

Legislative Council—No 79A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 30 June 2005

South Australia

Statutes Amendment (Local Government Elections) Bill 2005

A BILL FOR

An Act to amend the *City of Adelaide Act 1998*, the *Local Government Act 1999* and the *Local Government (Elections) Act 1999*.

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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 *Statutes Amendment (Local Government Elections) Act 2005*.

5 2—Commencement

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.

10 Part 2—Amendment of *City of Adelaide Act 1998*

4—Amendment of section 4—Interpretation

Section 4, definition of *relevant day*—delete the definition

5—Amendment of section 20—Constitution of Council

- (1) Section 20(1)—delete ", from the relevant day,"
- (2) Section 20(5)(a)—delete paragraph (a) and substitute:
- 5 (a) subsections (1) and (2) operate subject to any change to the composition or representative structure of the Council effected under Chapter 3 of the *Local Government Act 1999* after the conclusion of the 2006 Council periodic election (and until that time no such change can be made by proclamation under that Act);
- (3) Section 20(5)(b)—delete "the seventh anniversary of the relevant day" and substitute:
- 10 the conclusion of the 2006 Council periodic election
- (4) Section 20(5)(c)—delete "the seventh anniversary of the relevant day" and substitute:
- the conclusion of the 2006 Council periodic election
- (5) Section 20—after subsection (5) insert:
- (6) In subsection (5)—
- 15 ***2006 Council periodic election*** means the periodic election to determine the membership of the Council held in 2006.

6—Amendment of section 23—Code of conduct

Section 23(1)—delete ", within six months after the relevant day,"

7—Amendment of section 24—Allowances

- 20 (1) Section 24(2)—delete subsection (2) and substitute:
- (2) Subject to this section, the Council must, at its first ordinary meeting after the conclusion of each general election, fix or apply the rates of the annual allowances to be payable to its members during the ensuing year.
- 25 (2) Section 24(4)—delete "The rates" and substitute:
- Subject to this section, the rates
- (3) Section 24(7)—delete subsection (7) and substitute:
- (7) The regulations may—
- 30 (a) prescribe minimum and maximum amounts within which rates must be set under this section; or
- (b) prescribe a formula or formulas which must be applied in fixing rates under this section; or
- (c) fix rates under this section (which must then, in turn, be applied by the Council under this section).

(4) Section 24(9)—delete subsection (9) and substitute:

(9) In default of the Council fixing an appropriate rate in accordance with the requirements of this section and the provisions of the regulations under subsection (7) in relation to a particular office, the relevant allowance will be determined as follows:

- (a) if a regulation under subsection (7)(a) applies in relation to the office—the allowance will be the minimum amount set under the regulation in relation to the office;
- (b) if a regulation under subsection (7)(b) applies in relation to the office—the allowance will be the amount that applies under the relevant formula in relation to the office;
- (c) if a regulation applies under subsection (7)(c) in relation to the office—the allowance will be the rate that applies under the relevant regulation.

8—Repeal of section 39

Section 39—delete the section

9—Amendment of Schedule 1

(1) Schedule 1, Parts 1 to 6 (inclusive)—delete Parts 1 to 6 and substitute:

Part 1—Entitlement to vote

1—Entitlement to vote

A natural person may only vote in one capacity at an election or poll for the City of Adelaide (but this clause does not prevent a person voting at 2 or more elections for the City of Adelaide held on the same day).

(2) Schedule 1, clause 19(1)—delete subclause (1)

(3) Schedule 1, clause 21—delete clause 21

Part 3—Amendment of *Local Government Act 1999*

10—Amendment of section 4—Interpretation

(1) Section 4(2)(a)(i)—delete "first business day after the second Saturday of May" and substitute:

last business day before the second Saturday of November

(2) Section 4—after subsection (3) insert:

(4) Subsection (3) operates subject to any other section that makes express provision for another person to act in the relevant office or position.

