

**House of Assembly—No 104**

As laid on the table and read a first time, 14 May 2009

South Australia

**Constitution (Casual Vacancies) Amendment  
Bill 2009**

A BILL FOR

An Act to amend the *Constitution Act 1934*; and to make related amendments to the *Electoral Act 1985*.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Constitution (Casual Vacancies) Amendment Act 2009*.

#### 2—Amendment provisions

- 5 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### Part 2—Amendment of *Constitution Act 1934*

#### 3—Repeal of section 13—Casual vacancies

Section 13—delete the section

#### 10 4—Insertion of section 37A

Before section 38 insert:

##### 37A—Casual vacancies

- (1) This section applies to—
  - (a) a casual vacancy occurring in the Legislative Council; or
  - 15 (b) a casual vacancy occurring in the House of Assembly if—
    - (i) the member whose seat has become vacant—

- 5 (A) was, at the time of his or her election,  
publicly recognised by a particular political  
party as being an endorsed candidate of  
that party; and
- (B) publicly represented himself or herself, at  
the time of his or her election, to be such a  
candidate,
- and that party has nominated a member of that party  
to occupy the vacancy; or
- 10 (ii) the member whose seat has become vacant was not  
a person described in subparagraph (i) but has  
nominated, by notice in writing to the Speaker of  
the House of Assembly, a person whom he or she  
wishes to be chosen, in accordance with this  
15 section, to occupy the vacant seat.
- (2) Subject to this section, if this section applies to a casual vacancy  
occurring by death, resignation or otherwise in the seat of a member  
of either House of Parliament, a person will be chosen to occupy the  
20 vacant seat by an assembly of the members of both Houses of  
Parliament.
- (3) An assembly need not be held under subsection (2) to supply a casual  
vacancy if the vacancy occurs 3 months or less before—
- 25 (a) in the case of a member of the Legislative Council—a day  
on which the former member would, if circumstances giving  
rise to a casual vacancy had not occurred have been required  
to retire in any event; or
- (b) in the case of a member of the House of Assembly—a day  
on which a general election of members of the House of  
Assembly must be held in accordance with section 28.
- 30 (4) Where—
- (a) a casual vacancy occurs in the seat of a member of either  
House of Parliament; and
- 35 (b) the House of Assembly is dissolved by the Governor  
(otherwise than in pursuance of section 41) or expires by  
effluxion of time; and
- (c) as at the date of the dissolution or expiry, no assembly of the  
members of both Houses of Parliament had been held to  
choose a person to occupy the vacant seat; and
- 40 (d) in the case of a casual vacancy occurring in the seat of a  
member of the Legislative Council—the member formerly  
occupying the seat would, if the casual vacancy had not  
occurred, have been one of those required to retire under  
section 14(2),
- the vacancy must be supplied at the ensuing election.

- 5
- (5) The following provisions apply in relation to the constitution and proceedings of an assembly that is, in pursuance of subsection (2), to choose a person to occupy a casual vacancy:
- 10
- (a) the assembly will meet at a time and place appointed by proclamation;
- (b) a member of the House of Assembly or the Legislative Council appointed by proclamation will preside over the assembly;
- 15
- (c) a suitable person will be appointed by proclamation to be the clerk of the assembly;
- (d) the procedural rules (if any) prescribed by proclamation must be observed at the assembly and, in the absence of a rule governing a particular question of procedure that arises before the assembly, that question must be decided by the person presiding or, if the assembly is dissatisfied with that person's decision, by the assembly itself;
- 20
- (e) the members of the assembly have, in relation to proceedings before the assembly, the same privileges and immunities as the members of the House of Assembly in relation to proceedings before that House;
- (f) the person presiding over the assembly and the assembly itself have respectively the same powers to maintain order as the Speaker and the House of Assembly;
- 25
- (g) there is no requirement for all members of both Houses of Parliament to be present at a meeting of the assembly;
- (h) a question before the assembly will be decided by a majority of the votes cast by the members present at a meeting of the assembly;
- 30
- (i) each member present at a meeting of the assembly, except the person presiding, is entitled to 1 vote on a question arising before the assembly and, in the event of an equality of votes, the person presiding will have a casting vote.
- 35
- (6) If this section applies to a casual vacancy and the member whose seat has become vacant was, at the time of his or her election, publicly recognised by a particular political party as being an endorsed candidate of that party and publicly represented himself or herself to be such a candidate, the person chosen by the assembly to occupy that vacancy will, unless there is no member of that party available to be chosen, be a member of that party nominated by that party to occupy the vacancy.
- 40
- (7) If this section applies to a casual vacancy and the member whose seat has become vacant was not a person described in subsection (6) but has nominated, by notice in writing to—
- 45
- (a) in the case of a member of the Legislative Council—the president of the Legislative Council; or

- (b) in the case of a member of the House of Assembly—the Speaker of the House of Assembly,

a person whom he or she wishes to be chosen, in accordance with this section, to occupy the vacant seat, the person chosen by the assembly to occupy that vacancy will be the person so nominated.

- (8) If a person nominated to occupy a casual vacancy in accordance with this section is a person who would—

(a) in the case of a nomination to occupy a casual vacancy occurring in the Legislative Council—be required to immediately vacate his or her seat in accordance with section 17; or

(b) in the case of a nomination to occupy a casual vacancy occurring in the House of Assembly—be required to immediately vacate his or her seat in accordance with section 31,

the nomination will be taken to be invalid and of no effect.

## **Schedule 1—Related amendments and transitional provisions**

### **Part 1—Related amendment to *Electoral Act 1985***

#### **1—Amendment of section 47—Issue of writ**

Section 47(2)(a)—after "occurs" insert:

(other than a casual vacancy to which section 37A of the *Constitution Act 1934* applies)

### **Part 2—Transitional provision**

#### **2—Transitional provision**

The amendments effected by this Act apply in relation to a casual vacancy occurring after the commencement of this Act, whether the member whose seat has become vacant was elected before or after the commencement of this Act.