

House of Assembly—No 21

As laid on the table and read a first time, 13 October 2004

South Australia

**Statutes Amendment (Multi-Member Electorates)
Bill 2004**

A BILL FOR

An Act to amend the *Constitution Act 1934* and the *Electoral Act 1985*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Constitution Act 1934*

- 4 Amendment of section 27—Number of members of House of Assembly
- 5 Insertion of section 31A
 - 31A Casual vacancies
- 6 Substitution of section 32
 - 32 Electoral districts
- 7 Repeal of Part 5

Part 3—Amendment of *Electoral Act 1985*

- 8 Amendment of section 4—Interpretation
 - 9 Amendment of section 14—Electoral districts
 - 10 Amendment of section 47—Issue of writ
 - 11 Amendment of section 50—Failure of election
 - 12 Amendment of section 55—Proceedings on nomination day
 - 13 Insertion of section 59A
 - 59A Grouping of candidates in House of Assembly election
 - 14 Amendment of section 60—Printing of House of Assembly ballot papers
 - 15 Amendment of section 66—Display of certain electoral material
 - 16 Amendment of section 96—Scrutiny of votes in House of Assembly election
 - 17 Amendment of section 97—Re-count
 - 18 Amendment of section 99—Declaration of poll and return of writs for House of Assembly
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Multi-Member Electorates) Act 2004*.

5 2—Commencement

The commencement of this Act is subject to the operation of the *Referendum (Multi-Member Electorates) Act 2004* 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

- 10 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 27—Number of members of House of Assembly

- (1) Section 27—delete "The" and substitute:

Until the prescribed date the

- 5 (2) Section 27—after its current contents (now to be designated as subsection (1)) insert:

(2) On and from the prescribed date there are to be, in respect of each electoral district in the State, 5 members of the House of Assembly elected in accordance with the *Electoral Act 1985*.

- (3) In this section—

10 *prescribed date* means the day on which the first general election of Members of the House of Assembly after the commencement of this section occurs.

5—Insertion of section 31A

After section 31 insert:

15 31A—Casual vacancies

- (1) If a casual vacancy in the membership of the House of Assembly occurs, a person will be chosen to occupy the vacant seat by an assembly of the members of both Houses of Parliament.
- 20 (2) An assembly need not be held under subsection (1) to supply a casual vacancy if the casual vacancy occurs 3 months or less before the day fixed in accordance with section 28 for the next general election of Members of the House of Assembly.
- (3) Where—
- 25 (a) a casual vacancy occurs in the seat of a member of the House of Assembly; and
- (b) the House of Assembly is dissolved by the Governor (otherwise in pursuance of section 41) or expires by effluxion of time; and
- 30 (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,
- the vacancy will be supplied at the ensuing election.
- (4) The provisions applying under section 13(4) in relation to the constitution and proceedings of an assembly that is, in pursuance of section 13(1), to choose a person to occupy a vacancy in the Legislative Council apply equally in relation to the constitution and proceedings of an assembly that is, in pursuance of subsection (1), to choose a person to occupy a vacancy in the membership of the House of Assembly.
- 35

- 5
- (5) Where a casual vacancy in the membership of the House of Assembly is to be occupied by a person chosen by an assembly of the members of both Houses of Parliament, 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.
- 10

6—Substitution of section 32

Section 32—delete the section and substitute:

32—Electoral districts

- 15
- (1) The State is divided into House of Assembly electoral districts being those areas determined, from time to time, under Part IV of the *Commonwealth Electoral Act 1918* (the *Commonwealth Act*) as the electoral divisions for the State.
- (2) A redistribution occurring under the Commonwealth Act only has effect under this Act on and from the day on which the next general election of Members of the House of Assembly occurs.
- 20

7—Repeal of Part 5

Part 5—repeal the Part

Part 3—Amendment of *Electoral Act 1985*

8—Amendment of section 4—Interpretation

25 Section 4(1), definition of *electoral district* or *district*, (b)—delete "a member" and substitute:

members

9—Amendment of section 14—Electoral districts

Section 14(4)—delete subsection (4)

10—Amendment of section 47—Issue of writ

- 30 (1) Section 47(1)—delete "Subject to subsection (2), the" and substitute:

The

- (2) Section 47(2)—delete subsection (2)

11—Amendment of section 50—Failure of election

35 Section 50—after subsection (2) insert:

- (2a) A House of Assembly election will be taken to have partially failed if one or more candidates are returned as elected but not the full number required to be elected.