11—Amendment of section 12—Composition and wards

(1) Section 12(4)—delete "six years" and substitute:

8 years

(2) Section 12(5), (6), (7) and (8)—delete subsections (5), (6), (7) and (8) and substitute:

- 5 (5) A council must, in order to commence a review, initiate the preparation of a paper (a *representation options paper*) by a person who, in the opinion of the council, is qualified to address the representation and governance issues that may arise with respect to the matters under review.
- 10 (6) The representation options paper must examine the advantages and disadvantages of the various options that are available to the council under subsection (1) (insofar as the various features of the composition and structure of the council are under review) and, in particular (to the extent that may be relevant)—
- 15 (a) if the council is constituted of more than 12 members—examine the question of whether the number of members should be reduced; and
- (b) if the area of the council is divided into wards—examine the question of whether the division of the area into wards
- 20 should be abolished,
- (and may examine such other relevant issues as the council or the person preparing the paper thinks fit).
- (7) The council must—
- (a) by public notice—
- 25 (i) inform the public of the preparation of the representation options paper; and
- (ii) invite interested persons to make written submissions to the council on the subject of the review within a period specified by the council (being a period of at least 6 weeks); and
- 30 (b) publish a copy of the notice in a newspaper circulating within its area.
- (8) The council must ensure that copies of the representation options paper are available for inspection (without charge) and purchase (on payment of a fee fixed by the council) at the principal office of the council during the period that applies under subsection (7)(a)(ii).
- 35 (8a) The council must, at the conclusion of the public consultation undertaken under subsection (7)(a), prepare a report that—
- (a) provides information on the public consultation and the council's response to the issues arising from the submissions made as part of that process; and
- 40 (b) sets out—

- 5
- (i) any proposal that the council considers should be carried into effect under this section; and
 - (ii) in respect of any such proposal—an analysis of how the proposal relates to the principles under section 26(1)(c) and the matters referred to in section 33 (to the extent that may be relevant); and
- 10
- (c) insofar as a decision of the council is not to adopt any change under consideration as part of the representation options paper or the public consultation process—sets out the reasons for the council's decision.

(3) Section 12(9)(b)(i)—delete "completion" and substitute:
preparation

(3a) Section 12—after subsection (11) insert:

- 15
- (11a) If the report proposes that the composition of the council be altered so that—
 - (a) the council will have a chairperson rather than a mayor; or
 - (b) the council will have a mayor rather than a chairperson,then the proposal cannot proceed unless or until a poll has been conducted on the matter and the requirements of subsection (11c) have been satisfied.

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 - (11b) The council may, with respect to a proposal within the ambit of subsection (11a)—
 - (a) insofar as may be relevant in the particular circumstances, separate the proposal (and any related proposal) from any other proposal contained in the report (and then it will be taken that the council is reporting separately on this proposal (and any related proposal));
 - (b) determine to conduct the relevant poll—
 - 30 (i) in conjunction with the next general election for the council (so that the proposal (and any related proposal) will then, if approved at the poll, take effect from polling day for the following general election); or
 - 35 (ii) at some other time (so that the proposal (and any related proposal) will then, if approved at the poll, take effect in the manner contemplated by subsection (18)).

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 - (11c) The following provisions apply to a poll required under subsection (11a):
 - (a) the *Local Government (Elections) Act 1999* will apply to the poll subject to modifications, exclusions or additions prescribed by regulation;
 - (b) the council must—

(i) prepare a summary of the issues surrounding the proposal to assist persons who may vote at the poll; and

(ii) obtain a certificate from the Electoral Commissioner that he or she is satisfied that the council has taken reasonable steps to ensure that the summary presents the arguments for and against the proposal in a fair and comprehensive manner; and

(iii) after obtaining the certificate of the Electoral Commissioner, ensure that copies of the summary are made available for public inspection at the principal office of the council, are available for inspection on the Internet, and are published or distributed in any other way that the Electoral Commissioner may direct;

(c) the proposal cannot proceed unless—

(i) the number of persons who return ballot papers at the poll is at least equal to the prescribed level of voter participation; and

(ii) the majority of those persons who validly cast a vote at the poll vote in favour of the proposal.

(11d) For the purposes of subsection (11c)(c), the ***prescribed level of voter participation*** is a number represented by multiplying the total number of persons entitled to cast a vote at the poll by half of the turnout percentage for the council, where the ***turnout percentage*** is—

(a) the number of persons who returned ballot papers in the contested elections for the council held at the last periodic elections, expressed as a percentage of the total number of persons entitled to vote at those elections (viewing all elections for the council as being the one election for the purposes of this provision), as determined by the Electoral Commissioner and published in such manner as the Electoral Commissioner thinks fit; or

(b) if no contested elections for the council were held at the last periodic elections, a percentage determined by the Electoral Commissioner for the purposes of the application of this section to the relevant council, after taking into account the turnout percentages of other councils of a similar size and type, as published in such manner as the Electoral Commissioner thinks fit.

(3b) Section 12(12)—after "The council must" insert:

then, taking into account the operation of the preceding subsection,

(4) Section 12—after subsection (12) insert:

(12a) The report must be accompanied by copies of any written submissions received under subsection (9) that relate to the subject-matter of the proposal.

