

South Australia

## **Local Government (Elections) Act 1999**

An Act to regulate the conduct of local government elections; and for other purposes.

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### **Contents**

#### **Part 1—Preliminary**

- 1 Short title
- 3 Objects
- 4 Preliminary

#### **Part 2—Elections and polls to be held**

##### **Division 1—Elections**

- 5 Periodic elections
- 6 Supplementary elections
- 7 Failure of election in certain cases
- 8 Failure or avoidance of supplementary election

##### **Division 2—Polls**

- 9 Council may hold polls

#### **Part 3—Electoral officers**

- 10 The returning officer and deputy returning officer
- 11 Appointment of other electoral officers
- 12 Responsibilities of returning officer and councils
- 13 Costs and expenses

#### **Part 4—Enrolment**

- 14 Qualifications for enrolment
- 15 The voters roll

#### **Part 5—Entitlement to vote**

- 16 Entitlement to vote

#### **Part 6—Entitlement to stand for election and nomination**

##### **Division 1—Entitlement to stand for election**

- 17 Entitlement to stand for election

##### **Division 2—Nomination**

- 18 Call for nominations

- 19 Manner in which nominations are made
- 20 Questions of validity
- 21 Display of valid nominations
- 22 Ability to withdraw a nomination
- 23 Close of nominations
- 24 Multiple nominations
- 25 Uncontested elections
- 26 Notices

## Part 7—Electoral material

- 27 Publication of electoral material
- 28 Publication of misleading material

## Part 8—Preparation for an election or poll

### Division 1—Elections

- 29 Ballot papers
- 30 Appointment of place for counting votes
- 31 Special arrangements for the issue of voting papers
- 32 Scrutineers

### Division 2—Polls

- 33 Ballot papers
- 34 Appointment of a place for counting votes
- 35 Special arrangements for the issue of voting papers
- 36 Scrutineers

## Part 9—Postal voting

- 37 Postal voting to be used
- 38 Notice of use of postal voting
- 39 Issue of postal voting papers
- 40 Procedures to be followed for voting
- 41 Voter may be assisted in certain circumstances
- 42 Signature to electoral material
- 43 Issue of fresh postal voting papers
- 44 Security of votes

## Part 10—Method of voting

- 45 Method of voting at elections
- 46 Method of voting at polls

## Part 11—Counting of votes

### Division 1—Arranging voting papers

- 47 Arranging postal papers

### Division 2—Counting and declaration of results in elections

- 48 Method of counting and provisional declarations
- 49 Recounts
- 50 Declaration of results and certificate
- 51 Collation of certain information

### Division 3—Declaration of results in polls

- 52 Provisional declarations
- 53 Recounts
- 54 Declaration of results and certificate

### Division 4—Other matters

- 55 Computer counting
- 55A Recount if successful candidate dies
- 56 Retention of voting material

### Part 12—Illegal practices

- 57 Violence, intimidation, bribery etc
- 58 Dishonest artifices
- 59 Interference with statutory rights
- 60 Exception
- 61 Persons acting on behalf of candidates not to assist voters or collect voting papers
- 62 Unlawful interference with computer programs
- 63 Secrecy of vote
- 64 Unlawful declaration or marking of ballot papers
- 65 Conduct of officers
- 66 Conduct of scrutineers

### Part 13—Disputed returns

- 67 Constitution of the Court
- 68 The clerk of the Court
- 69 Jurisdiction of the Court
- 70 Procedure upon petition
- 71 Powers of the Court
- 72 Certain matters not to be called in question
- 73 Illegal practices
- 74 Effect of decision
- 75 Participation of council in proceedings
- 76 Right of appearance
- 77 Case stated
- 78 Costs
- 79 Rules of the Court

### Part 14—Campaign donations

#### Division 1—Returns

- 80 Returns for candidates
- 81 Campaign donations returns
- 82 Certain gifts not to be received
- 83 Inability to complete return
- 84 Amendment of return
- 85 Offences
- 86 Failure to comply with Division

#### Division 2—Public access to information

- 87 Public inspection of returns
- 88 Restrictions on publication

## Division 3—Related matters

- 89 Requirement to keep proper records
- 90 Related matters

## Part 15—Miscellaneous

- 91 Elected person refusing to act
- 92 Electoral Commissioner may conduct investigations etc
- 92A Forms
- 93 Regulations

## Legislative history

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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 *Local Government (Elections) Act 1999*.

#### 3—Objects

The objects of this Act are—

- (a) to provide for periodic and other local government elections; and
- (b) to provide for the qualifications of voters for the purposes of local government elections and for the preparation and maintenance of voters rolls; and
- (c) to provide for the qualifications and duties of candidates in local government elections; and
- (d) to provide for a system of voting, and for the counting of votes, at local government elections; and
- (e) to provide for local government polls; and
- (f) to provide for the administrative framework for local government elections and polls; and
- (g) to regulate various practices associated with local government elections and polls.

#### 4—Preliminary

- (1) In this Act, unless the contrary intention appears—

**conclusion of council elections**—see *Local Government Act 1999* (section 4(2));

**the Court** means the Court of Disputed Returns constituted under this Act;

**disposition of property** means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, and includes—

- (a) the allotment of shares in a company; and
- (b) the creation of a trust in property; and

- (c) the grant or creation of a lease, mortgage, charge, servitude, licence, power or partnership or any interest in property; and
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action or any interest in property; and
- (e) the exercise by a person of a general power of appointment of property in favour of another person; and
- (f) a transaction entered into by a person with intent thereby to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person;

**District Court** means the District Court of South Australia;

**elector** means a person, body corporate or group of persons enrolled on the voters roll for a council;

**electoral material** means an advertisement, notice, statement or representation calculated to affect the result of an election or poll;

**electoral officer** means a person appointed as an electoral officer under this Act and includes the returning officer and deputy returning officer;

**general election**—see *Local Government Act 1999* (section 4);

**gift** means a disposition of property made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration;

**illegal practice** means the commission of an offence against this Act;

**name**, of a candidate for election, includes a name by which the candidate is generally known;

**officer** of a body corporate means a director, manager, secretary or public officer of the body corporate and includes any other person who takes part in the management of the affairs of the body corporate;

**periodic election** means an election to fill offices of a council held pursuant to section 5;

**polling day**—see subsection (2);

**property** includes money;

**public notice** means notice in the Gazette and in a newspaper circulating in the area;

**registered industrial organisation** means an industrial association or organisation registered under a law of the State or of the Commonwealth;

**returning officer**—see section 10;

**voting material** means—

- (a) ballot papers and other forms of voting papers; and
- (b) applications for voting papers; and
- (c) records relating to the issue of voting papers; and
- (d) declarations made by persons voting or claiming to vote; and

- (e) voters rolls.
- (2) A reference in this Act to polling day for an election or poll means—
  - (a) for a periodic election—the day on which voting at the election closes under section 5;
  - (b) for a general election (not being a periodic election) to be held pursuant to a proclamation or notice under the *Local Government Act 1999*—the day fixed as polling day by the proclamation or notice (being the day on which voting at the election closes);
  - (c) for a supplementary election—the day fixed as polling day for the election under section 6;
  - (d) for a poll—the day fixed by the council as polling day for the poll.
- (3) For the purposes of this Act, the year in which polling day for an election occurs will be taken to be the year in which the election is held.
- (4) An election for mayor, an election for a councillor or councillors who are to be representatives for the area as a whole, and an election for a councillor or councillors who are to be representatives of a ward, are each separate and distinct elections.
- (5) This Act is to be read with the *Local Government Act 1999* as if the two Acts together formed a single Act.

## **Part 2—Elections and polls to be held**

### **Division 1—Elections**

#### **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 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.

#### **6—Supplementary elections**

- (1) Subject to this section, if—
  - (a) an election (other than a supplementary election) wholly or partially fails or is declared void; or
  - (b) a casual vacancy occurs in the office of a member of a council,a supplementary election will be held to fill the office or offices not filled by the election, or the office that has become vacant.
- (2) A supplementary election will not be held to fill a casual vacancy if—
  - (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

- (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
- (b) —
  - (i) the vacancy is for an office other than mayor; and
  - (ii) the area of the council is not divided into wards; and
  - (iii) there is no other vacancy in the office of a member of the council (disregarding the office of mayor); and
  - (iv) it is a policy of the council that it will not fill such a casual vacancy until the next general election.
- (3) However, if—
  - (a) a vacancy has not been filled due to the operation of subsection (2)(b); and
  - (b) another vacancy occurs in the office of a member (other than mayor); and
  - (c) the other vacancy has not occurred—
    - (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),

then a supplementary election must be held to fill the vacant offices.

- (4) If—
  - (a) a casual vacancy has occurred; and
  - (b) a supplementary election is not to be held by virtue of the operation of subsection (2)(b),

any subsequent revocation or alteration of a policy of the council in force for the purposes of subsection (2)(b) cannot have effect so as to require the casual vacancy to be filled before the next general election.
- (5) Subject to this Act, a supplementary election must be held as soon as practicable after the occasion for the election arises.
- (6) The returning officer must, by public notice, fix a day as polling day for the supplementary election.
- (7) A notice under subsection (6) must also fix a day for the close of the voters roll for the purposes of the election (the *closing date*).
- (8) Voting at a supplementary election will close at 12 noon on polling day.

## 7—Failure of election in certain cases

- (1) If between the close of nominations and the conclusion of an election a nominated candidate—
  - (a) by notice in writing to the returning officer, withdraws his or her nomination on the ground of serious illness; or

- (b) ceases to be qualified for election,  
the election will be taken to have wholly failed.
- (2) The returning officer cannot recognise the withdrawal of a nomination under subsection (1)(a) unless the notice of withdrawal is supported by the certificate of a legally qualified medical practitioner certifying that the candidate is too ill to be able to carry out satisfactorily the duties of a council member.
- (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.
- (3) If—
  - (a) between the close of nominations and the close of voting a nominated candidate dies; and
  - (b) the election is to fill one vacancy,the election will be taken to have wholly failed.
- (4) If between the close of nominations and the close of voting two or more candidates die, the election will be taken to have wholly failed.

