

BEGIN TRANSCRIPTION

1855–6

No. 2.

An Act to establish a Constitution for South Australia, and to grant a Civil List to Her Majesty.

[Reserved, January 4, 1856]

WHEREAS by an Act of the Imperial Parliament, passed in the Session holden in the thirteenth and fourteenth years of the Reign of Her present Majesty, intituled “An Act for the better Government of Her Majesty’s Australian Colonies,” it was amongst other things enacted that, notwithstanding anything therein contained, it should be lawful for the Governor and Legislative Council of the Province of South Australia, from time to time, by any Act or Acts, to alter the provisions and laws for the time being in force under the said Act of Parliament, or otherwise concerning the election of the elective Members of such Legislative Council, the qualification of electors and elective Members, or to establish in the said Province, instead of the Legislative Council, a Council and a House of Representatives, or other separate Legislative Houses, to consist of such Members to be appointed or elected by such persons, and in such manner, as by such Act or Acts should be determined, and to vest in such Council and House of Representatives, or other separate Legislative Houses, the powers and functions of the Legislative Council for which the same may be substituted: And whereas it is expedient to exercise the powers by the said Act vested in the Governor and Legislative Council of the said Province, and to substitute for the said Legislative Council a Parliament consisting of a Legislative Council and Assembly, constituted and elected as hereinafter provided: Be it therefore Enacted by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council thereof, as follows –

Preamble.

1. There shall be, in place of the Legislative Council now subsisting, a Legislative Council and a House of Assembly, which shall [PAGE 3 ENDS HERE] be called “The Parliament of South Australia,” and shall be severally constituted in the manner hereinafter prescribed, and such Legislative Council and House of Assembly shall have and exercise all the powers and functions of the existing Legislative Council: Provided that all Bills for appropriating any part of the Revenue of the said Province, or for imposing, altering, or repealing any rate tax, duty, or impost, shall originate in the House of Assembly.

Parliament to be constituted in South Australia

2. It shall be lawful for the Governor to fix such places and times for holding the first and every other Session of the said Parliament as he may think fit, and from time to time to change or vary the same as he may judge advisable and most consistent with general convenience and the public welfare, giving sufficient notice thereof; and also to prorogue the said

Place and time for holding Sessions of Parliament.

Parliament from time to time, and to dissolve the said House of Assembly by Proclamation or otherwise whenever he shall deem it expedient: Provided that nothing herein contained shall authorize the Governor to dissolve the said Legislative Council.

3. There shall be a Session of the said Parliament once at least in every year; so that a period of twelve calendar months shall not intervene between the last sitting of the Parliament in one Session and the first sitting of the Parliament in the next Session; and every House of Assembly hereafter to be summoned and chosen, shall continue for three years from the day on which such House of Assembly shall first meet for the dispatch of business, and no longer, subject nevertheless to be sooner prorogued or dissolved by the Governor.

Duration of
Parliament.

4. The said Parliament shall be called together for the first time at some period not later than six calendar months after the Proclamation of this Act by the Governor.

First calling
together of
Parliament.

5. The Legislative Council shall for the present consist of eighteen elected Members, who shall be elected by the inhabitants of the said Province, legally qualified to vote; and no person shall be capable of being elected a Member, who shall not be the full age of thirty years and a natural-born or naturalized subject of Her Majesty, or legally made a denizen of the said Province, and who shall not have resided within the said Province for the full period of three years.

Legislative Council
to consist of
eighteen Members.
Qualification of
Members.

6. Every man of the age of twenty-one years, being a natural born or naturalized subject of Her Majesty, or legally made a denizen of the said Province, and having a freehold estate in possession, either legal or equitable, situate within the said Province, of the clear value of Fifty Pounds sterling money above all charges and incumbrances affecting the same, or having a leasehold estate in possession, situate within the said Province, of the clear annual value of Twenty Pounds, the lease thereof having been registered in the general Registry Office, for the registration of deeds, and having three years [PAGE 4 OF THE DOCUMENT ENDS HERE] to run at the time of voting, or containing a clause authorizing the lessee to become the purchaser of the land thereby demised, or occupying a dwelling-house of the clear annual value of Twenty-five Pounds sterling money, and who shall have been registered on the Electoral Roll of the Province six months prior to the election, shall be entitled to vote at the election of Members of the Legislative Council.

Qualification of
electors for
Legislative Council.