5 (4a) Section 12(13)—delete "the report" and substitute:
a report

(5) Section 12(18)—delete subsection (18) and substitute:

(18) A proposal under this section takes effect as follows:

10 (a) if the day of publication of the relevant notice under subsection (15) occurs before 1 January of the year in which a periodic election is next due to be held then, unless paragraph (c) applies, the proposal will take effect as from polling day for that periodic election;

15 (b) if the day of publication of the relevant notice under subsection (15) occurs on or after 1 January of a year in which a periodic election is due to be held (and before polling day for that periodic election) then, unless paragraph (c) applies, the proposal will take effect as from polling day for the periodic election next following the periodic election held in the year of publication;

20 (c) if a general election (not being a periodic election) is held after the expiration of 7 months from the day of publication of the relevant notice under subsection (15) (and before polling day for the next periodic election after publication) then the proposal will take effect from polling day for that general election.

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(18a) Subsection (18) has effect subject to the operation of subsection (11b)(b)(i).

12—Amendment of section 28—Public initiated submissions

30 Section 28(3)—delete subsection (3) and substitute:

(3) However, if the council has, within the 2 years immediately preceding the making of the submission, been newly constituted (including through an amalgamation) or otherwise subject to change through the implementation of a structural reform proposal, a submission cannot be made under subsection (2) unless—

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(a) the submission is being made with a view to addressing a matter recommended by the Panel that the council has failed to implement; or

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(b) the submission is to alter the boundaries of the council and the alteration would not, if it were to be brought into effect—

- (i) alter a boundary that has been established (including through an amalgamation) within the preceding 2 years; or
- (ii) alter the same part of a boundary that has already been altered within the preceding 2 years.

13—Amendment of section 51—Principal member of council

- (1) Section 51(2)—delete "three" and substitute:

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- (2) Section 51(4)—delete "three" and substitute:

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- (3) Section 51—after subsection (9) insert:

- (10) In the event of a casual vacancy in the office of mayor, subsections (6) and (7) operate subject to any appointment made by the council under section 54(8).

14—Amendment of section 54—Casual vacancies

- (1) Section 54(2a)—delete subsection (2a) and substitute:

- (2a) Subsection (2) does not apply if—

- (a) the member is standing for election to a casual vacancy in the office of mayor but is unsuccessful; or

- (b) —

- (i) the member is standing for election to a casual vacancy in another office but is unsuccessful; and
- (ii) the conclusion of the election falls—

- (A) on or after 1 January of the year in which a periodic election is due to be held (and before polling day for that periodic election); or

- (B) within 7 months before polling day for a general election (other than a periodic election) (the date of that polling day being known at that time).

- (2) Section 54—after subsection (7) insert:

- (8) If a casual vacancy occurs in the office of mayor—

- (a) on or after 1 January of a year in which a periodic election is due to be held (and before polling day for that periodic election); or

- (b) within 7 months before polling day for a general election (other than a periodic election) (the date of that polling day being known at that time),

a member chosen by the council may act in the office of mayor until the conclusion of the election.

(9) The member chosen under subsection (8) may, but need not, be the deputy mayor (if any).

5 (10) If a person is to be chosen under subsection (8) and the votes for 2 or more candidates are equal, lots must be drawn to determine which candidate or candidates will be excluded.

15—Amendment of section 56—General election to be held in special case

Section 56(1)(b)—delete paragraph (b) and substitute:

10 (b) the prescribed occurrence occurs—

(i) before 1 January of the year in which a periodic election is next due to be held; or

15 (ii) more than 7 months before polling day for a general election (other than a periodic election) (the date of that polling day being known at the time of the occurrence);

16—Amendment of section 63—Code of conduct

Section 63—after subsection (3) insert:

20 (3a) A code of conduct must be consistent with any principle or requirement prescribed by the regulations and include any mandatory provision prescribed by the regulations.

17—Amendment of section 76—Allowances

(1) Section 76(2)—delete "A council" and substitute:

Subject to this section, a council

25 (2) Section 76(2)—after "fix" insert:

or apply

(3) Section 76(5)—delete subsection (5) and substitute:

(5) Subject to this section, the rates will then be reviewed by the council on an annual basis.

(4) Section 76(8)—delete subsection (8) and substitute:

30 (8) The regulations may—

(a) prescribe minimum and maximum amounts within which rates must be set under this section; or

(b) prescribe a formula or formulas which must be applied in fixing rates under this section; or

35 (c) fix rates under this section (which must then, in turn, be applied by each council, or each relevant council, under this section).

