

Legislative Council.

No. , 1902.

## A BILL

To amend the law relating to the constitution of the Legislative Council, and to provide means of settlement in cases of disagreement between the Legislative Council and the Legislative Assembly.

[MR. CREED ;—24 September, 1902.]

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

- 5     1. This Act may be cited as the "Constitution Act Amendment Short title.  
(Legislative Council) Act of ."
2. Sections seventeen and twenty-one of the Act No. 32, 1902, **Repeal.**  
intituled "*An Act to consolidate the Acts relating to the Constitution*"  
are hereby repealed.

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3.

Interpretation  
section.

3. In the construction of this Act, and of any Schedule thereto, or any regulations made thereunder, the following terms shall, if not inconsistent with the subject matter or context, have the respective meanings hereby assigned to them (that is to say)—

“Candidate” shall mean any person nominated under this Act 5  
for a seat in the Legislative Council.

“Elector” shall mean a Member of either of the Houses of the Legislature voting by ballot at the election of a member of the Legislative Council.

“Houses of the Legislature” shall mean the Legislative Council 10  
and Legislative Assembly of New South Wales.

“Prescribed” shall mean prescribed by this Act, or by any Schedule thereto, or by any regulation made thereunder.

“Present Members” shall mean Members holding seats in the Legislative Council when this Act shall come in operation, 15  
and who shall continue to hold the same until retirement, or until their seats shall have become vacated.

“President” shall mean President of the Legislative Council for the time being.

“Speaker” shall mean Speaker of the Legislative Assembly for 20  
the time being.

“Retire” shall mean to cease to be a Member of the Legislative Council at a time prescribed by this Act in that behalf.

“Vacated,” as applied to a seat in the Legislative Council, shall mean rendered vacant by death or by any other cause 25  
specified in Constitution Act or any Act amending the same, or in any way whatsoever, other than retirement, which may be prescribed by law for the time being in that behalf.

Number of members  
of Council.

4. After the passing of this Act the Legislative Council shall consist of half the full number of the Members of the Legislative 30  
Assembly authorised by law in that behalf, exclusive of the Representatives of the Government appointed under section twenty: Provided that whenever the full number of the Members of the Legislative Assembly authorised by law in that behalf be odd, half the next greatest number shall be taken to be the number of the Members of 35  
the Legislative Council prescribed by this Act: Provided also that if at any time after this Act shall have come into operation the number of the Members of the Legislative Assembly shall be diminished or increased by law in that behalf, the number of the Members of the Legislative Council shall not be diminished or increased in order to 40  
comply with the provisions of this section until the periodical retirement of Members on the thirty-first day of December, as hereinafter provided, at the end of the year on which the alteration in the numbers of Members of the Legislative Assembly shall come into force. The number of seats in the Legislative Council rendered vacant by 45  
retirement

Future alterations

retirement at that date shall be diminished or increased in such manner as to readjust the number of Members of the Legislative Council so as to comply with the provisions of this section.

Except, as hereinafter provided, the time during which the  
5 Members of the said Legislative Council shall be entitled to hold their seats shall be seven years.

5. If at the time of the passing of this Act there shall be a  
greater number of present Members than the number of Members  
prescribed by section four of this Act, the number of the said present  
10 Members shall forthwith be reduced by the retirement of as many present Members as there are in excess of the number of Members prescribed by the said section four—

(a) The present Members so retiring shall be selected by lot from  
15 amongst all the present Members, with the exception of the President, who shall not be one of the present Members so retiring.

(b) On the first day on which the Legislative Council shall  
20 assemble after the passing of this Act, and before proceeding with any other business the said selection by lot shall be held, and such selection by lot shall be conducted by the clerks of the said House. Immediately after the said selection by lot shall be completed, the President shall announce to the House the names of the Members so selected by lot, and the said Members shall forthwith retire.

6. On the thirty-first day in the month of December, in the  
25 year in which this Act is passed, one-seventh of the present Members holding their seats after the retirement of Members under section five shall retire, and a like number shall retire in each succeeding year on the thirty-first day in the month of December thereof, until all present  
30 Members shall have retired: Provided that if the seat of a present Member be vacated at any time within the two months preceding the fourteenth day of September, such seat shall not be filled, but shall for the purpose of filling the said seat only be deemed to be one of the  
35 seats of present Members rendered vacant by retirement on the said thirty-first day of December following, and shall be deemed to be one of the seats becoming vacant by the selection by lot as hereinafter provided in this section, and it shall be so provided in the said selection by lot: Provided also that if the President be a present Member, he shall not retire until the last day prescribed as aforesaid for the retiring  
40 of present Members.

The present Members so retiring at each of the several dates  
aforesaid shall be selected by lot, except as hereinbefore provided, on  
a date to be fixed each year as aforesaid by the President, and such  
selection by lot shall be conducted by the clerks of the Legislative  
45 Council: Provided that the date fixed each year by the President as aforesaid shall be not later than the fourteenth day of September thereof.

If

Provisions if Act  
comes into operation  
after the fourteenth  
of September

If this Act comes into operation after the fourteenth day of September of any year the President shall for that year only fix the date for such selection by lot as soon as practicable, so that the said selection by lot shall be decided before the thirty-first day of December thereof. If, after such selection by lot, there shall not be sufficient 5  
time to allow of candidates being nominated and elected as hereinafter provided, the seats so rendered vacant shall, for the purposes of electing new Members, be deemed to have been vacated, and shall be dealt with in the manner hereinafter provided for seats vacated by Members of the Legislative Council, with the exception that the said vacancies 10  
shall as soon as practicable be announced in the Gazette by the President, and that there shall be no notification of such vacancies to the Speaker and no announcement in both Houses of the Legislature, and that the Members filling such vacancies shall hold their seats in the Legislative Council, unless vacated, from the date of the announce- 15  
ment of their election in the Gazette, if the said date be not earlier than the first day of January following the date of such selection by lot, or if the said announcement in the Gazette be before the said first day of January—from the said first day of January until the thirty first day of December at the end of the seventh year from the date 20  
of the retirement of present Members as aforesaid in whose places the said Members shall be elected.

or later.