## **8—Failure or avoidance of supplementary election**

- (1) If a supplementary election wholly or partially fails or is declared void, the council must appoint a person or persons (being an elector or electors for the area) to the office or offices not filled by the supplementary election.
- (2) A council must not appoint a person to an office in pursuance of subsection (1) unless the person—
  - (a) would, if an election were held to fill the office, be eligible to stand as a candidate for election to the office; and
  - (b) has made a declaration of eligibility in the prescribed form.

## **Division 2—Polls**

### **9—Council may hold polls**

- (1) A council may hold a poll whenever the council considers that it is necessary, expedient or appropriate for a poll to be held.
- (2) A poll may be held on any matter within the ambit of the council's responsibilities, or as contemplated by the *Local Government Act 1999*.
- (3) The council must, by notice in a newspaper circulating in its area, fix a day as polling day for the poll.
- (4) A notice under subsection (3) must also fix a day for the close of the voters roll for the purposes of the poll (the *closing date*).
- (5) The returning officer of a council will conduct all polls of the council.



- (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.

## **Part 3—Electoral officers**

### **10—The returning officer and deputy returning officer**

- (1) The Electoral Commissioner will be the returning officer for each area.
- (2) The Electoral Commissioner may appoint one or more deputy returning officers for an area.
- (3) A council may, in connection with the operation of subsection (2), nominate a person to be a deputy returning officer for its area and the Electoral Commissioner will make the appointment if satisfied—
  - (a) that the person is an appropriate person to act as a deputy returning officer; and
  - (b) that the person has sufficient training or experience to act as a deputy returning officer; and
  - (c) that in the circumstances it is reasonable that an appointment be made.
- (4) No member of a council is eligible for appointment as a deputy returning officer for that council and no deputy returning officer for a council is eligible to stand for election as a member of that council.
- (5) The returning officer will be taken to have delegated to a deputy returning officer all of the returning officer's powers and functions under this Act in respect of the area for which the deputy returning officer has been appointed.
- (6) A delegation under subsection (5)—
  - (a) is subject to the condition that the deputy returning officer will act in accordance with the directions of the returning officer, and to other conditions and limitations determined by the returning officer; and
  - (b) subject to a direction of the returning officer—may be the subject of one or more subdelegations; and
  - (c) does not prevent the returning officer from acting in a matter.
- (7) The Electoral Commissioner may establish or specify courses of training to be undertaken by persons nominated or appointed as deputy returning officers under this section.
- (8) The Electoral Commissioner may remove a person from the position of deputy returning officer for any reasonable cause.
- (9) However, if it is proposed to remove a person who was nominated by a council, the Electoral Commissioner should not act under subsection (8) unless the Electoral Commissioner has first consulted with the council.

## **11—Appointment of other electoral officers**

- (1) The returning officer may engage electoral officers to assist in the conduct of an election or poll.
- (2) A deputy returning officer may, with the approval of the returning officer, engage electoral officers to assist in the conduct of an election or poll.
- (3) No member of a council, or candidate for election as a member of a council, may be engaged as an electoral officer for that council.
- (4) The returning officer or a deputy returning officer may, by instrument in writing, delegate to an electoral officer powers or functions under this Act.
- (5) A delegation under subsection (4)—
  - (a) is subject to conditions and limitations specified in the instrument of delegation; and
  - (b) does not prevent the returning officer or a deputy returning officer from acting in a matter; and
  - (c) is revocable at will.
- (6) In any legal proceedings, an apparently genuine document purporting to be a certificate signed by the returning officer or a deputy returning officer containing particulars of a delegation under this section will, in the absence of proof to the contrary, be accepted as proof of those particulars.

## **12—Responsibilities of returning officer and councils**

For the purposes of this Act (but subject to any appointments under this Part and the operation of the *Local Government Act 1999*)—

- (a) the returning officer is responsible for the conduct of elections and polls; and
- (b) a council is responsible for the provision of information, education and publicity designed to promote public participation in the electoral processes for its area, to inform potential voters about the candidates who are standing for election in its area, and to advise its local community about the outcome of elections and polls conducted in its area.

## **13—Costs and expenses**

All costs and expenses incurred by the returning officer in carrying out official duties must be defrayed from funds of the council.

## **Part 4—Enrolment**

### **14—Qualifications for enrolment**

- (1) Subject to this Act<sup>1</sup>—
  - (a) a natural person of or above the age of majority is entitled to be enrolled on the voters roll for an area or ward if that person—
    - (i) is enrolled as an elector for the House of Assembly in respect of a place of residence within the area or ward; or

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- (ii) is resident at a place of residence within the area or ward and has lodged the prescribed application with the chief executive officer of the council; or
    - (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
  - (b) a body corporate is entitled to be enrolled on the voters roll for an area or ward if it is a ratepayer in respect of rateable property within the area or ward and is the sole owner or sole occupier of the rateable property; and
  - (c) a group of persons (consisting of natural persons, bodies corporate or partly of natural persons and partly of bodies corporate) is entitled to be enrolled as a group on the voters roll for an area or ward if—
    - (i) the members of the group are all ratepayers in respect of rateable property within the area or ward; and
    - (ii) the members of the group are joint owners, owners in common or joint occupiers of the rateable property; and
    - (iii) at least one member of the group (being a natural person of or above the age of majority or a body corporate) is not enrolled on the relevant voters roll under paragraph (a) or (b), and no member of the group is enrolled on the relevant voters roll under paragraph (a)(i) or (ii) as a resident in respect of the rateable property; 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.
- (2) No enrolment will be made on the voters roll on the basis of a claim or application received between the time at which rolls for an election or poll close and polling day for the election or poll.
- (3) If—
- (a) a person has been enrolled as an elector under subsection (1)(a)(ii) on the basis of residence at a particular place of residence; and
  - (b) the chief executive officer sends a notice to the relevant address asking the elector to indicate whether he or she is still resident at that address; and
  - (c) the chief executive officer receives no reply within 28 days of the date of the notice or receives a reply indicating that the elector is no longer resident at that address,
- it may be presumed, for the purposes of the revision of the voters roll, that the elector is not still resident in the area or ward.
- (4) A group of persons may, on application to the chief executive officer in a form determined by the chief executive officer—
- (a) nominate a name for the group for the purposes of the voters roll;
  - (b) change the name for the group for the purposes of the voters roll.

- (5) The chief executive officer may reject an application under subsection (4) if the name is, in the opinion of the chief executive officer, obscene or frivolous.
- (6) Subject to the adoption of a name under subsection (4), the chief executive officer may determine the name of a group for the purposes of the voters roll.
- (7) The name of a group must include the word "Group" at the end.
- (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).

**Note—**

- 1 Subsection (1) does not apply to the Crown (see section 302 of the *Local Government Act 1999*).

## **15—The voters roll**

- (1) The chief executive officer is responsible for the maintenance of a voters roll for the area.
- (2) Subject to this section, the voters roll must set out in relation to each person, body corporate or group enrolled—
  - (a) the full name of the person, body corporate or group; and
  - (b) in the case of a natural person—the address of the person's place of residence; and
  - (c) the address of the place of residence or rateable property (as the case may be) by virtue of which the person, body corporate or group is entitled to be enrolled; and
  - (d) at the option of the person, body corporate or group—an additional address nominated by the person, body corporate or group (in a manner and form determined by the chief executive officer) for the service of postal voting papers under Part 9; and
  - (e) any prescribed particulars.
- (3) If the chief executive officer is satisfied that the inclusion on the voters roll of the address of the place of residence of a person or the address of a place of residence or rateable property (as the case may be) by virtue of which a person is entitled to be enrolled would place at risk the personal safety of that person, a member of that person's family or any other person, the chief executive officer may suppress the address from the voters roll.
- (4) If the chief executive officer is satisfied that the address of the place of residence of a person entitled to be enrolled to vote is suppressed from a roll under the *Electoral Act 1985*, the chief executive officer must also suppress that address from the voters roll.
- (5) If an area is divided into wards, the voters roll must differentiate the electors enrolled on the roll according to the wards in respect of which they are entitled to vote.

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- (6) The voters roll must be maintained in a form that allows for the roll to be brought into an up-to-date form (including by the merger of enrolment information for the House of Assembly) within three weeks after the supply of relevant information by the Electoral Commissioner under subsection (10).
  - (7) The voters roll must be brought up-to-date whenever an election or poll is to be held so as to reflect entitlements as they exist—
    - (a) in the case of a periodic election—on a day fixed by the returning officer for the close of the roll;
    - (b) in the case of any other election, or a poll—on a day fixed for the close of the roll by the proclamation or notice fixing polling day for the election or poll.
  - (8) A day that falls within the ambit of subsection (7) will be the ***closing date*** for the roll.
  - (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.
  - (10) The Electoral Commissioner must, within seven days after a closing date, supply the chief executive officer with a list of the persons who are, as at the closing date, enrolled as electors for the House of Assembly in respect of a place of residence within the area.
    - A list may be supplied in electronic form, or in another manner agreed between the Electoral Commissioner and the chief executive officer.
  - (11) If the area of a council is divided into wards, the list supplied under subsection (10) must differentiate the electors according to the wards in relation to which they are enrolled.
  - (12) The Electoral Commissioner is entitled to recover as a debt from a council a fee of an amount determined by the Electoral Commissioner for the supply of a list under this section.
  - (13) The voters roll must be brought up-to-date in accordance with the requirements of subsection (7) within four weeks after the relevant closing date.
    - A voters roll will be taken to have been brought up-to-date when copies of the roll are available for public inspection and purchase under this section.
  - (14) A council must ensure that copies of the roll are available for inspection (without charge) by the public at the principal office of the council.
  - (15) A person is entitled, on payment of a fee fixed by the council, to a copy of the roll in printed form.
  - (16) The chief executive officer must supply the returning officer with sufficient copies of the voters roll, certified by the chief executive officer, for use at an election or poll.
  - (17) The chief executive officer is not responsible to check the accuracy of a list supplied by the Electoral Commissioner under this section and is entitled to assume that such a list is accurate.

- (18) The validity of a voters roll is not affected by a misdescription or other error in the roll.
- (19) A voters roll is conclusive evidence of the entitlement of a person, body corporate or group whose name appears in the roll as an elector to vote at an election or poll at which the roll is used.<sup>1</sup>

**Note—**

- 1 Part 5 is also relevant to determining entitlements to vote.

