

South Australia

**Direct Democracy (Citizen-Initiated Referendums)
Bill 2004**

A BILL FOR

An Act to enable the electors of South Australia to initiate referendums on proposed laws,
and to approve or disapprove such proposed laws at a referendum.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation

Part 2—Initiation of referendums by petition

Division 1—Commencement of petitions

- 4 Initiation of referendums by electors
- 5 Petition details
- 6 Submission of petition to Electoral Commissioner
- 7 Registration of petition
- 8 Preparation of statement to accompany petition
- 9 Availability of copy of petition etc

Division 2—Electoral officials

- 10 Local electoral officials

Division 3—Signatories to petition

- 11 Signatories to petition
- 12 Particulars of signatories to petition
- 13 Counting arrangements

Division 4—Qualification of petition for submission of proposed law to electors

- 14 Closing date
- 15 Number of electors required to sign petition to qualify for referendum
- 16 Electoral Commissioner to determine whether petition qualifies
- 17 Certificate of qualification
- 18 Drafting of proposed law
- 19 Tabling of petition
- 20 Drafting of ballot papers
- 21 Bills to be submitted to the referendum

Part 3—Referendum

- 22 Date of referendum
- 23 Conduct of referendum
- 24 Entitlement to vote
- 25 Duty to vote
- 26 Declaration of result of referendum
- 27 Approval by electors

Part 4—Advertising

- 28 Printing and publication of CIR advertisements, notices etc
- 29 Misleading advertising
- 30 Heading to advertisements
- 31 Size of advertisements
- 32 Published material to identify person responsible for content
- 33 Evidence

Part 5—Miscellaneous

- 34 General ability to withdraw petition
- 35 Effect of approved law
- 36 Offences relating to petitions
- 37 Application to Supreme Court to restrain breach
- 38 Regulations

Schedule 1—Entrenchment

- 1 Entrenchment
 - 2 Referendum requirements
 - 3 Electoral Commissioner to conduct referendum
 - 4 Publication of result
 - 5 Presentation of Bill to Governor
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Direct Democracy (Citizen-Initiated Referendums) Act 2004*.

5 2—Commencement

The commencement of this Act is subject to the operation of the *Referendum (Direct Democracy) Act 2004* and, if approved at the referendum held under that Act, this Act will come into operation 2 months after it is assented to by the Governor.

3—Interpretation

- 10 (1) In this Act, unless the contrary intention appears—

CIR advertisement means an advertisement containing CIR matter;

CIR matter means matter calculated—

- 15 (a) to influence members of the public to sign, or not to sign, a registered petition under this Act; or
- (b) to affect the result of a referendum of a proposed law under this Act;

CPI means the Consumer Price Index (All Groups) for the City of Adelaide;

Electoral Commissioner includes a person for the time being acting in the office of the Electoral Commissioner under the *Electoral Act 1985*;

- 20 ***elector*** means a person whose name appears as an elector on an electoral roll kept under the *Electoral Act 1985* for House of Assembly elections (not being a person under the age of 18 years who is provisionally enrolled), and includes a person whose name should appear on such a roll as an elector but has, by error, been omitted from the roll;

House of Assembly electoral district, electoral district or *district* means a district for the return of a member of the House of Assembly;

local electoral official—see section 10;

Parliamentary Counsel includes a person for the time being acting in the office of the Parliamentary Counsel;

petition means a petition for a referendum under this Act;

petitioner in relation to a petition, means a signatory to a petition who is duly nominated or appointed under section 6 as a petitioner in relation to the petition;

President means the President of the Legislative Council;

proposed law means a Bill for an Act within the legislative powers of the Parliament of South Australia;

to publish includes to authorise, cause or permit to be published;

qualified petition means a petition for which a certificate of qualification has been issued by the Electoral Commissioner under section 17(3);

registered petition means a petition registered by the Electoral Commissioner under this Act;

referendum means a referendum on a proposed law conducted under and in accordance with this Act;

Speaker means the Speaker of the House of Assembly.

