

(Reprint No. 2)

**SOUTH AUSTRALIA**

**CONSTITUTION ACT, 1934**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 11 February 1992.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

## SUMMARY OF PROVISIONS

PART I  
PRELIMINARY

## Section

1. Short title and commencement
2. Repeal
3. Division of Act

PART II  
THE LEGISLATURE*General Provisions*

4. Constitution of the Parliament
5. Powers of the Parliament
6. Place and time for holding Sessions of Parliament
7. Sessions of Parliament
8. Power of Parliament to alter this Act
9. Privileges of Parliament
10. Relative powers of Houses of Parliament
- 10a. Special provisions as to referendum

*The Legislative Council*

11. Number of members of Legislative Council
13. Casual vacancies
14. Term of service of Legislative Councillors
15. Order of retirement
16. Resignation of Legislative councillors
17. Vacation of seat in Council
19. Legislative Council district
23. Election of President of Legislative Council
24. Absence of President
25. Continuance of President in office after dissolution or retirement
26. Quorum of Council

*The House of Assembly*

27. Number of members of House of Assembly
28. Term of House of Assembly
- 28a. Dissolution of House of Assembly by Governor in first three years
30. Resignation of seats in the Assembly
31. Vacation of seats in the Assembly
32. Assembly districts
34. Election of the Speaker
35. Absence of Speaker
36. Continuance in office of Speaker and Chairman of Committees after dissolution
37. Quorum, etc.

*Both Houses of Parliament*

38. Privileges, powers, etc., of Council and Assembly
39. Privilege against legal proceedings abolished
40. Evidence of privileges
41. Settlement of deadlocks
42. Oath of allegiance
43. Determination of questions of vacancy
- 43a. Disqualification of members occupying seats in both Houses
44. Disqualification of Judges
45. Disqualification of members holding offices of profit
46. Effect of election of disqualified person
- 46a. Crown pensioners qualified for election
47. Prevention of membership of both Commonwealth and State Parliaments
48. Franchise for women
- 48a. Non-disqualification of women as members
49. Disqualification of persons holding certain contracts
50. Avoidance of seat of members accepting or holding certain contracts
51. Exemptions
52. Condition to be inserted in all public contracts
53. Sitting in Parliament whilst disqualified
54. Limitations of actions
- 54a. Provisions as to members of Parliamentary committees and royal commissions
55. Standing rules and orders
56. Governor's Message
57. Restoration of lapsed Bills
58. Provision as to President, Speaker, and officers
59. Governor's recommendation for money votes

*Money Bills*

- 60. Interpretation of secs. 60-63
- 61. Origin of money Bills and money clauses
- 62. Power of Council as to money clauses
- 63. Restriction on contents of ordinary appropriation Bill
- 64. Validity of Acts assented to

PART IIA

LOCAL GOVERNMENT

- 64a. Constitutional guarantee of continuance of local government in this State

PART III

THE EXECUTIVE

- 65. Number of Ministers of the Crown
- 66. Ministerial offices
- 67. Appointment of acting Ministers
- 68. Appointment of officers
- 69. Powers of Governor's Deputy
- 70. Power of deputy of Lieutenant-Governor or Administrator
- 71. Signature and counter-signature of certain orders, warrants, etc.
- 71a. Validation of certain warrants, etc.
- 73. Salary of the Governor
- 73a. Allowances to Governor for expenses
- 73b. Financial provisions

PART IV

THE JUDICIARY

- 74. Tenure of office of Judges
- 75. Removal from office of Judges

PART V

ELECTORAL REDISTRIBUTION

DIVISION I—PRELIMINARY

- 76. Definitions
- 77. Basis of redistribution

DIVISION II—ELECTORAL DISTRICTS BOUNDARIES COMMISSION

- 78. The Commission
- 79. Incorporation of Commission
- 80. Procedure, etc., at meetings
- 81. Secretary
- 82. Electoral redistributions
- 83. Electoral fairness and other criteria
- 84. Application of Royal Commissions Act
- 85. Representations to the Commission
- 86. Order of the Commission
- 87. Moneys required for the purposes of the Commission

DIVISION III—ENTRENCHMENT OF THIS PART

- 88. Special provisions as to referendum

SCHEDULES

# CONSTITUTION ACT, 1934

being

Constitution Act, 1934, No. 2151 of 1934 [Assented to 18 October 1934]<sup>1</sup>

as amended by

Statute Law Revision Act, 1935, No. 2246 of 1935 [Assented to 19 December 1935]  
Constitution Act Amendment Act, 1936, No. 2336 of 1936 [Royal Assent proclaimed 25 March 1937]  
Constitution Act Amendment Act, 1937, No. 2381 of 1937 [Royal Assent proclaimed 30 March 1938]  
Constitution Act Amendment Act, 1939, No. 48 of 1939 [Royal Assent proclaimed 28 March 1940]  
Constitution Act Amendment Act (No. 2), 1939, No. 49 of 1939 [Royal Assent proclaimed 28 March 1940]<sup>2</sup>  
Constitution Act Amendment Act, 1940, No. 31 of 1940 [Assented to 21 November 1940]  
Constitution Act Amendment Act, 1942, No. 8 of 1942 [Assented to 22 October 1942]  
Constitution Act Amendment Act, 1943, No. 41 of 1943 [Royal Assent proclaimed 27 March 1944]  
Constitution Act Amendment Act, 1947, No. 19 of 1947 [Assented to 6 November 1947]  
Public Finance Act, 1949, No. 48 of 1949 [Assented to 1 December 1949]  
Constitution Act Amendment Act, 1950, No. 38 of 1950 [Assented to 30 November 1950]  
Constitution Act Amendment Act, 1951, No. 4 of 1951 [Assented to 6 September 1951]<sup>3</sup>  
Constitution Act Amendment Act (No. 2), 1951, No. 52 of 1951 [Royal Assent proclaimed 6 March 1952]  
Constitution Act Amendment Act, 1953, No. 28 of 1953 [Royal Assent proclaimed 3 December 1953]  
Constitution Act Amendment Act (No. 2), 1953, No. 56 of 1953 [Royal Assent proclaimed 24 June 1954]  
Statutes Amendment (Public Salaries) Act, 1955, No. 3 of 1955 [Assented to 23 June 1955]<sup>4</sup>  
Constitution Act Amendment Act, 1955, No. 59 of 1955 [Royal Assent proclaimed 8 December 1955]  
Constitution Act Amendment Act, 1959, No. 39 of 1959 [Royal Assent proclaimed 17 December 1959]<sup>5</sup>  
Statutes Amendment (Public Salaries) Act, 1960, No. 8 of 1960 [Assented to 19 May 1960]  
Constitution Act Amendment Act, 1961, No. 24 of 1961 [Royal Assent proclaimed 22 February 1962]  
Statutes Amendment (Public Salaries) Act (No. 2), 1963, No. 52 of 1963 [Assented to 28 November 1963]  
Constitution Act Amendment Act, 1963, No. 67 of 1963 [Royal Assent proclaimed 6 February 1964]  
Constitution Act Amendment Act, 1965, No. 17 of 1965 [Assented to 10 November 1965]  
Constitution Act Amendment Act (No. 2), 1965, No. 26 of 1965 [Assented to 25 November 1965]  
Parliamentary Salaries and Allowances Act, 1965, No. 55 of 1965 [Assented to 23 December 1965]  
Constitution Act Amendment Act, 1969, No. 110 of 1969 [Royal Assent proclaimed 12 March 1970]  
Constitution Act Amendment Act (No. 3), 1970, No. 33 of 1970 [Assented to 19 November 1970]  
Constitution Act Amendment Act (No. 2), 1970-1971, No. 17 of 1971 [Assented to 8 April 1971]<sup>6</sup>  
Constitution Act Amendment Act (No. 2), 1971, No. 95 of 1971 [Assented to 3 December 1971]  
Constitution Act Amendment Act, 1972, No. 62 of 1972 [Assented to 24 August 1972]<sup>7</sup>  
Constitution Act Amendment Act (No. 2), 1973, No. 31 of 1973 [Assented to 20 September, 1973]  
Constitution Act Amendment Act, 1973, No. 51 of 1973 [Royal Assent proclaimed 22 November 1973]<sup>8</sup>  
Constitution and Electoral Acts Amendment Act, 1973, No. 52 of 1973 [Royal Assent proclaimed 22 November 1973]<sup>8</sup>  
Statute Law Revision Act, 1973, No. 77 of 1973 [Assented to 6 December 1973]  
Constitution Act Amendment Act, 1974, No. 45 of 1974 [Royal Assent proclaimed 4 July 1974]<sup>9</sup>  
Statutes Amendment (Committee Salaries) Act, 1974, No. 80 of 1974 [Assented to 31 October 1974]<sup>10</sup>  
Constitution Act Amendment Act, 1975, No. 59 of 1975 [Royal Assent proclaimed 26 June 1975]<sup>11</sup>  
Constitution Act Amendment Act (No. 2), 1975, No. 67 of 1975 [Assented to 2 October 1975]  
Constitution Act Amendment Act (No. 3), 1975, No. 68 of 1975 [Assented to 2 October 1975]  
Constitution Act Amendment Act (No. 5), 1975, No. 122 of 1975 [Royal Assent proclaimed 22 January 1976]<sup>12</sup>  
Constitution Act Amendment Act, 1976, No. 68 of 1976 [Assented to 25 November 1976]

<sup>1</sup> Came into operation 1 January 1935: *Gaz.* 20 December 1934, p. 1217.

<sup>2</sup> For application of Act *see* s. 4.

