

CONSTITUTION FURTHER
AMENDMENT (REFERENDUM)
ACT.

Act No. 2, 1930.

George V.
No. 2, 1930.

An Act to provide for the holding of a referendum upon a Bill intituled "A Bill to alter the Constitution of the Legislative Council; to amend the Constitution Act, 1902, and certain other Acts; and for purposes connected therewith"; to provide for certain matters necessary for giving effect to that Bill if approved at the referendum and assented to by His Majesty, including the conduct of elections of Members of the
Legislative

Legislative Council; to provide for the conduct of any referendum upon a Bill authorised or directed by law to be submitted to a referendum; to make certain provisions as to the privileges of existing Members of the Legislative Council; and for purposes connected therewith. [Assented to, 10th March, 1930.]

BE 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:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Constitution Further Amendment (Referendum) Act, 1930." Short title.

2. This Act is divided into Parts as follows:—

Division into Parts.

PART I.—PRELIMINARY—ss. 1, 2.

PART II.—REFERENDUM ON SCHEDULED BILL—
s. 3.

PART III.—CONDUCT OF A REFERENDUM—ss. 4-
42.

DIVISION 1.—*Interpretation and application of Parliamentary Electorates and Elections Act, 1912-1929*—ss. 4, 5.

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PART

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FIRST SCHEDULE.

SECOND SCHEDULE.

THIRD SCHEDULE.

PART II.

REFERENDUM ON SCHEDULED BILL.

3. (1) The Bill, a copy of which is set out in the First Schedule to this Act, shall not be presented to the Governor for His Majesty's Assent unless at a referendum a majority of the electors voting approve the Bill.

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Referendum
to be held on
Bill in First
Schedule.

In this section "electors" means electors qualified to vote for the election of Members of the Legislative Assembly.

(2) The referendum shall be held upon a date to be appointed by the Governor and notified by proclamation published in the Gazette, and shall be conducted in accordance with the provisions of Part III of this Act.

PART III.

CONDUCT OF A REFERENDUM.

DIVISION 1.—*Interpretation and application of Parliamentary Electorates and Elections Act, 1912-1929.*

4. (1) In this Part, unless the contrary intention appears,—

Definitions.

"Referendum" means the submission of a Bill to the electors in pursuance of the authority of any Act passed either before or after the commencement of this Part.

"Election" means an election of Members of the Legislative Assembly.

"This Part" means this Part of this Act, and includes the Second Schedule to this Act.

(2) A reference in this Part either generally or particularly to any provision of any other Act, shall, if such provision is amended or replaced after the commencement of this Part, be deemed to be a reference to the provision as so amended or replaced.

5.

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Application
of Act No. 41,
1912.

5. (1) Subject to this Part the provisions of the Parliamentary Electorates and Elections Act, 1912-1929, and any Act amending or replacing that Act and any regulations or rules made under any such Act, shall, so far as they are applicable, apply to and in respect of a referendum as if it were an election, and for the purposes of a referendum references in any such provision shall be read as follows:—

- (a) a reference to a writ shall be read as a reference to a writ for a referendum;
- (b) a reference to a polling-day shall be read as a reference to the day fixed by a writ for a referendum for the taking of the votes of the electors;
- (c) a reference to a poll shall be read as a reference to the taking of the votes of the electors for the purposes of a referendum;
- (d) a reference to an election shall be read as a reference to a referendum;
- (e) a reference to electoral matter or to electoral papers shall be read as a reference to corresponding matter or papers in relation to a referendum;
- (f) a reference to a ballot-paper, ballot-box, or other thing shall be read as a reference to a ballot-paper, ballot-box, or corresponding thing in relation to a referendum;
- (g) any reference to "this Act" or "this Part" shall be read as a reference to the provisions or Part, as the case may be, of the Act applicable to a referendum.

(2) For the purposes of a referendum—

- (a) each returning officer shall, subject to the directions of the Electoral Commissioner, make the necessary arrangements for the taking of the votes of the electors in his electoral district;
- (b) a ballot-paper shall not be rejected as informal except for a reason specified in this Act or in the regulations made thereunder;
- (c) the vote of an elector shall be marked on his ballot-paper in the manner directed by this Part;

(d)

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(d) upon the adjournment of a poll by any deputy, such deputy shall forthwith give notice thereof to the returning officer ;

(e) where any polling stands adjourned the returning officer shall not transmit his statement of the result of the voting in his district to the Electoral Commissioner until the poll so adjourned has been finally closed and the ballot-papers transmitted to the returning officer.

(3) For the purposes of any referendum which is held before the dissolution or expiration by effluxion of time of the twenty-eighth Parliament of the State of New South Wales, the electoral districts shall be the electoral districts as existing on the first day of October, one thousand nine hundred and twenty-nine.

Electoral districts.

(4) The provisions of Part VI of the Parliamentary Electorates and Elections (Amendment) Act, 1928, shall apply to and in respect of the referendum which is to be held in pursuance of section three of this Act in the same manner and to the same extent as if that Part had commenced before the passing of this Act.

Compulsory voting.

DIVISION 2.—*Writ for the referendum.*

6. Where any Bill is to be submitted to a referendum, a writ for the referendum may be issued by the Governor.

Issue of writ for a referendum. cf. Cwth. Act. No. 11, 1906, s. 5.

The writ shall be directed to the Electoral Commissioner.

7. (1) The writ may be in or to the effect of the Form A in the Second Schedule to this Act, and shall appoint a day for taking the votes of the electors, and a day for the return of the writ.

Form of writ, &c.

(2) The day appointed for taking the votes of the electors shall be a Saturday, and shall be not later than the fortieth day from the date of the issue of the writ.

8. The Governor may cause to be attached to the writ a copy of the Bill, or a copy of a statement setting out—

Statement of proposed Bill. *Ibid.* s. 6.

- (a) the text of the Bill ;
- (b) the text of the particular provisions (if any) of any Act proposed to be textually altered by the Bill, and the textual alterations proposed to be made therein.

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Duties of
Electoral
Commis-
sioner upon
receipt of the
writ.cf. Cwth. Act
No. 11, 1906,
s. 9;
Act No. 41,
1912, s. 74.

9. The Electoral Commissioner shall forthwith after the receipt of the writ—

- (a) indorse on the writ the date of receipt by him;
- (b) cause to be inserted in the Gazette and in two or more newspapers circulating in the State a notification of the receipt of the writ, and of the days appointed for the taking of the votes of the electors and for the return of the writ;
- (c) cause a copy of the Bill or of the statement (if any) attached to the writ to be exhibited at each court of petty sessions throughout the State.
- (d) forward a copy of the writ and of the proposed Bill, or of the statement (if any) attached to the writ, to the returning officer for each electoral district.

Electors who
may be
admitted to
vote at
referendum.cf. Cwth. Act
No. 11, 1906,
s. 10A.

10. (1) At a referendum only those electors who would be entitled to vote if the referendum were an election shall be admitted to vote.

(2) Nothing in this section shall be deemed to entitle any person who is disqualified from voting, to vote.

DIVISION 3.—Voting at the referendum.

Voting on
same day.

11. The voting at the referendum shall, subject to this Part, be taken on the day appointed by the writ for taking the votes of the electors.

Polling
places.

12. The polling places and polling place areas appointed and established under the laws for the time being in force relating to elections shall be polling places and polling place areas for the purposes of the referendum.

One vote
only.

13. Each elector shall vote only once at any referendum.

Voting to be
by ballot.

14. (1) The voting at the referendum shall be by ballot.

(2)

(2) Upon receipt of a ballot-paper, other than an absent voter's ballot-paper or a postal ballot-paper, the elector shall, without delay—

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cf. Act No. 41, 1912,
s. 103.

(a) retire alone to some unoccupied compartment of the booth and there in private mark his vote on the ballot-paper in the following manner:—

(i) if he approves of the proposed Bill—by placing the number “1” in the square opposite the word “Yes,” and by placing the number “2” in the square opposite the word “No”;

(ii) if he does not approve of the proposed Bill—by placing the number “1” in the square opposite the word “No,” and by placing the number “2” in the square opposite the word “Yes”;

(b) fold the ballot-paper so as to conceal the vote marked thereon and to show clearly the signature or initials of the returning officer or deputy, and exhibit it so folded to the returning officer or deputy, and then forthwith openly and without unfolding it deposit it in the ballot-box;

(c) then quit the booth.

15. (1) The ballot-papers to be used at a referendum shall be in or to the effect of the Form B in the Second Schedule to this Act.

Ballot-papers.

(2) For the purposes of voting under the provisions relating to absent voters contained in the Parliamentary Electorates and Elections Act, 1912–1929, the ballot-papers to be used at a referendum shall be in or to the effect of the Form C in the Second Schedule to this Act.

Absent voters' ballot-papers.

(3) For the purposes of voting under the provisions relating to voting by post contained in the Parliamentary Electorates and Elections Act, 1912–1929, the form of ballot-paper to be used at a referendum shall be in or to the effect of the Form D in the Second Schedule to this Act.

Postal voters' applications and ballot-papers.

(4) An absent voter or a postal voter shall mark his vote on the ballot-paper in accordance with the directions set out on the ballot-paper.

(5)

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Two or more referendums on same day.

(5) Where two or more referendums are held on the same day, it shall not be necessary for the forms of ballot-paper for each referendum to be on separate pieces of paper, but two or more forms of ballot-paper which may be used by any one elector may be on one piece of paper in or to the effect of Form E in the Second Schedule to this Act, in which case it shall not be necessary for the signature or initials of the returning officer or deputy to appear more than once on the piece of paper, and the presence of any mark or writing on the piece of paper by which the voter can be identified shall render informal all the forms of ballot-paper and votes appearing on the piece of paper, but any other ground of informality shall only apply to the particular ballot-paper and vote to which it relates, and shall not affect the validity of any other ballot-paper or vote.

Application of absent and postal voters provisions. of. Cwth. Act, s. 14.

