

Legislative Council—No 117A

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South Australia

Electoral (Miscellaneous) Amendment Bill 2012

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 (Miscellaneous) Amendment Act 2012*.

2—Commencement

5 This Act will come 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)—after the definition of *bribery* insert:

Commonwealth Act means the *Commonwealth Electoral Act 1918* of the Commonwealth;

15 *Commonwealth roll* means the roll of electors for the State of South Australia kept under section 81 of the Commonwealth Act;

(2) Section 4(1), definition of *how-to-vote card*—delete the definition and substitute:

how-to-vote card means a card, in the form of a ballot paper, indicating the manner in which a vote should be recorded by a voter, and includes a split how-to-vote card (within the meaning of section 66A);

5—Amendment of section 7—Remuneration and conditions of office

(1) Section 7(6)—delete "or Deputy Electoral Commissioner"

(2) Section 7—after subsection (6) insert:

25 (6a) A person appointed after the commencement of this subsection as Deputy Electoral Commissioner is so appointed for a term expiring 1 year after polling day of the general election second occurring after the person's appointment under this section and, at the expiration of a term of appointment, is eligible for reappointment.

(3) Section 7(9)(c)—before "having" insert:

in the case of the Electoral Commissioner—

6—Amendment of section 21—Suppression of elector's address

Section 21—after its present contents (now to be designated as subsection (1)) insert:

- 5 (2) If a person's address has not been included on, or has been deleted from, the Commonwealth roll under section 104 of the Commonwealth Act, the person's address must be suppressed from any roll under this Act.

7—Amendment of section 23—Rolls to be kept up to date

- 10 (1) Section 23(a)—delete "pursuance of claims for enrolment under this Act" and substitute:

accordance with Part 5

- (2) Section 23—after paragraph (e) insert:

- 15 (f) in relation to a person who is enrolled on the Commonwealth roll—reflecting any change under the Commonwealth Act in relation to that enrolment.

8—Amendment of section 29—Entitlement to enrolment

Section 29(1) and (2)—delete subsections (1) and (2) and substitute:

- (1) A person is entitled to be enrolled on the roll for a subdivision if—

(a) the person—

20 (i) has attained the age of 18 years; and

(ii) —

(A) is an Australian citizen; or

25 (B) is a person who by virtue of his or her status as a British subject was, at some time within the period of 3 months commencing on 26 October 1983, enrolled under the repealed Act as an Assembly elector or enrolled on an electoral roll maintained under a law of the Commonwealth or a Territory of the Commonwealth; and

30 (iii) has his or her principal place of residence in the subdivision and has lived at that place of residence for a continuous period of at least 1 month immediately preceding the date of the claim for enrolment; and

35 (iv) is not of unsound mind; or

- (b) the person is properly enrolled on the Commonwealth roll, other than under section 100 of the Commonwealth Act, in respect of an address in the subdivision.

(2) A person is entitled to provisional enrolment on the roll for a subdivision if—

(a) the person—

(i) has attained the age of 16 years; and

(ii) would, if he or she had attained the age of 18 years, be entitled to be enrolled on the roll for that subdivision under subsection (1); or

(b) the person is properly enrolled on the Commonwealth roll under section 100 of the Commonwealth Act in respect of an address in the subdivision.

9—Repeal of Part 5 Division 2

Part 5 Division 2—delete Division 2

10—Amendment of section 31A—Itinerant persons

(1) Section 31A(1)(b)—delete "section 29(1)(a), (b) and (d)" and substitute:

section 29(1)(a)(i), (ii) and (iv)

(2) Section 31A—delete "section 29(1)(c)" wherever occurring and substitute in each case:

section 29(1)(a)(iii)

(3) Section 31A(2)(b)—delete "and attested as required by the Electoral Commissioner"

(4) Section 31A(3)(b)—delete "Division 2" and substitute:

Division 3

11—Amendment of section 32—Making of claim for enrolment or transfer of enrolment

(1) Section 32(1)—delete "A person" and substitute:

Subject to this Division, a person

(2) Section 32—after subsection (1) insert:

(1a) A claim for enrolment or the transfer of enrolment—

(a) must be made in a manner and form approved by the Electoral Commissioner; and

(b) must be made to an electoral registrar.

