

[CONFIDENTIAL]

(Rough Draft for Consideration Only.)

No. , 1923.

A BILL

To make provision for the filling of vacancies in the Legislative Assembly; to amend the Parliamentary Electorates and Elections Act, 1912, 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. This Act may be cited as the "Parliamentary ^{Short title.} Electorates and Elections (Casual Vacancies) Act, 1923."

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2. The Parliamentary Electorates and Elections Act, 1912, in this Act referred to as the Principal Act, is amended as follows :—

- (a) By omitting from section sixty-eight the words “and also in the case of any seat in the Assembly becoming vacant after any such general election and before the meeting of Parliament” after the word “election” where it first occurs in the section ;
- (b) by omitting sections seventy and seventy-one ;
- (c) by inserting in section seventy-two after the word “election” where it first occurs in that section the words “at a general election.”

3. The Principal Act is further amended by inserting after section one hundred and thirty-six the following new heading and sections :—

Provisions for filling vacancies in the Assembly.

137. (1) Where any seat in the Assembly becomes vacant—

- (a) after a general election and before the meeting of Parliament ; or
- (b) at a time when there is no Speaker and the Assembly is not in session ; or
- (c) at a time when the Speaker is absent from New South Wales,

the Governor shall, if satisfied of the existence of the vacancy, issue a writ for the election of a member to fill the vacant seat.

(2) Where a seat in the Assembly becomes vacant after the meeting of Parliament from whatever cause, the Speaker shall, upon a resolution of the Assembly declaring the vacancy and the reason thereof, issue a writ for the election of a member to fill the vacant seat.

(3) Where the vacancy occurs during an adjournment of the Assembly for a period of more than seven days or at a time when the Assembly is not in session, the Speaker shall issue a writ for the election of a member to fill the vacant seat.

138. A writ issued under the authority of the last preceding section shall be directed to the Chief Electoral Officer, and shall empower and direct him to act as the returning officer of the electorate in the representation of which the vacancy has occurred, for the purpose of filling the vacancy, and shall be made returnable on a day not later than the fortieth clear day after the issue thereof, or on such later day as the Governor may by proclamation in the Gazette direct.

139. (1) The Chief Electoral Officer shall, upon the receipt by him of any such writ as aforesaid, endorse thereon the day of such receipt and shall forthwith give public notice of the purport of such writ and of a day before which candidates who were unsuccessful at the latest general election for the electorate in respect of which the vacancy has occurred may, by writing, inform him that they wish to be considered candidates for the vacant seat, and of a day before which objection to the qualification of any of the said candidates may be made, and the return day of the writ.

Public notice in this section shall have the meaning attributed to the same expression by subsection two of section seventy-four of this Act.

(2) The Clerk of the Assembly shall, on request by the Chief Electoral Officer, and on production of the writ, produce to him at Parliament House all sealed parcels and packets which relate to the latest general election for the electorate in respect of which the vacancy has occurred, and which under the provisions of this Act have been received by the Clerk of the Assembly from the returning officer of the electorate for safe custody.

(3) The Chief Electoral Officer is hereby authorised to break the seals of and open such sealed packets in pursuance of the duties imposed on him by this Act.

140. (1) The Chief Electoral Officer shall first ascertain from the nomination papers who were the candidates for election at the latest general election
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for the electorate in respect of which the vacancy has occurred, and shall also ascertain whether any of the unsuccessful candidates who have intimated their willingness to be candidates for the vacant seat have since become disqualified for election under the Constitution Act or this Act. The Chief Electoral Officer may accept as evidence for this latter purpose statutory declarations in the form or to the effect prescribed.

(2) In the event of there being only one candidate unsuccessful at the latest general election and such one is qualified for election and has intimated his willingness to be a candidate for the vacant seat, or in the event of there remaining only one such candidate, the Chief Electoral Officer shall declare such one duly elected to fill the vacant seat.

(3) In the event of there being more than one such unsuccessful candidate qualified for election the Chief Electoral Officer shall, subject as in the next succeeding subsection provided, proceed to continue the count of the votes polled at such latest general election for the electorate in respect of which the vacancy has occurred, in the manner and subject to the provisions of the regulations contained in the Fourteenth Schedule to this Act.

(4) Any packet or parcel labelled as containing or found to contain the ballot-papers declared to be informal by the returning officer at the latest general election, shall either not be opened, or, if opened, be forthwith closed and sealed by the Chief Electoral Officer and handed to the Clerk of the Assembly to be retained by him, and such ballot-papers shall not be counted.

