



ANNO TRICESIMO NONO

ELIZABETHAE II REGINAE

A.D. 1990

No. 69 of 1990

An Act to amend the Local Government Act, 1934.

[Assented to 20 December 1990]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Local Government Act Amendment Act, 1990*.
- (2) The *Local Government Act, 1934*, is referred to in this Act as “the principal Act”.

Commencement

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

Interpretation

3. Section 5 of the principal Act is amended—

(a) by inserting in subsection (1) after the definition of “domestic premises” the following definition:

“driver” includes rider;

and

(b) by inserting in subsection (1) after the definition of “owner” of land the following definition:

“owner”, in relation to a motor vehicle, means—

- (a) a person registered or recorded as the owner or an owner of the vehicle under the *Motor Vehicles Act, 1959*, or a similar law of the Commonwealth or another State or a Territory of the Commonwealth;
- (b) if the vehicle is registered in the name of a business under the *Motor Vehicles Act, 1959*, or a similar law of the Commonwealth or another State or a Territory of the Commonwealth—any person carrying on that business;

or

- (c) a person to whom a trader’s plate, a permit or other authority has been issued under the *Motor Vehicles Act, 1959*, or a similar law

of the Commonwealth or another State or a Territory of the Commonwealth, by virtue of which the vehicle is permitted to be driven on roads,

and includes—

(d) if the ownership of the vehicle has been transferred but the transferee has not yet been registered or recorded as the owner of the vehicle—a person to whom ownership of the vehicle has been transferred;

or

(e) if a person has possession of the vehicle by virtue of the hire or bailment of the vehicle—that person.

Insertion of s. 49a

4. The following section is inserted after section 49 of the principal Act:

Register of allowances and benefits

49a. (1) The Chief Executive Officer of a council must ensure that a record (the “Register of Allowances”) is kept in which is entered, in accordance with principles (if any) prescribed by the regulations, in respect of each member of the council—

(a) the annual allowance payable to the member;

and

(b) details of any other allowance or benefit paid or payable to, or provided for the benefit of, the member by the council.

(2) The Chief Executive Officer must ensure that an appropriate record is made in the Register of Allowances within 28 days after—

(a) a change in the allowance or a benefit payable to, or provided for the benefit of, a member;

or

(b) the payment or provision of an allowance or benefit not previously recorded in the Register.

(3) A person is entitled to inspect the Register of Allowances at the council’s principal office from one hour after the commencement of ordinary office hours to one hour before the close of ordinary office hours.

(4) A person is entitled, on payment of a fee fixed by the council, to a copy of any entry made in the Register of Allowances.

(5) A Chief Executive Officer is not required to include in a Register of Allowances under this section details of any reimbursement of expenses of a prescribed kind incurred by a member in performing official duties.

Insertion of s. 70a

5. The following section is inserted after section 70 of the principal Act:

Register of salary and benefits

70a. (1) The Chief Executive Officer of a council must ensure that a record (the “Register of Salaries”) is kept in which is entered, in accordance with principles (if any) prescribed by the regulations—

(a) the title of each position held by an officer or employee of the council;

(b) in relation to those positions held by officers or employees who are paid according to salary scales set out in an award or industrial agreement

under the *Industrial Conciliation and Arbitration Act, 1972*, or the *Industrial Relations Act 1988* of the Commonwealth—

- (i) the classifications of the officers or employees who hold those positions;
 - (ii) the salary scales applicable to each classification (indicating in relation to each scale the number of officers or employees who are paid according to that scale);
- and
- (iii) details of any other allowance or benefit paid or payable to, or provided for the benefit of, any of those officers or employees as part of a salary package;
- (c) in relation to each position held by an officer or employee who is not paid according to a salary scale set out in an award or industrial agreement referred to above—
- (i) the salary or wage payable to the officer or employee who holds that position;
- and
- (ii) details of any other allowance or benefit paid or payable to, or provided for the benefit of, that officer or employee as part of a salary package.

