

Legislative Council—No 106

As received from the House of Assembly and read a first time, 3 June 2009

South Australia

Electoral (Miscellaneous) Amendment Bill 2009

A BILL FOR

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

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Part 1—Related amendment to *Constitution Act 1934*

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Electoral (Miscellaneous) Amendment Act 2009*.

2—Commencement

- 5 (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.
- (2) Sections 9 to 15 (inclusive) must be brought into operation on the same day.

3—Amendment provisions

- 10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Electoral Act 1985*

4—Amendment of section 4—Interpretation

Section 4(1), definition of *voting ticket square*—delete the definition and substitute:

5 *voting ticket square* means a square printed on a ballot paper for a Legislative
Council election for use by voters who choose to vote in accordance with a
voting ticket or voting tickets that have been registered under this Act in
relation to a candidate or group;

5—Amendment of section 26—Inspection and purchase of rolls

(1) Section 26(1)—after "Copies" insert:

10 (whether in printed or electronic form)

(2) Section 26(1)(c)—delete paragraph (c)

(3) Section 26(2)—delete subsection (2) and substitute:

(2) The Electoral Commissioner must, on request—

- 15 (a) provide a member of the House of Assembly with an
up-to-date copy of the electoral roll for the member's
district;
- (b) provide a member of the Legislative Council with an
up-to-date copy of the electoral roll for the Legislative
Council district;
- 20 (c) provide the registered officer of a registered political party
with an up-to-date copy of any electoral roll for any district;
- (d) provide a person who is a nominated candidate in an
election with an up-to-date copy of the electoral roll for—
- 25 (i) in the case of a person who is a candidate in an
election for a House of Assembly district—that
district; or
- (ii) in the case of a person who is a candidate in a
Legislative Council election—the Legislative
Council district.

30 (3) If, in accordance with an electoral redistribution under the
Constitution Act 1934, the area of a House of Assembly district (the
relevant district) will, from the day on which a general election of
members of the House of Assembly is next held, be altered to
include any part of the area of another House of Assembly district,
35 the Electoral Commissioner must, on request, provide an up-to-date
copy of the electoral roll for that other House of Assembly district
to—

- (a) the current House of Assembly member for the relevant
district;

- (b) any person who is a nominated candidate for an election in the relevant district.
- (4) The following provisions apply in connection with the operation of subsection (2):
- 5 (a) a request under subsection (2) may be made on the basis that a copy of the relevant roll (or rolls) will be provided on a monthly basis (and the Electoral Commissioner is not required to provide a roll to a particular person (or registered political party) more frequently than once in each month);
- 10 (b) a copy of a roll may be provided in electronic form (as determined by the Electoral Commissioner);
- (c) a copy of a roll must be provided without the requirement to pay a fee.
- 15 (5) If a copy of the roll is provided to a person under this section, a person who uses that copy of the roll, or information contained in that copy of the roll, for a purpose other than a State, Federal or local government purpose is guilty of an offence.
- Maximum penalty: \$10 000.

6—Amendment of section 27—Power to require information

- 20 (1) Section 27(1)(a)—delete paragraph (a) and substitute:
- (a) an agency or instrumentality of the Crown, or any other prescribed authority; or
- (ab) any public sector employee; or
- (2) Section 27—after subsection (1) insert:
- 25 (1a) The regulations may provide that subsection (1) does not apply to—
- (a) a particular agency or instrumentality of the Crown, prescribed authority, or public sector employee; or
- (b) specified information or material in the possession or control of an agency, instrumentality, authority, body or person.

7—Amendment of section 27A—Provision of certain information

- (1) Section 27A(2)(c)—delete paragraph (c) and substitute:
- (c) the elector's date of birth.
- (2) Section 27A(2), note—delete the note
- (3) Section 27A(3)—delete subsection (3)
- 35 (4) Section 27A(5), penalty provision—delete the penalty provision and substitute:
- Maximum penalty: \$10 000.
- (5) Section 27A—after subsection (5) insert:
- (6) A fee is not payable under subsection (4)(b) if the person to whom the information is provided is a Member of Parliament.

8—Substitution of Part 5 Division 3

Part 5 Division 3—delete Division 3 and substitute:

Division 2A—Itinerant persons

31A—Itinerant persons

- 5 (1) A person—
- (a) who is in South Australia; and
 - (b) who qualifies for enrolment under section 29(1)(a), (b) and (d) but does not qualify for enrolment under
10 section 29(1)(c) because he or she does not have a fixed place of residence (whether within the State or elsewhere),
may apply for enrolment under this section.
- (2) An application under this section—
- (a) must be made to the Electoral Commissioner in a form approved by the Electoral Commissioner; and
 - 15 (b) must be signed and attested as required by the Electoral Commissioner.
- (3) The form approved by the Electoral Commissioner may require the applicant to specify an address that may be taken to be the person's principal place of residence for the purposes of this Act.
- 20 (4) If the Electoral Commissioner is satisfied that a person has made a valid application in accordance with subsections (1) and (2)—
- (a) the person is entitled to be enrolled as an elector under this Act despite the provisions of Division 1; and
 - 25 (b) a further claim for enrolment need not be made under Division 2; and
 - (c) the Electoral Commissioner will cause the name of the person to be entered on the roll for the subdivision which is, according to a determination of the Electoral Commissioner after taking into account—
30 (i) any address specified under subsection (3); and
(ii) any other relevant factor,
the most appropriate subdivision for the purposes of the enrolment of the person.
- 35 (5) The Electoral Commissioner may, in connection with the operation of subsection (4) and after taking into account any address specified under subsection (3), include on the roll an address in the subdivision that is to be taken to be the person's principal place of residence for the purposes of this Act and any other Act or law relating to enrolment under this Act.