(5) Section 76(10)—delete subsection (10) and substitute:

(10) In default of a council fixing an appropriate rate in accordance with the requirements of this section and the provisions of the regulations under subsection (8) in relation to a particular office, the relevant allowance will be determined as follows:

- (a) if a regulation under subsection (8)(a) applies in relation to the office—the allowance will be the minimum amount set under the regulation in relation to the office;
- (b) if a regulation under subsection (8)(b) applies in relation to the office—the allowance will be the amount that applies under the relevant formula in relation to the office;
- (c) if a regulation applies under subsection (8)(c) in relation to the office—the allowance will be the rate that applies under the relevant regulation.

18—Insertion of new Part

After section 80 insert:

Part 6—Training and development

80A—Training and development

- (1) A council must prepare and adopt a training and development policy for its members.
- (2) The policy must be aimed at assisting members in the performance and discharge of their functions and duties.
- (3) A council may from time to time alter its policy, or substitute a new policy.
- (4) A person is entitled to inspect (without charge) a policy under this section at the principal office of the council during ordinary office hours.
- (5) A person is entitled, on payment of a fee fixed by the council, to a copy of a policy under this section.

19—Amendment of section 226—Moveable signs

Section 226(3)—after paragraph (c) insert:

- (ca) the sign is related to an election held under this Act or the *Local Government (Elections) Act 1999* and is displayed during the period commencing 4 weeks immediately before the date that has been set (either by or under either Act) for polling day and ending at the close of voting on polling day; or

20—Amendment of Schedule 2

Schedule 2, clause 4(2)—delete "three" and substitute:

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21—Amendment of Schedule 4

Schedule 4, clause 2—after paragraph (c) insert:

- (ca) the training and development activities for members of the council during the relevant financial year;

5 22—Amendment of Schedule 5

Schedule 5—delete "Reports on reviews" and substitute:

Representation options papers and reports on reviews

Part 4—Amendment of *Local Government (Elections) Act 1999*

23—Amendment of section 4—Preliminary

10 (1) Section 4(1), definition of *voting material* (a)—after "ballot papers" insert:

and other forms of voting papers

(2) Section 4(2)—delete the note that appears as part of subsection (2)

24—Substitution of section 5

Section 5—delete the section (and associated note) and substitute:

15 5—Periodic elections

Elections to determine the membership of each council must be held in accordance with this Act at intervals of 4 years on the basis that voting at the elections will close at 5 p.m. on the last business day before the second Saturday of November in 2006, at 5 p.m. on the
20 last business day before the second Saturday of November in 2010, at 5 p.m. on the last business day before the second Saturday of November in 2014, and so on.

25—Amendment of section 6—Supplementary elections

(1) Section 6(2)(a)—delete paragraph (a) and substitute:

25 (a) the vacancy occurs—

(i) on or after 1 January of a year in which a periodic election is due to be held and before the date on which nominations for that election are invited under section 18; or

30 (ii) within 7 months before polling day for a general election (other than a periodic election) (the date of that polling day being known at the time of the occurrence of the vacancy);
or

(2) Section 6(3)(c)—delete paragraph (c) and substitute:

(c) the other vacancy has not occurred—

35 (i) on or after 1 January of a year in which a periodic election is due to be held and before the date on which nominations for that election are invited under section 18; or

- (ii) within 7 months before polling day for a general election (other than a periodic election) (the date of that polling day being known at the time of the occurrence of the vacancy),

(3) Section 6(8)—delete the note that appears as part of subsection (8)

5 **26—Amendment of section 7—Failure of election in certain cases**

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

(2a) In addition, subsection (1) does not apply if—

- (a) the event that would otherwise cause the election to fail occurs after the close of voting; and
- (b) the returning officer declares, by notice published in the Gazette, that he or she is satisfied that the candidate would not have been elected on the basis of the votes cast at the relevant election.

(2) Section 7(3)(a)—delete "conclusion of an election" and substitute:

close of voting

(3) Section 7(4)—delete "conclusion of an election" and substitute:

close of voting

27—Amendment of section 9—Council may hold polls

Section 9(6)—delete subsection (6) (and associated note) and substitute:

(6) Voting at a poll will close—

- (a) subject to paragraph (b)—at 12 noon on polling day;
- (b) in a case where the poll is being held in conjunction with an election under this Act and voting at the election closes at 5 p.m.—at 5 p.m. on polling day.

