



ANNO TRICESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1988

No. 99 of 1988

An Act to amend the Local Government Act, 1934, and the Local Government Act Amendment Act, 1988.

[Assented to 15 December 1988]

The Parliament of South Australia enacts as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Statutes Amendment (Local Government) Act, 1988*.

Commencement

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

PART II

AMENDMENTS TO THE LOCAL GOVERNMENT ACT, 1934

Citation

3. The *Local Government Act, 1934*, is in this Part referred to as "the principal Act".

Interpretation

4. Section 5 of the principal Act is amended—

(a) by inserting after the definition of "foreshore" in subsection (1) the following definition:

"general election", of a council, means a general election of the members of the council (whether held under section 94 (1) or by proclamation);

and

(b) by inserting after paragraph (a) of subsection (7) the following paragraph:

(ab) to the conclusion of elections held on a day appointed by proclamation is a reference—

(i) where the number of candidates nominated to contest each of the elections does not exceed the number of persons required to be elected—to the appointed day;

or

(ii) in any other case—to the time at which the last result of the elections is certified by the returning officer under Division IX of Part VII;.

Constitution of councils

5. Section 6 of the principal Act is amended by striking out subsection (2) and substituting the following subsections:

(2) A proclamation under subsection (1) must—

(a) determine whether the council is to be a municipal council or a district council;

(b) assign a name to the area of the council;

and

(c) assign a name to the council.

(2a) In addition to the matters referred to in subsection (2), the proclamation under subsection (1), or a subsequent proclamation, must—

(a) determine whether the council is to have a mayor or a chairman;

(b) determine the number of councillors who are to constitute, or to be included in, the membership of the council;

(c) determine whether the area is to be divided into wards and, if so—

(i) determine the boundaries of each ward, the name of each ward, and the number of councillors to be elected for each ward (which number may vary from ward to ward);

and

(ii) determine whether the membership of the council is to include aldermen and, if so, how many;

and

(d) appoint, or make provision for the election of, the first members of the council.

(2b) If a proclamation makes provision for the appointment of the first members of the council, the proclamation, or a subsequent proclamation, may also make provision for the first election of members of that council.

Amalgamation of councils

6. Section 7 of the principal Act is amended—

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

(3) A proclamation made under subsection (1) must—

(a) define the area in relation to which the council to be formed by the amalgamation or each such council is to be constituted;

(b) determine in relation to the council to be formed by the amalgamation or each such council whether it is to be a municipal council or a district council;

(c) assign a name to the area of the council or each of the councils to be formed by the amalgamation;

and

(d) assign a name to the council or each of the councils to be formed by the amalgamation.

(3a) In addition to the matters referred to in subsection (3), the proclamation under subsection (1), or a subsequent proclamation, must—

(a) determine in relation to the council to be formed by the amalgamation or each such council—

(i) whether it is to have a mayor or a chairman;

and

(ii) the number of councillors who are to constitute, or to be included in, its membership;

(b) determine in relation to the council to be formed by the amalgamation or each such council whether its area is to be divided into wards and, if so—

(i) determine the boundaries of each ward, the name of each ward, and the number of councillors to be elected for each ward (which number may vary from ward to ward);

and

(ii) determine whether its membership is to include aldermen and, if so, how many;

(c) appoint, or make provision for the election of, the first members of the council to be formed by the amalgamation or each such council;

and

(d) except where the councils that are to be amalgamated under this section employ the same method of assessing ratable property throughout their combined areas—determine the method or methods of assessment to apply in relation to the council to be formed by the amalgamation or each such council.

(3b) If a proclamation makes provision for the appointment of the first members of a council, the proclamation, or a subsequent proclamation, may also make provision for the first election of members of that council;

and

(b) by striking out from subsection (6) “in the proclamation” and substituting “by proclamation”.

Alteration of the composition of a council

7. Section 11 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) A proclamation under this section may make any other provision that may be necessary or desirable in view of the circumstances of the particular case.

Formation, alteration or abolition of wards

8. Section 13 of the principal Act is amended—

(a) by striking out from subsection (1) “Subject to this section, the” and substituting “The”;

and

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

(2) A proclamation under this section may make any other provision that may be necessary or desirable in view of the circumstances of the particular case.

Insertion of s. 15a

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

Consequential cancellation of periodical elections

15a. (1) If the Governor by proclamation under Division I or II makes provision for the appointment or election of the members of a council, the Governor may also, by proclamation, cancel (for a particular year) the holding of periodical elections for the council.

(2) Section 15 extends to a proclamation under this section.

Constitution of Commission

10. Section 20 of the principal Act is amended by striking out subsection (6) and substituting the following subsections:

(6) A member of the Commission is disqualified for acting as such, or from continuing to act as such, in relation to a matter before the Commission if—

(a) the member is, or becomes, a member or officer of a council involved in the matter;

(b) the member holds, or accepts, any other remunerated office, or is employed, or accepts employment, with such a council;

or

(c) the member is, or becomes, interested (directly or indirectly) in a contract with such a council.

