not amount to ten then so many of the existing Members shall retire as will make the vacancies amount to that number—the Members so to retire 35 being always those lowest on the list of priority to be prepared as herein directed. But all retiring Members shall be eligible for re-election. Triennial election of ten Members.
6. In addition to the elective Members it shall be lawful for Her 35 Majesty by instrument under the sign manual to authorize the Governor in Her Majesty's name by instrument under the Great Seal of the Colony to summon to the Legislative Council such other persons as the said Governor shall see fit not being at any time of greater number than ten and being of some or one of the following descriptions viz :— Additional Members qualified by special public services may be appointed by the Crown (not exceeding one third of elected Members.)
- 40 (1.) Any retired Judge of the Supreme Court.
- (2.) Any person who has been for two years a Member of the Executive Council.
- (3.) Any person who has held the office of President of the Legislative Council or of Speaker of the Legislative Assembly or of Chairman of Committees in either House of Parliament.
- 45 (4.) Any person who has served for seven years as an elected Member of the Legislature.
- And every person summoned as last aforesaid shall retain his seat for life 50 unless the same be vacated by resignation disqualification or otherwise pursuant to the provisions of the Constitution Act in regard to Members appointed by virtue thereof. Who shall hold their seats for life.
7. If at any time there shall not be in the Legislative Council two 55 or more Members of the Executive Council it shall be lawful for the Governor with the advice of the Executive Council by instrument under the Great Seal of the Colony to appoint as additional Members of the Legislative Council any of the Members of the Executive Council not being Members of the Legislative Assembly. Provided that not more than two Members shall hold seats in the Legislative Council by virtue of such appointment at any one time and that every Member so appointed shall vacate his seat on his ceasing to be a Member of the Executive Council.

*Legislative Council.*

8. Every male subject of Her Majesty of the full age of twenty-one years being natural born or who being a naturalized subject shall reside and have resided in the Colony for three years shall if qualified as hereinafter prescribed and registered on the Council Roll and not disqualified or incapacitated for some cause hereinafter specified be entitled to vote at any election for Members of the Legislative Council and shall have one vote for every Assembly District in respect of which he shall be so qualified and registered but not exceeding five votes in any case that is to say :—every such person who at the time of making out the Electoral Roll and for six months previously shall hold and have held land in possession for an estate either of freehold or leasehold for an unexpired term of not less than twenty-one years of the clear value above all charges and outgoings of three hundred pounds or of like clear annual value of twenty pounds or a leasehold estate in possession for a term of less than twenty-one years of the like clear annual value of fifty pounds or who shall occupy and have occupied for a like period of six months any house warehouse counting-house office shop room or building either separately or jointly with any land occupied therewith at a yearly rental or joint rentals of fifty pounds such occupation being either continuously of the same premises or successively of any two or more respectively of the whole required value —or who shall hold and have held for a like period of six months a Crown lease or license to depasture lands at a rental to the Crown exclusive of assessment of not less than twenty pounds—or who shall be a Graduate of any University in the British Dominions a Barrister or Solicitor of the Supreme Court a legally qualified Medical Practitioner an officiating Minister of Religion or an Officer or retired Officer of Her Majesty's Land or Sea Forces not being on actual service at the time of the election.

Qualification of Electors.

9. Every person nevertheless shall be disqualified who at the time either of making out the Council roll or of the election shall be of unsound mind or in the receipt of aid from any charitable institution or who has been attainted or convicted of treason felony or other infamous offence in any part of Her Majesty's Dominions unless he have received a free or conditional pardon for such offence or have undergone the sentence passed on him.

Disqualifications.

10. Every person shall be incapable of voting who at the time either of making out such roll or of such election shall be in the naval or military service on full pay not being in any militia or volunteer corps only And no Inspector General or Metropolitan Superintendent of Police or paid Police Magistrate or Superintendent of Police nor any Clerk of Petty Sessions nor any Clerk Chief or other constable or person belonging to the Police or Constabulary Force shall during the time he shall continue in any such office be capable of voting for the election of a Member to serve in the Legislative Council nor shall by word message writing or in any other manner endeavour to persuade any elector to give or dissuade any elector from giving his vote for any candidate And every person incapacitated as last aforesaid who shall offend herein shall forfeit the sum of *one hundred* pounds to be recovered by any person who shall sue for the same by action of debt to be commenced within six months after the commission of the offence.

Other incapacities.

11. Every person being on the Council roll and of the full age of thirty years shall be qualified to be elected a Member of the Legislative Council Provided that if any Member of the Legislative Assembly shall with his consent as hereinafter provided be elected a Member of the Legislative Council his seat in the Assembly shall become vacant on the notification of such election in the *Gazette*.

Qualification of elective Members.

12. With all convenient speed after this Act shall come into operation the Governor shall fix a time within which the Courts of Petty Sessions of the several Police Districts shall appoint collectors and shall appoint

Mode of preparation of first Council roll.

*Legislative Council.*

appoint such collectors accordingly for the purpose of making out alphabetical lists of all persons qualified to vote in the election of Members of the Legislative Council in respect of any qualification within such District and such collectors and the Clerks and Justices of Petty Sessions of each Police District and the Returning Officer of each Assembly District and all electors and other persons shall possess and fulfil in regard to the making amending completing and revising of the said lists the like powers jurisdiction privileges and duties respectively as they are entitled and required to exercise and fulfil in regard to the lists of electors for the Legislative Assembly under the said Electoral Act of 1858 except with regard to the periods of time therein appointed for the notifying of claims and objections and of holding Courts which periods shall in relation to proceedings under this Act so far as they are not hereby fixed be specially appointed by the Governor and notified in the *Gazette* Provided however that the framing of separate Council lists for each Assembly District shall not constitute any distinction of Electorates in regard to choice of Members of Council but shall apply only to the more convenient making out of lists and polling of votes and all the lists of electors registered in each District shall when completed be transmitted by the Returning Officer of each Assembly District to the Registrar General in Sydney And the said Registrar General shall with as little delay as possible frame therefrom a general Council roll for the whole Colony wherein all the electors shall be named in alphabetical order and numbered in regular arithmetical progression And if the name of the same elector shall be entered in more than one District list his name shall first be placed and numbered on the Council roll in respect of some qualification held personally or in the District wherein he shall reside and then in respect of his qualifications in other Districts in consecutive numbers not exceeding five in all And the Council roll when so prepared shall be kept by the said Registrar General in his office and open to inspection by any person on payment of a fee of one shilling And the Registrar General shall cause copies of the said Council roll to be printed and sold at a reasonable price and shall also cause one of such printed copies to be transmitted to the Clerk of Petty Sessions in each Police District which shall be kept in his office and open for inspection by any person on payment of the like fee of one shilling.

Separate lists not to imply distinct Electorates.

13. During the third year after the first election under this Act and during the third year after each succeeding election a new Council roll shall be prepared in the same manner as provided in the last preceding clause except as hereinafter mentioned that is to say instead of the list for the making out of such roll being prepared in each Police District by paid collectors as in the case of the first Council roll the same shall be prepared by revision of the previous roll in manner following namely The Clerk of Petty Sessions of each Police District shall on or before some day to be fixed by the Governor not being less than six months before the expiration of the third year from the last preceding election cause so much of the existing Council roll as relates to each Police District to be submitted for provisional revision to a Court of Petty Sessions convened for that purpose And the said Court shall direct the omission of the names of any electors who shall to their knowledge or from satisfactory proof afforded them be dead And the said Clerk shall cause copies of the list so provisionally revised to be affixed to the Court House of the District and such other places as the Petty Sessions may direct and shall at the same time cause to be affixed therewith a notice according to the form numbered 1 in the Schedule hereto marked A which said list and notice shall be kept so affixed for the period of six weeks And every qualified person whose name shall not be on such list or who shall be entitled to have his name inserted

As to preparation of future rolls.

