

## CONSTITUTION ACT 1902

- As at 24 February 2014
- Act 32 of 1902

## TABLE OF PROVISIONS

### TABLE OF PROVISIONS

#### PART 1 - PRELIMINARY

1. Name of Act
2. Recognition of Aboriginal people
3. Definitions
4. Application of Act

#### PART 2 - POWERS OF THE LEGISLATURE

5. General legislative powers
  - 5A. Disagreement between the two Housesâ€”appropriation for annual services
  - 5B. Disagreementsâ€”referendum
  - 5C. Words of enactment
6. (Repealed)
7. Power to alter constitution of Legislative Council or Legislative Assembly
  - 7A. Referendum for Bills with respect to Legislative Council and certain other matters
  - 7B. Referendum for Bills with respect to Legislative Assembly and certain other matters
8. (Repealed)
- 8A. Assent to Bills

#### PART 2A - THE GOVERNOR

9. Meaning of â€œunavailableâ€

- 9A. Appointment of Governor
- 9B. Appointment of Lieutenant-Governor and Administrator
- 9C. Administration of government by Lieutenant-Governor or Administrator
- 9D. Deputy for Governor during short illness or absence
- 9E. Oaths or Affirmations of Allegiance and of Office
- 9F. Letters Patent and Instructions cease to have effect
- 9G. Continuation of existing Commissions, appointments etc
- 9H. Public Seal of the State
- 9I. Governor's salary

### PART 3 - THE LEGISLATIVE COUNCIL AND LEGISLATIVE ASSEMBLY

#### Division 1 - General provisions

- 10. Time and place for holding sessions of Parliament
    - 10A. Prorogation of Parliament
  - 11. One session of Parliament to be held in each year
    - 11A. Elections to be held pursuant to writs
    - 11B. Compulsory voting
  - 12. No Member to sit or vote until pledge of loyalty or oath of allegiance taken
  - 13. Disqualifications
    - 13A. Further disqualifications
    - 13B. Office of profit or pension from Crown
    - 13C. Member of one House ineligible for other
    - 13D. Abatement of salary of Members receiving pension or superannuation as public servants
  - 14. Summons or election of disqualified persons
    - 14A. Disclosure of pecuniary interests and other matters by Members
  - 15. Standing Rules and Orders to be laid before Governor
- #### Division 2 - Special provisions relating to the Legislative Council
- 16. Definitions

17. Reconstitution of the Legislative Council

17Aâ€”21. (Repealed)

22. Eligibility to vote at periodic Council elections

22A. Conduct of periodic Council elections

22B. Term of service of Members of Legislative Council

22C. (Repealed)

22D. Filling of casual vacancies in seats of Members of  
Legislative Council by  
joint sitting of both Houses

22E. Members elected at joint sittings of both Houses of  
Parliament

22F. Suspension of Legislative Council business for general  
election of the  
Legislative Assembly

22G. President

22H. Quorum

22I. Determination of questions

22J. Resignation of seats in the Legislative Council

Division 3 - Special provisions relating to the Legislative  
Assembly

23. Convocation of Assembly

24. Duration of Assembly

24A. Date of general election for Legislative Assembly

24B. Dissolution of Legislative Assembly during 4 year term

25. Number of Members of Legislative Assembly

26. Single Member electorates

27. Distribution of New South Wales into electoral districts

28. Number of voters in electoral districts

28A. Special distribution to maintain equal number of voters  
in each electoral  
district

29. Conduct of Legislative Assembly elections

30. Assembly may proceed to business although writs not  
exceeding five shall  
not have been returned

31. Speaker

31A. Absence of Speaker from New South Wales

31B. Manner of election of Speaker

32. Quorum and determination of questions

33. Resignation of seats in the Assembly

34. (Repealed)

#### PART 4 - THE EXECUTIVE

##### Division 1 - Preliminary

35. Definitions

35A. Preservation of certain conventions etc relating to advice to Governor

##### Division 2 - The Executive Council

35B. Continuation of Executive Council

35C. Members of the Executive Council

35CA. Executive Councillors' pledge of loyalty or oath of allegiance and oath of office

35D. Meetings of the Executive Council

##### Division 3 - Appointment of Ministers of the Crown

35E. Appointment of Ministers

35F. (Repealed)

##### Division 4 - Functions of Ministers of the Crown

36. Authority for Minister of the Crown to act for and on behalf of another Minister of the Crown

37. Unavailability of Minister of the Crown

37A. Provisions ancillary to sections 36 and 37

38. Limitation as to exercise of Attorney-General's functions

38A. Powers of Ministers to speak in Legislative Council

#### PART 4A - PARLIAMENTARY SECRETARIES

38B. Appointment of Parliamentary Secretaries

38C. Functions of Parliamentary Secretary

38D. How Parliamentary Secretary ceases to hold office

38E. Restrictions relating to Parliamentary Secretaries

PART 5 - THE CONSOLIDATED FUND

39. Consolidated Fund

40. Expenses of collection

41â€"44. (Repealed)

45. Appropriation of Consolidated Fund

46. Money Bills to be recommended by Governor

PART 6 - OFFICERS AND STAFF

47. Appointment of officers

47A. Employment of staff

48. Absent officers and staff

49. (Repealed)

49A. Demise of the Crown

PART 7 - ADMINISTRATIVE ARRANGEMENTS

50. (Repealed)

50A. Definitions: Part 7

50B. Allocation of administration of Acts and other portfolio responsibilities

50C. Ministers to whom Public Service agencies responsible

50D. Public Service agenciesâ€"creation, abolition and changes

50E. Change to references in Acts etc to Ministers, Public Service agencies and Public Service employees

50F. Provisions consequent on administrative changes and other matters

50G. Publication, commencement and operation of orders

PART 8 - LOCAL GOVERNMENT

51. Local government

PART 9 - THE JUDICIARY

52. Definition and application

53. Removal from judicial office

54. Suspension from judicial office

55. Retirement

56. Abolition of judicial office

Firstâ€Fifth Schedules - (Repealed)

SCHEDULE 6

SCHEDULE 7

CONSTITUTION ACT 1902

- LONG TITLE

An Act to consolidate the Acts relating to the Constitution.

CONSTITUTION ACT 1902

- SECT 1

Name of Act

1 Name of Act

This Act may be cited as the Constitution Act 1902.

CONSTITUTION ACT 1902

- SECT 2

Recognition of Aboriginal people

2 Recognition of Aboriginal people

(1) Parliament, on behalf of the people of New South Wales,

acknowledges and honours the Aboriginal people as the Stateâ€™s first people and nations.

(2) Parliament, on behalf of the people of New South Wales,

recognises that Aboriginal people, as the traditional custodians and

occupants of the land in New South Wales:

(a) have a spiritual, social, cultural and economic relationship with their traditional lands and waters, and

(b) have made and continue to make a unique and lasting

contribution to the identity of the State.

(3) Nothing in this section creates any legal right or liability, or

gives rise to or affects any civil cause of action or right to review

an administrative action, or affects the interpretation of any Act or

law in force in New South Wales.

CONSTITUTION ACT 1902

- SECT 3

## Definitions

### 3 Definitions

In this Act, unless the context or subject-matter otherwise indicates or requires:

>"Periodic Council election" means an election held for the return of 21

Members of the Legislative Council.

>"The Legislature" means His Majesty the King with the advice and consent of the Legislative Council and Legislative Assembly.

## CONSTITUTION ACT 1902

### - SECT 4

#### Application of Act

### 4 Application of Act

For the purposes of this Act, the boundaries of New South Wales shall comprise all that portion of Australia lying between the one hundred and twenty-ninth and one hundred and fifty-fourth degrees of east longitude, reckoning from the meridian of Greenwich and northward of the fortieth degree of south latitude, including all the islands adjacent in the Pacific Ocean within the latitude aforesaid, and also including Lord Howe Island, save and except the territories comprised within the boundaries of South Australia, Victoria, and Queensland, as at present established.

Note: For the boundary between NSW and Victoria see the proclamation

published in Gazette No 22 of 15.2.2006, p 825.

## CONSTITUTION ACT 1902

### - SECT 5

#### General legislative powers

### 5 General legislative powers

The Legislature shall, subject to the provisions of the Commonwealth of Australia Constitution Act, have power to make laws for the peace, welfare, and good government of New South Wales in all cases whatsoever: Provided that all Bills for appropriating any part of the public revenue, or for imposing any new rate, tax or impost, shall originate in the Legislative Assembly.

CONSTITUTION ACT 1902

- SECT 5A

Disagreement between the two Housesâ€”appropriation for annual services

5A Disagreement between the two Housesâ€”appropriation for annual services

(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 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 Majestyâ€™s pleasure thereon, and shall become an Act of the Legislature upon the Royal Assent being signified thereto, notwithstanding that the Legislative Council has not consented to the Bill.

(2) 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 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.

CONSTITUTION ACT 1902

- SECT 5B

Disagreementsâ€”referendum

5B Disagreementsâ€”referendum

(1) If the Legislative Assembly passes any Bill other than a Bill to which section 5A 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 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 does not agree, and if after a free conference between managers there is not agreement between the Legislative Council and the Legislative Assembly, the Governor may convene a joint sitting of the Members of the Legislative Council and the Members of the Legislative Assembly.

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.

(2) After the joint sitting and either after any further communication with the Legislative Council in order to bring about agreement, if possible, between the Legislative Council and the Legislative Assembly, or without any such communication 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 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.

The referendum shall be held and conducted, if the Constitution Further Amendment (Referendum) Act 1930 or any other Act relating to the manner in which the referendum shall be held and conducted is in force, in accordance with that Act or with any other such Act, but if

that Act is not in force and no such other Act is in force the law

for the time being in force relating to the holding and conduct of a

general election of Members of the Legislative Assembly shall,

mutatis mutandis, apply to and in respect of the holding and conduct

of the referendum, with such modifications, omissions, and additions

as the Governor may by notification published in the Gazette declare

to be necessary or convenient for the purposes of such application.

(3) 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.

(4) 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 two months after its transmission to

the Legislative Council and the Session continues during such period.

(5) This section shall extend to any Bill whether it is a Bill to

which section 7A applies or not.

And in the application of this section to a Bill to which section 7A

applies:

(a) the submission of the Bill to the electors by way of

referendum in accordance with this section shall be a

sufficient compliance with the provisions of section 7A

which require the Bill to be submitted to the electors,

(b) the referendum under this section shall, notwithstanding anything contained in section 7A,

be held

upon a day which shall be appointed by the Governor, and

(c) the day so appointed shall, notwithstanding anything

contained in subsection (2), be a day during the life of

the Parliament and not sooner than two months after the

Legislative Assembly has passed a resolution in accordance with that subsection for the purposes of such referendum.

(6) 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.

CONSTITUTION ACT 1902  
 - SECT 5C  
 Words of enactment

5C Words of enactment

(1) Where a Bill is presented to the Governor for the signification of His Majesty's pleasure in accordance with section 5A, 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 5A of the Constitution Act 1902, as amended by subsequent Acts, 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 in accordance with section 5B, 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, with  
the approval of the electors, in accordance with the  
provisions of section 5B of the Constitution Act 1902, as  
amended by subsequent Acts, 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.

#### CONSTITUTION ACT 1902

##### - SECT 7

Power to alter constitution of Legislative Council or  
Legislative Assembly

7 Power to alter constitution of Legislative Council or  
Legislative Assembly  
The Legislature may, by any Act, alter the laws in force for  
the time being under this Act or otherwise concerning the Legislative  
Council or Legislative Assembly.

#### CONSTITUTION ACT 1902

##### - SECT 7A

Referendum for Bills with respect to Legislative Council and  
certain other matters

7A Referendum for Bills with respect to Legislative Council  
and certain other matters

(1) The Legislative Council shall not be abolished or  
dissolved, nor shall:  
    (a) its powers be altered,  
    (b) section 11A, Division 2 of Part 3 (sections  
22G, 22H, 22I and 22J excepted), the Sixth Schedule or this  
section be expressly or impliedly repealed or amended,  
    (c) any provision with respect to the persons  
capable of being elected or of sitting and voting as Members  
of either House of Parliament be enacted, or  
    (d) any provision with respect to the circumstances  
in which the seat of a Member of either House of  
Parliament becomes vacant be enacted,

except in the manner provided by this section.

(2) A Bill for any purpose within subsection (1) shall not be presented to the Governor for His Majesty's assent until the Bill has been approved by the electors in accordance with this section.

(3) On a day not sooner than two months after the passage of the Bill through both Houses of the Legislature the Bill shall be submitted to the electors qualified to vote for the election of Members of the Legislative Assembly. Such day shall be appointed by the Legislature.

(4) When the Bill is submitted to the electors the vote shall be taken in such manner as the Legislature prescribes.

(5) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for His Majesty's assent.

(6) The provisions of this section do not apply to:

- (a) a Bill for the repeal, the amendment from time to time without modifications of:
  - (i) any of the provisions of section 15 or 38A,
  - or
  - (ii) any provision for the time being in force so far as it relates to the subject-matter dealt with in any of the provisions referred to in subparagraph (i),
- (b) a provision of a Bill, being a provision which would, upon its coming into operation, be a law referred to in section 22A (5),
- (c) a provision of a Bill, being a provision with respect to the capacity of a person who holds or accepts an office of profit under the Crown specified in the Bill to be elected or to sit and vote as a Member of either House of Parliament,
- (d) a provision with respect to the persons capable of being elected or of sitting and voting as Members of either House of Parliament which applies in the same way to the persons capable of being elected or of sitting and voting as Members of the other House of Parliament, or

(e) a provision with respect to the circumstances in which the seat of a Member of either House of Parliament becomes vacant which applies in the same way to the circumstances in which the seat of a Member of the other House of Parliament becomes vacant.

(8) In this section a reference to the Legislative Council shall be construed as a reference to the Legislative Council as reconstituted from time to time in accordance with this Act.

#### CONSTITUTION ACT 1902

##### - SECT 7B

Referendum for Bills with respect to Legislative Assembly and certain other matters

7B Referendum for Bills with respect to Legislative Assembly and certain other matters

(1) A Bill that:

(a) expressly or impliedly repeals or amends section 11B, 26, 27, 28 or 29, Part 9, the Seventh Schedule or this section, or

(b) contains any provision to reduce or extend, or to authorise the reduction or extension of, the duration of any Legislative Assembly or to alter the date required to be named for the taking of the poll in the writs for a general election,

shall not be presented to the Governor for Her Majesty's assent until the Bill has been approved by the electors in accordance with this section.

(2) On a day not sooner than two months after the passage of the Bill through both Houses of the Legislature the Bill shall be submitted to the electors entitled to vote at a general election of Members of the Legislative Assembly.

