

South Australia

Ballot Act 1862

An Act to regulate elections by ballot.

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Legislative history

Preamble

WHEREAS it is desirable that an uniform practice and mode of procedure should be observed in all elections for offices in public bodies:

The Parliament of South Australia enacts as follows:

1—Short title

This Act may, for all purposes, be cited as the *Ballot Act 1862*.

2—Election by ballot to be had under this Act

Whenever, in any Act of the Parliament of the State, it shall be enacted or provided that any election for any office in any public body shall be by ballot, such election shall, unless therein otherwise provided, be made under the provisions of this Act; and for the purposes of this Act such first-mentioned Act shall be regarded as a special Act.

3—Construction and explanation

In the construction of this Act, and for the purposes thereof, the following terms shall have the respective meanings assigned to them as follows, that is to say—

prescribed, used in reference to any matter, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act;

returning officer shall mean the person who shall, under the provisions of the special Act, be appointed to preside at any election, and have the conduct and control of the proceedings thereat;

deputy returning officer shall mean any person who, under the special Act, shall be appointed to preside at any polling or voting place as the deputy or assistant of the returning officer;

district, or *electoral district*, shall mean any town, district, ward, or other place for which, or for the representation of which, any election under the special Act shall be had;

election shall mean any election by ballot authorised or provided for by the special Act;

electoral roll, or *register of voters*, shall mean the prescribed list or roll of persons entitled to vote at any election, and in case of a district council shall mean the last assessment book in force for the district;

elector shall mean a person entitled to vote in an election authorised or provided for by the special Act.

4—Booths may be erected or hired for taking votes

At every election the returning officer, if it shall appear to him expedient, may cause booths to be erected, or rooms to be hired and used as such booths, at the several polling places of his district, and the same shall be so divided and allotted into compartments as to the returning officer shall seem most convenient, and shall, before the day fixed for taking votes, cause to be furnished, for the use of each booth, a copy of that portion of the electoral roll containing the names of persons entitled to vote at such voting place of the district, and shall under his hand certify such copy to be a true copy.

5—Returning officer to preside and appoint deputies to preside at the voting places

The returning officer of each electoral district, in case no means are prescribed for the appointment of a deputy returning officer, may appoint a deputy to act for him, and take the votes at each voting place: Provided that such deputy be appointed by writing under the hand of the said returning officer.

6—Adjournment of nomination, or of voting in case of riot

Where the proceedings at any election shall be interrupted or obstructed by any riot or open violence, the returning officer, or the deputy returning officer, shall not for such cause terminate the business, but shall adjourn the taking the votes at the particular voting place at which such interruption or obstruction shall have happened, until the following day, not being Sunday or a public holiday, and, if necessary, shall further adjourn such voting, as the case may be, until such interruption or obstruction shall have ceased, when the returning officer or his deputy shall again proceed with the business of the taking of votes at the place at which the same respectively may have been interrupted or obstructed, and the commencement of the voting shall be regulated accordingly; and any day whereon the voting shall have been so adjourned, shall not as to such place be reckoned the day of taking of votes at such election, within the meaning hereof; and whenever the voting shall have been so adjourned by any deputy of any returning officer, such deputy shall forthwith give notice of such adjournment to the returning officer, who shall not finally declare the state of the voting, or make proclamation of the member chosen, until the voting so adjourned at such place shall have been finally closed, and the boxes containing the votes delivered or transmitted to such returning officer.

7—Proceedings on the day of election

The election at each voting place shall be held before the returning officer or deputy returning officer, and the voting at every election shall commence at nine o'clock in the forenoon, and shall finally close at five o'clock in the afternoon of the same day, and shall be conducted in manner following, that is to say—Every elector entitled to vote, and who shall vote in the election, shall vote at the voting place in the district or division in which he shall be entitled to vote, and shall present himself to the returning officer or deputy returning officer at such voting place, and state his Christian and surname, abode, profession, or occupation, and the nature of his qualification, and the place where the property or qualification is situated: whereupon the returning officer or deputy returning officer shall place a mark against the voter's name on the electoral roll or copy, and hand to such voter a voting paper bearing the initials of the returning officer, or deputy returning officer, and containing the Christian and surname of each candidate arranged in alphabetical order, according to such surnames, and if there are two candidates of the same surname, then according to the Christian name or names of such candidates, and if there are two candidates of the same Christian and surname, then according to the residence of such candidates arranged in like order, and every such voting paper shall have a square printed opposite to the name of such candidate, with a number corresponding with the order of nomination inserted in such square, and no other matter or thing shall be inserted in or on such voting paper; and there shall be provided separate apartments, or places forming part of the polling booth, into which the voter shall immediately retire, and there, alone and in private, without interruption, indicate the name of each candidate for whom he intends to vote, by making a cross within the square opposite the name of such candidate, and shall then fold the same paper and immediately deliver it so folded to the returning officer or to the deputy returning officer, who shall forthwith publicly, and without opening the same, deposit it in a box to be provided for that purpose; and no voting paper so deposited in any box shall, on any account, be taken therefrom, unless in the presence of scrutineers after the close of the election: Provided, that no voting paper shall be received unless it be so folded as to render it impossible for the returning officer, or any other person, to see for what candidate or candidates the vote is given; and any voter wilfully infringing any of the provisions of this clause, or obstructing the voting by any unnecessary delay in performing any act within the polling booth or room, shall be deemed guilty of an offence.