- (2) If a monetary amount is followed by the word "(indexed)", the amount is to be adjusted on 1 January of each year, beginning in 2005, by multiplying the stated amount by a proportion obtained by dividing the CPI for the quarter ending 30 June in the previous year by the CPI for the quarter ending 30 June 2003.

Part 2—Initiation of referendums by petition

Division 1—Commencement of petitions

4—Initiation of referendums by electors

Electors have the right to initiate referendums on proposed laws by petition in accordance with the provisions of this Act.

5—Petition details

- (1) A petition is to be addressed to the President and the Speaker and request that a referendum be held on the proposed law.
- (2) A petition must have a title and contain a prose description of the proposed law in not more than 100 words.
- (3) The title and description of the proposed law must not be misleading.
- (4) The petition may be accompanied by written material in support of the petition.
- (5) Any such supporting material may contain arguments in support of the proposed law.

- (6) The petition, the summary and supporting material are to be framed so as to be clearly intelligible, and must not have an ambiguous meaning.
- (7) The petition must comply with any other requirement determined by the Electoral Commissioner and published in the Gazette for the purposes of this section.

5 **6—Submission of petition to Electoral Commissioner**

- (1) A petition prepared for the purposes of this Act must be submitted to the Electoral Commissioner for registration.
- (2) A petition submitted to the Electoral Commissioner for registration—
 - 10 (a) must be signed by not less than 400 persons each of whom was an elector at the time he or she signed the petition; and
 - (b) must nominate between 7 and 25 signatories (inclusive) to the petition to be the petitioners in relation to the petition for the purposes of this Act; and
 - (c) must be accompanied by a lodgement fee of \$8 000 (indexed); and
 - (d) must comply with any other requirement prescribed by the regulations.
- 15 (3) Only electors who sign a petition within 3 months before the date of delivery of the petition to the Electoral Commissioner are to be taken into account for the purposes of subsection (2).
- (4) A signatory to a petition may, by instrument in writing signed by a majority of the existing petitioners, be appointed as an additional petitioner or to replace a petitioner 20 who has resigned or died (but the number of petitioners must be kept to not more than 25).
- (5) A person must, by written notice (which may be incorporated into the original petition), signify his or her consent to being a petitioner.
- 25 (6) A person may resign from being a petitioner by written notice furnished to the Electoral Commissioner and to the other petitioners.
- (7) The Electoral Commissioner must ensure that each petitioner is provided with a certificate of identification.

7—Registration of petition

- 30 (1) The Electoral Commissioner should, subject to this section, register a petition within 14 days after its delivery to the Electoral Commissioner.
- (2) The Electoral Commissioner must not register a petition if—
 - (a) it does not comply with a relevant requirement of this Act; or
 - (b) it—
 - 35 (i) deals with 2 or more subject-matters which appear to the Electoral Commissioner to be not directly or indirectly related; or
 - (ii) affects the rights or liabilities of a named person (other than in the person's capacity as a public official); or
 - (iii) provides for the appointment of a named person to public office or for the removal of a named person from public office; or

(iv) provides for matter which, if enacted as a law of the State, would clearly be inconsistent with the Australian Constitution or a Commonwealth law.

5 (3) The Electoral Commissioner may consult with such persons as the Electoral Commissioner thinks fit for the purposes of subsection (2).

(4) The Electoral Commissioner may request or invite the petitioners to make such changes to the petition (being changes to its title, the description of the proposed law set out in the petition or the supporting material accompanying the petition) as the Electoral Commissioner considers necessary to enable it to be registered.

10 (5) Any such change may be effected by the withdrawal of the petition and the delivery of a new petition duly signed by the requisite number of electors or, if the Electoral Commissioner is satisfied that the change does not alter the substance of the proposed law, by a notice in writing signed by all the petitioners.

15 (6) The Electoral Commissioner must publish in the Gazette a notice of the title of a petition registered by the Electoral Commissioner, the date of registration and the description of the proposed law set out in the petition.

(7) The Electoral Commissioner must notify the petitioners of a decision not to register the petition and inform them of the reasons for that decision.

8—Preparation of statement to accompany petition

20 (1) The Electoral Commissioner must, on the registration of a petition, deliver a copy of the petition to the Parliamentary Counsel.