*Legislative Council.*

inserted on the Council roll in respect of some qualification other than or in addition to that already appearing may at any time before the expiration of the said six weeks claim to have his name so inserted by giving or transmitting by post to the said Clerk notice thereof in writing according  
 5 to the form numbered 2 in the said Schedule A accompanied by a declaration in the form thereto annexed verifying the qualification stated in the claim which declaration shall be made and signed before a Justice of the Peace And upon the expiration of such period of six weeks the said Clerk shall forthwith prepare a list of such claims according to the  
 10 form numbered 3 in the said Schedule A and shall cause copies thereof together with the first named list and together with a notice in the form numbered 4 in the said Schedule A to be affixed to the said Court and other public places as aforesaid during the eighth and three following weeks And any person named in either of such lists objecting to any  
 15 other person as not entitled to be on the Council roll shall before the expiration of the four last mentioned weeks give or transmit by post to the said clerk and to the person objected to at his address as inserted in the list wherein the name of the person so objected to appears notice thereof in writing according to the form numbered 5 in the said  
 20 Schedule A And the said clerk shall prepare a list of such objections in the form numbered 6 in the said Schedule and shall cause copies thereof to be affixed to the said Court House and other public places during the fourteen days then next following And the said clerk shall furnish copies of the said several lists or of any claims or objections to any person  
 25 requiring the same on payment of a reasonable price for such copies and shall at all reasonable times permit qualified electors to peruse in his presence any original claims or objections without payment of any fee Provided that no person claiming in manner mentioned in this Act to have his name inserted on any District list shall be bound to give proof of such  
 30 claim at any Revision Court unless duly objected to under the provisions of this Act or unless he be specially called upon by the Court to give such proof in which case reasonable time shall be allowed him in that behalf.

14. The Council roll to be prepared pursuant to clause twelve of this Act shall be the roll of electors at the first election and every  
 35 Council roll to be prepared pursuant to clause thirteen of this Act shall be the roll of electors at each triennial election next following the completion thereof Provided that if at the time of any election such roll shall not have been regularly made out or shall not have been perfected the preceding roll shall wholly or in part as the case may require be used  
 40 as the roll for such election.

Council roll first prepared to be used at first election.

If new roll imperfect old roll used *protanto*.

15. For the election of Members to the Legislative Council the  
 whole Colony shall form one Electorate.

The Colony to form one Electorate.

16. The election of such Members shall be by quotas and comparative majorities that is to say—Every candidate who shall receive a full  
 45 quota of votes shall be declared to be duly elected and if a sufficient number of Members be not so returned the complement shall be made up by majorities as hereinafter provided.

Elections to be by quotas and comparative majorities.

17. The Governor shall within one month after the completion of  
 the first Council roll under this Act and the President of the Council  
 50 or if that office be vacant the Governor shall within the like time after the expiration of three years from the day of the first election and within the like period after the expiration of three years from the day of each succeeding election issue a writ to the Registrar General stating the number of Members to be elected and requiring him forthwith to invite  
 55 a nomination of candidates for such election to be made to him within a period of time to be therein fixed and further requiring him if the candidates nominated shall exceed the required number of Members to cause an election to be held for the return of such Members at the several polling places established under the provisions of the Electoral Act on  
 60 a further day to be named in the said writ.

The Governor to fix the day of election in each third year.

*Legislative Council.*

18. Before the said President or the Governor as the case may be shall issue the second or any subsequent writ of election under this Act he shall ascertain the number if any of existing Members whose retirement is required under the fifth section of this Act and shall cause to be published in the *Gazette* the names of such Members being those who are lowest on the list of the required number And such Members shall unless re-elected vacate their seats on the notification in the *Gazette* of the return of the Members elected in their stead.

Names of Members retiring by rotation to be published.

19. Upon receipt of the said writ the Registrar General shall notify the same in the *Gazette* for general information and shall invite the nomination of candidates for election according to the provisions of this Act setting forth the requirements thereof in regard to such nomination And at any time after the issue of the said writ and within the time thereby limited any person qualified to be elected a Member of the Legislative Council or any qualified elector may with his consent signified in writing transmit to the Registrar General a requisition signed by not less than twelve qualified electors nominating him as a candidate for election and the names and addresses of all candidates shall be inserted by the Registrar General in the order of the receipt of such requisitions respectively in a list of candidates which he shall cause to be published from time to time when received in each *Gazette* for general information on the ordinary days of publication thereof and in a complete form in the first *Gazette* published after the expiration of the time limited for such nominations by the said writ.

Mode of nominating and declaring candidates.

20. If the candidates who shall be duly nominated in manner aforesaid within the time limited for that purpose shall not exceed the number of members to be elected the Registrar General shall on the day following the expiration of that time return to the Governor or to the President of the Council as the case may be the names of the candidates so nominated by certifying the same under his hand in a list indorsed upon the said writ and the said Governor or President shall cause such list to be published in the *Gazette* and the candidates therein named to be declared duly elected Members of the Legislative Council in the order of their notification as candidates.

If candidates do not exceed the number to be elected the whole to be declared duly elected.

21. If the candidates shall exceed the number to be elected the Registrar General shall cause a list of such candidates to be published in the *Gazette* once at least in every week which shall elapse before the day appointed in the said writ for the general election and shall together therewith publish a notice naming the said day of election and specifying the several polling places in each District (which polling places shall be the same as appointed for elections to the Legislative Assembly) at which the electors are required to attend and calling upon all Returning Officers and other persons upon whom any duties are imposed by the Electoral Act in regard to elections thereunder to fulfil the like duties in the election appointed to take place under this Act with such modifications and additions as are hereby directed.

If candidates exceed required number of Members Registrar to notify election in *Gazette*.

22. Each Returning Officer shall preside at one polling place and shall appoint Presiding Officers at other polling places in the Assembly District for which he was appointed and the requisite Poll Clerks as in the case of elections for the Assembly and the course of proceeding shall be the same as in such elections except so far as altered by this Act.

Returning Officer to preside and appoint deputies &c.

23. Each candidate shall be entitled to nominate one person at each polling place to hold his proxy in regard to the office of Scrutineer which nomination shall be by writing signed by the candidate and delivered or transmitted to the Presiding Officer before the election And in case the holders of proxies of the several candidates present at any polling place at the opening of the poll shall not exceed four they shall themselves be entitled to act as Scrutineers But if they exceed that number then

Mode of appointing Scrutineers.

any

*Legislative Council.*

any persons not exceeding four at each polling place shall be entitled to act as Scrutineers who shall be appointed respectively under the authority of not less than one-fourth in number (rejecting fractions) of the candidates there represented by such proxies as aforesaid And in making such  
 5 appointment any person holding a proxy may exercise the same either in his own favour or in favour of any other person but no proxy from any candidate shall be exercised more than once or contribute towards the appointment of more than one Scrutineer.

24. A convenient voting room shall be set apart for the preparation  
 10 of voting papers in which one or more Poll Clerks shall be in attendance for the purpose of assisting therein and in which such number of electors as can be readily accommodated may be admitted during the actual preparation of their votes but at no other time and no other persons shall be admitted except the Returning or Presiding Officer and such Scruti-  
 15 neers as may desire to attend.

Voting room to be provided.

25. Voting papers shall be prepared by the Registrar General in the form contained in the Schedule B to this Act which shall be transmitted by him to the several Returning Officers and other Presiding Officers in such numbers as they shall be likely to require for the supply  
 20 of voters at their respective polling places and who shall distribute them to the electors at such time and such manner as may be deemed convenient.

Voting papers to be delivered to each voter on making declaration of identity &c.

26. Each elector upon giving his vote shall bring with him a voting paper in the form aforesaid with the names of the candidates for whom he desires to record his vote entered thereon in the order of his  
 25 preference and signed by him before his vote shall be received and his name and number shall be entered on the voting paper by the Presiding Officer or Poll Clerk if not already noted thereon and the elector shall make the declaration thereon before the Presiding Officer who shall attest the same with his initials or a stamp.

Mode of preparing voting paper.

27. The Returning Officers Presiding Officers Poll Clerks and  
 30 Scrutineers before entering upon their duties under this Act shall respectively make and subscribe the declarations contained in the Schedules hereto annexed that is to say every Returning Officer Presiding Officer and Poll Clerk the declaration in the Schedule marked C which  
 35 shall be made before a Justice and every Scrutineer the declaration in the Schedule marked D which shall be made before the Presiding Officer.

Declaration by Officers and Scrutineers.

28. Every elector shall vote at some polling place in the district  
 40 wherein he resides.

Electors to vote in the district in which they reside.

29. At the close of the poll every Returning Officer and every  
 45 other Presiding Officer shall cause to be made a list of all the voting papers taken by him distinguishing them by reference to each voter's number on the roll He shall then seal up such voting papers in the presence of a Polling Clerk and of such of the Scrutineers as shall  
 50 choose to attend and shall with all convenient speed transmit the same together with the said list (which shall be signed by him and countersigned by a Poll Clerk) to the Registrar General.

Voting papers to be transmitted to Registrar General.