(2) The Chief Executive Officer must ensure that a record is made in the Register of Salaries within 28 days after—

- (a) a change in the salary or wage, or an allowance or benefit, payable to, or provided for the benefit of, an officer or employee;

or

- (b) the payment or provision of an allowance or benefit not previously recorded in the Register,

(insofar as may be necessary or appropriate in the circumstances of the particular case).

(3) A person is entitled to inspect the Register of Salaries at the council's principal office from one hour after the commencement of ordinary office hours to one hour before the close of ordinary office hours.

(4) A person is entitled, on payment of a fee fixed by the council, to a copy of any entry made in the Register of Salaries.

(5) A Chief Executive Officer is not required to include in a Register of Salaries under this section details of any reimbursement of expenses incurred by an officer or employee in performing official duties unless that reimbursement occurs by way of the periodical payment of a lump sum that is not calculated so as to provide exact reimbursement of expenses incurred by an officer or employee in performing official duties.

Ballot papers for elections

6. Section 99 of the principal Act is amended by striking out subsection (7) and substituting the following subsection:

- (7) A ballot paper must conform with any other requirements imposed by regulation.

Issue of advance voting papers

7. Section 106 of the principal Act is amended—

(a) by striking out subsections (6) and (7) and substituting the following subsection:

(6) The returning officer must keep a record of the persons to whom advance voting papers are issued under this section;

and

(b) by striking out from subsection (10) “, by public notice in the prescribed form,” and substituting “, by notice in the prescribed form published in a newspaper circulating in the area,”.

Voting in remote areas

8. Section 106a of the principal Act is amended—

(a) by striking out subsections (9) and (9a) and substituting the following subsection:

(9) The returning officer must keep a record of the persons to whom advance voting papers are issued under this section;

and

(b) by striking out from subsection (9b) “, by public notice in the prescribed form,” and substituting “, by notice in the prescribed form published in a newspaper circulating in the area,”.

Procedures to be followed for advanced voting

9. Section 107 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) Where an electoral officer receives before the close of voting on polling day an envelope bearing declarations apparently completed in accordance with this section, the electoral officer must immediately deposit the envelope unopened in a sealed ballot box.

Insertion of s. 114a

10. The following section is inserted before section 115 of the principal Act:

Signature to electoral material

114a. Where a person who is unable to sign his or her name in writing makes a mark as his or her signature on any voting material, the mark will be taken to be the person's personal signature if it is identifiable as such and is made in the presence of a witness of or above the age of majority.

Determination of method of counting at elections

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

(a) subject to paragraph (b), the determination will determine the method of counting to apply—

(i) at the next general election;

and

(ii) at all following elections until any subsequent determination comes into effect in accordance with this section;

Substitution of s. 123a

12. Section 123a of the principal Act is repealed and the following sections are substituted:

Use of electronic equipment to count votes

123a. (1) Subject to the regulations, electronic equipment may be used for the purpose of recording and counting votes.

(2) The regulations may—

(a) provide that the electronic equipment must be of a kind prescribed by the regulations;

and

(b) prescribe procedures that must be observed if electronic equipment is used for the purpose of recording and counting votes.

(3) A provision of a regulation under subsection (2) will, to the extent of any inconsistency, prevail over the provisions of this Part.

Uninitialled ballot papers

123b. A ballot paper is not informal by reason of the fact that it is not initialled by an electoral officer if the officer responsible for considering whether the ballot paper should be admitted is satisfied that it is an authentic ballot paper on which a voter has marked his or her vote.

Insertion of s. 128a

13. The following section is inserted after section 128 of the principal Act:

Transportation

128a. (1) Subject to subsection (2), a person who is a candidate for election or acting on behalf of such a candidate (whether with or without the candidate's authority) must not offer to provide transportation to or from a polling booth to any person who desires to vote at the election.

Penalty: \$500.

