

South Australia

# Electoral (Miscellaneous) Amendment Act 2013

An Act to amend the *Electoral Act 1985*.

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## Contents

### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

### Part 2—Amendment of *Electoral Act 1985*

- 4 Amendment of section 4—Interpretation
- 5 Amendment of section 7—Remuneration and conditions of office
- 6 Amendment of section 21—Suppression of elector's address
- 7 Amendment of section 23—Rolls to be kept up to date
- 8 Amendment of section 29—Entitlement to enrolment
- 9 Repeal of Part 5 Division 2
- 10 Amendment of section 31A—Itinerant persons
- 11 Amendment of section 32—Making of claim for enrolment or transfer of enrolment
- 12 Amendment of section 32A—Notification of transfer within the same subdivision
- 13 Insertion of section 32B
  - 32B Enrolment or transfer of enrolment
- 14 Amendment of section 47—Issue of writ
- 15 Amendment of section 48—Contents of writ
- 16 Amendment of section 53—Multiple nominations of candidates endorsed by political party
- 17 Substitution of section 68
  - 68 Certified list of electors
- 18 Amendment of section 74—Issue of declaration voting papers by post or other means
- 19 Insertion of section 74A
  - 74A Offence to distribute application form for issue of declaration voting papers
- 20 Amendment of section 94—Informal ballot papers
- 21 Amendment of section 95—Scrutiny of votes in Legislative Council election
- 22 Amendment of section 96—Scrutiny of votes in House of Assembly election
- 23 Amendment of section 100—Reviewable decisions
- 24 Amendment of section 112—Publication of electoral advertisements, notices etc
- 25 Substitution of section 112A
  - 112A Special provision relating to how-to-vote cards
- 26 Amendment of section 112B—Certain descriptions not to be used
- 27 Amendment of section 116—Published material to identify person responsible for political content
- 28 Amendment of section 126—Prohibition of advocacy of forms of voting inconsistent with Act

**The Parliament of South Australia enacts as follows:**

**Part 1—Preliminary**

**1—Short title**

This Act may be cited as the *Electoral (Miscellaneous) Amendment Act 2013*.

**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 *Electoral Act 1985***

**4—Amendment of section 4—Interpretation**

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

*Commonwealth Act* means the *Commonwealth Electoral Act 1918* of the Commonwealth;

*Commonwealth roll* means the roll of electors for the State of South Australia kept under section 81 of the Commonwealth Act;

- (2) Section 4(1), definition of *how-to-vote card*—delete "a particular candidate or group of candidates suggests that"

**5—Amendment of section 7—Remuneration and conditions of office**

- (1) Section 7(6)—delete "or Deputy Electoral Commissioner"

- (2) Section 7—after subsection (6) insert:

(6a) A person appointed after the commencement of this subsection as Deputy Electoral Commissioner is so appointed for a term expiring 1 year after polling day of the general election second occurring after the person's appointment under this section and, at the expiration of a term of appointment, is eligible for reappointment.

- (3) Section 7(9)(c)—before "having" insert:

in the case of the Electoral Commissioner—

**6—Amendment of section 21—Suppression of elector's address**

Section 21—after its present contents (now to be designated as subsection (1)) insert:

- (2) If a person's address has not been included on, or has been deleted from, the Commonwealth roll under section 104 of the Commonwealth Act, the person's address must be suppressed from any roll under this Act.

## 7—Amendment of section 23—Rolls to be kept up to date

- (1) Section 23(a)—delete "pursuance of claims for enrolment under this Act" and substitute:

accordance with Part 5

- (2) Section 23—after paragraph (e) insert:

- (f) in relation to a person who is enrolled on the Commonwealth roll—reflecting any change under the Commonwealth Act in relation to that enrolment.

## 8—Amendment of section 29—Entitlement to enrolment

Section 29(1) and (2)—delete subsections (1) and (2) and substitute:

- (1) A person is entitled to be enrolled on the roll for a subdivision if—

- (a) the person—

- (i) has attained the age of 18 years; and

- (ii) —

- (A) is an Australian citizen; or

- (B) is a person who by virtue of his or her status as a British subject was, at some time within the period of 3 months commencing on 26 October 1983, enrolled under the repealed Act as an Assembly elector or enrolled on an electoral roll maintained under a law of the Commonwealth or a Territory of the Commonwealth; and

- (iii) has his or her principal place of residence in the subdivision and has lived at that place of residence for a continuous period of at least 1 month immediately preceding the date of the claim for enrolment; and

- (iv) is not of unsound mind; or

- (b) the person is properly enrolled on the Commonwealth roll, other than under section 100 of the Commonwealth Act, in respect of an address in the subdivision.

