



ANNO TRICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1986

No. 101 of 1986

An Act to amend the Local Government Act, 1934.

[Assented to 18 December 1986]

The Parliament of South Australia enacts as follows:

1. (1) This Act may be cited as the “Local Government Act Amendment Act (No. 4), 1986”. Short title.

(2) The Local Government Act, 1934, is in this Act referred to as “the principal Act”.

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. Section 5 of the principal Act is amended by inserting after subsection (1a) the following subsection: Amendment of s. 5— Interpretation.

(1b) An electoral officer engaged by a council’s returning officer is, for the purposes of this Act, an officer of the council.

4. Section 48 of the principal Act is repealed and the following section is substituted: Repeal of s. 48 and substitution of new section.

48. (1) Subject to this section, the office of a member of a council becomes vacant if the member— Casual vacancies.

(a) dies;

(b) resigns by notice in writing to the chief executive officer;

(c) is removed from office by the Governor on the ground of mental or physical incapacity to carry out official duties satisfactorily;

(d) is removed from office by the council on the ground that he or she has been absent, without leave of the council, from three or more consecutive meetings (the first of which must have been held three months or more before the last);

(e) becomes an officer or employee of the council;

(f) is declared bankrupt;

(g) fails to submit a return under Part VIII before the expiration of one month from the end of the period allowed under that Part for the submission of the return;

or

(h) is convicted of an indictable offence.

(2) Where a member of a council stands for election to an office in the council other than the one presently held by the member, the latter office becomes vacant at the conclusion of the election.

(3) The resignation of a member takes effect on receipt by the chief executive officer of the notice of resignation or on such later date, not more than 14 days in advance, as may be specified in the notice of resignation (but once the notice is received by the chief executive officer the resignation cannot be withdrawn).

(4) Where a member's office becomes vacant because of the member's failure to submit a return under Part VIII—

(a) a court of summary jurisdiction may, on an application made within one month after the vacation of office, restore the member to office if satisfied that the failure arose from circumstances beyond the member's control;

(b) proceedings for a supplementary election to fill the vacancy must not be commenced until the period for making an application under paragraph (a) has expired or, if there is an application, until the application is determined;

and

(c) the member cannot be nominated as a candidate for the election to fill the vacancy unless he or she has submitted to the chief executive officer the return that was required to be submitted under Part VIII.

(5) Where a member's office becomes vacant because the member has been convicted of an indictable offence, proceedings for a supplementary election to fill the vacancy must not be commenced until the period for appealing against the conviction has expired or, if there is an appeal, until the appeal is determined.

(6) Where the office of a member of a council becomes vacant under subsection (1) the chief executive officer must notify the members of the council at the next meeting of the council and give notice of the occurrence of the vacancy in the *Gazette* (but the members of the council need not be notified where the member was removed from office by the council).

(7) A member's office does not become vacant by reason only of the fact that the member, after election or appointment, ceases to be an elector for the area.

5. Section 49 of the principal Act is amended by striking out paragraph (b) of subsection (5) and substituting the following paragraph:

(b) all other allowances shall be paid (in accordance with the council's determination) at the end of the month, quarter, half-year, or year in respect of which the allowances accrue.

6. Section 60 of the principal Act is amended by inserting after subsection (2) the following subsection:

Amendment of
s. 60—
Procedure at
meetings.

(2a) Where—

- (a) a chairman is to be elected at a meeting of a council;
- (b) an acting mayor or acting chairman is to be elected at a meeting of a council;

or

- (c) a member of a council must be chosen by those present at a meeting of the council to preside at the meeting,

the chief executive officer will preside at the meeting until the election is held or the choice is made.

7. Section 91 of the principal Act is repealed and the following section is substituted:

Repeal of s. 91
and substitution
of new section.

91. (1) Subject to this Act—

Qualifications for
enrolment.

(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;
- (ii) is resident at a place of residence within the area or ward and has lodged the prescribed declaration with the council;

or

(iii) is a ratepayer in respect of ratable property within the area or ward and is the sole owner or sole occupier of that ratable property;

(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 ratable property within the area or ward and is the sole owner or the sole occupier of the ratable 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 ratable property within the area or ward;
- (ii) the members of the group are joint owners, owners in common or joint occupiers of the ratable 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).

(2) A body corporate or a group that is entitled to be enrolled on a voters roll in pursuance of subsection (1) may, by notice in writing (in the prescribed form and containing the prescribed declarations) lodged with the council—

(a) nominate a natural person to act as an elector on its behalf;
or

(b) cancel any such nomination previously made and make a fresh nomination in its place.