25 (2) The Parliamentary Counsel must, on the receipt of a petition from the Electoral Commissioner, prepare a brief outline of the legislative measure that the Parliamentary Counsel would expect to prepare to give effect to the proposed law set out in the petition.

(3) The Parliamentary Counsel may, in preparing the outline, consult with such persons as the Parliamentary Counsel thinks fit.

(4) The Parliamentary Counsel must, on the completion of the outline, deliver a copy of the outline—

30 (a) to the Electoral Commissioner; and

(b) to the petitioners.

(5) The outline will form part of the supporting material that is to accompany the petition.

(6) Nothing contained in an outline is binding with respect to the preparation of a draft Bill if the petition subsequently becomes a qualified petition.

9—Availability of copy of petition etc

35 (1) The Electoral Commissioner must make available for public inspection copies of any petition registered by the Electoral Commissioner, together with any changes notified to the Electoral Commissioner in accordance with this Act and any supporting material accompanying the petition.

40 (2) Any such material is to be made available at the office of the Electoral Commissioner in Adelaide and at any other place designated by the regulations.

(3) The Electoral Commissioner may make any such material available at any other place determined by the Electoral Commissioner.

(4) The Electoral Commissioner may make any such material available for sale at cost.

Division 2—Electoral officials

5 10—Local electoral officials

(1) The Electoral Commissioner will appoint for each House of Assembly electoral district a local electoral official to deal with petitions signed by electors in that district.

(2) A person may be appointed as the local electoral official for 2 or more districts.

10 (3) The Electoral Commissioner may also appoint other persons as electoral officials to assist in dealing with petitions.

(4) An electoral official appointed under this section must exercise a function under this Act in accordance with any relevant direction of the Electoral Commissioner.

Division 3—Signatories to petition

11—Signatories to petition

15 (1) A signatory to a registered petition must be an elector at the time he or she signs the petition.

(2) A person must not sign a registered petition more than once.

(3) A person who is enrolled or who claims to be an elector may sign a registered petition.

20 (4) The Electoral Commissioner and any electoral official may use such electoral information and material as the Electoral Commissioner thinks fit for the purposes of determining the eligibility of signatories to the petition under this Part.

12—Particulars of signatories to petition

(1) The following particulars of signatories are required on a registered petition:

(a) the full name of the person;

25 (b) the address of the person (which should be shown on the relevant electoral roll for the petition);

(c) the date of birth of the person;

(d) the signature of the person;

(e) the date on which the person signs the petition;

30 (f) any other information required by the regulations.

(2) The required particulars (other than the signature) must appear in legible form.

13—Counting arrangements

(1) The Electoral Commissioner is to make the following arrangements for the counting of signatories to a registered petition:

35 (a) local electoral officials on receipt of signed petitions are to deposit them in a locked ballot-box until the count for the month;