- (6) The Electoral Commissioner will also annotate the roll so as to indicate that the person is enrolled under this section.
- (7) While a person is the subject of an annotation under subsection (6), the person is entitled (despite any other provision of this Act)—
- 5 (a) to have his or her name retained on the roll for the relevant subdivision; and
- (b) to vote as an elector for that subdivision.
- (8) Despite a preceding subsection, the Electoral Commissioner will not deal with an application under this section received between the time on which rolls for an election in the relevant district close and polling day for that election.
- 10
- (9) If an application under this section is rejected, the Electoral Commissioner must take reasonable steps to notify the applicant in writing—
- 15 (a) of the rejection of the application; and
- (b) of the reason for its rejection; and
- (c) of the applicant's rights under this Act to appeal against the decision.
- (10) If a person who is enrolled under this section—
- 20 (a) qualifies for enrolment with respect to a place of residence under section 29(1)(c); or
- (b) forms the intention to leave South Australia and to remain outside the State for a continuous period of at least 1 month,
- the person must, as soon as practicable, give notice to the Electoral Commissioner in a form approved by the Electoral Commissioner.
- 25
- (11) A person ceases to be entitled to be enrolled under this section if—
- 30 (a) the person gives notice under subsection (10); or
- (b) the person fails to vote at a general election while enrolled under this section; or
- (c) the Electoral Commissioner becomes aware that the person—
- (i) has qualified for enrolment with respect to a place of residence under section 29(1)(c); or
- (ii) has ceased to be entitled to be enrolled under this Act (otherwise than with respect to the operation of section 29(1)(c)); or
- 35 (iii) has remained outside the State for a continuous period of at least 1 month.

(12) If a person ceases to be entitled to be enrolled under this section, the Electoral Commissioner will remove the person's name, and the relevant annotation, from the roll (but may then, if relevant, re-enter the name in accordance with any entitlement that exists apart from this section).

(13) A person who falls within the ambit of subsection (11) may make a new application under this section if or when he or she again qualifies under the terms of subsection (1).

Division 3—Compulsory enrolment and transfer

32—Compulsory enrolment and transfer of enrolment

(1) A person who is entitled to be enrolled for any subdivision, whether by way of enrolment or transfer of enrolment, and whose name is not on the Roll for that subdivision must, within 21 days from the date on which the person became so entitled, make a claim in accordance with this Act for enrolment or for transfer of enrolment (as the case may require).

(2) Subsection (1) does not apply to a person who is entitled to be enrolled in accordance with section 29(2) or 31A.

(3) A person who fails, without proper excuse, to make a claim for enrolment or transfer of enrolment in accordance with this section is guilty of an offence.

Maximum penalty: \$75.

(4) Proceedings for an offence against subsection (3) may not be commenced after a claim for enrolment or transfer of enrolment (as the case may require) has been made.

32A—Notification of transfer with the same subdivision

(1) An elector whose principal place of residence changes from one address to another within the same subdivision must, within 21 days of the change, notify an electoral registrar of the address of the elector's current principal place of residence.

(2) An elector who fails, without proper excuse, to give a notification under this section is guilty of an offence.

Maximum penalty: \$75.

(3) Proceedings for an offence against subsection (2) may not be commenced after an appropriate notification has been given.

9—Amendment of section 36—Definitions and related provisions

(1) Section 36(1), definition of *eligible political party*—delete the definition and substitute:

eligible political party means—

(a) a parliamentary party; or

(b) a political party (other than a parliamentary party) whose membership includes at least 200 electors;

(2) Section 36(1), definition of *parliamentary party*—delete the definition and substitute:

parliamentary party means a political party at least 1 member of which is—

- 5
- (a) a member of the Parliament of South Australia; or
 - (b) a Senator for the State of South Australia; or
 - (c) a member of the House of Representatives chosen in the State of South Australia;

(3) Section 36(3)—delete subsection (3) and substitute:

10 (3) For the purposes of this Part, 2 or more political parties cannot rely on the same member for the purpose of qualifying or continuing to qualify as an eligible political party.

(4) The following provisions apply in connection with the membership requirements for political parties:

- 15 (a) a member who is relied on by 2 or more political parties may nominate the party entitled to rely on the member, but if a party is not nominated after the Electoral Commissioner has, in accordance with the regulations, given the member an opportunity to do so, the member is not entitled to be
- 20 relied on by any of those parties;
- (b) the registration of a party is not to be cancelled because of the provisions of this section unless the party is given an opportunity by the Electoral Commissioner, in accordance with the regulations, to change the member or members on
- 25 whom it relies.