30. An interval of twenty-eight days after the day of election  
 55 shall be allowed for transmission of the voting papers to the Registrar General And no voting papers thereafter received shall be counted in the election and upon the twenty-ninth day or sooner if the voting papers from all the polling places shall have been received the Registrar General shall open and examine all the voting papers so received by him and shall with the assistance of as many clerks as shall be necessary ascertain and  
 60 declare therefrom in manner hereinafter directed the candidates who have been elected and before entering upon such examination the said Registrar General and every clerk to be employed in assisting him therein shall make and subscribe a declaration in the form of the Schedule hereto marked E And the said declaration shall be made before any Justice  
 and

Registrar General after twenty-eight days to proceed to examine voting papers and ascertain the elections.

*Legislative Council.*

and shall be forwarded by such Justice to the Colonial Secretary to be filed of record.

31. The voting papers shall be examined and the elections ascertained therefrom as follows viz. :—

Rules for conducting examination of votes.

- 5 (1.) The whole number of votes shall be ascertained and such number divided by that of the Members to be elected for the purpose of ascertaining the quota.
- 10 (2.) The number of primary votes entered on all the voting papers for the respective candidates shall be ascertained and a list of the candidates prepared placing them in the order of their majorities in reference to such primary votes and stating the number received by each.
- 15 (3.) If any of the candidates shall have received primary votes in excess of the quota so many of the voting papers only which contain the same shall be allotted to each such candidate as will make up the quota and his name shall be cancelled on the remainder of such voting papers.
- 20 (4.) Each remaining voting paper on which the first name has been cancelled under rule three shall be allotted to the candidate named thereon to whom the contingent vote marked two has been given unless or until such last mentioned candidate shall also have obtained a quota of votes in which case his name shall also be cancelled on such voting paper which shall then be allotted to the candidate named thereon to whom the contingent vote marked three has been given and so on successively until the vote has been received by some candidate whose quota is not otherwise completed or until all the contingent votes marked thereon shall be exhausted.
- 25 (5.) The following rule shall be adopted in the selection of the voting papers retained for the quota of any candidate namely those voting papers shall first be taken which contain one candidate only and next in succession those which contain the fewest names of candidates and in the event of the numbers being equal on any two or more voting papers then they shall be taken in the order of the voter's number on the Council roll beginning with the lowest number.
- 30 (6.) When after appropriating all surplus votes to the candidates entitled thereto under the above rules it shall be found that no quota can thereby be completed in favour of any further candidate then if the full number required to complete the return of Members to be then elected shall not have obtained quotas the examiners shall sort and arrange all the voting papers not used in the quotas already completed and shall allot them to such remaining candidates as shall respectively stand highest on such voting paper and so many of such candidates as shall be sufficient to make up the required number of Members shall be returned as shall be found to have obtained the greater number of votes And in case of an equality of votes between competing candidates the candidate highest on the list of candidates published in the *Gazette* shall be returned.

Rule for selecting voting papers to make up the quota.

After applying all attainable quotas election to be completed by majorities.

32. So soon as the voting papers applicable to the election of any candidate shall have been ascertained they shall be set apart and sealed up in a separate packet by the Registrar General and at the close of the examination the votes ultimately appropriated to each candidate whether sufficient for his election or not shall be in like manner set apart and sealed up in a separate packet And such packets shall be endorsed with the names of the respective candidates and shall be retained in the office of the Registrar General until the close of the first Session of Parliament and shall then be transmitted to the Clerk of the Legislative Council.

Voting papers to be sealed up and preserved as evidence.

*Legislative Council.*

33. At the close of the examination the Registrar General shall after the first election transmit to the Governor and after any subsequent election to the President of the Council or the Governor as the case may be a return certified under his hand indorsed upon the writ of election received by him of the candidates ascertained to have been elected in manner aforesaid and shall place their names in order of priority according to the votes received by them that is to say—As regards the Members elected by full quotas according to the number of primary votes received by them as appearing on the list prepared under rule two aforesaid and as regards the Members elected by comparative majorities in the order of such majorities with regard to the whole number of their votes whether primary or contingent And in case of an equal number of votes in any case the priority shall be given to the candidates highest on the list published in the *Gazette*.
34. If the election of any candidate returned by the Registrar General shall by the decision of a Committee of Elections and Qualifications be declared void for bribery or otherwise the Registrar General shall upon such decision being notified to him by the Clerk of the Council make a supplementary return of another candidate being the next in order of majority of votes to the lowest on the previous list of elected Members to supply the place of the candidate whose election has been invalidated and such return shall be transmitted to the Governor or President of the Council respectively as in the case of the former return at the same election.
35. In case any of the votes retained under the Regulations aforesaid to make up the quota of a candidate whose votes have exceeded the quota shall be rejected upon any scrutiny before an Election Committee no reduction in the number of his votes thus occasioned shall be computed to his prejudice until the votes so rejected shall exceed the number of voting papers which shall have been withdrawn from him as superfluous and then only to the extent of such excess Provided nevertheless that nothing herein shall prejudice the election of any other candidate whose quota shall have been aided by the transfer of any such apparently superfluous votes if in themselves valid.
36. The several enactments of the Electoral Act of 1858 which relate to the appointment and duties of Presiding Officers—to the course of proceeding before and at and after elections—to the not questioning or avoiding of elections for defects—to the remedy for informalities—to bribery and its consequences—to any misconduct of Returning and other Officers—to the Committee of Elections and Qualifications and petitions against returns—and all other the enactments of the said Act—so far as any such enactments as aforesaid are or can be made applicable to the purposes of this Act and so far as the same are not repealed or varied hereby—shall apply to and be deemed to be hereby again enacted for the purposes of this Act and be acted upon accordingly Provided that the said sections and other enactments so far as they apply to the Legislative Assembly or to the Speaker thereof shall for the purposes of this Act apply respectively to the Legislative Council and to the President And so far as they apply to the Assembly electoral rolls shall for the purposes of this Act apply respectively to Council rolls.
37. The Legislative Council shall at its first meeting and before proceeding to the despatch of business elect one Member of the said Council to be President thereof and as often as the place of the said President shall become vacant by death resignation vote of the Council or otherwise shall forthwith proceed to elect some other Member to be President And the President shall preside at the meetings of the Council except as provided by the Standing Rules and Orders and may take part in any debate or discussion And the election of every such President shall be forthwith notified to the Governor by the said Council.
- 38.

Registrar to make return of elected Members.

If election of any Member invalidated Registrar General to return the candidate next in order on the poll.

If candidates lose votes by rejection on scrutiny the benefit of surplus votes to be retained in adjusting their position on the poll.

Certain provisions of the Electoral Act of 1858 adopted so far as applicable.

President.

President to take part in debates.

## Legislative Council.

38. The presence of at least ten Members of the Legislative Council exclusive of the President shall be necessary for despatch of business. And every question shall be decided by the majority of votes of the Members present exclusive of the President. Provided that in case of equality of votes he shall decide the same by his casting vote.
39. No deficiency in the number of elected Members whether arising from defective election or from vacancies occurring during any intervals of periodical election shall invalidate any proceeding of the Council provided the number of Members required for despatch of business be present thereat. But if at any time during the first two years of such interval the number of elected Members shall be less than fifteen a new writ shall issue for a special election to fill the vacancies and the same course of proceeding shall be adopted at such election as at any other election except that the Council roll for the preceding election shall be used thereat. And after any such special election the next triennial period of election shall be computed from the date thereof and the times for preparing the next and future Council roll and other incidents of and preparatory to future elections altered accordingly.
40. Any Member of the Legislative Council may after the time allowed by law for petitions against his return by writing under his hand addressed to the President resign his seat and upon receipt of such resignation by the President such seat shall become vacant. Provided that if there be no President a like resignation addressed to the Governor shall have the like effect.
41. If any Member of the Legislative Council shall for two whole Sessions of Parliament without the permission of the Legislative Council entered upon its Journals fail to give his attendance in the said Council his seat in the said Council shall thereby become vacant.
42. Any person who shall take any oath or make any declaration of allegiance to any Foreign Prince or Power or become a subject or citizen of any Foreign State or a bankrupt or insolvent debtor under the laws relating to bankrupts or insolvent debtors or a public defaulter or be attainted of treason or convicted of felony or any infamous crime shall be incapable of sitting in or being elected a Member of the Legislative Council.
43. The present and every future Clerk of the Legislative Council shall be styled "Clerk of the Parliaments."
44. The salaries and allowances of the President and Chairman of the Legislative Council shall be at least equal in all respects to the salaries and allowances of the Speaker and Chairman of the Legislative Assembly respectively the salary and allowances of the Clerk of the Parliaments shall be at least equal in all respects to the salary and allowances of the Clerk of the Legislative Assembly and the salaries and allowances of all other Officers already appointed or at any time hereafter to be appointed to offices in the Legislative Council Department shall be at least equal in all respects to those of the Officers at the time holding corresponding offices in the Department of the Legislative Assembly.
45. All the enactments of the Constitution Act relating to the Legislative Council as constituted thereunder except as repealed or varied hereby shall apply to the Legislative Council as constituted under this Act. And the said Council shall except as herein otherwise enacted possess and may exercise all the powers vested in the Legislative Council by the said Constitution Act.
46. Every person who shall make a declaration wilfully false in regard to any of the matters wherein a declaration is required to be made under this Act shall be guilty of a misdemeanor and being thereof convicted shall be liable to the punishment imposed by law upon persons found guilty of perjury.
47. No prosecution or other legal proceeding for any offence alleged to be committed or for the recovery of any penalty alleged to be incurred

Quorum &c.  
incurred  
months from  
penalty.