16. Where the day fixed for the taking of the votes for the purposes of a referendum is the same as that fixed for the polling at an election—

- (a) a declaration which suffices to enable an elector to vote under the provisions of any section of the Parliamentary Electorates and Elections Act, 1912–1929, shall suffice to enable him to vote under the provisions of that section at a referendum ;
- (b) any reference in the declaration to the election shall be deemed to include a reference to the referendum ;
- (c) an application for a postal vote certificate and postal ballot-paper for the purposes of the election shall be deemed to include an application for a postal vote certificate and postal ballot-paper for the purposes of the referendum ;
- (d) a postal vote certificate for the purposes of the election shall be deemed to have effect as a postal vote certificate for the purposes of the referendum ;
- (e) any reference in the application or the certificate to the election shall be deemed to include a reference to the referendum ;
- (f) a postal ballot-paper containing the vote of an elector at the referendum may be enclosed in the

the same envelope as that in which the postal ballot-paper containing the vote of the elector at the election is enclosed.

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17. Where the day fixed for the taking of the votes for the purposes of a referendum is the same as that fixed for the polling at an election, the answers by a person claiming to vote to any questions put to him in pursuance of the Parliamentary Electorates and Elections Act, 1912-1929, may be accepted as sufficient to enable him to vote for the purposes of the referendum, if they are satisfactory as regards the election, but the deputy returning officer may, if he thinks fit, in addition to the questions prescribed by that Act, put to the person claiming to vote the following question:—

Answers to questions may be accepted for purposes of referendum. cf. Cwth. Act No. 11, 1906, s. 15.

Have you already voted, either here or elsewhere, at this referendum? (or these referendums?— as the case may be),

and, if the person claiming to vote does not answer the question or admits that he has already voted at the referendum or referendums, shall refuse to allow him to vote.

18. Where a referendum is held on the same day as an election the same ballot-boxes and polling booths may be used for the purposes of the referendum and the election, but in that case the ballot-papers for the referendum shall be of a different colour from the ballot-papers for the election.

Use of ballot-boxes and polling booths. cf. *Ibid.* s. 16.

DIVISION 4.—Proceedings after close of poll.

19. As soon as is practicable after the close of the poll the returning officer and every deputy at the polling place at which each presides shall, in the presence and subject to the inspection of the poll clerks (if any), but of no other persons, open the ballot-box and proceed to count the number of votes given in favour of the Bill and the number of votes given not in favour of the Bill.

Conduct of scrutiny. cf. *Ibid.* ss. 19, 20; Act No. 41, 1912, ss. 121, et seq.

20. (1) A ballot-paper (including a postal voter's ballot-paper and an absent voter's ballot-paper) shall be informal if—

Informal ballot-papers. cf. Act No. 41, 1912, ss. 118, 122.

(a) it is not duly signed or initialled by the returning officer or deputy or

(b)

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(b) it has upon it any mark or writing not authorised by this Part to be put upon it, which, in the opinion of the returning officer, will enable any person to identify the voter.

(2) Informal ballot-papers shall be rejected at the scrutiny.

Saving of informality in certain cases.
cf. Act No. 41, 1912, s. 122A.

21. Notwithstanding anything to the contrary in this Act—

(a) a ballot-paper shall not, by reason of any marking thereon not authorised or required by this Part be treated as informal, or be rejected at the scrutiny if, in the opinion of the returning officer, the voter's intention is clearly indicated on the ballot-paper ;

cf. Cwth. Act No. 42, 1928, s. 3.

(b) a ballot-paper shall not be informal by reason only of the fact that the voter has indicated his vote by placing in one square the number "1" or a cross, and by leaving the other square blank, and in that case the cross shall be deemed to be equivalent to the figure "1."

Duties of deputy.
cf. Act No. 41, 1912, s. 123.

22. Immediately after ascertaining the total number of votes given in favour of the Bill, and the total number of votes given not in favour of the Bill, each deputy shall make up—

(a) in one parcel, the ballot-papers which have been used in voting at his polling-booth during the referendum ;

(b) in a second separate parcel, the ballot-papers which have remained unused thereat ;

(c) in a third separate parcel, the certified copies of rolls supplied to the said deputy, signed by him, and all books, rolls, and papers kept or used by him during the polling ;

and shall seal up the said several parcels ; and shall endorse the same severally with a description of the contents thereof, and with the name of the district and polling place, and the date of the polling ; and sign with his name the said endorsement ; and shall transmit the said parcels to the returning officer.

Statement of result, account of ballot-papers, &c.
cf. *Ibid.* s. 124.

23. Each deputy shall, together with the parcels aforesaid, transmit to the returning officer a statement setting out the total number of votes given in favour of the Bill, and the total number of votes given not in favour

favour of the Bill, and also an account in which such deputy shall charge himself with the number of ballot-papers originally delivered to him, and the number (if any) written out by him, specifying therein the number thereof delivered to and used by voters and the number not so delivered or left unused; and every such statement and account respectively shall be verified by the signatures of the said deputy and the poll clerk (if any).

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24. The returning officer shall, in respect of the polling booth at which he himself has presided, make up in separate parcels in like manner as is herein required of deputy returning officers, all ballot-papers used or unused, and all books, rolls, and papers kept or used by him at such polling booth; and shall seal up and endorse in like manner as aforesaid the several parcels; and shall also make out in respect of the said booth the like statement as is herein required in the case of deputy returning officers, which said statement shall be verified by the signatures of the returning officer and the poll clerk (if any) in the manner aforesaid.

Returning officers' parcels.
cf. Act No. 41, 1912, s. 125.

25. (1) The returning officer shall, as soon as practicable after the close of the poll, with such assistance as he may deem necessary, proceed to count the votes given on all ballot-papers (not rejected as informal), including postal and absent voters' ballot-papers, used in connection with the poll for his district.

Poll for the district.
Ibid. s. 125.

He shall as soon as is practicable after the count has been completed prepare a statement certifying in relation to the votes given at all the polling places in or for his district—

Return of result by returning officers.
cf. Cwth. Act No. 11, 1906, s. 22.

- (a) the number of votes given in favour of the Bill;
- (b) the number of votes given not in favour of the Bill;
- (c) the number of ballot-papers rejected as informal,

and shall transmit the statement to the Electoral Commissioner.

(2) It shall be permissible for the returning officer to accept information as to the votes polled at Lord Howe Island which is transmitted to him by cable or wireless and which he is satisfied is authentic in lieu of the statement referred to in section twenty-three of this Act.

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Recount.

26. (1) At any time before indorsing the writ the Electoral Commissioner may, if he thinks fit (and shall, if so directed by the Governor), direct the returning officer for any district to make a recount of the ballot-papers contained in any parcel relating to his district.

(2) The officer conducting a recount shall have the same powers as if the recount were the scrutiny, and may reverse any decision in relation to the scrutiny as to the allowance or admission or disallowance or rejection of any ballot-paper.

DIVISION 5.—Return of writ.

Return of writ.
cf. Cwth. Act
No. 11, 1906,
s. 25.

27. (1) The Electoral Commissioner shall, after he has received from the returning officer of each electoral district the statement referred to in section twenty-five of this Act, endorse on the writ a statement showing as regards each electorate and as regards the whole State—

- (a) the number of votes given in favour of the Bill;
- (b) the number of votes given not in favour of the Bill;
- (c) the number of ballot-papers rejected as informal,

and shall sign the statement and shall return the writ with the statement indorsed thereon to the Governor.

(2) The Electoral Commissioner shall cause a copy of the statement to be published in the Gazette, and the statement so published shall, subject to this Act, be conclusive evidence of the result of the referendum.

DIVISION 6.—Disputed returns.

Reference to Supreme Court.

28. Any question respecting the validity of a referendum, or of any return or statement showing the voting on any referendum, may be referred by resolution of the Legislative Council or of the Legislative Assembly to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the question.

Question.

29. Where any question is referred to the Supreme Court under this division, the President of the Legislative Council or the Speaker of the Legislative Assembly (as the case may be) shall transmit to the Prothonotary a statement of the question upon which the determination of the court is desired.

30. The Supreme Court, in relation to a reference under this division, shall sit as on open court, and shall have the powers conferred by the Parliamentary Electorates and Elections Act, 1912-1929, on the Court of Disputed Returns, so far as they are applicable.

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Powers of
the court.

31. The Electoral Commissioner shall be entitled and the Supreme Court may allow any other person to be represented and heard upon the hearing of the reference.

Electoral
Commis-
sioner.

32. The procedure in relation to a reference under this division shall be as prescribed by Rules of Court or in default of Rules of Court by the Supreme Court or a judge thereof.

Procedure.

33. After hearing and determination of any reference under this division the Prothonotary shall forthwith forward to the Clerk of the Parliaments or to the Clerk of the Legislative Assembly, as the case may be, a copy of the determination of the Supreme Court.

Order to be
sent to House
affected.

34. No referendum and no return or statement showing the voting on any referendum shall be avoided on account of any delay in relation to the taking of the votes of the electors or in relation to the making of any statement or return or on account of the absence or error of or omission by any officer which did not affect the result of the referendum :

Immaterial
errors not to
vitiate
referendum.

Provided that where any elector was, on account of the absence or error of or omission by any officer, prevented from voting at a referendum, the court shall not, for the purpose of determining whether the absence or error of or omission by the officer did or did not affect the result of the referendum, admit any evidence of the way in which the elector intended to vote.

DIVISION 7.—*Regulations.*

35. (1) The Governor may make regulations not inconsistent with this Part prescribing all matters which are required to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Part.

Regulations.

(2)

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(2) Form B, Form C, Form D, and Form E in the Second Schedule to this Act may, from time to time, be altered or modified by the regulations.

If any of such forms is altered by the regulations any reference in this Part to that form shall be deemed to be a reference to that form as so altered.

cf. Act No.
41, 1912,
s. 176 (3).

(3) Where the time allowed to do any act is insufficient, and an alteration or extension of such time and any alteration of dates consequent thereon is expedient, the regulations may declare that such alteration shall be made, and thereupon the same shall be made and take effect accordingly.

(4) The regulations shall be published in the Gazette and shall take effect from the date of publication or from a later date to be specified in the regulations.

(5) The regulations shall be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(6) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

DIVISION S.—*Offences.*

Construction
of Part.
cf. Cwth. Act
No. 11, 1906,
s. 42.

36. The provisions of this Division shall be construed as being in addition to such of the provisions of the Parliamentary Electorates and Elections Act, 1912–1929, as are applicable to a referendum.

Supply of
meat, drink,
or entertain-
ment, &c.
Ibid. s. 43.