10—Amendment of section 39—Application for registration

Section 39(2)—after paragraph (e) insert:

and

(f) in the case of a party that is not a parliamentary party—

30 (i) set out the names and addresses (as enrolled) of 200 electors who are members of the party and on whom the party relies for the purpose of qualifying as an eligible political party; and

35 (ii) be accompanied by declarations of membership of the party (in the form determined by the Electoral Commissioner) completed and signed by the members on whom the party relies for the purpose of qualifying as an eligible political party; and

(g) in the case of a parliamentary party—

40 (i) set out the name and address of the member on whom the party relies for the purpose of qualifying as an eligible political party; and

- (ii) be accompanied by a declaration of membership of the party (in the form determined by the Electoral Commissioner) completed and signed by the member on whom the party relies for the purpose of qualifying as an eligible political party; and

- (h) be accompanied by a \$500 application fee (which is not refundable).

11—Amendment of section 40—Order in which applications are to be determined

Section 40—after subsection (2) insert:

- (3) If, during the period of 6 months immediately preceding the day on which a general election must be held under section 28(1) of the *Constitution Act 1934*, an application is received by the Electoral Commissioner for registration of a political party, that application must not be determined until after the general election.

12—Amendment of section 42—Registration

Section 42(3)—delete subsection (3) and substitute:

- (3) An application for the registration of a political party may be refused if, in the opinion of the Electoral Commissioner the name of the party, or the abbreviation (if any) of the name, that it wishes to be registered—

- (a) is the name, or an abbreviation or acronym of the name, of a prominent public body, or so nearly resembles the name, or an abbreviation or acronym of the name, of a prominent public body that it is likely to be confused with that name, abbreviation or acronym; or

- (b) comprises or contains a word or set of words—

- (i) that constitute a distinctive aspect or part of the name of another political party (not being a related political party) that is a parliamentary party or a registered political party; or

- (ii) that so nearly resemble a distinctive aspect or part of the name of another political party (not being a related political party) that is a parliamentary party or a registered political party that it appears that that distinctive aspect or part of that name is being adopted by the political party applying for registration.

Note—

For example, the underlined words constitute distinctive aspects or parts of the names of political parties:

Australian Democrats (South Australian Division Inc)

Australian Labor Party (South Australian Branch)

The Liberal Party of Australia (SA Division)

The National Party of Australia (SA) Inc

No Pokies Campaign Inc.

- 5 (3a) Subsection (3)(b) does not apply if the applicant for registration provides the Electoral Commissioner with a declaration (in the form determined by the Electoral Commissioner) that has been signed by a person authorised by the relevant parliamentary party or registered political party (as the case may require) and states that the party consents to the use of the particular word or set of words.

13—Insertion of section 43A

10 After section 43 insert:

43A—Annual returns and other inquiries

- 15 (1) The registered officer of a registered political party must, by 30 September each year, furnish to the Electoral Commissioner a return as to the party's continued eligibility for registration under this Part in the form prescribed by the regulations.
- (2) A return under subsection (1) must be accompanied by any documents required under the regulations.
- 20 (3) A return is not required under subsection (1) if the party has been registered for less than 6 months before the return is due to be furnished.
- (4) The Electoral Commissioner may at any time, by notice in writing, require a registered officer of a registered political party to provide such information as is specified in the notice for the purpose of determining whether the party is still eligible to be registered under this Part.
- 25 (5) If the registered officer of a registered political party fails to comply with a requirement under this section, the Electoral Commissioner may de-register the party.

14—Amendment of section 45—De-registration of political party

30 Section 45(1)(b)—delete paragraph (b) and substitute:

- (b) a political party so registered has ceased to have the required number of members (or, in the case of a parliamentary party, an appropriate member) to enable the party to continue as an eligible political party;
or

15—Insertion of sections 46A and 46B

35 After section 46 insert:

46A—False statements

40 A person who, in furnishing information for the purposes of this Part, knowingly makes a statement that is false or misleading in a material particular is guilty of an offence.

Maximum penalty: \$5 000.

46B—Membership information to be confidential

- 5
- (1) Subject to subsection (2), the names and addresses of electors appearing in material provided to the Electoral Commissioner in connection with the membership requirements for registration, or continued registration, as a political party under this Part will be held by the Electoral Commissioner on a confidential basis (and therefore that material will not be available for public inspection under this Part).
- 10
- (2) Subsection (1) does not prevent the Electoral Commissioner providing information to a prescribed person or body, or a person or body of a prescribed class, (if any) for purposes connected with the operation or administration of this Act.