## **Part 5—Entitlement to vote**

### **16—Entitlement to vote**

- (1) A natural person who has his or her name on the voters roll used for an election or poll as an elector in his or her own right is entitled to vote at that election or poll.
- (2) A natural person is entitled to vote at an election or poll for a body corporate which has its name on the voters roll if—
  - (a) the natural person is an officer of the body corporate; and
  - (b) the natural person is acting on behalf of the body corporate (which may be assumed on the basis of a declaration under section 39).
- (3) A natural person is entitled to vote at an election or poll for a group which has its name on the voters roll if—
  - (a) the natural person is a member of the group or an officer of a body corporate that is a member of the group; and
  - (b) the natural person is acting on behalf of the group (which may be assumed on the basis of a declaration under section 39).
- (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.
- (5) If the name of a natural person has been omitted in error from a voters roll used for an election or poll, the person is, subject to this Act, entitled to vote at the election or poll as if the error had not occurred.
- (6) If the name of a body corporate has been omitted in error from a voters roll used for an election or poll, a person is, subject to this Act, entitled to vote at the election or poll under subsection (2) as if the error had not occurred.
- (7) If the name of a group has been omitted in error from a voters roll used for an election or poll, a person is, subject to this Act, entitled to vote at the election or poll under subsection (3) as if the error had not occurred.
- (8) An elector is only entitled to one vote in a particular election (and so an elector who is entitled to vote in more than one ward is still only entitled to one vote in an election for the area of the council as a whole).
- (9) A natural person cannot vote at an election or poll for another natural person pursuant to a power of attorney.
- (10) If a natural person has two or more entitlements to vote at an election or poll under this section, the provisions of this Act will be construed so that they apply to the person distinctively in relation to each such entitlement.

## Part 6—Entitlement to stand for election and nomination

### Division 1—Entitlement to stand for election

#### 17—Entitlement to stand for election

- (1) Subject to this Act and the *Local Government Act 1999*, a person is eligible to be a candidate for election as a member of a council if—
  - (a) the person is—
    - (i) an Australian citizen; or
    - (ii) a prescribed person; and
  - (b) —
    - (i) the person is an elector for the area; or
    - (ii) the person is the nominee of a body corporate which has its name on the voters roll for the area; or
    - (iii) the person is the nominee of a group which has its name on the voters roll for the area; or
    - (iv) the person's name has been omitted in error from the voters roll for the area, or the person is the nominee of a body corporate or group which has had its name omitted in error from the voters roll for the area (and would be eligible for nomination under subparagraph (ii) or (iii) (as the case may be) were the name on the roll).
- (2) Subsection (1)(b) operates subject to the following qualifications:
  - (a) a nominee of a body corporate must be an officer of the body corporate; and
  - (b) a nominee of a group must be a member of the group, or an officer of a body corporate that is a member of the group; and
  - (c) a body corporate or group cannot nominate more than one person for a particular election; and
  - (d) a body corporate or group cannot nominate a person who has not attained the age of majority.
- (3) A person is not eligible to be a candidate for election as a member of a council if the person—
  - (a) is a member of an Australian Parliament; or
  - (b) is an undischarged bankrupt or is receiving the benefit of a law for the relief of insolvent debtors; or
  - (c) has been sentenced to imprisonment and is, or could on the happening of some contingency become, liable to serve the sentence or the remainder of the sentence; or
  - (d) is an employee of the council; or
  - (e) is disqualified from election by court order under the *Local Government Act 1999*.

- (4) A person is not eligible to be a candidate for election as a member of a council if the person—
- (a) in the case of a supplementary election—is a member of another council; or
  - (b) in the case of any election—is a candidate for election as a member of another council.
- (5) In this section—
- prescribed person* means a person who has held office as a member of a council at any time between 5 May 1997 and the commencement of this section.

## **Division 2—Nomination**

### **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.

### **19—Manner in which nominations are made**

- (1) A person who is eligible to be a candidate for election to an office of a council may nominate (or, in the case of a nominee of a body corporate or group, be nominated) in the prescribed manner as a candidate for election to the office.
- (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) A profile under subsection (2) may include a photograph of the candidate (that complies with the regulations).
- (4) A nomination must be lodged with the returning officer not earlier than 14 days before the day on which nominations close.
- (5) The returning officer must cause a note to be made of the date and time of the receipt of a nomination form under this section.
- (6) The returning officer may reject a nomination if in the opinion of the returning officer the name under which the candidate is nominated—
- (a) is obscene; or
  - (b) is frivolous; or
  - (c) has been assumed for an ulterior purpose.
- (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.



## 20—Questions of validity

- (1) On receipt of a form of nomination, the returning officer must, if of the opinion that there is any matter that might render the nomination invalid, take all reasonable steps to notify the nominated candidate of the matter in order to enable the candidate to address the matter before the close of nominations.
- (2) A dispute as to the validity of a nomination must be determined summarily by the returning officer.

## 21—Display of valid nominations

The returning officer must, as soon as practicable after the receipt of a valid nomination, cause a copy of the nomination to be displayed in the principal office of the council.

## 22—Ability to withdraw a nomination

- (1) A nominated candidate may at any time before the close of nominations, by notice given to the returning officer, withdraw the nomination.
- (2) A body corporate or group of persons who have nominated a candidate under this Part may at any time before the close of nominations, by notice given to the returning officer, withdraw the nomination.

## 23—Close of nominations

Nominations close—

- (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);
- (b) in other cases—at 12 noon on a day appointed by the returning officer as nomination day, being a day that falls not less than 21 days before polling day for the relevant election.

## 24—Multiple nominations

If, at the close of nominations, it appears that the same person has been nominated for election to two or more vacancies, both or all the nominations are void.

## 25—Uncontested elections

- (1) If, after nominations have closed, it appears that the number of candidates nominated to contest the election does not exceed the number of persons required to be elected, the returning officer must declare the nominated candidate or candidates elected.
- (2) If a candidate is declared elected under subsection (1)—
  - (a) in the case of a supplementary election—the election of the candidate takes effect immediately; and
  - (b) in other cases—the election of the candidate takes effect at the conclusion of the relevant elections (see section 4(2) of the *Local Government Act 1999*).

## **26—Notices**

- (1) The returning officer must, within 16 days of the close of nominations, give public notice and notice in writing to the candidates setting forth—
  - (a) the names of the candidates nominated and the offices for which they were nominated; and
  - (b) the names of any candidates declared elected in pursuance of this Part; and
  - (c) if an election is to be held—the day appointed as polling day for the election; and
  - (d) information on the operation of Part 14.
- (2) If an election is to be held, a notice given to a candidate under subsection (1) should be accompanied by a statement (in a form determined by the Electoral Commissioner) concerning illegal practices under this Act.

## **Part 7—Electoral material**

### **27—Publication of electoral material**

- (1) A person must not publish electoral material or cause electoral material to be published unless the material contains—
  - (a) the name and address of the person who authorises publication of the material; and
  - (b) in the case of printed electoral material—the name and address of the printer or other person responsible for undertaking its production.

Maximum penalty: \$2 500.

- (2) If electoral material is published in a newspaper that has been published at intervals of one month or less over a period of at least six months immediately preceding the publication of the electoral material, the name and address of the printer need not be contained in the electoral material.
- (3) If electoral material is published in a newspaper as a letter to the editor, it is an offence to publish the material without the name and address (not being a post box) of the writer of the letter.

Maximum penalty: \$2 500.

### **28—Publication of misleading material**

- (1) If—
  - (a) electoral material contains a statement purporting to be a statement of fact; and
  - (b) the statement is inaccurate and misleading to a material extent,a person who authorised, caused or permitted the publication of the material is guilty of an offence.

Maximum penalty: \$5 000.

- (2) It is a defence to a charge of an offence against subsection (1) for the defendant to prove—
  - (a) that he or she took no part in determining the contents of the material; and
  - (b) that he or she could not reasonably be expected to have known that the statement to which the charge relates was inaccurate and misleading.
- (3) This section applies to material published by any means (including radio or television).
- (4) No action under this section lies against the returning officer with respect to the publication of material provided to the returning officer by a candidate for election under section 19.

## **Part 8—Preparation for an election or poll**

### **Division 1—Elections**

#### **29—Ballot papers**

- (1) If an election is to be held for an office, a ballot paper showing the names of all candidates for election to that office must be prepared.
- (2) The names of the candidates in a particular election must be arranged on the ballot paper, one under the other, in an order determined by lot.
- (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.
- (4) A square must be placed to the left of each name appearing on the ballot paper.
- (5) A ballot paper must conform with other requirements prescribed by regulation.

#### **30—Appointment of place for counting votes**

- (1) The returning officer must appoint a place for the counting of votes for the purposes of an election.
- (2) The returning officer must, at least seven days before polling day, give public notice of the place for the counting of votes.
- (3) In cases of emergency, the returning officer may, without giving public notice under subsection (2), appoint a place for the counting of votes for the purposes of an election in substitution for, or in addition to, a place previously appointed by the returning officer.

#### **31—Special arrangements for the issue of voting papers**

- (1) The returning officer may make arrangements for—
  - (a) the personal delivery of voting papers to persons who reside at, or who attend, a specified institution, a specified part of an institution, or a specified place, and who are entitled to voting papers under this Act; and

- (b) the attendance of electoral officers at a specified institution, or a specified part of an institution, or a specified place, in order to assist persons in voting and to collect completed voting papers.
- (2) The returning officer must take reasonable steps to inform candidates and electors of any arrangements made under subsection (1).

### **32—Scrutineers**

- (1) Each candidate may appoint one or more scrutineers for the purposes of an election.
- (2) A candidate in an election for the council (including a candidate who has already been declared elected) is not eligible for appointment as a scrutineer.
- (3) An appointment under this section is ineffective unless the candidate has given notice in writing to the returning officer of the appointment.

## **Division 2—Polls**

### **33—Ballot papers**

- (1) A ballot paper for a poll must be designed to suit voting on the particular proposition to be submitted to electors.
- (2) The returning officer will be responsible for the design of the ballot paper after consultation with the council.
- (3) A ballot paper must conform with any requirement prescribed by regulation.