25 **28—Amendment of section 14—Qualifications for enrolment**

(1) Section 14(1)(a)(iii)—delete subparagraph (iii) and substitute:

- (iii) is a ratepayer in respect of rateable property within the area or ward and is the sole owner of that rateable property; or
- (iv) is a ratepayer in respect of rateable property within the area or ward, is the sole occupier of that rateable property, and is not a resident in respect of that rateable property; and

(2) Section 14(1)(c)—after subparagraph (iii) insert:

and

- (iv) no member of the group who is an occupier of the rateable property but not an owner is a resident in respect of the rateable property.

(3) Section 14—after subsection (7) insert:

- (8) For the purposes of subsection (1)(a)(iv) and (c)(iv), the chief executive officer is entitled to assume (in the absence of any information in the hands of the chief executive officer to the contrary) that a ratepayer in respect of rateable property used for residential purposes who is a natural person and who is (or who appears to be) an occupier but not an owner of that rateable property is a resident in respect of that rateable property (and the voters roll may have effect accordingly).

29—Amendment of section 15—The voters roll

(1) Section 15(7)(a)—delete paragraph (a) and substitute:

- (a) in the case of a periodic election—on a day fixed by the returning officer for the close of the roll;

(2) Section 15(9)—delete subsection (9) and substitute:

(9) The closing date must not be less than—

- (a) in the case of the closing date under subsection (7)(a)—13 weeks before polling day for the relevant election;
- (b) in the case of the closing date under subsection (7)(b)—8 weeks before polling day for the relevant election or poll.

30—Amendment of section 16—Entitlement to vote

Section 16(4)—delete subsection (4) and substitute:

- (4) A natural person is not entitled to vote under subsection (2) or (3) unless he or she is of or above the age of majority.

31—Amendment of section 17—Entitlement to stand for election

Section 17(2)—after paragraph (c) insert:

and

- (d) a body corporate or group cannot nominate a person who has not attained the age of majority.

32—Substitution of section 18

Section 18—delete the section and substitute:

18—Call for nominations

The returning officer must not later than 14 days before the day on which nominations close for a particular election give public notice stating the vacancies to be filled at the election and inviting nomination of candidates for election to the vacancies.

33—Amendment of section 19—Manner in which nominations are made

(1) Section 19(1)—delete "and form"

(2) Section 19(2)—delete subsection (2) and substitute:

(2) The nomination must be accompanied by—

- (a) a declaration of eligibility made by the candidate; and
- (b) a profile of the candidate that complies with the regulations;
and
- (c) other information and material required by the regulations.

(3) Section 19(4)—delete "21" and substitute:

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(4) Section 19—after subsection (6)—insert:

- (7) The returning officer must reject a nomination if it appears to the returning officer that the nominated candidate has already been nominated for election to another vacancy (by a nomination lodged with the returning officer) and that the earlier nomination has not been withdrawn before the lodging of the nomination.

34—Amendment of section 22—Ability to withdraw a nomination

(1) Section 22(1)—delete "in the prescribed form"

(2) Section 22(2)—delete "in the prescribed form"

35—Amendment of section 23—Close of nominations

Section 23(a)—delete paragraph (a) and substitute:

- (a) in the case of a periodic election—at 12 noon on the sixth Tuesday after the closing day fixed under section 15(7)(a);

36—Amendment of section 26—Notices

(1) Section 26(1)—delete "14 days" and substitute:

16 days

(2) Section 26(2)—delete "in the prescribed form" and substitute:

(in a form determined by the Electoral Commissioner)

37—Amendment of section 29—Ballot papers

Section 29(3)—delete subsection (3) and substitute:

- (3) The drawing of lots for the purposes of subsection (2) must be conducted by the returning officer as soon as is reasonably practicable after the close of nominations in the presence of 2 persons who are of or above the age of majority and other persons who may wish to be present.

38—Amendment of section 39—Issue of postal voting papers

(1) Section 39(1)(b)—delete "in the prescribed form" and substitute:

(in a form determined by the Electoral Commissioner)

(2) Section 39(4)(a)—delete "fourth" and substitute:

second

(3) Section 39(4)(b)—delete "10 a.m." and substitute:

the close of voting

5 (4) Section 39(5)—delete "in the prescribed form" and substitute:

(in a form determined by the Electoral Commissioner)

(5) Section 39—after subsection (11) insert:

(12) The returning officer is not required to issue postal voting papers
under this section with respect to a person who the returning officer
has reason to believe has died.