(7) A member will not be regarded as having an interest in a contract with a council if the interest exists by reason only of the fact that the member is a director or shareholder in a company with 20 or more shareholders that is a party to, or otherwise interested in, the contract.

Insertion of s. 25a

11. The following section is inserted immediately after section 25 of the principal Act:

Annual reports

25a. (1) The Commission must submit an annual report to the Minister on its activities under this Act.

(2) The Minister must, within six sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

Reference of proposals to the Advisory Commission

12. Section 26 of the principal Act is amended—

(a) by inserting in subparagraph (ii) of paragraph (a) of subsection (2) “directly affected by the proposal” after “the area or portion”;

(b) by striking out the word “or” between paragraphs (a) and (b) of subsection (2);

(c) by inserting after paragraph (b) of subsection (2) the following word and paragraph:

or

(c) where the proposal relates to a part of the State that is partly within an area and partly outside an area—

(i) by the council for the area;

or

(ii) by twenty per cent or more of the persons who would, if the part were a distinct area, be electors for the area.;

(d) by striking out from subsection (10) “After the completion of its inquiries in relation to the proposal, the Commission shall” and substituting “The Commission must, in such manner as it thinks fit,”;

and

(e) by inserting in paragraph (b) of subsection (10) “(which may involve a council not directly affected by the original proposal)” after “alternative proposal”.

Periodical reviews

13. Section 28 of the principal Act is amended by striking out subsection (7) and substituting the following subsections:

(7) The Commission must, in such manner as it thinks fit, after making such inquiries as it thinks fit, report to the Minister on the proposal and may recommend to the Minister—

(a) that the proposal be carried into effect;

(b) that some alternative proposal be carried into effect;

or

(c) that the proposal should not be carried into effect.

(7a) The Commission should not recommend an alternative proposal under subsection (7) (b) unless the Commission is satisfied—

(a) that the council has had an opportunity to consider the proposal and to make submissions to the Commission in relation to that proposal;

or

(b) that the alternative proposal differs from the original proposal in minor respects only.

Councillors

14. Section 46 of the principal Act is amended by striking out subsection (2).

Term of office

15. Section 47 of the principal Act is amended by striking out from subsection (1) “periodical elections” and substituting “general election”.

Allowances and expenses

16. Section 49 of the principal Act is amended by striking out subsections (2) and (3) and substituting the following subsections:

(2) A council must—

(a) if the council is newly constituted by proclamation under Division I or II of Part II—at its first ordinary meeting;

(b) in any other case—at the first ordinary meeting held after the conclusion of any general election,

fix (subject to prescribed limits) the rates of the annual allowances that are to be payable to its members for the ensuing year.

(3) The rates must then be reviewed on an annual basis (but a resolution fixing the rates ceases to have effect at the conclusion of a general election).

Meetings of council

17. Section 58 of the principal Act is amended by striking out from subsection (5) "the periodical elections" and substituting "the general election".

Meetings of council committees

18. Section 61 of the principal Act is amended by striking out from subsection (3) "the periodical elections" and substituting "the general election".

Certificates of registration

19. Section 69 of the principal Act is amended by inserting before paragraph (a) of subsection (4) the following paragraph:

(aa) provide for the term, and renewal, of a certificate issued under this section;

Preliminary

20. Section 85 of the principal Act is amended—

(a) by striking out the definition of "declaration vote" and substituting the following definition:

"declaration vote" means a declaration vote made under section 107 or 111;
and "declaration voting papers" has a corresponding meaning;

(b) by inserting after the definition of "illegal practice" the following definitions:

"polling booth" means a building, structure, vehicle or enclosure, or part of a building, structure, vehicle or enclosure, for taking votes at an election or poll:

"polling day", in relation to an election or poll, means the day appointed for the election or poll:

"polling place" means a place appointed as a polling place under this Part;

(c) by striking out paragraph (b) of the definition of "voting material" and substituting the following paragraphs:

(b) applications for declaration voting papers;

(ba) records relating to the issue of declaration voting papers;

and

(d) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsection:

(2) For the purposes of this Part, the close of voting on polling day in an election or poll is—

(a) in the case of a supplementary election carried out entirely by the use of advance voting papers—12 noon on polling day;

(b) in all other cases—6 p.m. on polling day.

The returning officer and deputy returning officer

21. Section 86 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) If the council appoints only one deputy returning officer, he or she will act in the office of returning officer in the absence of the returning officer, and if the council appoints more than one deputy returning officer, the deputy returning officer to act in the office of returning officer in the absence of the returning officer will be determined according to an order determined by the council.

Substitution of s. 89

22. Section 89 of the principal Act is repealed and the following section is substituted:

Polling places and booths, and places for counting votes

89. (1) A council must appoint such polling places and such place or places for the counting of votes as may be necessary for the purposes of an election or poll.