### **34—Appointment of a place for counting votes**

- (1) The returning officer must appoint a place for the counting of votes for the purposes of a poll.
- (2) The returning officer must, at least seven days before polling day, give public notice of the place for the counting of votes.
- (3) In cases of emergency, the returning officer may, without giving public notice under subsection (2), appoint a place for the counting of votes for the purposes of a poll in substitution for, or in addition to, a place previously appointed by the returning officer.

### **35—Special arrangements for the issue of voting papers**

The returning officer may make arrangements for—

- (a) the personal delivery of voting papers to persons who reside at, or who attend, a specified institution, or a specified part of an institution, or a specified place, and who are entitled to voting papers under this Act; and
- (b) the attendance of electoral officers at a specified institution, or a specified part of an institution, or at a specified place, in order to assist persons in voting and to collect completed voting papers.

### **36—Scrutineers**

The council may appoint suitable persons to act as scrutineers for the purposes of a poll.

## **Part 9—Postal voting**

### **37—Postal voting to be used**

- (1) Voting at an election or poll will be conducted on the basis of postal voting.
- (2) Subsection (1) does not prevent—
  - (a) the personal delivery and collection of voting papers under Part 8; or
  - (b) the personal provision and return of voting papers under this Part.

### **38—Notice of use of postal voting**

The returning officer must, at least 21 days before polling day for an election or poll, by notice including the prescribed information published in a newspaper circulating in the area, inform electors that voting in the election or poll will be conducted entirely by means of postal voting.

### **39—Issue of postal voting papers**

- (1) The returning officer must, as soon as practicable after the twenty-first day before polling day, and in any event not later than 14 days before polling day, issue to every natural person, body corporate or group who or which has his, her or its name on the voters roll used for the purposes of the election or poll postal voting papers consisting of—
  - (a) a ballot paper (or, in an appropriate case, ballot papers) authenticated to the satisfaction of the returning officer; and
  - (b) an opaque envelope bearing a declaration (in a form determined by the Electoral Commissioner), to be completed by the voter, declaring the voter's date of birth and—
    - that the ballot paper contained in the envelope contains his or her vote; and
    - that he or she has not already voted at the election or poll; and
    - if the voting papers are issued to a body corporate or group—that he or she is eligible to vote and is acting on behalf of the body corporate or group.
- (2) The declaration under subsection (1) must appear on a tear-off extension to the envelope flap.
- (3) An envelope used under subsection (1) must be—
  - (a) a pre-paid post envelope addressed to the returning officer; or
  - (b) accompanied by a pre-paid post envelope addressed to the returning officer, and must comply with any prescribed requirement.

- (4) Postal voting papers must also be issued to any person, body corporate or group of persons whose name does not appear on the voters roll but who claims to be entitled to vote at the election or poll and applies to the returning officer for voting papers not later than—
  - (a) in the case of an application made by post—5 p.m. on the second business day before polling day;
  - (b) in the case of an application made personally—the close of voting on polling day.
- (5) Postal voting papers issued under subsection (4) must also include a declaration (in a form determined by the Electoral Commissioner) for the voter to set out the grounds on which an entitlement to vote is claimed.
- (6) Postal voting papers issued under this section must be accompanied by an explanatory notice and a set of candidate profiles that comply with the regulations and may be accompanied by other material determined by the returning officer.
- (7) Postal voting papers may be issued under this section—
  - (a) by giving them to the prospective voter personally; or
  - (b) by sending them by post—
    - (i) to a prospective voter at the appropriate address on the voters roll; or
    - (ii) in the case of a body corporate or group (without limiting any other method of delivery)—to the body corporate or group at an address nominated by the body corporate or group in a manner determined or approved by the returning officer; or
    - (iii) in the case of a prospective voter whose name and address do not appear on the voters roll—at some other address of which the returning officer has received notice in a manner determined or approved by the returning officer.
- (8) The returning officer must keep a record of the electors and other persons to whom voting papers are issued under this section.
- (9) If postal voting papers are returned because they have not been able to be successfully delivered, the returning officer must retain those voting papers in a secure place.<sup>1</sup>
- (10) The returning officer is not obliged to check the date of birth of a voter, or any other information, provided under this section (but may do so on a selective, random or other basis determined by the returning officer).
- (11) A vote may be admitted to the count notwithstanding that the voter's date of birth has not been declared (or accurately declared) under this section, or that there has been some other formal defect or error on the part of the voter in complying with the requirements of this section (unless the returning officer is of the opinion that the defect or error is sufficiently significant to warrant the rejection of the vote).
- (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.

**Note—**

- 1 Fresh voting papers may be subsequently issued under section 43.

#### **40—Procedures to be followed for voting**

- (1) If a person to whom postal voting papers have been issued desires to vote by use of those papers, the following procedure must be followed:
  - (a) the voter must mark his or her vote in the manner prescribed by this Act on the ballot paper supplied;
  - (b) the voter must then fold the ballot paper so as to conceal the vote and place the folded ballot paper in the envelope and seal the envelope;
  - (c) the voter must then ensure that any relevant declaration is signed;
  - (d) the sealed envelope must then be delivered to an electoral officer for the relevant council (by post or personally) not later than the close of voting on polling day.
- (2) An electoral officer must, on the receipt of voting papers under subsection (1), immediately ensure the security of those voting papers in accordance with directions issued by the returning officer for the purposes of the election or poll.
- (3) However, an electoral officer may, before taking steps under subsection (2), check relevant information in accordance with instructions issued by the returning officer.

#### **41—Voter may be assisted in certain circumstances**

- (1) Subject to subsection (2), if a person who desires to vote by use of postal voting papers is illiterate or physically unable to carry out a procedure under this Part, a person of the voter's choice (being a person of or above the age of majority) may render such assistance as may be necessary in the circumstances and may, if necessary, vote on behalf of the voter in accordance with his or her directions and complete any declaration on behalf of the voter.<sup>1</sup>
- (2) A person must not act under subsection (1) without first obtaining the approval of the returning officer to do so.
- (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.

**Note—**

- 1 This section operates subject to section 61.

#### **42—Signature to electoral material**

If a person who is unable to sign his or her name in writing makes a mark as his or her signature on any voting material, the mark will be taken to be the person's personal signature if it is witnessed by a person who provides his or her signature to verify the mark.

#### **43—Issue of fresh postal voting papers**

- (1) If the returning officer is satisfied that postal voting papers issued to an elector—
  - (a) have not been received by the elector; or
  - (b) have been lost; or
  - (c) have been inadvertently spoiled,

the returning officer may issue fresh postal voting papers to the elector.

- (2) The returning officer must keep a record of the issue of voting papers under this section.
- (3) The issue of fresh voting papers under this section automatically cancels the original voting papers.
- (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;
  - (b) in the case of an application made personally—the close of voting on polling day.

#### **44—Security of votes**

- (1) The returning officer must ensure that arrangements are in place for the efficient receipt and safekeeping of envelopes returned by persons voting at an election or poll, and for the confidential scrutiny of those envelopes (if the returning officer so chooses but without opening the envelopes) pending the close of voting.
- (2) The returning officer may give directions to other electoral officers for the purposes of subsection (1).

## **Part 10—Method of voting**

### **45—Method of voting at elections**

- (1) To make a formal vote at an election a person must make a vote on the ballot paper—
  - (a) if only one candidate is required to be elected—by placing the number 1 in the square opposite the name of the candidate of the voter's 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;
  - (b) if more than one candidate is required to be elected—by placing consecutive numbers beginning with the number 1 in the squares opposite the names of candidates in the order of the voter's preference for them until the voter has indicated a vote for a number of candidates equal to the number of candidates required to be elected and then, if the voter so desires, by continuing to place consecutive numbers for one or more additional candidates in the order of the voter's preference.
- (2) A tick or cross appearing on a ballot paper is equivalent to the number 1.
- (3) If—
  - (a) a series of numbers (starting from the number 1) appearing on a ballot paper is non-consecutive by reason only of the omission of one or more numbers from the series or the repetition of a number (not being the number 1); and
  - (b) if more than one candidate is required to be elected—the numbers are at least consecutive up to the number of candidates required to be elected,



the ballot paper is not informal and the votes are valid up to the point at which the omission or repetition occurs.

- (4) A ballot paper is not informal by reason of non-compliance with this section if the voter's intention is clearly indicated on the ballot paper.

#### **46—Method of voting at polls**

- (1) A person voting at a poll must vote according to the directions that appear on the ballot paper.
- (2) The returning officer will determine the directions that appear on ballot papers for the purposes of the poll.
- (3) A ballot paper is not informal by reason of non-compliance with the directions if the voter's intention is clearly indicated on the ballot paper.

### **Part 11—Counting of votes**

#### **Division 1—Arranging voting papers**

##### **47—Arranging postal papers**

- (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.

- (2) For the purposes of the scrutiny of voting papers, the returning officer will, with the assistance of any other electoral officers who may be present, and in the presence of any scrutineers who may be present—
  - (a) examine the declarations used for voting (and validly returned) and determine which votes are to be accepted for further scrutiny and which rejected from further scrutiny, rejecting unopened—
    - (i) any envelope that forms part of a set of voting papers that have been cancelled under this Act; and
    - (ii) any two or more envelopes apparently from the same voter (unless the voter has validly acted in two or more capacities); and
    - (iii) any envelope where the voter's name does not appear on the voters roll, unless the voter is voting on behalf of a body corporate or group of persons in accordance with this Act, or unless the voter's name has been omitted from the roll in error; and

- (iv) any envelope where the voter is purporting to be voting on behalf of a body corporate or group of persons but the returning officer concludes that the voter is in fact attempting to exercise an unauthorised vote; and
- (v) any envelope where the signature does not, to the satisfaction of the returning officer, correspond with the signature on the application (if any) of the voter for the relevant voting papers; and
- (b) tear off the extensions to the envelope flaps on the envelopes accepted under paragraph (a); and
- (c) rearrange the envelopes that no longer bear their tear-off extensions so that the anonymity of voters is maintained; and
- (d) remove the ballot papers from those envelopes; and
- (e) if an envelope contains more than one ballot paper and a scrutineer challenges the number of ballot papers contained in the envelope—satisfy himself or herself that the envelope does not contain more ballot papers than the number to which the voter is entitled and, if the returning officer is not so satisfied, return all of those ballot papers to the envelope and reject them from the count; and
- (f) examine the remaining ballot papers and reject any informal ballot papers; and
- (g) arrange all unrejected ballot papers into appropriate parcels for counting.