- (2) A person is entitled to provisional enrolment on the roll for a subdivision if—

- (a) the person—

- (i) has attained the age of 16 years; and

- (ii) would, if he or she had attained the age of 18 years, be entitled to be enrolled on the roll for that subdivision under subsection (1); or

- (b) the person is properly enrolled on the Commonwealth roll under section 100 of the Commonwealth Act in respect of an address in the subdivision.

## **9—Repeal of Part 5 Division 2**

Part 5 Division 2—delete Division 2

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

- (1) Section 31A(1)(b)—delete "section 29(1)(a), (b) and (d)" and substitute:
  - section 29(1)(a)(i), (ii) and (iv)
- (2) Section 31A—delete "section 29(1)(c)" wherever occurring and substitute in each case:
  - section 29(1)(a)(iii)
- (3) Section 31A(2)(b)—delete "and attested as required by the Electoral Commissioner"
- (4) Section 31A(3)(b)—delete "Division 2" and substitute:
  - Division 3

## **11—Amendment of section 32—Making of claim for enrolment or transfer of enrolment**

- (1) Section 32(1)—delete "A person" and substitute:
  - Subject to this Division, a person
- (2) Section 32—after subsection (1) insert:
  - (1a) A claim for enrolment or the transfer of enrolment—
    - (a) must be made in a manner and form approved by the Electoral Commissioner; and
    - (b) must be made to an electoral registrar.

## **12—Amendment of section 32A—Notification of transfer within the same subdivision**

Section 32A(1)—delete "An elector" and substitute:  
Subject to section 32B(4), an elector

## **13—Insertion of section 32B**

After section 32A insert:

### **32B—Enrolment or transfer of enrolment**

- (1) Where a claim for enrolment or transfer of enrolment made in accordance with section 32(1a) is received at the office of an electoral registrar, the electoral registrar must—
  - (a) if satisfied of the validity of the claim—enrol the claimant or transfer the enrolment of the claimant, in accordance with the claim; or
  - (b) if not satisfied of the validity of the claim—reject the claim.

- (2) No enrolment may—
- (a) be made on the roll for a subdivision; or
  - (b) be transferred from or to the roll for a subdivision,
- on the basis of a claim received at the office of an electoral registrar or by operation of subsection (4) between the time on which rolls for an election in the relevant district close and polling day for that election.
- (3) Where a claim is rejected, the electoral registrar must notify the claimant in writing—
- (a) of the rejection of the claim; and
  - (b) of the reasons for its rejection; and
  - (c) of the claimant's rights under this Act to appeal against the decision.
- (4) If a person is enrolled on the Commonwealth roll and the person's address recorded on that roll is an address in a subdivision—
- (a) the person is, for the purposes of this Act, to be taken—
    - (i) in the case of a person enrolled on the Commonwealth roll under section 100 of the Commonwealth Act—
      - (A) to have made a claim for enrolment; and
      - (B) to be provisionally enrolled; and
    - (ii) in any other case—
      - (A) to have made a claim in accordance with this Act, or given notice under section 32A (as the case requires); and
      - (B) to be enrolled as an elector for the subdivision for the purposes of this Act; and
  - (b) the particulars on the Commonwealth roll in relation to the person are, with such modifications (if any) as an electoral registrar considers necessary for the purposes of Part 4 of this Act, to be taken to be the particulars in relation to the person on the roll for the subdivision, unless the electoral registrar is satisfied that the person's particulars on the roll for the subdivision are more up-to-date than his or her particulars on the Commonwealth roll.

#### **14—Amendment of section 47—Issue of writ**

Section 47—after subsection (2) insert:

- (2a) In the case of a general election for the House of Assembly, the writ or writs for the elections in all House of Assembly districts must be issued 28 days before the date fixed for the polling in each district under section 48.

#### **15—Amendment of section 48—Contents of writ**

- (1) Section 48(3)(a)—delete "—the date falling 10 days after the date of the issue of the writ;" and substitute:

—

- (i) in the case of a general election for the House of Assembly—the date falling 6 days after the date of the issue of the writ; or
- (ii) in any other case—the date falling 10 days after the date of the issue of the writ;

- (2) Section 48(4)—delete "a date falling not less than 3 days nor more than 14 days after the date fixed for the close of the rolls." and substitute:

—

- (a) in the case of a general election for the House of Assembly—the date falling 3 days after the date fixed for the close of the rolls; or
- (b) in any other case—a date falling not less than 3 days nor more than 14 days after the date fixed for the close of the rolls.

