

South Australia

Local Government (Elections) (Miscellaneous) Amendment Act 2009

An Act to amend the *Local Government (Elections) Act 1999* and to make related amendments to the *City of Adelaide Act 1998*.

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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) (Miscellaneous) Amendment Act 2009*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Local Government (Elections) Act 1999*

4—Amendment of section 4—Preliminary

Section 4(1)—after the definition of *the Court* insert:

designated person, in respect of a body corporate or group entitled to be enrolled on the voters roll for an area or ward, means a natural person, of or above the age of majority, who is—

- (a) in the case of a body corporate—an officer of the body corporate who is authorised to act on behalf of the body corporate for the purposes of voting; or
- (b) in the case of a group—a member of the group, or an officer of a body corporate that is a member of the group, who is authorised to act on behalf of the group for the purposes of voting;

5—Amendment of section 6—Supplementary elections

- (1) Section 6(2)(b)(iii)—delete "(disregarding the office of mayor)"
- (2) Section 6(3)(b)—delete "(other than mayor)"

6—Amendment of section 7—Failure of election in certain cases

Section 7(1), (2) and (2a)—delete subsections (1), (2) and (2a)

7—Insertion of section 13A

After section 13 insert:

13A—Information, education and publicity for general election

- (1) The returning officer may, after consultation with the LGA conducted in such manner as the returning officer thinks fit, arrange advertising (the costs of which are recoverable from councils in accordance with a scheme determined by the returning officer) for the purposes of—
 - (a) informing electors on access to information relating to candidates; and
 - (b) encouraging voting at elections; and
 - (c) informing electors about postal voting and the method of voting; and
 - (d) advising potential electors (other than those referred to in section 14(1)(a)) of the requirement to apply to be enrolled on the voters roll.
- (2) Each council—
 - (a) must, in a year in which a periodic election is to be held, during the period commencing on 1 January of that year and ending on the day fixed by the returning officer for the close of the roll, inform potential electors in its area (other than those referred to in section 14(1)(a)) of the requirement to apply to be enrolled on the voters roll; and
 - (b) may arrange advertising relating to any matters referred to in subsection (1).

8—Amendment of section 14—Qualifications for enrolment

- (1) Section 14(1)(a)—delete paragraph (a) and substitute:
 - (a) a natural person is entitled, without application, to be enrolled on the voters roll for an area or ward if that person is enrolled as an elector for the House of Assembly in respect of a place of residence within the area or ward; and
 - (ab) a natural person (not being a person referred to in paragraph (a)), who is of or above the age of majority, is entitled, on application to the chief executive officer under this section, to be enrolled on the voters roll for an area or ward if that person—
 - (i) is resident at a place of residence within the area or ward and has been so resident for a continuous period of at least 1 month immediately preceding the date of the application for enrolment; or
 - (ii) is a ratepayer in respect of rateable property within the area or ward and is the sole owner of that rateable property; or

- (iii) 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
- (2) Section 14(1)(b)—after "entitled" insert:
 - , on application to the chief executive officer under this section,
- (3) Section 14(1)(c)—after "entitled" insert:
 - , on application to the chief executive officer under this section,
- (4) Section 14(1)(c)(iii)—delete "(a) or (b)" and substitute:
 - (a), (ab) or (b)
- (5) Section 14(1)(c)(iii)—delete "(a)(i) or (ii)" and substitute:
 - (a) or (ab)(i)
- (6) Section 14—after subsection (1) insert:
 - (1a) A natural person is entitled, without application, to provisional enrolment on the voters roll for an area or ward if he or she is provisionally enrolled as an elector for the House of Assembly in respect of a place of residence within the area or ward.
- (7) Section 14(3)(a)—delete "subsection (1)(a)(ii)" and substitute:
 - subsection (1)(ab)(i)
- (8) Section 14—after subsection (3) insert:
 - (3a) Except as otherwise provided in this Act, the name of a person, body corporate or group must not be added to the voters roll for an area or ward except in accordance with an application for enrolment.
 - (3b) An application for enrolment on the voters roll for an area or ward must—
 - (a) be in a form approved by the returning officer; and
 - (b) be signed and witnessed as required by the returning officer; and
 - (c) be made to the chief executive officer of the council.
 - (3c) If an application for enrolment in respect of an area or ward is received by a chief executive officer, the chief executive officer must enrol the applicant unless—
 - (a) the chief executive officer believes the applicant is not entitled to be enrolled; or
 - (b) —
 - (i) in the case of an application made in respect of an entitlement under subsection (1)(ab)—the natural person is already on the voters roll for the area or ward by virtue of another entitlement to vote; or