(3) The day referred to in subsection (2) shall be appointed by the Governor under and in accordance with the Constitution Amendment (Referendum) Act 1930 and any Act amending or replacing

that Act.

(4) When the Bill is submitted to the electors the vote shall be

taken under and in accordance with the Constitution

Further Amendment

(Referendum) Act 1930 and any Act amending or replacing that Act.

(5) If a majority of the electors voting approve the Bill, it shall

be presented to the Governor for Her Majesty's assent.

(6) Nothing contained in this section affects the operation of

section 5B and a Bill to which this section would otherwise apply

which has been submitted to the electors under and in accordance with

section 5B and has been approved by a majority of the electors voting

may be presented to the Governor for Her Majesty's assent as if

this section had not been enacted.

(7) The provisions of this section do not apply to a provision of a

Bill, being a provision which would, upon its coming into operation,

be a law referred to in section 29 (2).

(8) The provisions of this section do not apply to a provision of a

Bill, being a provision that would, upon its coming into operation,

be a law that amends section 52 for the purpose of extending the

application of Part 9 to additional judicial offices or classes of

judicial offices.

## CONSTITUTION ACT 1902

### - SECT 8A

#### Assent to Bills

#### 8A Assent to Bills

(1) Except as otherwise provided by this Act, every Bill:

(a) shall be presented to the Governor for Her Majesty's

assent after its passage through the Legislative Council

and the Legislative Assembly, and

(b) shall become an Act of the Legislature when it is

assented to by the Governor in the name and on behalf of

Her Majesty.

(2) Nothing in subsection (1) (b) precludes Her Majesty from

assenting to a Bill while Her Majesty is personally

present in the  
State.

(3) Every Bill shall, on becoming an Act, be transmitted  
to and  
enrolled in a public repository of State documents.

CONSTITUTION ACT 1902

- SECT 9

Meaning of "unavailable"

9 Meaning of "unavailable"

For the purposes of this Part, the Governor or any other  
officer is

>"unavailable" if the Governor or other officer:

(a) has assumed the administration of the government of  
the

Commonwealth, or

(b) is absent from the State, or

(c) is physically or mentally incapacitated, or

(d) is otherwise unavailable to exercise and perform his  
or her

powers and functions.

CONSTITUTION ACT 1902

- SECT 9A

Appointment of Governor

9A Appointment of Governor

(1) There shall continue to be a Governor of the State.

(2) The appointment of a person to the office of  
Governor shall be

during Her Majesty's pleasure by Commission under Her  
Majesty's

Sign Manual and the Public Seal of the State.

(3) Before assuming office, a person appointed to be  
Governor shall

take the Oath or Affirmation of Allegiance and the Oath  
or

Affirmation of Office in the presence of the Chief  
Justice or another

Judge of the Supreme Court.

CONSTITUTION ACT 1902

- SECT 9B

Appointment of Lieutenant-Governor and Administrator

9B Appointment of Lieutenant-Governor and Administrator

(1) There shall continue to be:

(a) a Lieutenant-Governor of the State, and

(b) an Administrator of the State.

(2) The appointment of a person to the office of  
Lieutenant-Governor



shall be during Her Majesty's pleasure by Commission under Her

Majesty's Sign Manual and the Public Seal of the State.

(3) The Administrator shall be:

(a) the Chief Justice of the Supreme Court, or

(b) if the Chief Justice is the Lieutenant-Governor

or if

there is a vacancy in the office of Chief Justice

or the

Chief Justice is unavailable the next most senior

Judge

of the Supreme Court who is for the time being

available,

and shall be deemed to have been appointed as

Administrator during

Her Majesty's pleasure.

(4) A person may be appointed as Administrator during Her Majesty's

pleasure by Commission under Her Majesty's Sign Manual and the

Public Seal of the State and, where such an Administrator has been

appointed and is available, subsection (3) does not apply.

(5) The Lieutenant-Governor or Administrator shall not assume the

administration of the government of the State or act as deputy to the

Governor unless the Lieutenant-Governor or Administrator, as the case

may be, has taken on that occasion, or has previously taken, the Oath

or Affirmation of Allegiance and the Oath or Affirmation of Office in

the presence of the Chief Justice or another Judge of the Supreme

Court.

(6) Any act, matter or thing done or omitted by the Chief Justice of

the Supreme Court (before or after the commencement of this

subsection) in the capacity of Lieutenant-Governor is taken to have

been done or omitted, and always to have been done or omitted, in the

capacity of Administrator if for any reason the Chief Justice was not

holding office as Lieutenant-Governor at the relevant time. This

subsection extends to any act, matter or thing done or omitted as the

Governor's deputy under section 9D.

CONSTITUTION ACT 1902

- SECT 9C

Administration of government by Lieutenant-Governor or

Administrator

9C Administration of government by Lieutenant-Governor or Administrator

(1) The Lieutenant-Governor or Administrator shall, subject to this section, assume the administration of the government of the State if:

(a) there is a vacancy in the office of Governor, or

(b) the Governor is unavailable.

(2) The Governor shall not, for the purposes of this section, be regarded as being unavailable at any time when there is a subsisting appointment of a deputy under section 9D and the deputy is available.

(3) The Administrator shall not assume the administration of the government of the State unless there is a vacancy in the office of Lieutenant-Governor or the Lieutenant-Governor is unavailable.

(4) The Lieutenant-Governor or Administrator shall, upon assuming the administration of the government of the State, notify:

(a) the Premier, or

(b) in the event that the Premier is not able to be contacted to give the notificationâ€”the next most senior Minister of the Crown (if any) who is able to be contacted.

Notification is not required if concurrence is required under

subsection (4A) for the assumption of administration.

(4A) The Lieutenant-Governor or Administrator shall not assume the administration of the government of the State because of any

unavailability referred to in section 9 (d) unless:

(a) the Premier has concurred in the assumption of administration, or

(b) in the event that the Premier is not able to be contacted to obtain concurrenceâ€”the next most

senior Minister of the Crown (if any) who is able to be contacted

has concurred in the assumption of administration,

or

(c) neither the Premier nor any other Minister of the Crown is able to be contacted to obtain concurrence, and the

Lieutenant-Governor or Administrator is of the opinion that

the assumption of administration is authorised by subsection (4B).

The Premier or other Minister is not to give concurrence unless of

the opinion that the assumption of administration is authorised by subsection (4B).

(4B) An assumption of administration because of any unavailability

referred to in section 9 (d) is authorised if:

(a) the powers or functions of the Governor are required to

be exercised or performed during that unavailability, or

(b) the duration of that unavailability cannot be determined,

and exceptional circumstances require the assumption of administration.

(5) The powers and functions of the Governor vest in the Lieutenant-

Governor or Administrator during the administration of the government

of the State by the Lieutenant-Governor or Administrator, as the case may be.

(6) The Lieutenant-Governor shall cease to administer the government

of the State when:

(a) a person is appointed to fill the vacancy in the office

of Governor and has taken the required oaths or affirmations, or

(b) the Governor ceases to be unavailable, as the case requires, and the Lieutenant-Governor has been notified accordingly.

(7) The Administrator shall cease to administer the government of the

State when:

(a) a person is appointed to fill the vacancy in the office

of Governor or Lieutenant-Governor and has taken the

required oaths or affirmations, or

(b) the Governor or Lieutenant-Governor ceases to be unavailable,

as the case requires, and the Administrator has been notified accordingly.

CONSTITUTION ACT 1902

- SECT 9D

Deputy for Governor during short illness or absence

9D Deputy for Governor during short illness or absence

(1) In the event that:

(a) the Governor is to be absent from the State or

absent from Sydney but not the State or is suffering from illness, and

(b) the Governor has reason to believe that the duration of the absence or illness will not exceed 4 weeks, the Governor may, by instrument in writing, appoint the Lieutenant-Governor or Administrator to be the Governor's deputy during that absence or illness and in that capacity to exercise and perform on behalf of the Governor such of the powers and functions of the Governor as are specified or described in the instrument during the period specified or described in the instrument.

(2) The Administrator shall not be appointed as deputy under this section unless there is a vacancy in the office of Lieutenant-Governor or the Lieutenant-Governor is unavailable.

(3) The Governor shall not appoint a deputy under this section unless:

(a) the Premier has concurred in the appointment of the deputy, or

(b) in the event that the Premier is not able to be contacted to obtain concurrence "the next most senior Minister of the Crown (if any) who is able to be contacted has concurred in the appointment of the deputy, or

(c) neither the Premier nor any other Minister of the Crown is able to be contacted to obtain concurrence.

(4) The appointment of a person as deputy under this section may be revoked by the Governor at any time.

(5) The powers and functions of the Governor shall not be abridged, altered or in any way affected by the appointment of a person as deputy under this section.

## CONSTITUTION ACT 1902

### - SECT 9E

#### Oaths or Affirmations of Allegiance and of Office

#### 9E Oaths or Affirmations of Allegiance and of Office

For the purposes of this Part:

(a) a reference to the Oath or Affirmation of Allegiance is a reference to an Oath or Affirmation swearing or

affirming to be  
faithful and bear true allegiance to Her Majesty and Her Majesty's  
heirs and successors according to law, and  
(b) a reference to the Oath or Affirmation of Office is a reference  
to an Oath or Affirmation swearing or affirming well and truly to  
serve Her Majesty and Her Majesty's heirs and successors in the  
particular office and to do right to all manner of people after the  
laws and usages of the State, without fear or favour, affection or  
ill-will.

CONSTITUTION ACT 1902

- SECT 9F

Letters Patent and Instructions cease to have effect

9F Letters Patent and Instructions cease to have effect  
The Letters Patent dated 29 October 1900, as amended, relating to the office of Governor of the State and all Instructions to the Governor cease to have effect  
on the commencement of the Constitution (Amendment) Act 1987.

CONSTITUTION ACT 1902

- SECT 9G

Continuation of existing Commissions, appointments etc

9G Continuation of existing Commissions, appointments etc  
(1) Any existing Commission or appointment given or made pursuant to  
Letters Patent or pursuant to Instructions referred to in section 9F  
shall continue in force until revoked or terminated.  
(2) A person who holds office under any such Commission or  
appointment as:  
(a) the Governor,  
(b) the Lieutenant-Governor,  
(c) a Minister of the Crown,  
(d) a member of the Executive Council, or  
(e) the Vice-President of the Executive Council,  
shall, on the commencement of the Constitution (Amendment) Act 1987,  
be deemed to have been appointed to that office under this Act.  
(3) The Constitution (Amendment) Act 1987 does not affect anything  
done in pursuance of any such Commission or appointment.  
(4) Any oath or affirmation taken before the commencement of the

Constitution (Amendment) Act 1987 for the purposes of any such Commission or appointment shall be deemed to have been taken pursuant to this Act.

(5) Subsection (1) does not continue in force:

(a) a provision of any such Commission or appointment that is inconsistent with any law, or

(b) the dormant Commission appointing an Administrator of the government of the State dated 16 October 1933.

CONSTITUTION ACT 1902  
- SECT 9H  
Public Seal of the State

9H Public Seal of the State

(1) The Governor shall provide, keep and use the Public Seal of the State.

(2) The seal which, immediately before the commencement of the Constitution (Amendment) Act 1987, was used as the Public Seal of the State shall continue to be so used until a new seal is provided by the Governor.

CONSTITUTION ACT 1902  
- SECT 9I  
Governor's salary

9I Governor's salary

(1) The annual amount payable for the salary of a Governor appointed to that office is \$80,000 or such greater amount as is determined from time to time by regulation.

(2) Such a regulation may be made by a Governor (whether or not his or her salary is thereby affected), or by any person for the time being administering the Government, or by a deputy in accordance with section 9D.

(4) The salary of a Governor as provided for from time to time under this section is not capable of being reduced by the making, amendment, operation, expiry or repeal (otherwise than on disallowance) of a regulation.

(5) The salary of a Governor as provided for from time

to time under

this section is payable out of the Consolidated Fund,  
which is

accordingly appropriated to the necessary extent.

(6) Salary is not payable under this section to a  
Governor for any

period for which he or she is entitled to salary from  
the

Commonwealth in respect of his or her administration of  
the

Government of the Commonwealth.

#### CONSTITUTION ACT 1902

##### - SECT 10

Time and place for holding sessions of Parliament

10 Time and place for holding sessions of Parliament

The Governor may fix the time and place for holding every  
Session of the

Legislative Council and Assembly, and may change or vary such  
time or place as

he may judge advisable and most consistent with general  
convenience and the

public welfare, giving sufficient notice thereof.

#### CONSTITUTION ACT 1902

##### - SECT 10A

Prorogation of Parliament

10A Prorogation of Parliament

(1) The Governor may, by proclamation, prorogue the  
Legislative

Council and Assembly whenever the Governor considers it  
expedient to

do so (subject to this section and section 24B).

(2) The Premier or Executive Council may not advise the  
Governor to

prorogue the Legislative Council and Assembly on a date  
that is

before 26 January in the calendar year in which the  
Legislative

Assembly is due to expire and that is after the fourth  
Saturday in

the preceding September.

#### CONSTITUTION ACT 1902

##### - SECT 11

One session of Parliament to be held in each year

11 One session of Parliament to be held in each year

There shall be a Session of the Legislative Council and  
Assembly once at least

in every year, so that a period of twelve months shall not intervene between the last sitting of the Legislative Council and Assembly in one Session and the first sitting of the Legislative Council and Assembly in the next Session.

CONSTITUTION ACT 1902

- SECT 11A

Elections to be held pursuant to writs

11A Elections to be held pursuant to writs

Every general election of Members of the Legislative Assembly and every periodic Council election shall be held pursuant to writs issued by the Governor.

CONSTITUTION ACT 1902

- SECT 11B

Compulsory voting

11B Compulsory voting

A person who is entitled to vote at a periodic Council election or the election of a Member of the Legislative Assembly shall vote at the election and if he does not do so shall be liable to such penalty as may be provided by law.

CONSTITUTION ACT 1902

- SECT 12

No Member to sit or vote until pledge of loyalty or oath of allegiance taken

12 No Member to sit or vote until pledge of loyalty or oath of allegiance taken

(1) A Member of the Legislative Council or the Legislative Assembly is not permitted to sit or vote in the House to which the Member has been elected until the Member has taken the pledge of loyalty or oath of allegiance before the Governor or other person authorised by the Governor for that purpose.

(2) The pledge of loyalty is to be in the following form:

Under God, I pledge my loyalty to Australia and to the people of New South Wales.

