

South Australia

## Electoral (Miscellaneous) Amendment Act 2017

An Act to amend the *Electoral Act 1985* and to make a related amendment to the *Local Government Act 1999*.

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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 2017*.

#### 2—Amendment provisions

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*

#### 3—Amendment of section 4—Interpretation

- (1) Section 4(1)—after the definition of *institution* insert:

*medical practitioner* means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

- (2) Section 4(1), definition of *officer*—delete "of this Act" and substitute:  
of this or any other Act

#### **4—Amendment of section 8—Powers and functions of the Electoral Commissioner**

Section 8—after subsection (1) insert:

- (1a) The Electoral Commissioner must, where relevant in the carrying out of the Electoral Commissioner's functions under this Act, promote and encourage the casting of votes at a polling booth on polling day.

#### **5—Repeal of section 11**

Section 11—delete the section

#### **6—Amendment of section 12—Staff**

Section 12(1)(b)—after "this" insert:

or any other

#### **7—Amendment of section 26—Inspection and provision of rolls**

Section 26—after subsection (1) insert:

- (1a) A person may only inspect a copy of the roll available for inspection under subsection (1) if the person—
  - (a) provides the person's name and address to the Electoral Commissioner; and
  - (b) if requested to do so by the Electoral Commissioner, produces evidence of the correctness of the name or address as provided in a form determined by the Commissioner; and
  - (c) complies with conditions (if any) prescribed by the regulations.

#### **8—Amendment of section 42—Registration**

Section 42(2)(e)—delete paragraph (e) and substitute:

- (e) comprises or contains the word "Independent".

#### **9—Amendment of section 43A—Annual returns and other inquiries**

Section 43A(5)—delete subsection (5)

#### **10—Amendment of section 45—De-registration of political party**

Section 45(1)—after paragraph (d) insert:

or

- (e) the registered officer of a registered political party has failed to comply with a requirement under section 43A,

## **11—Amendment of section 53—Nominations of candidates endorsed by political party**

- (1) Section 53(1)—delete subsection (1) and substitute:
  - (1) The registered officer of a registered political party may, after the issue of the writ for the election—
    - (a) nominate on a nomination paper a candidate endorsed by the party for election as a member of the House of Assembly or the Legislative Council; or
    - (b) nominate on the same nomination paper candidates endorsed by the party for election as members of the House of Assembly or the Legislative Council.
- (2) Section 53(2)(b)—delete "in cash or a banker's cheque" and substitute:

to be paid in the prescribed manner
- (3) Section 53—after subsection (10) insert:
  - (11) In this section—

*prescribed amount* means—

    - (a) in the case of a candidate nominating for election as a member of the House of Assembly—\$1 000, or such lesser amount as may be prescribed by the regulations; or
    - (b) in the case of a candidate nominated for election as a member of the Legislative Council—the amount prescribed by the regulations for the purposes of this paragraph.

## **12—Amendment of section 53A—Nomination of candidate by a person**

- (1) Section 53A(2)(b)—delete "in cash or a banker's cheque" and substitute:

to be paid in the prescribed manner
- (2) Section 53A—after subsection (4) insert:
  - (4a) If a nomination paper lodged under subsection (2) does not fully comply with the requirement under subsection (3)(a)(ii), the relevant district returning officer must, if practicable, give the nominated candidate notice of the non-compliance sufficient to enable the candidate to fully comply with the requirement before the hour of nomination.
- (3) Section 53A—after subsection (5) insert:
  - (6) In this section—

*prescribed amount* means—

    - (a) in the case of a candidate nominating for election as a member of the House of Assembly—\$1 000, or such lesser amount as may be prescribed by the regulations; or

- (b) in the case of a candidate nominated for election as a member of the Legislative Council—the amount prescribed by the regulations for the purposes of this paragraph.

### **13—Amendment of section 54—Declaration of nominations**

- (1) Section 54(1)(b)—delete "and addresses"
- (2) Section 54(1)—after paragraph (b) insert:
  - and
  - (c) declare the addresses of all candidates duly nominated for the election in that district; but if the address of a candidate is suppressed from the roll under section 21—
    - (i) in the case of a candidate nominated for election as a member of the House of Assembly—the returning officer must instead declare the name of the House of Assembly electoral district in which that candidate resides; and
    - (ii) in the case of a candidate nominated for election as a member of the Legislative Council—the returning officer must not declare the address of that candidate.