Direct Democracy (Citizen-Initiated Referendums) Bill 2004

Part 2—Initiation of referendums by petition

Division 3—Signatories to petition

- (b) the number of signatories to petitions returned to local electoral officials are (during the currency of the petition) to be counted as soon as practicable after the end of each month;
- 5 (c) signed petitions are to be kept in batches according to each relevant month and deposited in locked ballot-boxes;
- (d) the names of signatories to petitions that have been counted are to be marked off or recorded against an appropriate copy of the electoral roll kept by the local electoral official in a manner determined by the Electoral Commissioner;
- 10 (e) if the name of a signatory has been marked off or recorded against a copy of the relevant electoral roll, a further signature is not to be counted;
- (f) a local electoral official may make due inquiries to determine the eligibility of a person to be a signatory to a petition;
- 15 (g) if a local electoral official has reason to believe that a signature is not that of a person eligible to be a signatory to a petition, the signature is not to be counted by the official;
- (h) if it appears to a local electoral official that a signatory to a petition has not completed all of the particulars required on the petition, the signature is not to be counted by the official.
- 20 (2) The local electoral official is to issue a certificate in the prescribed form containing particulars of the count of each batch of signed petitions.
- (3) The certificate is to be kept with each batch and a copy sent to the Electoral Commissioner and another copy kept for public inspection at the office of the local electoral official.
- 25 (4) The Electoral Commissioner or a local electoral official may recount a batch at any time.
- (5) The relevant certificate of the count may be amended by the Electoral Commissioner or a local electoral official, as required.
- 30 (6) A local electoral official may, instead of counting the signatories and marking them off the relevant roll, merely count the total number of signatories if it appears (from a representative sample of at least 10% of the signatures) that they are duly enrolled.
- (7) The Electoral Commissioner may direct that the representative sample used for the purposes of subsection (6) be greater than 10%.
- (8) A certificate is then to be issued as an interim certificate.
- 35 (9) The Electoral Commissioner may direct a full count of the signatories if it becomes necessary to determine whether the petition is a qualified petition.
- (10) The Electoral Commissioner may at any time require counted batches of petitions to be forwarded to the Electoral Commissioner.
- 40 (11) The Electoral Commissioner is to ensure that the petitioners are given a reasonable opportunity to be present at the count of the signatories to a petition and to scrutinise the count.

- 5 (12) The Electoral Commissioner must, on a monthly basis, by notice published in the Gazette and in a newspaper circulating generally throughout the State, provide the public with a progress report on the number of signatories to a petition (but any number so provided will be taken to be indicative only and will not be relevant to any formal determination about whether the petition is a qualified petition).

Division 4—Qualification of petition for submission of proposed law to electors

14—Closing date

- 10 The closing date (the last date on which a person may sign a petition) is the date that is 8 months after the end of the month in which the petition was registered.

15—Number of electors required to sign petition to qualify for referendum

- 15 (1) A registered petition does not qualify for submission of the proposed law to a referendum unless the number of electors who have signed the petition equals or exceeds 3% of the total number of electors enrolled in the State for a general election for the House of Assembly.
- (2) Only electors who sign a petition before the closing date for the petition are to be taken into account for the purpose of determining whether the petition is a qualified petition.
- 20 (3) Copies of petitions are not to be taken into account if they are delivered to a local electoral official later than 2 months after the closing date for the petition.

16—Electoral Commissioner to determine whether petition qualifies

- 25 (1) As soon as practicable after the Electoral Commissioner receives certificates of local electoral officials indicating signature of the petition by the requisite number of duly qualified signatories to qualify for submission of the proposed law to a referendum, the Electoral Commissioner is required to ascertain whether the petition is a qualified petition.
- (2) The certificates of the local electoral officers are evidence of the number of electors who have duly signed the petition.
- 30 (3) The Electoral Commissioner may make inquiries for the purpose of being reasonably satisfied that the petition has been signed by the requisite number of duly qualified electors, and the Electoral Commissioner may reduce the number of signatories in any batch where the Electoral Commissioner is satisfied that they should not be counted for the purposes of this Act.
- 35 (4) A petition which does not qualify (taking into account the requirements of this Act) has no effect, and is cancelled.

17—Certificate of qualification

- (1) The Electoral Commissioner must certify any petition which the Electoral Commissioner determines qualifies for submission of the proposed law to a referendum.
- 40 (2) The certificate (a **certificate of qualification**) is to set out the description of the proposed law.

Direct Democracy (Citizen-Initiated Referendums) Bill 2004

Part 2—Initiation of referendums by petition

Division 4—Qualification of petition for submission of proposed law to electors

- (3) The Electoral Commissioner issues the certificate of qualification by publishing the certificate in the Gazette.
- (4) If the Electoral Commissioner issues a certificate of qualification, the Electoral Commissioner must, within 7 days, deliver a copy of the certificate and any relevant material—
- 5
- (a) to the President and to the Speaker; and
- (b) to the Parliamentary Counsel.