(3) A Member may omit the words "Under God" when



taking the  
pledge of loyalty.  
(4) The oath of allegiance is to be in the following  
form (with the  
name of the reigning Sovereign substituted, where  
appropriate):  
I swear that I will be faithful and bear true  
allegiance to  
Her Majesty Queen Elizabeth II, Her heirs and  
successors  
according to law. So help me God.  
(4A) A Member may, instead of taking an oath of  
allegiance, make an  
affirmation to the same effect.  
(4B) It is not necessary for a Member who has taken or  
made an oath  
or affirmation of allegiance to take or make that oath  
or affirmation  
again after any demise of the Crown, including by or on  
abdication.  
(5) This section applies only to Members elected after  
the  
commencement of the Constitution Amendment (Pledge of  
Loyalty) Act  
2006.

CONSTITUTION ACT 1902  
- SECT 13  
Disqualifications

13 Disqualifications

(1) Any person who directly, or indirectly, himself, or  
by any person  
whatsoever in trust for him or for his use or benefit or  
on his  
account, undertakes, executes, holds, or enjoys in the  
whole or in  
part any contract or agreement for or on account of the  
Public  
Service of New South Wales shall be incapable of being  
elected or of  
sitting or voting as a Member of the Legislative Council  
or  
Legislative Assembly during the time he executes, holds  
or enjoys any  
such contract or any part or share thereof or any  
benefit or  
emolument arising from the same.  
(2) If any person being a Member of such Council or  
Assembly enters  
into any such contract or agreement, or, having entered  
into it,  
continues to hold it, his seat shall be declared by the  
said  
Legislative Council or Legislative Assembly, as the case  
may require,

to be vacant, and thereupon the same shall become and be vacant

accordingly.

(3) Provided that nothing in subsection (1) or (2) contained shall

extend to any contract or agreement made, entered into, or accepted

by any incorporated company, or any trading company consisting of

more than twenty persons, where such contract or agreement is made,

entered into, or accepted, for the general benefit of such

incorporated or trading company.

(4) It is hereby declared that nothing in subsection (1) or (2)

extends to:

(a) a contract or agreement for or in respect of a loan to

the Treasurer or to a body authorised to borrow by Act of

Parliament,

(b) a contract or agreement the benefit or burden of which

or any interest in which devolves upon a person:

(i) as beneficiary under a will or as a person entitled to share in the estate of an intestate—until he has been in possession of the benefit, burden or interest, as the case

may be, for one year from the date of commencement

of the Constitution (Amendment) Act 1962 or from

the date of the devolution, whichever is the later date,

(ii) as executor, administrator or trustee—until he has been in possession of

the benefit, burden or interest, as the case may

be, for three years from the date of commencement

of the Constitution (Amendment) Act 1962 or from

the date of the devolution, whichever is the later date,

(c) a compromise or settlement in respect of compensation

or other money payable by Her Majesty or a statutory body

representing Her Majesty,

(d) a lease, licence for occupation, sale, purchase or

exchange of land, or a contract or agreement for such a

lease, sale, purchase or exchange or for the occupation of

land or for an easement; or a gift or an agreement  
for a gift by any person of land to or for Her Majesty or  
a statutory body representing Her Majesty,  
provision by (e) a contract or agreement for the supply or  
representing or to or for Her Majesty or a statutory body  
services Her Majesty of goods, wares or merchandise or  
(including the provision of insurance or indemnity)  
where the goods, wares or merchandise or services  
(including the provision of insurance or indemnity) are supplied  
or provided on the like terms as those on which they  
are ordinarily supplied or provided to members of the  
public,  
representing (f) a loan by Her Majesty or a statutory body  
Her Majesty to any person upon the security of a  
mortgage, bill of sale, lien or other security upon and  
subject to the like terms as those ordinarily imposed by Her  
Majesty or the statutory body on loans made to members of  
the public.

Notice of any such compromise or settlement as is  
referred to in paragraph (c) that takes place after the commencement of  
the Constitution (Amendment) Act 1962 shall be published in  
the Gazette within two months from the date of the compromise or  
settlement, as the case may be.

(4A) Nothing in:  
(a) subsection (1) applies so as to prevent a  
person who holds an office of profit under the Crown or has a  
pension from the Crown during pleasure or for a term of  
years from being elected or of sitting or voting as a Member  
of either House of Parliament, or  
(b) subsection (2) requires or permits the seat of  
a Member of either House of Parliament who accepts such an  
office or such a pension to be declared to be, or to become  
or be, vacant,

by reason only of his holding or accepting that office of profit or his having or accepting that pension.

(4B) In subsection (4A),  
 >"office of profit under the Crown" includes any office or place of profit under the Crown which, by any Act, is declared or deemed not to be an office or place of profit under the Crown for the purposes of any Act or of this Act, whether in those terms or in terms to the like effect.

(4C) Nothing in:  
 (a) subsection (1) applies so as to prevent a person from being elected or from sitting or voting as a Member of either House of Parliament, or  
 (b) subsection (2) requires or permits the seat of a Member of either House of Parliament to be declared to be, or to become or be, vacant, on the ground that he or she elects or agrees to be provided with, or receives, employment benefits (including salary sacrifice contributions for superannuation) under the Parliamentary Remuneration Act 1989 or any other Act.

(5) In this section,  
 >"statutory body representing Her Majesty" includes any statutory body that is part of, or that exercises any function that is a function of, the Public Service of New South Wales.

CONSTITUTION ACT 1902  
 - SECT 13A  
 Further disqualifications

13A Further disqualifications

(1) If a Member of either House of Parliament:  
 (a) fails for one whole Session of the Legislative Council and Assembly to give his attendance in the House of which he is a Member, unless excused in that behalf by the permission of that House entered upon its journals,  
 (b) takes any oath or makes any declaration or acknowledgment of allegiance, obedience or adherence to any foreign prince or power or does or concurs in or adopts any

any act whereby he may become a subject or citizen of  
 foreign state or power or become entitled to the  
 rights, privileges or immunities of a subject of any  
 foreign state or power,  
 (c) becomes bankrupt or takes the benefit of any  
 law for the relief of bankrupt or insolvent debtors,  
 (d) becomes a public defaulter, or  
 (e) is convicted of an infamous crime, or of an  
 offence punishable by imprisonment for life or for a term  
 of 5 years or more, and is the subject of the operation  
 of subsection (2),  
 his seat as a Member of that House shall thereby become  
 vacant.  
 (2) For the purposes of subsection (1) (e), a Member is  
 the subject of the operation of this subsection if:  
 (a) the Member has not lodged an appeal against the  
 conviction within the prescribed period, or  
 (b) the conviction has not been quashed on the  
 determination of an appeal or appeals lodged within  
 the prescribed period, or  
 (c) such an appeal has been lodged within the  
 prescribed period but has been withdrawn, or has lapsed,  
 without being determined, and no other appeal lodged within the  
 prescribed period is pending.  
 (3) Nothing in this section affects any power that a  
 House has to expel a Member of the House.  
 (4) An appeal is taken to have lapsed when a court makes  
 a declaration to that effect or relevant rules of court  
 treat the appeal as having lapsed.  
 (5) In this section:  
 >"appeal" includes a notice of appeal and an application  
 for leave to appeal, and any appeal lodged pursuant to such a notice  
 or pursuant to leave granted on such an application.  
 >"prescribed period", in relation to an appeal, means  
 the period within which the appeal may be lodged, but does not  
 include any extension of a period which a court may grant.  
 >"quash" a conviction means quash or otherwise set aside  
 the conviction.

CONSTITUTION ACT 1902

- SECT 13B

Office of profit or pension from Crown

13B Office of profit or pension from Crown

(1) A person:

(a) holding an office of profit under the Crown, or

(b) having a pension from the Crown during pleasure

or for

a term of years,

shall not, if he is elected as a Member of either House of

Parliament, be capable of sitting and voting as a Member of the House

to which he is elected, and his seat as a Member shall become vacant,

after the expiration of the period commencing with his election and

ending on the expiration of 7 sitting days of that House after notice

of his holding that office or having that pension has been given to

that House in accordance with its Standing Rules and Orders, unless

that House has previously passed a resolution indicating that it is

satisfied that that person has ceased to hold that office or, as the

case may be, that the right of that person to that pension has ceased

or is suspended while he is a Member of that House.

(2) If a Member of either House of Parliament accepts any office of

profit under the Crown or pension from the Crown during pleasure or

for a term of years, his seat as a Member of that House shall become

vacant upon the expiration of the period commencing with his

acceptance of the office or the pension and ending on the expiration

of 7 sitting days of that House after notice of his accepting that

office or pension has been given to that House in accordance with its

Standing Rules and Orders, unless that House has previously passed a

resolution indicating that it is satisfied that that Member has

ceased to hold that office or, as the case may be, that the right of

that Member to that pension has ceased or is suspended while he is a

Member of that House.

(3) Notwithstanding subsection (1) or (2):

(a) a person:

Minister (i) who holds or accepts the office of  
of the Crown or any office of profit under the  
Crown created by an Act as an office of the  
Executive Government,  
(ii) who holds or accepts an office of profit  
under the Crown in respect of which he is not  
entitled to any remuneration, except either  
fees payable to him, as a member of a body, in  
respect of his attendance at meetings of that body or  
an allowance for reasonable expenses incurred or  
to be incurred in carrying out the duties of the  
office, or both those fees and such an  
allowance,  
of (iii) who holds or accepts an office of profit  
under the Crown, other than the Crown in right  
the State of New South Wales, but not being an  
office as a member of any legislature of a  
country other than New South Wales, or  
(iv) who has or accepts a pension, referred to  
in subsection (1) (b) or (2), from the Crown,  
other than the Crown in right of the State of New  
South Wales,  
shall be capable of being elected and of sitting  
and voting as a Member of either House of Parliament,  
(b) a person who holds or accepts the office of  
Vice-President of the Executive Council shall be capable  
of being elected and of sitting and voting as a Member  
of either House of Parliament, and  
(c) a person who holds or accepts the office of  
Parliamentary Secretary shall be capable of being  
elected and of sitting and voting as a Member of either  
House of Parliament.  
(4) For the purposes of subsections (1) and (2), sitting  
days shall be counted, whether or not they occur during the same  
session of Parliament.

CONSTITUTION ACT 1902

- SECT 13C

Member of one House ineligible for other

13C Member of one House ineligible for other  
A Member of either House of Parliament shall not be capable  
of being elected or  
of sitting or voting as a Member of the other House.

CONSTITUTION ACT 1902

- SECT 13D

Abatement of salary of Members receiving pension or  
superannuation as public  
servants

13D Abatement of salary of Members receiving pension or  
superannuation as  
public servants  
A Member of either House of Parliament in receipt of any  
allowance or pension  
granted under any Act authorising the grant of superannuation  
allowances or  
pensions to officers in the Public Service shall be entitled  
to the salary  
authorised by the Parliamentary Remuneration Tribunal Act  
1975, subject to its  
abatement by the amount he receives or is entitled to as that  
allowance or  
pension.

CONSTITUTION ACT 1902

- SECT 14

Summons or election of disqualified persons

14 Summons or election of disqualified persons

(1) If any person by this Act, except section 13B,  
disabled or

declared to be incapable to sit or vote in the  
Legislative Council or

Legislative Assembly is, nevertheless, elected and  
returned as a

Member to serve in the said Council or the said  
Assembly, such

election and return shall be declared by the said  
Council and

Assembly, as the case may require, to be void, and  
thereupon the same

shall become and be void to all intents and purposes  
whatsoever.

(2) If any person under any of the disqualifications  
mentioned in

section 13 presumes, whilst so disqualified, to sit or  
vote as a

Member of the said Council or Assembly, such person  
shall forfeit the

sum of one thousand dollars to be recovered by any  
person who sues



for the same in the Supreme Court of New South Wales.

CONSTITUTION ACT 1902

- SECT 14A

Disclosure of pecuniary interests and other matters by  
Members

14A Disclosure of pecuniary interests and other matters by  
Members

(1) The Governor may, subject to subsections (4) and  
(5), make  
regulations for or with respect to:  
(a) the disclosure by Members of either House of  
Parliament  
of all or any of the following pecuniary interests  
or other  
matters:  
(i) real or personal property,  
(ii) income,  
(iii) gifts,  
(iv) financial or other contributions to any  
travel,  
(v) shareholdings or other beneficial  
interests  
in corporations,  
(vi) partnerships,  
(vii) trusts,  
(viii) positions (whether remunerated or not)  
held in, or membership of, corporations, trade  
unions, professional associations or other  
organisations or associations,  
(ix) occupations, trades, professions or  
vocations,  
(x) debts,  
(xi) payments of money or transfers of  
property  
to relatives or other persons by, or under  
arrangements made by, Members,  
(xii) any other direct or indirect benefits,  
advantages or liabilities, whether pecuniary  
or  
not, of a kind specified in the regulations,  
(b) prescribing the manner in which, and the times  
at  
which, pecuniary interests or other matters shall  
be  
disclosed and providing for the verification by  
statutory  
declaration or otherwise of any such disclosure,  
and  
(c) the compilation and maintenance of registers of  
Members  
pecuniary interests or other matters disclosed by  
of either House of Parliament and the inspection  
and  
publication of any such register.

(2) If a Member of either House of Parliament wilfully contravenes any regulation made under subsection (1), that House may, in accordance with subsection (3), declare his seat vacant and the seat of the Member shall thereupon become vacant.

(3) A declaration under subsection (2) shall:

- (a) specify the circumstances that constitute the contravention,
- (b) declare that the House is of the opinion that the contravention is of such a nature as to warrant the seat of the Member being declared vacant, and
- (c) be made in accordance with such Standing Rules and Orders of the House as may regulate the making of the declaration.

(4) A regulation shall not be made under subsection (1) for or with respect to the disclosure by Members of either House of Parliament of pecuniary interests or other matters unless it applies in the same way to the disclosure by Members of the other House of Parliament of pecuniary interests or other matters.

(5) The Governor shall, before making a regulation under subsection (1):

- (a) afford any committee of either House of Parliament established for the purpose an opportunity of considering and making representations with respect to the proposed regulation, and
- (b) take into account any such representations.

(6) Notwithstanding anything to the contrary in the Interpretation Act 1987 or any other Act, a regulation made under subsection (1), or any part thereof, shall not cease to have effect upon its disallowance by either House of Parliament unless it has previously been disallowed by the other House of Parliament.

(7) The publication, pursuant to any regulation made under subsection (1), of a register of pecuniary interests or other matters disclosed by Members of either House of Parliament shall, for the purposes of the Parliamentary Papers (Supplementary Provisions) Act 1975, be deemed to have been authorised by that House.