### **14—Amendment of section 66—Preparation of certain electoral material**

- (1) Section 66(2)(f)—after subparagraph (i) insert:
  - (ia) by use of a word or set of words that comprises or contains the word "Independent" and—
    - (A) the name, or an abbreviation or acronym of the name, of a parliamentary party or a registered political party; or
    - (B) matter that so nearly resembles the name, or an abbreviation or acronym of the name, of a registered political party that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym; or
- (2) Section 66(2)(f)(ii)—delete "(2)(e) or"
- (3) Section 66(2)—after paragraph (f) insert:
  - (fa) must not identify a candidate by use of the word "Independent" if the candidate is endorsed by a registered political party; and

### **15—Amendment of section 71—Manner of voting**

- Section 71(2)(c)—delete "an inmate" and substitute:
  - a resident

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

Section 74—after subsection (3) insert:

- (3a) An application under this section for the issue of declaration voting papers to an elector, or for registration of an elector as a declaration voter, may be made by a person other than the elector if the application is accompanied by a certificate from a medical practitioner, in a form approved by the Electoral Commissioner, certifying that the elector is, because of physical disability, unable to sign the elector's own name.

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

Section 80(3)—after paragraph (d) insert:

- (e) in the case of a voter making a declaration vote—
  - (i) by assisting the voter to complete the appropriate declaration on the envelope; or
  - (ii) if the voter is unable to do so—by completing and signing the declaration on the voter's behalf in the presence of an officer (who must sign the envelope as witness); or
  - (iii) by folding and placing the ballot paper in the appropriate envelope and sealing the envelope.

**18—Amendment of section 80A—Voting near polling booth in certain circumstances**

Section 80A(3)—delete subsection (3) and substitute:

- (3) The following provisions apply to a voter to whom subsection (1) applies:
  - (a) in the case of a voter casting an ordinary vote—after the voter has marked a vote on the ballot paper, the presiding officer must, in the presence of the scrutineers, ensure—
    - (i) that the ballot paper is folded to conceal the vote and placed in an envelope that is then sealed; and
    - (ii) that the envelope is opened inside the polling booth and the folded ballot paper is placed in the ballot box;
  - (b) in the case of a voter casting a declaration vote—the voter must—
    - (i) sign the appropriate declaration on the envelope (which must be signed by the person before whom the vote is taken as witness); and
    - (ii) mark a vote on the ballot paper and fold it so as to conceal the vote; and

- (iii) place the ballot paper in the envelope provided and seal the envelope,

and the presiding officer must then, in the presence of the scrutineers, ensure that the envelope is deposited in the ballot box;

- (c) if a voter satisfies the presiding officer that the voter is unable to vote without assistance, the voter may be assisted in accordance with section 80 as if the voter were in the polling booth.

## **19—Substitution of section 81**

Section 81—delete the section and substitute:

### **81—Voting by elector to whom declaration voting papers have been issued**

An elector to whom declaration voting papers have been issued (otherwise than at a polling booth) is entitled to an ordinary vote at a polling booth, but a declaration ballot paper purporting to be a ballot paper of that elector must not be admitted to the scrutiny.

## **20—Amendment of section 82—Declaration vote, how made**

- (1) Section 82(2)—delete "Where" and substitute:

Subject to this Part, if

- (2) Section 82(2)(a)—before "sign" insert:

unless the elector is an elector referred to in section 74(3a),

## **21—Amendment of section 83—Taking of declaration votes by electoral visitors**

- (1) Section 83(4)(a)—delete "inmates" and substitute:

residents

- (2) Section 83(4)(b)—delete "an inmate" and substitute:

a resident

- (3) Section 83(6)—delete "two or more inmates" and substitute:

2 or more residents

## **22—Amendment of section 84—Security of facilities**

Section 84—delete "At the close of poll, all" and substitute:

All

## 23—Insertion of Part 9 Division 5A

After section 84 insert:

