

Legislative Council—No 157

As received from the House of Assembly and read a first time, 23 September 2021

South Australia

**Electoral (Electronic Documents and Other
Matters) Amendment Bill 2021**

A BILL FOR

An Act to amend the *Electoral Act 1985*.

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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 (Electronic Documents and Other Matters) Amendment Act 2021*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—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*

4—Amendment of section 4—Interpretation

(1) Section 4(1), definition of *how-to-vote card*—delete "a card," and substitute:
written information

(2) Section 4(1), definition of *remote subdivision*—delete the definition

5—Amendment of section 8—Powers and functions of Electoral Commissioner

Section 8(1a)—delete subsection (1a)

6—Amendment of section 15—Electoral subdivisions

Section 15(3)—delete subsection (3)

7—Amendment of section 18—Polling places

Section 18(4)—delete "by advertisement in a newspaper circulating generally throughout the State" and substitute:

on a website determined by the Electoral Commissioner and in any other manner prescribed by the regulations

8—Repeal of section 25

Section 25—delete the section

9—Amendment of section 26—Inspection and provision of rolls

Section 26(1)—delete "(whether in printed or electronic form) of the latest prints"

10—Amendment of section 31A—Itinerant persons

(1) Section 31A(9)(b)—delete paragraph (b)

(2) Section 31A(10)(b)—delete paragraph (b)

(3) Section 31A(10)(c)(iii)—delete subparagraph (iii)

11—Amendment of section 41—Publication of notice of application

Section 41(1)—delete "in the Gazette and in a newspaper circulating generally in the State." and substitute:

—

- 5
- (a) in the Gazette; and
 - (b) on a website determined by the Electoral Commissioner; and
 - (c) in any other manner prescribed by the regulations.

12—Amendment of section 48—Contents of writ

(1) Section 48(3)(a)(i)—delete "6" and substitute:

10 2

(2) Section 48(7)(a)—delete "in a newspaper circulating throughout the State" and substitute:

on a website determined by the Electoral Commissioner and in any other manner prescribed by the regulations

13—Amendment of section 49—Deferral of election

15 Section 49(1)—delete "in a newspaper circulating generally throughout the State" and substitute:

on a website determined by the Electoral Commissioner and in any other manner prescribed by the regulations

20 14—Amendment of section 53—Nomination of candidates endorsed by political party

(1) Section 53(1)—delete subsection (1) and substitute:

25 (1) The registered officer of a registered political party may, after the issue of the writ for the election, nominate a candidate or candidates endorsed by the party for election as a member or members of the House of Assembly or the Legislative Council.

(2) Section 53(2)—delete subsection (2)

(3) Section 53(3)—delete "paper must be in a form approved by the Electoral Commissioner and" and substitute:

30 made by a registered officer under this section must

(4) Section 53(3)(a)—delete paragraph (a) and substitute:

- (a) be made in a manner and form determined by, and in accordance with any requirements of, the Electoral Commissioner; and
- (ab) be made at least 48 hours before the hour of nomination; and
- 35 (ac) be accompanied by a deposit of the prescribed amount to be paid in the manner determined by the Electoral Commissioner in respect of each candidate nominated; and

(5) Section 53(3)(b)—delete ", signed by each candidate, that he or she" and substitute:
made by the candidate in the prescribed manner, that the candidate

(6) Section 53(4)—delete subsection (4) and substitute:

(4) If the Electoral Commissioner receives a nomination under this section, the Electoral Commissioner must, as soon as is practicable (and in any event at least 24 hours before the hour of nomination), provide a copy of the nomination to the returning officer in respect of each district for which a candidate has been nominated.