<sup>3</sup> Came into operation 1 July 1951: s. 4.

<sup>4</sup> Came into operation 1 June 1955: s. 16(2).

<sup>5</sup> Came into operation 1 January 1959: s. 4.

<sup>6</sup> Came into operation 30 June 1972: s. 2.

<sup>7</sup> Came into operation 28 September 1972: *Gaz.* 28 September 1972, p. 1665.

<sup>8</sup> Came into operation 22 November 1973: *Gaz.* 22 November, 1973 p. 2970.

<sup>9</sup> Came into operation 4 July 1974: s. 2.

<sup>10</sup> Came into operation 1 July 1974: s. 2.

<sup>11</sup> Came into operation 1 July 1974: s. 2.

<sup>12</sup> Came into operation 22 January 1976: *Gaz.* 22 January 1976, p. 258.

Constitution Act Amendment Act, 1978, No. 8 of 1978 [Assented to 14 March 1978]  
 Constitution Act Amendment Act (No. 2), 1978, No. 64 of 1978 [Assented to 28 September 1978]  
 Statutes Amendment (Remuneration of Parliamentary Committees) Act (No. 2), 1978, No. 101 of 1978 [Assented to 7 December 1978]  
 Constitution Act Amendment Act, 1980, No. 45 of 1980 [Assented to 3 July 1980]<sup>1</sup>  
 Constitution Act Amendment Act, 1981, No. 63 of 1981 [Royal Assent proclaimed 8 October 1981]<sup>2</sup>  
 Constitution Act Amendment Act (No. 2), 1981, No. 32 of 1982 [Royal Assent proclaimed 8 April 1982]  
 Constitution Act Amendment Act, 1982, No. 57 of 1982 [Royal Assent proclaimed 1 July 1982]  
 Constitution Act Amendment Act (No. 2), 1982, No. 77 of 1982 [Royal Assent proclaimed 2 September 1982]<sup>3</sup>  
 Constitution Act Amendment Act, 1985, No. 84 of 1985 [Royal Assent proclaimed 12 September 1985]<sup>4</sup>  
 Constitution Act Amendment Act (No. 2), 1986, No. 120 of 1986 [Assented to 18 December 1986]  
 Statutes Amendment (Finance and Audit) Act, 1987, No. 13 of 1987 [Assented to 9 April 1987]<sup>5</sup>  
 Constitution Act Amendment Act, 1987, No. 63 of 1987 [Assented to 22 October 1987]  
 Constitution Act Amendment Act, 1988, No. 1 of 1988 [Assented to 3 March 1988]<sup>6</sup>  
 Statutes Repeal and Amendment (Remuneration) Act, 1990, No. 18 of 1990 [Assented to 19 April 1990]<sup>7</sup>  
 Constitution (Electoral Redistribution) Amendment Act 1991 No. 1 of 1991 [Assented to 7 March 1991]  
 Parliamentary Committees Act 1991 No. 50 of 1991 [Assented to 21 November 1991]<sup>8</sup>

**An Act to consolidate certain laws relating to the Constitution of the State, and for other purposes incidental thereto.**

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

**Short title and commencement**

1. This Act may be cited as the *Constitution Act, 1934* and shall come into operation on a day to be fixed by proclamation.

**Repeal**

2. The Acts set out in the first schedule are repealed to the extent shown in that schedule.

**Division of Act**

3. This Act is divided into Parts as follows:—

PART I—Preliminary: sections 1-3.

PART II—The Legislature: sections 4-64.

PART IIA—Local Government: section 64a.

PART III—The Executive: sections 65-73c.

PART IV—The Judiciary: sections 74 and 75.

PART V—Electoral Redistribution: sections 76-88.

<sup>1</sup> Came into operation 10 July 1980: *Gaz.* 10 July 1980, p. 118.

<sup>2</sup> Came into operation 1 July 1981: s. 2.

<sup>3</sup> Came into operation 26 January 1984: *Gaz.* 3 November 1983, p. 1276.

<sup>4</sup> Came into operation (except s. 4) on Royal Assent; s. 4 came into operation 10 November 1985: s. 2(3).

<sup>5</sup> Came into operation 1 October 1987: *Gaz.* 17 September 1987, p. 886.

<sup>6</sup> Came into operation 5 May 1988: *Gaz.* 5 May 1988, p. 1115.

<sup>7</sup> Came into operation 19 April 1990: *Gaz.* 19 April 1990, p. 1136.

<sup>8</sup> Came into operation 11 February 1992: *Gaz.* 5 December 1991, p. 1668.

N.B. The Statutes Amendment (Remuneration of Parliamentary Committees) Act, 1978, was repealed before it was brought into operation.

Note: 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

## PART II

## THE LEGISLATURE

*General Provisions***Constitution of the Parliament**

4. There shall be a Legislative Council and a House of Assembly which shall be called the Parliament of South Australia, and shall be constituted in the manner provided by this Act.

**Powers of the Parliament**

5. The Legislative Council and House of Assembly shall have and exercise all the powers and functions formerly exercised by the Legislative Council constituted pursuant to section 7 of the Act of the Imperial Parliament, 13 and 14 Victoria, Chapter 59, entitled "An Act for the better Government of Her Majesty's Australian Colonies".

**Place and time for holding Sessions of Parliament**

6. (1) The Governor may—

- (a) fix such places and times for holding every session of the Parliament as he thinks fit:
- (b) from time to time change any such place or time as he judges advisable and most consistent with general convenience and the public welfare:
- (c) prorogue the Parliament from time to time:
- (d) dissolve the House of Assembly by Proclamation or otherwise whenever he deems it expedient:

Provided that this section shall not authorize the Governor to dissolve the Legislative Council.

(2) The Governor shall give sufficient notice of the time and place fixed for holding every session of Parliament, and of any change thereof.

**Sessions of Parliament**

7. There shall be a session of the 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.

**Power of Parliament to alter this Act**

8. The Parliament may, from time to time, by any Act, repeal, alter, or vary all or any of the provisions of this Act, and substitute others in lieu thereof: Provided that—

- (a) it shall not be lawful to present to the Governor, for His Majesty's assent, any Bill by which an alteration in the constitution of the Legislative Council or House of Assembly is made, unless the second and third readings of that Bill have been passed with the concurrence of an absolute majority of the whole number of the members of the Legislative Council and of the House of Assembly respectively:
- (b) every such Bill which has been so passed shall be reserved for the signification of His Majesty's pleasure thereon.

**Privileges of Parliament**

9. The Parliament may, by any Act, define the privileges, immunities, and powers to be held, enjoyed, and exercised by the Legislative Council and House of Assembly, and by the members thereof respectively; Provided that no such privileges, immunities, or powers shall exceed those held, enjoyed, and exercised on the twenty-fourth day of October, 1856, by the House of Commons, or the members thereof.

**Relative powers of Houses of Parliament**

10. Except as provided in the sections of this Act relating to money Bills, the Legislative Council shall have equal power with the House of Assembly in respect of all Bills.

**Special provisions as to referendum**

10a. (1) Except as provided in this section—

- (a) the House of Assembly shall not be abolished;
  - (b) the Legislative Council shall not be abolished;
  - (c) the powers of the Legislative Council shall not be altered;
  - (d) sections 8 and 41 of this Act shall not be repealed or amended;
- and
- (e) any provision of this section shall not be repealed or amended.

(2) A Bill providing for or effecting—

- (a) the abolition of the House of Assembly;
- (b) the abolition of the Legislative Council;
- (c) any alteration of the powers of the Legislative Council;
- (d) the repeal or amendment of section 8 or section 41 of this Act;

or

- (e) the repeal or amendment of any provision of this section,

shall be reserved for the signification of Her Majesty's pleasure thereon, and 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.

(3) On a day which shall be appointed by proclamation, being a day not sooner than two months after the Bill has passed through both the Houses of Parliament, the Bill shall, as provided by and in accordance with an Act which must be passed by Parliament and in force prior to that day, be submitted to the persons whose names appear as electors on the electoral rolls kept under the *Electoral Act, 1929-1965*, as amended, for the election of members of the House of Assembly.

(4) When the Bill is so submitted as provided by and in accordance with the Act referred to in subsection (3) of this section, a vote shall be taken in such manner as is prescribed by that Act.

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

(6) Without restricting or enlarging the application of this section, this section shall not apply to any Bill providing for or effecting—

- (a) the repeal;

(b) the amendment from time to time;

or

(c) the re-enactment from time to time with or without modification,

of section 11, 12, 16, 17, 18, 19, 20, 20a, 21, 22, 44, 45, 46, 46a, 48, 48a, 49, 50, 51, 52, 53, 54, 54a, 55, 56, 57, 58, 59, 60, 61, 63, 64 or 65 of this Act as in force immediately after the commencement of the *Constitution Act Amendment Act, 1969*, or of any enactment for the time being in force so far as it relates to the subject matter dealt with in any of those sections.

(7) Any person entitled to vote at an election for a member or members of the House of Assembly or the Legislative Council shall have the right to bring an action in the Supreme Court for a declaration, injunction or other legal remedy to enforce any of the provisions of this section either before or after any Bill referred to in this section is presented to the Governor for Her Majesty's assent.

### *The Legislative Council*

#### **Number of members of Legislative Council**

11. The Legislative Council shall consist of twenty-two members elected by the inhabitants of the State legally qualified to vote.

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#### **Casual vacancies**

13. (1) Subject to this section, where a casual vacancy occurs by death, resignation or otherwise in the seat of a member of the Legislative Council, a person shall be chosen to occupy the vacant seat by an assembly of the members of both Houses of Parliament.