CONSTITUTION ACT 1902

- SECT 15

Standing Rules and Orders to be laid before Governor

15 Standing Rules and Orders to be laid before Governor

(1) The Legislative Council and Legislative Assembly shall, as there may be occasion, prepare and adopt respectively Standing Rules and

Orders regulating:

(a) the orderly conduct of such Council and Assembly respectively, and  
(b) the manner in which such Council and Assembly shall be presided over in case of the absence of the President or the Speaker, and  
(c) the mode in which such Council and Assembly shall confer, correspond, and communicate with each other relative to Votes or Bills passed by, or pending in, such Council and Assembly respectively, and  
(d) the manner in which Notices of Bills, Resolutions and other business intended to be submitted to such Council and Assembly respectively at any Session thereof may be published for general information, and  
(e) the proper passing, entitling, and numbering of the Bills to be introduced into and passed by the said Council and Assembly, and  
(f) the proper presentation of the same to the Governor for His Majesty's Assent, and  
(g) any other matter that, by or under this Act, is required or permitted to be regulated by Standing Rules and Orders.

(2) Such Rules and Orders shall by such Council and Assembly respectively be laid before the Governor, and being by him approved shall become binding and of force.

CONSTITUTION ACT 1902

- SECT 16

Definitions

16 Definitions

In this Division:

>"periodic Council election" includes an election for the return of 15 Members of the Legislative Council held after the commencement of the Constitution and Parliamentary Electorates and Elections (Amendment) Act 1978 and before the commencement of the 1991 reconstitution Act.  
>"the 1991 reconstitution Act" means the Constitution (Legislative Council) Amendment Act 1991.

#### CONSTITUTION ACT 1902

##### - SECT 17

#### Reconstitution of the Legislative Council

##### 17 Reconstitution of the Legislative Council

(1) On the commencement of the 1991 reconstitution Act, the

Legislative Council is reconstituted.

(2) On and from that commencement, the Legislative Council shall

(subject to this Division) consist of 42 Members elected at periodic

Council elections.

(3) The following Members of the Legislative Council cease to be

Members on the commencement of the 1991 reconstitution Act:

(a) the last 3 members of the Legislative Council elected

at the third-last periodic Council election held before

that commencement,

(b) if the seat of such a Member has become vacant since

that periodic Council electionâ€"a Member of the Legislative Council who is the successor (whether immediate, intermediate or ultimate) of that

Member.

#### CONSTITUTION ACT 1902

##### - SECT 22

#### Eligibility to vote at periodic Council elections

##### 22 Eligibility to vote at periodic Council elections

The persons who would, if a periodic Council election were a general election

of Members of the Legislative Assembly, be entitled to vote at that general

election, and only those persons, shall be entitled to vote at that periodic

Council election.

CONSTITUTION ACT 1902

- SECT 22A

Conduct of periodic Council elections

22A Conduct of periodic Council elections

(1) Periodic Council elections shall be conducted in accordance with

the provisions of the Sixth Schedule.

(3) A writ for a periodic Council election shall not be issued until

after the issue of the writs for the general election of Members of

the Legislative Assembly held next after the immediately preceding

periodic Council election and, when issued, shall name as the day for

the taking of the poll the same day as the day for the taking of the

poll at that general election.

(4) A reference in subsection (3) to a writ does not include a

reference to a writ issued by reason of the failure of an election,

including a failure of an election by reason of its being declared

void in accordance with law.

(5) Subsection (1) does not limit the power of the Legislature to

make laws (being laws that do not expressly or impliedly repeal or

amend any of the provisions of the Sixth Schedule and are not

inconsistent with any of those provisions) for or with respect to the

conduct of periodic Council elections.

CONSTITUTION ACT 1902

- SECT 22B

Term of service of Members of Legislative Council

22B Term of service of Members of Legislative Council

(1) A Member of the Legislative Council shall cease to be a Member of

the Legislative Council:

(a) on the day of his death,

becomes (b) on the day on which his seat as such a Member

vacant, otherwise than by reason of paragraph (c),

or

(c) on the day on which his term of service as a Member

expires under subsection (2), (3) or (4),

whichever first occurs.

(2) Subject to subsection (4), the term of service of a

Member of the  
Legislative Council (other than a long-term continuing  
Member) shall  
expire on the day of the termination, either by  
dissolution or  
expiry, of the Legislative Assembly next preceding the  
second general  
election of Members of the Legislative Assembly to be  
held after his  
or her election as a Member of the Legislative Council.  
(3) Subject to subsection (4), the term of service of a  
long-term  
continuing Member shall expire on the day of the  
termination, either  
by dissolution or expiry, of the Legislative Assembly  
next preceding  
the third general election of Members of the Legislative  
Assembly to  
be held after his or her election as a Member of the  
Legislative  
Council.  
(4) The term of service of a Member of the Legislative  
Council  
elected to fill the seat of another Member which has  
become vacant  
otherwise than by reason of subsection (1) (c) shall  
expire on the  
day on which that other Member's seat would have  
become vacant by  
reason of subsection (1) (c).  
(5) In this section,  
>"long-term continuing Member" means:  
(a) a member of the Legislative Council who was one  
of the  
first 12 Members elected at the third-last periodic  
Council  
election held before the commencement of the 1991  
reconstitution Act, or  
(b) a Member of the Legislative Council who was one  
of the  
first 6 Members elected at the second-last periodic  
Council  
election held before that commencement, or  
(c) if the seat of a Member referred to in  
paragraph (a) or  
(b) has become vacant since the periodic Council  
election  
concerned "a Member of the Legislative Council who  
is the  
successor (whether immediate, intermediate or  
ultimate) of  
that Member.

CONSTITUTION ACT 1902

- SECT 22D

Filling of casual vacancies in seats of Members of  
Legislative Council by joint

sitting of both Houses

22D Filling of casual vacancies in seats of Members of  
Legislative Council by  
joint sitting of both Houses

(1) Whenever:

(a) a vacancy occurs in the seat of a Member of the  
Legislative Council otherwise than by reason of  
section 22B

(1) (c), or

(b) a vacancy occurs in the seat of a Member of the  
Legislative Council by reason of section 22B (1)

(c) and

that vacancy is not filled by reason that  
insufficient

Members of the Legislative Council are elected at  
the

periodic Council election next following the  
occurrence of

the vacancy,

the Governor, by message to both Houses of Parliament,  
shall convene

a joint sitting of the Members of the Legislative  
Assembly and the

Members of the Legislative Council to be held at a place  
and time

specified in the message for the purpose of the election  
of a person

to fill the vacant seat.

(2) A person may not be nominated at any such joint  
sitting for

election to fill a vacant seat of an elected Member of  
the

Legislative Council if he is not eligible to be so  
nominated under

subsection (3) or, if applicable, subsection (4).

(3) A person is not eligible to be so nominated if, were  
he a Member

of the Legislative Council, he would be disqualified  
from sitting or

voting as such a Member.

(4) Where:

(a) a Member of the Legislative Council was elected  
at a

periodic Council election and was, at the time of  
his

election, publicly recognised by a particular  
political

party as being an endorsed candidate of that party  
and

publicly represented himself to be such a  
candidate, and

(b) the vacancy (not being a vacancy referred to in  
subsection (1) (b)) to be filled is in the seat of

that

Member or of the successor (whether immediate,  
intermediate

or ultimate) of that Member,  
a person is not eligible to be so nominated unless he is  
a member of  
that party, except where there is no member of that  
party available  
to be so nominated.  
(5) This section does not apply to or in respect of a  
vacancy that  
occurs by reason that a periodic Council election is  
declared void in  
accordance with law.

CONSTITUTION ACT 1902

- SECT 22E

Members elected at joint sittings of both Houses of  
Parliament

22E Members elected at joint sittings of both Houses of  
Parliament

(1) The oath or affirmation required to be taken and  
subscribed or  
made by a Member of the Legislative Council under  
section 12 shall  
not be taken or made by a person elected at a joint  
sitting to fill a  
vacancy referred to in section 22D (1) (a) until the  
expiration of 2  
days after his election.  
(2) If, before a person elected at a joint sitting to  
fill a vacancy  
referred to in section 22D (1) (a) takes and subscribes  
the oath or  
makes the affirmation required to be taken and  
subscribed or made  
under section 12, he ceases to be a member of the  
political party  
membership of which was necessary under section 22D (4)  
for him to be  
eligible to be nominated for that election, he shall be  
deemed not to  
have been elected at that joint sitting and the vacant  
seat of the  
Member which he was elected to fill shall, when he so  
ceases to be a  
member of that party, again be vacant.  
(3) More than one vacancy may be filled at the one joint  
sitting.

CONSTITUTION ACT 1902

- SECT 22F

Suspension of Legislative Council business for general  
election of the  
Legislative Assembly



22F Suspension of Legislative Council business for general election of the Legislative Assembly  
The Legislative Council shall not be competent to dispatch any business during the period commencing on the day of the termination, either by dissolution or expiry, of any Legislative Assembly and ending on the day fixed for the return of the writ for the periodic Council election held next after that termination.

CONSTITUTION ACT 1902  
- SECT 22G  
President

22G President

(1) There shall be a President of the Legislative Council, who is the Presiding Officer of the Legislative Council and is recognised as its independent and impartial representative.

(2) A person shall be chosen to be President of the Legislative Council:

(a) before the Legislative Council proceeds to the dispatch of any other business at its first meeting following a periodic Council election, and  
(b) at any other time when the office of President of the Legislative Council becomes vacant.

(3) The person so chosen shall cease to hold office as President of the Legislative Council immediately before the Legislative Council assembles for the dispatch of business at its first meeting following a periodic Council election, and shall also cease to hold that office:

(a) if he ceases to be a Member of the Legislative Council,

(b) if he is removed from that office by a vote of the

Legislative Council, or

(c) if he resigns his office by writing under his hand

addressed to the Governor.

(4) Until Standing Rules and Orders of the Legislative Council

otherwise provide, the President of the Legislative Council shall be

chosen in accordance with the procedure for the time being for

choosing the President of the Senate of the Parliament of the Commonwealth.

(5) The President shall preside at all meetings of the Legislative Council except as may be provided by the Standing Rules and Orders of the Legislative Council.

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

(7) Subject to subsection (5), during the absence from New South Wales of the President, the Chair of Committees of the Legislative Council shall act in his place and shall, for all purposes, whether

of this Act or otherwise, have and may exercise and perform all the powers, authorities, duties and functions of the President.

(8) Whenever a vacancy occurs in the seat of a Member of the Legislative Council otherwise than by reason of section 22B (1) (c), the President may notify the Governor of the vacancy.

#### CONSTITUTION ACT 1902

##### - SECT 22H

##### Quorum

##### 22H Quorum

The presence of at least 8 Members of the Legislative Council (in addition to the President or other Member presiding) shall be necessary to constitute a meeting of the Legislative Council for the dispatch of business.

#### CONSTITUTION ACT 1902

##### - SECT 22I

##### Determination of questions

##### 22I Determination of questions

All questions arising in the Legislative Council shall be decided by a majority of the votes of the Members present other than the President or other Member presiding and when the votes are equal the President or other Member presiding shall have a casting vote.

CONSTITUTION ACT 1902

- SECT 22J

Resignation of seats in the Legislative Council

22J Resignation of seats in the Legislative Council

Any Member of the Legislative Council may, by writing under his hand, addressed to the Governor, resign his seat therein, and upon the receipt of the resignation by the Governor, the seat of that Member shall become vacant.

CONSTITUTION ACT 1902

- SECT 23

Convocation of Assembly

23 Convocation of Assembly

The Governor may, as occasion requires, by proclamation or otherwise, summon and call together a Legislative Assembly.

CONSTITUTION ACT 1902

- SECT 24

Duration of Assembly

24 Duration of Assembly

(1) A Legislative Assembly shall, unless sooner dissolved under section 24B, expire on the Friday before the first Saturday in March in the fourth calendar year after the calendar year in which the return of the writs for choosing that Assembly occurred.

(2) In this section, a reference to a writ does not include a reference to a writ issued because of the failure of an election, including a failure of an election because of its being declared void in accordance with law.

CONSTITUTION ACT 1902

- SECT 24A

Date of general election for Legislative Assembly

24A Date of general election for Legislative Assembly

The writs for a general election of Members of the Legislative Assembly must name as the day for the taking of the poll at that general election:

(a) if the previous Legislative Assembly expiredâ€”the

fourth

Saturday in March next following the expiry, or  
(b) if the previous Legislative Assembly was dissolvedâ€  
a day that  
is not later than the fortieth day from the date of the  
issue of the  
writs.

#### CONSTITUTION ACT 1902

##### - SECT 24B

Dissolution of Legislative Assembly during 4 year term

24B Dissolution of Legislative Assembly during 4 year term

(1) The Legislative Assembly may be dissolved by the  
Governor by  
proclamation, but only in the circumstances authorised  
by this  
section.

(2) The Legislative Assembly may be dissolved if:  
(a) a motion of no confidence in the Government is  
passed

by the Legislative Assembly (being a motion of  
which not  
less than 3 clear daysâ€™ notice has been given in  
the  
Legislative Assembly), and

(b) during the period commencing on the passage of  
the  
motion of no confidence and ending 8 clear days  
thereafter,  
the Legislative Assembly has not passed a motion of  
confidence in the then Government.

After the motion of no confidence is passed, the  
Legislative Assembly  
may not be prorogued before the end of that 8-day period  
and may not  
be adjourned for a period extending beyond that 8-day  
period, unless  
the motion of confidence has been passed.

(3) The Legislative Assembly may be dissolved if it:  
(a) rejects a Bill which appropriates revenue or  
moneys for  
the ordinary annual services of the Government, or  
(b) fails to pass such a Bill before the time that  
the  
Governor considers that the appropriation is  
required.

This subsection does not apply to a Bill which  
appropriates revenue  
or moneys for the Legislature only.

(4) The Legislative Assembly may be dissolved within 2  
months before  
the Assembly is due to expire if the general election  
would otherwise  
be required to be held during the same period as a  
Commonwealth

election, during a holiday period or at any other inconvenient time.

(5) This section does not prevent the Governor from dissolving the

Legislative Assembly in circumstances other than those specified in

subsections (2) and (4), despite any advice of the Premier or Executive

Council, if the Governor could do so in accordance with established

constitutional conventions.

(6) When deciding whether the Legislative Assembly should be

dissolved in accordance with this section, the Governor is to

consider whether a viable alternative Government can be formed

without a dissolution and, in so doing, is to have regard to any

motion passed by the Legislative Assembly expressing confidence in an

alternative Government in which a named person would be Premier.

#### CONSTITUTION ACT 1902

##### - SECT 25

##### Number of Members of Legislative Assembly

#### 25 Number of Members of Legislative Assembly

Every Legislative Assembly shall consist of 93 Members.

#### CONSTITUTION ACT 1902

##### - SECT 26

##### Single Member electorates

#### 26 Single Member electorates

Each Member of a Legislative Assembly shall be elected to represent one electoral district only.