(2) The council may determine that voting at a polling place—

(a) will be conducted in a polling booth established for that place;

or

(b) will be conducted in a mobile polling booth.

(3) The council will decide the times at which a polling booth will be open for voting on polling day (although no polling booth can be open after 6 p.m. on polling day).

(4) The council must ensure that at least one polling booth is continually open in the area between 8 a.m. and 6 p.m. on polling day.

(5) The returning officer must ensure that each polling booth—

(a) is properly divided so that voters may mark their votes without the vote being observed;

(b) is properly equipped with ballot boxes and other necessary equipment;

and

(c) is properly staffed during the time at which voting may occur.

(6) The returning officer must assign a suitable electoral officer to preside at a polling place while the polling booth is open for voting.

(7) The returning officer must, at least seven days before polling day, give public notice of—

(a) the location of each polling place and the times at which voting may occur; and

(b) the place or places for the counting of votes.

(8) In cases of emergency, the returning officer may, without giving public notice under subsection (7), appoint a polling place or a place for the counting of votes for the purposes of an election or poll in substitution for, or in addition to, any place or places previously appointed by the council.

(9) In addition to subsection (8), the times and places for voting at a mobile polling booth may be altered on any reasonable ground—

(a) by the returning officer publishing in a newspaper circulating in the area no later than the day before polling day another notice advising electors of

the alteration of voting times at that place, or of the alteration of the place for voting;

- (b) if there is no such newspaper or circumstances render compliance with paragraph (a) impracticable—by the returning officer or the presiding officer taking such steps as are reasonably practicable to notify electors in the particular locality of the alteration.

(10) Where the times and places for voting at a mobile polling booth in an election are altered under subsection (9), the returning officer or presiding officer must take reasonable steps to inform candidates at that election of the alteration.

Qualifications for enrolment

23. Section 91 of the principal Act is amended by inserting after subsection (6) the following subsections:

- (7) In this section—

“officer” of a body corporate means a director, manager, secretary or public officer of the body corporate and includes any other person who takes part in the management of the affairs of the body corporate.

(8) For the purposes of resolving any doubt as to the validity of the nomination of a person to act as an elector on behalf of a body corporate or group made before the commencement of this section—

- (a) if the person, at the commencement of this section, satisfied the criteria in subsection (3) for nomination as an agent of the body corporate or group—the nomination was not affected by the enactment of this section;
- (b) if the person, at the commencement of this section, failed to satisfy the criteria in subsection (3) for nomination as an agent of the body corporate or group—the nomination was rendered invalid by the enactment of this section.

The voters roll

24. Section 92 of the principal Act is amended—

- (a) by striking out from subsection (2) “Subject to subsection (2a),” and substituting “Subject to this section,”;

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

(2b) Where 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.;

- (c) by striking out from subsection (5) “the first Thursday” and substituting “the second Thursday”;

and

- (d) by striking out paragraph (a) of subsection (5) and substituting the following paragraph:

(a) any general election held after the completion of the revision and before the completion of the next revision (except where the election is being held pursuant to a proclamation under Division I or II of Part II);

Date of elections**25. Section 94 of the principal Act is amended—**

(a) by striking out from subsection (1a) “pending the outcome of the report of the Commission”;

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

(1b) Subject to the operation of the provisions of Part II, where a proclamation is made suspending the holding of elections, a day following no more than 12 months after the day on which the elections would, but for the suspension, have been held must be fixed by the same or a subsequent proclamation.;

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

(2) Subject to subsection (2a), if—

(a) an election (other than a supplementary election) wholly or partially fails or is declared void;

or

(b) a casual vacancy occurs in the office of a member of a council, a supplementary election will be held to fill the office or offices not filled by the election, or the office that has become vacant.

(2a) If a casual vacancy occurs within five months before the date of a general election (the date of the election being known at the time of the occurrence of the vacancy), the vacancy will be filled at the general election.;

and

(d) by striking out subsection (4) and substituting the following subsection:

(4) The returning officer must appoint a day as polling day for the supplementary election (and unless voting at the election is to be carried out entirely by the use of advance voting papers, polling day for a supplementary election must be a Saturday).

Nominations**26. Section 96 of the principal Act is amended—**

(a) by striking out paragraph (b) of subsection (5) and substituting the following paragraph:

(b) in any other case—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 polling day.;

(b) by striking out from paragraph (b) of subsection (6) “in the case of a supplementary election” and substituting “in any other case”;

(c) by striking out paragraph (b) of subsection (13) and substituting the following paragraph:

(b) in any other case—the election of the candidate takes effect at the conclusion of the relevant elections.;

and

(d) by striking out paragraph (c) of subsection (14) and substituting the following paragraph:

(c) if an election is to be held—the day appointed as polling day for the election.

Method of voting at elections

27. Section 100 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) If—

(a) 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);

and

(b) where the method of counting votes applying at the election is the method set out in section 121 (4)—the numbers are at least consecutive up to the number of candidates required to be elected,

the ballot paper is not informal and the votes are valid up to the point at which the omission or repetition occurs.