## **Division 2—Counting and declaration of results in elections**

### **48—Method of counting and provisional declarations**

- (1) The returning officer must, with the assistance of any other electoral officers who may be present, and in the presence of any scrutineers who may be present, conduct the counting of the votes in an election according to the following method:
  - (a) the number of first preference votes given for each candidate and the total number of all such votes must be ascertained and a quota determined by dividing the total number of first preference votes by one more than the number of candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by one and, where any candidate has received a number of first preference votes equal to or greater than the quota, the returning officer must make a **provisional declaration** that the candidate has been elected;
  - (b) notwithstanding paragraph (a) or any other paragraph of this subsection, if the total number of all first preference votes does not exceed—
    - (i) 150; or
    - (ii) where a different number is prescribed for the purposes of this paragraph—that number,

the number of votes of any kind contained in the ballot papers will, for the purposes of any counting or calculation under paragraph (a) or any other paragraph of this subsection, be taken to be the number obtained by multiplying the number of votes of that kind contained in the ballot papers by 100;

- (c) unless all the vacancies have been filled, the surplus votes of each elected candidate must be transferred to the continuing candidates as follows:
- (i) the number of surplus votes of the elected candidate must be divided by the number of first preference votes received by that candidate and the resulting fraction will be the transfer value;
  - (ii) the total number of the first preference votes for the elected candidate that are contained in ballot papers that express the next available preference for a particular continuing candidate must be multiplied by the transfer value, the number so obtained (disregarding any fraction) must be added to the number of first preference votes of the continuing candidate and all those ballot papers must be transferred to the continuing candidate,

and, where any continuing candidate has received a number of votes equal to or greater than the quota on the completion of any such transfer, the returning officer must make a **provisional declaration** that the candidate has been elected;

- (d) unless all the vacancies have been filled, the surplus votes (if any) of any candidate elected under paragraph (c), or elected subsequently under this paragraph, must be transferred to the continuing candidates in accordance with paragraph (c)(i) and (ii) and, where any continuing candidate has received a number of votes equal to or greater than the quota on the completion of any such transfer, the returning officer must make a **provisional declaration** that the candidate has been elected;
- (e) if a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under paragraph (c) or (d) of the surplus votes of a particular elected candidate, no votes of any other candidate may be transferred to the continuing candidate;
- (f) for the purposes of the application of paragraph (c)(i) and (ii) in relation to a transfer under paragraph (d) or (h) of the surplus votes of an elected candidate, each ballot paper of the elected candidate that was obtained on a transfer under this subsection must be dealt with as if any vote it expressed for the elected candidate were a first preference vote, as if the name of any other candidate previously elected or excluded had not been on the ballot paper and as if the numbers indicating subsequent preferences had been altered accordingly;
- (g) if, after the counting of first preference votes or the election of a candidate and the transfer of the surplus votes (if any) of the elected candidate that are capable of being transferred, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes must be excluded and all the excluded candidate's votes must be transferred to the continuing candidates as follows:

- (i) the total number of the first preference votes for the excluded candidate that are contained in ballot papers that express the next available preference for a particular continuing candidate must be transferred, each first preference vote at a transfer value of one, to the continuing candidate and added to the number of votes of the continuing candidate and all those ballot papers must be transferred to the continuing candidate;
- (ii) the total number (if any) of other votes obtained by the excluded candidate on transfers under this subsection must be transferred from the excluded candidate in the order of the transfers on which they were obtained, the votes obtained on the earliest transfer being transferred first, as follows:
  - (A) the total number of votes transferred to the excluded candidate from a particular candidate that are contained in ballot papers that express the next available preference for a particular continuing candidate must be multiplied by the transfer value at which the votes were so transferred to the excluded candidate;
  - (B) the number so obtained (disregarding any fraction) must be added to the number of votes of the continuing candidate;
  - (C) all those ballot papers must be transferred to the continuing candidate;
- (h) if any continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under paragraph (g) or (i) of votes of an excluded candidate, the returning officer must make a **provisional declaration** that the candidate has been elected and, unless all the vacancies have been filled, the surplus votes (if any) of the candidate so elected must be transferred in accordance with paragraph (c)(i) and (ii), except that, if the candidate so elected is elected before all the votes of the excluded candidate have been transferred, the surplus votes (if any) of the candidate so elected must not be transferred until the remaining votes of the excluded candidate have been transferred in accordance with paragraph (g)(i) and (ii) to continuing candidates;
- (i) subject to paragraph (k), if, after the exclusion of a candidate and the transfer of the votes (if any) of the excluded candidate that are capable of being transferred, no continuing candidate has received a number of votes greater than the quota, the continuing candidate who has the fewest votes must be excluded and his or her votes transferred in accordance with paragraph (g)(i) and (ii);
- (j) if a candidate is elected as a result of a transfer of the first preference votes of an excluded candidate or a transfer of all the votes of an excluded candidate that were transferred to the excluded candidate from a particular candidate, no other votes of the excluded candidate may be transferred to the candidate so elected;

- (k) in respect of the last vacancy for which two continuing candidates remain, the returning officer must make a **provisional declaration** that the continuing candidate who has the larger number of votes has been elected notwithstanding that that number is below the quota and, if those candidates have the same number of votes, the candidate with the larger number of votes at the last preceding count or transfer will be taken to be the elected and, if the number of votes at that count or transfer was equal, the returning officer must, in the presence of any scrutineers who may be present, draw lots to determine which of the candidates is to be elected;
- (l) notwithstanding any other provision of this subsection, if, on the completion of a transfer of votes under this subsection, the number of continuing candidates is equal to the number of remaining unfilled vacancies, the returning officer must make a **provisional declaration** that those candidates have been elected;
- (m) for the purposes of this subsection—
- (i) the order of election of candidates will be taken to be in accordance with the order of the count or transfer as a result of which they were elected, the candidates (if any) elected on the count of first preference votes being taken to be the earliest elected; and
  - (ii) if two or more candidates are elected as a result of the same count or transfer, the order in which they will be taken to have been elected will be in accordance with the relative numbers of their votes, the candidate with the largest number of votes being taken to be the earliest elected but, if any two or more of those candidates each have the same number of votes, the order in which they will be taken to have been elected will be taken to be in accordance with the relative numbers of their votes at the last count or transfer before their election at which each of them had a different number of votes, the candidate with the largest number of votes at that count or transfer being taken to be the earliest elected and, if there has been no such count or transfer, the returning officer must, in the presence of any scrutineers who may be present, draw lots to determine the order in which they will be taken to have been elected;
- (n) subject to paragraphs (o) and (p), if, after any count or transfer under this subsection, two or more candidates have surplus votes, the order of any transfers of the surplus votes of those candidates will be in accordance with the relative sizes of the surpluses, the largest surplus being transferred first;
- (o) subject to paragraph (p), if, after any count or transfer under this subsection, two or more candidates have equal surpluses, the order of any transfers of the surplus votes of those candidates will be in accordance with the relative numbers of votes of those candidates at the last count or transfer at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count or transfer being transferred first but, if there has been no such count or transfer, the returning officer must, in the presence of any scrutineers who may be present, draw lots to determine the order in which the surpluses will be dealt with;

- (p) if, after any count or transfer under this subsection, a candidate obtains surplus votes, those surplus votes will not be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count or transfer;
  - (q) if the candidate who has the fewest votes is required to be excluded and two or more candidates each have the fewest votes, whichever of those candidates had the fewest votes at the last count or transfer at which each of those candidates had a different number of votes will be excluded but, if there has been no such count or transfer, the returning officer must, in the presence of any scrutineers who may be present, draw lots to determine which candidate will be excluded;
  - (r) if a candidate is elected by reason that the number of first preference votes received, or the aggregate of first preference votes received and all other votes obtained on transfers under this subsection, is equal to the quota, all the ballot papers expressing those votes must be set aside as finally dealt with;
  - (s) a ballot paper must be set aside as exhausted where on a transfer it is found that the paper expresses no preference for any continuing candidate;
  - (t) for the purposes of this subsection, a transfer under paragraph (c), (d) or (h) of the surplus votes of any elected candidate, a transfer in accordance with paragraph (g)(i) of all first preference votes of an excluded candidate or a transfer in accordance with paragraph (g)(ii) of all the votes of an excluded candidate that were transferred from a particular candidate will each be regarded as constituting a separate transfer.
- (2) In subsection (1)—
- continuing candidate*** means a candidate not already elected or excluded from the count;
- election*** of a candidate means the making by the returning officer of a provisional declaration that the candidate has been elected; and ***elected*** has a corresponding meaning;
- surplus votes*** of an elected candidate means the excess (if any) over the quota of the elected candidate's votes.
- (3) In subsection (1), a reference to votes of or obtained or received by a candidate includes votes obtained or received by the candidate on any transfer under that subsection.
  - (4) If a candidate has died between the close of nominations and close of voting, then (subject to the operation of Part 2) a vote indicated on a ballot paper opposite the name of the deceased candidate must be counted to the candidate next in the order of the voter's preference, and the numbers indicating subsequent preferences will be taken to have been altered accordingly.

## 49—Recounts

- (1) At any time within 72 hours after the returning officer has made a provisional declaration, a candidate (not being a candidate in whose favour the provisional declaration was made) may, by notice in writing lodged with the returning officer, request a recount of the votes cast in relation to the relevant vacancy or vacancies and, in the event of a request being made, the returning officer must cause a recount of votes to be made in accordance with the request unless the returning officer considers that there is no prospect that a recount would alter the result of the election.
- (2) The returning officer may, on his or her own initiative, during the period of 72 hours referred to in subsection (1), decide to conduct a recount of any votes cast in the election.
- (3) The following provisions apply to a recount:
  - (a) the returning officer should give the candidates reasonable notice of the time and place at which it is to be conducted;
  - (b) the returning officer may reverse a decision taken at the count;
  - (c) if the votes of two or more candidates are equal and one of them was excluded by lot at the count, the same candidate must be excluded at the recount.