Election in special  
cases.

Resignation of seat.

Grounds of vacating  
seats.

Grounds of incapacity.

Clerk to be styled  
"Clerk of the Parliaments."

Salaries of President  
Chairman and Officers of Legislative  
Council.

Powers of Legislative  
Council.

False declaration  
made punishable.

Limitation of  
prosecutions.

Legislative Council.

incurred under this Act shall be commenced after the expiration of six months from the commission of such offence or the incurring of such penalty.

48. It shall be lawful for the Governor with the advice aforesaid to make regulations for carrying into complete effect all the provisions of this Act in particulars not expressly provided for or intrusted to other authority by enactment. And all such regulations and details so far as they are not repugnant to or inconsistent with any provision of this Act shall when published in the Gazette have the force of law. And copies thereof shall be laid before both Houses of Parliament forthwith if then sitting and if not then within fourteen days next after the opening of the next Session.

49. Whenever any matter or thing shall by this Act be directed to be done or to take place on a certain day and that day happen to be Sunday Good Friday Christmas Day or any public holiday such matter or thing may be done or take place on the next day not being any such as aforesaid. And all further changes of time rendered necessary by any such alteration may also lawfully be made.

50. Nothing herein contained shall be deemed or construed to abrogate or in any way interfere with the powers possessed by the Legislative Council as at present constituted until the same shall be dissolved under the authority conferred by the third section of this Act.

51. This Act shall be styled and may be cited as the "Legislative Council Act of 1862."

25

SCHEDULE A. [Section 13.]

No. 1.

Notice to be given by Clerk of Petty Sessions upon renewing Electoral Lists in 1865 and triennially thereafter.

30

EVERY person entitled to vote in the election of Members for the Legislative Council in respect of any qualification within the Police District of and whose name is not inserted in the accompanying list. Also every person named thereon and being so entitled the place of whose residence or nature of whose qualification has been altered since the making up of the last Roll of Electors is invited to give or transmit to me by post notice in writing of any such claim or alteration respectively according to or to the effect of one of the forms of notice herewith.

35

Dated the day of 186

(Signed)

Clerk of Petty Sessions.

No. 2.

*Legislative Council.*

No. 2.

*To the Clerk of Petty Sessions at,*

I hereby give you notice that I claim to have my name inserted in the List of Electors for the Legislative Council by virtue of the following qualification :—

5 (Insert qualification.)

And I solemnly and sincerely declare that I hold the above qualification and that the particulars thereof are truly stated.

(Signed)

Elector.

10 Declared before me this                      day of                      18 .

J. P.

or

that in consequence of a change in my [*place of residence*] or [*qualification as an elector*] since the preparation of the last Electoral Council Roll the following alteration is required. 15 therein :—

(State nature of alteration.)

And I solemnly and sincerely declare that I hold the above qualification and that the particulars thereof are truly stated.

(Signed)

20 Declared before me this                      day of                      '18 .

J. P.

No. 3.

*List of persons claiming to be published by Clerk of Petty Sessions.*

25 The following persons have claimed to have their names inserted on the list of Council electors prepared within the District of

Christian and Surname.	Residence.	Qualification claimed.	Where situate or arising.

Dated the                      day of                      186 .

30 (Signed)

*Clerk of Petty Sessions.*

No. 4.

*Notice by Clerk of Petty Sessions inviting Objections.*

35 Every qualified Elector at the Election of Members of the Legislative Council within the Police District of                      objecting to the retaining of the name of any other person on the accompanying Lists either on account of any original error therein or any change of circumstances is invited to give or transmit to me by post notice in writing of any such objection according to or to the effect of the form of notice herewith.

Dated the                      day of                      186 .

40 (Signed)

*Clerk of Petty Sessions.*

Legislative Council.

No. 5.

Form of Notice of Objection.

To the Clerk of Petty Sessions at

I hereby give you notice that I object to the retaining on the List of Electors for the Legislative Council (or the list of persons claiming to be upon the Council Roll as the case may be) of the name of [blank] now appearing thereon number [blank] for the following reason:—

(State ground of objection.)

Dated the [blank] day of [blank] 186 .

10

(Signature in full) J.S.

(Place of abode.)

No. 6.

List of persons objected to, to be published by Clerk of Petty Sessions.

The following persons have been objected to as not being entitled to have their names on the list of Council electors prepared within the District of [blank]

Christian and Surname.	Residence.	Qualification claimed.	Where situate or arising.

Dated the [blank] day of [blank] 186 .

20

(Signed)

Clerk of Petty Sessions.

SCHEDULE B. [Section 25.]

Voting Paper.

Election for Members of Legislative Council.

Polling Place.....

25

Date of Election .....

Name of Elector .....

No. on Council Roll .....

Declaration to be made by Elector.

I hereby solemnly declare that I am the elector named and numbered on the roll as above, and that I have not before voted at this election in virtue of the qualification entered on the roll under the said number.

Attested by

(Signed)

Presiding Officer.

Elector.

I the said Elector hereby vote for the Candidates whose names are hereunder written in the order of preference set against their names respectively,—

35

Order of Preference.	Candidates voted for.	Order of Preference.	Candidates voted for.
1	A. B.	7	N. O.
2	C. D.	8	P. Q.
3	E. F.	9	R. S.
4	G. H.	10	T. V.
5	I. K.	11	W. X.
6	L. M.	12	Y. Z.
		&c.	

(Signed)

Elector.

*Legislative Council.*

## SCHEDULE C. [Section 27.]

*Declaration to be made by Returning Officer (or other Officer under this Act.)*

I do hereby declare that I accept the office of  
 Returning Officer (or other office as the case may be) for the election of Members of the  
 5 Legislative Council and I promise and declare that I will faithfully perform the duties of  
 my office to the best of my understanding and ability and that I will not attempt by any  
 word or action directly or indirectly to influence the vote of any elector.

Declared before me this                      day of                      186 .

(Signed)                      A. B.

10

*Justice of the Peace.*

## SCHEDULE D. [Section 27.]

*Declaration to be made by Scrutineer.*

I a Scrutineer duly appointed to act at the  
 polling place situate at                      in the election for Members of the  
 15 Legislative Council hereby solemnly declare that I will faithfully assist at such election  
 and that I will not attempt by any word or action directly or indirectly to influence the  
 vote of any elector.

Declared before me this                      day of                      186 .

C. D.

20

*Returning Officer or Presiding Officer.*

## SCHEDULE E. [Section 30.]

*Declaration to be made by Registrar General and Examining Clerks.*

I do solemnly declare that I will to the best of my skill  
 and ability and without favour or affection to any or either of the candidates perform the  
 25 duty of examining voting papers and ascertaining and declaring elections to the Legislative  
 Council according to the provisions of the Legislative Council Act 1862.

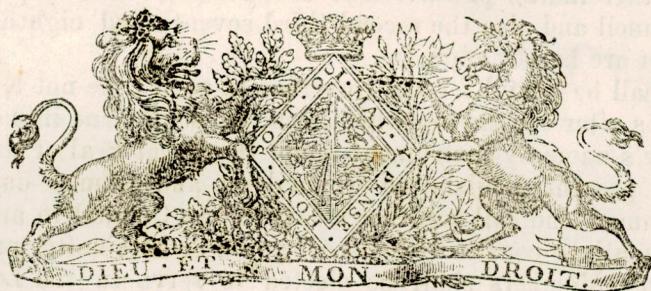
(Signed)                      A. B.

*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.*

*Legislative Council Chamber,  
Sydney, 8th October, 1862.* }

*R. O'CONNOR,  
Clerk of the Legislative Council.*

## New South Wales.



ANNO VICESIMO SEXTO

# VICTORIÆ REGINÆ.

\*\*\*\*\*

No. .

