

Legislative Council—No 157A

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South Australia

Electoral (Electronic Documents and Other Matters) Amendment Bill 2021

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 (Electronic Documents and Other Matters) Amendment Act 2021*.

2—Commencement

This Act comes 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), definition of *how-to-vote card*—delete "a card," and substitute:
written information

(2) Section 4(1), definition of *remote subdivision*—delete the definition

6—Amendment of section 15—Electoral subdivisions

Section 15(3)—delete subsection (3)

7—Amendment of section 18—Polling places

Section 18(4)—delete "by advertisement in a newspaper circulating generally throughout the State" and substitute:

on a website determined by the Electoral Commissioner and in any other manner considered appropriate by the Electoral Commissioner

8—Repeal of section 25

Section 25—delete the section

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

Section 26(1)—delete "(whether in printed or electronic form) of the latest prints"

9A—Amendment of section 29—Entitlement to enrolment

Section 29(1)(a)(iii)—delete subparagraph (iii) and substitute:

(iii) has their principal place of residence in the subdivision and—

(A) 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; or

- (B) lives at that place of residence and satisfies the Electoral Commissioner with evidence that complies with any requirements of the Electoral Commissioner that they will live there for more than 1 month from the date of the claim for enrolment; and

5

10—Amendment of section 31A—Itinerant persons

- (1) Section 31A(9)(b)—delete paragraph (b)
- (2) Section 31A(10)(b)—delete paragraph (b)
- (3) Section 31A(10)(c)(iii)—delete subparagraph (iii)

10A—Amendment of section 32—Making of claim for enrolment or transfer of enrolment

Section 32—after subsection (1a) insert:

- (1b) If a person makes a claim for enrolment or transfer of enrolment pursuant to section 69(1a), the person will be taken to have made a claim for enrolment or transfer of enrolment in accordance with this Act (even if the claim does not comply with the requirements to be in the manner and form approved by the Electoral Commissioner and given to an electoral registrar).

15

11—Amendment of section 41—Publication of notice of application

Section 41(1)—delete "in the Gazette and in a newspaper circulating generally in the State." and substitute:

—

- (a) in the Gazette; and
- (b) on a website determined by the Electoral Commissioner; and
- (c) in any other manner considered appropriate by the Electoral Commissioner.

25

12—Amendment of section 48—Contents of writ

- (1) Section 48(3)(a)(i)—delete "6" and substitute:

14

- (1a) Section 48(4)(a)—delete "3 days after the date fixed for the close of the rolls" and substitute:

9 days after the date of the issue of the writ

- (2) Section 48(7)(a)—delete "in a newspaper circulating throughout the State" and substitute:

on a website determined by the Electoral Commissioner and in any other manner considered appropriate by the Electoral Commissioner

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13—Amendment of section 49—Deferral of election

Section 49(1)—delete "in a newspaper circulating generally throughout the State" and substitute:

on a website determined by the Electoral Commissioner and in any other manner considered appropriate by the Electoral Commissioner

14—Amendment of section 53—Nomination 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, nominate a candidate or candidates endorsed by the party for election as a member or members of the House of Assembly or the Legislative Council.

(2) Section 53(2)—delete subsection (2)

(3) Section 53(3)—delete "paper must be in a form approved by the Electoral Commissioner and" and substitute:

made by a registered officer under this section must

(4) Section 53(3)(a)—delete paragraph (a) and substitute:

(a) be made in a manner and form determined by, and in accordance with any requirements of, the Electoral Commissioner; and

(ab) be made at least 48 hours before the hour of nomination; and

(ac) be accompanied by a deposit of the prescribed amount to be paid in the manner determined by the Electoral Commissioner in respect of each candidate nominated; and

(5) Section 53(3)(b)—delete ", signed by each candidate, that he or she" and substitute:

made by the candidate in the prescribed manner, that the candidate

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

(4) If the Electoral Commissioner receives a nomination under this section, the Electoral Commissioner must, as soon as is practicable (and in any event at least 24 hours before the hour of nomination), provide a copy of the nomination to the returning officer in respect of each district for which a candidate has been nominated.

(7) Section 53(5)—delete "in writing lodged with the appropriate district returning officer" and substitute:

to the Electoral Commissioner in a manner and form determined by the Electoral Commissioner

(8) Section 53(6)—delete "returning officer must immediately inform" and substitute:

Electoral Commissioner must immediately inform the appropriate district returning officer and

18—Amendment of section 60A—Voting tickets

- (1) Section 60A(2)(a)—delete "written notice of intention to lodge a voting ticket or voting tickets is given to the Electoral Commissioner or the returning officer" and substitute:

5 notice of intention to lodge a voting ticket or voting tickets is given, in a manner and form determined by the Electoral Commissioner, to the Electoral Commissioner or the returning officer

- (2) Section 60A(2)—after paragraph (b) insert:

and

10 (c) the voting ticket is lodged in accordance with the requirements of the Electoral Commissioner.