If this Act comes into operation at such a date in any year that the said selection by lot cannot be completed before the thirty-first day of December thereof, it shall, for that year only and for the 25  
purposes of this section and for the purposes of electing Members to vacancies arising under the provisions of this section, be deemed to come into operation on the first day of January of the year following.

*Election of Members.*

Rights and privileges  
of Members retiring  
on a date prescribed.

7. Present Members, who shall retire on a date prescribed, or 30  
Members who shall retire on a date prescribed, shall be eligible to be nominated as candidates for seats in the Legislative Council becoming vacant on that date, and shall as long as they retain their seats as Members of the Legislative Council, even although nominated for re-election as prescribed, retain all their rights and privileges as 35  
Members thereof, and shall be entitled to nominate and object to candidates and take part in the election of new Members as prescribed. And, further, any such Member, if nominated as a candidate, shall himself be entitled to present his withdrawal in writing in the form prescribed to the Chairman of the joint sitting as prescribed in section 40  
sixteen.

Nomination of  
candidates for  
vacancies caused  
by retirement.

Period of nomination.

8. (1) The period within which candidates may be nominated for vacancies in the Legislative Council caused by retirement (of Members other than the representatives of the Government appointed under

under section twenty) shall be from the first day of October to the thirty-first day of October, inclusive of both the days aforesaid, of the year at the end of which the said vacancies shall occur.

5 (2) (a) The Premier, as representing the Government shall, Who may nominate.  
at any time during the period of nomination, be entitled to nominate candidates: Provided that the number of candidates so nominated by him shall not exceed the number of the said vacancies by more than one-third.

10 (b) Any thirty Members of the Houses of the Legislature shall, at any time during the period of nomination, be entitled to nominate one candidate: Provided that no Member of either of the Houses of the Legislature shall sign more than four nomination papers.

15 (3) Every such nomination shall be in writing and in Mode of nomination.  
duplicate in the form prescribed, and both such instruments shall be addressed to the President and Speaker and signed by the person so nominating as aforesaid, one of which said instruments with the consent, or duplicate thereof, of the candidate as hereinafter prescribed affixed thereto shall be delivered to the President on or before the 20 last day of the period of nomination, and one with the consent, or duplicate thereof, of the candidate as hereinafter prescribed affixed thereto to the Speaker on or before the last day of the period of nomination, and the same shall be published in the Gazette for one calendar month from the last day of the period of nomination, and shall lie on the Tables of the Houses of the Legislature for so long as 25 the said Houses shall be sitting during the aforesaid calendar month.

9. If, after the passing of this Act, any seat of any Member of the Legislative Council other than the representatives of the Government appointed under section twenty and other than the seat of a present Member vacated within the two months preceding the four- 30teenth day of September, shall become vacated before the period herein prescribed for his retirement, the President shall, within fourteen days of the occurring of such vacancy, by message in writing, signed by himself, signify the said vacancy to the Speaker, and in the said message shall appoint a date on which the said vacancy shall be 35 announced in both Houses of the Legislature, if sitting, by the President and Speaker thereof respectively: Notice by President to Speaker in case of extraordinary vacancy

Provided that the said date appointed by the President in the said message shall be not later than seven days after the sending of the said message by the said President:

40 Provided also that the said vacancy shall be published in the Gazette within fourteen days from the occurring of such vacancy, and such publication shall, if the said Houses be not sitting, be sufficient announcement for the purposes of this section.

10. (1) The period within which a candidate may be nominated Nomination of candidates for vacated seats.  
45 for a seat in the Legislative Council, which shall have been vacated by

a Member other than the representatives of the Government appointed under section twenty, and other than the seat of a present Member vacated within the two months preceding the fourteenth day of September, shall be fourteen days from the date of the announcement of the said vacancy in the Houses of the Legislature, or from the date of the publication of the said vacancy in the Gazette as prescribed, according to whichever date shall be latest in point of time, inclusive of both days aforesaid. 5

Who may nominate. (2) (a) The Premier as representing the Government shall at any time during the period of nomination be entitled to nominate two candidates for each vacancy so occurring. 10

(b) Any thirty Members of the Houses of the Legislature shall at any time during the period of nomination be entitled to nominate one candidate: Provided that no Member of either of the Houses of the Legislature shall sign more than one nomination paper. 15

Mode of nomination. (3) Every such nomination shall be in writing and in duplicate in the form prescribed, and both such instruments shall be addressed to the President and Speaker and signed by the person so nominating as aforesaid, one of which said instruments with the consent, or duplicate thereof, of the candidate as hereinafter prescribed shall be delivered to the President on or before the last day of the period of nomination, and one with the consent, or duplicate thereof, of the candidate as hereinafter prescribed shall be delivered to the Speaker on or before the last day of the period of nomination, and the same shall be published in the Gazette for one calendar month from the last day of the period of nomination, and shall lie on the Tables of the Houses of the Legislature for so long as the said Houses shall be sitting during the aforesaid calendar month. 20 25

