

[CONFIDENTIAL]
(Bough Draft for Consideration Only.)

No. , 1932.

A BILL

To reform the Constitution and alter the powers of the Legislative Council; to reduce and limit the number of Members of the Council; to reconstitute the Council in accordance with the reformed constitution; 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, with the approval of the electors

electors as required by the Constitution Act, 1902, as amended by subsequent Acts, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Constitution Amendment (Legislative Council) Act, 1932," and shall be read and construed with the Constitution Act, 1902, as amended by subsequent Acts. Short title.

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

PART I.—PRELIMINARY.

PART II.—RECONSTITUTION OF THE LEGISLATIVE COUNCIL.

PART III.—QUALIFICATIONS.

PART IV.—ELECTIONS.

DIVISION 1—Elections for electorates.

DIVISION 2—Elections by both Houses of the Parliament.

PART V.—DISAGREEMENTS BETWEEN THE TWO HOUSES.

PART VI.—GENERAL PROVISIONS.

PART VII.—CONSEQUENTIAL AMENDMENTS OF CONSTITUTION ACT, 1902, AS AMENDED BY SUBSEQUENT ACTS.

PART II.

RECONSTITUTION OF THE LEGISLATIVE COUNCIL.

3. (1) The Legislative Council shall be reconstituted and shall consist of sixty elected Members. Reconstitution.

(2) Forty-five members shall be elected by the electors of fifteen electorates, each electorate being represented in the Legislative Council by three Members.

(3) Fifteen 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.

(4)

(4) Any vacancy in the seat of an Elected Member shall be filled by an election in accordance with subsection three of this section.

(5) The voting at every election of a Member or Members of the Legislative Council shall be by secret ballot, and shall be in accordance with a preferential system under which each voter shall be required to indicate the order of his preference for all the candidates; and the election shall be held and conducted as the Legislature may provide.

(6) The terms of service of elected Members of the Legislative Council shall expire in rotation so that the seats of twenty Members shall become vacant at regular triennial intervals.

PART III.

QUALIFICATIONS.

4. (1) Subject to the disqualifications set out in the Constitution Act, 1902, as amended by subsequent Acts, any person whether male or female, married or unmarried—

Qualifica-
tions.

(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 naturalised subject of the King,

shall be capable of being elected as a Member of the Legislative Council and of sitting and voting therein.

(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

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.

PART IV.

ELECTIONS.

DIVISION 1.—*Elections for electorates.*

5. The provisions of this Division shall apply to and in respect of any election by the electors of an electorate of a Member or Members of the Legislative Council to represent that electorate. Application of Division 1

6. (1) Until the Legislature otherwise provides the electorates for the purpose of any election under this Division shall be constituted in accordance with this section. Electorates.

(2) The forty-three electoral districts into which the Sydney Area is for the time being divided pursuant to the Parliamentary Electorates and Elections Act, 1912-1929, shall be distributed into seven electorates.

One of these electorates shall consist of seven of the forty-three electoral districts; and each of the other six electorates shall consist of six of the remaining thirty-six electoral districts.

(3) The five electoral districts into which the Newcastle Area is for the time being divided pursuant to the Parliamentary Electorates and Elections Act, 1912-1929, shall together constitute one electorate.

(4) The forty-two electoral districts into which the Country Area is for the time being divided pursuant to the Parliamentary Electorates and Elections Act, 1912-1929, shall be distributed into seven electorates, each of which shall consist of six of those electoral districts.

(5)

(5) A distribution of electorates under this section shall be carried out by the Electoral Districts Commissioners, who shall be appointed for this purpose in accordance with the law for the time being in force relating to a distribution of electoral districts for the election of Members of the Legislative Assembly.

In making any such distribution due consideration shall be given to community or diversity of interest lines of communication, physical features, and contiguity of electoral districts.

7. The electors qualified to vote at any election for an electorate shall be the electors qualified to vote for the election of a Member of the Legislative Assembly for any electoral district comprised in that electorate. Electors.

8. (1) The first election shall be held as soon as practicable after the commencement of this Act. First elections and tenure of Members so elected.

(2) At the first election three Members shall be elected for each electorate.