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39—Amendment of section 40—Procedures to be followed for voting

Section 40(1)(d)—after "electoral officer" insert:

for the relevant council

40—Amendment of section 41—Voter may be assisted in certain circumstances

15 (1) Section 41—delete "If" and substitute:

Subject to subsection (2), if

(2) Section 41—after its present contents as amended by this section (now to be
designated as subsection (1)) insert:

(2) A person must not act under subsection (1) without first obtaining
the approval of the returning officer to do so.

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(3) An approval under subsection (2)—

(a) may be given in such manner as the returning officer thinks
fit; and

(b) may be given subject to such conditions as the returning
officer thinks fit.

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41—Amendment of section 42—Signature to electoral material

Section 42—delete "if it is identifiable as such" and substitute:

if it is witnessed by a person who provides his or her signature to verify the
mark

42—Amendment of section 43—Issue of fresh postal voting papers

Section 43—after subsection (3) insert:

(4) An application for the issue of fresh voting papers must be received
by the returning officer not later than—

(a) in the case of an application made by post—5 p.m. on the
second business day before polling day;

35

(b) in the case of an application made personally—the close of
voting on polling day

43—Amendment of section 47—Arranging postal papers

Section 47(1)—delete subsection (1) and substitute:

- (1) The returning officer will—
- (a) in the case of an election or poll where voting closes at 12 noon—as soon as practicable after the close of voting;
 - (b) in the case of an election or poll where voting closes at 5 p.m.—on the day following polling day for the election or poll (at a time determined to be reasonable by the returning officer),

with the assistance of any other electoral officers who may be present, ensure that all voting papers returned for the purposes of the election or poll in accordance with this Act are made available for the purposes of this section.

44—Amendment of section 48—Method of counting and provisional declarations

Section 48(4)—delete "polling day" and substitute:

close of voting

45—Amendment of section 49—Recounts

(1) Section 49(1)—delete "48" and substitute:

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(2) Section 49(2)—delete "48" and substitute:

72

46—Amendment of section 51—Collation of certain information

Section 51(1)—delete subsection (1) and substitute:

- (1) The returning officer must, within 1 month after the conclusion of an election, make and certify a return relating to the election.
 - (1a) The return must conform with any requirement prescribed by regulation.

47—Amendment of section 53—Recounts

(1) Section 53(1)—delete "48" and substitute:

72

(2) Section 53(2)—delete "48" and substitute:

72

48—Insertion of section 55A

After section 55 insert:

55A—Recount if successful candidate dies

(1) This section applies if—

- 5
- (a) a candidate dies between the close of voting at an election and the first meeting of the council after that election; and
 - (b) the election was to fill 2 or more vacancies; and
 - (c) the candidate is, according to the counting of votes cast at the election, a successful candidate and no other candidate who was also a successful candidate according to those votes has died.
- 10

(2) In a case where this section applies—

- 15
- (a) the returning officer must recount the votes on the basis that a vote indicated on a ballot paper opposite the name of the deceased candidate will be counted to the candidate next in the order of the voter's preference, and that the numbers indicating subsequent preferences are to be taken to have been altered accordingly;
 - (b) the returning officer must then ascertain (in such manner as the returning officer thinks fit) whether the person who becomes a successful candidate on the basis of this recount (being a person who was not previously a successful candidate and, if relevant, being the highest ranked candidate from the candidates not elected at the time of the original count)—
 - (i) is still willing to be elected to the relevant office; and
 - (ii) is still eligible to be elected to the relevant office;
 - (c) if the person then indicates to the returning officer (within a reasonable time) that he or she is so willing and eligible, the returning officer will declare the person elected.
- 20
- 25
- 30

(3) A recount under subsection (2) does not affect the election of any other member according to the votes actually cast at the election (and where such a member is elected or excluded during the recount then that event will have notional effect for the purposes of performing the recount but not otherwise).

35

(4) A declaration under subsection (2)(c) will be taken to be a provisional declaration and a candidate (not being a successful candidate) may request a recount on the basis of this declaration in the manner contemplated by section 49 and the returning officer may then take such action that may be appropriate in the manner contemplated by section 50.

40

49—Amendment of section 92—Electoral Commissioner may conduct investigations etc

(1) Section 92(1)—after paragraph (a) insert:

(ab) issue a formal reprimand to a person who, in the opinion of the Electoral Commissioner, has been guilty of a breach of this Act; or

(2) Section 92—after subsection (2) insert:

(3) The Electoral Commissioner may, in connection with any matter concerning the operation or administration of this Act, seize and retain, or issue a seizure order in respect of, anything that the Electoral Commissioner reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act.