(2) An assembly need not be held under subsection (1) to supply a casual vacancy if the vacancy occurs 3 months or less before 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.

(3) Where—

(a) a casual vacancy occurs in the seat of a member of the Legislative Council;

(b) the House of Assembly is dissolved by the Governor (otherwise than in pursuance of section 41) or expires by effluxion of time;

(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

(d) 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 shall be supplied at the ensuing election.

(4) The following provisions apply 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 Legislative Council:

(a) the assembly shall meet at a time and place appointed by proclamation;

(b) a member of the House of Assembly or the Legislative Council appointed by proclamation shall preside over the assembly;

- (c) a suitable person shall be appointed by proclamation to be the clerk of the assembly;
- (d) the procedural rules (if any) prescribed by proclamation shall 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 shall be decided by the person presiding or, if the assembly is dissatisfied with his decision, by the assembly itself;
- (e) the members of the assembly shall, in relation to proceedings before the assembly, have 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;
- (g) a question before the assembly shall be decided by a majority of the votes cast by the members of the assembly;

and

- (h) each member of the assembly, except the person presiding, shall be entitled to one vote on a question arising before the assembly and, in the event of an equality of votes, the person presiding shall have a casting vote.

(5) Where a casual vacancy in the membership of the Legislative Council 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 election publicly recognized by a particular political party as being an endorsed candidate of that party and publicly represented himself to be such a candidate, the person chosen by the assembly to occupy that vacancy shall, 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.

#### **Term of service of Legislative Councillors**

14. (1) Subject to this Act, a member of the Legislative Council shall occupy his seat until he is required to retire in accordance with this section.

(2) Subject to subsection (3), whenever the House of Assembly is dissolved by the Governor (otherwise than in pursuance of section 41) or expires by effluxion of time, 11 members of the Legislative Council shall retire and an election to supply the resulting vacancies shall take place at the time of the general election of members of the House of Assembly.

(3) A member of the Legislative Council is not required to retire under subsection (2) unless—

- (a) in the case of a member elected at an election held upon dissolution of the Legislative Council under section 41—3 years have elapsed from the first day of March in the year in which that election was held;
- (b) in any other case—6 years have elapsed from the first day of March in the year in which the member was last elected.

(4) The seat of a member of the Legislative Council who is required to retire under subsection (2) is automatically vacated on the dissolution or expiry of the House of Assembly without the necessity of any action on the part of the retiring member.

**Order of retirement**

15. (1) Subject to this section, the order of retirement as between members of the Legislative Council shall be determined by reference to the period they have occupied their seats since the date of their last election, so that a member who has occupied his seat for a longer period retires before a member who has occupied his seat for a shorter period.

(2) For the purposes of subsection (1), where a casual vacancy occurs in the seat of a member of the Legislative Council and a person is chosen to occupy the vacant seat by an assembly of the members of both Houses of Parliament, the person so chosen shall be deemed to have occupied the seat since the date on which a person was last elected to occupy it.

(3) Where a casual vacancy occurs in the seat of a member of the Legislative Council, and the vacancy is to be supplied at an election in pursuance of section 13(3), the member formerly occupying the vacant seat shall be counted as one of the 11 retiring under section 14(2).

(4) Where an election is held upon dissolution of the Legislative Council under section 41—

(a) the Electoral Commissioner shall, as soon as practicable after the election, publish by notice in the *Gazette* the names of those members of the Legislative Council who would have been elected on the votes cast at the election if—

(i) the election had been one to supply 11 vacancies in the membership of the Legislative Council;

and

(ii) the only names of candidates appearing on the ballot-papers at that election were the names of the members elected at the election and the numbers indicating preferences had been altered accordingly;

and

(b) the 11 members whose names are not so published (including any member who was chosen by an assembly of the members of both Houses of Parliament to occupy a casual vacancy occurring in the seat of any such member) shall be the first to retire under section 14(2).

**Resignation of Legislative councillors**

16. (1) Any member of the Legislative Council may resign his seat in the Council by writing under his hand, addressed to the President of the Council, and delivered to the President forthwith after the signing thereof, and upon the receipt of such resignation by the President the seat of the member shall become vacant.

(2) If there is a vacancy in the office of the President of the Legislative Council, or if the President is absent from the State or incapacitated from performing the duties of his office the resignation may be delivered to the Governor, and when so delivered, shall have the same effect as if delivered to the President.

**Vacation of seat in Council**

17. If any member of the Legislative Council—

(a) without permission of the Council fails for twelve sitting days consecutively of any session of the Council to give his attendance therein; or

- (b) takes any oath or makes any declaration or act of acknowledgment or allegiance to any foreign prince or power; or
- (c) does, concurs in, or adopts any act whereby he may become a subject or citizen of any foreign state or power; or
- (d) becomes bankrupt; or
- (e) takes the benefit of any law relating to insolvent debtors; or
- (f) becomes a public defaulter; or
- (g) is attainted of treason; or
- (h) is convicted of a felony or any infamous crime; or
- (i) becomes of insane mind,

his seat in the Council shall thereby become vacant.

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**Legislative Council district**

19. The whole of the State constitutes a single Legislative Council electoral district.

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**Election of President of Legislative Council**

23. (1) The Legislative Council shall, at its first meeting, and before proceeding to the dispatch of any other business, elect some member of the Council to be the President thereof, and as often as the place of the President becomes vacant by death, resignation, vacation of seat, or removal by a vote of the Council, the Council shall again elect some other member to be the President thereof.

(2) The President so elected shall preside at all meetings of the Council.

(3) The election of the President of the Council shall be notified to the Governor by a deputation of the Council.

**Absence of President**

24. If the President of the Legislative Council is absent in consequence of leave of absence granted to him by the Council, or of illness, or other unavoidable cause, the Council may choose some other member of the Council to fill temporarily the office and perform the duties of the President during his absence.

**Continuance of President in office after dissolution or retirement**

25. (1) If the President of the Legislative Council vacates his seat by periodical retirement, or by reason of the dissolution of the Council, he shall nevertheless be and be deemed to be, the President of the Council until the next meeting of Parliament, unless he is not re-elected a member of the Council.

(2) This section shall not enable any person continued in the office of President by this section to preside at any meeting of the Legislative Council.

**Quorum of Council**

26. (1) The Legislative Council shall not be competent to proceed with the dispatch of business unless there are present, including the President, or the person chosen to preside in his absence, at least ten members of the Council.

(2) All questions which arise shall be decided by a majority of the votes of those members of the Council who are present exclusive of the President, or the person chosen as aforesaid, who shall be allowed a casting vote.

(3) Where a question arises with respect to the passing of the second or third reading of any Bill, and in relation to that question the President, or person chosen as aforesaid, has not exercised his casting vote, the President, or person chosen as aforesaid, may indicate his concurrence or nonconcurrence in the passing of the second or third reading of that Bill.

*The House of Assembly***Number of members of House of Assembly**

27. The House of Assembly shall consist of forty-seven members elected by the inhabitants of the State legally qualified to vote.

**Term of House of Assembly**

28. Every House of Assembly shall, subject to earlier dissolution under this Act, continue for four years from the day on which it first meets for the dispatch of business after a general election but—

- (a) if that period of 4 years would expire on or after the first day of October and on or before the last day of February next following, the House of Assembly shall continue up to and including that last day of February and then expire;
- (b) if that period of 4 years would expire on or after the first day of March and on or before the last day of September next following, the House of Assembly shall expire on that first day of March.

**Dissolution of House of Assembly by Governor in first three years**

28a. (1) The House of Assembly shall not be dissolved by the Governor before the expiration of 3 years from the day on which it first met for the dispatch of business after a general election unless—

- (a) a motion of no confidence in the government is passed in the House of Assembly;
- (b) a motion of confidence in the government is defeated in the House of Assembly;
- (c) a Bill of special importance passed by the House of Assembly is rejected by the Legislative Council;

or

- (d) the Governor is acting in pursuance of section 41.

(2) The Governor shall not dissolve the House of Assembly under subsection (1)(c) on the ground of the rejection by the Legislative Council of a Bill of special importance passed by the House of Assembly if more than 1 month has elapsed since the rejection of the Bill by the Legislative Council.

(3) Where a Bill of special importance is passed by the House of Assembly, the Speaker shall certify in the message transmitting the Bill to the Legislative Council that the Bill is such a Bill and that certification shall be conclusive for all purposes and may not be questioned.

(4) For the purposes of this section, a Bill of special importance shall be deemed to have been rejected by the Legislative Council if—

- (a) the Bill is defeated on a vote taken in the Legislative Council;
- (b) the Bill has not been passed by the Legislative Council at the expiration of 2 months from the date of the transmission of the Bill to the Legislative Council;
- (c) the Bill is passed by the Legislative Council with an amendment or suggested amendment to which the House of Assembly disagrees and the differences between the Houses are not resolved within 1 month after the passing of the Bill by the Legislative Council.

(5) In this section—

“Bill of special importance” means a Bill declared by resolution of the House of Assembly, passed before, or immediately after, the third reading of the Bill in the House of Assembly, to be a Bill of special importance.

\* \* \* \* \*

#### Resignation of seats in the Assembly

30. (1) Any member of the House of Assembly may resign his seat in the House by writing under his hand, addressed to the Speaker of the House, and delivered to the Speaker forthwith after the signing thereof, and upon the receipt of such resignation by the Speaker, the seat of the member shall become vacant.