18—Drafting of proposed law

- (1) The Parliamentary Counsel is required to prepare a draft of the law proposed by a qualified petition in accordance with the relevant description supplied by the Electoral Commissioner.
- 10
- (2) The Parliamentary Counsel must, in preparing a draft of the proposed law, consult with one or more of the petitioners, and may consult with any other persons as the Parliamentary Counsel thinks fit.
- 15
- (3) The Parliamentary Counsel may, in preparing a draft of a proposed law, on his or her own initiative, include such provisions or make such adjustments as in his or her opinion are necessary or appropriate to ensure that the law is legally effective and include such transitional, machinery, ancillary or related provisions as the Parliamentary Counsel (in his or her absolute discretion) thinks fit.
- 20
- (4) The Parliamentary Counsel must deliver a settled draft of the proposed law—
- (a) to the President and the Speaker; and
- (b) to the petitioners.

19—Tabling of petition

- (1) As soon as practicable after the Electoral Commissioner has delivered to the President and the Speaker the certificate of qualification for a petition and the Parliamentary Counsel has delivered to the President and the Speaker a copy of the draft proposed law—
- 25
- (a) the President is required to cause a copy of the certificate and the draft Bill to be tabled in the Legislative Council; and
- 30
- (b) the Speaker is required to cause a copy of the certificate and the draft Bill to be tabled in the House of Assembly.
- (2) The Parliamentary Counsel may, after consultation with the President, the Speaker, and a representative of the petitioners (nominated by a majority of the petitioners in accordance with the regulations), and any other persons as the Parliamentary Counsel thinks fit, alter and then resettle a draft Bill after it has been tabled (and the Parliamentary Counsel may do this on more than 1 occasion but must not act so as to derogate from the general purposes of the Bill).
- 35

20—Drafting of ballot papers

- (1) A question on the ballot paper at a referendum of a proposed law may deal with not more than 1 subject-matter of a proposed law unless the subject-matters are directly or indirectly related.
- 40

- (2) Separate questions must be presented on the ballot paper if the Electoral Commissioner or the Parliamentary Counsel requires the submission of separate questions on a provision or provisions of a subject-matter of the proposed law to referendum.
- 5 (3) The form and presentation of the ballot paper will be determined by the Electoral Commissioner after consultation with the Parliamentary Counsel and a representative of the petitioners nominated by a majority of the petitioners in accordance with the regulations.
- 10 (4) If there are 2 or more questions on the ballot paper, and these deal with the same subject-matter, the voting on these questions may be by preferential voting, or by some other method of voting, as determined by the Electoral Commissioner after consultation with the petitioners (or a representative of the petitioners nominated by a majority of the petitioners in accordance with the regulations).
- 15 (5) The Electoral Commissioner may determine any other related matter as the Electoral Commissioner thinks fit.

21—Bills to be submitted to the referendum

The Bill or Bills as last settled by the Parliamentary Counsel is or are the Bill or Bills to be submitted to the referendum.

Part 3—Referendum

22—Date of referendum

- (1) Subject to this Act, a referendum on a proposed law must be held on—
- 25 (a) unless paragraph (b) applies, the date of the first general election of members of the House of Assembly for which writs are issued by the Governor after the tabling of the draft proposed law in both Houses of Parliament under section 19; or
- (b) a date determined by resolution of both Houses of Parliament, being a date that is earlier than the date that would otherwise apply under paragraph (a).
- (2) Nothing in this section prevents more than 1 referendum being held on the same day.

23—Conduct of referendum

- 30 (1) The Electoral Commissioner is responsible for the conduct of the referendum.
- (2) The *Electoral Act 1985* applies to the referendum with adaptations, exclusions and modifications prescribed by regulation, or determined by the Electoral Commissioner by notice in the Gazette, as if the referendum were a general election of members of the House of Assembly.
- 35 (3) The petitioners may, by notice given to the Electoral Commissioner in accordance with the regulations, appoint 1 or more scrutineers for the purposes of the referendum.

24—Entitlement to vote

The persons entitled to vote at a referendum will be the electors (and no other persons).

25—Duty to vote

An elector is under a duty to vote at a referendum in accordance with section 85 of the *Electoral Act 1985* (as if a reference in that section to an election were a reference to the referendum).