(5) Any packet or parcel labelled as containing or found to contain the ballot-papers upon which the sitting members of the electorate were declared elected, and which are found not to contain any ballot-papers beyond a quota as determined at the latest general election, shall be dealt with as in the last preceding subsection mentioned.

(6)

(6) If any packet or parcel labelled as containing or found to contain the ballot-papers upon which a sitting member was declared elected is found to contain a surplus beyond a quota so determined as aforesaid, the surplus shall be dealt with as in the Fourteenth Schedule provided.

(7) For the purpose of the count the Chief Electoral Officer may appoint such officers and clerks as he may deem necessary.

141. The Chief Electoral Officer shall declare elected to fill the vacant seat that one of the unsuccessful candidates at the latest general election who as a result of the continuation of the count is found by him either to have received a quota as fixed at the latest general election, or who is found to have received a number of votes which exceeds the number of votes of the other continuing unsuccessful candidates, and shall indorse the writ accordingly and return same to the Governor or the Speaker as the case may be.

142. Upon the return of the writ the Chief Electoral Officer shall deal with the ballot-papers and other documents in connection with the election in like manner to that prescribed by section one hundred and twenty-seven of this Act, and the provisions of section one hundred and twenty-eight and one hundred and twenty-nine of this Act shall apply thereto.

143. (1) In the event of there being no unsuccessful candidate at the latest general election, or if there be no such candidate qualified and available for election to fill the vacant seat, the Chief Electoral Officer shall endorse the writ accordingly and return the same to the Governor or the Speaker as the case may be, who shall thereupon notify the fact to the Clerk of the Assembly.

(2) The Clerk of the Assembly shall forthwith in writing declare the party to which in his opinion the late member belonged or was usually allied, and who is the recognised leader of such party, and shall forward such declaration to the Speaker,

Speaker, or, if there be no Speaker, or if the Speaker is absent from New South Wales, to the Governor, and the contents of the declaration shall be notified by the Clerk of the Assembly to such recognised leader.

144. The person mentioned in such declaration as the recognised leader of the party to which the late member belonged shall, by writing under his hand addressed to the Governor, nominate a person whose name is at the date of such nomination enrolled on the electoral roll of the electorate in respect of which the vacancy has occurred and is qualified to vote under this Act. Upon receipt of such nomination the Governor shall by message communicate the same to the Assembly, and such person shall thereupon be deemed to be elected as a member of the Assembly for the electorate in place of the late member.

4. The Principal Act is further amended by the insertion after the Thirteenth Schedule of the following new Schedule :—

SCHEDULE FOURTEEN.

REGULATIONS.

ELECTIONS TO FILL VACANCIES.

1. In these Regulations, unless the contrary intention appears—
 "Available candidate" means a person who was at the latest general election an unsuccessful candidate, and who at the date of the writ issued to fill a vacant seat is not disqualified for election under the Constitution Act or this Act, and who has in writing informed the Chief Electoral Officer that he wishes to be considered a candidate for the vacant seat.
2. The Chief Electoral Officer shall, in making the count, disregard the name of any person who is not an available candidate.
3. A ballot-paper which does not contain the name of an available candidate against which a number has been placed by the voter, shall be set aside as exhausted.
4. If at the conclusion of the count for the latest general election or under these regulations the number of votes obtained by an elected candidate was raised above the quota, the first operation shall be to transfer the surplus, and such surplus shall be transferred in the manner hereinafter mentioned.

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5. Where more than one candidate has a surplus, the surpluses shall be transferred in the order of their magnitude, beginning with the largest.

6. Where two or more surpluses are equal the Chief Electoral Officer shall decide which surplus shall be first dealt with.

7. For the purpose of transferring a surplus, all the ballot-papers transferred to the elected candidate in the last transfer shall be re-examined, and the number of available choices for each available candidate thereon counted.

8. The procedure laid down in Regulation Thirteen of Schedule Thirteen to this Act shall *mutatis mutandis* apply to a transfer of a surplus under the provisions of this Schedule.

9. All the ballot-papers contained in the parcel of the vacating member, all the ballot-papers in the parcel or parcels of the continuing candidate or candidates, and all the ballot-papers set aside as exhausted, shall then in that order be re-examined and transferred to the available candidates in the order of the preference shown upon such papers, and each available candidate shall be credited with one vote in respect of each paper transferred to him.