An Act to amend the Constitution of the Legislative Council.

**W**HEREAS it is expedient to provide for the constitution of a <sup>Preamble.</sup> Legislative Council to consist of Members elected and summoned in manner hereinafter enacted Be it therefore 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 and by the authority of the same as follows:—

1. In the construction of this Act the following terms in inverted <sup>Interpretation.</sup> commas shall bear the meanings set against them respectively—

10 “ Constitution Act ”—Constitution Act assented to by Her Majesty under the Imperial Act eighteenth and nineteenth Victoria cap. 54.

“ Electoral Act ”—The Electoral Act of 1858 regulating elections for the Assembly (22 Vic. No. 20.)

15 “ Assembly Districts ”—Electoral Districts for the return of Members of the Legislative Assembly under the Electoral Act in force for the time being.

“ President ”—The President of the Legislative Council for the time being.

20 “ Council Roll ”—The General Roll of Electors qualified to vote for the election of Members of the Legislative Council under this Act.

c 26—A

(b)

“ District

*Legislative Council.*

- “ District List ”—The List made up within each Assembly District of electors qualified within such District to vote for the election of Members of the Legislative Council.
- 5 “ Quota ”—The number (rejecting fractions) resulting from a division of the whole number of votes at any election by that of the Members to be then elected.
- “ Primary votes ”—The votes marked No. 1 on the voting papers being those recorded for the candidates of first preference.
- 10 “ Contingent votes ”—The votes marked No. 2 and upwards which are to take effect only in the event of the primary or previous vote not being required to make up the quota for the candidate of earlier preference.
2. So much of the first section of the Constitution Act as relates to the manner thereafter prescribed of constituting and composing the Legislative Council and also the second third seventh and eighth sections of the same Act are hereby repealed. Repeal of provisions concerning present Council.
3. It shall be lawful for the Governor at such time not being later than six months after the day on which this Act shall come into operation in Her Majesty's name by instrument under the Great Seal of the Colony to dissolve the present Legislative Council on and from a day therein named and summon and call together a Legislative Council in and for the Colony which shall be constituted and composed as hereinafter prescribed. Legislative Council to be summoned as hereby constituted.
- 20 4. Thirty Members shall be elected to serve in the Legislative Council in manner hereinafter directed. Thirty Members to be elected.
- 25 5. At the expiration of every three years there shall be an election of at least ten Members that is to say all vacancies which may have occurred since the previous election shall be then filled up and if they shall not amount to ten then so many of the existing Members shall retire as will make the vacancies amount to that number—the Members so to retire being always those lowest on the list of priority to be prepared as herein directed. But all retiring Members shall be eligible for re-election. Triennial election of ten Members.
- 30 6. In addition to the elective Members it shall be lawful for Her Majesty by instrument under the sign manual to authorize the Governor to summon to the Legislative Council such other persons as the said Governor shall see fit not being at any time of greater number than ten and being of some or one of the following descriptions viz :— Additional Members qualified by special public services may be appointed by the Crown (not exceeding one third of elected Members.)
- 35 (1.) Any retired Judge of the Supreme Court.
- 40 (2.) Any person who has been for two years a Member of the Executive Council.
- (3.) Any person who has held the office of President of the Legislative Council or of Speaker of the Legislative Assembly or of Chairman of Committees in either House of Parliament.
- 45 (4.) Any person who has served for seven years as an elected Member of the Legislature.
- And every person summoned as last aforesaid shall retain his seat for life unless the same be vacated by resignation disqualification or otherwise pursuant to the provisions of the Constitution Act in regard to Members appointed by virtue thereof. Who shall hold their seats for life.
- 50 7. If at any time there shall not be in the Legislative Council two or more Members of the Executive Council it shall be lawful for the Governor with the advice of the Executive Council by instrument under the Great Seal of the Colony to appoint as additional Members of the Legislative Council any of the Members of the Executive Council not being Members of the Legislative Assembly. Provided that not more than two Members shall hold seats in the Legislative Council by virtue of such appointment at any one time and that every Member so appointed shall vacate his seat on his ceasing to be a Member of the Executive Council. Governor may appoint two responsible Ministers.
- 55 8.

*Legislative Council.*

8. Every male subject of Her Majesty of the full age of twenty-one years being natural born or who being a naturalized subject shall reside and have resided in the Colony for three years shall if qualified as hereinafter prescribed and registered on the Council Roll and not disqualified or incapacitated for some cause hereinafter specified be entitled to vote at any election for Members of the Legislative Council and shall have one vote for every Assembly District in respect of which he shall be so qualified and registered but not exceeding five votes in any case that is to say:—every such person who at the time of making out the Electoral Roll and for six months previously shall hold and have held land in possession for an estate either of freehold or leasehold for an unexpired term of not less than twenty-one years of the clear value above all charges and outgoings of three hundred pounds or of like clear annual value of twenty pounds or a leasehold estate in possession for a term of less than twenty-one years of the like clear annual value of fifty pounds or who shall occupy and have occupied for a like period of six months any house warehouse counting-house office shop room or building either separately or jointly with any land occupied therewith at a yearly rental or joint rentals of fifty pounds such occupation being either continuously of the same premises or successively of any two or more respectively of the whole required value—or who shall hold and have held for a like period of six months a Crown lease or license to depasture lands at a rental to the Crown exclusive of assessment of not less than twenty pounds—or who shall be a Graduate of any University in the British Dominions a Barrister or Solicitor of the Supreme Court a legally qualified Medical Practitioner an officiating Minister of Religion or an Officer or retired Officer of Her Majesty's Land or Sea Forces not being on actual service at the time of the election.

Qualification of Electors.

9. Every person nevertheless shall be disqualified who at the time either of making out the Council roll or of the election shall be of unsound mind or in the receipt of aid from any charitable institution or who has been attainted or convicted of treason felony or other infamous offence in any part of Her Majesty's Dominions unless he have received a free or conditional pardon for such offence or have undergone the sentence passed on him.

Disqualifications.

10. Every person shall be incapable of voting who at the time either of making out such roll or of such election shall be in the naval or military service on full pay not being in any militia or volunteer corps only And no Inspector General or Metropolitan Superintendent of Police or paid Police Magistrate or Superintendent of Police nor any Clerk of Petty Sessions nor any Clerk Chief or other constable or person belonging to the Police or Constabulary Force shall during the time he shall continue in any such office be capable of voting for the election of a Member to serve in the Legislative Council nor shall by word message writing or in any other manner endeavour to persuade any elector to give or dissuade any elector from giving his vote for any candidate And every person incapacitated as last aforesaid who shall offend herein shall forfeit the sum of *one hundred* pounds to be recovered by any person who shall sue for the same by action of debt to be commenced within six months after the commission of the offence.

Other incapacities.

11. Every person being on the Council roll and of the full age of thirty years shall be qualified to be elected a Member of the Legislative Council Provided that if any Member of the Legislative Assembly shall with his consent as hereinafter provided be elected a Member of the Legislative Council his seat in the Assembly shall become vacant on the notification of such election in the *Gazette*.

Qualification of elective Members.

12. With all convenient speed after this Act shall come into operation the Governor shall fix a time within which the Courts of Petty Sessions of the several Police Districts shall appoint collectors and shall appoint

Mode of preparation of first Council roll.

*Legislative Council.*

appoint such collectors accordingly for the purpose of making out alphabetical lists of all persons qualified to vote in the election of Members of the Legislative Council in respect of any qualification within such District and such collectors and the Clerks and Justices of Petty Sessions of each Police District and the Returning Officer of each Assembly District and all electors and other persons shall possess and fulfil in regard to the making amending completing and revising of the said lists the like powers jurisdiction privileges and duties respectively as they are entitled and required to exercise and fulfil in regard to the lists of electors for the Legislative Assembly under the said Electoral Act of 1858 except with regard to the periods of time therein appointed for the notifying of claims and objections and of holding Courts which periods shall in relation to proceedings under this Act so far as they are not hereby fixed be specially appointed by the Governor and notified in the *Gazette* Provided however that the framing of separate Council lists for each Assembly District shall not constitute any distinction of Electorates in regard to choice of Members of Council but shall apply only to the more convenient making out of lists and polling of votes and all the lists of electors registered in each District shall when completed be transmitted by the Returning Officer of each Assembly District to the Registrar General in Sydney And the said Registrar General shall with as little delay as possible frame therefrom a general Council roll for the whole Colony wherein all the electors shall be named in alphabetical order and numbered in regular arithmetical progression And if the name of the same elector shall be entered in more than one District list his name shall first be placed and numbered on the Council roll in respect of some qualification held personally or in the District wherein he shall reside and then in respect of his qualifications in other Districts in consecutive numbers not exceeding five in all And the Council roll when so prepared shall be kept by the said Registrar General in his office and open to inspection by any person on payment of a fee of one shilling And the Registrar General shall cause copies of the said Council roll to be printed and sold at a reasonable price and shall also cause one of such printed copies to be transmitted to the Clerk of Petty Sessions in each Police District which shall be kept in his office and open for inspection by any person on payment of the like fee of one shilling.