8—Who are to remain in polling booth

The only persons who shall be allowed to remain within any polling booth or room shall be the electors about to vote, the returning officer and deputy returning officers, and the scrutineers, not exceeding two for each candidate.

9—No inquiry of a voter except as to his identity whether he has voted before on the same election, and as to qualification

- (1) No inquiry shall be permitted at any election as to the right of any person to vote, except only as follows, that is to say—the returning officer or deputy returning officer may, or if required by any two electors entitled to vote in the same electoral district, shall put to any voter at the time of his tendering his vote, and not afterwards, the following questions, or any of them, or any prescribed questions, and no other:

First—Are you the person whose name appears as A.B. in the register of voters now in force for this district (or town or ward, or as the case may be) [being registered therein for property described to be situated in (here specify the street or place described in the electoral roll)]?

Second—Have you already voted at the present election for this district (or town or ward, or as the case may be)?

Third—Had you, at the time of being registered, the qualification for which your name now stands in the register of voters for the (town, district, or ward of, as the case may be, specifying in each case the particulars of the qualification, as described in the register of voters), and are you still possessed of the same qualification? Are you of the age of eighteen years?

- (2) No person required to answer any of the said questions shall be permitted or qualified to vote until he shall have answered the same, nor if he shall have answered the same in such a manner as to show that he is not qualified to vote; and if any person shall wilfully make a false answer to any of the questions aforesaid, he shall be deemed guilty of an offence, and may be indicted and punished accordingly.

10—Punishment for voting twice, or personating voters

Every person who shall vote a second time, or offer to vote a second time, at the said election, for any electoral district, or who shall personate any other person for the purpose of voting at such election, shall be guilty of an offence; and, upon being thereof convicted, shall be imprisoned for any term not more than six calendar months, at the discretion of the court who shall try such person.

11—Deputies to seal box and voting papers and deliver them forthwith to returning officers

Immediately before taking the votes, the returning officer or deputy returning officer shall exhibit the ballot box empty; and each returning officer shall, immediately on the close of the voting, publicly close and seal the box containing the voting papers which have been taken at the voting place whereat he presided, and shall, with the least delay possible, deliver, or cause the same to be delivered, to the returning officer of the electoral district; and any returning officer, or deputy returning officer, convicted of illegally tampering with the ballot boxes, shall be guilty of an offence, and be liable to pay a penalty of not less than one hundred nor more than four hundred dollars, and to imprisonment until the same be paid.

12—Names of persons elected to be declared by returning officer

- (1) The returning officer of each electoral district shall, at the place of nomination, and as soon as may be practical after the election shall have been held, in the presence of two or more scrutineers, whereof each candidate may name one, open all the boxes containing the voting papers delivered in at such election, and shall examine the same, and shall reject all voting papers which shall contain crosses against the names of a larger number of persons than are required to be elected at any such election, or shall contain any matter or thing other than such names and crosses, and shall openly declare the general state of the votes at the close of the election, as the same shall have been made up by him from the voting papers taken at the several voting places; and he shall, at the same time and place declare the name of the person or persons who may have been duly elected at such election; and, in the event of the number of votes being found to have been equal for any two or more candidates, he shall, by his casting vote, decide which of the candidates shall be elected.
- (2) No returning officer shall vote at any election for the electoral district for which he is the returning officer, except in the case of an equality of votes as aforesaid.
- (3) It shall and may be lawful for any deputy returning officer to vote at any election for the electoral district, in like manner as if he had not been appointed or acted as such deputy.

13—Voting papers to be destroyed by the returning officer

All voting papers shall be destroyed by the returning officer forthwith, after the declaration of the names of the persons duly elected.

14—What shall be deemed acts of bribery and corruption

The following acts shall be deemed and taken to be acts of bribery and corruption on the part of any candidate, whether committed by such candidate or by any agent authorised to act for him, that is to say—The giving of money or any other article whatsoever, cockades included, to any elector, with a view to influence his vote, or the holding out to him any promises or expectation of profit, advancement, or enrichment in any shape, in order to influence his vote, or making use of any threat to any elector, or otherwise intimidating him in any manner with a view to influence his vote; the treating of an elector, or the supplying him with meat, drink, lodging, or horse or carriage hire, or conveyance by steam or otherwise, whilst at such election, or whilst engaged in coming to or going from such election; the payment to any elector of any sum of money for acting or joining in any procession during such election, or before or after the same; the keeping open, or allowing to be kept open, any public-house, shop, booth, or tent, or place of entertainment, whether liquor or refreshments of any kind be distributed at such places of entertainment or not; the giving of any dinner, supper, breakfast, or other entertainment, at any place whatsoever, by a candidate, to any number of electors, with a view to influencing their votes.