- (ii) in the case of an application made in respect of an entitlement under subsection (1)(b) or (1)(c)—the designated person of the body corporate or group is already on the voters roll for the area or ward (whether as a designated person or by virtue of another entitlement to vote).
- (9) Section 14(4) and (5)—delete subsections (4) and (5)
- (10) Section 14(6)—delete "Subject to the adoption of a name under subsection (4),"
- (11) Section 14(8)—delete "(1)(a)(iv)" and substitute:
 - (1)(ab)(iii)
- (12) Section 14—after subsection (8) insert:
 - (9) A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this section.
Maximum penalty: \$10 000.

9—Amendment of section 15—The voters roll

- (1) Section 15(2)(a) and (b)—delete paragraphs (a) and (b) and substitute:
 - (a) in the case of a natural person—the full name of the person and the address of the person's place of residence; and
 - (b) in the case of a body corporate or group—the full name of the body corporate or group and the full name, residential address and date of birth of the designated person for the body corporate or group; and
- (2) Section 15—after subsection (5) insert:
 - (5a) Subject to subsection (5b), the voters roll expires on 1 January in each year in which a periodic election is to be held and a fresh voters roll is to be prepared after 1 January for the purposes of the election.
 - The effect of subsection (5a) is that voters who must apply under section 14 to be enrolled on the roll are required to lodge fresh applications for enrolment prior to each periodic election.
 - (5b) If a casual vacancy occurs before any time on which the voters roll is to expire under subsection (5a) (the *expiry date*) but the supplementary election to be held to fill that vacancy will not take place until after the expiry date, for the purposes of the supplementary election, the voters roll is to be taken to continue in existence until the conclusion of the supplementary election.
- (3) Section 15(10)—after "enrolled" insert
(including those provisionally enrolled)

(4) Section 15(15)—delete subsection (15) and substitute:

(15) At any time between the close of nominations and polling day for an election, a nominated candidate for the election is entitled to obtain from the relevant council a copy of the voters roll in printed form for the area (and he or she may, during that period, obtain further copies of the voters roll in printed form from the council on payment of the fees fixed by the council).

10—Amendment of section 16—Entitlement to vote

(1) Section 16(1)—delete "A" and substitute:

Subject to subsection (1a), a

(2) Section 16—after subsection (1) insert:

(1a) A natural person is not entitled to vote at an election if—

- (a) he or she was provisionally enrolled; and
- (b) he or she is not, as at polling day, of or above the age of majority.

(3) Section 16(2), (3) and (4)—delete subsections (2), (3) and (4) and substitute:

(2) A natural person is entitled to vote at an election or poll for a body corporate, or group, which has its name on the voters roll if the natural person is the designated person on the voters roll for the body corporate, or group.

(4) Section 16(7)—delete "subsection (3)" and substitute:

subsection (2)

(5) Section 16(8)—delete subsection (8)

(6) Section 16(10)—delete subsection (10) and substitute:

(10) A natural person may only vote in 1 capacity at an election or poll (but this clause does not prevent a person voting at 2 or more elections for a council held on the same day).

11—Amendment of section 17—Entitlement to stand for election

(1) Section 17(1)(b)—delete "nominee of" wherever occurring and substitute in each case:
designated person for

(2) Section 17(2)—delete subsection (2)

12—Insertion of section 19A

After section 19 insert:

19A—Publication of candidate statements etc

(1) A nominated candidate may, within 5 business days after the close of nominations, provide to the LGA an electoral statement in accordance with any requirements of the LGA for publication in accordance with this section.

