

Hon Vickie Chapman

357 Greenhill Rd

Toorak Gardens SA 5065

**By email and post**

Dear Ms Chapman

**Resignation as the Member for the Electoral District of Bragg**

I refer to your letter to the Speaker dated 26 April 2022 in relation to which I have sought and received advice.

The letter "... give[s] notice to you of my resignation from the Parliament...".

As well, the letter purports to make that resignation "... effective on midnight Tuesday 31 May 2022."

I received your letter on 26 April 2022 and accept your resignation effective at 26 April 2022.

The question arises whether your intention to set a future resignation date is effective given the words of s30 of the *Constitution Act 1934 (SA)* (the ***Constitution Act***). Section 30 provides –

Any member of the House of Assembly may resign his or her seat in the House by writing under his or her 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* [my emphasis].

The words of s30 leave little room for doubt; a seat becomes vacant as soon as the Speaker receives a resignation letter. As I have observed, the letter was received by me on 26 April 2022.

Importantly, s30 does not allow for the member to propose a date in the future at which a resignation will take effect.

However, there are two aspects of the letter which require further consideration. First, the identity of the recipient; and second, whether the letter constitutes notice of a future intention to resign and is not itself an act of resignation. I have carefully considered each of these matters.

### **The Identity of the Recipient**

Your letter is addressed to the “Speaker”. However, in the body of the letter you appear to assume that the Speaker will be a person elected when Parliament resumes. As I was re-elected as a Member of the House of Assembly, I continue in the office of Speaker by operation of s36 of the *Constitution Act* until the first meeting of the new Parliament when an election will be held.

Notwithstanding your reference to the “newly appointed Speaker”, you have addressed your letter to “Speaker”. As the current Speaker, I have received your letter – as I must – for the purposes of s30 of the *Constitution Act*.

### **An Act of Resignation**

You have adopted the following language with respect to resignation: “... I give notice to you of my resignation from the Parliament...” immediately thereafter, the same sentence purports to suggest your resignation will be “... effective on midnight Tuesday 31 May 2022”.

An argument might be made on the basis of the language used in the letter that it constitutes merely a notice of an intention to resign at a later date.

The alternative view is that the language used in the letter together with the operation of s30 of the *Constitution Act* has effected your resignation.

I form the view having regard to the operation of s30 of the *Constitution Act* that your resignation is effected –

1. by the words “... I give notice to you of my resignation from the Parliament...”; and
2. The acceptance of your letter by me as the Speaker for the time being.

The suggestion in the letter that the resignation will become effective at a later date is otiose for the purposes of s30 of the *Constitution Act* – it cannot serve any practical purpose or result.

### Further observations

I make the following further observations –

1. While s30 is automatic and self-executing, operating to vacate your seat, only the House can state authoritatively that the seat is vacant because of the operation of s43 of the *Constitution Act*. Section 43 of the *Constitution Act* provides –  

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* [my emphasis].
2. Practically speaking, this will only be necessary where the existence of a vacancy is contested or is otherwise unclear. If that occurs here, an authoritative statement or declaration by the House that your seat is vacant may be needed. As presiding officer, I do not in those circumstances have power simply to declare a vacancy without such a determination by the House, even if the vacancy is obvious and indisputable.
3. The declaration by the House would not itself be the cause of the vacancy; that has occurred by the operation of s30 of the *Constitution Act*. Accordingly, the vacancy would relate back to the date of receipt of the letter, not the date of any declaration by the House.

A copy of this correspondence will be provided to –

1. The Leader of Government Business;
2. The Leader of Opposition Business;
3. Members of the House of Assembly; and
4. Other parties as may be necessary.

Having regard to the views I have formed, it is important for me to act expeditiously to ensure a new member is chosen by electors in the Electoral District of Bragg.

Therefore, at **4.00 pm** on **Monday 2 May 2022**, I propose to initiate the process to issue a writ for a by-election in the Electoral District of Bragg under s47 of the *Electoral Act 1985* (SA). It follows that I would welcome any submission from you as to an alternative course of action as soon as practicable and before this time.

Yours sincerely



**DAN CREGAN MP**

**Speaker – House of Assembly**

30 April 2022