7. The Legislative Council shall, at its first meeting, and before proceeding to the dispatch of any other business, elect some Member of the said Council to be the President thereof, and as often as the place of such President shall become vacant by death, resignation, vacating his seat, or removal by a vote of the said Council, the said Council shall again elect some other Member to be the President thereof, and the President so elected shall preside at all meetings of the said Council, and the election of the President of the Legislative Council shall be notified to the Governor by a deputation of the said Council.

Election of
President of
Legislative Council

8. The Legislative Council shall, immediately after the election of the

Order in which

President thereof, proceed to determine by lot the order in which the names of the several Members shall be entered upon a list to be called the "Members' Roll," and at the expiration of four years from the date of issuing of the writs for the first election under this Act, and thenceforward at the expiration of every succeeding four years, such six Members as shall be the first six on such Members' Roll, shall vacate their seats, and six Members shall be elected to supply the vacancies so created, and immediately after the Members so elected to fill the vacancies so created shall have taken their seats, they shall proceed in like manner to determine by lot the order in which their names shall be respectively placed on the Members' Roll, next after the names of the Members previously on the said roll, and in the event of a single Member being elected to fill a seat in the said Council, vacant by reason of death, acceptance of office, or otherwise, the name of such Member shall be placed last on the said Members' Roll, to the intent that one-third of the whole number of Members of the Legislative Council, consisting of such six Members as shall have held their seats for the longest period, shall vacate their seats every four years.

9. In case of the absence of the President, in consequence of leave of absence granted to him by the House, or of illness, or other unavoidable cause, it shall be lawful for the Legislative Council to choose some other Member of the said House to fill temporarily the office and perform the duties of the President during his absence.

10. The Legislative Council shall not be competent to the dispatch of business unless there be present, including the President, or the person chosen to preside in his absence, at least seven Members of the said Council, and all questions which shall arise shall be decided by a majority of the votes of those Members of the Council who shall be present, exclusive of the President, or the person chosen as aforesaid, who shall be allowed a casting vote. [PAGE 5 ENDS HERE]

11. It shall be lawful for any Member of the Legislative Council, by writing under his hand, addressed to the President of the said Council, and which writing shall forthwith, after the signing thereof, be delivered to such President, to resign his seat in the said Legislative Council, and upon the receipt of such resignation by such President the seat of such Member shall become vacant.

12. If any Legislative Councillor shall, for two consecutive months, of any Session of the Legislative Council, fail to give his attendance therein, without the permission of the said Council, or shall take any oath or make any declaration or act of acknowledgment of allegiance or adherence to any foreign Prince, or power, or shall do, concur in, or adopt any act whereby he may become a subject or citizen of any foreign state or power, or shall become bankrupt, or shall take the benefit of any law relating to insolvent debtors, or become a public defaulter, or be attainted of treason, or be convicted of felony or any infamous crime, or shall become of unsound mind, his seat in such Council shall thereby become vacant.

Members to retire.

Absence of President provided for.

Quorum of Legislative Council.

Members of Legislative Council may resign.

Seat in Legislative Council, how to be come vacant.

13. Whenever any question shall arise respecting any vacancy in the Legislative Council or House of Assembly, the same shall be heard and determined by the Legislative Council and House of Assembly, respectively.

Question of vacancy, how determined.

14. The House of Assembly shall, for the present, consist of thirty six Members who shall be elected by the inhabitants of the said Province; and any person who shall be qualified and entitled to be registered as a voter in and for any electoral district within the said Province, shall be qualified and entitled to be elected a Member of the House of Assembly for any electoral district within the said Province.

Qualification of Members of Assembly.

15. No person, not being a natural-born subject of Her Majesty, shall be qualified and entitled to be elected a Member of the said Parliament unless he shall have resided in the said Province for the full period of five years.

Aliens not eligible until after residence of five years.

16. Every man of the age of twenty-one years, being a natural born or naturalized subject of Her Majesty, and having been registered upon the Electoral Roll of any District for the period of six calendar months prior to any election, shall be qualified to vote in the election of Members to serve in the House of Assembly: Provided, that no man shall be entitled to vote at the election of a Member of the Legislative Council or House of Assembly, who has been attainted or convicted of treason, or felony, or other infamous offence, in any part of Her Majesty's Dominions, unless he has received a free pardon for such offence, or has undergone the sentence passed on him for such offence.

Qualification of Electors.

Proviso.

17. If any Member of the said Parliament shall accept of any office of profit or pension from the Crown, during pleasure, excepting those offices which are hereinafter required to be held by Members of the said Parliament, his seat shall be thereupon and is hereby declared to be vacant. [PAGE 6 ENDS HERE]

Disqualifying clause of Members of Parliament.