12—Amendment of section 32A—Notification of transfer within the same subdivision

Section 32A(1)—delete "An elector" and substitute:

Subject to section 32B(4), an elector

13—Insertion of section 32B

After section 32A insert:

32B—Enrolment or transfer of enrolment

- 5 (1) Where a claim for enrolment or transfer of enrolment made in accordance with section 32(1a) is received at the office of an electoral registrar, the electoral registrar must—
- (a) if satisfied of the validity of the claim—enrol the claimant or transfer the enrolment of the claimant, in accordance with the claim; or
- 10 (b) if not satisfied of the validity of the claim—reject the claim.
- (2) No enrolment may—
- (a) be made on the roll for a subdivision; or
- (b) be transferred from or to the roll for a subdivision,
- 15 on the basis of a claim received at the office of an electoral registrar or by operation of subsection (4) between the time on which rolls for an election in the relevant district close and polling day for that election.
- (3) Where a claim is rejected, the electoral registrar must notify the claimant in writing—
- 20 (a) of the rejection of the claim; and
- (b) of the reasons for its rejection; and
- (c) of the claimant's rights under this Act to appeal against the decision.
- (4) If a person is enrolled on the Commonwealth roll and the person's address recorded on that roll is an address in a subdivision—
- 25 (a) the person is, for the purposes of this Act, to be taken—
- (i) in the case of a person enrolled on the Commonwealth roll under section 100 of the Commonwealth Act—
- 30 (A) to have made a claim for enrolment; and
- (B) to be provisionally enrolled; and
- (ii) in any other case—
- (A) to have made a claim in accordance with this Act, or given notice under section 32A (as the case requires); and
- 35 (B) to be enrolled as an elector for the subdivision for the purposes of this Act; and

- 5 (b) the particulars on the Commonwealth roll in relation to the person are, with such modifications (if any) as an electoral registrar considers necessary for the purposes of Part 4 of this Act, to be taken to be the particulars in relation to the person on the roll for the subdivision, unless the electoral registrar is satisfied that the person's particulars on the roll for the subdivision are more up-to-date than his or her particulars on the Commonwealth roll.

13A—Amendment of section 47—Issue of writ

10 Section 47—after subsection (2) insert:

- (2a) In the case of a general election for the House of Assembly, the writ or writs for the elections in all House of Assembly districts must be issued 35 days before the date fixed for the polling in each district under section 48.

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

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

- 20 (4) The Electoral Commissioner must, in respect of each district for which a candidate has been nominated under this section, deliver to the returning officer a copy or facsimile of the nomination paper as soon as practicable after the receipt of the nomination paper under this section (and in any event before the hour of nomination).

14A—Amendment of section 66—Preparation of certain electoral material

25 Section 66(2)(d)—delete paragraph (d) and substitute:

- 30 (d) in the case of how-to-vote cards, must—
- (i) be received by the Electoral Commissioner not later than 4 days after the day for nomination; and
 - (ii) comply with the requirements set out in section 66A(5) (as those requirements apply to how-to-vote cards submitted by a candidate); and
 - (iii) not otherwise be a card that the Electoral Commissioner must refuse to register if it were being submitted for registration under section 66A; and

14B—Insertion of section 66A

35 After section 66 insert:

66A—Registration of how-to-vote cards

- (1) Subject to this section, any person may, within the prescribed period, submit a how-to-vote card to the Electoral Commissioner for registration under this section.