37. Any person who, after the issue of a writ for a referendum and before the votes have been taken in pursuance thereof, supplies to an elector any meat, drink, or entertainment, or horse or carriage hire, with a view to influence his vote in connection with the referendum shall be guilty of an offence and shall be liable to a penalty not exceeding two hundred pounds or imprisonment for one year.

38.

38. Any person who gives, confers, or procures, or promises, or offers to give or confer, or to procure or attempt to procure, any money, property, or benefit of any kind, to, upon, or for any elector or any other person—

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Bribery.
cf. Cwth. Act
No. 11, 1906,
s. 44.

- (a) in order to influence the elector in his vote in connection with a referendum; or
- (b) in order to induce the elector to refrain from voting at a referendum; or
- (c) in order to induce the elector to support or oppose any Bill submitted or to be submitted for the approval of the electors,

shall be guilty of an offence, and shall be liable to a penalty not exceeding two hundred pounds or imprisonment for one year.

39. Any elector who asks for, receives or obtains, or agrees or attempts to receive or obtain any money, property, or benefit of any kind for himself or any other person upon the understanding that his vote in connection with any referendum shall be influenced thereby, or shall be given in any particular manner, or that he will refrain from voting at any referendum, or that he will support or oppose any Bill submitted or to be submitted for the approval of the electors, shall be guilty of an offence, and shall be liable to a penalty not exceeding two hundred pounds or imprisonment for one year.

Receipt of
bribe by
elector.
Ibid. s. 45.

40. Any person who—

- (a) threatens, offers, or suggests any violence, injury, punishment, damage, loss, or disadvantage to an elector or any other person—
 - (i) in order to influence the elector in his vote in connection with a referendum; or
 - (ii) in order to induce the elector to refrain from voting at a referendum; or
 - (iii) in order to induce the elector to support or oppose any Bill submitted or to be submitted for the approval of the electors; or
- (b) uses, causes, inflicts, or procures any violence, injury, punishment, damage, loss, or disadvantage towards, to, or upon any elector or any other

Undue
influence.
Ibid. s. 46.

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other person, for or on account of any such vote, refraining from voting, support, or opposition,

shall be guilty of an offence, and shall be liable to a penalty not exceeding two hundred pounds or imprisonment for one year.

Misleading advertisements, &c.
cf. Cwth. Act No. 11, 1906, s. 48.

41. (1) Every person who—

(a) prints, publishes, or distributes any advertisement or document containing a representation of a ballot-paper, or any representation apparently intended to represent a ballot-paper, and having thereon any directions intended or likely to mislead or improperly interfere with any elector in or in relation to the casting of his vote at a referendum; or

(b) prints, publishes, or distributes any advertisement or document containing any untrue or incorrect statement intended or likely to mislead or improperly interfere with any elector in or in relation to the casting of his vote at a referendum,

shall be guilty of an offence, and shall be liable to a penalty not exceeding one hundred pounds.

(2) This section shall not prevent the printing, publishing, or distributing of any advertisement or document (not otherwise illegal) which contains instructions how to vote in favour of or against any Bill submitted to the electors by a referendum, if those instructions are not intended or likely to mislead any elector in or in relation to the casting of his vote.

Misconduct at public meeting
cf. *Ibid.* s. 49 ;
Act No. 41, 1912, s. 176B.

42. (1) Any person who, at any public meeting to which this section applies, acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting is held shall be guilty of an offence, and shall be liable to a penalty not exceeding five pounds.

(2) This section applies to any lawful public meeting held in relation to a referendum between the date of the issue of the writ for the referendum and the date of the return of the writ.

PART IV.

LEGISLATIVE COUNCIL ELECTIONS.

DIVISION 1.—*Preliminary.*

43. This Part shall commence upon the day upon which the Constitution (Further Amendment) Act, 1929, shall commence. Commence-
ment.

44. This Part shall be read with the Constitution Act, 1902-1929. Construction.

45. In this Part, unless the context or subject-matter otherwise indicates or requires,— Interpreta-
tion.

“Assembly” means the Legislative Assembly of New South Wales.

“Council” means the Legislative Council of New South Wales.

“Election” means an election of a Member or Members of the Legislative Council held in pursuance of the Constitution Act, 1902-1929.

“Elector” means a person who is a Member of the Legislative Council or a Member of the Legislative Assembly.

“Prescribed” means prescribed by this Part or by regulations made thereunder.

“This Part” means this Part of this Act, and includes the Third Schedule to this Act.

“Writ” means a writ for an election.

DIVISION 2.—*Returning officer.*

46. (1) At every election the Clerk of the Parliaments shall be the returning officer. Clerk of the
Parliaments
to be return-
ing officer.

(2) It shall be the duty of the returning officer to take all necessary steps to conduct the election, to count the votes cast thereat and to ascertain and declare the result thereof in accordance with this Part, and to do such other matters and things in respect of the election as he is required by this Part to do.

(3) The returning officer may with the approval of the permanent head of the department concerned make use of the services of any of the officers of the Public Service for the purpose of carrying out the duties imposed upon the returning officer by this Part.

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DIVISION 3.—*Writs.*Writ to be
issued by
Governor.

47. (1) For the purposes of any election a writ may be issued by the Governor.

The Governor shall by message inform both Houses of the Parliament of the issue of the writ.

The message shall be accompanied by a copy of the writ.

(2) Every writ shall be directed to the returning officer.

(3) In every writ shall be named—

(a) the day (in this Part referred to as the “day of nomination”) on or before which all nominations of candidates at the election must be made;

(b) the day (in this Part referred to as the “day of the return of the writ”) upon which the writ shall be returnable to the Governor.

(4) In every writ there shall be appointed—

(a) a day upon which a sitting of the Members of the Council and a sitting of the Members of the Assembly shall be held for the purposes of taking the votes of those Members in the respective Houses of the Parliament;

(b) an hour at which the taking of votes at such sittings shall commence;

(c) an hour at which the taking of votes at such sittings shall terminate.

The day so appointed is in this Part referred to as the “day of the ballot.”

The same day and hours shall be appointed in respect of the sitting of the Members of the Council and of the sitting of the Members of the Assembly.

(5) The day of nomination shall be a day not earlier than the seventh and not later than the twenty-first day from the date of the issue of the writ.

(6) The day of the ballot shall be a day not later than the fortieth day from the date of the issue of the writ.

(7) The day of the return of the writ shall be a day not later than the sixtieth day from the date of the issue of the writ.

(8)

(8) The writ for an election to fill the seats of those Members of the Council whose seats become vacant by the expiration of their term of service shall be issued within six months before the date upon which the seats are to become vacant, and shall be returnable not later than the day immediately preceding that date.

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48. When and so often as the seat of a Member of the Council becomes vacant before the expiration of his term of service, the President of the Council shall, upon a resolution by the Council declaring such vacancy and the reason thereof, cause a message to be sent to the Governor notifying him of the vacancy. Upon receipt of the message the Governor shall issue a writ for the election of a Member to fill the vacancy.

President of Council to notify vacancy.

DIVISION 4.—Duties of returning officer on receipt of writ.

49. (1) The returning officer shall, upon the receipt by him of any writ indorse thereon the day of the receipt, and shall forthwith give public notice of the purport of the writ, of the day of nomination, the day of the ballot, the hour at which the sittings of the respective Houses of the Parliament are to commence, the hour at which the taking of the votes at such sittings is to terminate, the day of the return of the writ, and of the place at which he will receive the nomination papers.

Duties of returning officer on receipt of writ.

(2) For the purpose of this section "public notice" shall mean notice in the Gazette, and in two or more daily newspapers.

50. (1) The returning officer shall forthwith on the receipt by him of any writ appoint by writing under his hand some fit person to be the substitute returning officer for the election.

Substitute returning officer, &c.

(2) The returning officer shall in person or by such substitute attend at all reasonable hours in the daytime in the interval between the receipt of the writ and noon on the day of nomination at the place appointed for receiving the nomination papers.

(3)

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(3) If at any time during such interval the returning officer is absent at the time or place appointed for the doing or suffering by him of any act or thing relating to the election, then the substitute returning officer may and shall do or suffer such act or thing, or if the returning officer by reason of sickness or other disability is unable to do or suffer any acts or things relating to the election and the same is notified to the substitute returning officer, or if the returning officer dies, then the substitute at any time may and shall as and for the returning officer do and suffer all such acts and things, and subject in every such case to the like provisions as if he were the returning officer.

Returning officer to exhibit names of candidates.

51. The returning officer shall, upon each day between the receipt by him of any writ and noon on the day of nomination for the election mentioned in the writ, exhibit and keep exhibited at the place for receiving the nomination papers the names and residences of all persons who have duly become candidates for the election.

DIVISION 5.—*Nominations.*

Nominations.

52. (1) Every nomination of a candidate shall be made by delivering to the returning officer or to the substitute returning officer (who, if required, shall give a receipt for the same) a nomination paper at some time after the issue of the writ and before noon on the day of nomination.

(2) The nomination paper shall be in or to the effect of the following form, namely :—

We, the undersigned, do hereby nominate (*here state name in full occupation, and place of residence of the person nominated*) for election as a Member of the Legislative Council.

The said is an elector entitled to vote at elections of Members of the Legislative Assembly in and for the Electoral District of (*or is a person entitled to become an elector in and for the Electoral District of*).

And

And we do hereby respectively certify each for himself that we have not previously signed more than one nomination paper for this election.

Signatures.

State whether a Member of the Legislative Council or of the Legislative Assembly.

.....
.....
.....
.....

Dated this.....day of.....19.....

(3) Every nomination paper shall be accompanied by a written statement signed by the person nominated and signifying his consent to the nomination.

The statement shall be in or to the effect of the following form :—

I (*here state name in full, occupation, and place of residence?*)
 do hereby consent to my
 nomination by (*here state names of electors who signed the
 nomination paper*)..... as a candidate for
 election as a Member of the Legislative Council at
 the election to be held on

Signature

Dated this.....day of.....19.....

(4) No person shall be deemed to be nominated or to be a candidate for election pursuant to this Part unless the provisions of this section have been observed in relation to his nomination.

The returning officer shall decide whether the provisions of this section have been observed in relation to the nomination of any person, and the decision of the returning officer shall be final for all purposes.