#### CONSTITUTION ACT 1902

##### - SECT 27

##### Distribution of New South Wales into electoral districts

#### 27 Distribution of New South Wales into electoral districts

(1) A distribution of New South Wales into electoral districts shall be made:

(a) forthwith after the date of assent to the Constitution

(Amendment) Act 1979,

(b) forthwith after the enactment of any Act for

the  
alteration of the number of Members of the  
Legislative  
Assembly,  
(c) forthwith after a general election of Members  
of the  
Legislative Assembly if the next previous  
distribution  
applied for the purpose of that general election  
and the  
next previous such general election, and  
(d) at such additional times as may be provided by  
law.

(2) The number of electoral districts into which New  
South Wales  
shall be distributed upon any such distribution shall be  
the number  
that is equal to the number, provided by law, of Members  
of the  
Legislative Assembly to be returned at the general  
election of  
Members of the Legislative Assembly to be held next  
after that  
distribution.

#### CONSTITUTION ACT 1902

##### - SECT 28

Number of voters in electoral districts

#### 28 Number of voters in electoral districts

Upon any distribution of New South Wales into electoral  
districts, the  
boundaries of each proposed electoral district shall be so  
determined that, at  
the time the distribution is made, the number of persons  
entitled to vote at a  
general election of Members of the Legislative Assembly in  
each proposed  
electoral district is equal to the quotient obtained by  
dividing the number of  
persons entitled at that time to vote at any such general  
election in all of  
the proposed electoral districts by the number of those  
proposed electoral  
districts, but subject to a margin of allowance not exceeding  
10 per cent more  
or less of that quotient.

#### CONSTITUTION ACT 1902

##### - SECT 28A

Special distribution to maintain equal number of voters in  
each electoral  
district

28A Special distribution to maintain equal number of voters in each electoral district

(1) A distribution of New South Wales into electoral districts shall be made forthwith after more than one-quarter of the number of electoral districts has been malapportioned for a period of more than 2 months.

(2) For the purposes of this section, an electoral district is malapportioned at any particular time if the number of persons then entitled to vote at a general election of Members of the Legislative Assembly in the electoral district differs from the average electoral district enrolment at that time to a greater extent than 5 per cent more or less.

(3) The average electoral district enrolment is the quotient obtained by dividing the number of persons entitled to vote at a general election of Members of the Legislative Assembly in all electoral districts by the number of those districts.

(4) A distribution shall not be made under this section if:

(a) the distribution would commence within 1 year before the expiry of the Legislative Assembly by the effluxion of time, or  
(b) a distribution has already been made since the last general election of Members of the Legislative Assembly (whether under this section or not), or  
(c) a distribution is required to be made apart from this section.

CONSTITUTION ACT 1902

- SECT 29

Conduct of Legislative Assembly elections

29 Conduct of Legislative Assembly elections

(1) Elections of Members of the Legislative Assembly shall be conducted in accordance with the provisions of the Seventh Schedule.

(2) Subsection (1) does not limit the power of the Legislature to make laws (being laws that do not expressly or impliedly

repeal or  
    amend any of the provisions of the Seventh Schedule and  
are not  
    inconsistent with any of those provisions) for or with  
respect to the  
    conduct of elections of Members of the Legislative  
Assembly.

CONSTITUTION ACT 1902

- SECT 30

Assembly may proceed to business although writs not exceeding  
five shall not  
have been returned

30 Assembly may proceed to business although writs not  
exceeding five shall not  
have been returned  
Upon any general election the Legislative Assembly shall be  
competent to  
proceed to the dispatch of business at the time appointed by  
the Governor for  
that purpose notwithstanding that any of the writs of  
election (not exceeding  
five) have not been returned, or that in any of the electoral  
districts the  
electors have failed to elect a Member to serve in the said  
Assembly.

CONSTITUTION ACT 1902

- SECT 31

Speaker

31 Speaker

(1) There shall be a Speaker of the Legislative  
Assembly, who is the  
    Presiding Officer of the Legislative Assembly and is  
recognised as  
    its independent and impartial representative.  
(2) The Members of the Legislative Assembly shall upon  
the first  
    assembling after every general election proceed  
forthwith to elect  
    one of their number to be Speaker, and in case of his  
death,  
    resignation, or removal by a vote of the said  
Legislative Assembly,  
    the said Members shall forthwith proceed to elect  
another of such  
    Members to be such Speaker.  
(3) The Speaker so elected shall preside at all meetings  
of the said  
    Legislative Assembly except as may be provided by the  
Standing Rules  
    and Orders herein authorised to be made.



- (4) The Speaker may, when not presiding:  
    (a) take part in any debate or discussion, and  
    (b) vote on any question,  
which may arise in the Legislative Assembly.

CONSTITUTION ACT 1902

- SECT 31A

Absence of Speaker from New South Wales

31A Absence of Speaker from New South Wales

- (1) During the absence from New South Wales of the Speaker the Deputy Speaker of the Legislative Assembly shall act in his place, and for all purposes, whether of this Act or otherwise, shall have and may exercise and perform all the powers, authorities, duties and functions of the Speaker.
- (2) Without prejudice to the generality of subsection (1) the Deputy Speaker of the Legislative Assembly, while acting in the place of the Speaker under that subsection, shall be deemed to be the Speaker for the purposes of section 71 of the Parliamentary Electorates and Elections Act 1912â€”1935.

CONSTITUTION ACT 1902

- SECT 31B

Manner of election of Speaker

31B Manner of election of Speaker

- (1) The election of the Speaker shall be conducted by secret ballot.  
A ballot is not required if only one candidate is validly nominated,  
and that candidate shall be declared elected.
- (2) Nominations shall be made in writing, and the identity of the nominators and seconders shall not be disclosed by the Clerk of the Legislative Assembly or other person presiding at the election. A nomination is not validly made unless the person nominated accepts nomination, by endorsement on the instrument of nomination.
- (3) Nominations shall not be closed until a reasonable opportunity has been given for the Members of the Legislative Assembly desiring to do so to make nominations. Further nominations may

not be made  
between ballots.

(4) The candidates with the smallest number of votes shall be  
successively withdrawn one by one, and a fresh ballot shall take  
place after each withdrawal, until one candidate receives the votes  
of at least two-thirds of the number of Members of the Legislative  
Assembly for the time being or (if there are only two candidates  
validly nominated or there are only two candidates left) a majority  
of the number of Members voting at that ballot. That candidate shall  
be declared elected.

(5) If there is an equality of votes among the candidates with the  
smallest number of votes, the ballot shall be taken again, and if  
again there is such an equality of votes, the Clerk of the  
Legislative Assembly or other person presiding at the election shall  
determine, by lot, which of the candidates with the same number of  
votes shall be withdrawn, as if that candidate had received the  
smallest number of votes.

(6) If there are only two candidates validly nominated or there are  
only two candidates left, and if there is an equality of votes among  
the two candidates, the ballot shall be taken again, and if again  
there is an equality of votes, the Clerk of the Legislative Assembly  
or other person presiding at the election shall determine, by lot,  
which of the candidates is taken to have received the smaller number  
of votes. The other candidate shall be declared elected.

(7) The Standing Rules and Orders of the Legislative Assembly may  
make provision, not inconsistent with this section, for or with  
respect to the manner of election of the Speaker and associated  
matters.

(8) In the absence of relevant Standing Rules and Orders at the time  
of such an election, the election is to be conducted (subject to this  
section and to any necessary adaptations) in accordance with the  
provisions of the Standing Orders of the Senate of the Parliament of

the Commonwealth that relate to the election of the  
President of the  
Senate.

CONSTITUTION ACT 1902

- SECT 32

Quorum and determination of questions

32 Quorum and determination of questions

(1) The presence of at least twenty Members of the  
Legislative

Assembly, exclusive of the Member presiding, shall be  
necessary to

constitute a meeting of the said Assembly for the  
dispatch of  
business.

(2) All questions which may arise in the Legislative  
Assembly shall

be decided by the majority of the votes of the Members  
present other

than the Member presiding, and when the votes are equal  
the Member

presiding shall have a casting vote.

CONSTITUTION ACT 1902

- SECT 33

Resignation of seats in the Assembly

33 Resignation of seats in the Assembly

Any Member of the Legislative Assembly may, by writing under  
his hand,

addressed to the Speaker, resign his seat therein, and upon  
the receipt of such  
resignation by the Speaker, the seat of such Member shall  
become vacant.

CONSTITUTION ACT 1902

- SECT 35

Definitions

35 Definitions

In this Part:

>"functions" includes powers, authorities and duties.

>"unavailable", in relation to a Minister of the Crown, means  
unavailable by  
reason of the Minister's absence or disability or for any  
other reason.

CONSTITUTION ACT 1902

- SECT 35A

Preservation of certain conventions etc relating to advice to

Governor

35A Preservation of certain conventions etc relating to advice to Governor  
The enactment of the Constitution (Amendment) Act 1987 does not affect any law or established constitutional convention relating to the exercise or performance of the functions of the Governor otherwise than on the advice of the Executive Council.

CONSTITUTION ACT 1902  
- SECT 35B  
Continuation of Executive Council

35B Continuation of Executive Council  
There shall continue to be an Executive Council to advise the Governor in the government of the State.

CONSTITUTION ACT 1902  
- SECT 35C  
Members of the Executive Council

35C Members of the Executive Council  
(1) The Executive Council shall consist of such persons as may be appointed by the Governor, from time to time, as members of the Executive Council.  
(2) The members of the Executive Council shall hold office during the Governor's pleasure.  
(3) The Governor may appoint one of the members of the Executive Council as Vice-President of the Executive Council.

CONSTITUTION ACT 1902  
- SECT 35CA  
Executive Councillor's pledge of loyalty or oath of allegiance and oath of office

35CA Executive Councillor's pledge of loyalty or oath of allegiance and oath of office  
(1) Before assuming office, a person appointed as a member of the Executive Council is to take:  
(a) the pledge of loyalty or oath of allegiance,

and

(b) the Executive Councillor's oath of office, before the Governor or other person authorised by the Governor for that purpose.

(2) The pledge of loyalty is to be in the following form:

Under God, I pledge my loyalty to Australia and to the people of New South Wales.

(3) A member of the Executive Council may omit the words "Under

God" when taking the pledge of loyalty.

(3A) The oath of allegiance is to be in the following form (with the

name of the reigning Sovereign substituted, where appropriate):

I swear that I will be faithful and bear true allegiance to

Her Majesty Queen Elizabeth II, Her heirs and successors

according to law. So help me God.

(4) The Executive Councillor's oath of office is to be in the following form:

I, being appointed as a member of the Executive Council of New South Wales, do swear that I will perform the functions and duties of an Executive Councillor faithfully and to the best of my ability and, when required to do so, freely give

my counsel and advice to the Governor or officer administering the Government of New South Wales for the

time being for the good management of the public affairs of

New South Wales, and that I will not directly or indirectly

reveal matters debated in the Council and committed to my

secrecy, but that I will in all things be a true and

faithful councillor.

So help me God.

(5) A member of the Executive Council may, instead of taking an oath

under this section, make an affirmation to the same effect.

(6) This section applies only to members of the Executive Council

appointed after the commencement of the Constitution Amendment

(Pledge of Loyalty) Act 2006.

- SECT 35D  
Meetings of the Executive Council

35D Meetings of the Executive Council

(1) The Governor shall preside at meetings of the Executive Council.

(2) The Vice-President of the Executive Council or, in the absence of

the Vice-President, the senior member present shall preside at any

meeting of the Executive Council from which the Governor is absent.

(3) The quorum for a meeting of the Executive Council is 2 members.

(4) For the purposes of this section, the seniority of members of the

Executive Council shall be determined according to the order of their

respective appointments as members of the Executive Council.

CONSTITUTION ACT 1902

- SECT 35E  
Appointment of Ministers

35E Appointment of Ministers

(1) The Premier and other Ministers of the Crown for the State shall

be appointed by the Governor from among the members of the Executive Council.

(2) The Premier and other Ministers of the Crown shall hold office

during the Governor's pleasure.

CONSTITUTION ACT 1902

- SECT 36  
Authority for Minister of the Crown to act for and on behalf of another Minister of the Crown

36 Authority for Minister of the Crown to act for and on behalf of another Minister of the Crown

(1) The Governor may, from time to time, authorise a Minister of the

Crown to act for and on behalf of another Minister of the Crown for

any period specified or described by the Governor.

(2) Where a Minister of the Crown is authorised under this section to

act for and on behalf of another Minister of the Crown, any function

appertaining or annexed to the office of that other Minister may,  
while the authority remains in force, be exercised or performed from  
time to time by the Minister so authorised instead of by that other Minister.

(3) An authority under this section may be revoked by the Governor.

(4) A Minister of the Crown may be authorised under this section by  
reference to his name or by reference to the title of the office  
which he holds as Minister of the Crown.

(5) Notice of an authority under this section, or the revocation of

such an authority, may be published in the Gazette at any time, and,

where such a notice is so published, judicial notice shall be taken

of the notice and of the authority or revocation, as the case may be.

(6) Every authority under this section shall be recorded by the

officer in charge of the records of the Executive Council.

#### CONSTITUTION ACT 1902

##### - SECT 37

##### Unavailability of Minister of the Crown

#### 37 Unavailability of Minister of the Crown

A Minister of the Crown may exercise or perform for and on behalf of another  
Minister of the Crown a function appertaining or annexed to the office of that  
other Minister if the firstmentioned Minister is satisfied that the other  
Minister is unavailable and that any Minister of the Crown authorised under  
section 36 to exercise or perform that function is unavailable.

#### CONSTITUTION ACT 1902

##### - SECT 37A

##### Provisions ancillary to sections 36 and 37

#### 37A Provisions ancillary to sections 36 and 37

(1) Sections 36 and 37 apply to the functions  
appertaining or annexed

to the office of a Minister of the Crown, whether those functions are

conferred or imposed by the terms (express or implied) of an Act or

instrument under an Act, or by or under any other law,  
or by official

or other custom, but do not apply to the functions  
appertaining or

annexed to that office by virtue of an authority under  
section 36.

(2) Any act, matter or thing done or omitted by a  
Minister of the

Crown while acting for or on behalf of another Minister  
of the Crown:

(a) under an authority under section 36, or

(b) under the authority of section 37,

shall be as valid and effectual and shall have the same  
consequences

as if the act, matter or thing had been done or omitted  
by that other

Minister.

(3) In all proceedings and before all persons acting  
judicially, it

shall be presumed, in the absence of evidence to the  
contrary, that a

Minister of the Crown who purports to act for or on  
behalf of another

Minister of the Crown was authorised by or under section  
36 or 37 so

to act.

