

House of Assembly—No 169

As laid on the table and read a first time, 2 November 2016

South Australia

Electoral (Miscellaneous) 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

This Act may be cited as the *Electoral (Miscellaneous) Amendment Act 2016*.

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 *institution* insert:

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

15 (2) Section 4(1), definition of *officer*—delete "of this Act" and substitute:
of this or any other Act

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

Section 8—after subsection (1) insert:

20 (1a) The Electoral Commissioner must, where relevant in the carrying out of the Electoral Commissioner's functions under this Act, promote and encourage the casting of votes at a polling booth on polling day.

6—Repeal of section 11

Section 11—delete the section

7—Amendment of section 12—Staff

25 Section 12(1)(b)—after "this" insert:
or any other

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

Section 26—after subsection (1) insert:

30 (1a) A person may only inspect a copy of the roll available for inspection under subsection (1) if the person—
(a) provides the person's name and address to the Electoral Commissioner; and

(b) if requested to do so by the Electoral Commissioner, produces evidence of the correctness of the name or address as provided in a form determined by the Commissioner; and

(c) complies with conditions (if any) prescribed by the regulations.

9—Amendment of section 43A—Annual returns and other inquiries

Section 43A(5)—delete subsection (5)

10—Amendment of section 45—De-registration of political party

Section 45(1)—after paragraph (d) insert:

or

(e) the registered officer of a registered political party has failed to comply with a requirement under section 43A,

11—Amendment of section 53—Nominations of candidates endorsed by political party

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

(1) The registered officer of a registered political party may, after the issue of the writ for the election—

(a) nominate on a nomination paper a candidate endorsed by the party for election as a member of the House of Assembly or the Legislative Council; or

(b) nominate on the same nomination paper candidates endorsed by the party for election as members of the House of Assembly or the Legislative Council.

(2) Section 53(2)(b)—delete "in cash or a banker's cheque" and substitute:

to be paid in the prescribed manner

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

Section 53A(2)(b)—delete "in cash or a banker's cheque" and substitute:

to be paid in the prescribed manner

13—Amendment of section 54—Declaration of nominations

(1) Section 54(1)(b)—delete "and addresses"

(2) Section 54(1)—after paragraph (b) insert:

and

(c) declare the addresses of all candidates duly nominated for the election in that district; but if the address of a candidate is suppressed from the roll under section 21—

(i) in the case of a candidate nominated for election as a member of the House of Assembly—the returning officer must instead declare the name of the House of Assembly electoral district in which that candidate resides; and

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(ii) in the case of a candidate nominated for election as a member of the Legislative Council—the returning officer must not declare the address of that candidate.

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

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(1) Section 62(1)(d)—delete paragraph (d)

(2) Section 62(3) and (4)—delete subsections (3) and (4)

15—Amendment of section 71—Manner of voting

Section 71(2)(c)—delete "an inmate" and substitute:

a resident

15

16—Amendment of section 73—Issue of voting papers

Section 73(2)—delete subsection (2) and substitute:

(2) The following provisions apply to the issue of declaration voting papers to an elector (not being a registered declaration voter):

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(a) declaration voting papers must not be issued to an elector except on application made in the prescribed manner, and such an application must be supported by a written declaration of the applicant's entitlement to a make a declaration vote, which—

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(i) if the application is made orally—must be made before the officer to whom the application is made; or

(ii) if the application is made in writing—must be made in the application;

30

(b) declaration voting papers must only be issued to an elector who appears personally before an officer in South Australia other than at a polling booth on polling day at times determined by the Electoral Commissioner that fall within the 5 days before polling day;

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(c) paragraph (b) does not apply to the issue of declaration voting papers to an elector who is a resident of a declared institution.

17—Amendment of section 74—Issue of declaration voting papers by post or other means

Section 74—after subsection (3) insert:

- 5 (3a) An application under this section for the issue of declaration voting papers to an elector, or for registration of an elector as a declaration voter, may be made by a person other than the elector if the application is accompanied by a certificate from a medical practitioner, in a form approved by the Electoral Commissioner, certifying that the elector is, because of physical disability, unable to sign the elector's own name.
- 10

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

- (1) Section 74A(1)—delete "unless—"
(2) Section 74A(1)(a), (b) and (c)—delete paragraphs (a), (b) and (c)
- 15

19—Amendment of section 80—Voter may be accompanied by an assistant in certain circumstances

Section 80(3)—after paragraph (d) insert:

- (e) in the case of a voter making a declaration vote—
- 20 (i) by assisting the voter to complete the appropriate declaration on the envelope; or
- (ii) if the voter is unable to do so—by completing and signing the declaration on the voter's behalf in the presence of an officer (who must sign the envelope as witness); or
- 25 (iii) by folding and placing the ballot paper in the appropriate envelope and sealing the envelope.