(5) Any elector who by signing more than two nomination papers for any election contravenes the provisions

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provisions of subsection five of section 17C or of subsection three of section 17D of the Constitution Act, 1902-1929, shall be liable to a penalty of five hundred pounds, to be recovered by any person who sues for the same in the Supreme Court of New South Wales.

Proceedings
or
nomination.

53. (1) If at any election the number of candidates for election does not exceed the number to be elected, the returning officer shall, at noon on the day of nomination at the place for receiving the nomination papers, publicly declare all the candidates to be duly elected, shall publish such declaration in the Gazette, and shall make his return accordingly.

(2) If at any election the number of candidates for election exceeds the number to be elected, a ballot shall be taken; and the returning officer shall at noon on the day of nomination and at the place for receiving the nomination papers, publicly announce that a ballot will be taken, and the names of the persons who have become candidates, and shall also forthwith publish in the Gazette and in one or more daily newspapers a like announcement.

(3) The following candidates at an election if elected at that election shall be declared to be so elected and shall (without prejudice to the power of a court having jurisdiction to hear and determine election petitions) be deemed to have been duly elected and to vacate their seats immediately after the commencement of their term of service, that is to say—

- (a) every elected candidate who dies before the commencement of his term of service, whether he so dies before, during, or after the election;
- (b) every elected candidate who on the day of nomination for the election is not qualified to become a Member of the Council whether he does or does not become so qualified before the commencement of his term of service;
- (c) every elected candidate who at the commencement of his term of service is disqualified from being a Member of the Council or is incapable of sitting or voting in the Council whether he becomes so disqualified before, during, or after the election.

DIVISION

DIVISION 6.—*Ballot-papers.*

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54. (1) Where a ballot is to be taken at any election, the returning officer shall provide a ballot-box and a sufficient number of ballot-papers for each House of the Parliament.

(2) The ballot-papers shall be printed, and shall be in or to the effect of the prescribed form.

Ballot-papers.

cf. Act No. 41, 1912, s. 83.

(3) In printing the ballot-papers—

- (a) the names of all candidates shall be printed in alphabetical order according to their surnames; such surnames shall be printed in more conspicuous type than that used for the christian names;
- (b) if there are two or more candidates of the same surname, their names shall be printed according to the alphabetical order of their christian names, or if their christian names are the same, then according to the alphabetical order of their residences, arranged and stated on the ballot-paper;
- (c) where similarity in the names of two or more candidates is likely to cause confusion, the returning officer may arrange the names with such description or addition as will distinguish them from one another;
- (d) a square shall be printed opposite the name of each candidate.

(4) A counterfoil shall be attached to each ballot-paper.

DIVISION 7.—*The taking of the ballot.*

55. (1) The provisions of this division shall apply equally to the proceedings for taking the ballot at the sitting of Members of the Council and at the sitting of Members of the Assembly.

Application of this division.

(2) In the application of this division to proceedings at the sitting of Members of the Council, a reference to “the Clerk” shall be construed as a reference to the Clerk of the Parliaments or the officer acting in his place; and a reference to “a Member” shall be construed as a reference to a Member of the Council present at the sitting.

(3)

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(3) In the application of this division to proceedings at a sitting of Members of the Assembly, a reference to "the Clerk" shall be construed as a reference to the Clerk of the Assembly or the officer acting in his place; and a reference to "a Member" shall be construed as a reference to a Member of the Assembly present at the sitting.

Hours of taking of ballot.

56. (1) Upon the day of the ballot the taking of the votes shall commence and terminate at the hours respectively appointed therefor in the writ for the election:

Provided that if at the hour appointed for the termination of the taking of the votes there are any Members present at the sitting who desire to vote, the votes of such Members shall be taken.

cf. Act No. 41, 1912, s. 94.

(2) Immediately before proceeding to take the votes the Clerk shall exhibit for the inspection of the Members the ballot-box open and empty, and shall immediately afterwards close and lock the ballot-box and shall keep the same unopened in full view of the Members until the conclusion of the sitting.

Voting.

57. (1) Each Member shall vote only once at any election.

(2) Each member shall vote in person at the sitting and the voting shall be by secret ballot.

Issue of ballot-paper.

58. The Clerk shall enter on the counterfoil of a ballot-paper the name of a Member desiring to vote and shall then tear off the ballot-paper corresponding to that counterfoil, and having marked the ballot-paper on both sides with the prescribed official mark shall deliver it to the Member.

The Clerk shall retain the counterfoil with the other proceedings of the ballot.

Method of voting.

59. (1) On receiving a ballot-paper a member shall forthwith mark his vote on the ballot-paper as follows:—

He shall vote for not less than the prescribed number of candidates by placing the figure "1" in the square opposite the name of the candidate for whom he votes as his first preference, and by placing the figures "2," "3," "4" (and so on as the

the case requires) in the squares respectively opposite the names of so many other candidates as will, with the candidate for whom he votes as his first preference, complete the prescribed number.

The elector may in addition indicate the order of his preference for as many more candidates as he pleases by placing in the squares respectively opposite their names other figures next in numerical order after the figures already placed by him on the ballot-paper.

In this subsection "the prescribed number" means a number equal to twice the number of seats which are to be filled at the election, and where the number of candidates is less than twice the number of seats to be filled, the "prescribed number" means the total number of candidates.

(2) Having marked his vote on the ballot-paper, the Member shall then fold the ballot-paper so as to conceal the names of the candidates and to show the official mark. The member shall exhibit the ballot-paper so folded to the Clerk, and shall forthwith openly, and without unfolding it, deposit it in the ballot-box.

(3) If a Member, before his ballot-paper is deposited in the ballot-box, satisfies the Clerk that he has spoilt his ballot-paper by mistake or accident, and surrenders the spoilt ballot-paper to the Clerk, the Clerk shall deliver another ballot-paper to such Member and retain the spoilt ballot-paper.

The spoilt ballot-paper shall be immediately cancelled, and the fact of the cancellation shall be noted upon the counterfoil corresponding to the spoilt ballot-paper.

60. As soon as is practicable after the hour appointed for the termination of the taking of votes at the sitting, the Clerk shall—

- (a) make up in one parcel the counterfoils of the ballot-papers which have been used in the taking of the ballot, and in a second separate parcel the ballot-papers which have remained unused in the taking of the ballot, and in a third separate parcel such papers and records used in connection with the taking of the ballot as may be prescribed;

(b)

Proceedings
after close of
ballot.

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- (b) seal up the separate parcels and indorse the same severally with a description of the contents and the date of the taking of the ballot, and sign with his name the indorsement;
- (c) prepare an account setting out the number of ballot-papers originally delivered to him by the returning officer, the number handed to and used by members voting at the election, and the number left unused;
- (d) deliver or cause to be delivered to the returning officer the parcels and account, together with the ballot-box used at the taking of the ballot.

Standing
rules and
orders.

61. The Legislative Council and the Legislative Assembly may, with the approval of the Governor, prepare and adopt respectively standing rules and orders not inconsistent with this Part regulating the conduct of proceedings at any sitting held for taking the votes of Members at any election.

Displaying
ballot-paper.

62. (1) No person shall directly or indirectly induce any Member to display his ballot-paper after he shall have marked the same so as to make known to such person or to any other person the name of any candidate for whom he has marked his vote on such ballot-paper or the manner in which he has marked such vote.

(2) A Member who has marked his vote on his ballot-paper shall not display such ballot-paper to any person so as to make known to such person or to any other person the name of any candidate for whom the Member has marked his vote, or the manner in which he has marked his vote.

(3) Whosoever contravenes any provision of this section shall be liable to a penalty of five hundred pounds, to be recovered by any person who sues for the same in the Supreme Court of New South Wales.

DIVISION 8.—*Invalid ballot-papers.*

Invalid
ballot-paper.

63. A ballot-paper shall be invalid and shall not be counted if—

- (a) it does not bear the prescribed official mark referred to in subsection two of section fifty-eight of this Act; or

(b)

- (b) the figure "1" standing alone indicating a first preference for some candidate is not placed on the ballot-paper; or
- (c) the figure "1" standing alone indicating a first preference is placed opposite the name of more than one candidate; or
- (d) it has upon it any mark or writing by which in the opinion of the returning officer the voter can be identified; or
- (e) it has no vote indicated on it or it does not indicate the elector's first preference for one candidate and his consecutive preferences for so many other candidates as will, with the candidate for whom he votes as his first preference, be equal in number to the prescribed number as defined in subsection one of section fifty-nine of this Act.

DIVISION 9.—*Ascertainment of result of election.*

64. (1) As soon as is practicable after the taking of the ballot has been completed the returning officer shall—

Ascertainment of result of election.

- (a) in the presence of such candidates as may be in attendance, and with such assistants as he may deem necessary, open the ballot-boxes, count the votes, and ascertain the result of the election in accordance with this Part, and in particular the rules contained in the Third Schedule to this Act;
- (b) declare to be elected the candidates who are so ascertained to be elected.

(2) The returning officer shall so far as practicable proceed continuously with the counting of the votes.

(3) The decision of the returning officer as to any question arising on the ballot-papers, or any other matter arising on the counting of the votes, shall be final, subject only to review by the court having jurisdiction to hear and determine election petitions.

(4)

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(4) As soon as is practicable after the result of the election has been declared the returning officer shall prepare and sign a certificate in or to the effect of the prescribed form setting out the names of the candidates declared to be elected.

(5) The returning officer shall indorse upon the writ a copy of the certificate, and shall return the writ to the Governor within the time specified in the writ.

(6) A copy of the certificate and of the result sheet mentioned in the Third Schedule to this Act shall be published in the Gazette, and shall be laid before both Houses of Parliament.

Preservation
of ballot-
papers.

65. (1) Upon the completion of the counting of the votes at an election the returning officer shall seal up in separate parcels the counted ballot-papers and the ballot-papers rejected as invalid, and shall indorse the parcels severally with a description of the contents and the date of the taking of the ballot, and sign with his name the indorsement.

(2) The returning officer shall retain for a period of six months from the day of the ballot the several parcels referred to in this section and in section sixty of this Act, and shall at the end of that period destroy them unless a court having jurisdiction to hear and determine election petitions otherwise orders.

(3) No person shall be allowed to inspect any of the sealed parcels so retained or any of the contents save under and in accordance with an order of such court.