### **Division 5A—Electronically assisted voting for sight-impaired electors**

#### **84A—Electronically assisted voting for sight-impaired electors**

- (1) The regulations may make provision in relation to voting in an election by sight-impaired electors by means of an electronically assisted voting method.
- (2) Without limiting the generality of subsection (1), regulations made for the purposes of this Division may—
  - (a) determine, or provide for the determination of, the following:
    - (i) the electronically assisted voting method;
    - (ii) matters related to the voting using the electronically assisted voting method, including the provision of assistance to electors using the method, requirements to be followed after an elector has used the method and matters of privacy and secrecy;
    - (iii) the number of places where the electronically assisted voting method is to be available, the location of those places and the days and times at which the method is to be available;
    - (iv) which electors may use the electronically assisted voting method; and
  - (b) require the making of a record of each person who has voted using the electronically assisted voting method; and
  - (c) specify the information that is to be included in a record; and
  - (d) provide for the production of a record of the vote each person has cast, which must not contain any means of identifying the person who cast the vote; and
  - (e) provide for the appointment by the Electoral Commissioner of officers in relation to the conduct of the electronically assisted voting method; and
  - (f) provide for the application of this Act, or provisions of this Act, in relation to votes cast using the electronically assisted voting method, including the modification of the application of this Act or a provision of this Act in relation to such votes; and
  - (g) make provision for any other matters related to electronically assisted voting.

- (3) To avoid doubt, nothing in this Division (or in regulations made for the purposes of this Division) authorises any elector to vote more than once at an election.
- (4) In this section—  
*sight-impaired elector* means an elector whose sight is impaired such that the elector is unable to vote without assistance.

#### **84B—Applying provisions of Act to elector using electronic assisted voting**

- (1) The prescribed electronically assisted voting method must be such that an elector using the method in relation to an election—
  - (a) receives the same information (in the same order), and has the same voting options, as would appear in the ballot paper for the election that the elector would be given if the elector were voting at a polling booth under this Part; and
  - (b) is able to indicate a vote in a way that, if the elector were marking a ballot paper, would satisfy the requirements of section 76.
- (2) Subject to this Division, if an elector votes using the electronically assisted voting method (an *electronically assisted vote*)—
  - (a) this Act applies (subject to any modifications prescribed under section 84A(2)(f)) in relation to an electronically assisted vote as if it were a declaration vote; and
  - (b) the record of the electronically assisted vote produced in accordance with the regulations is to be taken to be a ballot paper for the purposes of this Act; and
  - (c) the requirements of this Act in relation to the elector's right to receive a ballot paper are to be taken to have been satisfied.

#### **84C—Electoral Commissioner may determine that electronically assisted voting is not to be used**

- (1) The Electoral Commissioner may, by notice in the Gazette, determine that the prescribed electronically assisted voting method is not to be used either generally or at 1 or more specified places.
- (2) A notice under subsection (1) must specify the election in respect of which the determination applies.

#### **24—Amendment of section 91—Preliminary scrutiny**

Section 91(1)(b) and (c)—delete paragraphs (b) and (c) and substitute:

- (b) must then—
  - (i) in the case of declaration voting papers of voters whose votes were not taken before an officer, if satisfied—

- (A) that the signature of the declarant corresponds with the signature on the application for declaration voting papers (other than in the case of an application made on behalf of an elector referred to in section 74(3a)); and
- (B) that the vote was recorded before the close of the poll,

accept the ballot paper for further scrutiny and proceed with the process by—

- (C) tearing off the extensions to the envelope flap on the envelope containing the ballot paper; and
- (D) rearranging the envelopes that no longer bear their tear-off extensions so that the anonymity of the voter is maintained; and
- (E) withdrawing the ballot paper from its envelope and placing it in a securely closed ballot box or other facility reserved for such ballot papers,

but, if the officer is not so satisfied, the officer must disallow the ballot paper without opening the envelope in which it is contained; or

- (ii) in the case of declaration voting papers of voters whose votes were taken before an officer, proceed with the process by—
  - (A) tearing off the extensions to the envelope flap on the envelope containing the ballot paper; and
  - (B) rearranging the envelopes that no longer bear their tear-off extensions so that the anonymity of the voter is maintained; and
  - (C) withdrawing the ballot paper from its envelope and placing it in a securely closed ballot box or other facility reserved for such ballot papers,

unless the officer 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—
  - (i) all tear-off extensions removed from envelopes; and
  - (ii) all opened declaration envelopes relating to declaration ballot papers accepted for further scrutiny; and
  - (iii) all unopened envelopes containing declaration ballot papers disallowed; and

**25—Amendment of section 92—Interpretation of ballot papers in Legislative Council elections**

Section 92—delete "candidate or" wherever occurring

**26—Amendment of section 112A—Special provision relating to how-to-vote cards**

Section 112A—after subsection (5) insert:

(5a) If the Electoral Commissioner is satisfied that a how-to-vote card has been distributed in contravention of this section, the Electoral Commissioner may request that the person who authorised the card do either or both of the following:

- (a) immediately cease distributing, or causing or permitting the distribution of, the how-to-vote card;
- (b) publish a retraction in specified terms and a specified manner and form,

(and in proceedings for an offence against this section arising from the distribution of the how-to-vote card, the authorised person's response to a request under this subsection will be taken into account in assessing any penalty to which the person may be liable).

