

South Australia

Local Government (Elections) (Miscellaneous) Amendment Regulations 2022

under the *Local Government (Elections) Act 1999*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Local Government (Elections) (Miscellaneous) Amendment Regulations 2022*.

2—Commencement

These regulations come into operation on the day on which section 151 of the *Statutes Amendment (Local Government Review) Act 2021* comes into operation.

Part 2—Amendment of *Local Government (Elections) Regulations 2010*

3—Insertion of regulation 3A

Before regulation 4 insert:

3A—Filling vacancy in certain circumstances

- (1) For the purposes of section 6A(2)(a) of the Act—
 - (a) the returning officer must contact each candidate who was not elected in the most recent election for the relevant office or the designated supplementary election referred to in section 6(2)(c)(ii)(B) of the Act (as the case requires) to request that the candidate make a declaration under paragraph (b); and
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- (b) a candidate may, within the relevant period and in a form determined by the returning officer, make a declaration that they are still willing and eligible to be elected to the relevant office (an *eligible candidate*); and
 - (c) if, after the relevant period—
 - (i) there is 1 eligible candidate—that candidate will be determined to fill the vacancy; or
 - (ii) there is more than 1 eligible candidate—the returning officer must determine which of the eligible candidates will fill the vacancy or vacancies by recounting the votes in accordance with—
 - (A) if there is 1 vacancy—section 48(1a) of the Act as modified by subregulation (2); or
 - (B) if there is more than 1 vacancy—section 48(1) of the Act as modified by subregulation (2).
- (2) For the purposes of a recount under subregulation (1), section 48 of the Act is modified as follows:
- (a) a vote indicated on a ballot paper opposite the name of the candidate in whose office the vacancy occurred will be counted to the eligible candidate next in order of the voter's preference;
 - (b) in addition, a vote indicated on a ballot paper opposite the name of a candidate who is not an eligible candidate will be counted to the eligible candidate next in order of the voter's preference;
 - (c) after the returning officer gives effect to paragraphs (a) and (b), the numbers indicating subsequent preferences on the relevant ballot papers will be taken to have been altered accordingly;
 - (d) a reference in section 48 to a candidate will be taken to be a reference to an eligible candidate.
- (3) To avoid doubt, a recount under subregulation (1) does not affect the election of any other member according to the votes actually cast at the election.
- (4) A declaration under section 6A(2)(c)(i) of the Act 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 of the Act and the returning officer may then take such action that may be appropriate in the manner contemplated by section 50 of the Act.
- (5) For the purposes of section 6A(2)(c)(ii) of the Act, the returning officer must determine the next successful candidate in such manner as the returning officer sees fit.

- (6) To avoid doubt, for the purposes of this regulation, a reference to an eligible candidate in relation to a recount does not include a reference to a candidate who is, immediately before the commencement of the recount, an elected member of the council.
- (7) In this regulation—
relevant period means the period determined by the returning officer.

4—Amendment of regulation 5—Manner in which nominations are made

- (1) Regulation 5(2)(b)—delete paragraph (b) and substitute:
 - (b) the profile must not, subject to subregulation (2a), exceed 1 000 characters;
- (2) Regulation 5—after subregulation (2) insert:
 - (2a) The contact details, statement and information provided under subregulation (2)(d), (e) and (f) (respectively) are excluded from the 1 000 character limit imposed by subregulation (2)(b) and the operation of subregulation (3).
- (3) Regulation 5(3)—delete subregulation (3) and substitute:
 - (3) Subject to subregulation (2a), if—
 - (a) a profile submitted with a nomination form exceeds 1 000 characters; and
 - (b) the candidate has not reduced the size of the profile to 1 000 characters or less by the close of nominations,

the returning officer will exclude from the profile all characters appearing after the 1 000th character.
- (4) Regulation 5(8)(d)—delete "bear on its back an endorsement" and substitute:

, in a manner determined by the Electoral Commissioner, be endorsed

5—Insertion of regulation 10A

After regulation 10 insert:

10A—Filling vacancy if successful candidate dies

- (1) For the purposes of section 55A(2)(a) of the Act—
 - (a) the returning officer must contact each candidate who was not elected in the most recent election for the relevant office to request that the candidate make a declaration under paragraph (b); and
 - (b) a candidate may, within the relevant period and in a form determined by the returning officer, make a declaration that they are still willing and eligible to be elected to the relevant office (an *eligible candidate*); and
 - (c) if, after the relevant period—

- (i) there is 1 eligible candidate—that candidate will be determined to fill the vacancy; or
 - (ii) there is more than 1 eligible candidate—the returning officer must determine which of the eligible candidates will fill the vacancy by recounting the votes in accordance with section 48(1a) of the Act as modified by subregulation (2).
- (2) For the purposes of a recount under subregulation (1), section 48 of the Act is modified as follows:
 - (a) a vote indicated on a ballot paper opposite the name of the candidate in whose office the vacancy occurred will be counted to the eligible candidate next in order of the voter's preference;
 - (b) in addition, a vote indicated on a ballot paper opposite the name of a candidate who is not an eligible candidate will be counted to the eligible candidate next in order of the voter's preference;
 - (c) after the returning officer gives effect to paragraphs (a) and (b), the numbers indicating subsequent preferences on the relevant ballot papers will be taken to have been altered accordingly;
 - (d) a reference in section 48 to a candidate will be taken to be a reference to an eligible candidate.
- (3) To avoid doubt, a recount under subregulation (1) does not affect the election of any other member according to the votes actually cast at the election.
- (4) A declaration under section 55A(2)(c)(i) of the Act 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 of the Act and the returning officer may then take such action that may be appropriate in the manner contemplated by section 50 of the Act.
- (5) For the purposes of section 55A(2)(c)(ii) of the Act, the returning officer must determine the next successful candidate in such manner as the returning officer sees fit.
- (6) To avoid doubt, for the purposes of this regulation, a reference to an eligible candidate in relation to a recount does not include a reference to a candidate who is, immediately before the commencement of the recount, an elected member of the council.
- (7) In this regulation—
relevant period means the period determined by the returning officer.

Editorial note—

As required by section 10AA(2) of the *Legislative Instruments Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

after consultation with the Local Government Association and with the advice and consent of the Executive Council

on 7 July 2022

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