

House of Assembly—No 103

As laid on the table and read a first time, 6 March 2008

South Australia

**Constitution (Legislative Council Reform)
Amendment Bill 2008**

A BILL FOR

An Act to amend the *Constitution Act 1934*; and to make a related amendment to the *Subordinate Legislation Act 1978*.

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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 (Legislative Council Reform) Amendment Act 2008*.

5 2—Commencement

The commencement of this Act is subject to the operation of the *Referendum (Legislative Council Reform) Act 2008* and, if approved at the referendum, this Act will come into operation on the day on which it is assented to by the Governor.

3—Amendment provisions

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*

4—Amendment of section 5—Powers of the Parliament

Section 5—delete "Legislative Council and House of Assembly" and substitute:

House of Assembly and, subject to the limitations imposed by this Act, the
Legislative Council

5—Repeal of section 10

10 Section 10—delete the section

6—Amendment of section 13—Casual vacancies

(1) Section 13(2)—delete subsection (2) and substitute:

15 (2) An assembly need not be held under subsection (1) to supply a casual
vacancy if the vacancy occurs within 3 months before polling day for
a general election of members of the House of Assembly under
section 28.

(2) Section 13(3)(b)—delete "(otherwise than in pursuance of section 41)"

(3) Section 13(3)(d)—delete paragraph (d)

7—Substitution of sections 14 and 15

20 Sections 14 and 15—delete the sections and substitute:

14—Term of Legislative Councillors

25 (1) Subject to this Act, the term of office of a member of the Legislative
Council is a term expiring on the dissolution or expiry of the House
of Assembly (and the seat of a member is automatically vacated on
the dissolution or expiry of the House of Assembly without the
necessity of any action on the part of the member).

(2) An election for members of the Legislative Council will take place at
the time of the general election of members of the House of
Assembly.

8—Amendment of section 25—Continuance of President in office after dissolution or retirement

Section 25(1)—delete "by periodical retirement, or"

9—Amendment of section 28A—Early dissolution of House of Assembly

Section 28A(1)(d)—delete paragraph (d)

10—Amendment of section 38—Privileges, powers etc of Council and Assembly

Section 38—delete "The privileges" and substitute:

Subject to this Act, the privileges

5 **11—Substitution of section 41**

Section 41—delete the section and substitute:

41—Resolution of disputes as to Bills

(1) If—

- 10 (a) the House of Assembly passes a Bill that has originated in that House (to be called the *first Bill* for the purposes of this section); and
- 15 (b) within the period of 45 sitting days after the first Bill is transmitted to the Legislative Council the Legislative Council rejects or fails to pass the Bill, or passes the Bill with amendments to which the House of Assembly will not agree; and
- 20 (c) after the expiration of the period that applies under paragraph (b), a Bill (to be called the *second Bill* for the purposes of this section) that is the same as the first Bill (as originally passed by the House of Assembly) is introduced into the House of Assembly and passes that House, with amendments (if any) within the ambit of subsection (2); and
- 25 (d) within the period of 30 sitting days after the second Bill is transmitted to the Legislative Council the Legislative Council rejects or fails to pass the Bill, or passes the Bill with amendments to which the House of Assembly will not agree,

30 the second Bill, as passed by the House of Assembly, with amendments (if any) within the ambit of subsection (3), will be taken to be a Bill that has passed both Houses of Parliament and, subject to sections 8 and 10A (if relevant), may be presented to the Governor for assent.

(2) The following amendments are within the ambit of this subsection:

- 35 (a) amendments certified by the Speaker to be necessary to the second Bill owing to the time that has elapsed since the date of the first Bill;
- 40 (b) amendments certified by the Speaker to be consistent with amendments made to the first Bill by the Legislative Council, subject to any additional amendments to those amendments certified by the Speaker to be necessary owing to the time that has elapsed or to be necessary as consequential amendments.

(3) The following amendments are within the ambit of this subsection:

- (a) amendments within the ambit of subsection (2), subject to the operation of any amendments under paragraph (b);
- (b) amendments certified by the Speaker to have been made to the second Bill by the Legislative Council and agreed to by the House of Assembly, subject to any additional amendments to those amendments certified by the Speaker to be necessary owing to the time that has elapsed or to be necessary as consequential amendments.

(4) Amendments within the ambit of subsection (3) may have effect for the purposes of this section even if the Legislative Council, at some stage after making the amendments, orders the relevant Bill to be laid aside.

(5) The House of Assembly may, by resolution, extend the period of 45 sitting days referred to in subsection (1)(b) or the period of 30 sitting days referred to in subsection (1)(d) in relation to a particular Bill.

(6) A certificate of the Speaker given under this section will be conclusive for all purposes and may not be questioned.

(7) For the purposes of this section—

- (a) a reference to sitting days is a reference to sitting days of the House of Assembly;
- (b) a reference to amendments (in the context of amendments made by the Legislative Council) includes a reference to amendments suggested or proposed by the Legislative Council.

12—Amendment of section 57—Restoration of lapsed Bills

(1) Section 57(1)—delete ", and thereafter proceeded with as if no prorogation had intervened"

(2) Section 57—after subsection (2) insert:

(3) If a Bill is restored to the notice paper in accordance with this section, the Bill will, for the purposes of section 41 and for all other purposes, be treated as if no prorogation had occurred.

Schedule 1—Related amendments and transitional provisions

Part 1—Related amendment to *Subordinate Legislation Act 1978*

1—Amendment of section 10—Making of regulations

Section 10(5), (5a), (5b) and (6)—delete subsections (5), (5a), (5b) and (6)

2—Substitution of section 10AA—Commencement of regulations

Section 10AA—delete the section and substitute:

10AA—Commencement of regulations

A regulation comes into operation on the day on which it is made or
from such later date or time as is specified in the regulation.

3—Repeal of section 10A

Section 10A—delete the section

Part 2—Transitional provisions

4—Term of office members elected before commencement

- (1) This Act does not affect the term of office of a member of the Legislative Council elected at the election held on 18 March 2006 (or the term of office of a person chosen to occupy a vacant seat of such a member (if any)), and the *Constitution Act 1934* will continue to apply in relation to the term of office of such a member as if this Act had not been enacted.
- (2) However, when a member of the Legislative Council referred to in subsection (1) is required to retire in accordance with the provisions of the *Constitution Act 1934* applying to the member, then the member will, if re-elected, become subject to the *Constitution Act 1934* as amended by this Act.
- (3) If this Act is approved at a referendum held on the day on which a general election of members of the House of Assembly is held, then this Act, once assented to by the Governor, will affect the term of office of a member of the Legislative Council elected at the election for members of the Legislative Council held on that same day.

5—Powers of Legislative Council in relation to Bills

Section 41 of *Constitution Act 1934*, as enacted by this Act, applies in relation to Bills introduced into the Parliament after the commencement of this Act.