

**Legislative Council—No 81**

As received from the House of Assembly and read a first time, 15 October 2020

South Australia

**Electoral (Miscellaneous) Amendment Bill 2020**

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 (Miscellaneous) Amendment Act 2020*.

### **2—Commencement**

5 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**

- 10
- (1) Section 4(1), definition of *how-to-vote card*—delete "a card," and substitute:  
written information
  - (2) Section 4(1), definition of *registered voting ticket*—delete the definition
  - (3) Section 4(1), definition of *remote subdivision*—delete the definition
  - 15 (4) Section 4(1), definition of *voting ticket*—delete the definition

### **5—Amendment of section 8—Powers and functions of Electoral Commissioner**

Section 8(1a)—delete subsection (1a)

### **6—Amendment of section 15—Electoral subdivisions**

Section 15(3)—delete subsection (3)

### **7—Amendment of section 18—Polling places**

20 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 prescribed by the regulations

### **8—Repeal of section 25**

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"

### **10—Amendment of section 31A—Itinerant persons**

- 30
- (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)

**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:

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—

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

**12—Amendment of section 48—Contents of writ**

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

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

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

**13—Amendment of section 49—Deferral of election**

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

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

**14—Amendment of section 53—Nomination of candidates endorsed by political party**

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

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- (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)

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

made by a registered officer under this section must

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

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- (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(3)(b)(iii)—delete ", and (in the case of a candidate for election as a member of the House of Assembly) to lodge a voting ticket under section 60A(1),"
- 5 (7) 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  
10 each district for which a candidate has been nominated.
- (8) 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
- 15 (9) Section 53(6)—delete "returning officer must immediately inform" and substitute:  
Electoral Commissioner must immediately inform the appropriate district returning officer and
- (10) Section 53(7)—delete "some other person as the candidate endorsed by the party for the district by lodging with the appropriate district returning officer before the hour of nomination a duly completed nomination paper" and substitute:  
20 , before the hour of nomination and in accordance with the requirements of subsection (3), some other person as the candidate endorsed by the party for the district

### **15—Amendment of section 53A—Nomination of candidate by a person**

- 25 (1) Section 53A(1)—delete "on a nomination paper"
- (2) Section 53A(2)—delete subsection (2)
- (3) Section 53A(3)—delete "paper must be in a form approved by the Electoral Commissioner and—" and substitute:  
made by a person under this section must—  
30 (a1) be made to the appropriate district returning officer before the hour of nomination; and  
(a2) be made in a manner and form determined by, and in accordance with any requirements of, the Electoral Commissioner; and  
(a3) be accompanied by a deposit of the prescribed amount to be paid in  
35 the manner determined by the Electoral Commissioner; and
- (4) Section 53A(3)(a)—delete "signed" and substitute:  
endorsed, in a manner determined by the Electoral Commissioner,
- (5) Section 53A(3)(b)—delete "signed by the candidate, that he or she" and substitute:  
made by the candidate in the prescribed manner, that the candidate

(6) Section 53A(3a)(b)—delete "signs a nomination paper" and substitute:  
endorses a nomination

(7) Section (3a)—delete "signature" and substitute:  
endorsement

5 (8) Section 53A(4)—delete "in writing lodged with" and substitute:  
given in a manner and form determined by the Electoral Commissioner to

(9) Section 53A(4a)—delete "paper lodged under subsection (2)" and substitute:  
made under this section

### **16—Amendment of section 54—Declaration of nominations**

10 Section 54(1)(a)—delete "nomination papers" and substitute:  
nominations

### **17—Repeal of section 60A**

Section 60A—delete the section

### **18—Amendment of section 65—Properly staffed polling booths to be provided**

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

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

### **19—Amendment of section 66—Preparation of certain electoral material**

20 (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

(2) Section 66(2)(f)—delete "(in the form determined by the Electoral Commissioner) that  
is signed" and substitute:

25 (made in a manner and form determined by the Electoral Commissioner)

### **20—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

30 (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:

at a polling booth other than 1 established in respect of the district for which  
the elector is enrolled

(3) Section 71(2)(b)(i)—delete "8" and substitute:

35 20

- (4) Section 71(2)(c)—delete paragraph (c)

**21—Amendment of section 72—Questions to be put to person claiming to vote**

Section 72(1)(a)—delete "and the address of the principal place of residence"