- (3) Section 60A(3)(b)—delete " in writing" and substitute:

, in a manner and form determined by the Electoral Commissioner,

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

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- (1) Section 62(1a)(b)—delete "appropriate written authorisation" and substitute:

authorisation, in a manner and form determined by the Electoral Commissioner,

- (2) Section 62(2)(b)—delete "signed" and substitute:

20 endorsed, in a manner determined by the Electoral Commissioner,

- (3) Section 62(2)(ba)—delete "appropriate written authorisation signed by the candidate" and substitute:

authorisation given by the candidate under subsection (1a)(b)

- (4) Section 62(2)(c)(i)—delete "signed" and substitute:

25 endorsed

- (5) Section 62(2)(d)—delete "appropriate written authorisation signed by all of the members of the group" and substitute:

authorisation given by all of the members of the group in a manner and form determined by the Electoral Commissioner

- 30 (6) Section 62(3)(b)—delete "signed" and substitute:

endorsed

20—Amendment of section 65—Properly staffed polling booths to be provided

- (1) Section 65(1)—delete "returning officer for the district" and substitute:

Electoral Commissioner

- 35 (2) Section 65(1)(a)—delete "within" and substitute:

for

21—Amendment of section 66—Preparation of certain electoral material

- (1) Section 66(2)(c)—delete paragraph (c) and substitute:
- (c) must be submitted in a manner determined by, and in accordance with the requirements of, the Electoral Commissioner; and
- 5 (2) Section 66(2)(f)—delete "(in the form determined by the Electoral Commissioner) that is signed" and substitute:
- (made in a manner and form determined by the Electoral Commissioner)

21A—Amendment of section 69—Entitlement to vote

Section 69—after subsection (1) insert:

- 10 (1a) A person is entitled to vote in an election for a district if the person—
- (a) is entitled to be enrolled on the electoral roll for the district (whether by way of enrolment or transfer of enrolment); and
 - (b) after the close of rolls for the election and no later than 6 pm on polling day, makes a claim for enrolment or transfer of enrolment (as the case requires) under section 32 to the
- 15 Electoral Commissioner or an officer.
- (1b) If, in relation to a person claiming an entitlement to vote under subsection (1a), the district for which the person is entitled to be enrolled as an elector for the purposes of this Act is not able to be
- 20 determined at the time of the making of the claim, the person is entitled to make a declaration vote for each district for which the person might be entitled to be enrolled, provided that—
- (a) the Electoral Commissioner must, as soon as reasonably practicable after the making of the claim, determine the district for which the person is entitled to be enrolled as an
- 25 elector; and
- (b) the Electoral Commissioner must ensure that only the declaration vote in respect of that district is accepted in the counting of votes for the purposes of the election.

22—Amendment of section 71—Manner of voting

- (1) Section 71(1)—after paragraph (a) insert:
- (ab) by attending at a pre-polling booth and voting in the manner prescribed by this Act; or
- (1a) Section 71—after subsection (1) insert:
- 35 (1a) However, an elector to whom section 69(1a) applies may only exercise their vote by making a declaration vote.
- (2) Section 71(2)(a)—delete "on polling day at a polling booth outside the district for which he or she is enrolled as an elector" and substitute:
- 40 at a polling booth other than 1 established in respect of the district for which the elector is enrolled

26—Amendment of section 77—Times and places for polling

(1) Section 77(1)(b)—delete paragraph (b) and substitute:

(b) at such other places as may be determined by the Electoral Commissioner—in a pre-polling booth.

(2) Section 77(2)(b)—delete "mobile polling booth in a remote subdivision" and substitute:

pre-polling booth

(3) Section 77(3)—delete subsection (3) and substitute:

(3) The Electoral Commissioner must, on a website determined by the Electoral Commissioner and in any other manner prescribed by the regulations, advise the times and places for polling at a pre-polling booth.