Scrutineers

28. Section 101 of the principal Act is amended—

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

(1a) A candidate in any election for the council on polling day (including a candidate who has already been declared elected) is not eligible for appointment as a scrutineer.;

and

(b) by striking out from paragraph (a) of subsection (2) “polling place at the same time during the poll” and substituting “polling booth at the same time during the time that it is open for voting”.

Substitution of headings

29. The heading to Division VII of Part VII is repealed and the following headings are substituted:

DIVISION VII—CONDUCT OF ELECTIONS AND POLLS

Voting otherwise than at Polling Places

Issue of advance voting papers

30. Section 106 of the principal Act is amended—

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

(1) Where a person desires to vote at an election or poll otherwise than by attending at a polling place during voting hours, the person may apply to the returning officer for advance voting papers under this section.;

(b) by striking out from subsection (2) “the day appointed for the election or poll” twice occurring and substituting, in each case, “polling day”;

(c) by striking out paragraph (b) of subsection (3) and substituting the following paragraph:

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

(i) two declarations—

(A) one being a declaration in the prescribed form to be subscribed by the voter to the effect—

- that the voter is of or above the age of majority;
- that the ballot paper contained in the envelope contains his or her vote;

and

- that he or she has not already voted at the election or poll;

and

- (B) 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 the witness has no reason to believe that the vote has been influenced by fraud or undue influence;

or

(ii) three declarations—

- (A) one being a declaration in the prescribed form to be subscribed by the voter in which the voter sets out the grounds on which he or she claims to be entitled to vote;

and

- (B) the other two being declarations referred to in subparagraph (i).;

(d) by striking out from subsection (4) “the day appointed for the election or poll” and substituting “polling day”;

(e) by striking out subsections (6), (7) and (8) and substituting the following subsections:

(6) Where the returning officer issues advance voting papers under this section to a person whose name appears on the voters roll, the returning officer must, for the purposes of the election or poll, place a mark on the roll next to the person’s name.

(7) The returning officer must also keep a record of the persons who receive advance voting papers under this section although their names do not appear on the voters roll.;

(f) by striking out from subsection (9) “the day on which an election or poll is to be held” and substituting “polling day”;

and

(g) by inserting after subsection (9) the following subsection:

(10) The returning officer must, at least 21 days before polling day, by public notice in the prescribed form, inform electors that advance voting papers are available from the returning officer in accordance with this section.

Voting in remote areas

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

(a) by striking out from subsection (2) “need be opened” and substituting “need be appointed (and no polling booth need be opened)”;

(b) by striking out from subsection (3) “, at least 21 days before the day appointed for the election or poll” and substituting “, as soon as practicable after the 21st day before polling day, and in any event not later than 14 days before polling day.”;

(c) by striking out paragraph (b) of subsection (3) and substituting the following paragraph:

(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 voter is of or above the age of majority;

— that the ballot paper contained in the envelope contains his or her vote;

and

— that he or she has not already voted at the election or poll;

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 the witness has no reason to believe that the vote has been influenced by fraud or undue influence.;

(d) by inserting after subsection (3) the following subsections:

(3a) The returning officer must also include with the advance voting papers issued under subsection (3) a ballot paper for any other election at which the person is entitled to vote that is being held concurrently in the area on polling day.

(3b) The envelopes used under subsection (3) must be pre-paid post envelopes addressed to the returning officer.;

(e) by striking out from subsection (4) “the day appointed for the election or poll” and substituting “polling day”;

(f) by striking out subsection (7);

and

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

(9) Where the returning officer issues advance voting papers under this section to a person whose name appears on the voters roll, the returning officer must, for the purposes of the election or poll, place a mark on the roll next to the person’s name.

(9a) The returning officer must also keep a record of the persons who receive advance voting papers under this section although their names do not appear on the voters roll.

(9b) The returning officer must, at least 21 days before polling day, by public notice in the prescribed form, inform electors that voting in the election or poll will be conducted by the use of advance voting papers issued in accordance with this section.

Substitution of ss. 107 and 108

32. Sections 107 and 108 of the principal Act are repealed and the following sections are substituted:

Procedure to be followed for advance voting

107. (1) Where a person to whom advance voting papers have been issued desires to vote by use of those papers, the following procedure must be followed:

(a) the voter must mark his or her vote in the manner prescribed by this Act on the ballot paper supplied;

(b) the voter must then fold the ballot paper so as to conceal the vote and, in the presence of a witness of or above the age of majority, place the folded ballot paper in the envelope and seal the envelope;

(c) the voter and the witness must then sign the respective declarations on the envelope;

and

(d) the sealed envelope must then be delivered to an electoral officer not later than the close of voting on polling day.

(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 will—

(a) rule a line through the voter's name on the voters roll or, if his or her name does not appear on the roll, make a record of the receipt of the envelope;

and

(b) immediately deposit the envelope unopened in a sealed ballot box.