Separate lists not to imply distinct Electorates.

13. During the third year after the first election under this Act and during the third year after each succeeding election a new Council roll shall be prepared in the same manner as provided in the last preceding clause except as hereinafter mentioned that is to say instead of the list for the making out of such roll being prepared in each Police District by paid collectors as in the case of the first Council roll the same shall be prepared by revision of the previous roll in manner following namely The Clerk of Petty Sessions of each Police District shall on or before some day to be fixed by the Governor not being less than six months before the expiration of the third year from the last preceding election cause so much of the existing Council roll as relates to each Police District to be submitted for provisional revision to a Court of Petty Sessions convened for that purpose And the said Court shall direct the omission of the names of any electors who shall to their knowledge or from satisfactory proof afforded them be dead And the said Clerk shall cause copies of the list so provisionally revised to be affixed to the Court House of the District and such other places as the Petty Sessions may direct and shall at the same time cause to be affixed therewith a notice according to the form numbered 1 in the Schedule hereto marked A which said list and notice shall be kept so affixed for the period of six weeks And every qualified person whose name shall not be on such list or who shall be entitled to have his name inserted

As to preparation of future rolls.

*Legislative Council.*

inserted on the Council roll in respect of some qualification other than or in addition to that already appearing may at any time before the expiration of the said six weeks claim to have his name so inserted by giving or transmitting by post to the said Clerk notice thereof in writing according 5 to the form numbered 2 in the said Schedule A accompanied by a declaration in the form thereto annexed verifying the qualification stated in the claim which declaration shall be made and signed before a Justice of the Peace And upon the expiration of such period of six weeks the said Clerk shall forthwith prepare a list of such claims according to the 10 form numbered 3 in the said Schedule A and shall cause copies thereof together with the first named list and together with a notice in the form numbered 4 in the said Schedule A to be affixed to the said Court and other public places as aforesaid during the eighth and three following weeks And any person named in either of such lists objecting to any 15 other person as not entitled to be on the Council roll shall before the expiration of the four last mentioned weeks give or transmit by post to the said clerk and to the person objected to at his address as inserted in the list wherein the name of the person so objected to appears notice thereof in writing according to the form numbered 5 in the said 20 Schedule A And the said clerk shall prepare a list of such objections in the form numbered 6 in the said Schedule and shall cause copies thereof to be affixed to the said Court House and other public places during the fourteen days then next following And the said clerk shall furnish copies of the said several lists or of any claims or objections to any person 25 requiring the same on payment of a reasonable price for such copies and shall at all reasonable times permit qualified electors to peruse in his presence any original claims or objections without payment of any fee Provided that no person claiming in manner mentioned in this Act to have his name inserted on any District list shall be bound to give proof of such 30 claim at any Revision Court unless duly objected to under the provisions of this Act or unless he be specially called upon by the Court to give such proof in which case reasonable time shall be allowed him in that behalf.

14. The Council roll to be prepared pursuant to clause twelve of this Act shall be the roll of electors at the first election and every 35 Council roll to be prepared pursuant to clause thirteen of this Act shall be the roll of electors at each triennial election next following the completion thereof Provided that if at the time of any election such roll shall not have been regularly made out or shall not have been perfected the preceding roll shall wholly or in part as the case may require be used 40 as the roll for such election.

15. For the election of Members to the Legislative Council the whole Colony shall form one Electorate.

16. The election of such Members shall be by quotas and comparative majorities that is to say—Every candidate who shall receive a full 45 quota of votes shall be declared to be duly elected and if a sufficient number of Members be not so returned the complement shall be made up by majorities as hereinafter provided.

17. The Governor shall within one month after the completion of the first Council roll under this Act and the President of the Council 50 or if that office be vacant the Governor shall within the like time after the expiration of three years from the day of the first election and within the like period after the expiration of three years from the day of each succeeding election issue a writ to the Registrar General stating the number of Members to be elected and requiring him forthwith to invite 55 a nomination of candidates for such election to be made to him within a period of time to be therein fixed and further requiring him if the candidates nominated shall exceed the required number of Members to cause an election to be held for the return of such Members at the several polling places established under the provisions of the Electoral Act on 60 a further day to be named in the said writ.

Council roll first prepared to be used at first election.

If new roll imperfect old roll used *protanto*.

The Colony to form one Electorate.

Elections to be by quotas and comparative majorities.

The Governor to fix the day of election in each third year.

*Legislative Council.*

18. Before the said President or the Governor as the case may be shall issue the second or any subsequent writ of election under this Act he shall ascertain the number if any of existing Members whose retirement is required under the fifth section of this Act and shall cause to be published in the *Gazette* the names of such Members being those who are lowest on the list of the required number And such Members shall unless re-elected vacate their seats on the notification in the *Gazette* of the return of the Members elected in their stead.

Names of Members retiring by rotation to be published.

19. Upon receipt of the said writ the Registrar General shall notify the same in the *Gazette* for general information and shall invite the nomination of candidates for election according to the provisions of this Act setting forth the requirements thereof in regard to such nomination And at any time after the issue of the said writ and within the time thereby limited any person qualified to be elected a Member of the Legislative Council or any qualified elector may with his consent signified in writing transmit to the Registrar General a requisition signed by not less than twelve qualified electors nominating him as a candidate for election and the names and addresses of all candidates shall be inserted by the Registrar General in the order of the receipt of such requisitions respectively in a list of candidates which he shall cause to be published from time to time when received in each *Gazette* for general information on the ordinary days of publication thereof and in a complete form in the first *Gazette* published after the expiration of the time limited for such nominations by the said writ.

Mode of nominating and declaring candidates.

20. If the candidates who shall be duly nominated in manner aforesaid within the time limited for that purpose shall not exceed the number of members to be elected the Registrar General shall on the day following the expiration of that time return to the Governor or to the President of the Council as the case may be the names of the candidates so nominated by certifying the same under his hand in a list indorsed upon the said writ and the said Governor or President shall cause such list to be published in the *Gazette* and the candidates therein named to be declared duly elected Members of the Legislative Council in the order of their notification as candidates.

If candidates do not exceed the number to be elected the whole to be declared duly elected.

21. If the candidates shall exceed the number to be elected the Registrar General shall cause a list of such candidates to be published in the *Gazette* once at least in every week which shall elapse before the day appointed in the said writ for the general election and shall together therewith publish a notice naming the said day of election and specifying the several polling places in each District (which polling places shall be the same as appointed for elections to the Legislative Assembly) at which the electors are required to attend and calling upon all Returning Officers and other persons upon whom any duties are imposed by the Electoral Act in regard to elections thereunder to fulfil the like duties in the election appointed to take place under this Act with such modifications and additions as are hereby directed.

If candidates exceed required number of Members Registrar to notify election in Gazette.

22. Each Returning Officer shall preside at one polling place and shall appoint Presiding Officers at other polling places in the Assembly District for which he was appointed and the requisite Poll Clerks as in the case of elections for the Assembly and the course of proceeding shall be the same as in such elections except so far as altered by this Act.

Returning Officer to preside and appoint deputies &c.

23. Each candidate shall be entitled to nominate one person at each polling place to hold his proxy in regard to the office of Scrutineer which nomination shall be by writing signed by the candidate and delivered or transmitted to the Presiding Officer before the election And in case the holders of proxies of the several candidates present at any polling place at the opening of the poll shall not exceed four they shall themselves be entitled to act as Scrutineers But if they exceed that number then any

Mode of appointing Scrutineers.

*Legislative Council.*

any persons not exceeding four at each polling place shall be entitled to act as Scrutineers who shall be appointed respectively under the authority of not less than one-fourth in number (rejecting fractions) of the candidates there represented by such proxies as aforesaid And in making such  
 5 appointment any person holding a proxy may exercise the same either in his own favour or in favour of any other person but no proxy from any candidate shall be exercised more than once or contribute towards the appointment of more than one Scrutineer.