(2) In proceedings for an offence against subsection (1), it is a defence if the defendant proves that the person to whom the transportation was offered was, at the time of the alleged offence—

(a) a member of the defendant's family, or a person residing with the defendant;

(b) a person who generally relied on the defendant for transportation;

(c) a person who was assisting the defendant for the purposes of the election;

or

(d) a candidate for election on the same day, or a person acting on behalf of such a candidate.

Insertion of s. 133b

14. The following section is inserted after section 133a of the principal Act:

Conduct of officers

133b. An electoral officer must not fail, without proper excuse, to carry out his or her official duties in connection with the conduct of an election or poll.

Penalty: \$2 000 or imprisonment for six months.

Procedure upon petition

15. Section 137 of the principal Act is amended—

(a) by striking out subsection (2) and substituting the following subsection:

(2) A copy of the petition must be served on—

(a) any person declared elected in the disputed election;

and

(b) if it is alleged that the election is invalid on account of an act or omission of an electoral officer—the council;

(b) by striking out from subsection (3) “A person served under subsection (2) who proposes to contest the petition must” and substituting “Where a person or council served under subsection (2) proposes to contest the petition, the person or council must”;

and

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

(c) be signed—

(i) where the replicant is a natural person—by the replicant;

(ii) where the replicant is the council—by the Chief Executive Officer or returning officer of the council;

Costs

16. Section 144 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

(1a) Where an election is declared void, or a candidate returned as elected is declared not to have been duly elected, on account of an act or omission of an electoral officer, any costs in favour of the petitioner must, to the extent to which they are attributable to that act or omission, be awarded against the council;

and

(b) by striking out from subsection (2) “subsection (1)” and substituting “this section”.

Minimum amount payable by way of rates

17. Section 190 of the principal Act is amended by striking out from subsection (3) “1991/1992” and substituting “1993/1994”;

Governor may make regulations under this Part

18. Section 475a of the principal Act is amended by striking out from subsection (2) (m) “\$200” and substituting “\$500”.

Repeal of s. 475d

19. Section 475d of the principal Act is repealed.

Evidentiary provisions

20. Section 475e of the principal Act is amended by striking out paragraphs (b) and (c) of subsection (1).

Interpretation

21. Section 475i of the principal Act is amended by striking out the definitions of “owner” and “registered owner”.

Service of notices, etc.

22. Section 693 of the principal Act is amended by striking out paragraph (c) and substituting the following paragraph:

- (c) by leaving it for the owner, occupier or person at his or her place of residence with someone apparently over the age of 16 years;

Substitution of s. 743a

23. Section 743a of the principal Act is repealed and the following section is substituted:

Evidentiary presumption

743a. If in any proceedings for an offence against this Act it is proved that an animal was ridden, led or standing in contravention of this Act, it will be presumed, in the absence of evidence to the contrary, that the animal was so ridden, led or allowed to stand by its owner.

Repeal of s. 748d

24. Section 748d of the principal Act is repealed.

Duty of owner to give information to identify driver

25. Section 789a of the principal Act is amended—

- (a) by striking out from subsection (1) “or any inspector or” and substituting “, an authorized person or an”;

and

- (b) by striking out subsection (3).

Insertion of ss. 789b-789d

26. The following sections are inserted after section 789a of the principal Act:

Owner of vehicle guilty of offence

789b. Where it is an offence against this Act for a person to drive, draw, propel, park or stand a vehicle in particular circumstances and the owner of the vehicle is not the driver, the owner of the vehicle is also guilty of an offence.

Owner and driver not both liable to conviction

789c. The owner and driver of a vehicle are not both liable to be convicted of an offence arising out of the same circumstances and consequently conviction of the owner exonerates the driver and conversely conviction of the driver exonerates the owner.

Proceedings against owner of vehicle or person named as driver by owner

789d. (1) Before proceedings are commenced against the owner of a vehicle for an offence against this Act a notice must be sent to the owner by the person who proposes to commence the proceedings (“the complainant”)—

- (a) setting out particulars of the alleged offence;

and

- (b) inviting the owner, if he or she was not the driver at the time of the alleged offence, to provide the complainant, within 21 days of the date of the notice, with a statutory declaration—

- (i) setting out the name and address of the driver;

or

- (ii) if he or she had transferred ownership of the vehicle to another prior to the time of the alleged offence and has complied with the *Motor Vehicles Act, 1959*, in respect of the transfer—setting out details of the transfer (including the name and address of the transferee).