(2) If there is a vacancy in the office of Speaker or if the Speaker is absent from the State or incapacitated from performing the duties of his office, the resignation may be delivered to the Governor and when so delivered shall have the same effect as if delivered to the Speaker.

#### Vacation of seats in the Assembly

31. If any member of the House of Assembly—

- (a) for twelve sitting days consecutively of any session of the House of Assembly without the permission of the House entered upon its journals fails to give his attendance in the House; or
- (b) takes any oath or makes any declaration or acknowledgment of allegiance, obedience, or adherence to any foreign prince or power; or
- (c) does, concurs in, or adopts any act whereby he may become a subject or citizen of any foreign state or power; or
- (d) becomes entitled to the rights, privileges, or immunities of a subject or citizen of any foreign state or power; or
- (e) becomes bankrupt or an insolvent debtor within the meaning of the laws in force in the State relating to bankrupts or insolvent debtors; or
- (f) becomes a public defaulter; or
- (g) is attainted of treason; or
- (h) is convicted of a felony or any infamous crime; or
- (i) becomes of unsound mind,

his seat in the House of Assembly shall thereby become vacant.

**Assembly districts**

32. (1) The State shall be divided into House of Assembly electoral districts in accordance with the last effective electoral redistribution.

(2) Where the Commission has published an order dividing the State into House of Assembly electoral districts, and—

(a) the order has become operative;

and

(b) the order has not been superseded by a subsequent operative order of the Commission,

the State shall, as from the day on which a general election of members of the House of Assembly is next held be divided into the appropriate number of House of Assembly electoral districts described in the order.

(3) An order of the Commission becomes operative for the purposes of this section upon the expiration of the prescribed period from the date of publication of the order.

(4) Each electoral district shall return one member of the House of Assembly.

(5) In this section—

“the appropriate number” means a number equal to the number of members of the House of Assembly from time to time prescribed by section 27 of this Act:

“the Commission” means the Electoral Districts Boundaries Commission established under Part V of this Act:

“the last effective electoral redistribution” means the division of the State into House of Assembly electoral districts that last took effect under subsection (2):

“the prescribed period”, in relation to an order of the Commission, means—

(a) where no appeal has been made against the order—the period of three months from the date of publication of the order;

or

(b) where an appeal has been made against the order—the period extending from the date of publication of the order to the date falling three months after the day on which all appeals have been finally determined.

\* \* \* \* \*  
\* \* \* \* \*

**Election of the Speaker**

34. (1) 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 House, the said members shall forthwith proceed to elect another of their number to be Speaker.

(2) The Speaker so elected shall preside at all meetings of the House of Assembly.

(3) The election of the Speaker shall be forthwith notified to the Governor by a deputation of the House.

**Absence of Speaker**

35. If the Speaker of the House of Assembly is absent in consequence of leave of absence granted to him by the House, or of illness or other unavoidable cause, the House may choose some other member of the House to fill temporarily the office and perform the duties of the Speaker during his absence.

**Continuance in office of Speaker and Chairman of Committees after dissolution**

36. (1) In case of any dissolution of Parliament the Speaker of the House of Assembly at the time of the dissolution shall be, and shall be deemed to be, the Speaker of the House until the first meeting of the new Parliament, unless he is not re-elected a member of the House; and the Chairman of Committees at the time of the dissolution shall be, and shall be deemed to be, the Chairman of Committees until the first meeting of the new Parliament, unless he is not re-elected a member of the House.

(2) This section shall not enable any person continued in the office of Speaker by this section to preside at any meeting of the House of Assembly.

**Quorum, etc.**

37. (1) The House of Assembly shall not be competent to proceed with the dispatch of business unless there are present, including the Speaker or a person chosen to preside in his absence, at least seventeen members of the House.

\* \* \* \* \*

(2) All questions which arise in the House of Assembly shall be decided by the majority of votes of the members present, other than the Speaker or person aforesaid.

(3) When the votes are equal the Speaker or person aforesaid shall have the casting vote.

(4) Where a question arises in the House of Assembly with respect to the passing of the second or third reading of any Bill and in relation to that question the Speaker, or person aforesaid has not exercised his casting vote, the Speaker or person aforesaid may indicate his concurrence or nonconcurrence in the passing of the second or third reading of that Bill.

*Both Houses of Parliament***Privileges, powers, etc., of Council and Assembly**

38. The privileges, immunities, and powers of the Legislative Council and House of Assembly respectively, and of the committees and members thereof respectively, shall be the same as but no greater than those which on the twenty-fourth day of October, 1856, were held, enjoyed, and exercised by the House of Commons and by the committees and members thereof, whether such privileges, immunities, or powers were so held, possessed, or enjoyed by custom, statute, or otherwise.

**Privilege against legal proceedings abolished**

39. No member of the Parliament shall be entitled to set up or claim any of the privileges, immunities, or powers to which he may be entitled by virtue of the last preceding section, as against any summons, subpoena, writ, order, process, or proceeding whatsoever issued by any court of law within the said province: Provided that—

- (a) no writ of *capias ad satisfaciendum* shall be executed or put into effect against any such member during any session of Parliament, or within ten days prior to the meeting thereof; and

- (b) no member shall be liable to any penalty or process for non-attendance as a witness in any court when such non-attendance is occasioned by his attendance in his place in Parliament.

#### Evidence of privileges

40. Any copy of the journals of the House of Commons printed, or purporting to be printed, by the order or printer of the House of Commons shall be received as *prima facie* evidence, without proof of its being such copy, upon any inquiry touching the privileges, immunities, and powers of the Legislative Council or House of Assembly, or of any committee or member thereof, respectively.

#### Settlement of deadlocks

41. (1) Whenever—

- (a) any Bill has been passed by the House of Assembly during any session of Parliament; and
- (b) the same Bill or a similar Bill with substantially the same objects and having the same title has been passed by the House of Assembly during the next ensuing Parliament; and
- (c) a general election of the House of Assembly has taken place between the two Parliaments; and
- (d) the second and third readings of the Bill were passed in the second instance by an absolute majority of the whole number of members of the House of Assembly; and
- (e) both such Bills have been rejected by the Legislative Council or failed to become law in consequence of any amendments made therein by the Legislative Council,

it shall be lawful for but not obligatory upon the Governor within six months after the last rejection or failure—

- (i) to dissolve the Legislative Council and House of Assembly by proclamation to be published in the *Gazette*; or
  - (ii) to issue writs for the election of two additional members for each Council district.
- (2) If the Legislative Council and House of Assembly are so dissolved—
- (a) all the members of both Houses of Parliament shall thereupon vacate their seats and members shall be elected to supply the vacancies so created; and
  - (b) the order of retirement as between members of the Legislative Council elected after such dissolution shall be as provided in section 15 of this Act and one-half of such members shall retire after three years' service calculated from the first day of March of the year of their election or after such further period as is provided for in section 14.

(3) If writs for the election of additional members of the Council are issued, after the issue of such writs no vacancy whether arising before or after the issue thereof shall be filled except as may be necessary to bring the representation of the district in which the vacancy occurs to its proper number as set forth in the second schedule of this Act. Whenever there are more seats vacated by members returned for the same district than there are seats to be filled and such members' seats were of unequal tenure the seats of those members the unexpired portions of whose terms are the shorter shall be first filled.

**Oath of allegiance**

42. (1) No member of Parliament, elected a member of Parliament on or after the commencement of the *Constitution Act Amendment Act, 1972*, shall be permitted to sit or vote therein until he has taken and subscribed the following oath before the Governor, or before some person or persons authorized by the Governor to administer such oath:—

“I, \_\_\_\_\_, do swear that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth the Second, Her Heirs and Successors, according to law. SO HELP ME GOD!”.

(2) It shall not be necessary for any member of Parliament who has taken the oath prescribed herein to take the said oath again in the event of the demise of the Crown; such oath shall be deemed to relate to the Sovereign, His heirs, and successors according to law, and the name of the Sovereign for the time being shall be substituted as occasion requires.

(3) Nothing in this section shall be deemed to affect the operation of the *Oaths Act, 1936*, as amended, which entitles any person to make an affirmation in lieu of taking any oath required by this Act.

(4) In the case of a member of Parliament elected before the commencement of the *Constitution Act Amendment Act, 1972*, section 42 of the *Constitution Act, 1934-1971*, as in force immediately before that commencement, shall, during so much of the term of office for which that member was elected as occurs after that commencement, apply in respect of that member as if the *Constitution Act Amendment Act, 1972*, had not been enacted.

**Determination of questions of vacancy**

43. Whenever any question arises respecting any vacancy in either House of Parliament it shall be heard and determined by the House in which the vacancy occurred.

**Disqualification of members occupying seats in both Houses**

43a. (1) No member of the Legislative Council shall be capable of being nominated as a candidate for election as a member of the House of Assembly.

(2) No member of the House of Assembly shall be capable of being chosen by an assembly of the members of both Houses of Parliament to supply a casual vacancy in the membership of the Legislative Council.

**Disqualification of Judges**

44. No Judge of any court of the State shall be capable of being elected a member of the Parliament.

**Disqualification of members holding offices of profit**

45. (1) If any member of the Parliament accepts any office of profit or pension from the Crown, during pleasure, excepting those offices which are required by or under this Act or any other Act to be held by members of Parliament, his seat shall be thereupon and is hereby declared to be vacant.

(1a) Subsection (1) does not prevent a member of Parliament from accepting office as a Minister of the Crown, or a Minister of the Crown from accepting an appointment to act in the office of another Minister.

(2) If a candidate for election as a member of Parliament holds an office of profit from the Crown he shall, unless he resigns that office before the date of the declaration of poll, be incapable of being elected.

