

House of Assembly—No 73

As laid on the table and read a first time, 15 October 2015

South Australia

**Electoral (Legislative Council Voting) Amendment
Bill 2015**

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) Amendment Act 2015*.

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:

group or *group of candidates* 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;

- (2) Section 4(1), definition of *organisation*—delete "group" wherever occurring and substitute in each case:

collective

- (3) Section 4(1)—after the definition of *undue influence* insert:

ungrouped candidate, in relation to a Legislative Council election—see section 59(1)(a);

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

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;

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

Section 53(3)(b)(iii)—after "and" insert:

(in the case of a candidate for election as a member of the House of Assembly)

6—Amendment of section 57—Deposit to be forfeited in certain cases

Section 57(1)(b) and (c)—delete paragraphs (b) and (c) and substitute:

(b) —

- (i) in the case of a House of Assembly election—the total number of votes polled in the candidate's favour as first preference votes exceeds 4 per cent of the total number of formal votes cast in the election; or

- (ii) in the case of a Legislative Council election—

- (A) if the candidate is an ungrouped candidate—the total number of votes polled in the candidate's favour exceeds 4 per cent of the total number of formal votes cast in the election; or

- (B) if the candidate is a member of a group—the total number of votes polled in favour of the group exceeds 4 per cent of the total number of formal votes cast in the election,

5 **7—Amendment of section 59—Printing of Legislative Council ballot papers**

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

(ungrouped candidates)

- (2) Section 59(1)(a)—delete "individual candidates" and substitute:

ungrouped candidates

- 10 (3) Section 59(1)(c)—delete "candidates whose names are not included in any group" and substitute:

ungrouped candidates

- (4) Section 59(1)(e)—delete paragraph (e) and substitute:

(e) the name or description (if any) under section 62—

- 15 (i) relating to each group must be printed on the ballot papers above the names of the candidates included in the group; and

(ii) relating to each ungrouped candidate must be printed on the ballot papers above the name of the candidate; and

- 20 (f) a square must be printed—

(i) opposite the name or description of each group and ungrouped candidate printed on the ballot paper in accordance with paragraph (e); or

- 25 (ii) if no such name or description is printed on the ballot paper in relation to a group or ungrouped candidate, above the group or ungrouped candidate.

- (5) Section 59(2)—delete subsection (2)

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

- 30 Section 62(2)(d)—delete "the name of each member of"

9—Amendment of section 63—Voting tickets

- (1) Section 63(a1)—delete subsection (a1)

- (2) Section 63(1)—delete "or a group of candidates entitled to lodge a voting ticket under subsection (a1)" and substitute:

35 in a House of Assembly election

- (3) Section 63(2)(a)—delete "or candidates"

- (4) Section 63(3)(a)—delete "or candidates"

(5) Section 63(3)(b)—delete "or candidates to act on their" and substitute:

to act on the candidate's

(6) Section 63(3a)(a)—delete "or candidates are members" and substitute:

is a member

5 (7) Section 63(3a)(b)—delete paragraph (b)

(8) Section 63(4)(b)—delete paragraph (b) and substitute:

(b) indicate a preference for the candidate to whom the voting ticket relates over all other candidates in the election.

(9) Section 63(5)—delete subsection (5)

10 **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.

15 (2) Section 66(2)(d)—delete "in the case of how-to-vote cards,"

(3) Section 66(2)(g)—delete "in the case of how-to-vote cards—"

(4) Section 66(3)—delete "or booklet"

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

(5) The presiding officer at each polling booth must ensure that—

20 (a) in relation to a House of Assembly election, posters prepared under subsection (1) are displayed in each voting compartment; and

25 (b) all other posters prepared under subsection (1) are displayed in a prominent position in the polling booth and in accordance with any direction issued by the Electoral Commissioner.

11—Amendment of section 76—Marking of votes on ballot papers

Section 76(1)—delete subsection (1) and substitute:

30 (1) In a Legislative Council election, a voter must mark his or her vote on the ballot paper by placing the number 1—

(a) if the voter wishes to vote for a group—

(i) in the square opposite the name or description of the group; or

35 (ii) if no such name or description is printed on the ballot paper in relation to the group, in the square above the group; or

(b) if the voter wishes to vote for an ungrouped candidate—

- (i) in the square opposite the name or description of the candidate; or
- (ii) if no such name or description is printed on the ballot paper in relation to the candidate, in the square above the candidate.