(7) Section 53(5)—delete "in writing lodged with the appropriate district returning officer" and substitute:

to the Electoral Commissioner in a manner and form determined by the Electoral Commissioner

(8) Section 53(6)—delete "returning officer must immediately inform" and substitute:

Electoral Commissioner must immediately inform the appropriate district returning officer and

(9) Section 53(7)—delete "some other person as the candidate endorsed by the party for the district by lodging with the appropriate district returning officer before the hour of nomination a duly completed nomination paper" and substitute:

, before the hour of nomination and in accordance with the requirements of subsection (3), some other person as the candidate endorsed by the party for the district

15—Amendment of section 53A—Nomination of candidate by a person

(1) Section 53A(1)—delete "on a nomination paper"

(2) Section 53A(2)—delete subsection (2)

(3) Section 53A(3)—delete "paper must be in a form approved by the Electoral Commissioner and—" and substitute:

made by a person under this section must—

(a1) be made to the appropriate district returning officer before the hour of nomination; and

(a2) be made in a manner and form determined by, and in accordance with any requirements of, the Electoral Commissioner; and

(a3) be accompanied by a deposit of the prescribed amount to be paid in the manner determined by the Electoral Commissioner; and

(4) Section 53A(3)(a)—delete "signed" and substitute:

endorsed, in a manner determined by the Electoral Commissioner,

(5) Section 53A(3)(b)—delete "signed by the candidate, that he or she" and substitute:
made by the candidate in the prescribed manner, that the candidate

(6) Section 53A(3a)(b)—delete "signs a nomination paper" and substitute:
endorses a nomination

(7) Section 53A(3a)—delete "signature" and substitute:

endorsement

(8) Section 53A(4)—delete "in writing lodged with" and substitute:

given in a manner and form determined by the Electoral Commissioner to

5 (9) Section 53A(4a)—delete "paper lodged under subsection (2)" and substitute:

made under this section

16—Amendment of section 54—Declaration of nominations

Section 54(1)(a)—delete "nomination papers" and substitute:

nominations

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

Section 58(2)(b)—delete "signed" and substitute:

endorsed, in a manner determined by the Electoral Commissioner,

18—Amendment of section 60A—Voting tickets

15 (1) Section 60A(2)(a)—delete "written notice of intention to lodge a voting ticket or voting tickets is given to the Electoral Commissioner or the returning officer" and substitute:

notice of intention to lodge a voting ticket or voting tickets is given, in a manner and form determined by the Electoral Commissioner, to the Electoral
20 Commissioner or the returning officer

(2) Section 60A(2)—after paragraph (b) insert:

and

(c) the voting ticket is lodged in accordance with the requirements of the Electoral Commissioner.

25 (3) Section 60A(3)(b)—delete " in writing" and substitute:

, in a manner and form determined by the Electoral Commissioner,

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

(1) Section 62(1a)(b)—delete "appropriate written authorisation" and substitute:

authorisation, in a manner and form determined by the Electoral
30 Commissioner,

(2) Section 62(2)(b)—delete "signed" and substitute:

endorsed, in a manner determined by the Electoral Commissioner,

(3) Section 62(2)(ba)—delete "appropriate written authorisation signed by the candidate"
35 and substitute:

authorisation given by the candidate under subsection (1a)(b)

(4) Section 62(2)(c)(i)—delete "signed" and substitute:
endorsed

(5) Section 62(2)(d)—delete "appropriate written authorisation signed by all of the members of the group" and substitute:

5 authorisation given by all of the members of the group in a manner and form determined by the Electoral Commissioner

(6) Section 62(3)(b)—delete "signed" and substitute:
endorsed

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

10 (1) Section 65(1)—delete "returning officer for the district" and substitute:
Electoral Commissioner

(2) Section 65(1)(a)—delete "within" and substitute:
for

21—Amendment of section 66—Preparation of certain electoral material

15 (1) Section 66(2)(c)—delete paragraph (c) and substitute:

(c) must be submitted in a manner determined by, and in accordance with the requirements of, the Electoral Commissioner; and

(2) Section 66(2)(f)—delete "(in the form determined by the Electoral Commissioner) that is signed" and substitute:

20 (made in a manner and form determined by the Electoral Commissioner)

22—Amendment of section 71—Manner of voting

(1) Section 71(1)—after paragraph (a) insert:

(ab) by attending at a pre-polling booth and voting in the manner prescribed by this Act; or

25 (2) Section 71(2)(a)—delete "on polling day at a polling booth outside the district for which he or she is enrolled as an elector" and substitute:

at a polling booth other than 1 established in respect of the district for which the elector is enrolled

(3) Section 71(2)(b)(i)—delete "8" and substitute:

30 20

(4) Section 71(2)(c)—delete paragraph (c)

23—Amendment of section 72—Questions to be put to person claiming to vote

Section 72(1)(a)—delete "and the address of the principal place of residence"

24—Amendment of section 73—Issue of voting papers

35 (1) Section 73(2)—delete "written"

(2) Section 73(2)—after "which" insert:

must be made in accordance with the requirements prescribed by the regulations

(3) Section 73(2)(a) and (b)—delete paragraphs (a) and (b)

5 **25—Amendment of section 74—Issue of declaration voting papers by post or other means**

(1) Section 74(1)(b)—delete paragraph (b) and substitute:

(b) to an elector who applies for the issue of declaration voting papers in the prescribed manner and within the designated time.

10 (2) Section 74(2)—delete subsection (2) and substitute:

(2) An officer who receives an application before the designated time must ensure that they respond to the applicant as soon as practicable after receipt of the application (and in any event no later than 24 hours after that receipt).

15 (3) Section 74(3)(c)(ii)—delete "mobile polling booth" and substitute:

pre-polling booth

(4) Section 74(3a)—delete "sign the elector's own name" and substitute:

make the application in the prescribed manner

(5) Section 74—after subsection (7) insert:

20 (8) In this section—

designated time means—

(a) in the case of an applicant who applies for the issue of declaration voting papers to an address within the State—5 pm on the Tuesday immediately preceding polling day; and

(b) in any other case—5 pm on the Friday falling 8 days before polling day.

26—Amendment of section 77—Times and places for polling

(1) Section 77(1)(b)—delete paragraph (b) and substitute:

30 (b) at such other places as may be determined by the Electoral Commissioner—in a pre-polling booth.

(2) Section 77(2)(b)—delete "mobile polling booth in a remote subdivision" and substitute:

pre-polling booth

35 (3) Section 77(3)—delete subsection (3) and substitute:

(3) The Electoral Commissioner must, on a website determined by the Electoral Commissioner and in any other manner prescribed by the regulations, advise the times and places for polling at a pre-polling booth.

- (4) Section 77(3a)—delete "mobile polling booth" and substitute:

pre-polling booth

- (5) Section 77(3a)(a)(i)—delete "in a newspaper circulating generally throughout the State" and substitute:

on a website determined by the Electoral Commissioner and in any other manner prescribed by the regulations

- (6) Section 77(3a)(a)(ii)—delete subparagraph (ii) and substitute:

(ii) if the Electoral Commissioner considers it appropriate to do so in the circumstances—by the Electoral Commissioner taking such steps as are reasonably practicable to notify relevant electors of the alteration;
or

- (7) Section 77(3a)(b)—delete "electors in the particular subdivision" and substitute:

relevant electors

- (8) Section 77(3b)—delete "mobile polling booth" and substitute:

pre-polling booth

27—Repeal of section 83

Section 83—delete the section

28—Amendment of heading to Part 9 Division 5A

Heading to Part 9 Division 5A—delete the heading and substitute:

Division 5A—Assisted voting for prescribed electors

29—Amendment of section 84A—Assisted voting for prescribed electors

- (1) Section 84A(1)—delete "sight-impaired" and substitute:

prescribed

- (2) Section 84A(1)—delete "electronically"

- (3) Section 84A(2)(a)—delete paragraph (a) and substitute:

(a) determine, or provide for the determination of, 1 or more assisted voting methods and, in relation to each such method, determine, or provide for the determination of, the following:

- (i) matters related to voting using the 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;
- (ii) the number of places where the assisted voting method is to be available, the location of those places (if relevant) and the days and times at which the method is to be available;
- (iii) which electors may use the assisted voting method; and