Members signing nomination papers in excess of the number authorised. 11. If, in the event of any vacancy in the Legislative Council, any Member of either of the Houses of the Legislature shall sign more nomination papers than the number prescribed for such Member, the Clerk of the Legislative Council or the Clerk of the Legislative Assembly shall, during the period such nomination papers shall lie on the Tables of the Houses of the Legislature and be published in the Gazette, notify such Member of the same. Such Member shall forthwith withdraw his signature from the nomination paper or papers, which shall be in excess of the number authorised by this Act to be signed by him. 30 35

shall withdraw. Clerk shall withdraw Member's signature. If such Member, after such notification as aforesaid, fails to withdraw his signature from the said nomination paper at least four clear days before the close of the period aforesaid, or if such Member, in the opinion of either of the clerks aforesaid, cannot be notified as above in time to withdraw his signature from the nomination paper or papers aforesaid four clear days before the close of the period aforesaid, either of the said clerks shall withdraw his signature from 40 45

from the nomination paper, which shall be in excess of number authorised by this Act to be signed by the said Member, four clear days before the close of the period aforesaid. The clerk shall first withdraw the said Member's signature from the nomination paper, the  
5 name of the candidate on which is first in alphabetical order as regards the candidates nominated in the nomination papers signed by the said Member; then, if necessary, the next nomination paper in which is nominated the candidate next in alphabetical order, and so on, as the occasion may require.

10 At any time during the period in which nomination papers shall lie on the Tables of the Houses of the Legislature and be published in the Gazette, any Member of either of the Houses of the Legislature, who shall not have already signed the full number of nomination papers authorised by this Act to be signed by him, may  
15 sign any nomination paper as aforesaid, which after the withdrawal of the signature of a Member as aforesaid shall not have the full number of signatures as prescribed: Provided that the said Member shall not sign more nomination papers than the number authorised by this Act for such Member. Such nomination papers, if signed as prescribed by  
20 thirty Members before the close of the period aforesaid, shall be valid and effectual for all the purposes of this Act.

12. Before a candidate shall be nominated as prescribed by this  
Act for any vacancy in the Legislative Council, whether such vacancy shall be caused by retirement or by any other cause whatsoever, the  
25 consent of such candidate shall be obtained in writing and in duplicate, both shall be duly signed by such candidate or his attorney duly appointed for such purpose, and such consent and duplicate as aforesaid shall be affixed, one to his nomination paper and one to the duplicate thereof, on or before the last day of the period of nomination  
30 for such vacancy.

13. Any thirty Members of the Houses of the Legislature may  
object to any candidate or candidates nominated as prescribed. Such  
objection shall be in writing and in duplicate as prescribed, both signed  
by the said thirty Members, but which shall not state therein the  
35 grounds of their objection. One of the said documents shall be placed on the Table of the Legislative Council, if sitting, and one on the Table of the Legislative Assembly, if sitting, at least ten clear days before, and shall be published in the Gazette at least two clear days before the close of the period during which nominations shall lie on the  
40 Tables of the Houses of the Legislature and be published in the Gazette.

14. Wherever in this Act it is provided that nomination papers,  
objections, or any papers whatsoever, shall lie on the Tables of the  
Houses of the Legislature for a period prescribed, and during part  
45 or the whole of such period shall be published in the Gazette, or  
wherever

Consent of candidate.

Objections to candidates.

Publication in Gazette when sufficient.

wherever in this Act it is provided that any announcement shall be made within a period prescribed in any or both of the Houses of the Legislature and be published in the Gazette, then in every such case in which the said House or Houses shall not be in session during the period named, publication in the Gazette as aforesaid shall be sufficient for the purposes of this Act. If in such case the House or Houses be sitting for a part of such period, it shall be sufficient for the purposes of this Act, if the papers referred to above lie on the Tables of the Houses of the Legislature for so long as the said Houses shall be sitting during the said period, the same having been published in the Gazette as prescribed.

When number of candidates not in excess of vacancies.

**15.** If the number of candidates nominated under section eight be not greater than the number of vacancies occurring, or if but one candidate be nominated under section ten for a seat which shall have been vacated, the President shall, subject to the proviso hereinafter contained, on the day following the last day of the period during which the nominations in regard to the said candidates shall lie on the Tables of the Houses of the Legislature and be published in the Gazette, or so soon thereafter as is practicable, declare in the Gazette, and in the Legislative Council (if sitting), the said candidates to be duly elected, and such candidates shall become Members of the Legislative Council and shall hold their seats therein, as follows :—

(1) If the seats shall have been rendered vacant by periodical retirement, the Members filling such vacancies under this section shall hold their seats in the Legislative Council, unless vacated, from the first day of January next following the date of their nomination until the thirty-first day of December, at the end of the seventh year from their taking their seats as Members of the Legislative Council, inclusive of both days aforesaid.

(2) If the seat shall have been vacated, the Member filling such vacancy shall hold his seat in the Legislative Council, unless vacated by him, from the date of the announcement of his election in the Gazette and for the remainder of the term during which the Member of the Legislative Council in whose place he was elected would have been entitled to hold his seat, if no cause had arisen whereby his seat became vacated : Provided that if the said seat shall have been vacated by the President, being a present Member, the Member taking his seat under this section shall be liable to retire at the time and in the manner prescribed for present Members :

Provided that if any of the said candidates shall have been objected to as hereinbefore provided, such candidate shall not be declared elected as provided in this section, but shall be elected or rejected as hereinafter provided by section sixteen.

16. In the event of the number of candidates so nominated under sections eight and ten being greater than the number of vacancies occurring, or in the event of any objection having been lodged as prescribed against any candidate, the Houses of the Legislature shall sit together at a time and place appointed by the President, who shall publish the said time and place in the Gazette seven clear days before such joint sitting, provided that such joint sitting shall not be held during the period within which the nominations shall lie on the Tables of the Houses of the Legislature and be published in the Gazette, and shall be held not later than fourteen clear days from the last day of the period aforesaid.

Number of candidates greater than number of vacancies.