CONSTITUTION ACT 1902

- SECT 38

Limitation as to exercise of Attorney-General's functions

38 Limitation as to exercise of Attorney-General's  
functions

(1) Nothing in section 36, 37 or 37A authorises a  
Minister of the

Crown to exercise any function that is by an Act or any  
other law

annexed or incident to the office of the Attorney-  
General.

(2) Where a function is annexed or incident to the  
office of the

Attorney-General by reason only of the fact that the  
Attorney-General

administers an Act or part of an Act, subsection (1)  
does not apply

in relation to that function unless the administration  
of that Act or

part is expressly vested in the Attorney-General by any  
Act.

CONSTITUTION ACT 1902

- SECT 38A

Powers of Ministers to speak in Legislative Council



38A Powers of Ministers to speak in Legislative Council

(1) Notwithstanding anything contained in this Act, any Minister of the Crown who is a member of the Legislative Assembly may at any time, with the consent of the Legislative Council, sit in the Legislative Council 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 in the Legislative Council on such Bill, but he shall not vote in the Legislative Council.

(2) It shall not be lawful at any one time for more than one Minister of the Crown under the authority of this section to sit in the Legislative Council.

CONSTITUTION ACT 1902

- SECT 38B

Appointment of Parliamentary Secretaries

38B Appointment of Parliamentary Secretaries

(1) The Premier may, from time to time, appoint a Member or Members of either House of Parliament to hold office as Parliamentary Secretary.

(2) Section 47 does not apply to or in respect of the office of Parliamentary Secretary.

CONSTITUTION ACT 1902

- SECT 38C

Functions of Parliamentary Secretary

38C Functions of Parliamentary Secretary

(1) A Parliamentary Secretary shall have and may perform such functions as the Premier may, from time to time, determine in respect of him.

(2) Nothing in this section authorises a Parliamentary Secretary to perform any functions that may, by the terms (express or implied) of an Act or instrument under an Act, or by or under any other law, only be performed by some other person.

CONSTITUTION ACT 1902

- SECT 38D

How Parliamentary Secretary ceases to hold office

38D How Parliamentary Secretary ceases to hold office

(1) A person holding office as Parliamentary Secretary ceases to hold

that office:

(a) if he dies,

(b) if the person by whom he was appointed as such ceases

to be Premier,

(c) if he resigns his office as such by writing under his

hand addressed to the Premier,

(d) if he is removed from office as such by the Premier,

(e) if his seat as a Member of either House of Parliament

becomes vacant, otherwise than by reason of the fact that

the Legislative Assembly has been dissolved or has expired

by the effluxion of time, or

(f) upon the day appointed for the taking of the poll for

the general election of Members of the Legislative Assembly

next following his appointment to hold that office.

(2) The Premier may, for any cause which appears to him to be

sufficient, remove any person from office as Parliamentary Secretary.

CONSTITUTION ACT 1902

- SECT 38E

Restrictions relating to Parliamentary Secretaries

38E Restrictions relating to Parliamentary Secretaries

(1) A person shall not be appointed to hold office as Parliamentary

Secretary if he is a Minister of the Crown or a member of the

Executive Council.

(2) A person shall not be appointed as a Minister of the Crown or a

member of the Executive Council if he is a Parliamentary Secretary.

CONSTITUTION ACT 1902

- SECT 39

Consolidated Fund

39 Consolidated Fund

(1) Except as otherwise provided by or in accordance with any Act,  
all public moneys (including securities and all revenue, loans and other moneys whatsoever) collected, received or held by any person for or on behalf of the State shall form one Consolidated Fund.

(2) Without limiting the generality of subsection (1), all territorial, casual and other revenues of the Crown (including all royalties), from whatever source arising, within New South Wales, and as to the disposal of which the Crown may otherwise be entitled absolutely, conditionally or in any other way shall form part of the Consolidated Fund.

CONSTITUTION ACT 1902

- SECT 40

Expenses of collection

40 Expenses of collection

The Consolidated Fund shall be permanently charged with all the costs, charges, and expenses incident to the collection, management, and receipt thereof; such costs, charges, and expenses being subject nevertheless to be reviewed and audited in such manner as may be directed by any Act.

CONSTITUTION ACT 1902

- SECT 45

Appropriation of Consolidated Fund

45 Appropriation of Consolidated Fund

The Consolidated Fund shall be subject to be appropriated to such specific purposes as may be prescribed by any Act in that behalf.

CONSTITUTION ACT 1902

- SECT 46

Money Bills to be recommended by Governor

46 Money Bills to be recommended by Governor

(1) It shall not be lawful for the Legislative Assembly to originate or pass any vote, resolution, or Bill for the

appropriation of any  
part of the Consolidated Fund, or of any other tax or  
impost to any  
purpose which has not been first recommended by a  
message of the  
Governor to the said Assembly during the Session in  
which such vote,  
resolution, or Bill shall be passed.  
(2) A Governor's message is not required under this  
section or  
under the Standing Rules and Orders of the Legislative  
Assembly for a  
Bill introduced by, or a vote or resolution proposed by,  
a Minister  
of the Crown.

CONSTITUTION ACT 1902  
- SECT 47  
Appointment of officers

47 Appointment of officers

(1) The appointment of all public officers under the  
Government of  
New South Wales is vested in the Governor with the  
advice of the  
Executive Council or in a person authorised by  
legislation to make  
the appointment.  
(2) This section does not apply to the appointment of:  
(a) members of the Executive Council and Ministers  
of the  
Crown or the holders of any other political office,  
or  
(b) an officer or employee of either House of  
Parliament or  
any officer under the separate control of the  
President or  
Speaker, or under their joint control (other than  
the Clerk  
of the Parliaments or of either House of Parliament  
or any  
other officer of the Parliament designated by order  
of the  
Governor).

CONSTITUTION ACT 1902  
- SECT 47A  
Employment of staff

47A Employment of staff

(1) Persons employed by the Government of New South  
Wales in the  
service of the Crown are to be employed in the Public  
Service of New

South Wales under the Government Sector Employment Act  
2013 or in any  
other service of the Crown established by legislation.  
(2) A statutory body that is a NSW Government agency, or  
a person  
holding a public office under the Government of New  
South Wales,  
cannot employ persons unless legislation specifically  
authorises the  
body or person to do so.  
(3) This section does not apply to:  
(a) a State owned corporation, or  
(b) the engagement of independent contractors or  
volunteer  
workers.

CONSTITUTION ACT 1902  
- SECT 48  
Absent officers and staff

48 Absent officers and staff  
(1) In this section:  
>"functions" includes powers, authorities and duties.  
>"officer" means an officer or employee in the service  
of the Crown  
or of an authority of the State, but does not include  
the Governor,  
the Lieutenant-Governor or other officer administering  
the government  
of the State, a member of the Executive Council, a  
Minister of the  
Crown or the holder of a judicial office.  
>"unavailable", in relation to an officer, means  
unavailable by  
reason of the officer's absence, suspension or  
disability or for  
any other reason.  
(2) Where, by any Act or statutory or other instrument,  
any function  
is conferred or imposed on an officer in his capacity as  
an officer,  
the function may be exercised or performed by another  
officer whom  
the Governor has directed to exercise the functions of  
the  
firstmentioned officer during any period when he is  
unavailable in  
the same manner and to the same extent in all respects  
as those  
functions might have been exercised or performed by the  
firstmentioned officer.  
(3) Any act, matter or thing done or omitted by an  
officer while  
acting pursuant to a direction given as referred to in  
subsection (2)  
in relation to the functions of another officer shall be

as valid and  
effectual as if the act, matter or thing had been done  
or omitted by  
that other officer.  
(4) This section is in addition to and not in derogation  
of any other  
provision made for the exercise of the functions of an  
unavailable  
officer (whether by way of temporary appointment or  
otherwise).

CONSTITUTION ACT 1902  
- SECT 49A  
Demise of the Crown

49A Demise of the Crown  
(1) The holding of any office under the Crown shall not  
be affected  
nor shall any fresh appointment thereto be rendered  
necessary by the  
demise of the Crown.  
(2) It shall not be necessary for the holder of any  
office under the  
Crown who, before any demise of the Crown, has taken any  
oath  
prescribed or provided for by any Act or law again to  
take that oath  
after any such demise but, where that oath relates only  
to the then  
reigning Sovereign, it shall be deemed to relate to the  
Sovereign for  
the time being.  
(3) In this section:  
>"demise of the Crown" includes a demise of the Crown by  
or on  
abdication.

CONSTITUTION ACT 1902  
- SECT 50A  
Definitions: Part 7

50A Definitions: Part 7  
In this Part:  
>"administrative arrangements order" means an order made by  
the Governor under  
this Part.  
>"administrative change" means:  
(a) the fact of there ceasing to be a Minister, a Public  
Service  
agency or a Public Service employee of a particular  
description, or  
(b) the transfer of the administration of an Act, or any  
portion or  
aspect of an Act, from a Minister to another Minister,

or

(c) the transfer of a function from a Minister, Public Service agency

or Public Service employee to another Minister, Public Service agency

or Public Service employee, respectively.

>"description" includes title.

>"Public Service agency" means a Department or other agency of the Public

Service, and includes:

(a) any part of a Department or other agency of the Public Service,

and

(b) that part of the NSW Police Force comprising administrative

officers under the Police Act 1990, and

(c) the Transport Service of New South Wales or any part of that

Service.

>"Public Service employee" means a person employed in a Public Service agency.

>"reference" to a Minister, Public Service agency or Public Service employee

includes a reference that (by or under any Act) is to be construed or treated

as a reference to that Minister, agency or employee.

## CONSTITUTION ACT 1902

### - SECT 50B

Allocation of administration of Acts and other portfolio responsibilities

#### 50B Allocation of administration of Acts and other portfolio responsibilities

(1) The Governor may, by an administrative arrangements order,

allocate to Ministers the administration of Acts and other portfolio responsibilities.

(2) A Minister may, subject to any direction of the Premier, assume

the administration of an Act, or portfolio responsibility, that has

not been allocated to a Minister by the Governor under this section.

(3) In allocating the administration of an Act:

(a) different portions of the Act may be administered by

different Ministers, and

(b) different Ministers may administer the Act in different

respects, and

(c) 2 or more Ministers may jointly administer the same Act

or the same portion of an Act.

The joint administration of an Act or portion of an Act

does not  
require the joint exercise of a Ministerial function.

CONSTITUTION ACT 1902

- SECT 50C

Ministers to whom Public Service agencies responsible

50C Ministers to whom Public Service agencies responsible

(1) The Governor may, by an administrative arrangements order,

specify the Minister to whom a Public Service agency is responsible.

(2) A Minister may, subject to any direction of the Premier, assume

responsibility for a Public Service agency for which the Governor has

not determined Ministerial responsibility under this section.

(3) The same Public Service agency may be responsible to more than

one Minister.

CONSTITUTION ACT 1902

- SECT 50D

Public Service agenciesâ€”creation, abolition and changes

50D Public Service agenciesâ€”creation, abolition and changes

(1) The Governor may, by an administrative arrangements order:

(a) establish, abolish or change the name of any Public

Service agency, or

(b) transfer a part (or all parts) of a Public Service

agency to another Public Service agency,

and substitute or amend Schedule 1 to the Government Sector

Employment Act 2013 for that purpose or any other purpose authorised

by that Act.

(2) If the Governor transfers a part or parts of a Public Service

agency to another Public Service agency under this section:

(a) the employees in the part or parts of the agency

transferred become employees of the agency to which the

transfer is made, and

(b) the employees continue as employees in the same employment in the agency to which the transfer is

made.



CONSTITUTION ACT 1902

- SECT 50E

Change to references in Acts etc to Ministers, Public Service agencies and Public Service employees

50E Change to references in Acts etc to Ministers, Public Service agencies and Public Service employees

(1) The Governor may, by an administrative arrangements order,

require a reference in any Act or statutory or other instrument, or

in any contract or agreement, to a Minister, Public Service agency or

Public Service employee by a specified description to be construed as

a reference to a Minister, Public Service agency or Public Service

employee, respectively, by another specified description.

(2) Such a requirement does not apply to or in respect of any Act or

statutory or other instrument, or any contract or agreement, enacted,

made or entered into after the requirement took effect.

(3) An administrative arrangements order under this section need not

be consequential on or incidental to administrative change.

(4) For the purposes of this section, a reference to a Minister by a

specified description extends to a reference to a Minister

administering a specified Act or portion of an Act.

CONSTITUTION ACT 1902

- SECT 50F

Provisions consequent on administrative changes and other matters

50F Provisions consequent on administrative changes and other matters

(1) The Governor may, by an administrative arrangements order, make

such provisions as are necessary or convenient to be made for the

purpose of dealing with matters that are incidental to or

consequential on administrative change or the making of an

administrative arrangements order.

(2) The provisions that may be made under this section include:

(a) provisions for the transfer of any property,

rights and  
liabilities of a superseded authority (being a  
Minister,  
Public Service agency or Public Service employee  
the  
subject of an administrative arrangements order),  
and  
(b) provisions of a savings or transitional nature.

CONSTITUTION ACT 1902

- SECT 50G

Publication, commencement and operation of orders

50G Publication, commencement and operation of orders

(1) An administrative arrangements order is to be  
published on the

NSW legislation website.

(2) The order takes effect on the date of its  
publication on the NSW

legislation website, or on such other date as may be  
specified in the

order. The commencement date can be a date that is  
earlier than the

date of publication of the order on the NSW legislation  
website.

(3) To the extent to which the order takes effect from a  
date that is

earlier than the date of its publication on the NSW  
legislation

website, the order does not operate so as:

(a) to affect, in a manner prejudicial to any  
person (other

than the State or an authority of the State), the  
rights of

that person existing before the date of its  
publication, or

(b) to impose liabilities on any person (other than  
the

State or an authority of the State) in respect of  
anything

done or omitted to be done before the date of its  
publication.

(4) An administrative arrangements order may combine any  
2 or more of

the provisions authorised by this Part to be made by  
such an order.

CONSTITUTION ACT 1902

- SECT 51

Local government

51 Local government

(1) There shall continue to be a system of local  
government for the

State under which duly elected or duly appointed local government bodies are constituted with responsibilities for acting for the better government of those parts of the State that are from time to time subject to that system of local government.

(2) The manner in which local government bodies are constituted and the nature and extent of their powers, authorities, duties and functions shall be as determined by or in accordance with laws of the Legislature.

(3) The reference in subsection (2) to laws of the Legislature shall be read as a reference to laws that have been enacted by the Legislature, whether before or after the commencement of this section, and that are for the time being in force.

(4) For the purposes of this section, the Western Lands Commissioner, the Lord Howe Island Board, and an administrator with all or any of the functions of a local government body, shall be deemed to be local government bodies.