- (2) A person submitting a how-to-vote card under subsection (1) must, at the time of submitting the how-to-vote card, provide—
- (a) the prescribed number of copies of the how-to-vote card; and
 - (b) an electronic version of the how-to-vote card, in a form and format prescribed by regulation.
- (3) The following provisions apply to the submission of a how-to-vote card for registration by a person, other than a how-to-vote card submitted by or on behalf of a candidate:
- (a) the person must make a declaration in the prescribed form;
 - (b) the person must provide a copy of the written consent of the candidate to whom the card indicates the first preference should be given;
 - (c) the person must provide the Electoral Commissioner with any prescribed material.
- (4) The Electoral Commissioner must, as soon as is reasonably practicable after a how-to-vote card is submitted under subsection (1), and in any event by no later than 5 p.m. on the day on which the prescribed period ends, register the how-to-vote card unless the Electoral Commissioner is satisfied that—
- (a) the how-to-vote card does not comply with the requirements in—
 - (i) section 66(2) (other than the requirement in section 66(2)(d)(i)); and
 - (ii) subsection (5); or
 - (b) the how-to-vote card is a card that may not be submitted in accordance with subsection (7).
- (5) The following requirements apply for the purposes of subsection (4)(a)(ii):
- (a) the how-to-vote card must clearly identify the person, political party, organisation or group on whose behalf the card is to be distributed;
 - (b) in the case of a card that contains a logo, emblem or insignia belonging to the person, political party, organisation or group on whose behalf the card is to be distributed—the logo, emblem or insignia must be not less than the relevant prescribed size;
 - (c) the how-to-vote card must indicate the manner in which it is suggested that a vote should be recorded by a voter by—
 - (i) being marked so as to indicate a valid vote in the manner prescribed in section 76(1) or (2); or

- 5
- (ii) if the card is submitted in relation to a House of Assembly election, having printed on each card, immediately before the surname of the candidate to whom the how-to-vote card relates, a figure "1" surrounded by a square together with a statement to the effect that the elector must express a preference for all other candidates as the elector sees fit;
- (d) in the case of a how-to-vote card submitted by or on behalf of a candidate—
- 10
- (i) the how-to-vote card must indicate that the first preference vote should be given to the candidate; and
- 15
- (ii) if a voting ticket has, or 2 voting tickets have, been lodged under section 63 by or on behalf of the candidate and the how-to-vote card is of a kind referred to in paragraph (c)(i), the order or orders of the remaining preferences indicated on the how-to-vote card must be consistent with the order or orders of preferences set out on—
- 20
- (A) that voting ticket; or
- (B) 1 of the 2 voting tickets; or
- (C) in the case of a split how-to-vote card— both of the 2 voting tickets,
- (as the case requires); and
- 25
- (iii) subject to subsection (6), if a how-to-vote card has been submitted for inclusion in posters under section 66 (the *initial submitted how-to-vote card*) by or on behalf of the candidate, the how-to-vote card must have substantially the same appearance as the initial submitted how-to-vote card;
- 30
- (e) the how-to-vote card must not—
- 35
- (i) be likely to induce an elector to mark the vote of the elector otherwise than in accordance with the directions on the ballot-paper; or
- (ii) contain offensive or obscene material;
- (f) the how-to-vote card must contain the endorsement "Registered by the Electoral Commission of South Australia" at the bottom of the card.

(6) Despite subsection (5)(d)(iii)—

5 (a) if an initial submitted how-to-vote card in relation to a candidate is of a kind referred to in subsection (5)(c)(i), a how-to-vote card submitted for registration by or on behalf of the candidate under this section may suggest that a vote should be recorded by a voter in the manner described in subsection (5)(c)(ii); or

10 (b) if an initial submitted how-to-vote card in relation to a candidate is of a kind referred to in subsection (5)(c)(ii), a how-to-vote card submitted for registration by or on behalf of the candidate under this section may suggest that the voter indicate all preferences in accordance with subsection (5)(c)(i); or

15 (c) if an initial submitted how-to-vote card in relation to a candidate is a split how-to-vote card, a how-to-vote card submitted for registration by or on behalf of the candidate under this section may suggest that a vote should be recorded by a voter in accordance with either of the 2 alternative orders of preferences indicated in the 2 voting tickets; or

20 (d) if an initial submitted how-to-vote card in relation to a candidate is not a split how-to-vote card, a how-to-vote card submitted for registration by or on behalf of the candidate under this section may be a split a how-to-vote card,

25 (but the how-to-vote card submitted for registration must otherwise have substantially the same appearance as the initial submitted how-to-vote card).