24. A convenient voting room shall be set apart for the preparation  
 10 of voting papers in which one or more Poll Clerks shall be in attendance for the purpose of assisting therein and in which such number of electors as can be readily accommodated may be admitted during the actual preparation of their votes but at no other time and no other persons shall be admitted except the Returning or Presiding Officer and such Scruti-  
 15 neers as may desire to attend. Voting room to be provided.

25. Voting papers shall be prepared by the Registrar General in  
 the form contained in the Schedule B to this Act which shall be  
 transmitted by him to the several Returning Officers and other Presiding  
 Officers in such numbers as they shall be likely to require for the supply  
 20 of voters at their respective polling places and who shall distribute them to the electors at such time and such manner as may be deemed convenient. Voting papers to be delivered to each voter on making declaration of identity &c.

26. Each elector upon giving his vote shall bring with him a  
 voting paper in the form aforesaid with the names of the candidates for  
 whom he desires to record his vote entered thereon in the order of his  
 25 preference and signed by him before his vote shall be received and his name and number shall be entered on the voting paper by the Presiding Officer or Poll Clerk if not already noted thereon and the elector shall make the declaration thereon before the Presiding Officer who shall attest the same with his initials or a stamp. Mode of preparing voting paper.

27. The Returning Officers Presiding Officers Poll Clerks and  
 30 Scrutineers before entering upon their duties under this Act shall respectively make and subscribe the declarations contained in the Schedules hereto annexed that is to say every Returning Officer Presiding Officer and Poll Clerk the declaration in the Schedule marked C which  
 35 shall be made before a Justice and every Scrutineer the declaration in the Schedule marked D which shall be made before the Presiding Officer. Declaration by Officers and Scrutineers.

28. Every elector shall vote at some polling place in the district  
 40 wherein he resides. Electors to vote in the district in which they reside.

29. At the close of the poll every Returning Officer and every  
 other Presiding Officer shall cause to be made a list of all the voting  
 papers taken by him distinguishing them by reference to each voter's  
 number on the roll He shall then seal up such voting papers in the  
 presence of a Polling Clerk and of such of the Scrutineers as shall  
 45 choose to attend and shall with all convenient speed transmit the same together with the said list (which shall be signed by him and countersigned by a Poll Clerk) to the Registrar General. Voting papers to be transmitted to Registrar General.

30. An interval of twenty-eight days after the day of election  
 shall be allowed for transmission of the voting papers to the Registrar  
 50 General And no voting papers thereafter received shall be counted in the election and upon the twenty-ninth day or sooner if the voting papers from all the polling places shall have been received the Registrar General shall open and examine all the voting papers so received by him and shall with the assistance of as many clerks as shall be necessary ascertain and  
 55 declare therefrom in manner hereinafter directed the candidates who have been elected and before entering upon such examination the said Registrar General and every clerk to be employed in assisting him therein shall make and subscribe a declaration in the form of the Schedule hereto marked E And the said declaration shall be made before any Justice  
 and Registrar General after twenty-eight days to proceed to examine voting papers and ascertain the elections.

and shall be forwarded by such Justice to the Colonial Secretary to be filed of record.

31. The voting papers shall be examined and the elections ascertained therefrom as follows viz. :—

5 (1.) The whole number of votes shall be ascertained and such number divided by that of the Members to be elected for the purpose of ascertaining the quota.

10 (2.) The number of primary votes entered on all the voting papers for the respective candidates shall be ascertained and a list of the candidates prepared placing them in the order of their majorities in reference to such primary votes and stating the number received by each.

15 (3.) If any of the candidates shall have received primary votes in excess of the quota so many of the voting papers only which contain the same shall be allotted to each such candidate as will make up the quota and his name shall be cancelled on the remainder of such voting papers.

20 (4.) Each remaining voting paper on which the first name has been cancelled under rule three shall be allotted to the candidate named thereon to whom the contingent vote marked two has been given unless or until such last mentioned candidate shall also have obtained a quota of votes in which case his name shall also be cancelled on such voting paper which shall then be allotted to the candidate named thereon to whom the contingent vote marked three has been given and so on successively until the vote has been received by some candidate whose quota is not otherwise completed or until all the contingent votes marked thereon shall be exhausted.

25 (5.) The following rule shall be adopted in the selection of the voting papers retained for the quota of any candidate namely those voting papers shall first be taken which contain one candidate only and next in succession those which contain the fewest names of candidates and in the event of the numbers being equal on any two or more voting papers then they shall be taken in the order of the voter's number on the Council roll beginning with the lowest number.

30 (6.) When after appropriating all surplus votes to the candidates entitled thereto under the above rules it shall be found that no quota can thereby be completed in favour of any further candidate then if the full number required to complete the return of Members to be then elected shall not have obtained quotas the examiners shall sort and arrange all the voting papers not used in the quotas already completed and shall allot them to such remaining candidates as shall respectively stand highest on such voting paper and so many of such candidates as shall be sufficient to make up the required number of Members shall be returned as shall be found to have obtained the greater number of votes. And in case of an equality of votes between competing candidates the candidate highest on the list of candidates published in the *Gazette* shall be returned.

35 (7.) So soon as the voting papers applicable to the election of any candidate shall have been ascertained they shall be set apart and sealed up in a separate packet by the Registrar General and at the close of the examination the votes ultimately appropriated to each candidate whether sufficient for his election or not shall be in like manner set apart and sealed up in a separate packet. And such packets shall be endorsed with the names of the respective candidates and shall be retained in the office of the Registrar General until the close of the first Session of Parliament and shall then be transmitted to the Clerk of the Legislative Council.

*Legislative Council.*

33. At the close of the examination the Registrar General shall after the first election transmit to the Governor and after any subsequent election to the President of the Council or the Governor as the case may be a return certified under his hand indorsed upon the writ of election received 5 by him of the candidates ascertained to have been elected in manner aforesaid and shall place their names in order of priority according to the votes received by them that is to say—As regards the Members elected by full quotas according to the number of primary votes received by them as appearing on the list prepared under rule two aforesaid and as regards the 10 Members elected by comparative majorities in the order of such majorities with regard to the whole number of their votes whether primary or contingent And in case of an equal number of votes in any case the priority shall be given to the candidates highest on the list published in the *Gazette*.
- 15 34. If the election of any candidate returned by the Registrar General shall by the decision of a Committee of Elections and Qualifications be declared void for bribery or otherwise the Registrar General shall upon such decision being notified to him by the Clerk of the Council make a supplementary return of another candidate being the next in order 20 of majority of votes to the lowest on the previous list of elected Members to supply the place of the candidate whose election has been invalidated and such return shall be transmitted to the Governor or President of the Council respectively as in the case of the former return at the same election.
- 25 35. In case any of the votes retained under the Regulations aforesaid to make up the quota of a candidate whose votes have exceeded the quota shall be rejected upon any scrutiny before an Election Committee no reduction in the number of his votes thus occasioned shall be computed 30 to his prejudice until the votes so rejected shall exceed the number of voting papers which shall have been withdrawn from him as superfluous and then only to the extent of such excess Provided nevertheless that nothing herein shall prejudice the election of any other candidate whose quota shall have been aided by the transfer of any such apparently superfluous votes if in themselves valid.
- 35 36. The several enactments of the Electoral Act of 1858 which relate to the appointment and duties of Presiding Officers—to the course of proceeding before and at and after elections—to the not questioning or avoiding of elections for defects—to the remedy for informalities—to bribery and its consequences—to any misconduct of Returning and other 40 Officers—to the Committee of Elections and Qualifications and petitions against returns—and all other the enactments of the said Act—so far as any such enactments as aforesaid are or can be made applicable to the purposes of this Act and so far as the same are not repealed or varied hereby—shall apply to and be deemed to be hereby again enacted for the 45 purposes of this Act and be acted upon accordingly Provided that the said sections and other enactments so far as they apply to the Legislative Assembly or to the Speaker thereof shall for the purposes of this Act apply respectively to the Legislative Council and to the President And so far as they apply to the Assembly electoral rolls shall for the purposes 50 of this Act apply respectively to Council rolls.
37. The Legislative Council shall at its first meeting and before proceeding to the despatch of business elect one Member of the said Council to be President thereof and as often as the place of the said President shall become vacant by death resignation vote of the Council 55 or otherwise shall forthwith proceed to elect some other Member to be President And the President shall preside at the meetings of the Council except as provided by the Standing Rules and Orders and may take part in any debate or discussion And the election of every such President shall be forthwith notified to the Governor by the said Council.

Registrar to make return of elected Members.

If election of any Member invalidated Registrar General to return the candidate next in order on the poll.

If candidates lose votes by rejection on scrutiny the benefit of surplus votes to be retained in adjusting their position on the poll.