CONSTITUTION ACT 1902  
 - SECT 52  
 Definition and application

## 52 Definition and application

(1) In this Part:  
 >"judicial office" means the office of any of the following:

- (a) Chief Justice, President of the Court of Appeal, Judge of Appeal, Judge, Associate Judge or Master of the Supreme Court,
- (b) Chief Judge, Deputy Chief Judge or Judge of the Industrial Court or member of the Industrial Relations Commission in Court Session,
- (c) Chief Judge or Judge of the Land and Environment Court,
- (d) Chief Judge or Judge of the District Court or President of the Children's Court,
- (e) Chief Judge or Judge of the Compensation Court,
- (f) Chief Magistrate, Deputy Chief Magistrate or Magistrate of the Local Courts; Chief Magistrate, Deputy Chief Magistrate or Magistrate of the Local Court; Senior

Childrenâ€™s Magistrate or Childrenâ€™s Magistrate  
of the Childrenâ€™s Court; Chief Industrial Magistrate or  
Industrial Magistrate; Chairman, Deputy Chairman or  
Licensing Magistrate of the Licensing Court.

(2) For the purposes of this Part:

(a) the Supreme Court, the Industrial Court and the  
Land and Environment Court are taken to be courts of  
equivalent status, and are of higher status than the courts  
referred to in paragraphs (b) and (c), and  
(b) the District Court and the Compensation Court  
are taken to be courts of equivalent status, and are of  
higher status than the court referred to in paragraph (c), and  
(c) the holders of the judicial offices referred to  
in paragraph (f) of the definition of  
>"judicial office" are taken to constitute one  
court, and  
(d) the relative status of any other court is to be  
as determined by legislation.

(3) This Part extends to the removal or suspension of  
judicial officers after the commencement of this Part because of  
matters arising before that commencement.

# CONSTITUTION ACT 1902 - SECT 53 Removal from judicial office

## 53 Removal from judicial office

(1) No holder of a judicial office can be removed from  
the office,  
except as provided by this Part.

(2) The holder of a judicial office can be removed from  
the office by  
the Governor, on an address from both Houses of  
Parliament in the  
same session, seeking removal on the ground of proved  
misbehaviour or  
incapacity.

(3) Legislation may lay down additional procedures and  
requirements  
to be complied with before a judicial officer may be  
removed from  
office.

(4) This section extends to term appointments to a  
judicial office,  
but does not apply to the holder of the office at the  
expiry of such

a term.

(5) This section extends to acting appointments to a judicial office, whether made with or without a specific term.

#### CONSTITUTION ACT 1902

##### - SECT 54

#### Suspension from judicial office

##### 54 Suspension from judicial office

(1) No holder of a judicial office can be suspended from the office, except in accordance with legislation.

(2) A suspended judicial officer is entitled to be paid remuneration

as a judicial officer during the period of suspension, at the current

rate applicable to the office from which he or she is suspended.

#### CONSTITUTION ACT 1902

##### - SECT 55

#### Retirement

##### 55 Retirement

(1) This Part does not prevent the fixing or a change of age at which

all judicial officers, or all judicial officers of a court, are

required to retire by legislation.

(2) However, such a change does not apply to a judicial officer

holding office when the change takes effect, unless the judicial

officer consents.

#### CONSTITUTION ACT 1902

##### - SECT 56

#### Abolition of judicial office

##### 56 Abolition of judicial office

(1) This Part does not prevent the abolition by legislation of a judicial office.

(2) The person who held an abolished judicial office is entitled

(without loss of remuneration) to be appointed to and to hold another

judicial office in the same court or in a court of equivalent or

higher status, unless already the holder of such an office.

(3) That right remains operative for the period during which the person was entitled to hold the abolished office, subject to removal or suspension in accordance with law. The right lapses if the person declines appointment to the other office or resigns from it.

(4) This section applies whether the judicial office was abolished directly or whether it was abolished indirectly by the abolition of a court or part of a court.

CONSTITUTION ACT 1902  
- SCHEDULE 6

SCHEDULE 6 &ndash; Conduct of Legislative Council elections  
(Sections 16, 22A)  
Part 1 - System of election 1  
At a periodic Council election, the whole of the State of New South Wales shall be a single electoral district for the return of 21 Members of the Legislative Council.

2

(1) At a poll for a periodic Council election, a voter shall be required to record his vote for 15 candidates and no more but shall be permitted to record his vote for as many more candidates as he pleases, so as to indicate in such manner as may be provided by law the candidates for whom he votes and the order of his preferences for them.

(2) Notwithstanding subclause (1) of this clause, a ballot-paper on which the voter has recorded not less than 15 votes is not informal by reason only that:

(a) the same preference (other than his first preference) has been recorded on the ballot-paper for more than 1 candidate, but the ballot-paper shall be treated as if those preferences and any subsequent preferences had not been recorded on the ballot-paper, or

(b) there is a break in the order of his preferences, but the ballot-paper shall be treated as if any subsequent preference had not been recorded on the ballot-

paper.

3

For the purpose of a periodic Council election, 2 or more candidates may, in the manner provided by law, be included in a group in such order as may be determined by them.

Part 2 - Counting of votes at elections 4

(1) In this Part of this Schedule:

>"continuing candidate" means a candidate not already elected or not excluded from the count.

>"Council returning officer" means the person for the time being appointed by law to conduct periodic Council elections.

(2) In relation to any stage of the scrutiny, a reference in this

Part of this Schedule to the surplus votes of an elected candidate is

a reference to the number at that stage by which the elected

candidate's votes exceed the quota, reduced by the excess, if any,

of the number at that stage of the elected candidate's votes on

which a next available preference for a continuing candidate is not

indicated over the quota.

5

The method of counting the votes to ascertain the result of a periodic Council election shall be as provided in this Part of this Schedule.

6

At the close of the poll the Council returning officer shall ascertain the total number of first preference votes recorded for each candidate on all ballot-papers not rejected by him as informal and the total of all such votes.

7

The Council returning officer shall then determine a quota by dividing the total number of first preference votes for all candidates by 22 and by increasing the quotient so obtained (disregarding any remainder) by 1.

8

Any candidate who has received a number of first preference votes equal to or greater than the quota so determined shall be elected.

9

Where the number of first preference votes received by a candidate is equal to the quota, the whole of the ballot-papers containing those votes shall be set aside as finally dealt with.

10

Unless all vacancies have been filled, the surplus votes of

each elected candidate shall be transferred to the continuing candidates, in proportion to the voters' preferences, as follows:

(a) The Council returning officer shall divide the number of the elected candidate's surplus votes by the number of first preference votes (excluding any first preference votes indicated on ballot-papers which do not bear a next available preference for a continuing candidate) received by him and the resulting fraction shall, for the purposes of this clause, be the transfer value of that candidate's surplus votes.

(b) The Council returning officer shall take all of the ballot-papers of the elected candidate on which a next available preference is indicated for a continuing candidate and arrange them in separate parcels for the continuing candidates according to the next available preference indicated on them.

(c) The Council returning officer shall ascertain, from the parcel referred to in paragraph (b) in respect of each continuing candidate, the total number of ballot-papers of the elected candidate which bear the next available preference for that continuing candidate and shall, by multiplying that total by the transfer value of the elected candidate's surplus votes, determine the number of votes to be transferred from the elected candidate to each continuing candidate.

(d) If, as a result of the multiplication, any fraction results, so many of those fractions, taken in the order of their magnitude, beginning with the largest, as are necessary to ensure that the number of votes transferred equals the number of the elected candidate's surplus votes shall be reckoned as of the value of unity and the remaining fractions shall be ignored.

(e) The Council returning officer shall then determine the number of ballot-papers to be transferred from the elected candidate to each continuing candidate.

(f) The Council returning officer shall then, in respect of each



continuing candidate, forthwith take at random, from the parcel

referred to in paragraph (b) containing the ballot-papers of the

elected candidate which bear the next available preference for that

continuing candidate, the number of ballot-papers determined under

paragraph (e) and transfer those ballot-papers to the continuing candidate.

(g) The ballot-papers containing the first preference votes of the

elected candidate which have not been transferred (that is, the

ballot-papers containing the number of votes equal to the quota)

shall be set aside as finally dealt with.

11

(1) When the surplus votes of all elected candidates have been

transferred to the continuing candidates as provided by clause 10,

any continuing candidate who has received a number of votes equal to

or greater than the quota shall be elected.

(2) Unless all the vacancies have been filled, the surplus votes of

the elected candidate shall be transferred to the continuing

candidates in accordance with the provisions of clause 10, but, in

the application of those provisions, only those ballot-papers which

have been transferred to the elected candidate from a candidate

previously elected shall be taken into consideration.

12

(1) If, as a result of the transfer of the surplus votes of a

candidate elected in pursuance of clause 11 or elected at a later

stage of the scrutiny, a continuing candidate has received a number

of votes equal to or greater than the quota, he shall be elected.

(2) Unless all the vacancies have been filled, the surplus votes of

the elected candidate shall be transferred to the continuing

candidates in accordance with the provisions of clause 10, but, in

the application of those provisions, only those ballot-papers which

have been transferred to the elected candidate from the candidate or

candidates elected at the last preceding count shall be taken into

consideration.

13

The ballot-papers containing the first preference votes of a candidate who has been elected in pursuance of the provisions of clause 11 or 12, together with the ballot-papers transferred to him from a candidate previously elected or excluded which have not been further transferred, shall be set aside as finally dealt with.

14

(1) If, after the transfer of the surplus votes of the elected candidates, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes shall be excluded and the whole of his ballot-papers shall be transferred to the continuing candidates next in order of the voters' available preferences.

(2) If thereupon, or as the result of the exclusion of a candidate at any subsequent stage of the scrutiny, a continuing candidate has received a number of votes equal to or greater than the quota, he shall be elected.

(3) Unless all the vacancies have then been filled, the surplus votes of the elected candidate shall be transferred to the continuing candidates in accordance with the provisions of clause 10, but, in the application of those provisions, only those ballot-papers which have been transferred to the elected candidate from the candidate last excluded shall be taken into consideration.

(4) The ballot-papers containing the first preference votes of the elected candidate, together with the ballot-papers transferred to him from a candidate previously elected or excluded which have not been further transferred, shall be set aside as finally dealt with.

(5) If no continuing candidate has then received a number of votes equal to the quota, the process of excluding the candidate with the fewest votes and the transferring of ballot-papers containing those votes to the continuing candidates shall be repeated until a

continuing candidate has received a number of votes equal to the quota or, in respect of the last vacancy, a majority of the votes remaining in the count, but the process of excluding candidates shall not be repeated after the number of continuing candidates is equal to the number of unfilled vacancies.

(6) A ballot-paper that under this clause is, pursuant to the exclusion of a candidate, required to be transferred to a continuing candidate shall be set aside as finally dealt with if it does not indicate a next available preference for a continuing candidate.

15

After all the candidates who have received a number of votes equal to the quota are elected:

(a) where there is 1 remaining unfilled vacancyâ€”the candidate who

has received a majority of the votes remaining in the count, or

(b) where the number of continuing candidates is equal to the number

of remaining unfilled vacanciesâ€”those candidates, shall be elected.

16

Where, on the count of the first preference votes, or at the same time at any subsequent stage of the scrutiny, 2 or more candidates are elected by reason of their having received a number of votes equal to or greater than the quota, any transfer of the surplus votes of those candidates shall be carried out in the order, first of the candidate with the largest surplus, second of the candidate with the next largest surplus and so on.

17

(1) Notwithstanding anything contained in this Part of this Schedule,

a transfer of the surplus votes of an elected candidate shall be

deferred (but without affecting the order of that transfer) so long

as the total number of those surplus votes and any other surplus

votes not transferred is less than the difference between the total

votes of the 2 continuing candidates with the fewest votes.

(2) In any such case, unless all vacancies have been filled, the

candidate with the fewest votes shall be first excluded and the

ballot-papers containing his votes shall be transferred to the

continuing candidates as provided in clause 14 (1).

18

(1) If, on any count, 2 or more candidates have an equal number of

votes, and 1 of them has to be excluded, the candidate whose name is

on the slip drawn in accordance with subclause (4) of this clause

shall be excluded.

(2) If, at the time of their election, 2 or more candidates have an

equal number of votes that is more than the quota, the candidate

whose name is on the slip drawn in accordance with subclause (4) of

this clause shall, for the purposes of clause 16, be deemed to have

had the larger or largest surplus.

(3) If, on the final count for filling the last vacancy, 2 candidates

have an equal number of votes, 1 candidate shall be excluded in

accordance with subclause (1) of this clause and the other shall be

elected.

(4) For the purposes of subclauses (1) and (2) of this clause, the

names of the candidates who have an equal number of votes having been

written on similar slips of paper by the Council returning officer

and the slips having been folded by him so as to prevent the

description being seen and having been mixed, 1 of those slips shall

be drawn at random by him.

CONSTITUTION ACT 1902

- SCHEDULE 7

SCHEDULE 7 &ndash; Conduct of Legislative Assembly elections  
(Section 29)

Part 1 - Method of voting 1

At a poll for the election of a Member of the Legislative Assembly, a voter

shall be required to record his vote for 1 candidate and no more but shall be

permitted to record his vote for as many more candidates as he pleases, so as

to indicate in such manner as may be provided by law the candidates for whom he

votes and the order of his preferences for them.

Part 2 - Counting of votes at elections 2

(1) In this Part of this Schedule:

>"continuing candidate", in relation to a count, means a candidate

not excluded at a previous count.

>"returning officer" means a person for the time being appointed by

law to conduct an election of a Member of the Legislative Assembly.

(2) A reference in this Part of this Schedule to an exhausted ballot-

paper in relation to any count is a reference to a ballot-paper on

which there is not recorded a vote for a continuing candidate.

(3) For the purposes of subclause (2) of this clause, where:

(a) the same preference (other than a first preference) has

been recorded on a ballot-paper for more than 1 candidate,

the ballot-paper shall be treated as if those preferences

and any subsequent preferences had not been recorded on the

ballot-paper, or

(b) there is a break in the order of preferences recorded

on a ballot-paper, the ballot-paper shall be treated as if

any subsequent preference had not been recorded on the

ballot-paper.

3

The method of counting the votes to ascertain the result of an election of a

Member of the Legislative Assembly shall be as provided in this Part of this

Schedule.

4

At the close of the poll the returning officer shall ascertain the total number

of first preference votes recorded for each candidate on all ballot-papers not

rejected by him as informal.

5

If a candidate has a majority of the first preference votes, he shall be

elected.

6

If no candidate is elected under clause 5, the returning officer shall make a

second count.