20—Amendment of section 80A—Voting near polling booth in certain circumstances

Section 80A(3)—delete subsection (3) and substitute:

- 30 (3) The following provisions apply to a voter to whom subsection (1) applies:
- (a) in the case of a voter casting an ordinary vote—after the voter has marked a vote on the ballot paper, the presiding officer must, in the presence of the scrutineers, ensure—
- 35 (i) that the ballot paper is folded to conceal the vote and placed in an envelope that is then sealed; and
- (ii) that the envelope is opened inside the polling booth and the folded ballot paper is placed in the ballot box;
- 40 (b) in the case of a voter casting a declaration vote—the voter must—

- (i) sign the appropriate declaration on the envelope (which must be signed by the person before whom the vote is taken as witness); and
- (ii) mark a vote on the ballot paper and fold it so as to conceal the vote; and
- (iii) place the ballot paper in the envelope provided and seal the envelope,

and the presiding officer must then, in the presence of the scrutineers, ensure that the envelope is deposited in the ballot box;

- (c) if a voter satisfies the presiding officer that the voter is unable to vote without assistance, the voter may be assisted in accordance with section 80 as if the voter were in the polling booth.

21—Substitution of section 81

Section 81—delete the section and substitute:

81—Voting by elector to whom declaration voting papers have been issued

An elector to whom declaration voting papers have been issued (otherwise than at a polling booth) is entitled to an ordinary vote at a polling booth, but a declaration ballot paper purporting to be a ballot paper of that elector must not be admitted to the scrutiny.

22—Amendment of section 82—Declaration vote, how made

- (1) Section 82(2)—delete "Where" and substitute:

Subject to this Part, if

- (2) Section 82(2)(a)—before "sign" insert:

unless the elector is an elector referred to in section 74(3a),

23—Amendment of section 83—Taking of declaration votes by electoral visitors

- (1) Section 83(4)(a)—delete "inmates" and substitute:

residents

- (2) Section 83(4)(b)—delete "an inmate" and substitute:

a resident

- (3) Section 83(6)—delete "two or more inmates" and substitute:

2 or more residents

24—Amendment of section 84—Security of facilities

Section 84—delete "At the close of poll, all" and substitute:

All

25—Insertion of Part 9 Division 5A

After section 84 insert:

Division 5A—Electronically assisted voting for sight-impaired electors

84A—Electronically assisted voting for sight-impaired electors

- (1) The regulations may make provision in relation to voting in an election by sight-impaired electors by means of an electronically assisted voting method.
- (2) Without limiting the generality of subsection (1), regulations made for the purposes of this Division may—
 - (a) determine, or provide for the determination of, the following:
 - (i) the electronically assisted voting method;
 - (ii) matters related to the voting using the electronically 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;
 - (iii) the number of places where the electronically assisted voting method is to be available, the location of those places and the days and times at which the method is to be available;
 - (iv) which electors may use the electronically assisted voting method; and
 - (b) require the making of a record of each person who has voted using the electronically assisted voting method; and
 - (c) specify the information that is to be included in a record; and
 - (d) provide for the production of a record of the vote each person has cast, which must not contain any means of identifying the person who cast the vote; and
 - (e) provide for the appointment by the Electoral Commissioner of officers in relation to the conduct of the electronically assisted voting method; and
 - (f) provide for the application of this Act, or provisions of this Act, in relation to votes cast using the electronically assisted voting method, including the modification of the application of this Act or a provision of this Act in relation to such votes; and
 - (g) make provision for any other matters related to electronically assisted voting.

(3) To avoid doubt, nothing in this Division (or in regulations made for the purposes of this Division) authorises any elector to vote more than once at an election.

(4) In this section—

5 *sight-impaired elector* means an elector whose sight is impaired such that the elector is unable to vote without assistance.