The Members of the Houses of the Legislature jointly sitting as aforesaid shall, without discussion and before proceeding with any other business, decide by a division whether any objection to any candidate be upheld or not. If the said objection be upheld by division the candidate and his nomination shall be rejected. If such objection be not upheld the said candidate shall, except as hereinafter provided, with the other candidates nominated go to an election by ballot as prescribed by this section: Provided that any Member of either of the Houses of the Legislature may, at such joint sitting and before division, present to the Chairman of such joint sitting the written withdrawal in the form prescribed of any candidate, who has been objected to as aforesaid. The Chairman shall forthwith withdraw the name of such candidate from the list of such candidates as aforesaid and announce such withdrawal to the Houses jointly sitting as aforesaid. Such candidate shall thereupon be deemed to have duly retired from such election. If after such objections have been rejected or upheld, and after the withdrawal of candidates as aforementioned, the number of candidates be not greater than the number of vacancies, the Chairman of the said joint sitting of the Houses of the Legislature shall declare at such joint sitting, and shall as soon as practicable announce in the Gazette such candidates to be elected, and the candidates so declared elected shall become Members of the Legislative Council, and shall hold their seats therein subject to the provisions of subsections one and two of this section.

Objections, how dealt with.

Withdrawal of candidate.

In the event of there being no objections lodged as prescribed to any of the said candidates, the number of whom is greater than the number of vacancies, or if after the said objections have been rejected or upheld and after the withdrawal of candidates as mentioned in this section, the number of candidates be greater than the number of vacancies, the Members of the Houses of the Legislature, jointly sitting as aforesaid, shall without discussion select by ballot the candidates to fill the said vacancies. The names of the candidates so selected by ballot shall be transmitted to the Chairman of the said Houses jointly sitting as soon as ascertained by the clerk in charge of such ballot, and

Election by ballot.

and the said Chairman shall as soon as practicable, announce to the Houses jointly sitting as aforesaid, and declare in the Gazette the said candidates so selected by ballot to be duly elected, and such candidates shall become Members of the Legislative Council, and shall hold their seats therein as follows :—

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- (1) If the seats shall have been rendered vacant by periodical retirement, the Members filling such vacancies under this section shall hold their seats in the Legislative Council, unless vacated, from the first day of January next following the date of their nomination until the thirty-first day of December at the end of the seventh year from their taking their seats as Members of the Legislative Council, inclusive of both days aforesaid. 10
- (2) If the seat shall have been vacated, the Member filling such vacancy shall hold his seat in the Legislative Council, unless vacated by him, from the date of the announcement of his election in the Gazette and for the remainder of the term during which the Member of the Legislative Council in whose place he was elected would have been entitled to hold his seat, if no cause had arisen whereby his seat became vacated : Provided that if the said seat shall have been vacated by the President, being a present Member, the Member taking his seat under this section shall be liable to retire at the time and in the manner prescribed for present Members. 20

Vacancies not filled.

17. In the event of the number of candidates elected as prescribed being less than the number of vacancies, the seats so remaining vacant after the close of such election shall, for the purposes of electing Members to fill such vacancies, be deemed to have been vacated, and all the provisions of this Act applying to the election of Members to vacated seats shall apply with the exceptions that :— 30

- (a) The President shall as soon as practicable announce such vacancies in the Gazette.
- (b) The President shall not signify the said vacancies to the Speaker, and such vacancies shall not be announced in both Houses of the Legislature. 35
- (c) The period within which candidates may be nominated as prescribed shall be fourteen days from the announcement of such vacancies in the Gazette.
- (d) If the seat, which under this section shall be deemed vacated for the purposes of electing Members thereto, were in fact originally rendered vacant by retirement, the Members elected to fill such vacancies shall hold their seats, unless vacated, from the date of the announcement of their election in the Gazette until, and inclusive of, the thirty-first day of December

December at the end of the seventh year from the announcement of such vacancy in the Gazette as provided by this section.

18. Every Member of the Legislative Council, with the exception of present Members, who shall not require the qualification hereinafter mentioned up to the time of their retirement or up to the time when they shall vacate their seats, must, in addition to the qualifications of a Member of the Legislative Council prescribed by the Constitution Act or any Act amending the same, be an elector of New South Wales entitled to vote at the election of Members of the Legislative Assembly: Provided that no such Member, as long as he holds his seat, shall become disqualified by an alteration in the law as regards the qualifications of an elector of New South Wales as aforesaid made after the said Member shall have taken his seat in the Legislative Council.

Qualification of member.

19. The seat of a Member of the Legislative Council shall become vacated, if for a complete session of the Parliament he, without leave having been granted by a resolution of the said House, fails to attend the Legislative Council.

Vacancy by absence.

20. The Governor, with the advice of the Executive Council, may at any time appoint two Members of the Executive Council for the time being, not being Members of the Legislative Council or of the Legislative Assembly, to be representatives of the Government in the Legislative Council, in addition to the Members hereinbefore referred to in section four. Before such representatives shall take their seats in the Legislative Council, the Governor shall by message in writing signify the appointment of such representatives to the President of the said Council, and shall publish such appointment in the Gazette, and thereupon such representatives shall become Members of the said Council and be entitled to the rights and privileges thereof as long as they remain Members thereof, and shall hold their seats therein, unless vacated, until they cease to be Members of the Executive Council, or the Governor by message in writing signifies the revocation of such appointments to the President.

Representatives of Government in the Legislative Council.

21. As often as the office of President becomes vacant, the Members of the Legislative Council shall at their first assembling thereafter proceed forthwith to elect by ballot one of their number as President.

Election of President.

The President shall cease to hold his office, if he ceases to be a Member of the Legislative Council. He may be removed from office by an affirmative vote of two-thirds of the Legislative Council, or he may resign his office by writing, addressed to the Governor.

And it shall be at all times lawful for the said President to take part in any debate or discussion which may arise in the said Legislative Council.

Mode of election.

22. Every election by ballot under this Act shall be conducted in the manner following :—

One candidate.

