

Legislative Council—No 182

As received from the House of Assembly and read a first time, 1 December 2016

South Australia

**Electoral (Legislative Council Voting) (Voter
Choice) Amendment Bill 2016**

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

- 5 This Act may be cited as the *Electoral (Legislative Council Voting) (Voter Choice) Amendment Act 2016*.

2—Commencement

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

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

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

- 15 *group* means a group of 2 or more candidates nominated for election to the Legislative Council who have their names grouped together on ballot papers in accordance with section 58;

group voting square means a square printed on a ballot paper for a Legislative Council election in relation to the candidates included in a group who have requested a group voting square for the purposes of the election under section 58(2)(e);

5 (2) Section 4(1), definition of *registered voting ticket*—delete "section 63" and substitute:
section 60A

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

10 *voting ticket* means a written statement of a particular order in which a voter might allocate preferences in an election, being a statement for use under this Act in interpreting the votes of voters who, in relation to a House of Assembly election, do not indicate an order of preference covering all candidates;

15 **5—Amendment of section 53—Multiple nominations of candidates endorsed by political party**

Section 53(3)(b)(iii)—delete "and to lodge a voting ticket under section 63(1)" and substitute:

and (in the case of a candidate for election as a member of the House of Assembly) to lodge a voting ticket under section 60A(1)

20 **6—Amendment of section 58—Grouping of candidates in Legislative Council election**

Section 58(2)—after paragraph (d) insert:

and

25 (e) may contain a request for a group voting square for the group on the ballot paper.

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

(1) Section 59(1)—after paragraph (a) insert:

30 (ab) the order of the names of the candidates included in each group will be the order specified by the candidates in the group under section 58(2)(c); and

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

(2) If the candidates in a group have requested under section 58(2)(e) a group voting square, an additional square must be printed on the ballot paper in order to provide for the casting of votes in that square.

35 **8—Insertion of section 60A**

After section 60 insert:

60A—Voting tickets

40 (1) One voting ticket, or two separate voting tickets, may be lodged with the Electoral Commissioner or the returning officer in relation to a candidate for election as a member of the House of Assembly.

- 5
- (2) A voting ticket will not be regarded as validly lodged under subsection (1) unless—
- (a) written notice of intention to lodge a voting ticket or voting tickets is given to the Electoral Commissioner or the returning officer at or before the hour of nomination by or on behalf of the candidate; and
 - (b) the voting ticket is lodged within 72 hours after the close of nominations.
- 10
- (3) A voting ticket may be lodged under this section by—
- (a) the candidate to whom it relates; or
 - (b) a person authorised in writing by the candidate to act on their behalf.
- 15
- (4) An authorisation under subsection (3)(b) may only be given to a registered officer of a registered political party of which the candidate is a member.
- 20
- (5) A voting ticket lodged by or on behalf of a candidate under subsection (1) must—
- (a) indicate by consecutive numbers commencing with the number 1 an order of preference for all candidates in the election; and
 - (b) indicate a preference for that candidate over all other candidates in the election.

9—Repeal of section 63

Section 63—delete the section

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

(1) Section 66(1)—delete subsection (1) and substitute:

- (1) The Electoral Commissioner must have posters formed from how-to-vote cards submitted by the candidates in the election prepared for use in polling booths on polling day.

(2) Section 66(2)—delete "Material submitted for inclusion" and substitute:

How-to-vote cards submitted

- (3) Section 66(2)(d)—delete "in the case of how-to-vote cards,"
- (4) Section 66(2)(g)—delete "in the case of how-to-vote cards—"
- (5) Section 66(3)—delete "or booklet"
- 35 (6) Section 66(4)—delete subsection (4)

(7) Section 66(5)—delete subsection (5) and substitute:

- 5 (5) The presiding officer at each polling booth must ensure that posters prepared for use in polling booths on polling day are displayed in a prominent position in the polling booth (in accordance with any directions issued by the Electoral Commissioner) and that a poster prepared under subsection (1) in relation to the relevant House of Assembly election is displayed in each voting compartment.

11—Amendment of section 76—Method of voting at elections

Section 76(1)(b)—delete paragraph (b) and substitute:

- 10 (b) if the ballot paper contains 1 or more group voting squares—by placing the number "1" in the square that relates to the group of candidates for whom the voter votes as his or her first preference.