12—Amendment of section 55—Proceedings on nomination day

Section 55(1) and (2)—delete subsections (1) and (2) and substitute:

- 5
- (1) If the number of candidates nominated in respect of a Legislative Council or House of Assembly election is not greater than the number of candidates required to be elected—
 - (a) the appropriate district returning officer will make a declaration to that effect; and
 - (b) the candidate or candidates will be taken to be duly elected as from polling day.

13—Insertion of section 59A

Before section 60 insert:

59A—Grouping of candidates in House of Assembly election

- 15
- (1) Where two or more candidates in a House of Assembly election apply under this section to have their names grouped together on a ballot paper, the names of those candidates must be grouped together on the ballot paper.
 - (2) An application under subsection (1)—
 - (a) must be in a form approved by the Electoral Commissioner; and
 - (b) must be signed by all the candidates who are to be included in the group; and
 - (c) must set out the order in which the names of the candidates are to be included in the group; and
 - (d) must be received by the returning officer for the relevant House of Assembly district not later than the hour of nomination.
 - (3) A candidate is not entitled to have his or her name included in more than one group.

14—Amendment of section 60—Printing of House of Assembly ballot papers

30 (1) Section 60—before paragraph (a) insert:

- (aa) the names of the candidates included in groups must be printed in groups on the ballot papers before the names of candidates not included in groups; and
- (ab) the order of the groups in the ballot papers must be determined by lot; and

(2) Section 60(a)—delete "in the ballot papers" and substitute:

whose names are not included in any group

15—Amendment of section 66—Display of certain electoral material

Section 66(2)(d)—delete "for the purposes of a Legislative Council election"

16—Amendment of section 96—Scrutiny of votes in House of Assembly election

Section 96(3) to (11)—delete subsections (3) to (11) (inclusive) and substitute:

(3) The district returning officer must—

- 5
- (a) open the sealed parcels of ballot papers received from the assistant returning officers in or for the district and make a fresh scrutiny of the ballot papers contained in the parcels, and for that purpose he or she has the same powers as if the fresh scrutiny were the original scrutiny, and may reverse any decision given by an assistant returning officer in relation to the original scrutiny; and
- 10
- (b) arrange any unrejected ballot papers so scrutinised by him or her under the names of the respective candidates by placing in a separate parcel all those on which a first preference is indicated for the same candidate; and
- 15
- (c) count the first preference votes given for each candidate on those ballot papers.

(4) Where, for the purposes of the succeeding provisions of this section, the number of ballot papers or votes in any category is required to be ascertained or a quota or transfer value is required to be determined, the district returning officer must determine the quota or transfer value.

20

(5) The number of first preference votes given for each candidate and the total number of all such votes is to be ascertained and a quota determined by dividing the total number of first preference votes by 1 more than the number of candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by 1, and any candidate who has received a number of first preference votes equal to or greater than the quota will be elected.

25

(6) Unless all the vacancies have been filled, the number (if any) of votes in excess of the quota (in this section referred to as *surplus votes*) of each elected candidate will be transferred to the continuing candidates as follows:

30

- (a) the number of surplus votes of the elected candidate will be divided by the number of first preference votes received by him or her and the resulting fraction will be the transfer value;
- 35
- (b) the total number of ballot papers of the elected candidate that express the first preference vote for him or her and the next available preference for a particular continuing candidate will be multiplied by the transfer value, the number so obtained (disregarding any fraction) will be added to the number of first preference votes of the continuing candidate and all those ballot papers will be transferred to the continuing candidate,
- 40
- 45

and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer will be elected.