(1) In every case in which only one candidate is to be elected for a vacancy in the Legislative Council, the elector shall expunge the names of the candidates for whom he does not intend to vote, so that he leaves only one name not struck out, and if he leaves the names of more than one candidate not struck out, such ballot-paper shall be invalid. 5

More than one candidate.

(2) In every case in which more than one candidate is to be elected for a vacancy in the Legislative Council, such elector shall have one vote only, but may vote in the alternative for as many candidates as he pleases, provided he votes for not less than one-half of the number of Members to be elected, and his vote shall be deemed to be given in the first place for the candidate opposite whose name upon the ballot-paper is placed the figure 1; but in the event of its not being required to be used for the return of such candidate, it may be transferred to the other candidate in succession, in the order of priority indicated by the figures set opposite their respective names; and the elector shall insert opposite to the names of the candidates for whom he wishes to vote the figures 1, 2, 3, 4, and so on, in the order of his preference. He shall not strike out from the ballot-paper the name of any candidate. 10 15 20

Officers in charge of ballot.

23. All the necessary business of balloting shall be carried out by the Clerks of the Legislative Council and the Clerks of the Legislative Assembly: Provided that the Clerk of the Parliaments, and in his absence the Clerk of the Legislative Assembly, and in the absence of both the Clerk of the Legislative Council next in priority, shall be the clerk in charge of the said business of balloting. 25 30

Ascertaining the poll.

24. In every case in which more than one candidate is to be elected for any vacancy in the Legislative Council, the clerk in charge of such ballot shall deal with the ballot-papers as follows :—

Papers sorted according to name having priority thereon.

(1) He shall first arrange the ballot-papers, placing in a separate parcel all those which have the figure 1 set opposite to the name of the same candidate, and in so doing he shall reject all ballot-papers which have not the official signatures or stamps on the back thereof, or which have anything written or marked thereon by which the voter can be identified, and all ballot-papers on which no number has been placed by the voter to indicate the candidate for whom he wishes to vote; and all ballot-papers on which the same number has been placed against more names than one; and all ballot-papers whereon the number of candidates marked in the order of the voters' preference is fewer than one-half the number of Members to be elected. 35 40 45 (2)

Informal papers.

- 5 (2) He shall then proceed to ascertain the quota of votes necessary for the election of a candidate by dividing the aggregate number of all the ballot-papers contained in all the parcels by the number of Members to be elected, and the result, disregarding any fractional remainder shall be the quota. Ascertaining the quota.
- 10 (3) He shall then proceed to count the number of ballot-papers in each parcel, and every candidate who has a number of first votes equal to or greater than the quota shall be declared elected, and every ballot-paper which has been once counted in the quota for a candidate, who is declared elected, shall not be counted for any other candidate. Candidate having full quota of votes elected.
- 15 (4) As many ballot-papers in each parcel as are in excess of the quota shall be set aside in the manner hereinafter directed to be counted for other candidates as hereinafter provided, and on all such ballot-papers so set aside the name of any candidate for whom the requisite number of ballot-papers has already been counted, shall be deemed to be cancelled, and the clerk in charge of such ballot shall then severally transfer such ballot-papers to the candidates indicated thereon respectively as the next in order of the voters' preference, and the votes thus transferred shall be deemed to have been given for the candidates to whom they shall be transferred as herein directed, and shall be deemed to be first votes. Transfer of unused votes.
- 20 (5) The ballot-papers which are set aside from any parcel after the first count of votes as hereinbefore directed shall be selected from that parcel in such manner that they shall include as nearly as practicable, in respect of each candidate, the same proportion of ballot-papers having the figure 2 set opposite to his name as the number of such ballot-papers included in the whole parcel bears to the total number of ballot-papers in the whole parcel; and if any doubt or dispute shall arise as to the number of ballot-papers which should be included in respect of any candidate among the ballot-papers set aside from any parcel, the decision of the Chairman of joint sitting of Houses of the Legislature at the time of such ballot shall be final.
- 25 (6) If in any case the number of ballot-papers transferred to another candidate as the second in the order of preference indicated thereon shall exceed the number required to give the quota of votes to that candidate, the excess to be transferred to other candidates shall be selected from the total number of the ballot-papers previously transferred as aforesaid in such manner that the excess shall include, as nearly as practicable in the case of each candidate, the same proportion of ballot-papers having the figure 3 set opposite to his
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- 35
- 40
- 45

his name as the number of such ballot-papers included in the total number of ballot-papers previously transferred as aforesaid bears to such total number; and if any doubt or dispute shall arise as to the number of ballot-papers which should be included in such excess in respect of any candidate, 5 the decision of the Chairman of the said joint sitting at the time of such ballot shall be final. This process shall be repeated until no candidate has more than a quota of first votes or votes deemed first.

Candidate having least number of first votes excluded from the poll, and the other votes transferable.

(7) If, after all the ballot-papers have been counted and 10 respectively assigned to the several candidates as hereinbefore directed, it is found that no candidate, or an insufficient number of candidates, has obtained the quota of votes necessary for his or their election, then and in such case the candidate who has obtained the lowest number of votes 15 shall be excluded from the poll, and all the ballot-papers previously counted for such candidate shall be deemed to have been unused and to have his name cancelled thereon, and they shall be respectively transferred to and counted for the other candidates who have not received the requisite 20 quota of votes and who are indicated on such ballot-papers respectively as the next in the order of the voters' preference.

Exclusion of lowest candidate to be repeated until number of candidates reduced.

(8) The same process of excluding the candidate lowest on the roll and transferring to other candidates the ballot-papers previously counted for the excluded candidate shall be 25 repeated as often as may be necessary until the requisite number of candidates have received the necessary quota of votes, or until the number of candidates has been reduced to the number of Members to be elected.