## 50—Declaration of results and certificate

- (1) If the period for requesting a recount for an election expires without such a request having been made and the returning officer has not decided to initiate a recount, the returning officer must confirm the relevant provisional declarations, and immediately make out a return to the chief executive officer certifying the election of specified candidates to specified vacancies.
- (2) If a recount is made, the returning officer must, according to the result of the recount—
  - (a) confirm the relevant provisional declaration; or
  - (b) revoke the provisional declaration and make a final declaration in accordance with the result of the recount,and then immediately make out a return to the chief executive officer certifying the result of the election accordingly.
- (3) The returning officer—
  - (a) must notify all candidates, in writing, of the result of the election; and
  - (b) must within one month after the conclusion of the election cause public notice to be given of the result of the election.
- (4) When the returning officer certifies the result of an election under subsection (1) or (2)—
  - (a) in the case of a supplementary election—the election of the candidate or candidates takes effect immediately;
  - (b) in any other case—the election of the candidate or candidates will take effect at the conclusion of all of the elections for the council with the same polling day.

## **51—Collation of certain information**

- (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.
- (2) A candidate is entitled, on application to the returning officer within three months after the conclusion of the election, to a copy of the return referred to in subsection (1).

## **Division 3—Declaration of results in polls**

### **52—Provisional declarations**

When the result of the poll becomes apparent, the returning officer must make a provisional declaration of the result.

### **53—Recounts**

- (1) At any time within 72 hours after the returning officer has made a provisional declaration, a scrutineer may, by notice in writing lodged with the returning officer, request a recount of the votes cast at the poll and, in the event of a request being made, the returning officer must cause a recount of votes to be made in accordance with the request unless the returning officer considers that there is no prospect that a recount would alter the result of the poll.
- (2) The returning officer may, on his or her own initiative, during the period of 72 hours referred to in subsection (1), decide to conduct a recount of any votes cast at the poll.

### **54—Declaration of results and certificate**

- (1) If the period for requesting a recount for a poll expires without such a request having been made and the returning officer has not decided to initiate a recount, the returning officer must confirm the provisional declaration, and make out a return to the council certifying the result of the poll.
- (2) If a recount is made, the returning officer must, according to the result of the recount—
  - (a) confirm the provisional declaration; or
  - (b) revoke the provisional declaration and make a final declaration in accordance with the result of the recount,and make out a return to the council certifying the result of the poll accordingly.
- (3) The returning officer must within one month after the conclusion of the poll cause public notice to be given of the result of the poll.

## **Division 4—Other matters**

### **55—Computer counting**

- (1) The returning officer may, after consultation with the relevant council, decide to use a computer program to carry out steps involved in the recording, scrutiny or counting of votes in an election or poll.



- (2) The computer program must be a program approved by the Electoral Commissioner on the basis that he or she is reasonably satisfied that the proper use of the program would produce the same result in the recording, scrutiny or counting of votes as the result that would be achieved if the program were not to be used.
- (3) The Electoral Commissioner may specify processes that must be followed in relation to the use of an approved computer program for the purposes of an election or poll.
- (4) If an approved computer program is used, the returning officer must ensure compliance with any processes specified under subsection (3).
- (5) If an approved computer program is used, section 48 will apply subject to the modifications prescribed by the regulations or approved by the Electoral Commissioner (which modifications may vary according to the relevant computer program).
- (6) The use of a computer program under this section does not prevent the returning officer deciding to recount votes in an election or poll without computer assistance.

### **55A—Recount if successful candidate dies**

- (1) This section applies if—
  - (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.
- (2) In a case where this section applies—
  - (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.
- (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).

- (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.

### **56—Retention of voting material**

- (1) The returning officer must retain all voting material relating to an election or poll until the returning officer is satisfied that the election or poll cannot be questioned.
- (2) Except as provided by other provisions of this Act, voting material will not be available for public inspection.

## **Part 12—Illegal practices**

### **57—Violence, intimidation, bribery etc**

- (1) A person who exercises violence or intimidation, or offers or gives a bribe, with a view to—
- (a) inducing a person to submit or withdraw candidature for election; or
  - (b) influencing the vote of a person at an election or poll; or
  - (c) otherwise interfering with the due course of an election or poll,

is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for seven years.

- (2) A person who receives a bribe offered in contravention of subsection (1) is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for seven years.

- (3) In this section—

*bribe* includes any pecuniary sum or material advantage including food, drink or entertainment.

### **58—Dishonest artifices**

- (1) A person who dishonestly exercises, or attempts to exercise, a vote at an election or poll to which that person is not entitled is guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for one year.

- (2) A person who dishonestly influences or attempts to influence the result of an election or poll is guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for one year.

### **59—Interference with statutory rights**

A person must not hinder or interfere with the free exercise or performance, by another person, of a right under this Act.

Maximum penalty: \$5 000 or imprisonment for one year.

## **60—Exception**

No declaration of public policy or promise of public action constitutes bribery or dishonest influence.

## **61—Persons acting on behalf of candidates not to assist voters or collect voting papers**

- (1) A person who is a candidate for election or acting on behalf of such a candidate (whether with or without the candidate's authority) must not act as an assistant to a person voting at the election.  
Maximum penalty: \$5 000 or imprisonment for one year.
- (2) A scrutineer must not act as an assistant to a person voting at an election or poll.  
Maximum penalty: \$5 000 or imprisonment for one year.
- (3) Without limiting the generality of subsection (1) or (2), a person acts as an assistant by assisting another to obtain, complete or return postal voting papers.
- (4) A person who is a candidate for election or acting on behalf of such a candidate (whether with or without the candidate's authority) must not have in his or her possession, or attempt to gain possession of, postal voting papers for that election (except any such papers issued to the person as an elector in his or her own right).  
Maximum penalty: \$5 000 or imprisonment for one year.

## **62—Unlawful interference with computer programs**

- (1) A person must not, without lawful authority to do so, tamper or interfere with a computer program or system used by an electoral officer for the purposes of an election or poll under this Act.  
Maximum penalty: \$5 000 or imprisonment for one year.
- (2) In proceedings for an offence against subsection (1), the prosecution need not prove the absence of lawful authority and the onus is on the defendant to prove any such authority on which he or she relies.

## **63—Secrecy of vote**

- (1) A person must not, by clandestine or dishonest means, attempt to discover how another person has voted.  
Maximum penalty: \$1 250 or imprisonment for three months.
- (2) No person may open an envelope under this Act containing a vote except the returning officer, or an electoral officer acting with the authority of the returning officer.  
Maximum penalty: \$750.
- (3) A person who acquires knowledge of the vote of another person through assisting the other person to vote, or otherwise in the exercise of powers or functions under this Act, must not divulge that knowledge.  
Maximum penalty: \$2 500 or imprisonment for six months.

#### **64—Unlawful declaration or marking of ballot papers**

- (1) A person must not make a statement in a claim, application, return or declaration, or in answer to a question, under this Act that is, to the person's knowledge, false or misleading in a material respect.

Maximum penalty: \$5 000 or imprisonment for one year.

- (2) Except as authorised by this Act, a person (not being a person to whom the ballot paper has been lawfully issued) must not mark a vote, or make any other mark or writing on a ballot paper.

Maximum penalty: \$2 500 or imprisonment for six months.

#### **65—Conduct of officers**

An electoral officer must not fail, without proper excuse, to carry out his or her official duties in connection with the conduct of an election or poll.

Maximum penalty: \$2 500 or imprisonment for six months.

#### **66—Conduct of scrutineers**

- (1) A scrutineer must not interfere with or attempt to influence a person voting or proposing to vote at an election or poll.

Maximum penalty: \$5 000 or imprisonment for one year.

- (2) If a candidate appoints more than one scrutineer, not more than two of them may be present in the place for the counting of votes at the same time during the counting of votes.

### **Part 13—Disputed returns**

#### **67—Constitution of the Court**

- (1) There will be, for the purposes of this Act, a Court of Disputed Returns.
- (2) The Court is constituted of a District Court Judge.
- (3) The Court, separately constituted under this section, may sit contemporaneously to hear separate proceedings.
- (4) The Court is a court of record.
- (5) Subject to this Part, the procedure and powers of the Court are the same as those of the District Court when exercising its civil jurisdiction.

#### **68—The clerk of the Court**

- (1) There will be a clerk of the Court appointed by the Chief Judge of the District Court.
- (2) The office of clerk of the Court may be held in conjunction with any other office.

#### **69—Jurisdiction of the Court**

- (1) The Court has jurisdiction to hear and determine any petition addressed to it disputing the validity of an election under this Act.
- (2) The Court will not call into question the eligibility of a person whose name appears on the voters roll as an elector to be a candidate for election under section 17(1)(b)(i).

## **70—Procedure upon petition**

- (1) A petition to the Court must—
  - (a) set out the facts relied on to invalidate the election; and
  - (b) set out the relief to which the petitioner claims to be entitled; and
  - (c) be signed by a candidate at the election in dispute or by an elector for that election; and
  - (d) be lodged with the clerk of the Court within 28 days after the conclusion of the election; and
  - (e) be accompanied by the prescribed amount as security for costs.
- (2) A copy of the petition must be served on—
  - (a) any person declared elected in the disputed election; and
  - (b) if it is alleged that the election is invalid on account of an act or omission of an electoral officer—if the Electoral Commissioner was the returning officer—the Electoral Commissioner; and
  - (c) the council.
- (3) If a person or council served under subsection (2) proposes to contest the petition, the person or council must, within 14 days after service, or such further time as may be allowed by the Court (on application made either before or after the expiration of the period of 14 days), lodge with the clerk of the Court, and serve on the petitioner, a reply.
- (4) A reply must—
  - (a) set out the facts on which the applicant proposes to rely; and
  - (b) ask for any relief to which the applicant claims to be entitled; and
  - (c) be signed—
    - (i) if the applicant is a natural person—by the applicant; or
    - (ii) if the applicant is the council—by the chief executive officer or returning officer of the council.