(3) A person may not be nominated as the nominated agent of a body corporate or a group under subsection (2) unless that person—

(a) is of or above the age of majority;

and

(b) (i) in the case of a nomination made by a body corporate—is an officer of the body corporate;

(ii) in the case of a nomination by a group—is a member of the group or an officer of a body corporate that is a member of the group.

(4) A nomination in force under this section must be recorded in the voters roll alongside the name of the body corporate or group by which the nomination was made.

(5) A person whose name is recorded in the voters roll as a nominated agent shall be regarded as having been enrolled as an elector.

(6) Where—

(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;

(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;

(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 electoral roll, that the elector is not still resident in the area or ward.

Amendment of
s. 92—
The voters roll.

8. Section 92 of the principal Act is amended by striking out subsections (4) and (5) and substituting the following subsections:

(4) The voters roll must be revised twice in each year, the first revision being made so that the roll reflects entitlements to enrolment as they existed on the second Thursday of February and the second revision being made so that the roll reflects entitlements as they existed on the second Thursday of August (“the closing dates”).

(5) A revision under subsection (4) must be completed before the first Thursday of the calendar month following the month in which the closing date occurs and the roll, as revised, must be used for the purposes of—

(a) any periodical election held after the completion of the revision and before the completion of the next revision;

(b) any supplementary election for a casual vacancy in the membership of the council where the casual vacancy occurs after the completion of the revision and before the completion of the next revision;

and

(c) any poll held after the completion of the revision and before the completion of the next revision.

9. Section 94 of the principal Act is amended—

Amendment of
s. 94—
Date of elections.

(a) by striking out from subsection (1) "Elections" and substituting "Subject to this section, elections";

(b) by inserting after subsection (1) the following subsections:

(1a) Where—

(a) a proposal for the making of a proclamation under Part II amalgamating two or more councils has been referred by the Minister to the Advisory Commission for inquiry and recommendations;

(b) the proposal was referred to the Commission at least three months before the first Thursday of March in a year in which periodical elections are to be held under subsection (1);

(c) the Commission has advised the Minister that it will not be able to report to the Minister on the proposal before the first Thursday of March in a year in which periodical elections are to be held under subsection (1),

the Governor may, by proclamation, suspend the holding of periodical elections for the councils to which the proposal relates pending the outcome of the report of the Commission.

(1b) The Governor may, by subsequent proclamation, appoint a day for the holding of elections suspended under subsection (1a).

(1c) A proclamation under this section may make any other provision that is necessary or desirable in the circumstances of the case.;

and

(c) by striking out subsection (3) and substituting the following subsections:

(3) Subject to this Act, a supplementary election must be held as soon as practicable after the occasion for the election arises.

(4) The returning officer must appoint a Saturday for the taking of the poll at a supplementary election.

10. Section 96 of the principal Act is amended—

Amendment of
s. 96—
Nominations.

(a) by striking out subsections (5) and (6) and substituting the following subsections:

(5) Nominations close—

(a) in the case of a periodical election—at 12 noon on the last Thursday of March in the year in which the periodical election is to be held;

or

(b) in the case of a supplementary election—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 the day appointed for taking the poll.

(6) The returning officer must—

(a) in the case of a periodical election—not later than the first Thursday of March in the year in which the periodical election is to be held;

or

(b) in the case of a supplementary election—not later than 21 days before the day on which nominations close,

give public notice stating the vacancies to be filled at the election and inviting nomination of candidates for election to the vacancies;

and

(b) by inserting after subsection (14) the following subsection:

(15) Where an election is to be held, a notice given to a candidate under subsection (14) should be accompanied by a copy of Division X.

Repeal of s. 97
and substitution
of new section.

11. Section 97 of the principal Act is repealed and the following section is substituted:

Failure of election
in certain cases.

97. (1) If between the close of nominations and the conclusion of an election a nominated candidate—

(a) dies;

(b) by notice in writing to the returning officer, withdraws his or her nomination on the ground of serious illness;

or

(c) ceases to be qualified for election,

the election shall be deemed to have wholly failed.

(2) The returning officer shall not recognize the withdrawal of a nomination under subsection (1) (b) 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.

Amendment of
s. 99—
Ballot papers for
elections.

12. Section 99 of the principal Act is amended by inserting after subsection (6) the following subsection:

(7) A ballot paper prepared under this section must conform with any requirements imposed by regulation.

13. Section 100 of the principal Act is repealed and the following section is substituted:

Repeal of s. 100 and substitution of new section.

100. (1) A person voting at an election (whether the election is held to fill one vacancy or more than one vacancy) shall make a vote on the ballot paper—

Method of voting at elections.

(a) where the method of counting votes applying at the election is the method set out in section 121 (3)—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) where the method of counting votes applying at the election is the method set out in section 121 (4)—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 not less than the number of candidates required to be elected.