Who shall be deemed the lowest candidate in certain cases.

(9) If at any time after the first counting of the ballot-papers it 30 becomes necessary to exclude the lowest candidate from the poll as hereinbefore directed, and it shall be found that two or more candidates have the same number of votes and occupy together the lowest position on the poll, then and in every such case whichever one of such candidates was found 35 to have received the least number of votes upon the first counting of the ballot-papers shall be deemed to be the lowest on the poll; and if at any time it becomes necessary to exclude from the poll one or more of any number of candidates who have received the same number of votes upon 40 the first counting of the ballot-papers, the Chairman of the joint sitting at the time of such ballot shall decide which one or more of such candidates shall be excluded from the poll.

Remaining candidates elected.

(10) When, by successive applications of the directions hereinbefore contained, the number of candidates is reduced to the 45 number

number of Members to be elected, the candidates constituting such reduced number shall be declared elected. The clerk in charge of such ballot shall not count the votes on any ballot-papers which he may reject as invalid, but he shall collect all such invalid ballot-papers and seal them up in a separate parcel after the counting of the votes has been concluded, and such parcel shall be handed over to the Clerk of the Legislative Council together with the other ballot-papers and documents used at the election.

5  
10 **25.** In any ballot held under the provisions of this Act no vote shall be deemed informal if, before the close of the ballot, any elector who shall have mutilated or rendered useless his ballot-paper shall return the same to the clerk in charge of the said ballot as prescribed.

Informal votes.

On the return of such ballot-paper to the said clerk, he shall cancel the same and issue a fresh ballot-paper to the elector returning the said informal ballot-paper.

**26.** The President, and, in his absence, the Speaker, shall be Chairman at all joint sittings of the Houses of the Legislature.

Chairman of joint sitting.

**27.** Present Members who shall retire or who shall voluntarily vacate their seats shall be entitled to retain all their rights and privileges as Members of the Legislative Council, except the right of sitting in the Legislative Council as Members thereof, unless elected as prescribed. Such retired present Members shall, unless disqualified by law for the time being in that behalf, be eligible to become Members of the Legislative Council and Legislative Assembly and the Federal Parliament, and if they shall become Members of any of the said Houses of Parliament they shall hold their seats therein without forfeiting their rights and privileges aforesaid: Provided also that present Members who under this section shall retain the rights and privileges aforesaid, shall cease to retain the said rights and privileges:—

Rights and privileges of present members.

(1) If convicted of any criminal offence by a Court of competent jurisdiction.

(2) If they cease to be British subjects.

**28.** No election under this Act shall be liable to be questioned by reason only of any defect in form of any of the documents or papers used for the purposes of the said election, or by reason only that any person as regards such election acted in an official capacity, who was not so authorised by this Act, and where any accidental or unavoidable impediment, misfeasance or omission shall have happened, the Governor may take all such measures as may be necessary for removing such impediment or rectifying such misfeasance or omission; or may, by proclamation, declare any or all of the proceedings at or for any election valid as to and notwithstanding such impediment, misfeasance or omission; and every such proclamation shall state specifically the nature of the impediment, misfeasance or omission, and shall be forthwith published in the Gazette.

Election not to be questioned for any defects of a formal nature.

**29.**

Petition against sitting Member.

29. (1) Any Member or Members of the Legislative Council may present a petition complaining that a person has been elected a Member of the Legislative Council, who, by this Act, or the Constitution Act, or any Act amending the same, is disabled or declared to be incapable to sit and vote in the Legislative Council, or complaining of the undue election of a Member of the Legislative Council, provided that such petition shall be subscribed by the said Member or Members, and shall be addressed to the President, and shall be presented to the President within eight weeks after such person has, in the Gazette as prescribed, been declared a Member of the Legislative Council. 5 10

(2) Every such petition shall be forthwith notified in the Gazette, and shall, as soon as conveniently may be after such presentation, be laid by the President before the Legislative Council. The said House may thereupon, by resolution, refer such petition and the question thereby raised to three Judges of the Supreme Court, by 15 message in writing to the said Court.

General power of Judges.

30. (1) The three Judges aforesaid of the Supreme Court shall have power to inquire into and determine upon the said petition and the questions thereby raised, and they shall report their finding to the Governor, and the same shall forthwith be published in the Gazette. 20

Power to make rules.

(2) The Judges of the Supreme Court or any three of them may make rules to regulate the procedure and practice of such inquiries as aforesaid, and such rules shall have the same force and effect, as if they had formed part of this Act ; rules made as aforesaid shall be published in the Gazette, and shall take effect from the date 25 of publication.

Until rules are made and published under this section, the three Judges may in each case give directions as may seem fit.

Decisions of Judges and their effect.

31. The three Judges shall determine finally on all questions referred to them, and if they shall determine and report to the Governor 30 that a person was not duly elected who was declared elected, or that a person declared elected was disabled or incapable of sitting and voting in the Legislative Council, the person so declared not to be duly elected, or so declared to have been when declared elected, disabled, or incapable of sitting and voting in the Legislative Council, shall, on the publication 35 of the said finding in the Gazette, cease to be a Member of the Legislative Council, and if necessary for the purpose of filling the said vacancy shall be deemed to have been duly elected and to have vacated his seat. And if the said Judges shall determine and report any person to have been duly elected, who was not declared elected as prescribed, the 40 person so declared elected shall, after the publication of the finding in the Gazette, take his seat accordingly, and hold it as long as the person, who was declared unduly elected or disqualified from sitting at the time of his being declared a Member of the Legislative Council, would have held it, if he had not so been declared unduly elected. 45

The

The Legislative Council shall not have the power to determine and decide as above. Legislative Council no power to determine.