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12—Repeal of section 92

Section 92—delete the section

13—Amendment of section 94—Informal ballot papers

- (1) Section 94(1)(b)—after "on it, or" insert:

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, in the case of a House of Assembly election,

- (2) Section 94(3)—after "a voter" insert:

in a House of Assembly election

- (3) Section 94(4a) and (5)—delete subsections (4a) and (5)

14—Substitution of section 95

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Section 95—delete the section and substitute:

95—Scrutiny of votes in Legislative Council election

- (1) In a Legislative Council election, the scrutiny must, subject to this Act, be conducted, and the vacancies must be filled, in the manner set out in this section.
- (2) Each assistant returning officer must, in the presence of an assistant presiding officer or a poll clerk and of such authorised scrutineers as may attend—
 - (a) open all ballot boxes sent to him or her, or received from polling places within or for that portion of the district in which he or she exercises his or her powers; and
 - (b) reject all informal ballot papers and arrange the unrejected ballot papers into votes for groups and votes for ungrouped candidates by placing in a separate parcel all those on which a vote is indicated for the same group or the same ungrouped candidate; and
 - (c) count the votes given for each group and each ungrouped candidate on all unrejected ballot papers; and
 - (d) make out and sign a statement setting out the number of votes given for each group or ungrouped candidate and the number of informal ballot papers; and
 - (e) place in a separate parcel all the ballot papers that have been rejected as informal; and
 - (f) transmit the following information, in an expeditious manner, to the deputy returning officer for the division:
 - (i) the number of votes given for each group;

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- (ii) the number of votes given for each ungrouped candidate;
- (iii) the total number of ballot papers rejected as informal; and
- 5 (g) seal up the parcels and endorse on each parcel a description of its contents; and
- (h) transmit the parcels to the deputy returning officer with the least possible delay together with the statement specified in paragraph (d).
- 10 (3) The deputy returning officer must—
- (a) open all ballot boxes and other facilities used for keeping voting papers not opened by an assistant returning officer and must conduct the scrutiny of the ballot papers contained in those boxes or facilities, as far as practicable, in the
- 15 manner described above; and
- (b) seal up all parcels created under this subsection and endorse on each parcel a description of its contents; and
- (c) complete a return, in a form determined by the Electoral Commissioner, addressed to the returning officer for the
- 20 Legislative Council; and
- (d) transmit all voting papers, together with the return, to the returning officer for the Legislative Council.
- (4) Subject to subsection (5), the returning officer for the Legislative Council must—
- 25 (a) open the sealed parcels of ballot papers received from the deputy returning officers and make a fresh scrutiny of the ballot papers contained in the parcels (and for that purpose he or she has the same powers as if the fresh scrutiny were the original scrutiny and may reverse any decision given by
- 30 an assistant or deputy returning officer in relation to the original scrutiny); and
- (b) arrange the unrejected ballot papers so scrutinised by him or her into votes for groups and votes for ungrouped candidates by placing in a separate parcel all those on which a vote is
- 35 indicated for the same group or for the same ungrouped candidate; and
- (c) count the votes given for each group or ungrouped candidate on those ballot papers.
- 40 (5) The returning officer may, to such extent as he or she determines to be appropriate, rely on any information contained in a return under subsection (3) in substitution for conducting a fresh scrutiny under subsection (4) (and that information will then, to the extent determined by the returning officer, have full effect for the purposes of the succeeding provisions of this section).

(6) Having ascertained the total number of votes for each group and for each ungrouped candidate, the returning officer must proceed to determine the outcome of the election as follows:

5 (a) the returning officer must determine a quotient (rounded to 1 decimal place) for each such group or candidate (other than an ungrouped candidate who died between the date fixed for the nomination and polling day) calculated as follows:

$$\text{quotient} = \frac{T}{(2E + 1)}$$

10 Where:

T is the total number of votes received by the group or candidate;

E is—

15 (i) in the case of the first calculation of the quotient for a group or any calculation for an ungrouped candidate—0; or

(ii) for any subsequent calculation of a quotient for a group—the number of members of the group that have been elected;

20 **Example—**

An example of a calculation of quotients is set out in the table in Schedule 1. It can be seen that the numerator, *T*, will not change on any calculation of the quotient in relation to a particular group or candidate whilst the denominator, $(2E + 1)$, will increase for a group on subsequent calculations as the group is allocated vacancies under this provision.

25 (b) the group or ungrouped candidate with the highest quotient on the first calculation is allocated the first vacancy and—

30 (i) in the case of a group—the candidate listed highest in the group in accordance with section 58(2)(c) will be elected; or

(ii) in the case of an ungrouped candidate—the ungrouped candidate will be elected;

35 (c) the returning officer must then determine a further quotient for each group (other than any group that has no remaining member available to be elected) and for each ungrouped candidate (other than any ungrouped candidate who has been elected) in accordance with paragraph (a) and the group or ungrouped candidate with the highest quotient is
40 allocated the next vacancy and—