- (4) Section 84A(2)(b), (e) and (f)—delete "the electronically" wherever occurring and substitute in each case:

an

- (5) Section 84A(2)(g)—delete "electronically"

- 5 (6) Section 84A(4)—before the definition of *sight-impaired elector* insert:

prescribed elector means a sight-impaired elector or an elector of a class prescribed by the regulations for the purposes of this definition;

30—Amendment of section 84B—Applying provisions of Act to elector using assisted voting

- 10 (1) Section 84B(1)—delete "The prescribed electronically" and substitute:

An

- (2) Section 84B(2)—delete "using the electronically assisted" and substitute:
using an assisted

- (3) Section 84B(2)—delete "(an *electronically assisted vote*)" and substitute:
15 (an *assisted vote*)

- (4) Section 84B(2)(a)—delete "an electronically" and substitute:
the

- (5) Section 84B(2)(b)—delete "electronically"

31—Amendment of section 84C—Electoral Commissioner may determine that assisted voting is not to be used

- 20 Section 84C(1)—delete "the prescribed electronically" and substitute:
an

32—Amendment of section 85—Compulsory voting

- (1) Section 85(8)—after paragraph (c) insert:

- 25 (ca) the elector is an itinerant elector; or

- (2) Section 85—after subsection (10) insert:

- (11) In this section—

itinerant elector means—

- 30 (a) a person enrolled as an elector under section 31A; or
(b) an itinerant elector within the meaning of the
Commonwealth Electoral Act 1918.

33—Amendment of section 89—Scrutiny

(1) Section 89(2)—delete subsection (2) and substitute:

(2) The scrutiny must commence—

(a) in relation to votes taken at a polling booth at an appointed polling place—as soon as practicable after the close of poll; and

(b) in relation to ordinary votes taken at a pre-polling booth before polling day—at such times and in such manner before the close of poll as determined by the Electoral Commissioner,

and may be adjourned from time to time as may be necessary until the counting of the votes is complete.

(2) Section 89—after subsection (3) insert:

(4) Any scrutiny undertaken before the close of poll must be undertaken in accordance with this Act and the requirements prescribed by the regulations.

34—Amendment of section 91—Preliminary scrutiny

Section 91(1)(b)(i)(A)—delete subsubparagraph (A) and substitute:

(A) of the identity of the elector (which must be verified in a manner prescribed by the regulations); and

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

Section 112A—after subsection (7) insert:

(7a) Subsection (1)(a) and (b) do not apply to a how-to-vote card published as part of other material if that material is an electoral advertisement authorised in accordance with section 112.

36—Amendment of section 113—Misleading advertising

Section 113(4) and (5)—delete subsections (4) and (5) and substitute:

(4) If, on application, the Tribunal is satisfied that an electoral advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent, the Tribunal may order the advertiser to do 1 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.

(5) For the purposes of the *South Australian Civil and Administrative Tribunal Act 2013*—

(a) an application to the Tribunal under subsection (4)—

(i) will be taken to come within the Tribunal's original jurisdiction; and

(ii) must be referred to a Presidential member or senior member of the Tribunal, or a magistrate designated as a member of the Tribunal; and

(b) an order of the Tribunal under subsection (4) may not be the subject of an application for internal review under section 70 of that Act, but, despite section 71(2a) of the *South Australian Civil and Administrative Tribunal Act 2013*, an appeal against the order may be instituted under section 71 of that Act.

37—Amendment of section 116A—Evidence

Section 116A(d)—delete paragraph (d)

38—Amendment of section 125—Prohibition of canvassing near polling booths

Section 125(3)(a)—delete paragraph (a)

39—Insertion of section 129A

After section 129 insert:

129A—False or misleading information

A person must not, in giving any information under this Act—

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is false or misleading.

Maximum penalty: \$1 250.

40—Amendment of section 132—Injunctions

Section 132(2)—delete subsection (2)