26—Declaration of result of referendum

- (1) The Electoral Commissioner must publish the result of a referendum by notice in the Gazette when the result is conclusively determined.
- (2) The publication of a notice under subsection (1) is conclusive evidence of the result of the referendum.

27—Approval by electors

- (1) A proposed law is approved by the electors at a referendum if a majority of the electors voting at the referendum approve the proposed law.
- (2) On approval, the proposed law is to be taken as incorporating a request to the Governor that the Governor assent to the approved law, and the Electoral Commissioner is required to present the approved law to the Governor for the Governor's assent.
- (3) The enacting provision of a law approved by the electors, when so assented to, will be:

"The electors of South Australia under the provisions of the Direct Democracy (Citizen-Initiated Referendums) Act 2004 enact as follows:".
- (4) If the electors approve at 2 or more referendums held on the same day 2 or more proposals the provisions of which conflict in any respect, the provisions of the proposal receiving the highest affirmative vote will, to the extent of any inconsistency, prevail, and those other provisions are, to the extent of any inconsistency, invalid and of no effect.

Part 4—Advertising

28—Printing and publication of CIR advertisements, notices etc

- (1) A person must not publish or distribute, or cause or permit to be published or distributed, a CIR advertisement in printed form unless—
 - (a) the name and address (not being a post office box) of the author of the advertisement, or the person who authorised its publication, appears at the end; and
 - (b) in the case of a CIR advertisement that is printed but not in a newspaper—the name and place of business of the printer appears at the end.

Maximum penalty:

- (a) if the offender is a body corporate—\$5 000;
 - (b) if the offender is a natural person—\$1 250.
- (2) Subsection (1) does not apply in relation to—
 - (a) a car sticker, T-shirt, lapel button, lapel badge, pen, pencil or balloon; or
 - (b) an article included in a prescribed class of articles.

29—Misleading advertising

- (1) This section applies to advertisements published by any means (including radio or television).
- (2) A person who authorises, causes or permits the publication of a CIR advertisement (an *advertiser*) is guilty of an offence if the advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent.

Maximum penalty:

- (a) if the offender is a body corporate—\$10 000;
(b) if the offender is a natural person—\$1 250.

- (3) However, it is a defence to a charge of an offence against subsection (2) to establish that the defendant—
- (a) took no part in determining the content of the advertisement; and
(b) could not reasonably be expected to have known that the statement to which the charge relates was inaccurate and misleading.

- (4) If the Electoral Commissioner is satisfied that a CIR advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent, the Electoral Commissioner may request the advertiser to do one or more of the following:

- (a) withdraw the advertisement from further publication;
(b) publish a retraction in specified terms and a specified manner and form,

(and in proceedings for an offence against subsection (2) arising from the advertisement, the advertiser's response to a request under this subsection will be taken into account in assessing any penalty to which the advertiser may be liable).

30—Heading to advertisements

- (1) If CIR matter is to be inserted in a journal, the proprietor of the journal must cause the word "advertisement" to be printed as a headline in letters not smaller than 10 point or long primer to each article or paragraph containing the CIR matter.

Maximum penalty:

- (a) if the offender is a body corporate—\$2 500;
(b) if the offender is a natural person—\$750.

- (2) This section applies only in respect of CIR matter for the publication of which payment or other consideration has been, or is to be, given.

- (3) In this section—

journal means a newspaper, magazine or other periodical, whether published for sale or for distribution without charge.

31—Size of advertisements

- (1) A person must not exhibit a CIR advertisement on—
- (a) a vehicle or vessel; or
(b) a building, hoarding or other structure,

if the advertisement occupies an area in excess of 1 square metre.

Maximum penalty: \$1 250.

(2) For the purposes of subsection (1), CIR advertisements—

(a) that are apparently exhibited by or on behalf of the same person; and

(b) that are at their nearest points within 1 metre of each other,

will be taken to form a single advertisement.

(3) This section does not apply to—

(a) the exhibition of an advertisement in a theatre (including a drive-in theatre) by means of a cinematograph; or

(b) the exhibition of an advertisement of a prescribed kind or the exhibition of an advertisement in circumstances of a prescribed kind.