- 5 (7) Unless all the vacancies have been filled, the surplus votes (if any) of any candidate elected under subsection (6), or elected subsequently under this subsection, will be transferred to the continuing candidates in accordance with subsection (6)(a) and (b), and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer will be elected.
- 10 (8) Where a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under subsection (6) or subsection (7) of the surplus votes of a particular elected candidate, no votes of any other candidate will be transferred to the continuing candidate.
- 15 (9) For the purposes of the application of subsection (6)(a) and (b) in relation to a transfer under subsection (7) or (11) of the surplus votes of an elected candidate, each ballot paper of the elected candidate that was obtained by him or her on a transfer under this section will be dealt with as if any vote it expressed for the elected candidate were a first preference vote, as if the name of any other candidate previously elected or excluded had not been on the ballot paper and as if the numbers indicating subsequent preferences had been altered accordingly.
- 20 (10) Where, after the counting of first preference votes or the transfer of surplus votes (if any) of 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 will be excluded and all his or her votes will be transferred to the continuing candidates as follows:
- 25 (a) the total number of ballot papers of the excluded candidate that express the first preference vote for him or her and the next available preference for a particular continuing candidate will be transferred, each ballot paper at a transfer value of 1, to the continuing candidate and added to the number of votes of the continuing candidate and all those ballot papers will be transferred to the continuing candidate;
- 30 (b) the total number (if any) of other votes obtained by the excluded candidate on transfers under this section will be transferred from the excluded candidate in the order of the transfers on which he or she obtained them, the votes obtained on the earliest transfer being transferred first, as follows:
- 35
- 40

(i) the total number of ballot papers transferred to the excluded candidate from a particular candidate and expressing the next available preference for a particular continuing candidate will be multiplied by the transfer value at which the votes were so transferred to the excluded candidate;

(ii) the number so obtained (disregarding any fraction) will be added to the number of votes of the continuing candidate;

(iii) all those ballot papers will be transferred to the continuing candidate.

(11) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer under subsection (10) or (12) of votes of an excluded candidate is elected, and, unless all the vacancies have been filled, the surplus votes (if any) of the candidate so elected will be transferred in accordance with subsection (6)(a) and (b), except that, where the candidate so elected is elected before all the votes of the excluded candidate have been transferred, the surplus votes (if any) of the candidate so elected will not be transferred until the remaining votes of the excluded candidate have been transferred in accordance with subsection (10)(a) and (b) to continuing candidates.

(12) Subject to subsection (15), where, after the transfer of all the votes of an excluded candidate, no continuing candidate has received a number of votes greater than the quota, the continuing candidate who has the fewest votes is excluded and his or her votes transferred in accordance with subsection (10)(a) and (b).

(13) Where a candidate is elected as a result of a transfer of the first preference votes of an excluded candidate or a transfer of all the votes of an excluded candidate that were transferred to the excluded candidate from a particular candidate, no other votes of the excluded candidate will be transferred to the candidate so elected.

(14) In respect of the last vacancy, the continuing candidate who has the most votes will be elected despite the fact that the number may be below the quota.

(15) However, if, in respect of the last vacancy, the continuing candidates have an equal number of votes, the matter must be referred, on the application of the Electoral Commissioner, to the Court of Disputed Returns for the Court to determine the validity of any disputed ballot papers and—

(a) if the deadlock is resolved—the Court must declare the appropriate candidate elected; but

(b) if the deadlock is not resolved—the Court must order a fresh election to be held in accordance with any directions of the Court with the continuing candidates as the sole candidates in that election.