- (2) The LGA must, as soon as is reasonably practicable after the close of nominations (and in any event within 14 days after the close of nominations) cause—
 - (a) each candidate's profile supplied under section 19(2)(b); and
 - (b) if an electoral statement is provided by a candidate under subsection (1)—the statement,

to be published, in accordance with any requirements of the regulations, on the Internet.
- (3) The returning officer must, for the purposes of subsection (2)(a), forward a copy of the profile of each candidate to the LGA.
- (4) Despite any other provision of this Act or any other law, a candidate is solely responsible for his or her statement under subsection (1) and the returning officer, the LGA, a council or any person involved (whether as an Internet service provider or otherwise) in the administration of the Internet publication referred to in subsection (2) bears no civil or criminal liability with respect to the publication of a statement in accordance with this section.
- (5) A statement published under this section is taken to be authorised in accordance with section 27 and proceedings for an offence against section 27 may not be commenced in respect of a statement published under this section.

13—Amendment of section 28—Publication of misleading material

- (1) Section 28(1)—after "publication of the material" insert:

(the *publisher*)
- (2) Section 28—after subsection (2) insert:
 - (2a) If the Electoral Commissioner is satisfied that published electoral material contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent, the Electoral Commissioner may request the publisher to do 1 or more of the following:
 - (a) withdraw the material from further publication;
 - (b) publish a retraction in specified terms and a specified manner and form,

(and in proceedings for an offence against subsection (1) arising from the material, the publisher's response to a request under this subsection may be taken into account in assessing any penalty to which the publisher may be liable).

14—Amendment of section 29—Ballot papers

- Section 29(3)—delete "as soon as is reasonably practicable after" and substitute:
at 4pm, or as soon as is reasonably practicable after 4pm, on the day of

15—Amendment of section 39—Issue of postal voting papers

- (1) Section 39(1)(b)—delete "acting on behalf of" and substitute:
the designated person for
- (2) Section 39(7)(b)(ii)—delete "body corporate or group at an address nominated by the body corporate or group in a manner determined or approved by the returning officer" and substitute:
designated person for the body corporate or group at the address of the designated person on the voters roll

16—Amendment of section 47—Arranging postal papers

- (1) Section 47(2)(a)(ii)—delete subparagraph (ii) and substitute:
 - (ii) any 2 or more envelopes where it appears to the returning officer that the voter has acted in more than 1 capacity at the particular election or poll; and
- (2) Section 47(2)(a)(iii)—delete "voting on behalf of a body corporate or group of persons in accordance with this Act" and substitute:
the designated person for a body corporate or group
- (3) Section 47(2)(a)(iv)—delete subparagraph (iv)

17—Amendment of section 80—Returns for candidates

Section 80(1)—delete "six weeks" and substitute:
30 days

18—Amendment of section 81—Campaign donation returns

Section 81(3)(a)—delete "30" wherever occurring and substitute in each case:
21

19—Amendment of section 87—Public inspection of returns

Section 87(5)—delete "three" and substitute:
4

20—Amendment of section 89—Requirement to keep proper records

Section 89(2)—delete "three" and substitute:
4

21—Insertion of section 91A

After section 91 insert:

91A—Conduct of council during election period

- (1) A council must, within 6 months of the commencement of this section, prepare and adopt a caretaker policy governing the conduct of the council and its staff during the election period for a general election.

- (2) Subject to this section, the caretaker policy must, as a minimum, prohibit the making of a designated decision during the election period.
- (3) If a council considers that there are extraordinary circumstances which require the making of a designated decision during the election period, the council may apply in writing to the Minister for an exemption from the application of this section to the designated decision specified in the application.
- (4) If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the designated decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.
- (5) A designated decision made by a council in contravention of this section or the caretaker policy of the council is invalid.
- (6) Any person who suffers any loss or damage as a result of acting in good faith on a designated decision made in contravention of this section or a caretaker policy is entitled to compensation from the council for that loss or damage.
- (7) The caretaker policy of a council is to be taken to form part of each code of conduct required to be prepared and adopted in relation to council members and staff under the *Local Government Act 1999* or the *City of Adelaide Act 1998*.
- (8) In this section—

designated decision means a decision—

- (a) relating to the employment or remuneration of a chief executive officer, other than a decision to appoint an acting chief executive officer; or
- (b) to terminate the appointment of a chief executive officer; or
- (c) to enter into a contract, arrangement or understanding (other than a prescribed contract) the total value of which exceeds whichever is the greater of \$100 000 or 1% of the council's revenue from rates in the preceding financial year; or
- (d) allowing the use of council resources for the advantage of a particular candidate or group of candidates (other than a decision that allows the equal use of council resources by all candidates for election),

other than a decision of a kind excluded from this definition by regulation;

election period in relation to an election, means the period commencing on—

- (a) the day of the close of nominations for the election; or

- (b) if a council has specified a day (being a day that falls earlier than the day of the close of nominations) in its caretaker policy—the specified day,

and expiring at the conclusion of the election;

prescribed contract means a contract entered into by a council for the purpose of undertaking—

- (a) road construction or maintenance; or
- (b) drainage works.