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

15 Section 92(2) to (4)—delete subsections (2) to (4) (inclusive) and substitute:

- 20 (2) Subject to this section, if a voter records a vote on a ballot paper by placing the number "1" in the group voting square for a group of candidates, the ballot paper is taken to have recorded on it a first preference vote for the first candidate included in the group and subsequent preferences for all other candidates included in the group in the order in which the names of the candidates appear on the ballot paper.
- 25 (3) If a voter marks a ballot paper in accordance with subsection (2) and also places other numbers in other group voting squares (but does not indicate preferences for individual candidates in accordance with subsection (4)), the voter will be taken to have recorded their vote in accordance with subsection (2) and all other purported indications of preferences will be disregarded.
- 30 (4) If a voter marks a ballot paper in accordance with subsection (2) and also indicates preferences for individual candidates (whether or not the voter also places other numbers in other group voting squares), the following provisions apply:
- 35 (a) if the indication of preferences for individual candidates would, if it stood alone, constitute a valid vote, that indication of preferences will be taken to be the vote of the voter and any marks in the group voting squares will be disregarded;
- 40 (b) if the indication of preferences for individual candidates would not, if it stood alone, constitute a valid vote, the voter will be taken to have recorded their vote in accordance with subsection (2) and all other purported indications of preferences will be disregarded.

(5) If—

(a) a voter marks a ballot paper by placing the number 1 in the square opposite the name of a particular candidate but does not mark any group voting square and indicates no further preferences for individual candidates; and

(b) that candidate is the first candidate included in a group,

the voter will be taken to have recorded their vote in accordance with subsection (2) as if the voter had placed the number "1" in the group voting square for that group.

(6) For the avoidance of doubt, if, under this section, a voter is taken to have recorded their vote in accordance with subsection (2) as if the voter had placed the number "1" in a group voting square, voting will be taken, for the purposes of this Act, to have occurred by use of a group voting square (regardless of whether any group voting square was in fact marked by the voter).

13—Amendment of section 94—Informal ballot papers

(1) Section 94(1)(b)—delete paragraph (b) and substitute:

(b) —

(i) in the case of a ballot paper for a House of Assembly election—it has no vote indicated on it, or it does not indicate, in the manner required by this Act, the order of the voter's preference for all candidates in the election; or

(ii) in the case of a ballot paper for a Legislative Council election—it has no vote indicated on it, or it does not indicate, in the manner required by this Act—

(A) the order of the voter's preference for individual candidates in accordance with section 76(1)(a); or

(B) the voter's preference for a group in accordance with section 76(1)(b); or

(2) Section 94(4)—after "ballot paper" insert:

for a House of Assembly election

(3) Section 94(4)—delete "subsection (1)(b)" and substitute:

subsection (1)(b)(i)

(4) Section 94(4a)—delete subsection (4a)

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

(1) Section 95(3)(b)(i)—delete "voting ticket square" and substitute:

group voting square

(2) Section 95(3)(b)(iii)—delete "voting ticket" and substitute:

group voting square

- (3) Section 95(7)—after "continuing candidates" insert:
(if any)
- (4) Section 95(7)(b)—after "next available preference" insert:
(if any)
- 5 (5) Section 95—after subsection (7) insert:
(7a) A ballot paper that is, under subsection (7), required to be transferred to a continuing candidate must be set aside as finally dealt with if it does not indicate a next available preference for a continuing candidate.
- 10 (6) Section 95(8)—after "continuing candidates" insert:
(if any)
- (7) Section 95(10)—after "subsequent preferences" insert:
(if any)
- (8) Section 95(11)(a)—after "next available preference" insert:
15 (if any)
- (9) Section 95(11)(b)(i)—after "next available preference" insert:
(if any)
- (10) Section 95(11)—after paragraph (b) insert:
(c) a ballot paper that under this subsection is, pursuant to the exclusion of a candidate, required to be transferred to a continuing candidate must be set aside as finally dealt with if it does not indicate a next available preference for a continuing candidate.
- 20
- (11) Section 95(15)—delete subsection (15) and substitute:
(15) If, after all the candidates who have received a number of votes equal
25 to or greater than the quota are elected (following the transfer of votes under this section) there is 1 or more remaining vacancies, the following provisions apply:
- (a) where there is 1 remaining vacancy—the continuing candidate who has the most votes will be elected despite the fact that the number of votes of that candidate may be below the quota;
- 30
- (b) where there is more than 1 remaining vacancy—the continuing candidates who have the most votes will be elected (such that the continuing candidate who has the most votes and will be elected first, the continuing candidate who has the second most votes will be elected second and so forth until all remaining vacancies are filled) and such candidates will be elected despite the fact that the number of votes of each candidate may be below the quota.
- 35
- 40 (12) Section 95(25)—after "voter's preference" insert:
(if any)

- (13) Section 95(25)—after "subsequent preferences" insert:
(if any)

15—Amendment of section 130A—Interpretation

Section 130A(1), definition of *group*—delete the definition