32. All Members subscribing any petition shall be deemed to be parties to the reference, and the sitting Member to whose election any such petition relates, or any person complained against in any petition, may within four weeks after presentation thereof, by notice in writing to the President, be admitted as a party to support or oppose the same or to defend the election of the sitting Member, as the case may be, and every person so admitted shall be deemed a party to the reference. Parties to petition.

33. The parties to any reference may at any time after such presentation of the petition so referred to, jointly or severally withdraw their support or opposition, as the case may be, by written notice to that effect under their hands, or under the hand of their agent, to the President and also to the sitting Member whose election or return has been complained of, or his agent, and in all such cases the parties so withdrawing shall be liable to the payment of all costs and expenses as the said three Judges in their discretion shall deem reasonable and just. Parties withdrawing liable to costs.

34. It shall be lawful for the three Judges aforesaid to determine and report to the Governor upon all petitions so referred, and in all cases to award payment of such costs or expenses incurred by any of the parties as the Judges in their discretion shall deem reasonable and just, and to name the parties in each case who shall be liable for such payments, and the parties (if any) to whom such payments are to be made. Award of costs and expenses.

35. The said Judges shall upon application made to them deliver to any witnesses summoned before the Committee, or to any person entitled under the provisions of this Act to costs and expenses, a certificate thereof, signed by one of the said three Judges, expressing the amount of the costs and expenses allowed, with the name of the party liable to pay the same, and the name of the party entitled to receive the same, and such certificate shall be conclusive evidence for all purposes whatever as well of the amount of the demand as of the title of the party therein named in that behalf to recover the same from the party therein stated to be liable to the payment thereof. Costs and expenses, how certified.

36. If the party liable to pay such costs or expenses shall not, upon demand being made within seven days thereafter, pay the same, the President shall by warrant under his hand directed to the sheriff, command the said sheriff to levy for the amount named in such warrant upon the lands, goods, and chattels of the parties liable to pay the same; and thereupon the said sheriff shall forthwith levy for the said amount, and when the same shall be recovered, pay over the same to the party entitled thereto. Recovery of costs.

37. Any person from whom the amount of such costs or expenses shall have been recovered, or who shall have paid the same on demand thereof, shall be entitled to recover in any Court from the other persons (if such there be) who are liable to the payment of the same a proportionate share thereof according to the number of persons 5 so liable, and according to the extent of the liability of each person.

Powers in respect of witnesses, affidavits, documentary evidence, contempt, &c.

38. (1) The said three Judges shall have power to direct the attendance of witnesses, and to examine them upon oath (which oath it shall be competent for any of the three Judges to administer), and also to send for and examine papers, records and other documentary 10 evidence, and it shall be competent to the said Judges if they shall think fit to receive affidavits relative to any of the matters referred to them taken before any Justice of the Peace (which affidavits such Justice of the Peace is hereby authorised to take).

(2) If any person summoned by the said Judges shall 15 disobey such summons, or shall refuse or neglect to produce any papers, records or other documentary evidence relating to or affecting the matter under investigation which shall have been sent for by the said three Judges, or shall refuse to submit himself to examination, or shall give false evidence, or otherwise misconduct himself in refusing to 20 give evidence, he shall be deemed guilty of a misdemeanour and be liable accordingly. Moreover if any such person, while under examination, is guilty of prevarication or evasion or improper or indecent conduct, the said three Judges may commit him to prison for any term not exceeding *fourteen* days. 25

(3) Any person wilfully or knowingly giving false evidence before the said three Judges, or in such affidavit, shall be deemed guilty of wilful and corrupt perjury and be liable to be punished therefor; provided that in any case where a witness, if examined before the Supreme Court, would be permitted to make a solemn declaration 30 in any other way than upon oath, a witness summoned under this Act shall be allowed to give evidence in like manner by declaration or otherwise.

39. The three Judges aforesaid shall, after such petition shall have been referred to them, appoint the time and place of holding the 35 inquiry aforesaid, and the said Judges shall have power to adjourn the inquiry as they shall think proper.

Disagreement between the Houses.

40. If after the passing of this Act one of the Houses of the Legislature (hereinafter referred to as the First House) shall pass any proposed law and the other House (hereinafter referred to as the 40 Second House) shall reject or fail to pass it, or pass it with amendments to which the First House will not agree, and if after an interval of three months the First House, in the same or next session, again shall pass the proposed law with or without any amendments which shall have been made, suggested, or agreed to by the Second House, and 45 the

the Second House shall reject or fail to pass it, or pass it with amendments to which the First House will not agree, the Governor shall convene a joint sitting of the Members of the Legislative Council and Legislative Assembly :

5        Provided that if the said First House shall pass any proposed law, and the said Second House shall reject or fail to pass it or pass it with amendments to which the said First House will not agree, and if both Houses shall thereupon pass resolutions in favour of a joint sitting of the said Houses, as hereinafter provided, and such  
10 resolutions shall be presented to the Governor, who shall convene a joint sitting of the Members of the Legislative Council and Legislative Assembly.

The Members present at the joint sitting may deliberate together upon the proposed law as finally passed by the said First  
15 House (or if the said joint sitting be convened after and in consequence of the resolutions of both Houses as provided above—upon the proposed law as passed by the said First House), and upon amendments, if any, proposed at the said joint sitting, and if the proposed law, with amendments, if any, is affirmed by an absolute majority of the total number  
20 of Members present at the joint sitting it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor for the King's assent.

41. The presence of at least two-thirds of the Members of the Houses of the Legislature, exclusive of the chairman, shall be necessary  
25 to constitute a joint sitting of the Houses of the Legislature, as prescribed under section forty, for the despatch of business, and all questions which shall arise in the said joint sitting shall be decided by a majority of votes of such Members as shall be present other than the Chairman, and when the votes shall be equal the chairman shall  
30 have the casting vote: Provided that if on the day and at the time appointed under this Act for a joint sitting of the Houses of the Legislature there be not two-thirds of the Members of the said Houses of the Legislature (exclusive of the Chairman) present, the Chairman shall appoint the day following as the day for the joint sitting of the  
35 said Houses.

