

## **Legislative Council—No 136A**

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 8 February 2024

South Australia

# **Electoral (Control of Corflutes) Amendment Bill 2023**

A BILL FOR

An Act to amend the *Electoral Act 1985* and to make a related amendment to the *Local Government 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 *Electoral (Control of Corflutes) Amendment Act 2023*.

Part 2—Amendment of *Electoral Act 1985*

2—Amendment of section 115—Limitations on display of electoral advertisements

- (1) Section 115—after subsection (2) insert:

- (2a) A person must not exhibit an electoral advertising poster on a public road or road-related area (including any structure, fixture or vegetation on a public road or road-related area).  
Maximum penalty: \$5 000.

- (2b) Subsection (2a) does not apply to the exhibition of—

- (a) an electoral advertising poster by a person holding the electoral advertising poster (either directly in their hands or by holding an implement or device to which the poster is attached); or
- (b) an electoral advertising poster that—
  - (i) is not attached to a building, hoarding or other structure or fixture on a public road or road related area; and
  - (ii) is exhibited at, or in the vicinity of, a place at which a designated event or activity is being held; and

- (iii) is exhibited immediately before, during or immediately after the designated event or activity, provided that the electoral advertising poster is not exhibited at, or in the vicinity of, the place for more than 6 hours; or

- (c) an electoral advertising poster—

- (i) of a kind prescribed by regulation; or
- (ii) in circumstances prescribed by regulation.

- (2) Section 115(3)—delete "This section" and substitute:

Subsection (1)

- (3) Section 115—after subsection (3) insert:

- (4) In this section—

***designated event or activity*** means—

- (a) an assembly within the meaning of the *Public Assemblies Act 1972*; or
- (b) an organised gathering, meeting, function or event relating to an election; or
- (c) a person canvassing for votes relating to an election; or
- (d) any other gathering, meeting, function or event, or class of gathering, meeting, function or event, prescribed by the regulations;

***electoral advertising poster*** means a poster, notice or sign displaying an electoral advertisement;

***public road*** means a road within the meaning of the *Road Traffic Act 1961*;

***road-related area*** has the same meaning as in the *Road Traffic Act 1961*.

### 3—Amendment of section 125—Prohibition of canvassing near polling booths

- (1) Section 125—after subsection (1) insert:

- (1a) Notwithstanding any other provision in this Act, but without limiting subsection (1)(e) and subject to subsection (1b), the following provisions apply to the exhibition of electoral advertising posters within 50 metres of an entrance to a polling booth open for polling:

- (a) in relation to a House of Assembly election—an electoral advertising poster may only be exhibited within 50 metres of an entrance to a polling booth for a district open for polling if—

- (i) it is exhibited by or with the consent of a candidate for election as the member returned for a district; and

- (ii) no more than 12 electoral advertising posters are exhibited by or with the consent of the candidate within 50 metres of an entrance to the polling booth;

- (b) in relation to a Legislative Council election—an electoral advertising poster may only be exhibited within 50 metres of an entrance to a polling booth open for polling if—

- (i) it is exhibited—

- (A) in the case of a group of candidates—by a member of the group or with the consent of the member of the group whose name on the ballot paper is at the top of the group; or

- (B) in the case of any other candidate—by or with the consent of the candidate; and

- (ii) —

- (A) in the case of a group of candidates—no more than 12 electoral advertising posters are exhibited by a member of the group or with the consent of the member of the group whose name on the ballot paper is at the top of the group within 50 metres of an entrance to the polling booth; or

- (B) in the case of any other candidate—no more than 12 electoral advertising posters are exhibited by or with the consent of the candidate within 50 metres of an entrance to the polling booth.

- (1b) An electoral advertising poster exhibited under subsection (1a) must comply with any requirements prescribed by the regulations.

- (1c) If an electoral advertising poster exhibited by or with the consent of a candidate contravenes subsection (1a) or (1b), the candidate is guilty of an offence.

Maximum penalty: \$5 000.

- (1d) If an electoral advertising poster exhibited by a member of a group or with the consent of the member of the group whose name on the ballot paper is at the top of the group contravenes subsection (1a) or (1b), the member whose name on the ballot paper is at the top of the group is guilty of an offence.

Maximum penalty: \$5 000.

- (1e) If an electoral advertising poster is exhibited within 50 metres of an entrance to a polling booth open for polling without the consent of a candidate or group required under subsection (1a), the person who authorised the exhibition of the poster is guilty of an offence.

Maximum penalty: \$5 000.

- (1ea) Despite subsections (1c) to (1e), if the Electoral Commissioner is satisfied that a person has contravened subsection (1c), (1d) or (1e), the Electoral Commissioner may give the person a written formal caution against further such contraventions.

- (1eb) Subject to subsection (1ec), if the Electoral Commissioner gives a person a written formal caution under subsection (1ea), no further proceedings may be taken against the person for the contravention in relation to which the person was cautioned.

**Note—**

The presiding officer at a polling booth may (under subsection (1f)) direct or cause the removal of an electoral advertising poster exhibited in contravention of this section (whether a written formal caution is given in relation to the contravention or otherwise).

- (1ec) If, in relation to an electoral advertising poster exhibited in contravention of subsection (1c), (1d) or (1e)—

- (a) a person given a direction by a presiding officer under subsection (1f) to remove the poster fails to comply with a direction; and
- (b) the person is also given a written formal caution under subsection (1ea) in respect of the contravention; and
- (c) the failure to comply with the direction continues after the person is given the written formal caution,

nothing prevents criminal or civil proceedings from being taken against the person in relation to the contravention.

- (1f) If the presiding officer at a polling booth is satisfied that an electoral advertising poster is exhibited in contravention of this section, the presiding officer may direct any of the following persons to remove the poster or cause it to be removed within a period specified by the presiding officer (which must be reasonable):

- (a) the person who exhibited the poster;
- (b) in the case of a poster exhibited by or with the consent of—
  - (i) a candidate endorsed by a registered political party—the candidate or the registered officer of the party; or
  - (ii) any other candidate—the candidate;
- (c) in the case of a poster exhibited by or with the consent of—

(i) a group endorsed by a registered political party—a member of the group or the registered officer of the party; or

(ii) any other group—a member of the group;

(d) any other person the presiding officer considers appropriate to be directed to remove the poster.

(1g) If a direction of a presiding officer is not complied with within the specified period of time, the presiding officer may cause the electoral advertising poster to which the direction relates to be removed.

(1h) Section 115(2a) does not apply to the exhibition of an electoral advertising poster on a public road or road-related area (including any structure, fixture or vegetation on a public road or road-related area) in accordance with subsection (1a) and (1b).

(2) Section 125(2)(b)—delete "subsection (1)" and substitute:

subsections (1) and (1a)

(3) Section 125(2)—delete "that subsection" and substitute:

those subsections

(4) Section 125(3)—delete "subsection (1)" and substitute:

subsections (1) and (1a)

(5) Section 125—after subsection (3) insert:

(4) In this section—

*electoral advertising poster*, *public road* and *road-related area* have the same respective meanings as they have in section 115.

## **Schedule 1—Related amendment to *Local Government Act 1999***

### **1—Amendment of section 226—Moveable signs**

(1) Section 226(3)(c)—delete "State or"

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

(caa) the sign relates to a State election, is an electoral advertising poster that is not prohibited from exhibition under section 115(2a) of the *Electoral Act 1985* (or is a poster within the ambit of section 115(2b) of that Act or exhibited in accordance with section 125(1a) and (1b) of that Act) and is displayed during an election period under that Act; or

(3) Section 226(5)—delete "this section" and substitute:

subsection (2a)