(4) A seizure order under this section—

(a) must be in the form of a written notice served on the owner or person in control of the thing to which the order relates; and

(b) may be varied or revoked by further such written notice.

(5) If a seizure order is issued, a person who removes or interferes with the thing to which the order relates without the approval of the Electoral Commissioner before an order is made under subsection (6)(b) in respect of the thing or the seizure order is discharged under subsection (6)(c) is guilty of an offence.

Maximum penalty: \$5 000.

(6) If a thing has been seized or made subject to a seizure order, the following provisions apply:

(a) the thing must, if it has been seized, be held pending proceedings for an offence against this Act related to the thing seized, unless the Electoral Commissioner, on application, authorises its release to the person from whom it was seized, or to any person who had legal title to it at the time of its seizure, subject to such conditions as the Electoral Commissioner thinks fit (including conditions as to the giving of security for satisfaction of an order under paragraph (b)(ii));

(b) if proceedings for an offence against this Act relating to the thing are instituted within the prescribed period after its seizure or the issuing of the seizure order and the defendant is convicted or found guilty of the offence, the court may—

(i) order that it be forfeited to the Electoral Commissioner; or

(ii) if it has been released pursuant to paragraph (a) or is the subject of a seizure order—order that it be forfeited to the Electoral Commissioner or that the person to whom it was released or the defendant pay to the Electoral Commissioner an amount equal to its market value at the time of its seizure or the issuing of the seizure order, as the court thinks fit;

(c) if—

(i) proceedings are not instituted for an offence against this Act relating to the thing within the prescribed period after its seizure or the issuing of the seizure order; or

(ii) proceedings have been so instituted and—

(A) the defendant is found not guilty of the offence; or

(B) the defendant is convicted or found guilty of the offence but no order for forfeiture is made under paragraph (b),

then—

(iii) in the case of a thing seized—the person from whom the thing was seized, or any person with legal title to it, is entitled to recover from the Electoral Commissioner (if necessary, by action in a court of competent jurisdiction) the thing itself, or if it has been damaged or destroyed, compensation of an amount equal to its market value at the time of its seizure; or

(iv) in the case of a thing subject to a seizure order—the order is discharged.

(7) In subsection (6)—

the prescribed period means 6 months or such longer period as a magistrate may, on application by the Electoral Commissioner, allow.

50—Insertion of section 92A

After section 92 insert:

92A—Forms

(1) Subject to any provision made by another provision of this Act or by the regulations, the Electoral Commissioner may, by notice in the Gazette—

(a) determine the form of any voting material under this Act;

(b) make other determinations as to the forms that are to be used for the purposes of this Act.

- 5
- (2) A determination under subsection (1) may make different provision according to the circumstances to which it is expressed to apply.
- (3) A person must, if relevant, use a form required by a determination of the Electoral Commissioner under subsection (1) (and, in doing so, must comply with any relevant requirement imposed by the Electoral Commissioner relating to the completion of the form or the provision of information or material in association with the form).
- 10 (4) The Electoral Commissioner should, so far as is reasonably practicable, consult with the LGA before making a determination under subsection (1).

51—Repeal of Schedule

Schedule—delete the Schedule

Schedule 1—Transitional provisions

1—Interpretation

15 In this Schedule—

2006 periodic elections means the periodic elections to determine the membership of councils to be held in 2006 according to section 5 of the *Local Government (Elections) Act 1999*, as substituted by this Act.

2—Term of office

20 A member of a council—

- (a) holding office immediately before the commencement of this clause; or
- (b) elected or appointed after the commencement of this clause and before the close of nominations for the 2006 periodic elections,

25 may, subject to the provisions of the *Local Government Act 1999*, the *Local Government (Elections) Act 1999* or the *City of Adelaide Act 1998* (as the case requires), continue to hold his or her office until the conclusion of the 2006 periodic elections for the relevant office.

3—Allowances

(1) A council may—

- 30 (a) review the allowances to be payable to its members under section 24 of the *City of Adelaide Act 1998* or section 76 of the *Local Government Act 1999* (as the case requires) to take into account any relevant provision made by regulation on account of the enactment of this Act;
- 35 (b) as may be required, fix or apply allowances for any period up to the conclusion of the 2006 periodic election.

(2) An allowance under subclause (1) must be recorded in the Register of Allowances and Benefits for the relevant council.