DIVISION 10.—*Secrecy of officers.*

Preservation
of secrecy
of voting.

66. (1) The returning officer, the substitute returning officer, and every officer, clerk, and assistant concerned in the taking of the ballot or the counting of ballot-papers at an election, and every candidate present at such counting, shall maintain and aid in maintaining the secrecy of the voting at the election, and shall not at any time communicate to any person any information which he may have obtained at or in connection with such ballot or counting as to the candidate for whom any elector has voted.

(2)

(2) Every person who acts in contravention of this section shall be guilty of an offence, and shall be liable on summary conviction to a penalty not exceeding one hundred pounds or to imprisonment for any term not exceeding six months.

DIVISION 11.—*Disputed elections.*

67. (1) The law for the time being in force relating to the determination of any dispute or question respecting any election, return, or qualification of a Member of the Legislative Assembly, or respecting any vacancy therein shall, mutatis mutandis, apply to the determination of similar disputes or questions respecting the election, return, or qualification of a Member of the Legislative Council or respecting any vacancy therein, with the following modifications, that is to say—

Determina-
tion of
questions.

- (a) the court trying an election petition in relation to an election at which more than one seat is to be filled shall not have power to declare the whole election to be void, but may declare the election of any one or more of the candidates returned as elected at the election to be void or to be valid as justice may require;
- (b) where the court so declares the election of a candidate to be void the court shall declare that such one as justice may require of the candidates not returned as elected was elected;
- (c) the court shall have power to make such amendments as may be necessary to give effect to its decisions in the certificate of the returning officer of the result of the election;
- (d) references to the Legislative Assembly shall be construed as references to the Legislative Council, references to the Speaker of the Legislative Assembly shall be construed as references to the President of the Legislative Council, and references to the Clerk of the Legislative Assembly shall be construed as references to the Clerk of the Parliaments.

(2) No person who has voted at an election shall, in any legal proceedings to question the election or return of any candidate at such election, be required to state for whom he has voted.

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Non-compliance with rules.

68. No election of a candidate at an election shall be declared void by reason only of a non-compliance with the rules contained in the Third Schedule to this Act, or by reason of any mistake in the use of any form prescribed by or under this Part, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in this Part, and that such non-compliance or mistake did not affect the result of the election.

DIVISION 12.—*Offences.*

Application of Act No. 41, 1912.

69. The provisions of sections one hundred and forty-seven to one hundred and fifty-two, both inclusive, of the Parliamentary Electorates and Elections Act, 1912-1929, shall, mutatis mutandis, apply to and in respect of any election under this Part.

DIVISION 13.—*Regulations.*

Regulations.

70. (1) The Governor may make regulations not inconsistent with this Part prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Part.

cf. Act No. 41, 1912, s. 176 (3).

(2) Where the time allowed to do any act is insufficient, and an alteration or extension of such time and any alteration of dates consequent thereon is expedient, the regulations may declare that such alteration shall be made, and thereupon the same shall be made and take effect accordingly.

(3) The regulations shall be published in the Gazette, and shall take effect from the date of publication or from a later date to be specified in the regulations.

(4) The regulations shall be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(5)

(5) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House, disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

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DIVISION 14.—*Special provisions for first election of sixty members.*

71. In the application of the provisions of sections forty-three to seventy (both inclusive) of this Part to the election of the sixty Members who are to be elected in pursuance of section 17A of the Constitution Act, 1902-1929, for the first constitution of the Legislative Council, those provisions shall be subject to the modifications and amendments set out in this division of this Part.

72. (1) The provisions of subsection one of section forty-seven of this Act shall be read subject to this section.

(2) It shall not be necessary for the Governor to issue separate writs for each of the four elections referred to in section 17D of the Constitution Act, 1902-1929. One writ shall suffice for all four of such elections.

73. (1) The Governor shall in and by the writ appoint—

- (a) four separate days upon each of which respectively a sitting of the Members of the Council and a sitting of the Members of the Assembly shall be held for the purposes of taking the votes of those Members in the respective Houses of the Parliament;
- (b) the hour at which the taking of votes at such sittings shall respectively commence on each of the days so appointed;
- (c) the hour at which the taking of votes at such sittings shall respectively terminate on each of the days so appointed.

A reference in this Part to “the day of the ballot” shall include a reference to each of the days appointed under paragraph (a) of this subsection.

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The same days and hours shall in each case be appointed in respect of the sittings of the Members of the Council and of the sittings of the Members of the Assembly.

(2) The provisions of subsection one of this section shall be read in lieu of the provisions of subsection four of section forty-seven.

74. (1) The days of the ballot appointed under subsection one of section seventy-three of this Act shall not be later than the sixtieth day from the date of the issue of the writ.

(2) The day of the return of the writ shall be a day not later than the eightieth day from the date of the issue of the writ.

(3) The provisions of subsections one and two of this section shall be read in lieu of the provisions of subsections six and seven of section forty-seven of this Act.

Return of writ.

75. (1) As soon as is practicable after the result of the fourth of the four elections has been declared, the returning officer shall prepare and sign a certificate in or to the effect of the prescribed form setting out the names of the candidates declared to be elected at each of the four elections respectively.

(2) The returning officer shall indorse upon the writ a copy of the certificate, and shall return the writ to the Governor within the time specified in the writ.

(3) A copy of the certificate and of the result sheets mentioned in the Third Schedule to this Act relating to each of the four elections shall be published in the Gazette, and shall be laid before both Houses of Parliament.

(4) Subsections one, two, and three of this section shall respectively be read in lieu of subsections four, five, and six of section sixty-four of this Act.

PART V.

No. 2, 1930.

RETENTION OF PRIVILEGES.

76. This Part shall commence upon the date appointed for the reconstitution of the Legislative Council in pursuance of subsection one of section 17A of the Constitution Act, 1902-1929. Commence-ment.

77. (1) Every person summoned by the Governor to the Legislative Council under section sixteen of the Principal Act who immediately before the commencement of this Part of this Act is a Member of the Legislative Council shall for the term of his natural life retain and continue to be entitled— Privileges of summoned Members of Legislative Council to be retained.

(a) to hold and use the free pass issued to him under section fifty-eight of the Government Railways Act, 1912, notwithstanding anything in the said section contained; and

(b) to have the privileges of a Member of the Legislative Council within the precincts of Parliament House.

(2) Such free pass shall on the death of the holder be forthwith returned to the Commissioners for Railways by his personal representatives.

SCHEDULES.

FIRST SCHEDULE.

Act No. , 1930.

An Act to alter the constitution of the Legislative Council; to amend the Constitution Act, 1902, and certain other Acts; and for purposes connected therewith.

BE 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:—

1. (1) This Act may be cited as the "Constitution (Further Amendment) Act, 1929," and shall be read and construed with the Constitution Act, 1902, as amended by subsequent Acts. Short title.

(2)

Constitution Further Amendment (Referendum) Act.

No. 2, 1930.

(2) The Constitution Act, 1902, as so amended, is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Constitution Act, 1902-1929.

(4) This Bill shall not be presented to the Governor for His Majesty's Assent unless at a referendum a majority of the electors voting approve the Bill.

In this subsection "electors" means electors qualified to vote for the election of Members of the Legislative Assembly.

Amendment of
Act No. 32, 1902,
s. 3.

2. (1) The Principal Act is amended by inserting at the end of section three the following paragraph:—

"The appointed day" means the day appointed by the Governor in pursuance of subsection one of section 17A of this Act as the day on and from which the Legislative Council shall be reconstituted.

Amendment
Ibid.
New ss. 17A, 17B,
17C, 17D, 17E.

(2) The Principal Act is amended by inserting next after section seventeen the following new sections:—

Constitution of
Legislative
Council.

17A. (1) The Legislative Council shall, on and from a day to be appointed by the Governor and notified by proclamation published in the Gazette, be reconstituted, and shall consist of sixty elected Members.

(2) Such Members shall be elected at elections at which the electors shall be the Members of the Legislative Council and the Members of the Legislative Assembly voting as one electoral body and recording their votes at sittings of the respective Houses of the Parliament.

Any vacancy in the seat of a Member shall be filled by a like election.

(3) Elections of Members of the Legislative Council shall wherever the election is contested, and more than one seat is to be filled, be according to the principle of proportional representation, each voter having one transferable vote, and where only one seat is to be filled be according to a preferential system.

The voting at any such election shall be by secret ballot.

The elections shall be conducted at the times and in the manner provided by law.

Qualifications,
&c.

17B. (1) Subject to the disqualifications set out in this Act any person whether male or female, married or unmarried—

(a) who is an elector entitled to vote at the election of Members of the Legislative Assembly, or a person entitled to become such elector; and

(b) who has been for three years at the least resident within the limits of the Commonwealth of Australia; and

(c) who is a natural-born or naturalized subject of the King, shall be capable of being elected as a Member of the Legislative Council and of sitting and voting therein.

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(2) No person being a Member of the Legislative Assembly shall be capable of being elected or of sitting or voting as a Member of the Legislative Council.

(3) If after being elected as a Member of the Legislative Council any person accepts any office of profit under the Crown, or any pension from the Crown during pleasure or for a term of years, his election shall thereupon become void, and an election shall be held to fill the vacancy.

Provided that nothing in this subsection shall extend to—

- (a) any person in receipt only of pay, half-pay, or a pension as an officer in any of His Majesty's defence forces, or who accepts any office of profit in any of His Majesty's defence forces; or
- (b) any person who accepts any of the offices enumerated in the Second Schedule hereto, or any office of profit under the Crown created by Act of Parliament as an office of the Executive Government.

17c. (1) A person shall not be a candidate at any election unless he is nominated for election. Nominations.

(2) Every nomination of a candidate shall be in writing, and shall be made by means of a nomination paper which shall be in or to the effect of the form prescribed by law.

(3) A nomination paper shall contain the name of one candidate and one candidate only.

(4) A nomination paper shall be invalid unless the person nominated therein has consented to the nomination in the manner provided by law.

(5) Each nomination paper shall be signed by six and not more than six electors.

No elector shall sign more than two nomination papers for any election, but the contravention of this provision shall not of itself invalidate any nomination paper.

Each elector signing a nomination paper for any election shall certify thereon that he has not previously signed more than one nomination paper for that election.