42. If any Member of either of the Houses of the Legislature shall be absent on the day and at the hour and place fixed as aforesaid for the joint sitting of the Houses of the Legislature, he shall, ipso  
facto, be fined in the sum of *fifty* pounds, and on each succeeding day  
40 on which the said Houses shall continue to sit as aforesaid for the conduct of business, and on which any Member of either of the Houses of the Legislature shall absent himself, he shall, ipso facto, be fined in the sum of *fifty* pounds for each day: Provided that if any Member as aforesaid shall have been granted leave of absence from  
45 either of the Houses of the Legislature by His Excellency the Governor,

Quorum.

Casting vote.

Joint sitting.  
Fines for non-attendance.

Governor, he shall be entitled to absent himself from all joint sittings of the said Houses of the Legislature for so long as his said leave of absence shall continue, and shall not be fined for so absenting himself :

Remission of fines.

Provided also that the President, or in his absence the person acting in his capacity, shall have power to remit any fine imposed on any Member of either of the said Houses of the Legislature under this section on being satisfied by the sworn statement of the said Member, together with such other evidence as the President, or the person acting in his capacity, may require, that such absence was unavoidable. 5 10

All fines shall be paid to the Clerk of the Legislative Council, who shall give a receipt for the same, and who shall keep an account of all such fines paid to him, and who shall pay the amount of such fines into the Consolidated Revenue. He shall also keep a record of of all fines remitted by the President. 15

Fines how recovered.

Any Member who shall be fined as aforesaid shall, except as hereinafter provided, pay such fine within two calendar months from the date of incurring such fine. In default of such payment by the said Member within the time limited as aforesaid, the President shall, by warrant under his hand directed to the Sheriff, command the said Sheriff to levy for the amount named in such warrant upon the lands, goods, and chattels of the Member liable to pay the same ; and thereupon the said Sheriff shall forthwith levy for the said amount, and when the same shall be recovered pay over the same to the Clerk of the Legislative Council. In the event of such levy not being sufficient to pay the said fine, then one-third, or so much thereof as shall satisfy so much of such fine as is still owing, of such Member's salary, if any, as a Member of either of the Houses of the Parliament shall, from time to time, as it shall become due, be paid to the Clerk of the Legislative Council, until the whole of such fine shall have been satisfied : Provided that such Member as aforesaid may, at any time before such warrant shall be signed by the President, apply to him as aforesaid to have such fine remitted, and on receipt of such application, together with the sworn statement aforesaid by the President, he shall not sign the said warrant until two weeks after he shall have given his decision on such Member's application. 20 25 30 35

Standing Rules and Orders.

**43.** The Standing Rules and Orders and Sessional Orders of the Legislative Council, so far as they are not inconsistent with the provisions of this Act, shall apply to all joint sittings of the Houses of the Legislature as prescribed. 40

Regulations.

**44.** The President may make regulations for carrying the provisions of this Act into full effect ; and all such regulations, in so far as they are not inconsistent with the provisions of this Act shall, on being published in the Gazette, have the full force of law, and shall be laid before both Houses of Parliament within fourteen days after 45

after such publication, if Parliament be then sitting, and if not, then within fourteen days after the commencement of the next ensuing session.

45. Wherever any day or date provided or appointed by or under this Act for any purpose shall fall on a Sunday or Good Friday or Christmas Day, then such provision and appointment shall take effect as for the day following; and all further changes of time, rendered necessary by any such alteration, may be lawfully made.

SCHEDULES.

10

FIRST SCHEDULE.

Secs. 8 and 10.

(a) The day of , 1902.

We, the undersigned Members of the Houses of the Legislature of New South Wales, do hereby nominate [*stating Christian and surname*] of [*state occupation*], as a fit and proper person to be elected a Member of the Legislative Council.

15

Surnames and Christian names of electors.	Usual signatures of electors.

To the Honourable the President of the Legislative Council  
and  
To the Honourable the Speaker of the Legislative Assembly.

20 (NOTE.—This writing must be in duplicate, and original and duplicate must be duly signed.)

(b) The day of , 1902.

I, the undersigned, being for the time being Prime Minister, do hereby nominate [*stating Christian and surname (or surnames)*] of [*state occupation*], as a fit and proper person (*or fit and proper persons*) to be elected a Member of the Legislative Council.

25

(Signature.)

To the Honourable the President of the Legislative Council  
and  
To the Honourable the Speaker of the Legislative Assembly.

30 (NOTE.—This writing must be in duplicate, and original and duplicate must be duly signed.)

Sec. 12.

SECOND SCHEDULE.

The day of , 1902.

I, the undersigned , do hereby consent to become a candidate at the election of a Member [or of Members] to a seat [or seats] in the Legislative Council.

(Signature.)

5

(NOTE.—This consent must be in duplicate, and original and duplicate must be duly signed.)

Sec. 13.

THIRD SCHEDULE.

The day of , 1902.

We, the undersigned Members of the Houses of the Legislature of New South Wales, do hereby object to the nomination of [state name or names as stated in the nomination papers] as a candidate [or candidates] at this election.

Surnames and Christian names of Members objecting.	Usual signature of Members objecting.	15

To the Honourable the President of the Legislative Council and  
To the Honourable the Speaker of the Legislative Assembly.

Sec. 16.

FOURTH SCHEDULE.

The day of , 1902.

I, the undersigned , do hereby withdraw my name from the list of candidates nominated for the vacant seat [or seats] in the Legislative Council.

(Signature.)

20

To the Chairman of the Houses of the Legislature jointly sitting.

25