**Effect of election of disqualified person**

46. (1) If any person by this Act disabled from or declared to be incapable of voting or sitting in Parliament is, nevertheless, elected and returned as a member to serve in Parliament for any electoral district, his election and return shall be void to all intents and purposes whatsoever.

(2) If any person so elected and returned, contrary to the provisions of this Act, sits or votes as an elected member of Parliament he shall forfeit the sum of one thousand dollars to be recovered by any person who sues for it in the Supreme Court or in any other court of record in the State having competent jurisdiction.

**Crown pensioners qualified for election**

46a. Notwithstanding any other provision of this Act a person who has been in the employment of the Crown and has retired from that employment, and has by virtue of that employment become entitled to a pension wholly or partly paid by the Crown, shall not, by reason only of the receipt of that pension—

- (a) be disabled from or incapable of being elected as a member of the Parliament or of sitting and voting therein; or
- (b) be liable to any forfeiture, fine, or other disability for so sitting and voting.

**Prevention of membership of both Commonwealth and State Parliaments**

47. (1) No member of either House of the Parliament of the Commonwealth shall be a member of either House of the Parliament of the State.

(2) If any member of either House of the Parliament of the State is elected a member of either House of the Parliament of the Commonwealth he shall vacate his seat in the Parliament of the State on taking his seat in the Parliament of the Commonwealth.

**Franchise for women**

48. Women shall possess and may exercise the right to vote at parliamentary elections subject to the same qualifications and in the same manner as men.

**Non-disqualification of women as members**

48a. A woman shall not be disqualified by sex or marriage for being elected to, or sitting or voting as a member of, either House of the Parliament.

**Disqualification of persons holding certain contracts**

49. (1) Any person who—

- (a) 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, agreement, or commission made or entered into with, under, or from any person or persons whatsoever, for or on account of the Government of the State; or
- (b) knowingly and willingly furnishes or provides in pursuance of any such agreement, contract, or commission made or entered into as aforesaid, any money to be remitted abroad, or any wares or merchandise to be used or employed in the service of the public; or

- (c) is a member of any company, or holds any office or position in any company formed for the construction of any railway, or other public work, the payment for which, or the interest on the cost of which has been guaranteed by the State,

shall be incapable of being elected, or of sitting or voting as a member of the Parliament during the time he executes, holds, or enjoys any such contract, agreement, or commission, or office, or position, or any part or share thereof, or any benefit or emolument arising from the same.

(2) An officer or employee of the Crown is not disqualified by this section from being a candidate for election as a member of the Parliament but shall, unless he resigns that office or employment before the date of the declaration of poll, be incapable of being elected.

#### **Avoidance of seat of members accepting or holding certain contracts**

**50.** If any person, being a member of the Parliament—

- (a) directly or indirectly, himself or by any other person whatsoever in trust for him, or for his use or benefit, or on his account, enters into, accepts, agrees for, undertakes or executes in the whole or in part, any such contract, agreement, or commission as aforesaid; or
- (b) having already entered into any such agreement or commission, or part or share of any such contract, agreement, or commission, by himself, or by any other person whatsoever in trust for him, or for his use or benefit, or upon his account, continues to hold, execute, or enjoy the same, or any part thereof,

his seat in the Parliament shall be and is hereby declared to be void.

#### **Exemptions**

**51.** Nothing contained in the preceding two sections shall extend—

- (a) to persons contributing towards any loan raised for public purposes under the authority of Parliament; nor
- (b) to the holders of any bonds issued under any Act authorizing any such loan; nor
- (c) to any contract, agreement, or commission made, entered into, or accepted by any incorporated trading company in its corporate capacity, if that incorporated company consists of more than twenty persons, and the contract, agreement, or commission is made, entered into, or accepted for the general benefit of such incorporated company; nor
- (d) to any contract or agreement in respect of any lease, licence, or agreement in respect to the sale or occupation of any waste lands of the Crown, or Crown lands; nor
- (e) to any person on whom the completion of any contract, agreement, or commission devolves by descent, or limitation, or by marriage, or as devisee, or legatee, until twelve calendar months after he has been in possession of the same; nor
- (f) to any executor, or administrator, until three years after he has been in possession of the contract, agreement, or commission; nor

- (g) to the supply or provision or any contract for the supply or provision by or to the Government or by or to any person on behalf of the Government, of any goods, chattels or services where such goods, chattels or services are supplied or provided on no better terms than those on which they are ordinarily supplied or provided to members of the public; nor
- (h) to any loan made under any Act by the government or by any person on behalf of the Government to any person who was not a member of the Parliament at the time when the loan was made; nor
- (i) to any contract or agreement in respect of any bet made in the ordinary course of business with the South Australian Totalizator Agency Board, whether as principal or as agent; nor
- (j) to any contract or agreement to participate in any lottery or for the purchase of any ticket in a lottery conducted by the Lotteries Commission of South Australia where the contract or agreement or purchase was made or entered into in the ordinary course of business of the Commission; nor
- (k) to any contract, agreement or commission made, entered into or accepted in the ordinary course of business in respect of any policy of insurance issued by the State Government Insurance Commission or in respect of any loan made in the ordinary course of business by the South Australian Superannuation Fund Board under the *Superannuation Act, 1969*, as amended, or under any corresponding previous enactment; nor
- (l) to any contract or agreement made or entered into in the ordinary course of business—
  - (i) with the South Australian Housing Trust for the sale, purchase or letting of any land;
  - or
  - (ii) with the State Bank of South Australia or the Savings Bank of South Australia in respect of any loan whether by way of overdraft or otherwise; nor
- (m) to any contract, agreement, advance or payment made or entered into under, or any assistance granted pursuant to an arrangement or scheme referred to in, the *Marginal Dairy Farms (Agreement) Act, 1971*, the *Rural Industry Assistance (Special Provisions) Act, 1971*, or the *Primary Producers Emergency Assistance Act, 1967*; nor
- (n) to any royalty or commission paid by or on behalf of the Government in respect of any mining or quarrying activity on any land where the royalty or commission is calculated at no better rate or on no better conditions than would apply if the royalty or commission were ordinarily paid to a member of the public; nor
- (o) to any guarantee or contract, agreement, payment or condition relating to any guarantee under the *Homes Act, 1941*, as amended; nor
- (p) to any payment made by the Government to a member of Parliament out of moneys received by the Government from any insurer in respect of any policy of insurance relating to that member of Parliament.

#### Condition to be inserted in all public contracts

52. (1) In every such contract, agreement, or commission made, entered into, or accepted as aforesaid (except a contract, agreement or commission referred to in section 51 of this Act), there shall be inserted an express condition that no member of the Parliament be admitted to any share or part of such contract, agreement, or commission, or to any benefit to arise therefrom.

(2) If any person who has entered into or accepted any such contract, agreement, or commission (except a contract, agreement or commission referred to in section 51 of this Act), admits any member of Parliament to any part or share thereof, or to receive any benefit thereby, he shall forfeit and pay the sum of one thousand dollars to be recovered, with full costs of suit, by any person who sues for it in the Supreme Court, or in any other court of competent jurisdiction.

#### **Sitting in Parliament whilst disqualified**

53. If any person disabled or declared by section 49 or 50 incapable of being elected, sits or votes as a member of either House of the Parliament, he shall forfeit the sum of one thousand dollars to be recovered, with full costs of suit, by any person who sues for it in the Supreme Court or any other court of competent jurisdiction.

#### **Limitations of actions**

54. No person shall be liable to any forfeiture or penalty imposed by section 52 or 53, unless a prosecution is commenced within twelve calendar months after the forfeiture or penalty has been incurred.

#### **Provisions as to members of Parliamentary committees and royal commissions**

54a. (1) Notwithstanding any other provision of this Act, the seat of a member of Parliament shall not be or become vacant and a member of Parliament shall not be liable to any forfeiture, fine, or other disability by reason only of the fact that—

- (a) he accepts or holds office as the chairman or a member of any committee appointed by either House of Parliament or by both Houses of Parliament, or of any royal commission:
- (b) as such chairman or member, he receives or is entitled to receive any salary, fees, allowances or other emoluments.

(2) The election of any person as a member of Parliament shall not be affected by reason only of the fact that he holds any such office or receives or is entitled to receive any such salary, fees or other emoluments.

#### **Standing rules and orders**

55. (1) The Legislative Council and House of Assembly from time to time as there shall be occasion, shall prepare and adopt such Standing Rules and Orders as appear to the Council and Assembly respectively best adapted for—

- (a) the orderly conduct of the Council and Assembly respectively:
- (b) the regulation of the proceedings thereof and the dispatch of business therein:
- (c) the manner in which the Council and Assembly shall be presided over in case of the absence of the President or Speaker:
- (d) the mode in which the Council and Assembly shall confer, correspond, and communicate with each other relative to votes or Bills passed by or pending in the Council and Assembly respectively:
- (e) the proper passing, intituling, and numbering of the Bills to be introduced into and passed by the Council and Assembly:
- (f) the proper presentation of the same to the Governor for the time being, for His Majesty's assent:

\* \* \* \* \*

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

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#### **Governor's Message**

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

#### **Restoration of lapsed Bills**

57. (1) When any Bill has passed its second reading in either House of Parliament, but has not been finally disposed of at the close of the session, the Bill shall not necessarily lapse by prorogation, but may, in the next session of the same Parliament, be restored to the stage reached in the previous session, and thereafter proceeded with as if no prorogation had intervened.