If an elector contravenes this subsection by signing more than two nomination papers he shall be liable to such penalty as may be prescribed by law, and shall be disqualified from voting and from being a candidate at any election of Members of the Legislative Council held within four years after the date of the contravention.

17d. (1) Notwithstanding any other provision of this Act the provisions of this section shall apply to the election of the sixty members who are to be elected in pursuance of section 17A of this Act for the first constitution of the Legislative Council. Elections for the first constitution of the Legislative Council.

(2) There shall be four separate elections at each of which fifteen members shall be elected, but nominations shall be made as if the four elections formed one election.

(3) Each nomination paper shall be signed by two, and not more than two, electors.

No

Constitution Further Amendment (Referendum) Act.

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No elector shall sign more than two nomination papers, but the contravention of this provision shall not of itself invalidate any nomination paper.

Each elector signing a nomination paper shall certify thereon that he has not previously signed more than one nomination paper.

If an elector contravenes this subsection by signing more than two nomination papers he shall be liable to such penalty as may be prescribed by law, and shall be disqualified from voting and from being a candidate at any election of Members of the Legislative Council held within four years after the date of the contravention.

(4) At the first of the four elections the candidates shall consist of those persons who are duly nominated for election.

(5) At the second of the four elections the candidates shall consist of those persons who were candidates at the first election and were not declared elected at that election.

(6) At the third of the four elections the candidates shall consist of those persons who were candidates at the second election and were not declared elected at that election.

(7) At the fourth of the four elections the candidates shall consist of those persons who were candidates at the third election and were not declared elected at that election.

Where candidates are insufficient a further election to be held.

17E. (1) If at any election the number of candidates for election does not exceed the number of persons required to be elected all the candidates shall be declared elected.

(2) If at any election the number of candidates for election is less than the number of persons required to be elected, a fresh election shall be held to fill the vacancies.

Commencement of section.

Amendment of Act No. 32, 1902, secs. 16, 17.

Amendment of Act No. 32, 1902, New s. 17F.

Term of service, &c.

3. (1) This section shall commence upon the appointed day.

(2) The Principal Act is amended by omitting sections sixteen and seventeen.

(3) The Principal Act is amended by inserting next after section 17E as inserted by section two of this Act the following new section:—

17F. (1) Subject to the provisions of subsections three and five of this section, the term of service of a Member of the Legislative Council shall expire at the end of twelve years from its commencement.

(2) One-fourth of the Members of the Legislative Council shall be elected every three years.

(3) The term of service of the Members elected under section 17D of this Act shall expire as follows:—

(a) in the case of the fifteen who are elected at the first election under that section—at the end of twelve years from the commencement of such term;

(b) in the case of the fifteen who are elected at the second election under that section—at the end of nine years from the commencement of such term;

c)

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(c) in the case of the fifteen who are elected at the third election under that section—at the end of six years from the commencement of such term;

(d) in the case of the fifteen who are elected at the fourth election under that section—at the end of three years from the commencement of such term.

(4) A Member of the Council whose term of service is about to expire shall, if not otherwise disqualified, be capable of being re-elected.

(5) Where the seat of a Member becomes vacant before the expiration of his term of service the term of service of the person elected to fill such casual vacancy shall expire at the date of the expiration of the term of service of the Member whose seat he is elected to fill.

(6) For the purposes of this section—

(a) the term of service of a Member elected for the first constitution of the Legislative Council shall be taken to commence on the appointed day;

(b) the term of service of a Member elected to fill a seat which becomes vacant by the expiry of the holder's term of service shall be taken to commence on such expiry.

(4) The Principal Act is amended—

(a) by omitting from subsection one of section thirteen the words "summoned or";

Amendment of Act No. 32, 1902. Sec. 13 (1). (Consequential.)

(b) by omitting from subsection one of section fourteen the words "summoned to the said Council, or elected and returned as a Member to serve in the said Assembly for any electoral district, such summons or" and by inserting in lieu thereof the words "elected and returned as a Member to serve in the said Council or the said Assembly such";

Sec. 14 (1). (Consequential.)

(5) The Principal Act is amended by omitting section twenty and by inserting in lieu thereof the following section:—

Amendment of Act No. 32, 1902, s. 20.

20. The law for the time being in force relating to the determination of any dispute or question respecting any election return or qualification of a Member of the Legislative Assembly, or respecting any vacancy therein shall, mutatis mutandis, and subject to any modifications and amendments enacted from time to time by the Legislature, apply to the determination of similar disputes or questions respecting the election return or qualification of a Member of the Legislative Council or respecting any vacancy therein.

Determination of questions of elections, &c.

(6) The Principal Act is amended by omitting section twenty-one and by inserting in lieu thereof the following section:—

Amendment of Act No. 32, 1902 s. 21.

21. (1) The Legislative Council shall, before proceeding to the despatch of any other business, choose one of their number to be President of the Legislative Council, and as often as the office of President becomes vacant the Legislative Council shall again choose one of their number to be the President.

President.

The

Constitution Further Amendment (Referendum) Act.

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The President shall cease to hold office if he ceases to be a member of the Legislative Council. He may be removed from office by a vote of the Legislative Council or he may resign his office by writing under his hand addressed to the Governor.

(2) Before or during the absence of the President the Legislative Council may choose one of their number to perform the duties of the President during his absence.

(3) The President or presiding Member may take part in any debate or discussion which may arise in the Legislative Council.

Amendment of Act No. 32, 1902, s. 22.

(Casting vote.)

Consequential repeal of Act No. 1, 1926.

Commencement of section.

Amendment of Act No. 32, 1902, s. 5.

Amendment of Act No. 32, 1902, New ss. 5A, 5B, 5C.

Powers of the Houses in respect of legislation.

(7) The Principal Act is amended by inserting in subsection two of section twenty-two after the word "President" wherever occurring the words "or the presiding Member."

(8) The Constitution (Amendment) Act, 1925, is hereby repealed.

4. (1) This section shall commence upon the appointed day.

(2) The Principal Act is amended by omitting the proviso to section five.

(3) The Principal Act is amended by inserting next after section five the following new sections:—

5A. Bills appropriating revenue or moneys or imposing taxation shall not originate in the Legislative Council. A Bill shall not be taken to appropriate revenue or moneys or to impose taxation by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licenses or fees for services under the Bill.

The Legislative Council may not amend Bills imposing taxation or Bills appropriating revenue or moneys for the ordinary annual services of the Government.

The Legislative Council may not amend any Bill so as to increase any proposed charge or burden on the people.

The Legislative Council may at any stage return to the Legislative Assembly any Bill which the Council may not amend, suggesting by message the amendment of any provision therein, whether by the omission of any item or otherwise. The Assembly may, if it thinks fit, make any such amendment with or without modifications.

5B. (1) If the Legislative Assembly passes any Bill appropriating revenue or moneys for the ordinary annual services of the Government, and the Legislative Council rejects or fails to pass it, or returns the Bill to the Legislative Assembly with a message suggesting any amendment with which the Legislative Assembly does not agree, the Legislative Assembly may direct that the Bill, with or without any amendment suggested by the Legislative Council, be presented to the Governor for the signification of His Majesty's pleasure thereon.

The Legislative Council shall be taken to have failed to pass any such Bill if the Bill is not returned to the Legislative Assembly within one month after its transmission to the Legislative Council and the session continues during such period.

(2)

Disagreement between the two Houses.

Appropriation for annual services.

(2) If the Legislative Assembly passes any Bill imposing taxation, and the Legislative Council rejects or fails to pass it or returns the Bill to the Legislative Assembly with a message suggesting any amendment with which the Legislative Assembly does not agree, and if after an interval of three months the Legislative Assembly in the same session or in the next session, whether of the same Parliament or not, again passes the Bill, with or without any amendment which has been suggested by the Legislative Council, and the Legislative Council rejects or fails to pass it, or returns the Bill with a message suggesting any amendment with which the Legislative Assembly, after a free conference between managers, does not agree, the Governor may convene a joint sitting of the Members of the Legislative Council and of the Legislative Assembly.

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Bills imposing
taxation.

The Members present at the joint sitting may deliberate upon the Bill as last proposed by the Legislative Assembly and upon those amendments suggested by the Legislative Council with which the Legislative Assembly does not agree.

No vote shall be taken at the joint sitting.

After the joint sitting the Legislative Assembly in the same session or in the next session, whether of the same Parliament or not, may direct that the Bill with or without any amendment which has been suggested by the Legislative Council, be presented to the Governor for the signification of His Majesty's pleasure thereon.

The Legislative Council shall be taken to have failed to pass any such Bill if the Bill is not returned to the Legislative Assembly within one month after its transmission to the Legislative Council, and the session continues during such period.

(3) If the Legislative Assembly passes any Bill other than a Bill to which subsection one or subsection two of this section applies, and the Legislative Council rejects or fails to pass it, or passes it with any amendment to which the Legislative Assembly does not agree, and if after an interval of three months the Legislative Assembly in the same session or in the next session, whether of the same Parliament or not, again passes the Bill with or without any amendment which has been made or agreed to by the Legislative Council, and the Legislative Council rejects or fails to pass it, or passes it with any amendment to which the Legislative Assembly, after a free conference between managers, does not agree, the Governor may convene a joint sitting of the Members of the Legislative Council and of the Legislative Assembly.

Bills generally.

The Members present at the joint sitting may deliberate and shall vote together upon the Bill as last proposed by the Legislative Assembly and upon amendments, if any, which have been made therein by one House and not agreed to by the other; and any such amendments which are affirmed by a majority of the Members voting thereon shall be taken to have been carried, and if the Bill, with amendments, if any, is affirmed by a majority of the Members voting thereon, it shall be presented to the Governor for the signification of His Majesty's pleasure thereon.

If

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If at the joint sitting the Bill is not so affirmed, and the Legislative Assembly in the next Parliament again passes the Bill with or without any amendment which has been made or agreed to by the Legislative Council, the Bill shall, if the Legislative Council rejects or fails to pass it or passes it with any amendment to which the Legislative Assembly does not agree, be presented to the Governor for the signification of His Majesty's pleasure thereon.

The Legislative Council shall be taken to have failed to pass such a Bill if the Bill is not returned to the Legislative Assembly within three months after its transmission to the Legislative Council and the session continues during such period.