(3) The term of service of the three Members elected to represent an electorate at the first election shall commence on the date upon which the Legislative Council is reconstituted, and shall expire as follows:—

- (a) In the case of the one who upon the count of the votes at the election in that electorate is firstly declared elected—at the end of nine years from the commencement of such term;
- (b) in the case of the one who upon the count of the votes at the election in that electorate is secondly declared elected—at the end of six years from the commencement of such term;
- (c) in the case of the one who upon the count of the votes at the election in that electorate is thirdly declared elected—at the end of three years from the commencement of such term.

9. (1) In the case of any election after the first election the date on which the poll for the election may be taken shall not be earlier than the fortieth day before the expiration of the term of service of the Members whose seats are to be filled at the election: Subsequent elections and tenure of Members elected.

Provided

Provided that the Legislature may provide for the taking of any such poll on the polling-day for a general election of Members of the Legislative Assembly, where that polling-day is within six months before the expiration of such term of service.

(2) At each election after the first election one Member shall be elected to represent each electorate.

The term of service of a Member so elected shall—

- (a) commence upon the expiration of the term of service of the Member whose seat is to be filled at such election; and
- (b) expire at the end of nine years from its commencement.

10. A member of the Legislative Council whose term of service is about to expire shall if not otherwise disqualified be capable of being re-elected.

Retiring Member not disqualified.

DIVISION 2.—Elections by both Houses of the Parliament.

11. The provisions of this Division shall apply to and in respect of any election of a Member or Members of the Legislative Council where the electors are the Members of the Legislative Council and the Members of the Legislative Assembly.

Application of Division 2.

12. (1) A person shall not be a candidate at any election under this Division 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 ten and not more than ten 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

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 under this Division held within four years after the date of the contravention.

13. (1) Notwithstanding any other provision of this Act the provisions of this section shall apply to and in respect of the first election of the fifteen Members who are to be elected in pursuance of subsection three of section three of this Act.

First election of fifteen Members.

(2) For the purposes of this election, the forty-five persons who are elected pursuant to section eight of this Act to represent the electorates, and those persons only, shall be deemed to be Members of the Legislative Council, and shall, together with the Members of the Legislative Assembly, be the electors for the election.

(3) The forty-five persons referred to in subsection two of this section shall record their votes at the election at a special meeting which shall be convened for the purpose in such manner and at such time as is provided by law.

The Speaker of the Legislative Assembly shall preside at such meeting, and the proceedings at the meeting shall be conducted as provided by law.

(4) Each nomination paper shall be signed by five and not more than five electors.

No elector shall sign more than two nomination papers, but the contravention of this provision shall not 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

any election of Members of the Legislative Council under this Division held within four years after the date of the contravention.

(5) The election shall be held as soon as is practicable after the first election pursuant to section eight of this Act of forty-five persons to represent the electorates.

(6) The term of service as Members of the Legislative Council of the fifteen persons elected under this section shall commence on the date upon which the Legislative Council is reconstituted and shall expire as follows:—

- (a) In the case of the five persons who upon the count of the votes at the election are firstly declared elected—at the end of nine years from the commencement of such term;
- (b) in the case of the five persons who upon the count of the votes at the election are secondly declared elected—at the end of six years from the commencement of such term;
- (c) in the case of the five persons who upon the count of the votes at the election are thirdly declared elected—at the end of three years from the commencement of such term;

14. (1) In the case of an election to fill the seats of any five Members elected under this Division whose terms of service are about to expire by effluxion of time the date on which the sittings of the respective Houses of the Parliament for the purpose of the taking of the ballot at the election may be held shall not be earlier than the sixtieth day before the expiration of the term of service of the Members whose seats are to be filled at the election.

Subsequent elections and tenure of Members elected.

(2) The term of service of the five Members elected at such election shall—

- (a) commence upon the expiration of the term of service of the Members whose seats are to be filled at such election; and
- (b) expire at the end of nine years from its commencement.

15.

15. Where the seat of any Member of the Legislative Council 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.

Term of service of Member. elected to fill casual vacancy.

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

Retiring Member not disqualified.

PART V.

DISAGREEMENTS BETWEEN THE TWO HOUSES.

17. If at any time after the reconstitution of the Legislative Council the Legislative Assembly passes any Bill 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 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 the Members of the Legislative Assembly.

Disagreements—Referendum.