16—Amendment of section 48—Contents of writ

Section 48(3)—delete subsection (3) and substitute:

- 15
- (3) The date fixed for the close of the rolls must be—
- (a) subject to paragraph (b)—the date falling 10 days after the date of the issue of the writ;
- (b) if the day that would apply under paragraph (a) would be a Saturday, Sunday or public holiday—the date falling on the day next following the Saturday, Sunday or public holiday that is not itself a Saturday, Sunday or public holiday.
- 20

17—Amendment of section 52—Qualifications of candidate

Section 52—after subsection (1) insert:

- 25
- (1a) A person is not qualified to be a candidate for election as a member of the House of Assembly or the Legislative Council if the person would, if elected at the relevant election, be required to immediately vacate his or her seat under section 17 or 31 of the *Constitution Act 1934* (as the case requires).

18—Amendment of section 58—Grouping of candidates in Legislative Council election

- 30
- (1) Section 58(1)—delete "Where" and substitute:

Subject to this section, if

- (2) Section 58—after subsection (3) insert:

- 35
- (4) The number of candidates in a group must not exceed the number of candidates required to be elected at the particular election.

19—Amendment of section 59—Printing of Legislative Council ballot papers

- (1) Section 59(1)(a)—after "not included in groups" insert:

40

(on the basis that the groups and then the individual candidates will be placed sequentially on the ballot paper starting towards the left-hand side of the ballot paper and then moving across the ballot paper (towards the right-hand side) and, if necessary, on to and across a second or subsequent row or rows)

(2) Section 59(2)—delete subsection (2) and substitute:

- (2) If notice of an intention to lodge a voting ticket or voting tickets has been given in accordance with this Division, an additional square must be printed on the ballot paper in order to provide for the casting of votes in accordance with that ticket or those tickets.

20—Amendment of section 62—Printing of descriptive information on ballot papers

Section 62(3)—delete subsection (3) and substitute:

- (3) The Electoral Commissioner may reject an application under subsection (1)(d) if—
- (a) the description to which the application relates is, in the opinion of the Electoral Commissioner, obscene or frivolous; or
 - (b) the word or words constituting the description could not be, or may not be able to be, registered as the name, or as part of the name, of a political party under Part 6 because of the operation of section 42(2)(e) or (3)(b), other than where the application includes a declaration (in the form determined by the Electoral Commissioner) that has been signed by a person authorised by the relevant parliamentary party or registered political party and states that the party supports the application.
- (4) A decision of the Electoral Commissioner to accept or reject an application under subsection (1)(d) is final and conclusive and not subject to review or appeal.

21—Amendment of section 63—Voting tickets

Section 63—after subsection (4) insert:

- (5) If—
- (a) notice of intention to lodge a voting ticket for a Legislative Council election is given under subsection (2)(a); but
 - (b) a voting ticket is not then lodged in accordance with the requirements of subsection (2)(b),

the Electoral Commissioner must take reasonable steps to inform the candidate or candidates to whom the voting ticket was to relate of the failure to lodge the voting ticket in accordance with the requirements of this section (but the Electoral Commissioner need not take any other action in relation to the matter).

22—Amendment of section 65—Properly staffed polling booths to be provided

Section 65(2)—after "polling booth" insert:

unless the Electoral Commissioner has taken reasonable steps to ensure that liquor will not be sold or consumed on the premises while the polling booth is open for voting or otherwise being used for the purposes of the poll

23—Substitution of section 66

Section 66—delete the section and substitute:

66—Preparation of certain electoral material

- 5 (1) The Electoral Commissioner must have the following electoral material prepared for use in polling booths on polling day:
- (a) posters formed from how-to-vote cards submitted by the candidates in the election; and
 - (b) in relation to a Legislative Council election—posters or booklets, or posters and booklets containing the voting tickets registered for the purposes of the election.
- 10 (2) Material submitted for inclusion under subsection (1)—
- (a) must list candidates in the same order as their names will appear on the relevant ballot paper; and
 - (b) must comply with any other requirement prescribed by the regulations; and
 - (c) must be submitted in a quantity determined by the Electoral Commissioner; and
 - (d) in the case of how-to-vote cards, must be received by the Electoral Commissioner not later than 4 days after the day for nomination; and
 - (e) if 2 or more candidates form a group for the purposes of a Legislative Council election—must be jointly submitted by or on behalf of all candidates in the group; and
 - (f) must not identify a candidate—
 - 25 (i) by reference to the registered name of a registered political party or a composite name consisting of the registered names of 2 registered political parties; or
 - 30 (ii) by the use of a word or set of words that could not be, or may not be able to be, registered as the name, or as part of the name, of a political party under Part 6 because of the operation of section 42(2)(e) or (3)(b),
35 unless the candidate provides the Electoral Commissioner with a declaration (in the form determined by the Electoral Commissioner) that is signed by a person authorised by the relevant parliamentary party or registered political party (as the case may require) and states that—
 - (iii) the candidate is endorsed by the party; or
 - 40 (iv) the party has consented to the use of the relevant name or names or word or words; and

(g) in the case of how-to-vote cards—must, in relation to how-to-vote cards submitted by or on behalf of the same candidate or group of candidates, be in identical form.

5 (3) The form of a poster or booklet prepared under this section will, subject to this section, be as determined by the Electoral Commissioner.