84B—Applying provisions of Act to elector using electronic assisted voting

- 10 (1) The prescribed electronically assisted voting method must be such that an elector using the method in relation to an election—
- (a) receives the same information (in the same order), and has the same voting options, as would appear in the ballot paper for the election that the elector would be given if the elector were voting at a polling booth under this Part; and
 - 15 (b) is able to indicate a vote in a way that, if the elector were marking a ballot paper, would satisfy the requirements of section 76.
- (2) Subject to this Division, if an elector votes using the electronically assisted voting method (an *electronically assisted vote*)—
- 20 (a) this Act applies (subject to any modifications prescribed under section 84A(2)(f)) in relation to an electronically assisted vote as if it were a declaration vote; and
 - (b) the record of the electronically assisted vote produced in accordance with the regulations is to be taken to be a ballot paper for the purposes of this Act; and
 - 25 (c) the requirements of this Act in relation to the elector's right to receive a ballot paper are to be taken to have been satisfied.

84C—Electoral Commissioner may determine that electronically assisted voting is not to be used

- 30 (1) The Electoral Commissioner may, by notice in the Gazette, determine that the prescribed electronically assisted voting method is not to be used either generally or at 1 or more specified places.
- (2) A notice under subsection (1) must specify the election in respect of which the determination applies.
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26—Amendment of section 91—Preliminary scrutiny

Section 91(1)(b) and (c)—delete paragraphs (b) and (c) and substitute:

- (b) must then—
 - 40 (i) in the case of declaration voting papers of voters whose votes were not taken before an officer, if satisfied—

(A) that the signature of the declarant corresponds with the signature on the application for declaration voting papers (other than in the case of an application made on behalf of an elector referred to in section 74(3a)); and

(B) that the vote was recorded before the close of the poll,

accept the ballot paper for further scrutiny and proceed with the process by—

(C) tearing off the extensions to the envelope flap on the envelope containing the ballot paper; and

(D) rearranging the envelopes that no longer bear their tear-off extensions so that the anonymity of the voter is maintained; and

(E) withdrawing the ballot paper from its envelope and placing it in a securely closed ballot box or other facility reserved for such ballot papers,

but, if the officer is not so satisfied, the officer must disallow the ballot paper without opening the envelope in which it is contained; or

(ii) in the case of declaration voting papers of voters whose votes were taken before an officer, proceed with the process by—

(A) tearing off the extensions to the envelope flap on the envelope containing the ballot paper; and

(B) rearranging the envelopes that no longer bear their tear-off extensions so that the anonymity of the voter is maintained; and

(C) withdrawing the ballot paper from its envelope and placing it in a securely closed ballot box or other facility reserved for such ballot papers,

unless the officer determines that there is proper cause at this stage for not accepting the ballot paper for further scrutiny under this Act; and

(c) must then seal up in separate parcels and preserve—

(i) all tear-off extensions removed from envelopes; and

(ii) all opened declaration envelopes relating to declaration ballot papers accepted for further scrutiny; and

(iii) all unopened envelopes containing declaration ballot papers disallowed; and

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

Section 92—delete "candidate or" wherever occurring

28—Amendment of section 113—Misleading advertising

5 Section 113(2), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$50 000.

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

Section 125—after subsection (3) insert:

- 10 (4) If a place is open for the issue of voting papers in an election other than on polling day, a person must not exhibit a notice or sign (other than an official notice) relating to the election at an entrance of, or within, that place, or in any public or private place within 100 metres, or such lesser distance as may be fixed in a particular case by the presiding officer, of an entrance to that place.
- 15 Maximum penalty: \$750.
- (5) An officer may, if directed by the presiding officer or Electoral Commissioner, remove a notice that the Electoral Commissioner or presiding officer believes on reasonable grounds to be exhibited in contravention of this section.
- 20 (6) A person must not obstruct an officer in the exercise or attempted exercise of the officer's functions under subsection (5).
Maximum penalty: \$2 500 or imprisonment for 6 months.

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

- 25 (1) Section 126(2)—after paragraph (b) insert:
or
(c) identical to a card permitted to be distributed under section 112A.
- (2) Section 126—after subsection (2) insert:
- 30 (3) A person must not publicly advocate that an elector may exercise their vote in a manner inconsistent with the provisions of this Act relating to the manner in which an elector may exercise a vote.
Maximum penalty: \$2 500.
- 35 (4) It is a defence to a charge of an offence against subsection (3) to prove that acts alleged to constitute the offence arose from an honest and reasonable misunderstanding or mistake on the part of the defendant.