## **71—Powers of the Court**

- (1) The Court must sit as an open court, and its powers include the following:
  - (a) to adjourn;
  - (b) to compel the attendance of witnesses and the production of documents;
  - (c) to examine witnesses on oath, affirmation or declaration;
  - (d) with the consent of the parties to the proceedings, to receive evidence on affidavit or by statutory declaration;
  - (e) subject to this Act and the rules, to determine its procedure in each case;
  - (f) to declare—
    - (i) that a person who was returned as elected was not duly elected; and
    - (ii) that a candidate who was not returned as elected was duly elected;

- (g) to declare an election void;
  - (h) to dismiss or uphold a petition, in whole or in part;
  - (i) to amend or allow the amendment of a petition or reply;
  - (j) to punish contempt of its authority by fine or imprisonment.
- (2) The Court may exercise all or any of its powers under this section on such grounds as the Court in its discretion thinks just and sufficient.
  - (3) The Court is not bound by the rules of evidence.
  - (4) The Court must act according to good conscience and the substantial merits of the case without regard to legal technicalities.
  - (5) A decision of the Court is final and without appeal.

## **72—Certain matters not to be called in question**

The entitlement to vote of a person whose name appears on the voters roll as an elector cannot be called in question by the Court.

## **73—Illegal practices**

- (1) The Court cannot declare an election void, or that a candidate returned as elected was not duly elected, on the ground of an illegal practice found by the Court to have been committed unless the Court is satisfied, on the balance of probabilities, that the result of the election was affected by the illegal practice.
- (2) If an illegal practice under section 57, 58 or 59 is found by the Court to have been committed, the illegal practice will be taken to have affected the result of the election unless the contrary is proved on the balance of probabilities.
- (3) No finding by the Court as to whether an illegal practice was committed constitutes a bar to criminal proceedings in relation to the illegal practice or may be admitted as evidence in such proceedings.
- (4) If the Court finds that an illegal practice occurred in relation to an election or poll, the clerk of the Court must report the finding to the Minister.

## **74—Effect of decision**

- (1) If pursuant to this Part a person returned as elected is declared not to have been duly elected, that person ceases to be a member of the council, and the person declared to have been duly elected will take his or her place accordingly.
- (2) If pursuant to this Part an election is declared void, a person returned as elected at the election ceases to be a member of the council.

## **75—Participation of council in proceedings**

- (1) The Court may—
  - (a) on the application of a party to the proceedings—order that the council be joined as a party to the proceedings; or
  - (b) on the application of the council—allow the council to intervene in the proceedings.

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- (2) A council may only be joined as a party to the proceedings or allowed to intervene if the Court is satisfied that it is fair and reasonable that the council participate in the proceedings.
  - (3) If a council is allowed to intervene in the proceedings, it may intervene in the manner and to the extent directed by the Court, and on such other conditions as the Court may direct.

### **76—Right of appearance**

A party to proceedings before the Court may appear personally or be represented by counsel.

### **77—Case stated**

The Court may, of its own motion or on the application of a party to proceedings, state a question of law for the opinion of the Full Court of the Supreme Court.

### **78—Costs**

- (1) The Court may make orders for costs as it thinks just (including an order for costs in favour of or against a council that has been joined as a party to the proceedings or that has intervened in the proceedings).
- (2) If an election is declared void, or a candidate returned as elected is declared not to have been duly elected, on account of an act or omission of an electoral officer, any costs in favour of the petitioner must, to the extent to which they are attributable to that act or omission, be awarded against the council.
- (3) An order under this section may be enforced as an order of the District Court.

### **79—Rules of the Court**

The Chief Judge of the District Court may make rules—

- (a) regulating the practices and procedures of the Court; and
- (b) fixing fees to be paid in respect of proceedings before the Court; and
- (c) making any other provision necessary or expedient for the purposes of this Part.

## **Part 14—Campaign donations**

### **Division 1—Returns**

#### **80—Returns for candidates**

- (1) A person who is a candidate for election to an office of a council must, within six weeks after the conclusion of the election, furnish to the chief executive officer of the council, in accordance with the requirements of this Part, a *campaign donations return* (see section 81).
- (2) A return must be in the prescribed form and completed in the prescribed manner.

## 81—Campaign donations returns

- (1) Subject to this section, a campaign donations return for a candidate for election to an office of a council must set out—
  - (a) the total amount or value of all gifts received by the candidate during the disclosure period; and
  - (b) the number of persons who made those gifts; and
  - (c) the amount or value of each gift; and
  - (d) the date on which each gift was made; and
  - (e) in the case of each gift made on behalf of the members of an unincorporated association, other than a registered industrial organisation—
    - (i) the name of the association; and
    - (ii) the names and addresses of the members of the executive committee (however described) of the association; and
  - (f) in the case of each gift purportedly made out of a trust fund or out of the funds of a foundation—
    - (i) the names and addresses of the trustees of the fund or of the funds of the foundation; and
    - (ii) the title or other description of the trust fund or the name of the foundation, as the case requires; and
  - (g) in the case of each other gift—the name and address of the person who made the gift.
- (2) A campaign donations return need not set out any details required by subsection (1) in respect of—
  - (a) a private gift made to the candidate; or
  - (b) a gift if the amount or value of the gift is less than \$500.
- (3) For the purposes of this section—
  - (a) the disclosure period is the period that commenced—
    - (i) in relation to a candidate in an election who was a new candidate (other than a candidate referred to in subparagraph (ii))—on the day on which the person announced that he or she would be a candidate in the election or on the day on which the person's nomination as a candidate was lodged with the returning officer, whichever was the earlier;
    - (ii) in relation to a candidate in an election who was a new candidate and when he or she became a candidate in the election was a member of the council by virtue of having been appointed under Chapter 3 of the *Local Government Act 1999*—on the day on which the person was so appointed as a member of the council;
    - (iii) in relation to a candidate in an election who was not a new candidate—at the end of 30 days after polling day for the last preceding election in which the person was a candidate,



and that ended, in any of the above cases, at the end of 30 days after polling day for the election;

- (b) a candidate is a new candidate, in relation to an election, if the person had not been a candidate in the last general election of the council and had not been elected at a supplementary election held after the last general election of the council;
  - (c) two or more gifts (excluding private gifts) made by the same person to a candidate during the disclosure period are to be treated as one gift;
  - (d) a gift made to a candidate is a private gift if it is made in a private capacity to the candidate for his or her personal use and the candidate has not used, and will not use, the gift solely or substantially for a purpose related to an election.
- (4) If no details are required to be included in a return under this section for a candidate, the return must nevertheless be lodged and must include a statement to the effect that no gifts of a kind required to be disclosed were received.

## **82—Certain gifts not to be received**

- (1) It is unlawful for a member of a council to receive a gift made to or for the benefit of the member the amount or value of which is not less than \$500 unless—
- (a) the name and address of the person making the gift are known to the member; or
  - (b) at the time when the gift is made, the person making the gift gives to the member his or her name and address and the member has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.
- (2) It is unlawful for a candidate in an election or a person acting on behalf of a candidate in an election to receive a gift made to or for the benefit of the candidate the amount or value of which is not less than \$500 unless—
- (a) the name and address of the person making the gift are known to the person receiving the gift; or
  - (b) at the time when the gift is made, the person making the gift gives to the person receiving the gift his or her name and address and the person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.
- (3) For the purposes of this section—
- (a) a reference to a gift made by a person includes a reference to a gift made on behalf of the members of an unincorporated association;
  - (b) a reference to the name and address of a person making a gift is—
    - (i) in the case of a gift made on behalf of the members of an unincorporated association, other than a registered industrial organisation—a reference to—
      - (A) the name of the association; and

- (B) the names and addresses of the members of the executive committee (however described) of the association; and
  - (ii) in the case of a gift purportedly made out of a trust fund or out of the funds of a foundation—a reference to—
    - (A) the names and addresses of the trustees of the fund or of the funds of the foundation; and
    - (B) the title or other description of the trust fund or the name of the foundation, as the case requires;
  - (c) a person who is a candidate in an election is to be taken to remain a candidate for 30 days after the polling day for the election;
  - (d) a reference to a candidate in an election includes a reference to a person who is already a member of the council.
- (4) If a person receives a gift that, by virtue of this section, it is unlawful for the person to receive, an amount equal to the amount or value of the gift is payable by that person to the Crown and may be recovered by the Crown as a debt by action, in a court of competent jurisdiction, against the person.

### **83—Inability to complete return**

If a person who is required to furnish a return under this Division considers that it is impossible to complete the return because he or she is unable to obtain particulars that are required for the preparation of the return, the person may—

- (a) prepare the return to the extent that it is possible to do so without those particulars; and
- (b) furnish the return so prepared; and
- (c) give to the chief executive officer notice in writing—
  - (i) identifying the return; and
  - (ii) stating that the return is incomplete by reason that he or she is unable to obtain certain particulars; and
  - (iii) identifying those particulars; and
  - (iv) setting out the reasons why he or she is unable to obtain those particulars; and
  - (v) if the person believes, on reasonable grounds, that another person whose name and address he or she knows can give those particulars—stating that belief and the reasons for it and the name and address of that other person,

and a person who complies with this section is not, by reason of the omission of those particulars, to be taken, for the purposes of this Division, to have furnished a return that is incomplete.

### **84—Amendment of return**

- (1) A person who has furnished a return under this Division may request the permission of the chief executive officer to make a specified amendment of the return for the purpose of correcting an error or omission.

- (2) A request under subsection (1) must—
  - (a) be by notice in writing signed by the person making the request; and
  - (b) be lodged with the chief executive officer.
- (3) If—
  - (a) a request has been made under subsection (1); and
  - (b) the chief executive officer is satisfied that there is an error in, or omission from, the return to which the request relates,the chief executive officer must amend the return, or permit the person making the request to amend the return, in accordance with the request.
- (4) The amendment of a return under this section does not affect the liability of a person to be convicted of an offence arising out of the furnishing of the return.