#### **16—Amendment of section 53—Multiple nominations of candidates endorsed by political party**

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

- (4) The Electoral Commissioner must, in respect of each district for which a candidate has been nominated under this section, deliver to the returning officer a copy or facsimile of the nomination paper as soon as practicable after the receipt of the nomination paper under this section (and in any event before the hour of nomination).

#### **17—Substitution of section 68**

Section 68—delete the section and substitute:

##### **68—Certified list of electors**

- (1) The relevant electoral registrars in relation to a district must, as soon as practicable after the date fixed for the closing of the rolls for an election, supply the Electoral Commissioner with a certified list of the electors enrolled for the district.
- (2) The Electoral Commissioner must, as soon as practicable after receipt of the certified list of electors for a district, supply the returning officer for the district with a copy of the certified list of electors.

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

- (1) Section 74(4)(c)—delete "—the address of the principal place of residence" and substitute:
- 
- (i) the address of the principal place of residence; and
  - (ii) if an elector has provided an address to which declaration voting papers are to be issued that is different from the address of the principal place of residence—the address to which the papers are to be issued.
- (2) Section 74—after subsection (6) insert:
- (6a) The Electoral Commissioner must, on request, provide (in a form determined by the Electoral Commissioner)—
    - (a) the registered officer of a registered political party with a copy of the information contained in the register in relation to electors in any district; or
    - (b) a person who is a nominated candidate in an election with a copy of the information contained in the register in relation to electors for—
      - (i) in the case of a person who is a candidate in an election for a House of Assembly district—that district; or
      - (ii) in the case of a person who is a candidate in a Legislative Council election—the Legislative Council district.
  - (6b) If a copy of information contained in the register is provided to a person under subsection (6a), a person who uses that copy, or information contained in that copy, for a purpose other than the distribution of matter calculated to affect the result of a State election or purposes related to the holding of such election is guilty of an offence.
- Maximum penalty: \$10 000.

**19—Insertion of section 74A**

After section 74 insert:

**74A—Offence to distribute application form for issue of declaration voting papers**

- (1) A person, other than a person authorised by the Electoral Commissioner, must not distribute, or cause or permit to be distributed, a form for the application by an elector for the issue of declaration voting papers (an *application form*) unless—
- (a) the application form is in the prescribed form; and

- (b) it is stated on the form that it must be returned directly to the Electoral Commissioner; and
- (c) no additional information or matter appears on the form or on the reverse side of the form.

Maximum penalty: \$5 000.

- (2) In this section—

*distribute* an application form includes make the form available (including in electronic form) to other persons.

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

Section 94(1)(c)—delete paragraph (c)

## **21—Amendment of section 95—Scrutiny of votes in Legislative Council election**

Section 95(2)(f)—delete "by telegram or in some other" and substitute:

in an

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

Section 96(2)(f)—delete "by telegram or in some other" and substitute:

in an

## **23—Amendment of section 100—Reviewable decisions**

Section 100(1)—after paragraph (c) insert:

- (ca) a decision by the Electoral Commissioner as to the registration of a how-to-vote card; or

## **24—Amendment of section 112—Publication of electoral advertisements, notices etc**

- (1) Section 112(1)—after paragraph (a) insert:

- (ab) if the advertisement is authorised for a registered political party or a candidate endorsed by a registered political party—the party's name or, if the Register of Political Parties includes an abbreviation of the party's name, that abbreviation appears at the end; and
- (ac) if the advertisement is authorised for a relevant third party—the relevant third party's name appears at the end; and

- (2) Section 112—after subsection (2) insert:

- (3) In this section—

*relevant third party* means an organisation or other person, other than a registered political party, candidate or natural person, who—

- (a) as at the day of publication of the advertisement to which subsection (1)(ac) relates, intends to spend more than \$2 000 on electoral advertisements—

- (i) if the advertisement is published in an election period—during that election period; or
  - (ii) in any other case—during the election period for the next general election due to occur; or
- (b) spent more than \$2 000 on electoral advertisements during the election period for the general election immediately preceding the day of publication of the advertisement to which subsection (1)(ac) relates.

