



## LEGISLATIVE COUNCIL FACT SHEETS

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### FACT SHEET 5: CASUAL VACANCIES IN THE LEGISLATIVE COUNCIL

#### Meaning of casual vacancy

A casual vacancy in the Council arises when a vacancy occurs in the seat of a member other than by reason of expiry of the member's term. This will occur if a member dies, resigns, is expelled from the House, becomes disqualified from sitting as a member under the *Constitution Act 1902*, or if the Court of Disputed Returns declares the member's seat has become vacant.

To resign, a member must write to the Governor resigning his or her seat.<sup>1</sup> The member's seat becomes vacant on receipt by the Governor of the member's resignation.<sup>2</sup> The Governor informs the President that the member has resigned, and the President reports that fact to the House at the next sitting.

#### Procedures for filling Legislative Council vacancies

Where a casual vacancy arises in the seat of a member of the Council, the Governor sends messages to both Houses of Parliament convening a joint sitting of the Houses to elect a person to fill the vacant seat. The message specifies the place and date and time for holding the joint sitting.<sup>3</sup> More than one vacancy may be filled at one joint sitting.<sup>4</sup>

To be nominated for election to fill a casual vacancy, a person must be a member of the same political party as the member they replace was at the time that member was elected, unless there is no member of that party available to be nominated.<sup>5</sup> Further, a person may not be nominated for election to fill a casual vacancy if they are disqualified from sitting or voting as a member of the Council.<sup>6</sup> The grounds for disqualification from sitting or voting as a member of the Council are set out in section 13 to 13C of the *Constitution Act 1902* and section 81E of the *Parliamentary Electorates and Elections Act 1912*. In addition, a member who has been expelled by the Council is disqualified from sitting or voting as a member of the Council and is therefore incapable of filling their own vacancy.

A joint sitting to fill a casual vacancy is held in the Council chamber, although it is not a sitting of the House. At the appointed time, the President leaves the Chair until the conclusion of the joint sitting. The rules for the conduct of proceedings are set out in clause 12 of Schedule 4 to the *Constitution and Parliamentary Electorates and Elections (Amendment) Act 1978*. The rules provide:

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<sup>1</sup> *Constitution Act 1902*, s 22J.

<sup>2</sup> *Ibid.*

<sup>3</sup> In practice, the date and time of the joint sitting are negotiated by the Clerk of the House in conjunction with the Leader of the House and the Cabinet Office.

<sup>4</sup> *Constitution Act 1902*, s 22E(3).

<sup>5</sup> *Constitution Act 1902*, s 22D(4).

<sup>6</sup> *Constitution Act 1902*, s 22D(3).

- At a joint sitting the President or, in the absence of the President, the Speaker presides.
- For the purpose of filling more than one vacant seat, each vacant seat will be filled separately, by the votes of members present.
- The motion that a person be elected as a member of the Council to fill a casual vacancy must be seconded.
- A member at the time he or she proposes or seconds an eligible person to fill a vacant seat may speak on the proposal for 10 minutes and no other person may speak at that time.
- If only one eligible person is proposed, the person is elected to fill the vacant seat without the question being put.
- If two or more eligible persons are proposed, the motion is put in respect of each of those persons in the order in which they have been proposed, and any member may speak to the motion.
- The motion that a person be elected is decided by open voting, with the presiding person only having a casting vote.

The standing orders of the Council apply to the proceedings, except where the rules in Schedule 4 apply.

At the conclusion of the joint sitting, the President resumes the Chair of the House, announces the name of the person elected to fill the vacant seat, and tables the minutes of the joint sitting. The person presiding over the joint sitting must write to the Governor advising of the person elected.

The person chosen at the joint sitting to fill the casual vacancy may not be sworn as a member until two days after their election.<sup>7</sup> If, before the person is sworn as a member, the person ceases to be a member of the political party of which membership was necessary to be eligible for nomination, the seat again becomes vacant.<sup>8</sup>

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<sup>7</sup> *Constitution Act 1902*, s 22E(1).

<sup>8</sup> *Constitution Act 1902*, s 22E(2).