(4) The order in which the electoral material referred to in subsection (1) is arranged will correspond to the order in which the names of candidates will appear on the relevant ballot paper.

10 (5) The presiding officer at each polling booth must cause posters and booklets prepared under subsection (1) to be displayed or made available (as the case may be) in a prominent position in the polling booth and in accordance with any direction issued by the Electoral Commissioner.

15 **24—Amendment of section 67—Appointment of scrutineers**

Section 67(1) and (2)—delete subsections (1) and (2) and substitute:

(1) Each candidate may appoint 1 or more scrutineers for the purposes of an election.

20 (2) A person cannot act as a scrutineer at a particular place on behalf of a candidate unless or until a copy of a written notice of appointment of the person as a scrutineer, signed by the candidate, is presented to the officer presiding at that place.

25—Amendment of section 71—Manner of voting

Section 71—after subsection (2) insert:

25 (3) In addition, a person whose name has been removed from the electoral roll by virtue of an objection under Part 5 Division 4 is entitled to make a declaration vote at an election if—

30 (a) the ground for the objection was that the person failed to notify an electoral registrar of a change of address in accordance with the requirements of this Act; and

(b) the previous address and the new address are both in the same House of Assembly district.

35 (4) A person who satisfies the requirements of subsection (3) will be taken to be an elector for the purposes of the other provisions of this Act (with respect to the election or elections held on the day in relation to which the entitlement under that subsection arises).

26—Amendment of section 74—Issue of declaration voting papers by post or other means

(1) Section 74(1)—delete "by post" and substitute:

40 under this section

(2) Section 74(2)—delete "is posted" and substitute:

is dispatched

(3) Section 74—after subsection (2) insert:

(2a) Declaration voting papers under subsection (1) or a response under subsection (2) may be issued or dispatched—

(a) by post; or

(b) in some other manner prescribed by the regulations.

(4) Section 74(3)(b)(iii)—delete subparagraph (iii) and substitute:

(iii) caring for a person who is seriously ill, infirm or disabled,

(5) Section 74(3)—after paragraph (b) insert:

; or

(c) the elector's place of residence is not within 20 kilometres, by the shortest practicable route—

(i) of any place likely to be a polling place appointed under this Act; or

(ii) of any place likely to constitute the site of a mobile polling booth established under this Act,

(6) Section 74—after subsection (6) insert:

(7) A person who is given an application by an elector for the issue of declaration voting papers under this section on the basis that the person will deliver the application to the appropriate officer must transmit the application to the appropriate officer as soon as possible.

Maximum penalty: \$1 250.

27—Amendment of section 80—Voter may be accompanied by an assistant in certain circumstances

(1) Section 80(1)—delete "subsection (2)" and substitute:

this section

(2) Section 80—after subsection (3) insert:

(4) A candidate, or a scrutineer appointed by a candidate, must not act as an assistant under this section.

Maximum penalty: \$1 250.

28—Amendment of section 82—Declaration vote, how made

(1) Section 82(1)(c)—delete "by post to the elector" and substitute:

to the elector under section 74(2a)

(2) Section 82(2)(d)(i)—after "ballot box" insert:

, or placed in another secured facility,

(3) Section 82—after subsection (4) insert:

(4a) A person who is given an envelope containing a declaration vote of an elector for transmission to a returning officer must lodge it with, or forward it by post to, the appropriate district returning officer as soon as possible.

Maximum penalty: \$1 250.

29—Amendment of section 84—Security of facilities

Section 84—after "ballot boxes" insert:

or other secured facilities

30—Amendment of section 85—Compulsory voting

(1) Section 85(5)—delete "at the foot of the notice by stating in it" and substitute:

in the indicated place by stating

(2) Section 85(5)—after "him or her," insert:

and then

31—Amendment of section 87—Ballot boxes or other facilities to be kept secure

(1) Section 87(1)—after "a ballot box" insert:

or other facility used for keeping voting papers

(2) Section 87(1)(a)—delete "the ballot box" and substitute:

it

(3) Section 87(2)—delete subsection (2) and substitute:

(2) An officer must, before voting papers are first deposited in a ballot box or other secured facility for the purposes of an election, publicly exhibit it empty.

32—Amendment of section 89—Scrutiny

Section 89—after subsection (2) insert:

(3) Despite subsection (2), the returning officer or a deputy returning officer may undertake a preliminary scrutiny of declaration voting papers (without opening any envelope) before the close of poll.