15—Any of the above acts to disqualify

The commission of any one of the above-mentioned acts shall, on proof thereof, be held to render void the election of the person committing such act, and to disqualify him from being elected to the same office during the whole period that may intervene between the commission of the same and at the time of the next periodical election.

16—Principals bound by acts of their agents

The acts of all authorised agents of a candidate shall, in matters connected with the election, be held to be the acts of their principal, provided that it shall be proved that such acts were committed with his knowledge and consent.

17—Acts of bribery and corruption by persons not being the authorised agents

If any of the above-mentioned acts, hereby declared to be acts of bribery and corruption, shall be committed by any person not the authorised agent of any candidate, the person so committing, or having committed them, shall be deemed guilty of an offence, and may be indicted for such acts as for an offence in the Supreme Court, and punished with a fine not exceeding four hundred dollars, or imprisoned not exceeding six calendar months, at the suit or on the plaint of His Majesty's Attorney-General, or of any elector of the district wherein such act of bribery or corruption shall be alleged to have been committed.

18—Penalty on persons receiving or offering reward for voting or withholding a vote

If any person who shall have, or claim to have, any right to vote in any election shall, directly or indirectly, ask, receive, or take any money or other reward, by way of gift, employment, or other reward whatsoever, for himself or for any of his family or kindred, to give his vote, or to abstain from giving his vote, in any such election; or if any person, by himself, his friends, or by any person employed by him, shall, by any gift or reward, or by any promise and agreement, or security for any gift or reward, procure any person to give his vote in any such election, or to abstain from giving the same, such offender shall, for such offence, forfeit the sum of one hundred dollars to the person who shall first sue for the same, to be recovered, with full costs, by action of debt in the Supreme Court.

19—No action against candidates for costs or expenses of election

No action, suit, or other proceeding shall be maintainable against any person who may have been a candidate at an election for or in respect of any costs or expenses whatsoever in or about or relating to such election.

20—Provision in the event of impediments of a formal nature

No election shall be held to be void in consequence solely of any delay of the holding of such election at the time appointed, or the absence of the returning officer, or any deputy returning officer, or any error on the part of any returning officer or deputy returning officer, which shall not affect the result of the election, or of any error or impediment of a mere formal nature; and within the period of twenty days before or after the day appointed for the holding of any election, it shall be lawful for the Governor, with the advice of the Executive Council, to extend the time allowed for the holding of such election, and to adopt or cause to be adopted such measures as may be necessary to remove any obstacles by which the due course of any election may be impeded, and to supply any deficiency that may otherwise affect the same.

21—Recovery of penalties

The proceedings to recover any penalty under this Act shall be commenced within three calendar months from the commission of the offence; and the money arising from any such penalty shall, except as hereinbefore provided, after payment of the expenses attending the recovery thereof, be paid, one moiety thereof to the informer, or person suing for the same, and the other moiety thereof to His Majesty, for the public uses of the State and the support of the Government thereof.

22—Act not to apply to Legislative Council or House of Assembly

This Act shall not apply to the election of Members of the Legislative Council or House of Assembly of the State.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

| Year | No | Title | Assent | Commencement |
|------|----|---|------------|--|
| 1862 | 13 | <i>The Ballot Act of 1862</i> | 21.10.1862 | 21.10.1862 |
| 1971 | 15 | <i>Age of Majority (Reduction) Act 1971</i> | 8.4.1971 | 15.4.1971 (<i>Gazette 15.4.1971 p1598</i>) |
| 1994 | 59 | <i>Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994</i> | 27.10.1994 | 1.1.1995 (<i>Gazette 8.12.1994 p1942</i>) |
| 2003 | 44 | <i>Statute Law Revision Act 2003</i> | 23.10.2003 | Sch 1—24.11.2003 (<i>Gazette 13.11.2003 p4048</i>) |

Provisions amended since 3 February 1976

New entries appear in bold.

| Provision | How varied | Commencement |
|--------------|--|--------------|
| s 1 | s 2 redesignated as s 1 and relocated to appear before s 2 by 44/2003 s 3(1) (Sch 1) | 24.11.2003 |
| s 2 | s 1 redesignated as s 2 and relocated to follow s 1 by 44/2003 s 3(1) (Sch 1) | 24.11.2003 |
| s 7 | amended by 59/1994 Sch 2 | 1.1.1995 |
| s 9 | | |
| s 9(1) | s 9 amended and designated as s 9(1) by 44/2003 s 3(1) (Sch 1) | 24.11.2003 |
| s 9(2) | s 9 amended by 59/1994 Sch 2 | 1.1.1995 |
| | s 9 amended and designated as s 9(2) by 44/2003 s 3(1) (Sch 1) | 24.11.2003 |
| ss 10 and 11 | amended by 59/1994 Sch 2 | 1.1.1995 |
| s 12 | | |
| s 12(1) | s 12 amended and designated as s 12(1)—(3) by 44/2003 s 3(1) (Sch 1) | 24.11.2003 |
| s 17 | amended by 59/1994 Sch 2 | 1.1.1995 |

Historical versions

Reprint No 1—1.1.1995