Voter may be assisted in certain circumstances

108. Where a person who desires to vote by use of advance voting papers is illiterate or physically unable to carry out a procedure under this Division, a person of the voter's choice (being a person of or above the age of majority but not being the witness who subscribes a declaration) may render such assistance as may be necessary in the circumstances or may vote on behalf of the voter in accordance with his or her directions.

Repeal of Division VIII of Part VII and substitution of new sections

33. Division VIII of Part VII (and the heading to that Division) is repealed and the following heading and sections are substituted:

Voting at Polling Places

Voting procedure at polling booths

111. (1) Subject to this Part, when a person who is present at a polling booth open for voting claims that he or she is entitled to vote at the election or poll, an electoral officer will ask the person—

(a) to state—

(i) his or her full name;

(ii) unless the person's address is suppressed from the roll—the address of his or her place of residence;

and

(iii) where applicable—the address of the ratable property within the area by virtue of which the person is entitled to be enrolled on the voters roll;

and

(b) whether he or she has already voted at the election or poll,

and may then ask the person such further questions as the electoral officer considers necessary to establish whether the person is entitled to vote.

(2) If the person—

(a) refuses to answer fully any question asked under subsection (1);

or

- (b) so answers any such question as to indicate that he or she is not entitled to vote,

the person's claim to vote will be rejected.

(3) A person is not precluded by subsection (1) from voting at an election or poll in different capacities at different times.

(4) If a person's claim to vote is accepted and his or her name and address are on the voters roll, the electoral officer will rule a line through the person's name on the roll and issue to the person a ballot paper.

(5) If—

- (a) a person claims that his or her name has been omitted in error from the voters roll;

or

- (b) a person's address has been suppressed from the roll,

the electoral officer will issue to the person a ballot paper and an opaque envelope on the outside of which is printed a declaration in the prescribed form to be subscribed by the voter to the effect—

- (c) that he or she is entitled to vote at the election or poll;

and

- (d) that he or she has not already voted at the election or poll.

(6) If the person is issued a ballot paper only, the person must immediately retire to a voting compartment, mark the ballot paper with his or her vote, fold it so as to conceal the vote, and deposit it in a ballot box provided for the purpose of the election or poll.

(7) If the person is issued a ballot paper and an envelope bearing a declaration—

- (a) the person must complete and sign the declaration in the presence of the electoral officer (who will sign the envelope as witness);

- (b) the person must then immediately retire to a voting compartment, mark the ballot paper with his or her vote, and fold it so as to conceal the vote;

- (c) the person must then immediately return to the electoral officer and, in the presence of the electoral officer, place the folded ballot paper in the envelope, seal the envelope, and deposit it in a ballot box provided for the purposes of the election or poll.

(8) A ballot paper issued under this section must be authenticated by the initials of the officer by whom it is issued.

(9) The presiding officer at a polling place must keep a record of the persons to whom declaration voting papers are issued under this section distinguishing between those persons who are issued with envelopes under subsection (5) (a) and those persons who have been issued with envelopes under subsection (5) (b).

(10) A person who enters a polling booth while it is open but who has not voted before it closes must be allowed a reasonable opportunity to vote.

Issue of fresh ballot paper

112. Where a ballot paper issued at a polling booth has been inadvertently spoiled and is returned to the presiding officer by the person to whom it was issued, the presiding officer may issue a fresh ballot paper to the person and, on doing so, must immediately cancel the spoiled ballot paper.

Voter may be assisted in certain circumstances

113. A person who desires to vote at a polling booth but is illiterate or physically unable to vote without assistance will, on request being made to the presiding officer, be permitted to be accompanied by an assistant of the voter's choice (being a person of or above the age of majority) who may render such assistance as may be necessary in the circumstances or may vote on behalf of the voter in accordance with his or her directions.

How-to-vote cards

114. (1) A candidate may submit how-to-vote cards to the returning officer for display in voting compartments at polling booths.

(2) The how-to-vote cards—

(a) must be in the prescribed form;

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

and

(c) must be received by the returning officer not less than 14 days before polling day.

(3) The returning officer will have the how-to-vote cards made into posters for display in voting compartments at each polling booth 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 size and form of posters for display under this section will be as determined by the returning officer.

*Miscellaneous***Use of ballot boxes**

115. (1) Subject to subsection (2), a ballot box to be used in an election or poll must be kept securely closed and sealed so as to prevent the introduction or removal of any paper or object except—

(a) when the ballot box is immediately required for the purpose of receiving voting papers;

or

(b) when the voting papers are required for the purposes of scrutiny.

(2) An electoral officer must, before voting papers are first deposited in a ballot box for the purposes of an election or poll, publicly open the ballot box and exhibit it empty.

Adjournment of election or poll

116. (1) If for any reason it becomes impracticable to proceed with the conduct of an election or poll on the appointed day, the returning officer may adjourn the election or poll for a period not exceeding 21 days.

(2) Any votes cast prior to the adjournment will be disregarded and the taking of votes recommenced.