18. If any person by this Act disabled, or declared to be incapable to vote or sit in the said Parliament, shall, nevertheless, be elected and returned as a Member to serve in the said Parliament for any electoral district, such election and return shall and are hereby declared to be void to all intents and purposes whatsoever; and if any person so elected and returned, contrary to the provisions of this Act, shall presume to sit or vote as an elected Member of the said Parliament in any Session to be hereafter summoned and holden, such person shall forfeit the sum of Five Hundred Pounds, to be recovered by any person who shall sue for the same in the Supreme Court of the said Province, or in any other Court of Record in the said Province having competent jurisdiction.

Election of disqualified persons void.

Penalty on their sitting and voting.

19. The Members of the House of 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 House of Assembly, the said Members shall forthwith proceed to elect another of such Members to be such Speaker, and the Speaker so elected shall preside at all meetings of the said House of Assembly; and the election of such Speaker shall be forthwith notified to the Governor by a deputation of the said House.

Election of the Speaker.

20. In case of the absence of the Speaker, in consequence of leave of absence granted to him by the House, or of illness or other unavoidable cause, it shall be lawful for the House of Assembly to choose some other Member of the said House to fill, temporarily, the office and perform the duties of the Speaker during his absence.

Absence of Speaker provided for.

21. The presence of at least one-third of the Members of the said House of Assembly, exclusive of the Speaker, or of the person chosen to preside in his absence, shall be necessary to constitute a meeting of the said House of Assembly for the dispatch of business, and all questions which shall arise in the said House of Assembly shall be decided by the majority of votes of such Members as shall be present, other than the Speaker or person aforesaid, and when the votes shall be equal, the Speaker or person aforesaid shall have the casting vote.

Quorum; division; casting vote.

22. No Member of the said Parliament shall be permitted to sit or vote therein until he shall have taken and subscribed the following oath before the Governor, or before some person or persons authorized by the Governor to administer such oath:—

No Member to sit or vote until he has taken the following oath of allegiance.

“I, A.B., do sincerely promise and swear, that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of this Province of South Australia, dependent on and belonging to the said United Kingdom, and that I will defend Her to the utmost of my power against all traitorous conspiracies and attempts whatsoever, which shall be made [PAGE 7 ENDS HERE] against Her person, crown, and dignity; and that I will do my utmost endeavour to disclose and make known to Her Majesty, Her heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against Her, or any of them; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or persons whatever to the contrary. SO HELP ME GOD.”

Oath of allegiance.

23. It shall be lawful for any Member of the House of Assembly by writing under his hand, addressed to the Speaker of the said House, and which writing shall forthwith after the signing thereof, be delivered to such Speaker, to resign his seat therein, and upon the receipt of such resignation by the Speaker, the seat of such Member shall become vacant.

Resignation of seats in the Assembly.

24. Every person authorized by law to make an affirmation instead of taking an oath, may make such affirmation in every case in which an oath is hereby required to be taken.

Affirmation instead of oath.

25. If any Member of the House of Assembly shall, for two consecutive months of any Session of the Legislature, without the permission of such House of Assembly entered upon its journals, fail to give his attendance in the said House, or shall take any oath, or make any declaration or acknowledgment of allegiance, obedience, or adherence to any Foreign Prince or Power, or do, or concur in, or adopt any act whereby he may become a subject or citizen of any Foreign State or Power, or become entitled to the rights, privileges, or immunities of a subject or citizen of any Foreign State or Power, or shall become bankrupt or an insolvent debtor within the meaning of the laws in force within the said Province relating to bankrupts or insolvent debtors, or shall become a public defaulter, or be attainted of treason, or be convicted of felony, or any infamous crime, or shall become of unsound mind, his seat in such House of Assembly shall thereby become vacant.

Vacating seats of Members of Assembly in certain cases.

26. When and so often as a vacancy shall occur in the said Legislative Council or House of Assembly, upon a resolution by the House declaring such vacancy and the causes thereof, the President or Speaker, as the case may be, shall forthwith cause a writ to be issued for supplying such vacancy.

Election to take place on vacancies.

27. The said Legislative Council and House of Assembly, at the first sitting of each respectively, and from time to time afterwards as there shall be occasion, shall prepare and adopt such Standing Rules and Orders as shall appear to the said Council and Assembly respectively best adapted for the orderly conduct of such Council and Assembly respectively, and for the regulation of the proceedings thereof and the dispatch of business therein, and for the manner in which such Council and Assembly shall be presided over in case of the absence of the President or Speaker, and for the mode in which such Council and Assembly shall confer, correspond, and communi- [PAGE 8 ENDS HERE] cate with each other relative to votes or Bills passed by or pending in such Council and Assembly respectively, and for the proper passing, intituling, and numbering of the Bills to be introduced into and passed by the said Council and Assembly, and for the proper presentation of the same to the Governor for the time being, for Her Majesty's assent; all of which 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.