### **85—Offences**

- (1) A person who fails to furnish a return that the person is required to furnish under this Division within the time required by this Division is guilty of an offence.  
Maximum penalty: \$10 000.
- (2) A person who furnishes a return or other information—
  - (a) that the person is required to furnish under this Division; and
  - (b) that contains a statement that is, to the knowledge of the person, false or misleading in a material particular,is guilty of an offence.  
Maximum penalty: \$10 000.
- (3) A person who furnishes to another person who is required to furnish a return under this Division information—
  - (a) that the person knows is required for the purposes of that return; and
  - (b) that is, to that person's knowledge, false or misleading in a material particular,is guilty of an offence.  
Maximum penalty: \$10 000.
- (4) An allegation in a complaint that a specified person had not furnished a return of a specified kind as at a specified date will be taken to have been proved in the absence of proof to the contrary.

### **86—Failure to comply with Division**

- (1) If a person who is required to furnish a return under this Division fails to submit the return within the time required by this Division, the chief executive officer must as soon as practicable notify the person of that fact.
- (2) A notification under subsection (1) must be given by letter sent to the person by registered mail.

- (3) A failure of a person to comply with a provision of this Division in relation to an election does not invalidate that election. (However, the office of a member of a council who fails to submit a return may become vacant under Chapter 5 Part 2 of the *Local Government Act 1999*.)

## **Division 2—Public access to information**

### **87—Public inspection of returns**

- (1) The chief executive officer of a council must keep at the principal office of the council each return furnished to the chief executive officer under Division 1.
- (2) Subject to this section, a person is entitled to inspect a copy of a return under Division 1, without charge, during ordinary business hours at the principal office of the council.
- (3) Subject to this section, a person is entitled, on payment of a fee fixed by the council, to obtain a copy of a return under Division 1.
- (4) A person is not entitled to inspect or obtain a copy of a return until the end of eight weeks after the day before which the return was required to be furnished to the chief executive officer.
- (5) The chief executive officer is only required to keep a return under this section for a period of three years following the election to which the return relates.

### **88—Restrictions on publication**

- (1) A person must not publish—
- (a) information derived from a return under Division 1 unless the information constitutes a fair and accurate summary of the information contained in the return and is published in the public interest; or
  - (b) comment on the facts set forth in a return under Division 1 unless the comment is fair and published in the public interest and without malice.
- (2) If information or comment is published by a person in contravention of subsection (1), the person, and any person who authorised the publication of the information or comment, is guilty of an offence.

Maximum penalty: \$10 000.

## **Division 3—Related matters**

### **89—Requirement to keep proper records**

- (1) A person must take reasonable steps to keep in his or her possession all records relevant to completing a return under this Part.
- Maximum penalty: \$5 000.
- (2) A person must keep a record under subsection (1) for at least three years after the date on which the relevant return is required to be furnished to the chief executive officer of the council under this Part.
- Maximum penalty: \$5 000.

**90—Related matters**

- (1) For the purposes of this Part, the amount or value of a gift consisting of or including a disposition of property other than money is, if the regulations so provide, to be determined in accordance with principles set out or referred to in the regulations.
- (2) For the purposes of this Part—
  - (a) a body corporate and any other body corporate that is related to the first-mentioned body corporate is to be taken to be the same person; and
  - (b) the question whether a body corporate is related to another body corporate is to be determined in the same manner as under the *Corporations Law*.
- (3) For the purposes of this Part, an act performed by a person or committee appointed or formed to assist the campaign of a candidate in an election will be taken to be an act performed by the candidate.

**Part 15—Miscellaneous****91—Elected person refusing to act**

A duly qualified person who, having been duly appointed or elected as a member of a council—

- (a) refuses to assume office and to act in it; or
- (b) neglects to assume the office and to act in it for the first three ordinary meetings of the council (without leave of the council),

is guilty of an offence.

Maximum penalty: \$750.

**92—Electoral Commissioner may conduct investigations etc**

- (1) The Electoral Commissioner may—
  - (a) make an investigation into any matter concerning the operation or administration of this Act, including a matter that may involve a breach of this Act; or
  - (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
  - (b) bring proceedings for an offence against this Act.
- (2) If the Electoral Commissioner decides to take action as a result of an investigation under subsection (1) (including by bringing proceedings for an offence) and it appears to the Electoral Commissioner that a council has a material interest in the matter, the Electoral Commissioner must provide a written report on the matter to the council.
- (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—

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- (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.

### 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.
- (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).
- (4) The Electoral Commissioner should, so far as is reasonably practicable, consult with the LGA before making a determination under subsection (1).

### 93—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.
- (2) Subject to the Schedule, a regulation may prescribe a penalty (not exceeding \$2 500) for contravention of, or failure to comply with, the regulation.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- 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](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1999	63	<i>Local Government (Elections) Act 1999</i>	26.8.1999	1.1.2000 ( <i>Gazette 9.12.1999 p3113</i> )
<b>2005</b>	<b>35</b>	<b><i>Statutes Amendment (Local Government Elections) Act 2005</i></b>	<b>14.7.2005</b>	<b>Pt 4 (ss 23—27, 29, 30, 43—45, 47—51) &amp; Sch 1 (cll 1—4, 5(2), 6—9)—18.8.2005; ss 28, 31—42, 46 &amp; Sch 1 (cl 5(1))—1.1.2006 (<i>Gazette 18.8.2005 p3058</i>)</b>
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 47 (s 162)—4.9.2006 ( <i>Gazette 17.8.2006 p2831</i> )

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	18.8.2005
s 4		
s 4(1)		
voting material	amended by 35/2005 s 23(1)	18.8.2005
Pt 2		
s 5	substituted by 35/2005 s 24	18.8.2005
s 6		
s 6(2)	amended by 35/2005 s 25(1)	18.8.2005
s 6(3)	amended by 35/2005 s 25(2)	18.8.2005
s 7		
s 7(2a)	inserted by 35/2005 s 26(1)	18.8.2005



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s 7(3)	amended by 35/2005 s 26(2)	18.8.2005
s 7(4)	amended by 35/2005 s 26(3)	18.8.2005
s 9		
s 9(6)	substituted by 35/2005 s 27	18.8.2005
Pt 4		
s 14		
s 14(1)	<b>amended by 35/2005 s 28(1), (2)</b>	<b>1.1.2006</b>
s 14(8)	<b>inserted by 35/2005 s 28(3)</b>	<b>1.1.2006</b>
s 15		
s 15(7)	amended by 35/2005 s 29(1)	18.8.2005
s 15(9)	substituted by 35/2005 s 29(2)	18.8.2005
Pt 5		
s 16		
s 16(4)	substituted by 35/2005 s 30	18.8.2005
Pt 6		
s 17		
s 17(2)	<b>amended by 35/2005 s 31</b>	<b>1.1.2006</b>
s 18	<b>substituted by 35/2005 s 32</b>	<b>1.1.2006</b>
s 19		
s 19(1)	<b>amended by 35/2005 s 33(1)</b>	<b>1.1.2006</b>
s 19(2)	<b>substituted by 35/2005 s 33(2)</b>	<b>1.1.2006</b>
s 19(4)	<b>amended by 35/2005 s 33(3)</b>	<b>1.1.2006</b>
s 19(7)	<b>inserted by 35/2005 s 33(4)</b>	<b>1.1.2006</b>
s 22		
s 22(1)	<b>amended by 35/2005 s 34(1)</b>	<b>1.1.2006</b>
s 22(2)	<b>amended by 35/2005 s 34(2)</b>	<b>1.1.2006</b>
s 23	<b>amended by 35/2005 s 35</b>	<b>1.1.2006</b>
s 26		
s 26(1)	<b>amended by 35/2005 s 36(1)</b>	<b>1.1.2006</b>
s 26(2)	<b>amended by 35/2005 s 36(2)</b>	<b>1.1.2006</b>
Pt 8		
s 29		
s 29(3)	<b>substituted by 35/2005 s 37</b>	<b>1.1.2006</b>
Pt 9		
s 39		
s 39(1)	<b>amended by 35/2005 s 38(1)</b>	<b>1.1.2006</b>
s 39(4)	<b>amended by 35/2005 s 38(2), (3)</b>	<b>1.1.2006</b>
s 39(5)	<b>amended by 35/2005 s 38(4)</b>	<b>1.1.2006</b>
s 39(12)	<b>inserted by 35/2005 s 38(5)</b>	<b>1.1.2006</b>
s 40		
s 40(1)	<b>amended by 35/2005 s 39</b>	<b>1.1.2006</b>
s 41		

s 41(1)	s 41 amended and redesignated as s 41(1) by 35/2005 s 40(1), (2)	1.1.2006
s 41(2) and (3)	inserted by 35/2005 s 40(2)	1.1.2006
s 42	amended by 35/2005 s 41	1.1.2006
s 43		
s 43(4)	inserted by 35/2005 s 42	1.1.2006
Pt 11		
s 47		
s 47(1)	substituted by 35/2005 s 43	18.8.2005
s 48		
s 48(4)	amended by 35/2005 s 44	18.8.2005
s 49		
s 49(1)	amended by 35/2005 s 45(1)	18.8.2005
s 49(2)	amended by 35/2005 s 45(2)	18.8.2005
s 51		
s 51(1)	substituted by 35/2005 s 46	1.1.2006
s 51(1a)	inserted by 35/2005 s 46	1.1.2006
s 53		
s 53(1)	amended by 35/2005 s 47(1)	18.8.2005
s 53(2)	amended by 35/2005 s 47(2)	18.8.2005
s 55A	inserted by 35/2005 s 48	18.8.2005
Pt 15		
s 92		
s 92(1)	amended by 35/2005 s 49(1)	18.8.2005
s 92(3)—(7)	inserted by 35/2005 s 49(2)	18.8.2005
s 92A	inserted by 35/2005 s 50	18.8.2005
Sch	deleted by 35/2005 s 51	18.8.2005

## Transitional etc provisions associated with Act or amendments

### *Statutes Amendment (Local Government Elections) Act 2005, Sch 1—Transitional provisions*

#### 1—Interpretation

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

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,

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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—
  - (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;
  - (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**

- (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—
  - (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
  - (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
  - (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**

- (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.

- (2) However, if—
- (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
  - (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.

- (3) 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.

## 7—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(2) (and accordingly subject to the requirements of section 12(11c) and (11d) of the *Local Government Act 1999* as enacted by this Act).

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- (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.

### **8—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*.

### **9—Other provisions**

- (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.
- (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.
- (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.

### **Historical versions**

18.8.2005