(2) A tick or cross appearing on a ballot paper is equivalent to the number 1.

(3) If 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), 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.

14. Section 106 of the principal Act is amended—

Amendment of s. 106—
Issue of advance voting papers.

(a) by inserting in subsection (3) “under this section” after “Advance voting papers”;

(b) by inserting in subsection (4) “under this section” after “for advance voting papers”;

(c) by striking out paragraph (b) of subsection (4) and substituting the following paragraph:

(b) in any other case, shall be sent by post to the applicant at the address shown on the application or, if no address is shown, to the address shown on the voters roll (if any).;

(d) by inserting in subsection (7) “until after the conclusion of the election or poll for which the advance voting papers are issued” after “public inspection”;

and

(e) by inserting after subsection (8) the following subsection:

(9) Advance voting papers must be available for use under this section at least 21 days before the day on which an election or poll is to be held.

Insertion of new
s. 106a.

15. The following section is inserted after section 106 of the principal Act:

Use of advance
voting papers in
proclaimed areas.

106a. (1) If the Governor is satisfied on the application of a district council that, by reason of the size, geographical configuration, or sparse settlement of an area or ward, it would be expedient to dispense with voting at polling places, the Governor may, by proclamation, declare the area or ward to be one to which this section applies.

(2) No polling place need be opened for voting at an election or poll in an area or ward to which this section applies.

(3) Where an election or poll is to be held in an area or ward to which this section applies, the returning officer must, at least 21 days before the day appointed for the election or poll issue to every natural person whose name appears in the voters roll used for the election or poll (as it relates to that area or ward) advance voting papers (initialled by the returning officer) consisting of—

(a) a ballot paper;

and

(b) an opaque envelope on the outside of which are printed two declarations—

(i) one being a declaration in the prescribed form to be subscribed by the voter to the effect that the ballot paper contained in the envelope contains his or her vote;

and

(ii) the other being a declaration in the prescribed form to be subscribed by a witness of or above the age of majority to the effect that there is no reason to believe that the vote has been influenced by fraud or undue influence.

(4) Advance voting papers (initialled by the returning officer) must also be issued to any person whose name does not appear in the voters roll but who claims to be entitled to vote at the election or poll and applies to the returning officer for advance voting papers not later than 5 p.m. on the day before the day appointed for the election or poll.

(5) Advance voting papers issued under subsection (4) must have included on the envelope referred to in subsection (1) an additional declaration in the prescribed form for the voter to set out the grounds on which an entitlement to vote is claimed.

(6) Advance voting papers issued under this section must be accompanied by an explanatory notice in the prescribed form.

(7) The returning officer must keep a record of the persons to whom advance voting papers have been issued under subsection (4) (and the record will not be available for public inspection until after

the conclusion of the election or poll for which the advance voting papers are issued).

(8) Advance voting papers may be issued under this section—

(a) by giving them to the prospective voter personally;

or

(b) by sending them by post to the prospective voter at the address on the voters roll or if the name and address of the prospective voter do not appear on the voters roll, at some other address of which the returning officer has received notice.

(9) When the returning officer issues advance voting papers to a person whose name appears in the voters roll, the returning officer shall, for the purposes of the election or poll, rule a line through the person's name on the roll.

(10) The Governor may, on the application of a council, vary or revoke a proclamation under this section.

16. Section 107 of the principal Act is amended—

(a) by striking out from subsection (1) “in advance” and substituting “by use of those papers”;

and

(b) by striking out from subsection (2) “the close of voting” and substituting “6 p.m. on the day appointed for the election or poll”.

Amendment of s. 107—
Procedure to be followed for advance voting.

17. Section 109 of the principal Act is repealed and the following section is substituted:

109. (1) If the returning officer is satisfied that advance voting papers issued to an elector—

(a) have not been received by the elector;

(b) have been lost;

or

(c) have been inadvertently spoiled,

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

(2) The returning officer must keep a record of the issue of advance voting papers under this section.

Repeal of s. 109 and substitution of new section.

Issue of fresh advance voting papers.

18. Section 111 of the principal Act is repealed.

Repeal of s. 111.

19. The following section is inserted after section 112 of the principal Act:

112a. (1) A candidate may submit how-to-vote cards to the returning officer for display in polling places.

(2) The how-to-vote cards—

(a) must be in the prescribed form;

Insertion of new s. 112a.

How-to-vote cards.

(b) must be submitted in a quantity determined by the returning officer;

and

(c) must be received by the returning officer not less than seven days before the day appointed for the election.

(3) The returning officer will have the how-to-vote cards made into posters for display in each polling place where voting for the election to which the cards relate may occur and must ensure that the posters are displayed during the hours for voting.