Insertion of s. 120

34. The following section is inserted immediately before section 121 of the principal Act:

Scrutiny of declaration voting papers

120. (1) The scrutiny of declaration voting papers used at an election or poll must be completed as soon as practicable after the close of voting on polling day.

(2) For the purposes of an election or poll that has been carried out entirely by the use of advance voting papers, the returning officer will, immediately after the close of voting on polling day, with the assistance of any other electoral officers who may be present, and in the presence of any scrutineers who may be present, open all ballot boxes used in the election or poll, remove the contents and exhibit the ballot boxes empty.

(3) For the purposes of the scrutiny of declaration voting papers, the returning officer will, with the assistance of any other electoral officers who may be present, and in the presence of any scrutineers who may be present—

- (a) examine the declarations on all envelopes used for declaration voting (and validly returned) and determine which votes are to be accepted for further scrutiny and which rejected from further scrutiny, rejecting unopened—
 - (i) any two or more envelopes apparently from the same voter (unless the voter has validly voted in two or more capacities);
 - (ii) any envelope apparently from a voter who has voted both by declaration vote and by attending at a polling booth on polling day and voting otherwise than by declaration vote (unless the voter has validly done so in two or more capacities);
 - (iii) any envelope where the voter's name does not appear on the voters roll in the capacity in which the voter in his or her declaration claims to be entitled to vote (unless the voter's name has been omitted from the roll in error);
 - (iv) any envelope where the signature does not, to the satisfaction of the returning officer, correspond with the signature on the application (if any) of the voter for the relevant voting papers;
- (b) remove the ballot papers from the envelopes accepted under paragraph (a), taking care, so far as practicable, to ensure that the vote of any voter is not disclosed;
- (c) if an envelope contains more than one ballot paper and a scrutineer challenges the number of ballot papers contained in the envelope—satisfy himself or herself that the envelope does not contain more ballot papers than the number to which the voter is entitled and, if the returning officer is not so satisfied, return all of those ballot papers to the envelope and reject them from the count;
- (d) examine the remaining ballot papers and reject any informal ballot papers;
- (e)
 - (i) in the case of an election—arrange all 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;
 - (ii) in the case of a poll—arrange all unrejected ballot papers into two parcels for counting.

(4) The returning officer may subsequently, on his or her own initiative or on the application of a scrutineer, admit to the count (or any recount) any declaration vote that is initially rejected but later found to be valid.

(5) The returning officer is not required to consider an application under subsection (4) in respect of an election if it is apparent that the admission of the declaration votes to which the application relates (if valid) could not affect the outcome of the election.

Procedure to be followed at the close of voting at elections**35. Section 121 of the principal Act is amended—**

- (a) by striking out from subsection (1) “At the close of voting at an election, every presiding officer shall,” and substituting “Each presiding officer will, immediately after the polling booth at which he or she has been presiding closes for voting at an election (or, in the case of a mobile polling booth, immediately after the polling booth finally closes for voting at an election),”;
- (b) by striking out from subparagraph (ii) of paragraph (a) of subsection (1) “polling place” and substituting “polling booth”;
- (c) by striking out from subparagraph (vi) of paragraph (b) of subsection (1) “lock” and substituting “seal”;
- (d) by striking out from subparagraph (i) of paragraph (c) of subsection (1) “polling place” and substituting “polling booth”;
- (e) by striking out subsections (2) and (2a) and substituting the following subsection:
 - (2) The returning officer will, 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) separate the envelopes used for declaration votes from the ballot papers not contained in such envelopes;
 - (c) proceed to the scrutiny of the declaration votes in accordance with section 120;
 - and
 - (d) at an appropriate time—
 - (i) examine all the ballot papers not contained in envelopes and reject any informal ballot papers;
 - and
 - (ii) arrange the unrejected ballot papers into appropriate parcels for counting.;
- (f) by striking out subsection (8) and substituting the following subsection:
 - (8) The returning officer may, on his or her own initiative, during the period of 48 hours referred to in subsection (7), decide to conduct a recount of any votes cast in the election.;
- (g) by striking out from subsection (9) “caused a recount to be made” and substituting “decided to initiate a recount”;
- and
- (h) by striking out paragraph (b) of subsection (12) and substituting the following paragraph:
 - (b) in any other case—the election of the candidate or candidates will take effect at the conclusion of all of the elections for the council held on polling day.

Insertion of s. 121a**36. The following section is inserted after section 121 of the principal Act:**

Collation of certain information

121a. (1) The returning officer must, within 10 days after the conclusion of an election, make and certify a return showing—

- (a) the number of ballot papers printed for the election;
 - (b) the number of ballot papers not issued;
 - (c) the number of ballot papers issued but returned unused;
 - (d) the number of ballot papers issued but returned spoiled;
 - (e) the number of fresh ballot papers issued to voters under section 109 without the return of the original ballot papers;
 - (f) the number of ballot papers issued to persons claiming that their names had been omitted in error from the voters roll (not including ballot papers included in a previous category) and the number of those contained in envelopes that were not rejected;
 - (g) the number of ballot papers issued with declaration voting papers (not including ballot papers included in a previous category) and the number of those contained in envelopes that were not rejected;
 - (h) the number of ballot papers issued at polling booths on polling day (not including ballot papers included in a previous category) and the number of those contained in ballot boxes;
 - (i) the number of ballot papers rejected as informal;
- and
- (j) the number of ballot papers included in the count.