33—Amendment of section 91—Preliminary scrutiny

(1) Section 91(1)—delete subsection (1) and substitute:

(1) For the purposes of the scrutiny of declaration voting papers, the returning officer or a deputy returning officer—

5 (a) must begin by producing the relevant applications for declaration voting papers and, unopened, the envelopes containing declaration ballot papers, being such envelopes received by him or her up to the end of the period of 7 days immediately following the close of the poll, or received by
10 any other officer up to the close of the poll; and

(b) must then—

(i) in the case of declaration voting papers of voters whose votes were not taken before an officer, satisfy himself or herself—

15 (A) that the signature of the declarant corresponds with the signature on the application for declaration voting papers; and

20 (B) that the vote was recorded before the close of the poll,

and if so satisfied, accept the ballot paper for further scrutiny by withdrawing the ballot paper from its envelope and, without inspecting or unfolding it or allowing any other person to do so, by placing it in a securely closed ballot box or other facility reserved for such ballot papers but, if not so
25 satisfied, disallow the ballot paper without opening the envelope in which it is contained;

30 (ii) in the case of declaration voting papers of voters whose votes were taken before an officer, proceed with the process by withdrawing the ballot paper from its envelope and, without inspecting or unfolding it or allowing any other person to do so, by placing it in a securely closed ballot box or other facility reserved for such ballot papers, unless he or
35 she determines that there is proper cause at this stage for not accepting the ballot paper for further scrutiny under this Act; and

(c) must then seal up in separate parcels and preserve—

40 (i) all envelopes endorsed with declarations relating to declaration ballot papers accepted for further scrutiny; and

(ii) all unopened envelopes containing declaration ballot papers disallowed; and

(d) must then proceed with the scrutiny of the declaration ballot papers that have been accepted for further scrutiny.

(2) Section 91(1a)(a)—after "ballot box" insert:

or other facility

5 (3) Section 91(2)—delete subsection (2) and substitute:

(2) If, in conducting a scrutiny, it appears to a returning officer or deputy returning officer that 2 or more declaration ballot papers in respect of the same election have been received from the same elector, the returning officer or deputy returning officer must, subject to this section, accept the first such ballot paper that came into his or her hands and reject the remainder from further scrutiny.

34—Amendment of section 94—Informal ballot papers

(1) Section 94(1)(d)—after "ballot box" insert:

or other secured facility

15 (2) Section 94—after subsection (4) insert:

(4a) If—

(a) notice of intention to lodge a voting ticket for a Legislative Council election was given under section 63(2)(a) but a voting ticket was not then lodged in accordance with the requirements of section 63(2)(b); and

(b) the ballot papers for the election contain a voting ticket square on the basis that the voting ticket was to be lodged; and

(c) a voter uses that voting ticket square,

25 then the ballot paper is informal unless—

(d) subsection (4) of section 92 applies; or

(e) subsection (6) of this section applies.

35—Amendment of section 95—Scrutiny of votes in Legislative Council election

30 (1) Section 95(2)(h)—delete paragraph (h) and substitute:

(h) transmit the parcels to the deputy returning officer with the least possible delay, together with the statement specified in paragraph (d).

(2) Section 95(3)—delete subsection (3) and substitute:

35 (3) The deputy returning officer must—

(a) open all ballot boxes and other facilities used for keeping voting papers not opened by an assistant returning officer and must conduct the scrutiny of the ballot papers contained in those boxes or facilities, as far as practicable, in the manner described above; and

(b) if authorised by the Electoral Commissioner—

- (i) open the sealed parcels of ballot papers received from the assistant returning officers that comprise ballot papers where voting has occurred by the use of a voting ticket square; and
- (ii) make a fresh scrutiny of the ballot papers contained in those parcels, and for that purpose he or she has the same powers as if the fresh scrutiny were the original scrutiny, and may reverse any decision given in the original scrutiny; and
- (iii) arrange the unrejected ballot papers so scrutinised by him or her under the names of the respective candidates by placing in a separate parcel all those on which a first preference is indicated for the same candidate by virtue of the voting ticket; and
- (iv) count the first preference votes given for each candidate on all unrejected ballot papers arranged under subparagraph (iii); and
- (v) make out and sign a statement setting out the number of first preference votes given for each candidate under subparagraph (iv), and the number of informal ballot papers under this paragraph; and
- (vi) place in a separate parcel all the ballot papers which have been rejected as informal under this paragraph; and

(c) seal up all parcels created under this subsection and endorse on each parcel a description of its contents; and

(d) complete a return, in a form determined by the Electoral Commissioner, addressed to the returning officer for the Legislative Council; and

(e) transmit all voting papers, together with the return, to the returning officer for the Legislative Council.

(3) Section 95(4)—delete "The returning officer" and substitute:

Subject to subsection (4a), the returning officer

(4) Section 95—after subsection (4) insert:

(4a) The returning officer may, to such extent as he or she determines to be appropriate, rely on any information contained in a return under subsection (3) in substitution for conducting a fresh scrutiny under subsection (4) (and that information will then, to the extent determined by the returning officer, have full effect for the purposes of the succeeding provisions of this section).