**27—Amendment of section 112B—Certain descriptions not to be used**

(1) Section 112B(1)—after paragraph (a) insert:

(ab) by use of the word or a set of words containing the word "Independent" and—

- (i) the name, or an abbreviation or acronym of the name, of a parliamentary party or a registered political party; or
- (ii) matter that so nearly resembles the name, or an abbreviation or acronym of the name, of a registered political party that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym; or

(2) Section 112B(1)(b)—delete "(2)(e) or"

(3) Section 112B—after subsection (1) insert:

(1a) A person must not publish or distribute an electoral advertisement or a how-to-vote card that identifies a candidate by use of the word "Independent" if the candidate is endorsed by a registered political party.

Maximum penalty: \$5 000.

(4) Section 112B(2)—delete "Subsection (1) applies" and substitute:

Subsections (1) and (1a) apply

(5) Section 112B(3)—delete "Subsection (1) does" and substitute:

Subsections (1) and (1a) do

## 28—Insertion of section 115A

After section 115 insert:

### 115A—Automated political calls

- (1) A person must not make, or cause or permit the making of, a telephone call consisting of a pre-recorded electoral advertisement unless, immediately after that part of the call consisting of the advertisement, the following statements are made:
  - (a) the name and address (not being a post office box) of the person who is making, or who authorises the making of, the call;
  - (b) if the call is authorised for a registered political party or a candidate endorsed by a registered political party—the name of the political party;
  - (c) if the call is authorised for a relevant third party—the name of the relevant third party.

Maximum penalty:

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

***relevant third party*** means an organisation or other person, other than a registered political party, candidate or natural person, who—

  - (a) as at the day on which the call to which subsection (1) relates is made, intends to spend more than \$2 000 on electoral advertisements—
    - (i) if the call is made in an election period—during that election period; or
    - (ii) in any other case—during the election period for the next general election due to occur; or
  - (b) spent more than \$2 000 on electoral advertisements during the election period for the general election immediately preceding the day on which the call to which subsection (1) relates is made.

## 29—Amendment of section 117—Candidates not to take part in elections

Section 117(2)—delete subsection (2)

## 30—Amendment of section 126—Prohibition of advocacy of forms of voting inconsistent with Act

- (1) Section 126(2)—after paragraph (b) insert:
  - or
  - (c) identical to a card permitted to be distributed under section 112A.

- (2) Section 126—after subsection (2) insert:
- (3) A person must not publicly advocate that an elector may exercise their vote in a manner inconsistent with the provisions of this Act relating to the manner in which an elector may exercise a vote.  
Maximum penalty: \$2 500.
- (4) It is a defence to a charge of an offence against subsection (3) to prove that acts alleged to constitute the offence arose from an honest and reasonable misunderstanding or mistake on the part of the defendant.

### 31—Amendment of section 130A—Interpretation

- (1) Section 130A(1), definition of *capped expenditure period*—delete "(subject to subsection (9))"
- (2) Section 130A(1), definition of *designated period*—delete "(subject to subsection (10))"
- (3) Section 130A(1), definition of *political expenditure*—delete the definition and substitute:

*political expenditure* means expenditure incurred—

- (a) for the purposes of the public expression of views on a political party, a candidate in an election or a member of the House of Assembly or the Legislative Council by any means; or
- (b) for the purposes of the public expression of views on an issue in an election by any means; or
- (c) for the purposes of the production of any political material (not being material referred to in paragraph (a) or (b)) that is required under section 112, 115A or 116 to include the name and address of the author of the material or of the person who takes responsibility for the publication or authorisation of the material (as the case requires);  
or
- (d) for the purposes of the carrying out of an opinion poll, or other research, relating to an election or the voting intentions of electors;  
or
- (e) for any other prescribed purpose,

and includes expenditure of a prescribed kind, but does not include—

- (f) expenditure that is a GST payment; or
- (g) expenditure of an electorate allowance or another allowance, expense or benefit (as determined by the Remuneration Tribunal) under section 4(1)(c) of the *Parliamentary Remuneration Act 1990*; or
- (h) administrative expenditure; or
- (i) expenditure of an allowance or benefit of a kind contemplated under section 6A(1) of the *Parliamentary Remuneration Act 1990*; or
- (j) expenditure of a prescribed kind;