- 5
- (16) Subsection (15) does not limit the jurisdiction of the Court of Disputed Returns under Division 2 of Part 12 in relation to an election.
- (17) Despite any other provision of this section, where, on the completion of a transfer of votes under this section, the number of continuing candidates is equal to the number of remaining unfilled vacancies, those candidates are elected.
- (18) The district returning officer must, on the completion of the last count—
- 10
- (a) make out and sign a statement setting out the number of ballot papers and votes counted to each candidate at each count and the number of informal ballot papers, and forward the statement to the Electoral Commissioner; and
- 15
- (b) place in a separate parcel all the ballot papers which have been rejected as informal; and
- (c) place in a separate parcel all the unrejected ballot papers; and
- 20
- (d) seal up the parcels and endorse on each parcel a description of its contents, and permit any scrutineers present, if they so desire, to countersign the endorsement.
- (19) For the purposes of this Act—
- 25
- (a) the order of election of candidates in a House of Assembly election will be taken to be in accordance with the order of the count or transfer as a result of which they were elected, the candidates (if any) elected on the count of first preference votes being taken to be the earliest elected; and
- 30
- (b) where 2 or more candidates are elected as a result of the same count or transfer, the order in which they will be taken to have been elected will be in accordance with the relative numbers of their votes, the candidate with the largest number of votes being taken to be the earliest elected, but if any 2 or more of those candidates each have the same number of votes, the order in which they will be taken to have been elected will be taken to be in accordance with the relative numbers of their votes at the last count or transfer before their election at which each of them had a different number of votes, the candidate with the largest number of votes at that count or transfer being taken to be the earliest elected, and if there has been no such count or transfer the district returning officer will determine the order in which they will be taken to have been elected.
- 35
- 40
- (20) Subject to subsection (21) and (22), where, after any count or transfer under this section, 2 or more candidates have surplus votes, the order of any transfers of the surplus votes of those candidates will be in accordance with the relative sizes of the surpluses, the largest surplus being transferred first.
- 45

5 (21) Subject to subsection (22), where, after any count or transfer under this section, 2 or more candidates have equal surpluses, the order of any transfers of the surplus votes of those candidates will be in accordance with the relative numbers of votes of those candidates at the last count or transfer at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count or transfer being transferred first, but if there has been no such count or transfer the district returning officer must determine the order in which the surpluses are to be dealt with.

10 (22) Where, after any count or transfer under this section, a candidate obtains surplus votes, those surplus votes must not be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count or transfer.

15 (23) Where the candidate who has the fewest votes is required to be excluded and 2 or more candidates each have the fewest votes, whichever of those candidates had the fewest votes at the last count or transfer at which each of those candidates had a different number of votes will be excluded, but if there has been no such count or transfer, the district returning officer must determine which candidate is to be excluded.

20 (24) Where a candidate is elected by reason that the number of first preference votes received by the candidate, or the aggregate of first preference votes received by the candidate and all other votes obtained by the candidate on transfers under this section, is equal to the quota, all the ballot papers expressing those votes must be set aside as finally dealt with.

25 (25) In a case where a candidate has died between the date of nomination and polling day, a vote indicated on a ballot paper opposite the name of the deceased candidate must be counted to the candidate next in the order of the voter's preference, and the numbers indicating subsequent preferences will be taken to be altered accordingly.

30 (26) For the purposes of this section, a transfer under subsection (6), (7) or (11) of the surplus votes of an elected candidate, a transfer in accordance with subsection (10)(a) of all first preference votes of an excluded candidate or a transfer in accordance with subsection (10)(b) of all the votes of an excluded candidate that were transferred to him or her from a particular candidate each constitutes a separate transfer.

35 (27) In this section—

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

40 (28) In this section, a reference to votes of or obtained or received by a candidate includes votes obtained or received by the candidate on any transfer under this section.

17—Amendment of section 97—Re-count

Section 97(2) and (2a)—delete subsections (2) and (2a) and substitute:

- 5 (2) At any time before the declaration of the result of a House of
Assembly election, the district returning officer may, if he or she
thinks fit, and must, if so directed by the Electoral Commissioner,
conduct one or more recounts of the ballot papers from the Division
or of the ballot papers contained in any parcel.

**18—Amendment of section 99—Declaration of poll and return of writs for
House of Assembly**

- 10 (1) Section 99(1)(a) and (b)—delete "name of the candidate" wherever occurring and
substitute in each case:

names of the candidates

- (2) Section 99(3)—delete subsection (3) and substitute:

- 15 (3) Where the Electoral Commissioner has received statements from all
district returning officers in pursuance of subsection (1)(b), the
Electoral Commissioner must by endorsement certify on the writ for
the election the names of the candidates elected for each district and
return the writ to the Governor.