36—Amendment of section 96D—Use of approved computer program in election

- (1) Section 96D(2)(b)—after "informal ballot papers" insert:
(after taking into account the operation of subsection (4a) (if relevant))
- 5 (2) Section 96D(2)(c)—after "(20) to (28) (inclusive)" insert:
(after taking into account the operation of subsection (4a) (if relevant))

37—Amendment of section 105—Respondents to petitions

Section 105—delete "is the respondent" and substitute:

10 and the person who was the successful candidate at the relevant election are
both respondents

38—Amendment of section 107—Orders that the Court is empowered to make

Section 107—after subsection (4) insert:

- 15 (5) An election may be declared void on the ground of misleading
advertising but only if the Court of Disputed Returns is satisfied, on
the balance of probabilities, that the result of the election was
affected by that advertising.
- (6) An election may be declared void on the ground of a breach of
section 109, 110 or 111 in accordance with the following provisions:
- 20 (a) if the Court of Disputed Returns finds, either on the basis of
a conviction or on the balance of probabilities, that the
successful candidate, or a person acting on behalf of the
successful candidate with the successful candidate's
knowledge, has committed such a breach, then the Court
may declare the election to be void whether or not it is
25 satisfied that the result of the election was affected by the
breach;
- (b) if the Court of Disputed Returns finds, on the balance of
probabilities, that the breach was committed without the
30 successful candidate's knowledge, then the Court may
declare the election to be void only if satisfied, on the
balance of probabilities, that the result of the election was
affected by the breach.

39—Amendment of section 112—Publication of electoral advertisements, notices etc

- 35 (1) Section 112(1)—after "in printed form" insert:
or through electronic publication on the Internet
- (2) Section 112(1)(a)—after "the name" insert:
(being the name by which the person is usually known)
- (3) Section 112(1), penalty provision—delete the penalty provision and substitute:
40 Maximum penalty:

- (a) if the offender is a natural person—\$5 000;
- (b) if the offender is a body corporate—\$10 000.

40—Insertion of sections 112A, 112B and 112C

After section 112 insert:

112A—Special provision relating to how-to-vote cards

- (1) During the election period for an election, a person must not distribute, or cause or permit to be distributed, a how-to-vote card unless—
 - (a) the name (being the name by which the person is usually known) and address (not being a post office box) of the person who authorised the card appears at the bottom of the card; and
 - (b) if the card is authorised—
 - (i) for a registered political party or a candidate endorsed by a registered political party—the party's name or, if the Register of Political Parties includes an abbreviation of the party's name, that abbreviation; or
 - (ii) for a candidate who is not endorsed by a registered political party—the candidate's name and the word "candidate",
- is stated on the card in accordance with any requirements prescribed by the regulations.

Maximum penalty: \$5 000.

- (2) Subsection (1) does not apply in relation to how-to-vote cards submitted for inclusion in posters under section 66.
- (3) In this section—
distribute a how-to-vote card includes make the card available to other persons.

112B—Certain descriptions not to be used

- (1) A person must not publish or distribute an electoral advertisement or a how-to-vote card that identifies a candidate—
 - (a) by reference to the registered name of a registered political party or a composite name consisting of the registered names of 2 registered political parties; or
 - (b) by the use of a word or set of words that could not be, or may not be able to be, registered as the name, or as part of the name, of a political party under Part 6 because of the operation of section 42(2)(e) or (3)(b),

unless—

- (c) the candidate is endorsed by the relevant parliamentary party or registered political party (as the case may be); or
- (d) the relevant parliamentary party or registered political party has consented to the use of the relevant name or names or word or words (as the case may be).

Maximum penalty: \$5 000.

- (2) Subsection (1) applies to publication by any means (including radio or television).
- (3) Subsection (1) does not prevent the publication of background information, a personal profile, or a declaration of policy, by or in relation to a candidate.
- (4) In this section—

distribute an electoral advertisement or how-to-vote card includes make the relevant advertisement or how-to-vote card available to other persons.

112C—Publication of matter regarding candidates

- (1) If, in any matter announced or published, or caused to be announced or published, by a person on behalf of any association, league, organisation or other body, it is—

(a) claimed or suggested that a candidate in an election is associated with, or supports the policy or activities of, that association, league, organisation or body; or

(b) expressly or impliedly advocated or suggested—

(i) in the case of a Legislative Council election—that a voter should place in the square opposite the name of a candidate on a ballot-paper a number not greater than the number of members to be elected; or

(ii) in the case of a House of Assembly election—that that candidate is the candidate for whom the first preference vote should be given,

that person is guilty of an offence.

Maximum penalty:

If the offender is a natural person—\$1 000;

If the offender is a body corporate—\$5 000.

- (2) Subsection (1) does not apply if the person proves that he or she is authorised in writing by the candidate to announce or publish the thing claimed, suggested or advocated.

- 5
- (3) Where any matter, the announcement or publication of which by any person without the written authority of a candidate would be an offence against subsection (1) on the part of that person, is announced or published by or on behalf of, or with the support of, any association, league, organisation or other body, every person who was an officer of the association, league, organisation or body at the time of that announcement or publication is guilty of an offence against subsection (1).
- 10
- (4) For the purposes of this section, where any matter purports, expressly or impliedly, to be announced or published by or on behalf of, or in the interests or with the support of, any association, league, organisation or other body, the matter will, in the absence of proof to the contrary, be deemed to be announced or published by or on behalf, or with the support, of the association, league, organisation or other body.
- 15
- (5) Nothing in this section applies to or in relation to any announcement or publication made or authorised by a bona fide political party respecting a candidate who, by public announcement, has declared his or her candidature to be a candidature on behalf of, or in the interests of, that party.
- 20

41—Amendment of section 113—Misleading advertising

Section 113(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- 25
- (a) if the offender is a natural person—\$5 000;
- (b) if the offender is a body corporate—\$25 000.