(4) Where a Bill is presented to the Governor for the signification of His Majesty's pleasure thereon in pursuance of any provision of this section there shall be endorsed on the Bill a certificate of the Speaker of the Legislative Assembly signed by him that the provisions of this section applicable to such Bill have been duly complied with.

(5) Nothing in this section shall affect the provisions of section 7A of this Act as inserted by the Constitution (Legislative Council) Amendment Act, 1929.

5c. (1) Where any Bill is presented for the signification of His Majesty's pleasure under the provisions of section 5B of this Act, and the Royal Assent is given thereto, the Bill shall become an Act of Parliament, notwithstanding that the Legislative Council has not consented to the Bill, and the provisions of this section shall have effect.

(2) If the Bill has been affirmed at a joint sitting, the words of enactment shall be as follows:—

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of New South Wales at a joint sitting of the Members thereof in accordance with the provisions of section 5B of the Constitution Act, 1902-1929, and by the authority of the same, as follows:—

Any alteration of a Bill necessary to give effect to this subsection shall not be deemed to be an amendment of the Bill.

(3) In any other case coming within this section the words of enactment shall be as follows:—

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of New South Wales in Parliament assembled in accordance with the provisions of section 5B of the Constitution Act, 1902-1929, and by authority of the same as follows:—

Any alteration of a Bill necessary to give effect to this subsection shall not be deemed to be an amendment of the Bill.

(4) If a Bill which appropriates revenue or moneys for the ordinary annual services of the Government becomes an Act under the provisions of this section, any provision in such Act dealing with any matter other than such appropriation shall be of no effect.

(5)

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(5) If a Bill imposing taxation becomes an Act under the provisions of this section any provisions in such Act dealing with any matter other than the imposition of taxation shall be of no effect.

5D. Any reference in section 5A, 5B, or 5C of this Act to the imposition of taxation shall be read as including a reference to the repeal, remission, or alteration of taxation.

(4) The Principal Act is amended by inserting next after section fifteen the following new section:—

15A. A joint sitting of the Legislative Assembly and the Legislative Council required under the provisions of this Act may be convened by the Governor by message to both Houses.

At such joint sitting the President of the Legislative Council or in his absence the Speaker of the Legislative Assembly shall preside, and until standing rules and orders governing the procedure at joint sittings have been passed by both Houses and approved by the Governor the standing rules and orders of the Legislative Council shall so far as practicable apply.

(5) The Principal Act is amended by inserting next after section thirty-eight the following new section:—

38A. (1) Notwithstanding anything contained in this Act any Executive Councillor who is a Member of the Legislative Council or of the Legislative Assembly may at any time with the consent of the House of which he is not a member sit in such House for the purpose only of explaining the provisions of any Bill relating to or connected with any department administered by him, and may take part in any debate or discussion therein on such Bill, but he shall not vote except in the House of which he is an elected Member.

(2) It shall not be lawful at any one time for more than one Executive Councillor under the authority of this section to sit in the House of which he is not a Member.

Bills relating to taxation.

Amendment of Act No. 32, 1902. New s. 15A.

Joint sittings. cf. 9 Edw. VII c. 9, s. 58.

Amendment of Act No. 32, 1902. New s. 38A.

Powers of Ministers to speak in either House.

Constitution Further Amendment (Referendum) Act.

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Sec. 15 (2).

Form C.

ABSENT VOTERS' BALLOT-PAPER.

CONSTITUTION FURTHER AMENDMENT (REFERENDUM) ACT, 1930.

Electoral District for which absent voter is enrolled.....

Directions to Voter.

The voter should indicate his vote as follows :—

If he approves of the Bill he should place the number " 1 " in the square opposite the word " Yes " and place the number " 2 " in the square opposite the word " No."

If he does not approve of the Bill he should place the number " 1 " in the square opposite the word " No " and place the number " 2 " in the square opposite the word " Yes."

Submission to the Electors of a Bill.

Do you approve of the Bill entitled [*here set out the title of the Bill*] ?

<input type="checkbox"/>	YES.
<input type="checkbox"/>	NO

Form

Constitution Further Amendment (Referendum) Act.

No. 2, 1930.

Sec. 15 (3).

Form D.

[Front of Form.]

POSTAL BALLOT-PAPER.

CONSTITUTION FURTHER AMENDMENT (REFERENDUM) ACT, 1930.

Electoral District for which voter is enrolled.....

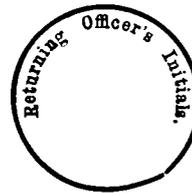
Submission to the Electors of a Bill.

Do you approve of the Bill entitled [here set out the title of the Bill] ?

<input type="checkbox"/>	YES.
<input type="checkbox"/>	NO.

NOTE —The elector should carefully read the directions for his guidance printed on the back of this ballot-paper, and in particular note that he must not mark his vote thereon until after he has first exhibited the ballot-paper (unmarked) to the authorised witness.

[Back of Form.]



Directions to Elector and Authorised Witness.

- (a) The elector shall exhibit his unmarked Postal Ballot-paper and his Postal Vote Certificate to the authorised witness.
- (b) The elector shall then and there, in the presence of the authorised witness, sign his name in his own handwriting on the Postal Vote Certificate, in the place provided for the signature of the voter.

(c)

- (c) The authorised witness shall then and there sign his name in his own handwriting on the Postal Vote Certificate in the place provided for the signature of the authorised witness, and shall add the title under which he acts as an authorised witness, and the date.
- (d) The elector shall then and there in the presence of the authorised witness, but so that the authorised witness cannot see the vote, indicate his vote on the ballot-paper as follows:—
- If he approves of the Bill he should place the number "1" in the square opposite the word "Yes" and place the number "2" in the square opposite the word "No."
- If he does not approve of the Bill he should place the number "1" in the square opposite the word "No" and place the number "2" in the square opposite the word "Yes."
- He shall then fold the ballot-paper so that the vote cannot be seen, and hand it so folded to the authorised witness.
- (e) The authorised witness shall then and there place the ballot-paper in the envelope addressed to the returning officer, fasten the envelope, and hand it to the voter, who shall forthwith post or deliver it, or cause it to be posted or delivered, to the returning officer.
- (f) If the elector's sight is so impaired that he cannot vote without assistance, the authorised witness, if so requested by the elector, shall mark the elector's vote on the ballot-paper in the presence of a witness, according to the instructions of the elector and shall then and there fold the ballot-paper so that the vote cannot be seen, place the ballot paper in the envelope addressed to the returning officer, fasten the envelope, and hand it to the voter, who shall forthwith post or deliver it, or cause it to be posted or delivered, to the returning officer.

Further Directions to Authorised Witness.

The authorised witness shall not, unless the elector's sight is so impaired that he cannot vote without assistance, look at or make himself acquainted with the vote given by the elector, and, except as provided in paragraph (f) of the preceding Directions, shall not suffer or permit any person (other than the elector) to see or become acquainted with the elector's vote, or to assist the elector to vote, or to interfere in any way with the elector in relation to his vote.

Every authorised witness shall—

- (a) comply with the preceding directions in so far as they are to be complied with on his part ;
- (b) see that the preceding directions are complied with by every elector voting by post before him, and by every person present when the elector votes ; and
- (c) refrain from disclosing any knowledge of the vote of any elector voting by post before him.

Penalty : One hundred pounds, or imprisonment for three months.

Duty

Constitution Further Amendment (Referendum) Act.

No. 2, 1930.

Duty of Persons Present when an Elector Votes by Post.

Any person present when an elector is before an authorised witness for the purpose of voting by post shall—

- (a) obey all directions of the authorised witness;
- (b) refrain from making any communication whatever to the elector in relation to his vote;
- (c) refrain from assisting the elector or in any manner interfering with him in relation to his vote;
- (d) except as provided in paragraph (f) of the Directions to Elector and Authorised Witness, refrain from looking at the elector's vote or from doing anything whereby he might become acquainted with the elector's vote.

Penalty: One hundred pounds, or imprisonment for three months.

Duty of Person to whom an Envelope containing a Postal Ballot-paper is entrusted for Posting or Delivery.

Any person to whom an envelope containing or purporting to contain a Postal Ballot-paper is entrusted by a voter for the purpose of posting or delivery to a returning officer, and who fails to forthwith post or deliver the envelope, shall be guilty of an offence.

Penalty: Fifty pounds, or imprisonment for one month.

Sec. 15 (5).

Form E.**SPECIAL FORM OF BALLOT-PAPER.**

CONSTITUTION FURTHER AMENDMENT (REFERENDUM) ACT, 1930.

Directions to Voter.

The voter should indicate his vote in relation to each Bill as follows:—

If he approves of the Bill he should place the number "1" in the square opposite the word "Yes," and place the number "2" in the square opposite the word "No."

If he does not approve of the Bill he should place the number "1" in the square opposite the word "No," and place the number "2" in the square opposite the word "Yes."

Submission to the Electors of certain Bills.

1. Do you approve of the Bill entitled [*here set out the title of the Bill*]?

<input style="width: 40px; height: 40px;" type="checkbox"/>	YES.
<input style="width: 40px; height: 40px;" type="checkbox"/>	NO.

2.

Constitution Further Amendment (Referendum) Act.

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2. Do you approve of the Bill entitled [*here set out the title of the Bill*] ? **No. 2, 1939.**

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

(Additional ballot-papers (numbered consecutively) in similar form may be included in this form.)

THIRD SCHEDULE.

Sec. 64.

DIVISION 1.

Where one candidate only is to be elected—Preferential System.

1. The rules in this Division of this Schedule shall be observed in the counting of the votes for the purpose of ascertaining the result of an election at which only one seat of a member of the Council is to be filled.

2. (a) The returning officer shall after rejecting any ballot-papers which are invalid count the total number of first preference votes given for each candidate.

(b) The candidate who has received the largest number of first preference votes shall, if that number constitutes an absolute majority of votes, be elected.

(c) If no candidate has received an absolute majority of first preference votes the returning officer shall make a second count.

(d) On the second count the candidate who has received the fewest first preference votes shall be excluded, and each unexhausted ballot-paper counted to him shall be counted to the candidate next in the order of the voter's preference.