(4) Section 77(3a)—delete "mobile polling booth" and substitute:

pre-polling booth

(5) Section 77(3a)(a)(i)—delete "in a newspaper circulating generally throughout the State" and substitute:

on a website determined by the Electoral Commissioner and in any other manner prescribed by the regulations

(6) Section 77(3a)(a)(ii)—delete subparagraph (ii) and substitute:

(ii) if the Electoral Commissioner considers it appropriate to do so in the circumstances—by the Electoral Commissioner taking such steps as are reasonably practicable to notify relevant electors of the alteration;
or

(7) Section 77(3a)(b)—delete "electors in the particular subdivision" and substitute:

relevant electors

(8) Section 77(3b)—delete "mobile polling booth" and substitute:

pre-polling booth

27—Repeal of section 83

Section 83—delete the section

28—Amendment of heading to Part 9 Division 5A

Heading to Part 9 Division 5A—delete the heading and substitute:

Division 5A—Assisted voting for prescribed electors

29—Amendment of section 84A—Assisted voting for prescribed electors

(1) Section 84A(1)—delete "sight-impaired" and substitute:

prescribed

(2) Section 84A(1)—delete "electronically"

(3) Section 84A(2)(a)—delete paragraph (a) and substitute:

(a) determine, or provide for the determination of, 1 or more assisted voting methods and, in relation to each such method, determine, or provide for the determination of, the following:

- (i) matters related to voting using the 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;
- (ii) the number of places where the assisted voting method is to be available, the location of those places (if relevant) and the days and times at which the method is to be available;
- (iii) which electors may use the assisted voting method; and

(4) Section 84A(2)(b), (e) and (f)—delete "the electronically" wherever occurring and substitute in each case:

an

(5) Section 84A(2)(g)—delete "electronically"

(5a) Section 84A—after subsection (2) insert:

(2a) Regulations relating to an assisted voting method that involves telephone voting must at least provide for the method to include the following requirements:

- (a) a witness who listens to the entire telephone communication between a prescribed elector voting using the method and the officer taking the vote and ensures that—
 - (i) the prescribed elector's vote is accurately marked by the officer in the presence of the witness; and
 - (ii) the officer then reads the marked vote aloud to the prescribed elector; and
 - (iii) the prescribed elector confirms that their vote has been accurately marked or, if the prescribed elector seeks to amend their vote, the officer accurately marks the amendments and reads the amended marked vote aloud to the prescribed elector;
- (b) a witness who performs the functions referred to in paragraph (a) in relation to an assisted vote—
 - (i) records a unique identifier number (being a number provided to the prescribed elector in relation to their assisted vote) on the declaration envelope into which the vote is to be placed; and
 - (ii) signs the declaration envelope; and
 - (iii) folds the ballot paper and seals it inside the declaration envelope.

(2b) Regulations made under section 84A(2)(f) cannot disapply or modify the operation of subsection (2a) in relation to an assisted voting method that involves telephone voting.

(6) Section 84A(4)—before the definition of *sight-impaired elector* insert:

prescribed elector means—

- (a) a sight-impaired elector; or
- (b) an elector with a disability within the meaning of the *Disability Inclusion Act 2018* (other than sight-impairment); or
- (d) any other elector, or class of elector, specified for the purposes of this definition in a direction under section 25 of the *Emergency Management Act 2004*.

(7) Section 84—after subsection (4) insert:

(5) For the purposes of paragraph (b) of the definition of *prescribed elector* in subsection (4), the regulations may declare that a reference to a disability in that paragraph—

- (a) will be taken to include a disability of a kind prescribed by the regulations; and
- (b) will be taken not to include a disability of a kind prescribed by the regulations.

30—Amendment of section 84B—Applying provisions of Act to elector using assisted voting

(1) Section 84B(1)—delete "The prescribed electronically" and substitute:

An

(2) Section 84B(2)—delete "using the electronically assisted" and substitute:

using an assisted

(3) Section 84B(2)—delete "(an *electronically assisted vote*)" and substitute:

(an *assisted vote*)

(4) Section 84B(2)(a)—delete "an electronically" and substitute:

the

(5) Section 84B(2)(b)—delete "electronically"

31—Amendment of section 84C—Electoral Commissioner may determine that assisted voting is not to be used

Section 84C(1)—delete "the prescribed electronically" and substitute:

an

32—Amendment of section 85—Compulsory voting

(1) Section 85(8)—after paragraph (c) insert:

- (ca) the elector is an itinerant elector; or

(2) Section 85—after subsection (10) insert:

(11) In this section—

itinerant elector means—

- (a) a person enrolled as an elector under section 31A; or
- (b) an itinerant elector within the meaning of the *Commonwealth Electoral Act 1918*.

33—Amendment of section 89—Scrutiny

(1) Section 89(2)—delete subsection (2) and substitute:

(2) The scrutiny must commence—

- (a) in relation to votes taken at a polling booth at an appointed polling place—as soon as practicable after the close of poll; and
- (b) in relation to ordinary votes taken at a pre-polling booth before polling day—at such times and in such manner before the close of poll as determined by the Electoral Commissioner,

and may be adjourned from time to time as may be necessary until the counting of the votes is complete.