- (4) Section 130A—after subsection (1) insert:
- (1a) For the purposes of this Part, if the disclosure period for a return required to be furnished under this Part by a candidate or group has not commenced, a requirement in this Part that a return be furnished at a prescribed time during a designated period is not to be taken to require the furnishing of a return by the candidate or group at that prescribed time.
- (5) Section 130A(5)—delete "(other than Division 3)"
- (6) Section 130A(6)—delete "For" and substitute:
- Subject to subsection (6a), for
- (7) Section 130A—after subsection (6) insert:
- (6a) Political expenditure on electoral matter in relation to a candidate or group for election that is incurred—
- (a) after polling day for the last preceding general election and before the commencement of the capped expenditure period for the election; and
- (b) for the primary purpose of publication, use or display of that electoral matter during the capped expenditure period,
- will be taken to have been incurred during the capped expenditure period.
- (8) Section 130A(9) and (10)—delete subsections (9) and (10)

### **32—Substitution of section 130C**

Section 130C—delete the section and substitute:

#### **130C—Application of Part**

A registered political party is only required under this Part to disclose donations and amounts received or applied for State electoral purposes.

### **33—Amendment of section 130L—Gifts to be paid into State campaign account**

Section 130L—delete "the gift is made or received in contravention of this Part or is otherwise a gift that must not be paid into such an account in accordance with this Division" and substitute:

- 
- (a) the gift is made or received in contravention of this Part; or
- (b) in relation to a gift received by or on behalf of a registered political party—the gift is not intended by the registered political party to be used for State electoral purposes; or
- (c) the gift is otherwise a gift that must not be paid into such an account in accordance with this Division.

### **34—Amendment of section 130M—Payments into State campaign account**

Section 130M—after subsection (1) insert:

- (1a) If a registered political party keeps an account with an ADI for federal electoral purposes, the agent of the registered political party must ensure that no amount is paid or transferred from that account into the State campaign account.

### **35—Amendment of section 130Y—Application of Division**

Section 130Y(2)(b)—delete "the capped expenditure period commences in relation to the candidate or group for the election" and substitute:

—

- (i) the capped expenditure period commences in relation to the candidate or group for the election; or
- (ii) the disclosure period for a return required to be furnished under this Part by the candidate or group in relation to the election commences, whichever period commences later

### **36—Amendment of section 130Z—Expenditure caps**

- (1) Section 130Z(1)(c)—delete "(or, if different amounts are so allocated to the candidate at different times, the amount so allocated at the end of the capped expenditure period)"
- (2) Section 130Z—after subsection (2) insert:
  - (2a) For the purpose of subsection (2)(a), the amount agreed between the candidate and the agent of the party may vary at different times, provided that the candidate and agent may not vary the amount agreed after notice of the agreement has been given to the Electoral Commissioner under subsection (3).
- (3) Section 130Z(3)—delete "within 3 days of the agreement" and substitute:

at least 8 days before polling day for the election
- (4) Section 130Z—after subsection (3) insert:
  - (3a) The Electoral Commissioner must not publish an agreement given to the Electoral Commissioner under subsection (3) until after the end of the capped expenditure period for the election to which the agreement relates.

### **37—Amendment of section 130ZF—Returns by certain candidates and groups**

Section 130ZF—after subsection (5) insert:

- (5a) Despite section 130ZZ, if no details are required to be included in a return required to be furnished under this section by the agent of a candidate or group of candidates endorsed by a registered political party, the return need not be furnished to the Electoral Commissioner as required by this section.

## **Schedule 1—Related amendment and transitional provision**

### **Part 1—Amendment of *Local Government Act 1999***

#### **1—Amendment of section 226—Moveable signs**

Section 226(3)(c)—delete "on the issue of" and substitute:

at 5pm on the day before the day of the issue of

### **Part 2—Transitional provision**

#### **2—Political expenditure on electoral matter**

Section 130A(6a) of the *Electoral Act 1985* (as inserted by this Act) applies to political expenditure on electoral matter incurred on or after 1 May 2017 (but does not apply to political expenditure on electoral matter incurred before that date).