42—Substitution of section 114

Section 114—delete the section and substitute:

114—Heading to electoral advertisements

- 30
- (1) This section applies to the publication of electoral matter in written form in—
- (a) a journal; or
- (b) an electronic publication on the Internet,
- if payment or other consideration has been, or is to be, given for publication of the matter (whether the journal or electronic publication is published for sale or for distribution without charge).
- 35
- (2) If this section applies to the publication of electoral matter, the publisher of the matter must cause the word "advertisement" to be included as a headline to each article or paragraph containing the electoral matter—
- 40
- (a) in the case of matter published in a journal—in letters not smaller than 10 point or long primer; or

- (b) in the case of matter published in an electronic publication—in letters of a size that will be readily legible.

Maximum penalty:

- (a) if the offender is a natural person—\$1 250;
(b) if the offender is a body corporate—\$5 000.

- (3) In this section—

journal means a newspaper, magazine or other periodical.

43—Amendment of section 115—Limitations on display of electoral advertisements

- (1) Section 115(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

- (2) Section 115—after subsection (2) insert:

- (2a) A person must not exhibit an electoral advertisement by affixing it to a structure, fixture or vegetation that is situated on a road or road related area.

Maximum penalty: \$5 000.

Note—

This subsection only applies if the structure, fixture or vegetation is situated on land that is a road or road related area. It would not apply, for example, to material affixed to a fence, or to the wall of a building, that is situated on private land, even if the electoral advertisement is visible from a road or road related area.

- (2b) Subsection (2a) expires on 31 March 2014.

- (3) Section 115(3)(c)—delete paragraph (c)

- (4) Section 115—after subsection (3) insert:

- (4) The regulations may provide that any provisions of this section do not apply to an advertisement of a specified kind or the exhibition of an advertisement in circumstances of a specified kind.

- (5) In this section—

road means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles;

road related area means—

- (a) the shoulder of a road;
(b) an area that divides a road;
(c) a footpath or nature strip adjacent to a road.

44—Amendment of section 116—Published material to identify person responsible for political content

(1) Section 116(1)—after "television" insert:

or by publication or broadcast on the Internet

(2) Section 116(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

(a) if the offender is a natural person—\$1 250;

(b) if the offender is a body corporate—\$5 000.

(3) Section 116(2)(a)—delete "newspaper" and substitute:

journal, or an electronic publication on the Internet,

(4) Section 116(2)(c)—delete paragraph (c)

(5) Section 116(2)(d)—after "television" insert:

or broadcast on the Internet

(6) Section 116(2)—after paragraph (d) insert:

(e) any other prescribed material or class of material.

(7) Section 116—after subsection (2) insert:

(3) In this section—

journal means a newspaper, magazine or other periodical.

45—Amendment of section 119—Offender may be removed from polling booth

Section 119(2)—after "subsection (1)" insert:

(including a candidate or scrutineer)

46—Insertion of section 137

After section 136 insert:

137—Immunity

(1) No civil liability attaches to the Electoral Commissioner or any other officer acting in the administration of this Act for an act or omission in good faith in the exercise, performance or discharge, or purported exercise, performance or discharge, of powers, functions or duties under this Act.

(2) A liability that would, but for this section, attach to a person attaches instead to the Crown.

Schedule 1—Related amendments and transitional provisions

Part 1—Related amendment to *Constitution Act 1934*

1—Amendment of section 81—Staff

Section 81(2) and (3)—delete subsections (2) and (3) and substitute:

- 5 (2) The Commission may appoint other persons to the staff of the Commission.
- (3) An office within the staff of the Commission may be held in conjunction with an office in the public service of the State.
- 10 (4) A member of the staff of the Commission may receive such remuneration, if any, as may be determined by the Commission.

2—Amendment of section 82—Electoral redistributions

Section 82(2)(c)—delete "three" and substitute:

24

Part 2—Transitional provisions

15 3—Interpretation

In this Schedule—

principal Act means the *Electoral Act 1985*;

relevant day means the day on which sections 9 to 15 of this Act come into operation.

4—Transitional provisions

- 20 (1) The amendments effected to Part 6 of the principal Act by this Act will apply from 6 months after the relevant day with respect to a political party registered under that Part immediately before the relevant day.
- (2) A political party registered under Part 6 of the principal Act immediately before the relevant day is not required to furnish a return under section 43A of the principal Act (as enacted by this Act) until 30 September 2010.
- 25 (3) An application for the registration of an eligible political party (not being a parliamentary party) made but not finally determined before the amendment of Part 6 of the principal Act must comply with the requirements of that Part as amended by this Act, but the Electoral Commissioner must allow the applicant a reasonable
- 30 opportunity to amend the application in order to comply with those requirements.
- (4) The registration of an elector under paragraph (b)(iii) of section 74(3) of the principal Act is not affected by the amendment of that paragraph by this Act.