(2) Section 89—after subsection (3) insert:

(4) Any scrutiny undertaken before the close of poll must be undertaken in accordance with this section and the other relevant provisions of this Act.

(5) In connection with section 89(4), the following requirements apply in relation to the scrutiny of ordinary votes taken at a pre-polling booth before polling day undertaken before the close of poll:

- (a) the scrutiny is to be conducted in 1 or more areas determined by the Electoral Commissioner (*restricted areas*);
- (b) the Electoral Commissioner must appoint an officer as a responsible officer for a restricted area;
- (c) a person must not enter a restricted area before the close of poll unless—
 - (i) the responsible officer grants the person permission to enter the restricted area, which may be subject to conditions determined by the responsible officer; and
 - (ii) the person gives the responsible officer an undertaking not to leave the restricted area before the close of poll;
- (d) a person must leave a restricted area on being required to do so by the responsible officer for the restricted area;

(e) a person must not enter a restricted area before the close of poll if the person is in possession of a device that enables information to be conveyed to a person or machine outside the restricted area;

5 (f) a person in possession of a device of a kind referred to in paragraph (e) in a restricted area before the close of poll must surrender the device on being required to do so by the responsible officer for the restricted area and the responsible officer may retain the device until the close of poll;

10 (g) a person who is or has been in a restricted area must not, before the close of poll, disclose to any person outside the restricted area any information relating to the scrutiny of votes (including the counting of votes) undertaken before the close of poll.

15 (6) A person who contravenes or fails to comply with a requirement under subsection (5)(c) to (g) is guilty of an offence.

Maximum penalty: \$5 000.

20 (7) A person who contravenes or fails to comply with an undertaking made, or a condition of a permission granted, under subsection (5)(c) is guilty of an offence.

Maximum penalty: \$5 000.

(8) The Electoral Commissioner may grant a person an exemption from a provision of subsection (5) to (7) in an emergency or to deal with an urgent situation.

25 (9) A person who contravenes or fails to comply with a requirement to leave a restricted area under subsection (5)(d) may be removed from the restricted area by a police officer or a person authorised by the responsible officer for the restricted area to remove the person.

34—Amendment of section 91—Preliminary scrutiny

30 Section 91(1)(b)(i)(A)—delete subsubparagraph (A) and substitute:

(A) of the identity of the elector (which must be verified in a manner prescribed by the regulations); and

35—Amendment of section 112A—Special provision relating to how-to-vote cards

35 Section 112A—after subsection (7) insert:

(7a) Subsection (1)(a) and (b) do not apply to a how-to-vote card published as part of other material if that material is an electoral advertisement authorised in accordance with section 112.

36—Amendment of section 113—Misleading advertising

Section 113(4) and (5)—delete subsections (4) and (5) and substitute:

- 5
- (4) If, on application, the Tribunal is satisfied that an electoral advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent, the Tribunal may order the advertiser to do 1 or more of the following:
- (a) withdraw the advertisement from further publication;
 - (b) publish a retraction in specified terms and a specified manner and form.
- 10
- (5) For the purposes of the *South Australian Civil and Administrative Tribunal Act 2013*—
- (a) an application to the Tribunal under subsection (4)—
 - 15 (i) will be taken to come within the Tribunal's original jurisdiction; and
 - (ii) must be referred to a Presidential member or senior member of the Tribunal, or a magistrate designated as a member of the Tribunal; and
 - (b) an order of the Tribunal under subsection (4) may not be the subject of an application for internal review under section 70 of that Act, but, despite section 71(2a) of the *South Australian Civil and Administrative Tribunal Act 2013*, an appeal against the order may be instituted under section 71 of that Act.
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36A—Amendment of section 115A—Automated political calls

25 Section 115A(1) and (2)—delete subsections (1) and (2) and substitute:

A person must not make, or cause or permit the making of, a telephone call consisting of a pre-recorded electoral advertisement.

Maximum penalty:

- 30 (a) if the offender is a natural person—\$5 000;
- (b) if the offender is a body corporate—\$10 000.

37—Amendment of section 116A—Evidence

Section 116A(d)—delete paragraph (d)

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

Section 125(3)(a)—delete paragraph (a)

39—Insertion of section 129A

After section 129 insert:

129A—False or misleading information

A person must not, in giving any information under this Act—

- 5 (a) make a statement knowing it to be false or misleading; or
 (b) omit any matter from a statement knowing that without that
 matter the statement is false or misleading.

Maximum penalty: \$1 250.

40—Amendment of section 132—Injunctions

10 Section 132(2)—delete subsection (2)