The Members present at the joint sitting may deliberate upon the Bill as last proposed by the Legislative Assembly and upon any amendments made 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 may by resolution direct that the Bill as last proposed by the Legislative Assembly and either with or without any amendment subsequently agreed to by the Legislative Council and the Legislative Assembly, shall, at any time during the life of the Parliament or at the next general election

election of Members of the Legislative Assembly, be submitted by way of referendum to the electors qualified to vote for the election of Members of the Legislative Assembly.

If at the referendum a majority of the electors voting approve the Bill it shall be presented to the Governor for the signification of His Majesty's pleasure thereon and become an Act of the Legislature upon the Royal Assent being signified thereto, notwithstanding that the Legislative Council has not consented to the Bill.

For the purposes of this section the Legislative Council shall be taken to have failed to pass 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.

This section shall extend to any Bill whether it is a Bill to which section 7A of the Constitution Act, 1902 (as inserted by the Constitution (Legislative Council) Amendment Act, 1929), applies or not.

A joint sitting of the Members of the Legislative Council and the Members of the Legislative Assembly for the purposes of this section may be convened by the Governor by message to both Houses of the Parliament.

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.

18. If after the reconstitution of the Legislative Council 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 to 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, and shall become an

Appropriation for annual services.

an Act of the Legislature upon the Royal Assent being signified thereto, notwithstanding that the Legislative Council has not consented to the Bill.

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.

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.

19. (1) Where a Bill is presented to the Governor for the signification of His Majesty's pleasure under section thirteen of this Act, the words of enactment shall be as follows:—

Words of enactment.

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, with the approval of the electors, in accordance with the provisions of section thirteen of the Constitution Amendment (Legislative Council) Act, 1932, 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.

(2) Where a Bill is presented to the Governor for the signification of His Majesty's pleasure under section fourteen of this Act, 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 fourteen of the Constitution Amendment (Legislative Council) Act, 1932, and by the authority of the same, as follows:—

Any

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

PART VI.

GENERAL PROVISIONS.

20. The date upon which the Legislative Council shall be reconstituted pursuant to this Act shall be the ninetyeth day after the date upon which the poll for the first election of Members of the Legislative Council referred to in section eight of this Act is taken, or such earlier day after the date of such poll as the Governor may by Proclamation published in the Gazette appoint.

Date of re-constitution.

21. Every person who immediately before the date upon which the Legislative Council is reconstituted in pursuance of this Act holds office as a Member of the Legislative Council shall, upon the date of such reconstitution, cease to be a Member of the Legislative Council.

Existing members of the Legislative Council.

22. Upon the first or any other election of Members of the Legislative Council, the Legislative Council shall on and after the date of the reconstitution, be competent to proceed to the despatch of business at the time appointed by the Governor for that purpose, notwithstanding that any of the writs of election (not exceeding three) have not been returned, or that in any of the electorates the electors have failed to elect a Member or Members to serve in the Legislative Council.

Legislative Council may proceed to despatch of business notwithstanding non-return of three writs.

PART VII.

CONSEQUENTIAL AMENDMENTS OF CONSTITUTION ACT, 1902, AS AMENDED BY SUBSEQUENT ACTS.

23. This Part shall commence on the date upon which the Legislative Council is reconstituted pursuant to this Act.

Commencement of Part.

24. (1) The Constitution Act, 1902, as amended by subsequent Acts, is amended--

Amendment of Act No. 32, 1902.

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

Sec. 13 (1) (Consequential).

(b)

(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).

(c) by omitting sections sixteen and seventeen ;

Secs. 16, 17.
(Summoned Members.)

(d) by omitting section twenty and by inserting in lieu thereof the following section:—

Sec. 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, etc.

(e) by omitting section twenty-one and by inserting in lieu thereof the following section:—

Sec. 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 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.

Constitution Amendment (Legislative Council).

(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.

(f) by inserting in subsection two of section twenty-two after the word "President" wherever occurring the words "or the presiding Member." Sec. 22
(Casting
vote).

(2) The Constitution (Amendment) Act, 1925, is hereby repealed. Consequen-
tial repeal
of Act
No. 1, 1926.

25. Section 7A of the Constitution Act, 1902, as inserted by the Constitution (Legislative Council) Amendment Act, 1929, shall apply to the Constitution and powers of the Legislative Council as altered under this Act. Section 7A
of Act
No. 32, 1902,
not affected.