(2) The restoration provided for in this section shall be effected by carrying a motion that the Bill be restored to the notice paper; and every such motion shall be put to the vote without debate, unless otherwise provided by the standing orders of the House in which the motion is made.

#### **Provision as to President, Speaker, and officers**

58. (1) The salary of the President of the Legislative Council shall be at least equal to the salary of the Speaker of the House of Assembly; and the salaries and allowances of the officers of the Legislative Council shall be the same as those of the corresponding officers of the House of Assembly.

(2) The Chief Clerk for the time being of the Legislative Council, and of the House of Assembly shall respectively be removable from office only in accordance with a vote of the House of which he is an officer.

#### **Governor's recommendation for money votes**

59. It shall not be lawful for either House of the 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 has not been first recommended by the Governor to the House of Assembly during the session in which such vote, resolution, or Bill is passed.

#### *Money Bills*

#### **Interpretation of secs. 60-63**

60. (1) In this and the next three sections the expressions "revenue", "public money", "taxation", and "loan" respectively do not include any revenue, money, taxation, or loan raised by local authorities or bodies for local purposes.

(2) For the purposes of this and the next three sections a Bill, or a clause of a Bill, shall not be taken to appropriate revenue or public money, or to deal with taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences or fees for services under the proposed Act.

(3) For the purposes of the said sections a Bill, or a clause of a Bill, shall be taken to deal with taxation if it provides for the imposition, repeal, remission, alteration, or regulation of taxation.

(4) In the said sections—

“appropriation Bill” means a Bill for appropriating revenue or other public money:

“money Bill” means a Bill for appropriating revenue or other public money, or for dealing with taxation, or for raising or guaranteeing any loan, or for providing for the repayment of any loan:

“money clause” means a clause of a Bill, which clause appropriates revenue or other public money, or deals with taxation, or provides for raising or guaranteeing any loan or for the repayment of any loan:

“previously authorized purpose” means—

(a) a purpose which has been previously authorized by Act of Parliament or by resolution passed by both Houses of Parliament; or

(b) a purpose for which any provision has been made in the votes of the Committee of Supply whereon an appropriation Bill previously passed was founded.

#### **Origin of money Bills and money clauses**

61. A money Bill, or a money clause, shall originate only in the House of Assembly.

#### **Power of Council as to money clauses**

62. (1) The Legislative Council may not amend any money clause.

(2) Subject to subsection (3) of this section, the Council may return to the House of Assembly any Bill containing a money clause with a suggestion to omit or amend such clause or to insert additional money clauses, or may send to the Assembly a Bill containing suggested money clauses requesting, by message, that effect be given to the suggestion; and the Assembly may, if it thinks fit, make any omission or amendment, or insertion so suggested, with or without modifications.

(3) Subsection (2) of this section applies to a money clause contained in an appropriation Bill only when such clause contains some provision appropriating revenue or other public money for some purpose other than a previously authorized purpose or dealing with some matter other than the appropriation of revenue or other public money.

(4) When, under subsection (2) of this section, the Council sends to the Assembly a Bill containing suggested money clauses, such clauses shall be printed in erased type, and shall not be deemed to form part of the Bill.

#### **Restriction on contents of ordinary appropriation Bill**

63. A Bill for appropriating revenue or other public money for any previously authorized purpose shall not contain any provision appropriating revenue or other public money for any purpose other than a previously authorized purpose.

#### **Validity of Acts assented to**

64. No infringement or non-observance of any provision of the preceding three sections shall be held to affect the validity of any Act assented to by the Governor.

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PART IIA  
LOCAL GOVERNMENT

**Constitutional guarantee of continuance of local government in this State**

**64a.** (1) There shall continue to be a system of local government in this State under which elected local governing bodies are constituted with such powers as the Parliament considers necessary for the better government of those areas of the State that are from time to time subject to that system of local government.

(2) The manner in which local governing bodies are constituted, and the nature and extent of their powers, functions, duties and responsibilities shall be determined by or under Acts of the Parliament from time to time in force.

(3) No Bill by virtue of which this State would cease to have a system of local government that conforms with subsection (1) of this section shall be presented to Her Majesty or the Governor for assent unless the Bill has been passed by an absolute majority of the members of each House of Parliament.

PART III  
THE EXECUTIVE

**Number of Ministers of the Crown**

65. (1) The number of Ministers of the Crown shall not exceed thirteen.

(2) The Ministers of the Crown shall respectively bear such titles and fill such ministerial offices as the Governor from time to time appoints.

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\*       \*       \*       \*       \*       \*       \*       \*       \*       \*

**Ministerial offices**

66. (1) No person shall hold office as a Minister of the Crown for more than three calendar months unless he is a member of Parliament.

(2) Every Minister of the Crown shall, *ex officio*, be a member of the Executive Council.

**Appointment of acting Ministers**

67. (1) The Governor may appoint a Minister to act in the office of another Minister.

(2) An appointment under subsection (1) may authorize the appointee to act for—

(a) a specified period;

or

(b) a period terminating on the occurrence of a specified event,

(being a period for which the holder of the office is expected to be unavailable to carry out official duties).

(3) A Minister has, while acting in the office of another Minister in pursuance of an appointment under this section, all the powers, functions and duties of that other Minister.

(4) Notice of an appointment under this section shall be published in the *Gazette*.

(5) If, in any legal proceedings, it appears that a Minister has acted in the office of another Minister, the Minister shall be deemed, in the absence of proof to the contrary, to have acted in pursuance of an appointment under this section.

**Appointment of officers**

68. The appointment to all public offices under the Government of the State, 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 required by this Act to be members of Parliament, the appointment and dismissal of which officers shall be vested in the Governor alone: Provided that this section shall not extend to minor appointments, which by statute or by order of the Governor in Council are vested in Heads of Departments, or other officers or persons within the State.

**Powers of Governor's Deputy**

69. (1) During the temporary absence of the Governor from the seat of Government or from the State or during the illness of the Governor all the powers and authorities conferred upon or vested in him by any statutory or other law or usage of the State, as well as the powers and authorities conferred upon or vested in him by the Letters Patent, shall and may be exercised, performed, and executed by the person appointed by him to be his Deputy during such absence or illness, subject, nevertheless, to anything expressed in the instrument appointing such Deputy.

(2) In this and the next succeeding section—

“the Letters Patent” means the Letters Patent passed under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date the twenty-ninth day of October, 1900, whereby permanent provision was made for the office of Governor in and for the State of South Australia and its dependencies in the Commonwealth of Australia.

#### Power of deputy of Lieutenant-Governor or Administrator

70. During such time as the powers and authorities granted to the Governor by the Letters Patent are vested in the Lieutenant-Governor, or any other person who is appointed to administer the Government of the State, the provisions of the preceding section shall apply to the person appointed to be the Deputy of the Lieutenant-Governor, or of the person appointed to administer the Government as aforesaid, during his temporary absence from the seat of Government or from the State or during his illness, subject nevertheless to anything expressed in the instrument appointing such Deputy.

#### Signature and counter-signature of certain orders, warrants, etc.

71. No officer of the Government shall be bound to obey any order of the Governor involving any expenditure of public money, nor shall any appointment to or dismissal from office be valid, except as provided in this Act, unless the order, appointment, or dismissal is signed by the Governor, and countersigned by a Minister of the Crown.

#### Validation of certain warrants, etc.

71a. (1) Where, by virtue of the applicable provision, any warrant for the payment of public money or any appointment to or dismissal from office would, but for this section, have been invalid then that warrant, appointment or dismissal, as the case may be, shall be and shall be deemed always to have been valid.

(2) In this section—

“the applicable provision”—

(a) in relation to a warrant, appointment or dismissal, as the case may be, issued or made on or after the twenty-fourth day of October, 1856, and before the commencement of this Act, means section 33 of Act No. 2 of 1855-6 intituled An Act to establish a Constitution for South Australia, and to grant a Civil List to Her Majesty;

and

(b) in relation to a warrant, appointment or dismissal, as the case may be, issued or made on or after the commencement of this Act and before the commencement of the *Constitution Act Amendment Act, 1978*, means section 71 of this Act as in force before the commencement of that Act:

“Warrant, appointment or dismissal” includes a purported warrant, appointment or dismissal.

\* \* \* \* \*

#### Salary of the Governor

73. (1) The salary of the Governor shall be as follows:

(a) in respect of the financial year commencing on the first day of July, 1981—the salary of the Governor shall be at the rate of \$30 000 per annum;

and

(b) in respect of a subsequent financial year—the salary of the Governor shall be at an annual rate determined by dividing the sum of \$30 000 by the consumer price index for the quarter ending on the thirty-first day of March, 1981, and multiplying the quotient so obtained by the consumer price index for the quarter ending on the thirty-first day of March in the financial year immediately preceding the financial year for which the salary is to be determined, and by adjusting the product to the nearest multiple of \$100.

(2) The salary of the Governor shall accrue from day to day, and shall be paid monthly by the Treasurer out of the General Revenue of the State.

(3) Where a Governor retires after completing nine-tenths or more of the term for which he was appointed his entitlement to salary shall be calculated as if he had completed that term.

(4) In determining whether a Governor has completed nine-tenths or more of the term for which he was appointed, periods of furlough shall not be counted as part of the period of service of the Governor.

(5) In this section—

“consumer price index” means the quarterly consumer price index number for Adelaide prepared and published by the Commonwealth Statistician:

“furlough”, in relation to a Governor, means absence from office for recreational purposes for a continuous period of more than one month.

#### **Allowances to Governor for expenses**

**73a.** (1) In addition to the salary prescribed by section 73 of this Act, there shall be paid to the Governor—

(a) in respect of the whole of the financial year commencing on the first day of July, 1974, an expenses allowance at the rate of twenty-two thousand six hundred dollars a year;

(b) in respect of each subsequent financial year an expenses allowance at an annual rate arrived at by dividing the sum of twenty-two thousand six hundred dollars by the consumer price index for the quarter ending on the thirty-first day of March, 1974, and multiplying the quotient so obtained by the consumer price index for the quarter ending on the thirty-first day of March in the financial year immediately preceding the financial year in respect of which the allowance is to be determined and by adjusting the product to the nearest multiple of one hundred dollars.

(2) The said expenses allowance shall—

(a) accrue due from day to day;

(b) be apportionable in point of time; and

(c) be paid monthly by the Treasurer out of the general revenue of the State.

(3) Whenever in case of the death, incapacity, removal, or departure from the State of the Governor, the Government of the State is administered during any period by the Lieutenant-Governor, or any other person appointed for the purpose by His Majesty the King, the Treasurer may direct that the whole, or such part as in the circumstances he deems just, of the expenses allowance which would otherwise have been payable in respect of that period to the Governor, shall be paid to the Lieutenant-Governor or other person administering the Government of the State.

(4) The expenses allowance payable under this section shall be in addition to any salary or other payment to which the Governor is entitled under any other enactment.

(5) In this section the expression "consumer price index" means the quarterly consumer price index number for Adelaide prepared and published by the Commonwealth Statistician from time to time.

**Financial provisions**

73b. This Act without further appropriation, shall be sufficient authority for the payment from year to year by the Treasurer out of the General Revenue of the State, of the salary of the Governor, and of the expenses allowance of the Governor, and of any money payable to the Lieutenant-Governor or any person administering the Government of the State, as provided for in this Part.

\* \* \* \* \*

PART IV  
THE JUDICIARY

**Tenure of office of Judges**

74. The Commissions of all Judges of the Supreme Court shall be and remain in full force during their good behaviour, notwithstanding the demise of the King or of His Heirs and Successors, and notwithstanding any law, usage, or practice to the contrary.

**Removal from office of Judges**

75. It shall be lawful for the King, His Heirs and Successors, to remove any Judge of the Supreme Court upon the address of both Houses of the Parliament.

PART V  
ELECTORAL REDISTRIBUTION  
DIVISION I—PRELIMINARY

**Definitions**

76. (1) In this Part, unless the contrary intention appears—

“the Chief Justice” means the Chief Justice of the Supreme Court and includes a puisne judge who is acting in the office of Chief Justice:

“the Commission” means the Electoral Districts Boundaries Commission established under this Part:

“elector” means a person whose name appears as an elector on the electoral roll for an electoral district:

“the Electoral Commissioner” means the person holding, or acting in, the office of the Electoral Commissioner under the *Electoral Act, 1929*, as amended:

“electoral district” means an electoral district of the House of Assembly:

“electoral redistribution” means a division of the State into electoral districts:

“order” means an order of the Commission made under this Part:

“polling day” means a day on which a general election of members of the House of Assembly is held:

“the Surveyor-General” means the person holding, or acting in, the office of the Surveyor-General.

**Basis of redistribution**

77. (1) Whenever an electoral redistribution is made, the redistribution shall be made upon the principle that the number of electors comprised in each electoral district must not (as at the relevant date) vary from the electoral quota by more than the permissible tolerance.

(2) In this section—

“electoral quota” means the nearest integral number obtained by dividing the total number of electors for the House of Assembly (as at the relevant date) by the number of electoral districts into which the State is to be divided as at the first polling day for which the order is to be effective:

“permissible tolerance” means a tolerance of ten per centum:

“the relevant date” means a date specified in an order as the relevant date, being a date falling not earlier than two months before the date of the order.

DIVISION II—ELECTORAL DISTRICTS BOUNDARIES COMMISSION

**The Commission**

78. (1) There shall be a Commission by the name of the “Electoral Districts Boundaries Commission” constituted of the following members:—

(a) the Chairman of the Commission who shall be a Judge of the Supreme Court appointed by the Chief Justice to be Chairman of the Commission;

(b) the Electoral Commissioner or a person appointed pursuant to subsection (3) of this section;

and

(c) the Surveyor-General or a person appointed pursuant to subsection (4) of this section.

(2) The Judge appointed by the Chief Justice under subsection (1) of this section should be the most senior puisne Judge who is available to undertake the duties of Chairman of the Commission.

(3) If there is no Electoral Commissioner, or the Electoral Commissioner is for any reason unable to act as a member of the Commission, then, subject to subsection (5) of this section, the Chief Justice shall appoint as a member of the Commission, for such term as the Chief Justice considers expedient, a person who, in the opinion of the Chief Justice, has wide knowledge of, and experience in, electoral matters.

(4) If there is no Surveyor-General, or the Surveyor-General is for any reason unable to act as a member of the Commission, then, subject to subsection (5) of this section, the Chief Justice shall appoint as a member of the Commission, for such term as the Chief Justice considers expedient a person who, in the opinion of the Chief Justice, has wide knowledge of, and experience in, surveying.

(5) Where the Chairman is for the time being acting in the office of the Chief Justice any appointment to the Commission under subsection (3) or subsection (4) of this section shall be made by the puisne judge next in order of seniority after the Chairman.

(6) A member appointed under subsection (3) or subsection (4) of this section, may by instrument in writing addressed to the Governor resign his office.

#### **Incorporation of the Commission**

79. (1) The Commission—

(a) shall be a body corporate with perpetual succession and a common seal;

(b) shall be capable, in its corporate name of acquiring, holding and disposing of real and personal property;

(c) shall be capable of acquiring or incurring any other legal rights or liabilities, and of suing and being sued;

and

(d) shall hold its property on behalf of the Crown.

(2) Where an apparently genuine document purports to bear the common seal of the Commission, it shall be presumed, in the absence of proof to the contrary, that the common seal of the Commission was duly affixed to that document.

#### **Procedure, etc., at meetings**

80. (1) At every meeting of the Commission the Chairman of the Commission shall preside.

(2) The Chairman of the Commission and one other member shall constitute a quorum of the Commission for the transaction of business.

(3) At a meeting of the Commission a decision concurred in by the Chairman of the Commission and by at least one other member shall be a decision of the Commission.

(4) No proceedings of the Commission are invalid by reason only of the fact that, at the time of the proceedings, there was a vacancy in the membership of the Commission.

(5) No proceedings of the Commission are invalid by reason only of the fact that, during the course of the proceedings, there was a change in the membership of the Commission.

### Secretary

81. (1) The Commission may appoint a person to be secretary to the Commission.

(2) The office of secretary to the Commission may be held in conjunction with an office in the public service of the State.

(3) The secretary shall receive such remuneration, if any, as is determined by the Commission.

### Electoral redistributions

82. (1) The Commission shall, whenever required to do so under subsection (2) of this section, make an electoral redistribution.

(2) The Commission is required to commence proceedings for the purpose of making an electoral redistribution—

(a) within three months after the commencement of the *Constitution (Electoral Redistribution) Amendment Act, 1991*;

(b) as soon as practicable after the enactment of an Act that alters presently or prospectively the number of members of the House of Assembly;

(c) within three months after each polling day.

(3) After commencing proceedings for the purpose of making an electoral redistribution, the Commission shall proceed with all due diligence to complete those proceedings.

(4) An electoral redistribution under this section shall be effected by order of the Commission.

(5) Except where discontinuous or separate boundaries are necessary for the purpose of including an island within an electoral district, the boundaries of an electoral district shall, in any electoral redistribution made by the Commission, form an unbroken line.

### Electoral fairness and other criteria

83. (1) In making an electoral redistribution the Commission must ensure, as far as practicable, that the electoral redistribution is fair to prospective candidates and groups of candidates so that, if candidates of a particular group attract more than 50 per cent of the popular vote (determined by aggregating votes cast throughout the State and allocating preferences to the necessary extent), they will be elected in sufficient numbers to enable a government to be formed.

(2) In making an electoral redistribution, the Commission must have regard, as far as practicable, to—

(a) the desirability of making the electoral redistribution so as to reflect communities of interest of an economic, social, regional or other kind;

(b) the population of each proposed electoral district;

(c) the topography of areas within which new electoral boundaries will be drawn;

(d) the feasibility of communication between electors affected by the redistribution and their parliamentary representative in the House of Assembly;

- (e) the nature of substantial demographic changes that the Commission considers likely to take place in proposed electoral districts between the conclusion of its present proceedings and the date of the expiry of the present term of the House of Assembly,

and may have regard to any other matters it thinks relevant.

(3) For the purposes of this section a reference to a group of candidates includes not only candidates endorsed by the same political party but also candidates whose political stance is such that there is reason to believe that they would, if elected in sufficient numbers, be prepared to act in concert to form or support a government.

#### **Application of Royal Commissions Act**

84. The *Royal Commissions Act, 1917*, shall, so far as its provisions are applicable, apply to and in relation to the Commission, the secretary to the Commission, the members of the Commission and the proceedings of or conducted before the Commission as if—

- (a) the Commission were a commission to whom a commission of inquiry had been issued by the Governor under his hand and the public seal of the State;
- (b) the Chairman of the Commission and each other member were the chairman and a member respectively of such a commission;
- and
- (c) the secretary to the Commission were the secretary to such a commission.

#### **Representations to the Commission**

85. (1) Before commencing proceedings for the purpose of making an electoral redistribution the Commission shall, by means of an advertisement published in a newspaper circulating generally throughout the State, invite representations from any person in relation to the proposed electoral redistribution and in any such advertisement a date must be specified as the date before which such representations must be made.

(2) A person who desires to make representations to the Commission in relation to the proposed electoral redistribution may do so by instrument in writing served personally or by post upon the secretary of the Commission before the date specified in the advertisement.

(3) The Commission shall consider all representations made in accordance with this section, and may, at its discretion, hear and consider any evidence or argument submitted to it in support of those representations by or on behalf of any person.

#### **Order of the Commission**

86. (1) The Commission shall cause an order making an electoral redistribution to be published in the *Gazette*.

(2) Within one month of the publication of an order, any elector may, in the manner prescribed by Rules of Court, appeal to the Full Court of the Supreme Court against that order, on the ground that the order has not been duly made in accordance with this Act.

(3) The Commission shall be the respondent to any appeal under this section.

(4) Where an appeal has been instituted under this section, the order shall not take effect until the appeal has been disposed of.

(5) Where more than one appeal is instituted against the same order, every such appeal may be dealt with in the same proceedings.

(6) In any appeal under this section, any person having an interest in the proceedings may, upon application to the Court, be joined as a party to the proceedings.

(7) On the hearing of an appeal under this section the Full Court may—

(a) quash the order and direct the Commission to make a fresh electoral redistribution;

(b) vary the order;

or

(c) dismiss the appeal,

and may make any ancillary order as to costs or any other matter that it thinks expedient.

(8) The validity of an order of the Commission shall not be called in question except in an appeal under this section.

(9) An appeal against an order of the Commission shall be set down for hearing by the Full Court as soon as practicable after the expiration of one month from the date of the order, and the appeal shall be heard and determined by the Full Court as a matter of urgency.

#### **Moneys required for the purposes of the Commission**

87. The moneys reasonably required for the purposes of the Commission shall be payable, on the certificate of the Auditor-General, out of the General Revenue of the State, which is hereby to the necessary extent appropriated accordingly.

### **DIVISION III—ENTRENCHMENT OF THIS PART**

#### **Special provisions as to referendum**

88. (1) Except as provided in this section, no provision of section 32 of this Act or of this Part shall be repealed, suspended or amended.

(2) A Bill providing for or effecting the repeal, suspension, or amendment of any provision of section 32 of this Act or of this Part shall not be presented to Her Majesty or the Governor for assent unless—

(a) the Bill does not provide for, or effect, the repeal, suspension or amendment of a provision of this section and the Bill does not:—

(i) offend against the principle that the State is to be divided into electoral districts each returning the same number (whether that number be one or more than one) of members to the House of Assembly;

(ii) offend against the principle expressed in section 77 of this Act by which the number of electors to be comprised in each electoral district upon an electoral redistribution is to be ascertained;

(iii) affect the frequency with which electoral redistributions are to be made;

or

(iv) offend against the principle that an electoral redistribution is to be made by a Commission that is independent of political influence or control;

or

(b) the Bill has been approved by the electors in accordance with this section.

(3) Where it is necessary for a Bill to be approved by the electors in accordance with this section, the Bill shall, on a day appointed by proclamation (being a day that falls not earlier than two months after the day on which the Bill is passed by Parliament) be submitted to a referendum of the electors for the House of Assembly.

(4) If the majority of the persons voting at the referendum approve of the Bill it shall be presented to the Governor for assent.

(5) Any person entitled to vote at a general election of members of the House of Assembly shall have the right to bring an action in the Supreme Court for a declaration, injunction or other legal remedy to enforce any of the provisions of this section.

SCHEDULES  
THE FIRST SCHEDULE  
ACTS REPEALED

Number of Act	Title of Act	Extent of Repeal
No. 2 of 1855-6	The Constitution Act	The whole
No. 19 of 1869-70	An Act to prevent Public Contractors being returned to or sitting or voting in Parliament	Do
No. 14 of 1872	An Act to repeal The Parliamentary Privilege Act and to make other provisions in lieu thereof	Do
No. 5 of 1873	The Constitution Amendment Act, 1873	Do
No. 16 of 1873	An Act to enable His Excellency the Governor to appoint Acting Ministers of the Crown in certain cases	Do
No. 28 of 1873	An Act to increase the salaries of the Judges of the Supreme Court and of certain Officers of the Civil Service, of the Province of South Australia	Do
No. 430 of 1888	An Act to amend an Act No. 14 of 1872, intituled "An Act to Repeal the Parliamentary Privilege Act, and to make other provisions in lieu thereof"	Do
No. 453 of 1889	An Act to amend the Civil List	Do
No. 462 of 1889	An Act to alter the Boundaries of certain Electoral Districts and Divisions, and for other purposes	Do
No. 496 of 1890	The Officers of Parliament Act	Do
No. 579 of 1893	The Lapsed Bills Continuance Act	Do
No. 581 of 1893	An Act to alter the Boundaries of the Electoral Districts and Divisions of Albert and Onkaparinga	Do
No. 613 of 1894	The Constitution Amendment, 1894	Do
No. 636 of 1895	An Act to alter the Boundaries of the Electoral Districts and Divisions of Burra and Stanley	Do
No. 637 of 1895	An Act to alter the Boundaries of the Electoral Districts and Divisions of Gumeracha and Albert	Do
No. 731 of 1899	The Constitution Amendment Act, 1899	Do
No. 790 of 1902	An Act to amend "The Constitution Amendment Act, 1899"	Do
No. 876 of 1904	The Electoral Laws Amendment Act, 1904	s. 4(2)
No. 959 of 1908	The Constitution Amendment Act, 1908	The whole
No. 1029 of 1910	The Constitution Amendment Act, 1910	Do
No. 1065 of 1911	The Governor's Appropriation Act, 1911	Do
No. 1072 of 1911-12	The Deputy Governor's Powers Act, 1910	Do
No. 1087 of 1912	The Governor's Appropriation Act Amendment Act, 1912	Do
No. 1148 of 1913	The Constitution Further Amendment Act, 1913	Do
No. 1167 of 1914	The Governor's Appropriation Act Further Amendment Act, 1914	Do
No. 1210 of 1915	Governor's Appropriation Act Further Amendment Act, 1915	Do
No. 1335 of 1918	Constitution Amendment (War Service Franchise) Act, 1918	Do
No. 1446 of 1920	Electoral Code Further Amendment Act, 1920	ss. 53, 54
No. 1492 of 1921	Constitution Amendment (Ministers Salaries) Act, 1921	The whole
No. 1548 of 1922	Governor's Salary Act, 1922	Do
No. 1929 of 1929	Electoral Act, 1929	s. 192
No. 2141 of 1933	Constitution (Quinquennial Parliament) Act, 1933	The whole

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## APPENDIX

## Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 2 of The Public General Acts of South Australia 1837-1975 at page 751.

Legislative history since 3 February 1976 (entries in bold type indicate amendments incorporated since the last reprint):

Section 3:	amended by 45, 1980, s. 3
Section 11:	substituted by 77, 1982, s. 3
Section 12:	amended by 77, 1982, s. 4; repealed by 1, 1988, s. 3
Section 13:	substituted by 84, 1985, s. 3
Section 14:	amended by 77, 1982, s. 5; substituted by 84, 1985, s. 3
Section 15:	substituted by 84, 1985, s. 3
Section 19:	substituted by 77, 1982, s. 6
Section 20:	repealed by 1, 1988, s. 4
Section 28:	substituted by 84, 1985, s. 4
Section 28a:	inserted by 84, 1985, s. 4
Section 29:	repealed by 1, 1988, s. 5
Section 32(1):	substituted by 77, 1982, s. 7(a)
Section 32(5):	definition of "the last effective electoral redistribution" inserted by 77, 1982, s. 7(b)
Section 33:	amended by 68, 1976, s. 2; 77, 1982, s. 8; repealed by 1, 1988, s. 6
Section 33a:	amended by 68, 1976, s. 3; repealed by 77, 1982, s. 9
Section 43a:	inserted by 84, 1985, s. 5
Section 45:	amended by 101, 1978, s. 8; redesignated as s. 45(1) by 57, 1982, s. 2
Section 45(1a):	inserted by 120, 1986, s. 2
Section 45(2):	inserted by 57, 1982, s. 2
Section 49:	redesignated as s. 49(1) by 57, 1982, s. 3
Section 49(2):	inserted by 57, 1982, s. 3
Section 55(1)(g):	<b>repealed by 50, 1991, Sched. Pt. II</b>
Section 55(3):	substituted by 101, 1978, s. 9; 18, 1990, s. 6; <b>repealed by 50, 1991, Sched. Pt. II</b>
Section 55(3a) and (3b):	inserted by 101, 1978, s. 9; repealed by 18, 1990, s. 6
Section 55(4):	repealed by 18, 1990, s. 6
Section 55(5):	<b>repealed by 50, 1991, Sched. Pt. II</b>
	Part IIa comprising s. 64a and heading inserted by 45, 1980, s. 4
Section 65(1):	amended by 64, 1978, s. 2
Section 67:	substituted by 120, 1986, s. 3
Section 71:	amended by 8, 1978, s. 2; 13, 1987, s. 4
Section 71a:	inserted by 8, 1978, s. 3
Section 73:	substituted by 63, 1981, s. 3
Section 73(3):	substituted by 32, 1982, s. 2
Section 73(4) and (5):	inserted by 32, 1982, s. 2
Section 82(2):	amended by 1, 1991, s. 2
Section 83:	substituted by 1, 1991, s. 3
Second and Third Schedules:	repealed by 77, 1982, s. 10