(2) Subject to subsection (3), in proceedings against the owner of a vehicle for an offence against this Act it is a defence to prove—

- (a) that, in consequence of some unlawful act, the vehicle was not in the possession or control of the owner at the time of the alleged offence;

or

- (b) that the owner provided the complainant with a statutory declaration in accordance with an invitation under this section.

(3) The defence in subsection (2) (b) does not apply if it is proved that the owner made the declaration knowing it to be false in a material particular.

(4) Where—

- (a) in accordance with an invitation under this section the owner of a vehicle names a person, other than someone who is also an owner of the vehicle, as the driver of the vehicle at the time of the alleged offence;

- (b) a notice to the effect that the alleged offence may be expiated has been given under this Act;

and

- (c) it is proposed that proceedings be taken against the alleged driver for the alleged offence,

the person proposing to commence the proceedings must, before doing so, send to the alleged driver a notice—

- (d) setting out particulars of the alleged offence and of the statutory declaration naming the alleged driver;

- (e) stating that the offence may be expiated in accordance with this Act and giving particulars as to how the offence may be so expiated;

and

- (f) informing the alleged driver that, if the offence is not expiated within the period specified in the notice, proceedings may be commenced against him or her for the alleged offence.

(5) In proceedings against a person named in a statutory declaration in accordance with an invitation under this section for the offence referred to in that invitation, it will be presumed, in the absence of proof to the contrary, that the person was the driver of the vehicle at the time at which the alleged offence was committed.

Expiation of offences

27. Section 794a of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsection:

(1) If an authorized officer believes on reasonable grounds that a person has—

- (a) committed a prescribed offence against this Act;

or

(b) committed an offence against a by-law in relation to which an expiation fee has been set,

the authorized officer may give that person a written notice to the effect that the offence may be expiated by payment of the appropriate expiation fee within 21 days of the date of the notice—

(c) if the offence was committed within the area of a council—to the council;

or

(d) in any other case—at a police station specified in the notice.;

(b) by striking out subsection (4a) and substituting the following subsections:

(4a) In the case of an offence alleged to have been committed within the area of a council, the council may accept late payment of the expiation fee—

(a) if the council has commenced proceedings in respect of the alleged offence—on payment of the costs and expenses incurred by the council in relation to those proceedings;

or

(b) in any other case—on payment of the prescribed late payment fee (which may include costs and expenses of a prescribed class incurred by the council in relation to the matter).

(4ab) In the case of an offence alleged to have been committed at a place that does not fall within the area of any council, an authorized officer may accept late payment of the expiation fee on payment of the prescribed late payment fee.;

and

(c) by striking out from subsection (4b) “Where a council has accepted late payment of an expiation fee under subsection (4a)—” and substituting “Where late payment of an expiation fee has been accepted under this section—”;

Certain prosecutions must be commenced within one year

28. Section 794c of the principal Act is amended by striking out “against a regulation under Part XXIIA” and substituting “which may be expiated pursuant to this Act”.

Vesting of Levi Park in the Corporation of the Town of Walkerville

29. Section 886d of the principal Act is amended by striking out subsection (4) and substituting the following subsection:

(4) The Council will be taken to have constituted, in pursuance of this Act, a controlling authority to undertake the care, control and management of Levi Park, and the controlling authority must not be abolished unless the Minister consents to its abolition.

Insertion of s. 890

30. The following section is inserted after section 889 of the principal Act:

Incorporation of Standards, etc.

890. A regulation under this Act may apply, adopt or incorporate, with or without modification, any code, standard or other document prepared or approved by a body or authority referred to in the regulation as in force from time to time or as in force at a specified time.

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

D. B. DUNSTAN, Governor