32—Published material to identify person responsible for content

(1) A person must not publish material consisting of, or containing a commentary on, the issues being submitted to electors by a registered petition under this Act or in a referendum under this Act, in written form, or by radio or television, unless the material or the program in which the material is presented contains a statement of the name and address (not being a post office box) of a person who takes responsibility for the publication of the material.

Maximum penalty:

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

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

(2) This section does not apply to—

(a) the publication in a newspaper of a leading article;

(b) the publication of a report of a meeting that does not contain any comment (other than comment made by a speaker at the meeting) on the issues being submitted to electors;

(c) the publication in a newspaper of an article, letter, report or other matter if the newspaper contains a statement to the effect that a person whose name and address (not being a post office box) appears in the statement takes responsibility for the publication of all CIR matter published in the newspaper;

(d) a news service or a current affairs programme on radio or television;

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

33—Evidence

In proceedings for an offence against this Part—

(a) a CIR advertisement that includes a statement that its publication was authorised by a specified person; or

(b) a CIR advertisement that includes a statement that it was printed by a specified person; or

- (c) material consisting of, or containing, a commentary on the issues being submitted to electors, that includes a statement that a specified person takes responsibility for the publication of the material; or
- (d) an apparently genuine document purporting to be a certificate of the Electoral Commissioner certifying that the Electoral Commissioner made a request for the withdrawal of a misleading advertisement or the publication of a retraction,

is, in the absence of proof to the contrary, proof of that fact.

Part 5—Miscellaneous

34—General ability to withdraw petition

- (1) The petitioners may, by notice in writing signed by a majority of the petitioners and provided to the Electoral Commissioner, at any time, propose—
- (a) the withdrawal of a petition; or
- (b) the withdrawal of any part of the subject-matter of a proposed law; or
- (c) the postponement of the submission of a proposed law to referendum; or
- (d) the termination of a referendum.
- (2) Subject to any determination of the Electoral Commissioner after consultation with the Attorney-General, a notice under subsection (1) will have effect according to its terms (and the Electoral Commissioner must give notice of this in the Gazette).

35—Effect of approved law

- (1) A law approved by electors at a referendum and assented to by the Governor under this Act will be taken to be an Act of the Parliament of South Australia for the purposes of any other Act or law (and may then be subject to the operation of a subsequent Act of the Parliament).
- (2) A law approved by electors at a referendum may itself effect amendments to an Act of Parliament (including an Act within the ambit of subsection (1)).
- (3) An irregularity in compliance with a provision of Part 2 does not affect the validity of a law approved by electors at a referendum and assented to by the Governor under this Act.

36—Offences relating to petitions

- (1) A person who signs another person's name to a petition or who knowingly signs a petition more than once, or who, not being an elector, knowingly signs a petition, is guilty of an offence.
- (2) A person who gives or offers or promises to give any money or other material benefit to a person to obtain the person's signature to a petition is guilty of an offence.
- (3) A person who, without reasonable excuse, hinders or obstructs a person from collecting signatures for a petition is guilty of an offence.
- (4) A person who knowingly misrepresents a proposed law in order to induce a person to sign or not sign a petition is guilty of an offence.

- 5 (5) A person who uses or makes available to any person any particulars obtained from a petition about a signatory to a petition for a purpose that is not connected with the administration of this Act is guilty of an offence.
- (6) A person who threatens, offers or suggests any violence, injury, damage, loss or disadvantage to any elector or any other person in order to induce an elector to sign or refrain from signing a petition is guilty of an offence.
- (7) A person who inflicts or procures any violence, injury, damage, loss or disadvantage to an elector or any other person for or on account of an elector signing or refraining from signing a petition is guilty of an offence.
- 10 (8) A person who prints, publishes or distributes any advertisement or document containing a representation of a ballot paper, or any representation appearing to represent a ballot paper, containing directions likely to mislead, or any untrue or incorrect statement likely to mislead, an elector in or in relation to the casting of a vote at a referendum is guilty of an offence.
- 15 (9) If a body corporate is guilty of an offence against this Act, each director and manager of the body corporate is guilty of an offence and liable to the same penalty as may be imposed for the principal offence unless it is proved that the principal offence did not result from failure on his or her part to take reasonable and practicable measures to prevent the commission of the offence.
- 20 (10) A person who is found guilty of an offence against this Act is liable to a penalty not exceeding \$10 000.