(4) If two or more candidates submit how-to-vote cards in respect of the same election, the cards must appear on the poster in the same order as the names of the candidates appear on the ballot papers.

(5) If two or more elections are held simultaneously, how-to-vote cards in respect of those elections may be included on the same poster, but in that event, the cards relating to the various elections should be differentiated in an appropriate manner.

(6) Subject to this section, the form of posters for display under this section will be as determined by the returning officer.

20. Section 121 of the principal Act is amended—

Amendment of
s. 121—
Procedure to be
followed at close
of voting.

(a) by striking out paragraph (b) of subsection (1) and the word “and” immediately preceding that paragraph and substituting the following paragraphs:

(b) if the returning officer has determined that the presiding officer should have the powers conferred by this paragraph—

(i) open the ballot boxes and remove the ballot papers;

(ii) arrange all ballot papers that appear to the presiding officer to be informal in a separate parcel;

(iii) arrange the remaining ballot papers under the names of the respective candidates, including in each parcel all ballot papers on which a first preference for the relevant candidate is indicated;

(iv) count the number of ballot papers in each parcel;

(v) make out a return of the number of ballot papers in each parcel;

(vi) return the parcels of ballot papers to the ballot boxes and lock the ballot boxes,

(but no decision taken by a presiding officer under this paragraph as to the validity of a ballot paper or in relation to the counting of ballot papers is binding on the returning officer);

and

(c) transmit to the returning officer—

- (i) all ballot boxes used at the polling place;
- (ii) all ballot papers that were not deposited in the ballot boxes;
- (iii) the return referred to in paragraph (a) and, if the presiding officer exercised the powers conferred by paragraph (b), the return referred to in that paragraph;

(b) by inserting after subsection (2) the following subsection:

(2a) Where all voting in the election has been carried out by the use of advance voting papers, the returning officer shall, with the assistance of any other electoral officers who may be present, and in the presence of any scrutineers who may be present—

- (a) open all ballot boxes used in the election, remove the contents and exhibit the ballot boxes empty;
- (b) examine the declarations on all the envelopes used for declaration votes and determine which votes are to be admitted to the count and which rejected from the count, rejecting from the count the vote of any person whose name does not appear on the voters roll in the capacity in which he or she claims to be entitled to vote unless the person's name was omitted from the roll in error;
- (c) remove the ballot papers from all the envelopes which are by the determination under paragraph (b) to be admitted to the count;
- (d) examine all the ballot papers removed from such envelopes and reject any informal ballot papers;
- (e) arrange all the unrejected ballot papers under the names of the respective candidates by placing in a separate parcel all those on which a first preference is indicated for the same candidate;

(c) by striking out "seventy-two" wherever it occurs in subsections (7) and (8) substituting, in each case, "48";

and

(d) by inserting after subsection (8) the following subsection:

(8a) The following provisions apply to a re-count:

- (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 any decision taken at the count;

and

- (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 re-count.

Amendment of
s. 122—
Council to
determine method
of counting votes.

21. Section 122 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) The following provisions apply in relation to a determination under subsection (1):

(a) subject to paragraph (b), the determination will determine the method of counting to apply at the next periodical elections and at all supplementary and periodical elections following those periodical elections;

(b) the determination will not affect periodical elections held within three months of the making of the determination;

(c) the method of counting votes at elections applying at the time of the making of the determination will continue to apply until the determination comes into effect;

and

(d) the council must, as soon as practicable after making the determination, cause notice in the prescribed form to be given to the Minister and published in the *Gazette*.

Insertion of new
s. 123a.

22. The following section is inserted after section 123 of the principal Act:

Use of electronic
equipment to
count votes.

123a. Subject to the regulations, electronic equipment of a prescribed kind may be used for the purpose of counting votes.

Amendment of
s. 133—
Publication of
electoral material
to contain
statement of
authority, etc.,
under which it is
published.

23. Section 133 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) Where 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 person who takes responsibility for the publication of the material.

Penalty: \$2 000.

Insertion of new
s. 141a.

24. The following section is inserted after section 141 of the principal Act:

Participation of
council in
proceedings.

141a. (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.

(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 upon such other conditions as the Court may direct.

Amendment of
s. 144—
Costs.

25. Section 144 of the principal Act is amended by inserting in subsection (1) “(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)" after "just".

26. Section 303 of the principal Act is amended by inserting after paragraph III of subsection (1) the following paragraph:

IV Any land laid out as a pathway or walkway for use by the public generally.

Amendment of s. 303—
Power to declare certain streets, road or land public streets and roads.

27. Section 359 of the principal Act is amended by inserting in subsection (1) "or part of a particular street, road or public place" after "public place".

Amendment of s. 359—
Temporary control or prohibition of traffic or closure of streets or roads.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor