



ANNO TRICESIMO QUARTO

# ELIZABETHAE II REGINAE

A.D. 1985

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No. 84 of 1985

An Act to amend the Constitution Act, 1934.

{ Reserved 6 June 1985  
Royal Assent proclaimed 12 September 1985 }

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

1. (1) This Act may be cited as the “Constitution Act Amendment Act, 1985”. Short title.

(2) The Constitution Act, 1934, is in this Act referred to as “the principal Act”.

2. (1) Subject to subsection (3), this Act shall come into operation on the day when Her Majesty’s pleasure thereon is publicly signified in South Australia. Commencement.

(2) Her Majesty’s pleasure may be so signified by proclamation.

(3) Section 4 shall come into operation on the day on which the House of Assembly is next dissolved, or next expires, after the commencement of this Act.

3. Sections 13, 14 and 15 of the principal Act are repealed and the following sections are substituted: Repeal of ss. 13, 14 and 15 and substitution of new sections.

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. Casual vacancies.

(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.

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. Term of service of Legislative Councilors.

(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.

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. Order of retirement.

(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).

Repeal of s. 28  
and substitution  
of new sections.

4. Section 28 of the principal Act is repealed and the following sections are substituted:

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.

5. The following section is inserted after section 43 of the principal Act:

Insertion of new s. 43a.

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.

Disqualification of members occupying seats in both Houses.

(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.

Reserved for the signification of Her Majesty the Queen's pleasure thereon.

D. B. DUNSTAN, Governor