Standing Rules and Orders to be made.

28. It shall be lawful for the Governor to transmit, by message, to the Council or Assembly, for their consideration, any amendment which he shall desire to be made in any Bill presented to him for Her Majesty's assent, and all such amendments shall be taken into consideration, in such convenient manner, as shall, by the rules and orders aforesaid, be in that behalf provided.

Governor's Message.

29. The appointment to all public offices under the Government of the said Province hereafter to become vacant or be created, whether such offices be salaried or not, shall be vested in the Governor, with the advice and consent of the Executive Council, except the appointment of the officers hereinafter required to be Members of the said Parliament, the appointment and dismissal of which officers shall be vested in the Governor alone: Provided that this enactment shall not extend to minor appointments, which by Act of the Legislature or by order of the Governor and Executive Council may be vested in Heads of Departments, or other officers or persons within the said Province.

Appointment of officers vested in Governor and Executive Council.

30. The commissions of the present Judges of the Supreme Court, and of all future Judges thereof, shall be, continue, and remain in full force during their good behaviour, notwithstanding the demise of Her Majesty (whom may God long preserve), or of Her Heirs and Successors, any law, usage, or practice to the contrary thereof in any wise notwithstanding.

Judges to hold office during good behaviour notwithstanding any demise of the Crown.

31. It shall be lawful, nevertheless, for Her Majesty, Her Heirs and Successors, to remove any such Judge or Judges upon the address of both Houses of the said Parliament.

Judges may be removed on address of both Houses of Parliament.

32. After the first general election of the said Parliament, no person shall hold any of the offices following – that is to say, Chief Secretary, Attorney-General, Treasurer, Commissioner of Crown Lands and Immigration, and Commissioner of Public Works, for any longer period than three calendar months, unless he shall be a Member of the Legislative Council or House of Assembly, for the time being; and the persons for the time being holding such offices shall *ex officio* be Members of the Executive Council.

Certain offices to be held by Members of Parliament.

33. No officer of the Government shall be bound to obey any order of the Governor involving any expenditure of public money; [PAGE 9 ENDS HERE] nor shall any warrant for the payment of money, or any appointment to or dismissal from office, be valid, except as herein provided, unless such order, warrant, appointment, or dismissal shall be signed by the Governor, and countersigned by the Chief Secretary.

Certain orders, warrants, &c., not to be valid, unless countersigned.

34. The said Parliament shall have full power and authority, from time to time, by any Act, to repeal, alter, or vary all or any of the provisions of this Act, and to substitute others in lieu thereof: Provided that it shall not be lawful to present to the Governor, for Her Majesty's assent, any Bill by which an alteration in the Constitution of the said Legislative Council or House of Assembly may be made, unless the second and third reading of such Bill shall have been passed with the concurrence of an absolute majority of the whole number of the Members of the said Legislative Council and of the House of Assembly respectively: Provided also, that every Bill which shall be so passed shall be reserved for the signification of Her Majesty's pleasure thereon.

Power to Parliament to alter this Act.

35. It shall be lawful for the said Parliament, by any Act, to define the privileges, immunities, and powers to be held, enjoyed, and exercised by

Privileges of Parliament.

the said Legislative Council and House of Assembly, and by the Members thereof, respectively: Provided that no such privileges, immunities, or powers shall exceed those now held, enjoyed, and exercised by the Commons House of Parliament, or the Members thereof.

36. No Judge of any Court of the said Province, nor any Clergyman or Officiating Minister shall be capable of being elected a Member of the said Legislative Council or House of Assembly.

Judges, and Ministers of Religion, ineligible for election.

37. The salary of the President of the said Legislative Council shall be at least equal to the salary of the Speaker of the said House of Assembly; and the salaries and allowances of the various officers of the said Legislative Council shall be the same as those of the corresponding officers of the said House of Assembly; and the Chief Clerk for the time being of the said Legislative Council, and of the said House of Assembly shall respectively be removable from office only in accordance with a vote of the House of which he shall be an officer.

Salaries of President and Officers of Legislative Council.

Chief Clerk only removable on a vote of the House.