22—Amendment of section 93—Regulations

Section 93—after subsection (2) insert:

- (3) The Minister should consult with the LGA before a regulation is made under this Act.

Schedule 1—Related amendments and transitional provisions

Part 1—Amendment of *City of Adelaide Act 1998*

1—Amendment of section 18—Access to information

Section 18(1)—delete "and Part 5A of the *Local Government Act 1934*"

2—Amendment of section 37A—Rundle Mall

Section 37A(10)—delete "*Local Government Act 1934*" and substitute:

Local Government Act 1999

3—Amendment of Schedule 1—Special provisions for elections and polls

- (1) Schedule 1, Part 1—delete the Part and substitute:

Part 1—Preliminary

1—Interaction with *Local Government (Elections) Act 1999*

- (1) In this Schedule—
 - (a) Part 2 operates, in relation to the Council and the City of Adelaide in substitution for the provisions of Part 4 of the *Local Government (Elections) Act 1999*; and
 - (b) Part 3 operates, in relation to the Council and the City of Adelaide, in substitution for the provisions of Part 5 of the *Local Government (Elections) Act 1999*; and
 - (c) clause 18 operates, in relation to the Council and the City of Adelaide, in substitution for the provisions of section 39 of the *Local Government (Elections) Act 1999*;

- (d) clause 19 operates, in relation to the Council and the City of Adelaide, in substitution for the provisions of section 47 of the *Local Government (Elections) Act 1999*;
 - (e) Part 8 operates, in relation to the Council and the City of Adelaide, in substitution for the provisions of Part 14 of the *Local Government (Elections) Act 1999*.
- (2) Section 13A(2)(a) of the *Local Government (Elections) Act 1999* does not apply in relation to the Council.

Part 2—Enrolment

2—Qualifications for enrolment

- (1) Subject to this Schedule¹—
- (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
 - (ii) has lodged the prescribed application with the chief executive officer of the Council, is resident at a place of residence within the area or ward and has been so resident for a continuous period of at least 1 month immediately preceding the date of the application; 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 1 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) A natural person is entitled, without application, to provisional enrolment on the voters roll for an area or ward if he or she is provisionally enrolled as an elector for the House of Assembly in respect of a place of residence within the area or ward.
- (3) 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.
- (4) If—
 - (a) a person has been enrolled as an elector under subclause (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.
- (5) 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.
- (6) The chief executive officer may reject an application under subclause (5) if the name is, in the opinion of the chief executive officer, obscene or frivolous.
- (7) Subject to the adoption of a name under subclause (5), the chief executive officer may determine the name of a group for the purposes of the voters roll.

- (8) The name of a group must include the word "Group" at the end.
- (9) For the purposes of subclause (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).
- (10) A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this clause.
Maximum penalty: \$10 000.

Note—

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

3—The voters roll

- (1) The chief executive officer is responsible for the maintenance of a voters roll for the area.
- (2) Subject to this clause, 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 clause 18; 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.
- (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 3 weeks after the supply of relevant information by the Electoral Commissioner under subclause (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 subclause (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 subclause (7)(a)—13 weeks before polling day for the relevant election;
 - (b) in the case of the closing date under subclause (7)(b)—8 weeks before polling day for the relevant election or poll.
- (10) The Electoral Commissioner must, within 7 days after a closing date, supply the chief executive officer with a list of the persons who are, as at the closing date, enrolled (including those provisionally 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 the Council is divided into wards, the list supplied under subclause (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 the Council a fee of an amount determined by the Electoral Commissioner for the supply of a list under this clause.
- (13) The voters roll must be brought up-to-date in accordance with the requirements of subclause (7) within 4 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 under this clause.

- (14) The 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) At any time between the close of nominations and polling day for an election, a nominated candidate for the election is entitled to obtain from the relevant council a copy of the voters roll in printed form for the area (and he or she may, during that period, obtain further copies of the voters roll in printed form from the Council on payment of the fees fixed by the Council).
- (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 clause 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.¹

Note—

- 1 Part 3 is also relevant to determining entitlements to vote.