37—Application to Supreme Court to restrain breach

- (1) The Electoral Commissioner may apply to the Supreme Court for an order to remedy or restrain a breach of this Act.
- 25 (2) An application may be made in the absence of the respondent and, if the Court is satisfied on the application that the respondent has a case to answer, the Court may grant leave to the applicant to serve a summons requiring the respondent to appear before the Court to show cause why an order should not be made under this section.
- (3) If—
- 30 (a) after hearing—
- (i) the applicant and the respondent; and
 - (ii) any other person who has, in the opinion of the Court, a proper interest in the subject matter of the proceedings and desires to be heard in the proceedings,
- 35 the Court is satisfied, on the balance of probabilities, that the respondent to the application has breached this Act; or
- (b) the respondent fails to appear in response to the summons or, having appeared, does not avail himself or herself of an opportunity to be heard,
- the Court may, by order, exercise 1 or more of the following powers:
- 40 (c) require the respondent to refrain, either temporarily or permanently, from the act, or course of action, that constitutes the breach;

- (d) require the respondent to make good the breach in a manner, and within a period, specified by the Court, or to take such other action as may appear appropriate to the Court;
- (e) if relevant—require the respondent to do one or both of the following:
- 5 (i) withdraw an advertisement from further publication;
- (ii) publish a retraction in specified terms and in a specified manner and form;
- (f) require the respondent to pay to any person who has incurred costs or expenses as a result of the breach, an amount for, or towards, those costs or expenses;
- 10 (g) if the Court considers it appropriate to do so, require the respondent to pay an amount, determined by the Court, in the nature of exemplary damages into the Consolidated Account;
- (h) require the respondent to take specified action to publicise—
- 15 (i) the breach of this Act; and
- (ii) the other requirements of the order made against the respondent.
- (4) The Court may make such order in relation to costs of proceedings under this section as it thinks just and reasonable.
- (5) In this section—
- 20 *breach* of this Act includes a threatened contravention of, or failure to comply with, this Act.

38—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes, of this Act.
- 25 (2) Without limiting the generality of subsection (1), the regulations may—
- (a) provide for the form and provision of any document under or for the purposes of this Act; and
- (b) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Electoral Commissioner or another prescribed person; and
- 30 (c) impose penalties, not exceeding \$5 000, for a contravention of, or failure to comply with, a regulation.

Schedule 1—Entrenchment

1—Entrenchment

- 35 Subject to this Schedule, a Bill passed by the Parliament of South Australia providing for the repeal, suspension, expiry or amendment of—
- (a) sections 4, 5, 6, 7, 11, 14, 15, 22, 23, 24, 25, 26, 27 or 35; or
- (b) this Schedule,

must not be presented to the Governor for assent unless or until the Bill has been approved at a referendum of electors under this Schedule.

2—Referendum requirements

- 5 (1) A referendum under this Schedule will be held on a date appointed by proclamation for the purpose, being a date falling at least 2 months after the Bill is passed by Parliament.
- (2) The question to be put at the referendum will be specified by proclamation.

3—Electoral Commissioner to conduct referendum

- 10 (1) The Electoral Commissioner will be responsible for the conduct of the referendum.
- (2) The *Electoral Act 1985* applies to the referendum with adaptations, exclusions and modifications prescribed by regulation, or determined by the Electoral Commissioner by notice in the Gazette, as if the referendum were a general election of members of the House of Assembly.
- (3) An elector is under a duty to vote at the referendum.

4—Publication of result

- 15 (1) The Electoral Commissioner must publish the result of the referendum by notice in the Gazette when the result is conclusively determined.
- (2) The publication of a notice under subclause (1) is conclusive evidence of the result of the referendum.

5—Presentation of Bill to Governor

20 If a majority of electors voting at the referendum approve the Bill at the referendum, it will be presented to the Governor for assent.