7

(1) On the second count, the candidate who has the fewest first

preference votes shall be excluded, and each of his ballot-papers

that is not exhausted shall be transferred to the candidate next in

the order of the voter's preference and counted to him as a vote.

(2) If, on the second count, a candidate has a majority of the votes remaining in the count, he shall be elected.

8

(1) If, on the second count, no candidate has a majority of the votes

remaining in the count, the process of excluding the candidate who

has the fewest votes, transferring each of his ballot-papers that is

not exhausted to the continuing candidate next in the order of the

voter's preference and counting it to him as a vote shall be

repeated by the returning officer until 1 candidate has a majority of

the votes remaining in the count.

(2) The candidate who, in accordance with subclause (1) of this

clause, has a majority of the votes remaining in the count shall be

elected.

9

Notwithstanding clause 7 (1) or 8 (1), the process of transferring to a

continuing candidate each of the ballot-papers that is not exhausted and

counting it to him as a vote shall not be repeated where there is only 1

continuing candidate, but that 1 continuing candidate shall be elected.

10

(1) Where, on any count at which the candidate with the fewest number

of votes has to be excluded, 2 or more candidates have an equal

number of votes (that number being fewer than the number of votes

that any other candidate has or those candidates being the only

continuing candidates):

(a) such one of those candidates as had the fewest number

of votes at the last count at which they did not have an

equal number of votes shall be excluded, or

(b) if they had an equal number of votes at all preceding

counts, the candidate whose name is on a slip drawn in

accordance with subclause (2) of this clause shall be

excluded.

(2) For the purposes of subclause (1) of this clause, the names of

the candidates who have an equal number of votes having

been written  
on similar slips of paper by the returning officer and  
the slips  
having been folded by him so as to prevent the names  
being seen and  
having been mixed, 1 of those slips shall be drawn at  
random by him.

CONSTITUTION ACT 1902  
- NOTES

Does not include amendments by:  
Constitution Amendment  
(Governor's Salary) Act 2003 No 66 (not commenced " to  
commence on the day  
on which the first person to be appointed to the office of  
Governor after the  
date of assent to that Act is so appointed)

CONSTITUTION ACT 1902  
- NOTES

See also:  
Government Sector Employment Legislation Amendment Bill  
2013

CONSTITUTION ACT 1902  
- NOTES

Reprint history (since 1972):  
Reprint No 1 9 June 1972  
  
Reprint No 2 21 April 1976  
  
Reprint No 3 23 August 1978  
  
Reprint No 4 28 August 1980  
  
Reprint No 5 27 January 1983  
  
Reprint No 6 14 October 1985  
  
Reprint No 7 23 December 1987

Reprint No 8    2 April 1991

Reprint No 9    5 August 1991

Reprint No 10    15 February 1993

Reprint No 11    14 November 1995

Reprint No 12    5 January 1999

Reprint No 13    16 January 2001

Reprint No 14    13 June 2006

Reprint No 15    7 December 2010

CONSTITUTION ACT 1902  
- NOTES

Historical notes

The following abbreviations are used in the Historical notes:

_____	
_____	
_____	
_____	
_____	
_____	
_____	
_____	
_____	
_____	
_____	
_____	
_____	
_____	
_____	

See also Australia Act 1986 (Commonwealth); Australia Act 1986 (UK); Parliamentary Electorates and Elections Act 1912; and Women's Legal Status Act 1918. Table of amending instruments Constitution Act 1902 No 32. Assented to 18.8.1902. This Act has been amended as follows:

_____		
_____		Parliamentary Elections Act
_____		
1906	No 41	1906. Reserved 19.12.1906. Assented to



26.3.1907. See GG No 59 of|

---

1908	No 2	Ministers' Salaries Act
------	------	-------------------------

---

---

1912	No 19	Parliamentary Representatives
------	-------	-------------------------------

---

---

	No 41	Parliamentary
--	-------	---------------

---

---

		Parliamentary Representatives Allowance and Ministers' Salaries (Amendment) Act 1920. Assented to 21.12.1920.
--	--	---

---

---

		Parliamentary Allowances and Salaries Act 1922. Assented to 1922
No 2		6.5.1922.

---

---

		Parliamentary Allowances and Salaries Act 1925. Assented to 1925
No 6		21.10.1925.

---

---

1926	No 1	Constitution (Amendment) Act
------	------	------------------------------

---

---

		Audit (Amendment) Act 1929. Assented to 8.4.1929.
1929	No 12	

---

---

		Constitution (Legislative Council) Amendment Act 1929. Reserved 26.3.1929. Assented to 5.11.1929. See GG No 143 of 1929
No 28		24.9.1930, p 3775.

---

---

		Date of commencement, 1.10.1930, sec 1 and GG No
--	--	--

---

144 of		
		Parliamentary Allowances and Salaries Act 1930.
Assented to		
1930	No 8	15.4.1930.
		Parliamentary Allowances and Salaries Act 1932.
Assented to		
1932	No 48	21.12.1932.
		Constitution Amendment (Legislative Council) Act
		1932. Approved by the electors in accordance
with sec 7A of Act		
		No 32, 1902, on 13.5.1933. Assented to
22.6.1933.		
1933	No 2	
		Date of commencement of sec 4, 23.4.1934, secs
2, 4 (1) and GG No		
		71 of 16.4.1934, p 1627; date of commencement of
sec 5,		
1936	No 1	Constitution (Amendment) Act
		Demise of the Crown (Amendment) Act 1936.
Assented to		11.12.1936.
	No 55	
		Parliamentary Allowances and Salaries Act 1938.
Assented to		
1938	No 18	31.10.1938.
		Parliamentary Allowances and Salaries Act 1947.
Assented to		
		9.12.1947.
1947	No 28	
		Date of commencement (sec 2 (3) (a) excepted),

1.7.1947, sec 1		
		(3); date of commencement of sec 2 (3) (a),
30.10.1947, sec 2 (3)		
		Constitution Amendment (Legislative Council
Members Allowances)		
		Act 1948. Assented to 2.12.1948.
1948 No 34		
		Date of commencement, 1.9.1948, sec 1 (2). (Act
repealed by Act		
		Constitution Amendment
1950 No 33		(Legislative Assembly) Act 1950. Reserved
2.11.1950. Assented to		
		Parliamentary Allowances and Salaries Act 1951.
Assented to		
1951 No 63		28.12.1951.
		Parliamentary Allowances and Salaries Act 1956.
Assented to		
1956 No 22		12.10.1956.
		Parliamentary Allowances and Salaries Act 1959.
Assented to		
1959 No 36		10.12.1959.
		Constitution (Amendment) Act
1962 No 39		1962. Reserved 14.12.1962. Assented to
17.1.1963. See GG No 37 of		
		Parliamentary Allowances and Salaries
(Amendment) Act		
1963 No 36		1963. Assented to 10.10.1963.

		Decimal Currency Act
		1965. Assented to 20.12.1965.
1965	No 33	
		Date of commencement of sec 4, 14.2.1966, secs 1 (3), 2 (1) and the Currency Act
<hr/>		
		Parliamentary Allowances and Salaries (Amendment) Act
1966	No 29	1966. Assented to 13.4.1966.
<hr/>		
1968	No 60	Constitution (Amendment) Act
<hr/>		
		Parliamentary Allowances and Salaries (Amendment) Act
1969	No 41	1969. Assented to 17.4.1969.
<hr/>		
		Parliamentary Allowances and Salaries (Amendment) Act
1971	No 52	1971. Assented to 14.12.1971.
<hr/>		
1972	No 48	Reprints Act
<hr/>		
		Parliamentary Allowances and Salaries (Amendment) Act
1974	No 7	1974. Assented to 26.3.1974.
<hr/>		
		Parliamentary Allowances and Salaries (Amendment) Act
		1975. Assented to 1.4.1975.
1975	No 2	

		Date of commencement of sec 3 (sec 3 (b) (ii) excepted),
		1.1.1975, sec 2; date of commencement of sec 3 (b) (ii),
<hr/>		
		Parliamentary Remuneration Tribunal Act 1975.
Assented to		
	No 25	14.4.1975.
<hr/>		
		Constitution and Other Acts
	No 67	(Amendment) Act 1975. Assented to 31.10.1975.
(Sec 8 repealed by		
		Act No 25, 1975, Sch 2 (as amended by Act No 67, 1975, sec 9
<hr/>		
		Constitution (Ministers of the Crown) Amendment Act
1976	No 48	1976. Assented to 27.10.1976.
<hr/>		
		Constitution (Amendment) Act
1978	No 46	1978. Reserved 3.4.1978. Assented to 25.7.1978.
See GG No 89 of		
<hr/>		
		Constitution and Parliamentary
	No 75	Electorates and Elections (Amendment) Act 1978.
Assented to		
<hr/>		
1979	No 38	Constitution (Amendment) Act
<hr/>		
		Constitution (Public Service) Amendment Act
		1979. Assented to 16.5.1979.
	No 91	
		Date of commencement of sec 3, 28.9.1979, sec 2 (2) and GG No 130
<hr/>		
		Constitution (Amendment) Act 1980. Assented to

15.4.1980.		
1980	No 13	
		Date of commencement of Sch 1, 5.8.1980, sec 2 (2) and GG No 102
<hr/>		
		Constitution (Legislative
1981	No 102	Assembly) Amendment Act 1981. Reserved
12.11.1981.		Assented to
<hr/>		
		Constitution (Disclosures by
	No 103	Members) Amendment Act 1981. Reserved
12.11.1981.		Assented to
<hr/>		
		Constitution (Consolidated Fund) Amendment Act
1982	No 95	1982. Assented to 6.9.1982.
<hr/>		
		Miscellaneous Acts (Public Finance and Audit)
Repeal and		
		Amendment Act 1983. Assented to 29.12.1983.
1983	No 153	
		Date of commencement of Sch 1, 6.1.1984, sec 2 (2) and GG No 4 of
<hr/>		
		Constitution (Enrolment of Acts) Amendment Act
		1984. Assented to 6.6.1984.
1984	No 21	
		Date of commencement of Sch 1, 1.3.1985, sec 2 (2) and GG No 178
<hr/>		
	No 153	Statute Law (Miscellaneous
<hr/>		
1986	No 16	Statute Law (Miscellaneous
<hr/>		
	No 57	Constitution (Amendment) Act
<hr/>		







		Industrial Relations Act	
		1996. Assented to 13.6.1996.	
1996	No 17		
		Date of commencement of the provision of Sch 5 relating to the	
		Constitution Act 1902, 2.9.1996, sec 2 and GG No 99 of 30.8.1996,	
		Constitution and Parliamentary Electorates and Elections	
1997	No 88	Amendment Act 1997. Assented to 23.10.1997.	
		Statute Law (Miscellaneous Provisions) Act (No 2)	
1998	No 120	1998. Assented to 26.11.1998.	
		Statute Law (Miscellaneous Provisions)	
1999	No 31	Act 1999. Assented to 7.7.1999.	
		Crimes Legislation Amendment (Sentencing) Act	
		1999. Assented to 8.12.1999.	
	No 94		
		Date of commencement of Sch 4.90, 1.1.2000, sec 2 (1) and GG No	
		Constitution Amendment Act	
2000	No 30	2000. Assented to 9.6.2000.	
		Courts Legislation Amendment Act	

2005	No 31	2005. Assented to 15.6.2005.
		Constitution Amendment (Pledge of
2006	No 6	Loyalty) Act 2006. Assented to 3.4.2006.
		Constitution Amendment (Governor) Act
	No 32	2006. Assented to 31.5.2006.
		Statute Law (Miscellaneous Provisions)
2007	No 27	Act 2007. Assented to 4.7.2007.
		Constitution Amendment (Speaker) Act
	No 31	2007. Assented to 4.7.2007.
		Miscellaneous Acts (Local Court)
		Amendment Act 2007. Assented to 13.12.2007.
	No 94	
		Date of commencement of Sch 1.15, 6.7.2009, sec
2	and 2009	(314)
		Statute Law (Miscellaneous
2008	No 114	Provisions) Act (No 2) 2008. Assented to
10.12.2008.		
		Children Legislation Amendment (Wood

		Inquiry Recommendations) Act 2009. Assented to 7.4.2009.
2009	No 13	
		Date of commencement of Sch 2.3, 1.6.2009, sec 2 and 2009 (178)
<hr/>		
		Parliamentary Remuneration Amendment
	No 62	(Salary Packaging) Act 2009. Assented to 16.9.2009.
<hr/>		
		Constitution Amendment
	No 83	(Lieutenant-Governor) Act 2009. Assented to 19.11.2009.
<hr/>		
		Constitution Amendment (Recognition of
2010	No 75	Aboriginal People) Act 2010. Assented to 25.10.2010.
<hr/>		
		Constitution Amendment (Prorogation of
2011	No 3	Parliament) Act 2011. Assented to 16.5.2011.
<hr/>		
		Constitution Amendment (Restoration of
2012	No 33	Oaths of Allegiance) Act 2012. Assented to 5.6.2012.
<hr/>		
		Government Sector Employment Act
		2013. Assented to 25.6.2013.
2013	No 40	
		Date of commencement of Sch 6.2, 24.2.2014, sec 2 and 2013 (631)
<hr/>		





Sch 1 (8); 1980	
Sec 16	Am 1926 No 1, sec 2. Rep 1933 No 2,
sec 4 (2). Ins	
Sec 17	Rep 1933 No 2, sec 4 (2). Ins 1978 No
75, Sch 1 (9).	
sec 2 (a); 1956	Ins 1948 No 34, sec 2. Am 1951 No 63,
(a); 1966 No 29,	No 22, sec 2 (1); 1963 No 36, sec 2
Sec 17G	sec 2 (a); 1969 No 41, sec 2 (a);
1971 No 52, sec 2	(a); 1974 No 7, sec 3 (a); 1975 No 2,
sec 3 (a). Rep	
Sec 17H	Ins 1948 No 34, sec 2. Am 1966 No 29,
sec 2 (b); 1968	
Sec 18	Subst 1978 No 75, Sch 1 (9). Rep 1991
No 20, Sch 1	
Sec 19	Am 1962 No 39, sec 2 (b). Subst 1978
No 75, Sch 1 (9).	
Sec 20	Subst 1933 No 2, sec 4 (6); 1978 No
75, Sch 1 (9). Rep	
Sec 21	Subst 1933 No 2, sec 4 (7); 1978 No
75, Sch 1 (9). Rep	



[illegible]







(c); GG No 23 of		
		3.3.1971, p 635; 1971 No 52, sec 2
(d); GG No 147 of		
		30.11.1973, p 5098; 1974 No 7, sec 3
(c); 1975 No 2,		
		sec 3 (c). Rep 1975 No 25, sec 15 (2)
(a). Ins 1978 No		
		_____
_____		
		_____
_____		
		_____
_____		