Part 3—Entitlement to vote

4—Entitlement to vote

- (1) Subject to subclause (2), 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 not entitled to vote at an election if—
 - (a) he or she was provisionally enrolled; and
 - (b) he or she is not, as at polling day, of or above the age of majority.
- (3) 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 clause 18).
- (4) 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 clause 18).
- (5) A natural person is not entitled to vote under subclause (3) or (4) unless he or she is of or above the age of majority.
- (6) 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 Schedule, entitled to vote at the election or poll as if the error had not occurred.
- (7) 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 Schedule, entitled to vote at the election or poll under subclause (3) as if the error had not occurred.
- (8) 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 Schedule, entitled to vote at the election or poll under subclause (4) as if the error had not occurred.
- (9) A natural person cannot vote at an election or poll for another natural person pursuant to a power of attorney.
- (10) A natural person may only vote in 1 capacity at an election or poll for the City of Adelaide (but this clause does not prevent a person voting at 2 or more elections for the City of Adelaide held on the same day).

5—Entitlement to stand for election

- (1) Subject to this Schedule and the *Local Government Act 1999*, a person is eligible to be a candidate for election as a member of the 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) Subclause (1)(b) operates subject to the following qualifications:
- (a) a nominee of a body corporate must be an officer of the body corporate;
 - (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;
 - (c) a body corporate or group cannot nominate more than one person for a particular election;
 - (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 the 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 the 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 clause—
- 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 clause.

- (2) Schedule 1, heading to Part 7—delete the heading to Part 7 and substitute:

Part 7—Special provisions relating to postal voting

- (3) Schedule 1—before clause 19 insert:

18—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—
 - (i) that the ballot paper contained in the envelope contains his or her vote; and
 - (ii) that he or she has not already voted at the election or poll; and
 - (iii) 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 subclause (1) must appear on a tear-off extension to the envelope flap.
- (3) An envelope used under subclause (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 subclause (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 clause 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 clause—
 - (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 clause.
- (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.¹
- (10) The returning officer is not obliged to check the date of birth of a voter, or any other information, provided under this clause (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 clause, or that there has been some other formal defect or error on the part of the voter in complying with the requirements of this clause (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 clause 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 of the *Local Government (Elections) Act 1999*.

- (4) Schedule 1, clause 23(1)—delete "six weeks" and substitute:
30 days
- (5) Schedule 1, clause 24(3)(a)—delete "subject to paragraph (b),"
- (6) Schedule 1, clause 24(3)(a)(ii)—delete "*Local Government Act 1934*" and substitute:
Local Government Act 1999
- (7) Schedule 1, clause 24(3)(a)—delete "30" wherever occurring and substitute in each case:
21
- (8) Schedule 1, clause 24(3)(b)—delete paragraph (b)
- (9) Schedule 1, clause 25(2)(e)—delete "section 133 of the *Local Government Act 1934*" and substitute:
section 27 of the *Local Government (Elections) Act 1999*
- (10) Schedule 1, clause 31(5)—delete "three" and substitute:
4
- (11) Schedule 1, clause 33(2)—delete "three" and substitute:
4

Part 2—Transitional provisions

4—Section 12 of the *Local Government Act 1999*

- (1) This clause applies to a council other than the Adelaide City Council.
- (2) Despite section 12(4) of the *Local Government Act 1999*, a comprehensive review that is required to occur under that subsection—
- (a) must not be commenced during the period beginning on the commencement of this clause and ending on the conclusion of the periodic election (within the meaning of the *Local Government (Elections) Act 1999*) to be conducted in 2010; and
 - (b) if, but for the operation of paragraph (a), a council would have been required to commence the review during the period specified in paragraph (a)—must, instead, be commenced in 2011 and must be completed within a period specified by the Electoral Commissioner.
- (3) If a council has completed a comprehensive review within the period of 8 years before the commencement of this clause, the Electoral Commissioner may not give the council a notification under section 12(24)(b) of the *Local Government Act 1999* until the expiration of 8 years from the completion of the review (but nothing in this subclause prevents the Electoral Commissioner from giving a notification to a council that has completed a review after the commencement of this clause).