10. If by any transfer under these Regulations an available candidate receives a quota or an absolute majority of votes, he shall thereupon be declared elected.

An absolute majority means a number greater than one-half of the whole number of votes credited to all the available candidates at the conclusion of any count. The casting vote of the Chief Electoral Officer shall be included in reckoning an absolute majority.

11. If no available candidate has a quota or an absolute majority, the available candidate who has the fewest first choices shall be excluded, and each ballot-paper counted to him shall (unless exhausted) be counted to the unexcluded available candidate next in the order of the voter's preference, and shall for the purpose of the count be deemed a first choice for such last-mentioned candidate.

12. If no available candidate then has a quota or an absolute majority, the process of excluding the available candidate who has the fewest first choices and counting each of his ballot-papers (unless exhausted) to the unexcluded available candidate next in the order of the voter's preference, shall be repeated until one available candidate has a quota or an absolute majority.

13. A ballot-paper shall be counted in every count until it becomes exhausted, when it shall be rejected in all further counts. When an available candidate is excluded, any ballot-paper counted to him shall be deemed to be exhausted if there is not indicated upon it a further preference for an unexcluded available candidate.

14. If on any count two or more available candidates have an equal number of votes and one of them has to be excluded, the Chief Electoral Officer shall decide which is to be excluded; and if in the final count two available candidates have an equal number of votes, the Chief Electoral Officer shall decide by his casting vote which shall be elected.

5. Except for the purpose of filling any vacancy in the Assembly occurring, either before or after the passing of this Act, by reason of the death, resignation, or disqualification by any means of a member for the electorates of Sturt or Namoi during the present (the twenty-sixth) Parliament, the provisions of the Parliamentary Elections (Casual Vacancies) Act, 1920, and the Parliamentary Electorates and Elections Act, 1921, shall be deemed to have ceased to have effect as from the twenty-fifth day of March, one thousand nine hundred and twenty-two, but for the purpose aforesaid the said provisions shall be deemed to have been and to be in full force and effect.

6. The Principal Act is further amended as follows:—
 Amendment of Principal Act, Schedule Thirteen.
 Schedule Thirteen: By omitting paragraph (c) of regulation thirteen and inserting the following paragraph in lieu thereof:—

Surplus on Transfer.

(c) If by a transfer the number of votes obtained by a candidate is raised above the quota, then, subject to paragraphs (viii) and (ix) of this Regulation, his surplus shall be transferred to the continuing candidates next in the order of the voters' respective preferences in the following manner:—

- (i) The ballot-papers transferred to the elected candidate in the last transfer shall be re-examined, and the number of next consecutive preferences recorded for each continuing candidate thereon counted. Surplus to be transferred.
- (ii) If the total number of next consecutive preferences is equal to or less than the surplus, all the papers on which a next consecutive preference is shown shall be transferred to the candidates indicated thereon. Voting papers of last transfer re-examined and next choices counted.
- (iii) If the total number of next consecutive preferences is greater than the surplus, the surplus shall be divided by the total number of next consecutive preferences and the first three figures of the resulting decimal fraction (afterwards called the transfer value) shall be found. If next choices equal to or less than surplus, all papers to be transferred.
- (iv) The number of next consecutive preferences ascertained in paragraph (i) to be recorded for each continuing candidate respectively shall be multiplied by the transfer value. Transfer value where next choices greater than surplus.
- (v) The resulting number, disregarding any fractional remainder, shall be the number of votes to be credited to each continuing candidate respectively, and added to the number of votes already credited to him. Multiply next preferences by transfer value.

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- (vi) From the papers on which a next consecutive preference is recorded for any continuing candidate there shall be selected at random a number equal to the number of votes directed by the last preceding paragraph to be credited to him, and these shall be placed in a separate parcel and transferred to him. Transfer as many papers as he receives votes.
 - (vii) All papers of the elected candidate not transferred under the foregoing provisions shall be set aside as finally dealt with. Set aside other papers.
 - (viii) A transfer of votes under this Regulation shall not be made unless the surplus of the elected candidate, together with any other surpluses not transferred, exceeds the difference in numbers between the votes of the two continuing candidates lowest on the poll. Postponement of transfer.
 - (ix) The foregoing provisions of this Regulation shall take effect subject to the provisions of Regulation 18, and if at any time there is one remaining vacancy which can be filled under that Regulation no further transfer under this Regulation shall be made. Vacancies to be filled under Regulation 18, if possible.
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