38. There shall be payable to Her Majesty, Her Heirs, and Successors, in every year, out of the Consolidated Revenue Fund of the Province of South Australia, the several sums, not exceeding in the whole Thirteen Thousand Five Hundred Pounds, for defraying the expenses of the services and purposes set forth in the Schedule to this Act annexed marked A, and the said several sums shall be issued by the Treasurer of the said Province in discharge of such warrants as shall, from time to time, be directed to him under the hand of the Governor.

Civil List granted to Her Majesty.

39. And whereas, by the operation of this Act, certain officers of the Government will become liable to loss of office, by reason of their [PAGE 10 ENDS HERE] inability to become Members of the said Parliament, or to command the support of a majority of the Members thereof, or upon other grounds without any misconduct or incapacity on the part of such officer, and it is just to compensate the present holders of such offices for the actual loss of their offices, in case the same should happen, by the causes aforesaid, or any of them – Be it enacted, That the sums set opposite the names of the persons mentioned in Schedule B to this Act annexed, who at present respectively hold the offices therein mentioned, shall be payable annually, by way of retiring allowance, to such persons respectively during their respective lives, upon their respective retirement or removal from office, upon the grounds aforesaid, or any of them, after this Act shall come into operation; and all such sums as aforesaid shall be payable and paid to such persons out of the General Revenue; and the Treasurer for the time being is hereby authorized and required to make such payments accordingly, on warrants under the hand of the Governor: Provided that, if after any such annual retiring allowance as aforesaid shall have become payable, the person entitled thereto shall accept any new appointment under the Crown, then such retiring allowance shall merge or be reduced *pro tanto* during the tenure of such appointment, according as the salary or emolument of such new appointment is or are of greater or less amount than such retiring allowance of such person.

Compensation to officers liable to loss of offices.

40. It shall not be lawful for either House of the said Parliament to pass any vote, resolution, or bill, for the appropriation of any part of the Revenue, or of any tax, rate, duty, or impost, for any purpose which shall not have been first recommended by the Governor to the said House of Assembly during the Session in which such vote, resolution, or bill shall be passed.

All money votes to be recommended by the Governor.

41. This Act shall be published in South Australia by the Governor of the said Province, within three months after Her Majesty's approval of the same shall have been received, by Proclamation for that purpose in the *South Australian Government Gazette*, and shall commence and take effect from the day of the date of such Proclamation.

Act to be proclaimed.

42. Anything herein contained to the contrary notwithstanding the Legislative Council now subsisting shall continue and exist until the issue of the first writs for the election of Members of the Parliament hereby constituted.

Present Legislature to continue till issue of writs for New Parliament.

43. In referring to this Act, it shall be sufficient to make use of the expression "The Constitution Act."

Short title may be cited.

SCHEDULE A.

PART I.

| | | | | | | £ | s. | d. |
|---|----|----|----|----|----|-------|----|----|
| Salary of Governor | .. | .. | .. | .. | .. | 4,000 | 0 | 0 |
| Salary of First Judge | .. | .. | .. | .. | .. | 1,500 | 0 | 0 |
| Salary of Second Judge | .. | .. | .. | .. | .. | 1,300 | 0 | 0 |
| Salary of Attorney-General | .. | .. | .. | .. | .. | 1,000 | 0 | 0 |
| Salary of Crown Solicitor and Public Prosecutor | .. | .. | | | | 600 | 0 | 0 |

PART II.

| | | | | | | £ | s. | d. |
|---|----|----|----|----|----|-------|----|----|
| Salary of Chief Secretary | .. | .. | .. | .. | .. | 1,300 | 0 | 0 |
| Salary of Under Secretary | .. | .. | .. | .. | .. | 600 | 0 | 0 |
| Salary of Treasurer | .. | .. | .. | .. | .. | 900 | 0 | 0 |
| Salary of Auditor-General | .. | .. | .. | .. | .. | 700 | 0 | 0 |
| Salary of Commissioner of Lands and Immigration | .. | .. | | | | 800 | 0 | 0 |
| Salary of Commissioner of Public Works | .. | .. | .. | | | 800 | 0 | 0 |

SCHEDULE B.

Retiring Allowance on loss of office.

| | | | | | | £ | s. | d. |
|---|----|----|----|--|--|-----|----|----|
| Boyle Travers Finnis, Colonial Secretary | .. | .. | .. | | | 425 | 0 | 0 |
| Richard Davies Hanson, Advocate-General | .. | .. | .. | | | 375 | 0 | 0 |
| Robert Richard Torrens, Colonial Treasurer | .. | .. | .. | | | 325 | 0 | 0 |
| Charles Bonney, Commissioner of Crown Lands | .. | .. | .. | | | 250 | 0 | 0 |