(2) A candidate is entitled, on application to the returning officer within three months after the conclusion of the election, to a copy of the return referred to in subsection (1).

Determination of method of counting at elections

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

- (a) subject to paragraph (b), the determination will determine the method of counting to apply at the next general election and at all following elections;
- (b) the determination will not affect a general election held within three months of the making of the determination;

Procedure to be followed at the close of voting at polls

38. Section 123 of the principal Act is amended—

- (a) by striking out from subsection (1) “At the close of voting at a poll every presiding officer shall,” and substituting “Each presiding officer will, immediately after the polling booth at which he or she has been presiding closes for voting at a poll (or, in the case of a mobile polling booth, immediately after the polling booth finally closes for voting at a poll),”;
- (b) by striking out from paragraph (a) of subsection (1) “polling place” and substituting “polling booth”;
- (c) by striking out from subparagraph (v) of paragraph (f) of subsection (1) “polling place” and substituting “polling booth”;
- (d) by striking out subsections (3) and (4) and substituting the following subsection:

(3) The returning officer will, 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 and parcels containing declaration votes, remove the contents and, in the case of the ballot boxes, exhibit them empty;

(b) proceed to the scrutiny of the declaration votes in accordance with section 120;

and

(c) at an appropriate time—

(i) examine all ballot papers not contained in envelopes and reject any informal ballot papers;

and

(ii) arrange the unrejected ballot papers into two parcels for counting;

(e) by striking out from subsection (6) “seventy-two hours” and substituting “48 hours”;

(f) by striking out subsection (7) and substituting the following subsection:

(7) The returning officer may, on his or her own initiative, during the period of 48 hours referred to in subsection (6), decide to conduct a recount of any votes cast at the poll.;

and

(g) by striking out from subsection (8) “caused a recount to be made” and substituting “decided to initiate a recount”.

Retention and availability of voting material

39. Section 124 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) Except as provided by other provisions of this Act, voting material will not be available for public inspection.

Insertion of s. 124a

40. The following section is inserted immediately before section 125 of the principal Act:

Interpretation

124a. A reference in this Division to a polling booth extends to any other place where voting papers are issued.

Substitution of s. 127

41. Section 127 of the principal Act is repealed and the following section is substituted:

Interference with statutory rights

127. A person must not hinder or interfere with the free exercise or performance, by any other person, of a right under this Part.

Penalty: \$2 000 or imprisonment for 6 months.

Exception

42. Section 128 of the principal Act is amended by striking out “undue” and substituting “dishonest”.

Substitution of s. 129

43. Section 129 of the principal Act is repealed and the following section is substituted:

Prohibition of certain activities near polling booths

129. While voting is in progress at a polling booth, a person must not, within six metres of the entrance to the polling booth, or such lesser distance as may be fixed in a particular case by the presiding officer, solicit the vote of any person or distribute or display electoral material.

Penalty: \$500.

Voting information

44. Section 130 of the principal Act is amended by striking out "polling place" wherever occurring and substituting in each case "polling booth".

Repeal of s. 131 and substitution of sections

45. Section 131 of the principal Act is repealed and the following sections are substituted:

Persons present at polling

131. (1) No person may be present at a polling booth while the booth is open for voting unless the person is—

(a) an electoral officer who is required to be there;

(b) a scrutineer appointed under this Part;

(c) a person engaged in voting or about to vote;

(d) a person chosen by another person to assist that other person in voting;

or

(e) a person permitted by the presiding officer to be present at the polling booth.

Penalty: \$500.

(2) A person who is present at a polling booth in contravention of subsection (1) may be removed by a member of the police force, or by another person authorized by the presiding officer.

Conduct of scrutineers

131a. (1) A scrutineer must not, without reasonable excuse, communicate with a person who is in a polling booth for the purpose of voting.

Penalty: \$500.

(2) A scrutineer must not interfere with or (while in a polling booth) attempt to influence any person voting or proposing to vote at an election or poll.

Penalty: \$1 000 or imprisonment for 3 months.

Removal of offenders

131b. (1) Where a person misconducts himself or herself in a polling booth, or fails to obey the lawful directions of the presiding officer—

(a) the person may be removed from the polling booth by a member of the police force, or by another person authorized by the presiding officer;

and

(b) the person is guilty of an offence.

Penalty: \$500.

(2) A person who has been removed from a polling booth under subsection (1) and who re-enters the polling booth without the permission of the presiding officer is guilty of a further offence.