- 5
- (i) in the case of a group—the candidate listed highest in the group (disregarding any candidates in the group who have already been elected) in accordance with section 58(2)(c) will be elected; or
 - (ii) in the case of an ungrouped candidate—the ungrouped candidate will be elected;
 - (d) the returning officer must continue to determine quotients and allocate vacancies in accordance with paragraph (c) until all vacancies have been filled.
- 10
- (7) If, on any calculation of quotients under subsection (6), 2 or more groups or ungrouped candidates have the equal highest quotient, each of those groups or candidates are to be allocated a vacancy and candidates elected in accordance with that subsection as if they were the only group or candidate with the highest quotient.
- 15
- (8) However, if the number of vacancies to be filled is less than the number of candidates that would be elected in accordance with subsection (7), the matter must be referred, on the application of the Electoral Commissioner, to the Court of Disputed Returns for the Court to determine the validity of any disputed ballot papers and—
- 20
- (a) if the deadlock is resolved—the Court must declare the appropriate candidate elected; but
 - (b) if the deadlock is not resolved—the Court must order a fresh election to be held in accordance with any directions of the Court with the candidates that would be elected in
- 25
- accordance with subsection (7) as the sole candidates in that election.
- (9) Subsection (8) does not limit the jurisdiction of the Court of Disputed Returns under Part 12 Division 2 in relation to an election.
- (10) The returning officer must, on the allocation of the final vacancy—
- 30
- (a) make out and sign a statement setting out the number of ballot papers and votes counted to each group and each ungrouped candidate and the number of informal ballot papers, and the quotients calculated (in accordance with subsection (6)) for each group and each ungrouped candidate before each allocation of a vacancy and forward the statement to the Electoral Commissioner; and
- 35
- (b) place in a separate parcel all the ballot papers which have been rejected as informal; and
 - (c) place in a separate parcel all the unrejected ballot papers; and
- 40
- (d) seal up the parcels and endorse on each parcel a description of its contents, and permit any scrutineers present, if they so desire, to countersign the endorsement.

(11) For the purposes of this Act—

- 5
- (a) the order of election of candidates in a Legislative Council election will be taken to be in accordance with the order of the allocation of vacancies as a result of which they were elected; and
- (b) if 2 or more candidates are elected in accordance with subsection (7), the order in which they will be taken to have been elected will be in accordance with the relative numbers of their votes, the candidate who has, or whose group has, the largest number of votes being taken to be the earliest elected, but if any 2 or more of those candidates each have the same number of votes, the returning officer will determine by lot the order in which they will be taken to have been elected.

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(12) For the purposes of allocating vacancies under subsection (6)(b)(i) and (c)(i), a candidate listed in a group who died between the date fixed for the nomination and polling day is to be disregarded.

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

20 (1) Section 96D(2)(b)—delete "subsection (4a)" and substitute:

subsection (5)

(2) Section 96D(2)(c)—delete "(15) (inclusive), (17) and (20) to (28) (inclusive) (after taking into account the operation of subsection (4a) (if relevant))" and substitute:

(7) (inclusive) and (12)

25 (3) Section 96D(2)(d) and (e)—delete paragraphs (d) and (e)

(4) Section 96D(2)(f)—delete "(16), (16a), (18), and (19)" and substitute:

(8), (9), (10) and (11)

16—Amendment of section 130A—Interpretation

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

30 17—Amendment of section 130O—Interpretation

Section 130O, definitions of *eligible vote* and *total primary vote*—delete the definitions and substitute:

eligible vote means—

- 35 (a) a first preference vote on a formal ballot paper in a House of Assembly election; or
- (b) a vote on a formal ballot paper in a Legislative Council election;

total primary vote means—

- 40 (a) in the case of an election for a House of Assembly district—the total number of eligible votes cast in favour of all of the candidates in the election by electors for the district;

(b) in the case of an election for the Legislative Council district—the total number of eligible votes cast in the election.

18—Insertion of Schedule 1

After section 139 insert:

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**Schedule 1—Example of quotient calculations for
Legislative Council election**

	Party A	Party B	Party C	Party D	Group E	Independent F	Independent G
Number of primary votes	360 000	312 000	103 000	90 000	60 000	35 000	20 000
1st quotient calculation	360 000.0	312 000.0	103 000.0	90 000.0	60 000.0	35 000.0	20 000.0
2nd quotient calculation	120 000.0	312 000.0	103 000.0	90 000.0	60 000.0	35 000.0	20 000.0
3rd quotient calculation	120 000.0	104 000.0	103 000.0	90 000.0	60 000.0	35 000.0	20 000.0
4th quotient calculation	72 000.0	104 000.0	103 000.0	90 000.0	60 000.0	35 000.0	20 000.0
5th quotient calculation	72 000.0	62 400.0	103 000.0	90 000.0	60 000.0	35 000.0	20 000.0
6th quotient calculation	72 000.0	62 400.0	34 333.3	90 000.0	60 000.0	35 000.0	20 000.0
7th quotient calculation	72 000.0	62 400.0	34 333.3	30 000.0	60 000.0	35 000.0	20 000.0
8th quotient calculation	51 428.6	62 400.0	34 333.3	30 000.0	60 000.0	35 000.0	20 000.0
9th quotient calculation	51 428.6	44 571.4	34 333.3	30 000.0	60 000.0	35 000.0	20 000.0
10th quotient calculation	51 428.6	44 571.4	34 333.3	30 000.0	20 000.0	35 000.0	20 000.0
11th quotient calculation	40 000.0	44 571.4	34 333.3	30 000.0	20 000.0	35 000.0	20 000.0
Total number elected (after final vacancy allocated to Party B)	4	4	1	1	1	0	0