Certain provisions of the Electoral Act of 1858 adopted so far as applicable.

President.

President to take part in debates.

*Legislative Council.*

38. The presence of at least ten Members of the Legislative Council exclusive of the President shall be necessary for despatch of business And every question shall be decided by the majority of votes of the Members present exclusive of the President Provided that in case of equality of votes he shall decide the same by his casting vote.

39. No deficiency in the number of elected Members whether arising from defective election or from vacancies occurring during any intervals of periodical election shall invalidate any proceeding of the Council provided the number of Members required for despatch of business be present thereat But if at any time during the first two years of such interval the number of elected Members shall be less than fifteen a new writ shall issue for a special election to fill the vacancies and the same course of proceeding shall be adopted at such election as at any other election except that the Council roll for the preceding election shall be used thereat And after any such special election the next triennial period of election shall be computed from the date thereof and the times for preparing the next and future Council roll and other incidents of and preparatory to future elections altered accordingly.

40. Any Member of the Legislative Council may after the time allowed by law for petitions against his return by writing under his hand addressed to the President resign his seat and upon receipt of such resignation by the President such seat shall become vacant Provided that if there be no President a like resignation addressed to the Governor shall have the like effect.

41. If any Member of the Legislative Council shall for two whole Sessions of Parliament without the permission of the Legislative Council entered upon its Journals fail to give his attendance in the said Council his seat in the said Council shall thereby become vacant.

42. Any person who shall take any oath or make any declaration of allegiance to any Foreign Prince or Power or become a subject or citizen of any Foreign State or a bankrupt or insolvent debtor under the laws relating to bankrupts or insolvent debtors or a public defaulter or be attainted of treason or convicted of felony or any infamous crime shall be incapable of sitting in or being elected a Member of the Legislative Council.

43. The present and every future Clerk of the Legislative Council shall be styled "Clerk of the Parliaments."

44. The salaries and allowances of the President and Chairman of the Legislative Council shall be at least equal in all respects to the salaries and allowances of the Speaker and Chairman of the Legislative Assembly respectively the salary and allowances of the Clerk of the Parliaments shall be at least equal in all respects to the salary and allowances of the Clerk of the Legislative Assembly and the salaries and allowances of all other Officers already appointed or at any time hereafter to be appointed to offices in the Legislative Council Department shall be at least equal in all respects to those of the Officers at the time holding corresponding offices in the Department of the Legislative Assembly.

45. All the enactments of the Constitution Act relating to the Legislative Council as constituted thereunder except as repealed or varied hereby shall apply to the Legislative Council as constituted under this Act And the said Council shall except as herein otherwise enacted possess and may exercise all the powers vested in the Legislative Council by the said Constitution Act.

46. Every person who shall make a declaration wilfully false in regard to any of the matters wherein a declaration is required to be made under this Act shall be guilty of a misdemeanor and being thereof convicted shall be liable to the punishment imposed by law upon persons found guilty of perjury.

47. No prosecution or other legal proceeding for any offence alleged to be committed or for the recovery of any penalty alleged to be incurred

Quorum &amp;c.

Election in special cases.

Resignation of seat.

Grounds of vacating seats.

Grounds of incapacity.

Clerk to be styled "Clerk of the Parliaments."

Salaries of President Chairman and Officers of Legislative Council.

Powers of Legislative Council.

False declaration made punishable.

Limitation of prosecutions.

*Legislative Council.*

incurred under this Act shall be commenced after the expiration of six months from the commission of such offence or the incurring of such penalty.

48. It shall be lawful for the Governor with the advice aforesaid <sup>Regulations for matters in detail.</sup> to make regulations for carrying into complete effect all the provisions of this Act in particulars not expressly provided for or intrusted to other authority by enactment And all such regulations and details so far as they are not repugnant to or inconsistent with any provision of this Act shall when published in the *Gazette* have the force of law And copies thereof shall be laid before both Houses of Parliament forthwith if then sitting and if not then within fourteen days next after the opening of the next Session.

49. Whenever any matter or thing shall by this Act be directed to be done or to take place on a certain day and that day happen to be <sup>Postponement of things chancing to fall on Sundays or holidays.</sup> Sunday Good Friday Christmas Day or any public holiday such matter or thing may be done or take place on the next day not being any such as aforesaid And all further changes of time rendered necessary by any such alteration may also lawfully be made.

50. Nothing herein contained shall be deemed or construed to <sup>Present Legislative Council to continue until writs for election be issued.</sup> abrogate or in any way interfere with the powers possessed by the Legislative Council as at present constituted until the same shall be dissolved under the authority conferred by the third section of this Act.

51. This Act shall be styled and may be cited as the "*Legislative Council Act of 1862.*" <sup>Short title.</sup>

25

## SCHEDULE A. [Section 13.]

## No. 1.

*Notice to be given by Clerk of Petty Sessions upon renewing Electoral Lists in 1865 and triennially thereafter.*

EVERY person entitled to vote in the election of Members for the Legislative Council in respect of any qualification within the Police District of <sup>and whose name is not inserted in the accompanying list</sup> Also every person named thereon and being so entitled the place of whose residence or nature of whose qualification has been altered since the making up of the last Roll of Electors is invited to give or transmit to me by post notice in writing of any such claim or alteration respectively according to or to the effect of one of the forms of notice herewith.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 186 .

(Signed)

*Clerk of Petty Sessions.*

No. 2.



*Legislative Council.*

No. 5.

*Form of Notice of Objection.*

To the Clerk of Petty Sessions at

I hereby give you notice that I object to the retaining on the List of Electors for  
 5 the Legislative Council (or the list of persons claiming to be upon the Council Roll as the  
 case may be) of the name of \_\_\_\_\_ now appearing thereon  
 number \_\_\_\_\_ for the following reason:—

(State ground of objection.)

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 186 .

10

(Signature in full) J.S.

(Place of abode.)

No. 6.

*List of persons objected to, to be published by Clerk of Petty Sessions.*

The following persons have been objected to as not being entitled to have their names  
 15 on the list of Council electors prepared within the District of

Christian and Surname.	Residence.	Qualification claimed.	Where situate or arising.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 186 .

20

(Signed)

Clerk of Petty Sessions.

SCHEDULE B. [Section 25.]

*Voting Paper.*

Election for: \_\_\_\_\_ Members of Legislative Council.

Polling Place.....

25

Date of Election .....

Name of Elector .....

No. on Council Roll .....

*Declaration to be made by Elector.*

I hereby solemnly declare that I am the elector named and numbered on the  
 30 roll as above, and that I have not before voted at this election in virtue of the qualification  
 entered on the roll under the said number.

Attested by

(Signed)

Presiding Officer.

Elector.

I the said Elector hereby vote for the Candidates whose names are hereunder written  
 35 in the order of preference set against their names respectively,—

Order of Preference.	Candidates voted for.	Order of Preference.	Candidates voted for.
1	A. B.	7	N. O.
2	C. D.	8	P. Q.
3	E. F.	9	R. S.
4	G. H.	10	T. V.
5	I. K.	11	W. X.
6	L. M.	12	Y. Z.
		&c.	

40

(Signed)

Elector.

*Legislative Council.*

SCHEDULE C. [Section 27.]

*Declaration to be made by Returning Officer (or other Officer under this Act.)*

I do hereby declare that I accept the office of Returning Officer (or other office as the case may be) for the election of Members of the Legislative Council and I promise and declare that I will faithfully perform the duties of my office to the best of my understanding and ability and that I will not attempt by any word or action directly or indirectly to influence the vote of any elector.

Declared before me this \_\_\_\_\_ day of \_\_\_\_\_ 186 .  
(Signed) A. B.  
*Justice of the Peace.*

SCHEDULE D. [Section 27.]

*Declaration to be made by Scrutineer.*

I a Scrutineer duly appointed to act at the polling place situate at \_\_\_\_\_ in the election for Members of the Legislative Council hereby solemnly declare that I will faithfully assist at such election and that I will not attempt by any word or action directly or indirectly to influence the vote of any elector.

Declared before me this \_\_\_\_\_ day of \_\_\_\_\_ 186 .  
C. D.  
*Returning Officer or Presiding Officer.*

SCHEDULE E. [Section 30.]

*Declaration to be made by Registrar General and Examining Clerks.*

I do solemnly declare that I will to the best of my skill and ability and without favour or affection to any or either of the candidates perform the duty of examining voting papers and ascertaining and declaring elections to the Legislative Council according to the provisions of the Legislative Council Act 1862.

(Signed) A. B.

M. L. 10