Penalty: \$1 000 or imprisonment for 3 months, or both.

Insertion of ss. 132a, 132b and 132c

46. The following sections are inserted after section 132 of the principal Act:

Persons acting on behalf of candidates not to collect postal voting papers

132a. No person who is a candidate for election or acting on behalf of such a candidate (whether with or without the candidate's authority) may have in his or her possession advance voting papers for that election (except any such papers issued to the person as an elector in his or her own right).

Penalty: \$1 000.

Secrecy of vote

132b. (1) A person must not, by clandestine or dishonest means, attempt to discover how another person has voted.

Penalty: \$1 000 or imprisonment for 3 months.

(2) No person may open an envelope containing a declaration vote except the returning officer, or an electoral officer acting with the authority of the returning officer.

Penalty: \$500.

(3) A person who acquires knowledge of the vote of another person through assisting the other person to vote, or otherwise in the exercise of powers or functions under this Part, must not divulge that knowledge.

Penalty: \$2 000 or imprisonment for 6 months.

Unlawful marking of ballot papers, etc.

132c. (1) Except as authorized by this Part, a person (not being a person to whom the ballot paper has been lawfully issued) must not mark a vote, or make any other mark or writing on a ballot paper.

Penalty: \$2 000 or imprisonment for 6 months, or both.

(2) A person must not make a statement in any claim, application, return or declaration, or in answer to a question, under this Part that is, to the person's knowledge, false or misleading in a material respect.

Penalty: \$2 000 or imprisonment for 6 months, or both.

Publication of electoral material

47. Section 133 of the principal Act is amended by striking out from subsection (3) "person who takes responsibility for the publication of the material" and substituting "writer of the letter".

Insertion of s. 133a

48. The following section is inserted immediately after section 133 of the principal Act:

Publication of misleading material

133a. (1) Where—

(a) electoral material contains a statement purporting to be a statement of fact;
and

(b) the statement is inaccurate and misleading to a material extent,

a person who authorized, caused or permitted the publication of the material is guilty of an offence.

Penalty: \$2 000.

(2) It is a defence to a charge of an offence against subsection (1) for the defendant to prove—

- (a) that he or she took no part in determining the contents of the material;
and
- (b) that he or she could not reasonably be expected to have known that the statement to which the charge relates was inaccurate and misleading.
- (3) This section applies to material published by any means (including radio or television).

Jurisdiction of the Court

49. Section 136 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

- (2) The Court will not call into question the eligibility of any person whose name appears on the voters roll as an elector to be a candidate for election under section 95 (1) (a).

PART III

AMENDMENTS TO THE LOCAL GOVERNMENT ACT AMENDMENT ACT, 1988

Citation

50. The *Local Government Act Amendment Act, 1988*, is in this Part referred to as “the principal Act”.

Repeal of Parts X to XV and substitution of new Parts

51. Section 10 of the principal Act is amended—

- (a) by striking out subsection (4) of new section 178 to be inserted in the *Local Government Act, 1934*, and substituting the following subsections:

(4) Notwithstanding subsection (1), where the chief executive officer is satisfied that the inclusion in the assessment book of the name or address of any person 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 name or address from the assessment book.

(4a) Where the chief executive officer is satisfied that a person’s address is suppressed from the roll under the *Electoral Act, 1985*, the chief executive officer must—

- (a) where the person’s residential address is included in respect of ratable property that the person owns but does not occupy—suppress the person’s residential address from the assessment book;
- (b) where the person’s residential address is ratable land described in the assessment book—suppress the person’s name from the assessment book in relation to that land.;

- (b) by inserting after subsection (7) of new section 184 to be inserted in the *Local Government Act, 1934*, the following subsection:

(7a) If the council has entered into an agreement with a principal ratepayer under subsection (6), the council may, as part of the agreement, vary the periods for the provision of accounts under subsection (7) (a) or (b).;

- (c) by striking out subsection (4) of new section 200 to be inserted in the *Local Government Act, 1934*, and substituting the following subsection:

(4) The Minister must not include a council as a constituent council under subsection (3) unless—

(a) the council has been given a reasonable opportunity to make written submissions to the Minister in relation to the matter;

and

(b) if the council so requests at the time that it makes such written submissions—the Minister has discussed the matter with a delegation representing the council.;

(d) by striking out the word “and” between paragraphs (a) and (b) of subsection (5) of new section 200 to be inserted in the *Local Government Act, 1934*;

and

(e) by inserting after paragraph (b) of subsection (5) of new section 200 to be inserted in the *Local Government Act, 1934*, the following word and paragraph:

and

(c) that, after giving proper consideration to any representations made under subsection (4), it is fair and reasonable in all the circumstances of the case that the council be included as a constituent council.

Statute Law Revision amendments

52. Section 55 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) If the principal Act is amended by another Act in a manner that renders an amendment sought by the schedule ineffective, the amendment sought by the schedule will not apply.

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

D. B. DUNSTAN, Governor