**22—Amendment of section 73—Issue of voting papers**

- 5 (1) Section 73(2)—delete "written"
- (2) Section 73(2)—after "which" insert:
- must be made in accordance with the requirements prescribed by the regulations
- (3) Section 73(2)(a) and (b)—delete paragraphs (a) and (b)

10 **23—Amendment of section 74—Issue of declaration voting papers by post or other means**

- (1) Section 74(1)(b)—delete paragraph (b) and substitute:
- (b) to an elector who applies for the issue of declaration voting papers in the prescribed manner and within the designated time.
- 15 (2) Section 74(2)—delete subsection (2) and substitute:
- (2) An officer who receives an application before the designated time must ensure that they respond to the applicant as soon as practicable after receipt of the application (and in any event no later than 24 hours after that receipt).
- 20 (3) Section 74(3)(c)(ii)—delete "mobile polling booth" and substitute:
- pre-polling booth
- (4) Section 74—after subsection (7) insert:
- (8) In this section—
- designated time* means—
- 25 (a) in the case of an applicant who applies for the issue of declaration voting papers to an address within the State—5 pm on the Tuesday immediately preceding polling day; and
- (b) in any other case—5 pm on the Friday falling 8 days before
- 30 polling day.

**24—Amendment of section 76—Method of voting at elections**

Section 76(2)—delete subsection (2) and substitute:

- 35 (2) In a House of Assembly election, a voter must mark their vote on the ballot paper by placing the number 1 in the square opposite the name of the candidate for whom they vote as their first preference, and, if the voter so desires, by placing the number 2 and consecutive numbers in the squares opposite the names of other candidates in the order of the voter's preference for them (but not so as to be required to indicate a preference for all candidates).

## 25—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.

5 (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:

10 (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

15 (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:

20 (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:

25 relevant electors

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

pre-polling booth

## 26—Repeal of section 83

Section 83—delete the section

## 30 27—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—

35 *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*.

## **28—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 Act and the requirements prescribed by the regulations.

## **29—Amendment of section 91—Preliminary scrutiny**

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

## **30—Repeal of section 93**

Section 93—delete the section

## **31—Amendment of section 94—Informal ballot papers**

(1) Section 94(1)(b)(i)—delete ", or it does not indicate, in the manner required by this Act, the order of the voter's preference for all candidates in the election"

(2) Section 94(3) and (4)—delete subsections (3) and (4) and substitute:

(3) If a series of numbers (starting from the number 1) appearing on a ballot paper is non-consecutive by reason only of the omission of 1 or more numbers or the repetition of a number (not being the number 1), the ballot paper is not informal and the votes are valid up to the point where the omission or repetition occurs.

## **32—Amendment of section 96—Scrutiny of votes in House of Assembly election**

(1) Section 96(5)(d)(i)—after "voter's preference" insert:

(if any)

(2) Section 96(5)(d)(ii) and (iii)—delete subparagraphs (ii) and (iii) and substitute:

(ii) if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the fewest votes, and counting each of that candidate's ballot papers to the unexcluded candidate next in the order of the voter's preference (if any), is to be repeated until—

(A) 1 candidate has an absolute majority of votes, in which case that candidate will be elected; or

(B) 2 candidates remain, in which case the candidate who has the most votes will be elected (despite the fact that neither candidate has an absolute majority of votes).

### **33—Amendment of section 115—Limitations on display of electoral advertisements**

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

(2a) A person must not, during an election period, exhibit an electoral advertising poster on a public road (including any structure, fixture or vegetation on a public road), except in circumstances prescribed by the regulations.

Maximum penalty: \$5 000.

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

(4) In this section—

*electoral advertising poster* means a poster displaying electoral advertising made of—

(a) corflute; or

(b) plastic; or

(c) any other material, or kind of material, prescribed by the regulations;

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

### **34—Amendment of section 125—Prohibition of canvassing near polling booths**

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

### **35—Insertion of section 129A**

After section 129 insert:

#### **129A—False or misleading information**

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

(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.

### **36—Amendment of section 132—Injunctions**

Section 132(2)—delete subsection (2)

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

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

- 5
- (1) Section 226(3)(c)—delete "State or"
  - (2) Section 226(3)—after paragraph (c) insert:
    - (caa) the sign relates to a State election and is an electoral advertising poster that is authorised to be exhibited under section 115(2a) of the *Electoral Act 1985* (during an election period under that Act); or