(e) If a candidate then has an absolute majority of votes he shall be declared elected, but if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the fewest votes and counting each of his unexhausted ballot-papers to the continuing candidate next in the order of the voter's preference shall be repeated by the returning officer until one candidate has received an absolute majority of votes.

(f) The candidate who has received an absolute majority of votes shall be declared elected.

3.

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No. 2, 1930.

3. In the process of counting, exhausted ballot-papers shall be set aside as finally dealt with, and shall thenceforth not be taken into account in ascertaining the result of the poll.

4. (a) When a candidate is excluded, each ballot-paper counted to him shall be deemed to be exhausted if there is not indicated upon it a next preference for one continuing candidate.

(b) "Next preference" in the last preceding subparagraph includes the first of the subsequent preferences marked on the ballot-paper which is not given to an excluded candidate.

5. In this Division of this Schedule "continuing candidate" means a candidate not already excluded from the count.

6. If on any count two or more candidates have an equal number of votes, and one of them has to be excluded, the returning officer shall determine by lot which shall be excluded.

7. In this Division of this Schedule—

The expression "an absolute majority of votes" means a greater number than one-half of the whole number of ballot-papers other than invalid and exhausted ballot-papers.

The expression "determine by lot" shall have the meaning ascribed to it in Division 2 of this Schedule.

DIVISION 2.

Where more than one candidate is to be elected—Proportional Representation.

Application of rules.

1. The following Rules shall be observed in the counting of the votes for the purpose of ascertaining the result of an election at which more than one seat of a member of the Legislative Council is to be filled.

Arrangement and counting of ballot-papers.

2. (1) The returning officer shall, after rejecting any ballot-papers which are invalid, cause the valid ballot-papers to be arranged in parcels according to the first preferences recorded for each candidate.

(2) For the purpose of facilitating the processes prescribed by these Rules, each valid ballot-paper shall be deemed to be of the value of one hundred.

(3) The returning officer shall count the number of papers in each parcel, and in accordance with subsection two of this Rule credit each candidate with the value of the valid papers on which a first preference has been recorded for such candidate.

Ascertainment of quota.

3. The returning officer shall then add together the values in all the parcels and divide the full total value by a number exceeding by one the number of seats to be filled. The result increased by one, any fractional remainder being disregarded, shall be the number sufficient to secure the return of a candidate. This number is herein called the "quota."

Candidates with quota deemed elected

4. If at the end of any count or at the end of the transfer of any parcel or subparcel of an excluded candidate the value credited to a candidate is equal to or greater than the quota, that candidate shall be deemed to be elected.

5.

5. (1) If at the end of any count the value credited to a candidate is greater than the quota, the surplus shall be transferred in accordance with the provisions of this Rule to the continuing candidate or candidates indicated on the ballot-papers in the parcel or subparcel of the elected candidate, according to the next available preferences recorded thereon.

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Transfer of surplus.

(2) (a) If the value credited to an elected candidate arises out of original votes only, the returning officer shall examine all the papers in the parcel of the elected candidate whose surplus is to be transferred, and shall arrange the transferable papers in subparcels according to the next available preferences recorded thereon and shall make a separate subparcel of the non-transferable papers.

(b) If the value credited to an elected candidate arises out of original and transferred votes, or of transferred votes only, the returning officer shall examine the papers contained in the subparcel last received by the elected candidate, and shall arrange the transferable papers therein in further subparcels according to the next available preferences recorded thereon and shall make a separate subparcel of the non-transferable papers.

(c) In either of the cases referred to in paragraphs (a) and (b) in this subsection, the returning officer shall ascertain the number of papers and their total value in each subparcel of transferable papers and in the subparcel of non-transferable papers.

(3) If the surplus is equal to or greater than the total value of the papers in the subparcels of transferable papers, the returning officer shall transfer each subparcel of transferable papers to the continuing candidate indicated thereon as the voter's next available preference, each paper being transferred at the value at which it was received by the candidate whose surplus is being transferred.

When the surplus is greater than the total value of the subparcels of transferable papers, the non-transferable papers shall be set aside as not effective, at a value which is equal to the difference between the surplus and the total value of the subparcels of transferable papers.

(4) If the surplus is less than the total value of the transferable papers, the returning officer shall transfer each paper in each subparcel of transferable papers to the continuing candidate indicated thereon as the voter's next available preference, and the value at which each paper shall be transferred shall be ascertained by dividing the surplus by the total number of transferable papers, fractional remainders being disregarded, except that the consequential loss of value shall be noted on the Result Sheet.

(5) A surplus which arises on the completion of any count shall be dealt with before a surplus which may arise at a subsequent count.

When two or more surpluses arise out of the same count, the largest shall be first dealt with and the others shall be dealt with in the order of their magnitude.

If two or more candidates have each an equal surplus arising out of the same count, the surplus of the candidate credited with the greatest value at the earliest count at which the values credited to these

these

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these candidates were unequal shall be first dealt with. Where the values credited to such candidates were equal at all counts, the returning officer shall determine by lot which surplus he will first deal with.

Exclusion of candidates.

6. (1) If at the end of any count no candidate has a surplus and one or more vacancies remain unfilled, the returning officer shall exclude the candidate credited with the lowest value and shall transfer his papers to the continuing candidate or candidates indicated on the ballot-papers in the parcel or subparcels of the excluded candidate as the voters' next available preference, and shall credit the continuing candidate or candidates with the value of the papers transferred.

(2) (a) The parcel containing original votes shall first be transferred, the transfer value of each paper being one hundred.

(b) The subparcels containing transferred votes shall then be transferred in the order in which and at the value at which the excluded candidate obtained them.

(3) In the transfer of each parcel or subparcel a separate subparcel shall be made of the non-transferable papers, which shall be set aside at the value at which the excluded candidate obtained them.

(4) If, when a candidate has to be excluded under this Rule, two or more candidates are each credited with the same value and are lowest, regard shall be had to the total value of original votes credited to each of those candidates, and the candidate with the smallest total value shall be excluded, and where the total values are equal, regard shall be had to the total value credited to those candidates at the earliest count at which they had unequal values, and the candidate with the smallest value at that count shall be excluded.

If two or more candidates are lowest and are each credited with the same value at all counts, the returning officer shall arrange the papers of such candidates according to the next available preferences recorded thereon for continuing candidates, including the candidates in question, and shall exclude that lowest candidate for whom the total value of the next available preferences expressed is smallest, and if the total values of next available preferences recorded for two or more of the candidates in question are then equal and smallest, the returning officer shall determine by lot as between the candidates last mentioned which candidate shall be excluded.

Disposal of papers after any transfer.

7. Whenever any transfer is made under any of the preceding Rules, each subparcel of papers transferred shall be placed on top of the parcel or subparcel, if any, of papers of the candidate to whom the transfer is made, and that candidate shall be credited with a value ascertained in pursuance of these Rules.

Filling the last vacancies.

8. (1) If at the end of any count the number of elected candidates is equal to the number of vacancies to be filled, no further transfer shall be made.

(2) (a) When the number of continuing candidates is equal to the number of vacancies remaining unfilled, the continuing candidates shall thereupon be deemed to be elected.

(b)

(b) When only one vacancy remains unfilled, and the value credited to some one continuing candidate exceeds the total of the values credited to the other continuing candidates, together with any surplus not transferred, that candidate shall thereupon be deemed to be elected.

(3) When the last vacancies can be filled under this Rule, no further transfer shall be made.

9. The returning officer shall record the total of the values credited to each candidate at the end of every count. Such record shall include—

- (a) the value of the non-transferable papers not effective; and
- (b) the loss of value owing to disregard of fractions; and may be in accordance with the form set out as an appendix to this Schedule, or in a form to the like effect.

10. In these Rules—

- (a) The expression “continuing candidate” means any candidate not deemed to be elected and not excluded;
- (b) the expression “first preference” means the figure “1” standing alone, the expression “second preference” means the figure “2” standing alone in succession to the figure “1,” and the expression “third preference” means the figure “3” standing alone in succession to the figures “1” and “2,” set opposite the name of any candidate, and so on;
- (c) the expression “next available preference” means a second or subsequent preference recorded in consecutive numerical order for a continuing candidate, the preferences next in order on the ballot-paper for candidates already deemed to be elected or excluded being ignored;
- (d) the expression “transferable paper” means a ballot-paper on which, following any preference, a subsequent preference is recorded in consecutive numerical order for a continuing candidate;
- (e) the expression “non-transferable paper” means a ballot-paper on which no subsequent preference is recorded in consecutive numerical order for a continuing candidate;
- (f) the expression “original vote” in regard to any candidate means a vote derived from a ballot-paper on which a first preference is recorded for that candidate;
- (g) the expression “transferred vote” in regard to any candidate means a vote derived from a ballot-paper on which a second or subsequent preference is recorded for that candidate;
- (h) the expression “surplus” means the number by which the total value of the votes, original and transferred, credited to any candidate exceeds the quota;
- (i) the expression “count” means—
 - (i) all the operations involved in the counting of the first preferences recorded for candidates; or
 - (ii) all the operations involved in the transfer of the surplus of an elected candidate; or
 - (iii) all the operations involved in the transfer of the votes of an excluded candidate;

(j)

Constitution Further Amendment (Referendum) Act.

No. 2, 1930.

- (j) the expression "deemed to be elected" means deemed to be elected for the purpose of counting, but without prejudice to the declaration of the result of the election;
- (k) the expression "determine by lot" means determine in accordance with the following direction:—

The names of the candidates concerned having been written on similar slips of paper, and the slips having been folded so as to prevent identification and mixed and drawn at random, the candidate or candidates shall, in cases of exclusion, be excluded in the order in which their names are drawn, and, in cases of surpluses, the surpluses shall be transferred in the order in which the names are drawn.

APPENDIX.

FORM OF RESULT SHEET.

Election of Members of the Legislative Council—Result Sheet.

Number of valid votes _____
 Full total value of valid votes _____
 Number of Members to be elected _____
 Quota (value sufficient to secure the election of a candidate) _____

Names of Candidates.	First Count.	Second Count.	Third Count.	—	—	Names of Candidate Elected.
	Value of Votes.	Transfer of Result.	Transfer of Result.	Transfer of Result.	Transfer of Result.	

Value of non-transferable papers not effective. } Loss of value owing to disregard of fractions. }						
Totals _____						

(Signature).....Returning Officer.

MARKETING