4—Training and development policy

A council is not required to have a training and development policy under section 80A of the *Local Government Act 1999* until 1 July 2006.

5—Rolls and electoral processes

- 5 (1) The chief executive officer of a council cannot rely on subsection (8) of section 14 of the *Local Government (Elections) Act 1999* (as enacted by this Act) with respect to an entry on a voters roll at the time of the commencement of this subclause unless—
- 10 (a) the chief executive officer has sent a notice addressed to the relevant person at the rateable property advising the person about the operation of that section and the entitlements that apply with respect to the enrolment of residents; and
- 15 (b) the chief executive officer receives no reply within 28 days of the notice (or receives a reply within that period but the reply does not establish, to the satisfaction of the chief executive officer, that the person is an occupier within the ambit of section 14(1)(a)(iv) or (c)(iv) of the *Local Government (Elections) Act 1999*).
- (2) To avoid doubt—
- (a) any roll prepared under Schedule 1 of the *City of Adelaide Act 1998* will, until revised, have effect under the *Local Government (Elections) Act 1999*; and
- 20 (b) any application or other process made, commenced or dealt with under the *City of Adelaide Act 1998* will (if relevant) have effect for the purposes of the *Local Government (Elections) Act 1999*.

6—Review of council structures

- 25 (1) If a council has, before the commencement of this clause, commenced a review under section 12 of the *Local Government Act 1999* by the publication of a notice under subsection (5) of that section (as in existence before the amendment of that section by this Act), the council may continue with the process as set out in that section as if it had not been amended until an appropriate certificate is obtained from the Electoral Commissioner under that section.
- (1a) However, if—
- 30 (a) a proposal within the ambit of subclause (1) proposes that the composition of the relevant council be altered so that—
- (i) the council will have a chairperson rather than a mayor; or
- (ii) the council will have a mayor rather than a chairperson; and
- 35 (b) the council has not, before the commencement of this clause, referred its report on the proposal to the Electoral Commissioner under section 12(12) of the *Local Government Act 1999*,
- the proposal cannot proceed unless or until it is approved at a poll in the manner contemplated by section 12(11c) and (11d) of the *Local Government Act 1999* as enacted by this Act.
- 40 (2) A proposal within the ambit of subclause (1) will then take effect in accordance with section 12(11b) and (18) of the *Local Government Act 1999* as enacted by this Act.

6A—Change to principal member

(1) In addition to the operation of clause 6, if, at the time of the commencement of this clause—

(a) —

(i) a council is undertaking a review of its composition under section 12 of the *Local Government Act 1999* and has referred its report on its proposal or proposals to the Electoral Commissioner under subsection (12) of that section; and

(ii) a proposal is that the composition of the council be altered so that—

(A) the council will have a chairperson rather than a mayor; or

(B) the council will have a mayor rather than a chairperson; or

(b) —

(i) a council has completed a review under section 12 of the *Local Government Act 1999*; and

(ii) a proposal arising from the review is that the composition of the council be altered so that—

(A) the council will have a chairperson rather than a mayor; or

(B) the council will have a mayor rather than a chairperson; and

(iii) the composition of the council is to be altered as from the next general election of members of the council,

then despite the operation of section 12 of the *Local Government Act 1999* (and anything that would otherwise take effect if it were not for the operation of this provision), the proposal cannot take effect unless or until it is approved at a poll of electors for the relevant area as if it were a proposal within the ambit of clause 6(1a) (and accordingly subject to the requirements of section 12(11c) and (11d) of the *Local Government Act 1999* as enacted by this Act).

(2) A proposal that is approved under subclause (1) will then have effect in accordance with a determination of the Electoral Commissioner under this clause.

7—Special provision—LGFA

(1) In this clause—

representative member of the LGFA Board means a representative member of the Board of the Local Government Finance Authority of South Australia.

(2) The Governor may, by proclamation—

(a) extend the term of office of a person who, immediately before the date of the proclamation, is a representative member of the LGFA Board to a date fixed by the proclamation;

(b) fix the term of office of a person who is to be elected or appointed (including by virtue of being re-elected or re-appointed) as a representative member of the LGFA Board to fill an office that will become vacant on the date fixed under paragraph (a).

- (3) A proclamation under this clause has effect despite section 8(1) of the *Local Government Finance Authority Act 1983*.

8—Other provisions

- 5 (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- 10 (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
- (a) decreasing the person's rights; or
- (b) imposing liabilities on the person.
- 15 (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule (or regulations made under this clause), apply to any amendment or repeal effected by this Act.