## **25—Substitution of section 112A**

Section 112A—delete the section and substitute:

### **112A—Special provision relating to how-to-vote cards**

- (1) During the election period for an election, a person must not distribute, or cause or permit to be distributed, a how-to-vote card unless—
- (a) the name (being the name by which the person is usually known) and address (not being a post office box) of the person who authorised the card appears at the bottom of the card; and
  - (b) if the card is authorised—
    - (i) for a registered political party or a candidate endorsed by a registered political party—the party's name or, if the Register of Political Parties includes an abbreviation of the party's name, that abbreviation; or
    - (ii) for a candidate who is not endorsed by a registered political party—the candidate's name and the word "candidate",is stated on the card in accordance with any requirements prescribed by the regulations; and
  - (c) the card—
    - (i) has substantially the same appearance as a how-to-vote card that—
      - (A) has been submitted for inclusion in posters under section 66; or
      - (B) has been lodged with the Electoral Commissioner no later than 12 noon on the day falling 8 days before polling day; or
    - (ii) is a compilation of more than 1 how-to-vote card of a kind referred to in subparagraph (i) (provided that those how-to-vote cards relate to different electoral districts).

Maximum penalty: \$5 000.

- (2) A how-to-vote card lodged with the Electoral Commissioner under subsection (1)(c)(i)(B) must—
- (a) be lodged in a manner determined by the Electoral Commissioner; and
  - (b) comply with any requirements prescribed by the regulations.
- (3) If a how-to-vote card is lodged with the Electoral Commissioner under subsection (1)(c)(i)(B) by or on behalf of a candidate, no further how-to-vote card may be lodged in relation to the same election by or on behalf of that candidate.
- (4) If a how-to-vote card is submitted to the Electoral Commissioner by or on behalf of a candidate in accordance with section 66 (the *initial submitted how-to-vote card*), any how-to-vote card that—
- (a) is subsequently lodged with the Electoral Commissioner under subsection (1)(c)(i)(B) or distributed in relation to the same election; and
  - (b) relates to the candidate; and
  - (c) is authorised by or for the candidate or a registered political party of which the candidate is a member,
- must have substantially the same appearance as the initial submitted how-to-vote card.
- (5) A person who distributes a how-to-vote card in contravention of subsection (4) is guilty of an offence.  
Maximum penalty: \$5 000.
- (6) For the purposes of this section, how-to-vote cards will be taken to have *substantially the same appearance* if the cards are identical except for—
- (a) the size or shape of the cards; or
  - (b) the fonts used in the cards; or
  - (c) the material or medium on which the cards are printed or published; or
  - (d) the manner in which the cards suggest that a voter indicate the order of preference for candidates on the ballot paper; or
  - (e) any other matter prescribed by the regulations for the purposes of this subsection.
- (7) Despite subsection (6), a how-to-vote card distributed by or on behalf of a candidate (the *relevant candidate*) will be taken not to have substantially the same appearance as—
- (a) the relevant candidate's initial submitted how-to-vote card (if any); or
  - (b) a how-to-vote card lodged under subsection (1)(c)(i)(B) by or on behalf of the relevant candidate,

if—

- (c) the distributed how-to-vote card indicates that the first preference vote should be given to a different candidate from the relevant candidate or any other candidate indicated as a candidate to whom a first preference vote should be given on a how-to-vote card referred to in paragraph (a) or (b); and
  - (d) the relevant candidate has not given written notice at least 8 days before the card is distributed and in accordance with any other requirements of the regulations to the candidate to whom the distributed how-to-vote card indicates that the first preference vote should be given.
- (8) In this section—

*distribute* a how-to-vote card includes make the card available (including in electronic form) to other persons;

*how-to-vote card* includes any material that has the appearance of a how-to-vote card (whether published on its own or as part of any other material).

## **26—Amendment of section 112B—Certain descriptions not to be used**

Section 112B(4), definition of *distribute*—after "available" insert:

(including in electronic form)

## **27—Amendment of section 116—Published material to identify person responsible for political content**

- (1) Section 116(1)—delete "in a journal published in electronic form on the Internet"
- (2) Section 116(1)—delete "or broadcast on the Internet"
- (3) Section 116(2)(a)—delete "(including a journal published in electronic form on the Internet)"
- (4) Section 116(2)(c)—delete paragraph (c) and substitute:
  - (c) the publication in a journal of an article, letter, report or other matter if the journal contains a statement to the effect that a person whose name and address (not being a post office box) appears in the statement takes responsibility for the publication of all electoral matter published in the journal;
- (5) Section 116(2)(d)—delete "or broadcast on the Internet"

## **28—Amendment of section 126—Prohibition of advocacy of forms of voting inconsistent with Act**

Section 126(2)—delete "marked so as to indicate a valid vote in the manner prescribed in section 76(1) or (2)." and substitute:

- (a) marked so as to indicate a valid vote in the manner prescribed in section 76(1) or (2); or

- (b) identical to a card submitted for inclusion in posters under section 66.