(7) If a how-to-vote card is—

30 (a) submitted for registration—

(i) by or on behalf of any candidate or candidates; or

(ii) by a person; and

(b) registered under this section,

no further how-to-vote card may be submitted for registration under this section—

35 (c) by or on behalf of that candidate or any of those candidates; or

(d) by that person,

(as the case may be).

(8) As soon as is reasonably practicable after registering a how-to-vote card under this section, and in any event by no later than 5 p.m. on the day on which the prescribed period ends, the Electoral Commissioner must—

- 5 (a) make a copy of the card available for inspection at the office of the Electoral Commission; and
- (b) publish a copy of the card on a website maintained by the Electoral Commissioner.

10 (9) For the purposes of this section, how-to-vote cards will be taken to have *substantially the same appearance* if the cards are identical except for—

- (a) the size or shape of the cards; or
- (b) the fonts used in the cards; or
- 15 (c) the material or medium on which the cards are printed or published; or
- (d) any other matter prescribed by the regulations for the purposes of this subsection.

(10) In this section—

20 *prescribed period*, in relation to an election, means the period commencing on the day after the day fixed for the nomination and ending at noon on the 8th calendar day before polling day for the election (regardless of whether that day is a public holiday);

25 *split how-to-vote card*, in relation to a how-to-vote card submitted by or on behalf of a candidate in respect of whom 2 voting tickets have been lodged under section 63, means a how-to-vote card that suggests that a vote should be recorded by a voter in accordance with either of the 2 alternative orders of preferences indicated in the 2 voting tickets (by setting out on the 1 card both of those 2 orders in 2 representations of the ballot paper to which the card relates).

30 **Note—**

 Section 112A provides for an offence of distributing, during the election period for an election, a how-to-vote card that has not been registered under this section, or submitted for inclusion in posters under section 66.

35 **15—Substitution of section 68**

 Section 68—delete the section and substitute:

68—Certified list of electors

40 (1) The relevant electoral registrars in relation to a district must, as soon as practicable after the date fixed for the closing of the rolls for an election, supply the Electoral Commissioner with a certified list of the electors enrolled for the district.

- (2) The Electoral Commissioner must, as soon as practicable after receipt of the certified list of electors for a district, supply the returning officer for the district with a copy of the certified list of electors.

5 **15A—Amendment of section 71—Manner of voting**

- (1) Section 71(1)—delete "An" and substitute:

Subject to subsection (2), an

- (2) Section 71(1)(b)—delete "in the case of an elector entitled to do so by virtue of subsection (2)—"

- 10 (3) Section 71(2)(b) and (ba)—delete paragraphs (b) and (ba)

- (4) Section 71(2)—before "entitled" insert:

only

- (5) Section 71(3)—delete "In addition, a" and substitute:

A

15 **15B—Amendment of section 73—Issue of voting papers**

Section 73(2)—delete "ground of the applicant's entitlement to make a declaration vote" and substitute:

prescribed kind

20 **16—Amendment of section 74—Issue of declaration voting papers by post or other means**

- (a1) Section 74—before subsection (1) insert:

- (a1) The Electoral Commissioner must, in respect of an election, send a form for the application by an elector for the issue of declaration voting papers to every address on the electoral roll for the electoral district, or districts, to which the election relates.

- (1) Section 74(4)(c)—delete "—the address of the principal place of residence" and substitute:

—

- (i) the address of the principal place of residence; and
(ii) if an elector has provided an address to which declaration voting papers are to be issued that is different from the address of the principal place of residence—the address to which the papers are to be issued.

- (2) Section 74—after subsection (6) insert:

- (6a) The Electoral Commissioner must, on request, provide (in a form determined by the Electoral Commissioner)—

- (a) the registered officer of a registered political party with a copy of the information contained in the register in relation to electors in any district; or

(b) a person who is a nominated candidate in an election with a copy of the information contained in the register in relation to electors for—

(i) in the case of a person who is a candidate in an election for a House of Assembly district—that district; or

(ii) in the case of a person who is a candidate in a Legislative Council election—the Legislative Council district.

(6b) If a copy of information contained in the register is provided to a person under subsection (6a), a person who uses that copy, or information contained in that copy, for a purpose other than the distribution of matter calculated to affect the result of a State election or purposes related to the holding of such election is guilty of an offence.

