
A BILL

To amend the Constitution of the Legislative Council.

[MR. HARGRAVE;—13 November, 1861.]

WHEREAS 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 ^{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.

“ 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.

2. So much of the first section of the Constitution Act as relates <sup>Repeal of provisions
concerning present
Council.</sup>
20 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and eighth sections of the same Act are hereby repealed.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 <sup>Future Legislative
Council to be
Elective.</sup>
time not being later than six months after the day on which this Act
25 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 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 dispatch 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 in the Schedule hereto marked A. 25

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

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 5 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.

10 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.

ELECTION WRITS.
Governor to issue
Writs in certain
cases.

15 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 20 resolution when the Legislative Council is not in Session or when such vacancy occurs during any adjournment for a longer period than seven days.

President to issue
Writs to fill
vacancies.

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 25 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 30 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.

35 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 40 Secretary.

Returning Officers
and other officers to
make declaration.

Schedule B.

Questions to voters.

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—

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? 10

Constitution Act sections 18 & 19 and Electoral Act of 1858 sections 34, to 42, to 45, 47, to 49, 51, to 86, inclusive adopted so far as applicable.

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 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

Schedule C.

Schedule D.

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
5 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.

16. The Members of the Legislative Council shall upon their first ^{President.} assembling after their first Election and every subsequent General Election
10 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
15 Council.

17. Immediately after such Election of President and before pro-^{Periodical retirement of Members.}ceeding 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
20 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
25 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
30 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.

18. The presence of at least Twelve Members of the Legislative ^{Quorum &c.} Council exclusive of the President shall be necessary for despatch of
35 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.

- 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. 5
- 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 10 have the like effect.
- 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. 15
- 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 20 shall be incapable of sitting in or being elected a Member of the Legislative Council.
- Powers of Legislative Council. 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 25 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.
- Limitation of Prosecutions. 24. No prosecution or other legal proceeding for any offence alleged to be committed or for the recovery of any penalty alleged to be 30 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. 25. It shall be lawful for the Governor with the advice aforesaid to make regulations for carrying into complete effect all the provisions 35 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.

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.

10 27. This Act shall be styled and may be cited as the "Legislative Short Title. Council Act of 1861."

SCHEDULES.

SCHEDULE A.

COUNCIL DISTRICTS.	ELECTORAL DISTRICTS OF WHICH COMPOSED.	NUMBER OF MEMBERS.
BOURKE	East Sydney	2
GIPPS	West Sydney.....	2
THE HAMLETS	Paddington—Newtown—and The Glebe	1
CUMBERLAND	Parramatta and Central Cumberland... ..	1
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
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
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
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
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.

DECLARATION OF RETURNING OFFICER &c.

I do hereby declare that I accept the Office of Returning 35
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
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 40
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 186 .

45

(Signature)

Justice of the Peace.

SCHEDULE C.

SCHEDULE C.

BALLOT PAPER.

COUNCIL DISTRICT OF

Polling Day the *day of* 186

5

NAMES OF CANDIDATES.

A. B. of
C. D. of
E. F. of
G. H. of

10

SCHEDULE D.

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
15 to ascertain for whom any Elector shall vote and that I will not by any word or action
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)

20 Declared before me at
this day of 186 .

(Signature)

Justice of the Peace.