Maximum penalty: \$10 000.

17—Insertion of section 74A

After section 74 insert:

74A—Offence to distribute application form for issue of declaration voting papers

(1) A person, other than a person authorised by the Electoral Commissioner, must not distribute, or cause or permit to be distributed, a form for the application by an elector for the issue of declaration voting papers (an *application form*).

Maximum penalty: \$5 000.

(2) In this section—

distribute an application form includes make the form available (including in electronic form) to other persons.

17A—Amendment of section 78—Right of elector to receive ballot paper

Section 78(2)—delete "Where a person claiming to vote" and substitute:

Subject to this Act, where an elector who

18—Amendment of section 94—Informal ballot papers

Section 94(1)(c)—delete paragraph (c)

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

Section 95(2)(f)—delete "by telegram or in some other" and substitute:

in an

20—Amendment of section 96—Scrutiny of votes in House of Assembly election

Section 96(2)(f)—delete "by telegram or in some other" and substitute:
in an

5 **20A—Amendment of section 100—Reviewable decisions**

Section 100(1)—after paragraph (c) insert:

- (ca) a decision by the Electoral Commissioner as to the registration of a how-to-vote card; or

10 **21—Amendment of section 112—Publication of electoral advertisements, notices etc**

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

- (ab) if the advertisement is authorised for a registered political party or a candidate endorsed by a registered political party—the party's name or, if the Register of Political Parties includes an abbreviation of the party's name, that abbreviation appears at the end; and
15
(ac) if the advertisement is authorised for a relevant third party—the relevant third party's name appears at the end; and

(2) Section 112—after subsection (2) insert:

(3) In this section—

20 *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 of publication of the advertisement to which subsection (1)(ac) relates, intends to spend more than \$2 000 on electoral advertisements—
25 (i) if the advertisement is published 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
30 (b) spent more than \$2 000 on electoral advertisements during the election period for the general election immediately preceding the day of publication of the advertisement to which subsection (1)(ac) relates.

22—Substitution of section 112A

Section 112A—delete the section and substitute:

35 **112A—Distribution of how-to-vote cards**

- (1) During the election period for an election, a person must not distribute, or cause or permit to be distributed, a how-to-vote card.
Maximum penalty: \$5 000.

- (2) Subsection (1) does not apply to the distribution of a how-to-vote card—
- (a) that has been submitted for inclusion in posters under section 66; or
 - (b) that has been registered under section 66A; or
 - (c) that is a compilation of more than 1 how-to-vote card of a kind referred to in paragraph (a) or (b).
- (3) The presiding officer at a polling booth may request a person reasonably suspected by the presiding officer of distributing, or causing or permitting to be distributed, a how-to-vote card at or near that polling booth on polling day—
- (a) to produce for inspection any how-to-vote cards in the person's possession; and
 - (b) to hand over all how-to-vote cards other than ones referred to in subsection (2)(a) or (b).
- (4) A person who fails to comply with a request under subsection (3) is guilty of an offence.
Maximum penalty: \$1 250.
- (5) In this section—
- distribute* includes make available to other persons.

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

Section 112B(4), definition of *distribute*—after "available" insert:
(including in electronic form)

24—Amendment of section 116—Published material to identify person responsible for political content

- (1) Section 116(1)—delete "in a journal published in electronic form on the Internet"
- (2) Section 116(1)—delete "or broadcast on the Internet"
- (3) Section 116(2)(a)—delete "(including a journal published in electronic form on the Internet)"
- (4) Section 116(2)(c)—delete paragraph (c) and substitute:
 - (c) the publication in a journal of an article, letter, report or other matter if the journal 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 electoral matter published in the journal;
- (5) Section 116(2)(d)—delete "or broadcast on the Internet"

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

Section 126(2)—delete "marked so as to indicate a valid vote in the manner prescribed in section 76(1) or (2)." and substitute:

5

—

(a) marked so as to indicate a valid vote in the manner prescribed in section 76(1) or (2); or

(b) identical to a card—

(i) submitted for inclusion in posters under section 66; or

(ii) registered under section 66A.

10