

Local Government (Elections) Act 1999

Draft Submission

September 2020

Please note:

This document has been prepared by the LGA Secretariat for endorsement by the LGA Board of Directors.

Amendments to Local Government (Elections) Act 1999

The State Government tabled the *Statutes Amendment (Local Government Review) Bill 2020*, on 17 June 2020. This Bill included proposed amendments to the Local Government (Elections) Act. The LGA produced a Guidance Paper for our 68 member councils, specifically dealing with the proposed changes to the Elections Act.

This paper consolidates the response of the local government sector to the Bill. The views of the LGA are based upon consultation with the sector as well as previous resolutions of LGA General Meetings and LGA Board meetings.

Some of the proposed changes to the Elections Bill are technical in nature, fix errors or are related to the way in which the Electoral Commissioner performs her/his duties. Most of these issues are not canvased in this submission.

The LGA's position on each issue is indicated through a traffic light guidance system. The table also includes additional comments explaining the LGA's views.

A number of reform ideas previously suggested by local government have not been included in the Bill. These include alternatives to voter roll purging, simplification of enrolment processes for supplementary roll and for nominations (with a view of providing a full online option) and a requirement for unsuccessful candidates to remove social media related to elections. These items were canvased in the LGA's November 2019 Submission on Local Government Reform. The LGA maintains its support for these changes.

The LGA also continues to advocate for online voting and has asked the Parliament to support a review of online voting options. The LGA recommends that the review into online voting:

- is supported by officers of the Electoral Commission of SA, the Office of Local Government and the LGA.
- is required to consider:
 - options to purchase or build an IT system for the secure conduct of local government elections in South Australia; and
 - provide advice on legislative amendments required to support such a system(s).
- reports back to the Minister within twelve months of convening.

Which section of LG (Elections) Act does it amend?	What does it do?	LGA Guidance	LGA Comments
6 Supplementary elections	<p>Subsection (2)(b)(iii) – this change reduces the number of supplementary elections that may be held if a policy of the council so provides, whilst at the same time ensuring adequate representation.</p> <p>Subsection (2)(c) – this also reduces the need for a supplementary election 12 months after a periodic election</p>		These changes are consistent with the LGA's previous local government reform submission.
6A Filling vacancy in certain circumstances	If a casual vacancy has occurred in the circumstances set out in section 6 (see above), the position will be filled by a count-back method, from the previous election. The method will be set out in Regulations.		These changes are consistent with the LGA's previous local government reform submission. How well the scheme works in practice will depend on the content of the Regulations, which ought not be made without consultation with councils via the LGA.
7 Failure of election in certain cases	This clause captures instances where a nominated candidate becomes ineligible to be a candidate for election as a member of a council. As with when a candidate dies, the election will be deemed to have 'failed'.		This sensible technical change clarifies what happens when it is discovered that a candidate is ineligible to run.
15 Voters Roll	New subsection 15(20) introduces a penalty for people who use a copy of the roll "for a purpose other than the distribution of matter calculated to affect the result of a local government election or a purpose related to the holding of such an election". The proposed maximum penalty is \$10,000.		These changes are consistent with the LGA's previous local government reform submission.

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19A Publication of candidate statements	The LGA (and councils) will no longer have responsibility for receiving candidate nominations and publishing candidate statements. The Electoral Commissioner will assume this role.		These welcome changes are consistent with the LGA's previous local government reform submission.
21 Publication etc of valid nominations	The Bill deletes the existing requirement for the Returning Officer to cause the display of nominations on a council notice board, as soon as these are received. Instead, these will be provided to the council and published on the Internet after the close of nominations.		<p>Each LGA periodic election involves elections for a large number of individual contests for council areas. Currently, as the close of nominations approaches and it appears no-one has nominated for an area, prospective councillors can be contacted and encouraged to run by members of the community.</p> <p>The proposed change would have the practical result of suppressing information about whether any candidates had nominated for each election. Information about candidates would only be made available after the close of nominations. This would result in many more elections where no candidate nominates, leading to unnecessary and costly supplementary elections, where no candidate has nominated.</p> <p>The LGA appreciates the views of the Electoral Commissioner, and the worthy aim of aligning local government electoral practice with State and Federal elections. Nevertheless, on balance the costs of additional elections is a more serious concern for the sector than the issues that the proposed amendment seeks to redress.</p> <p>The LGA opposes this change.</p>

Which section of LG (Elections) Act does it amend?	What does it do?	LGA Guidance	LGA Comments
27 Publication of electoral material	Subsection (1a) – provides that a name and address of the person publishing election material on the Internet need not be included in every document published if this information is readily available elsewhere on the Internet.		This change reflects the way that the Internet works. Advertisements (including paid-for election material) often take the form (for example) of sponsored posts inserted into other websites and Apps. These would not require the usual authorisation if the required information is readily available elsewhere on another web site. This change should also alleviate the frustration of many candidates, posting to Twitter and Facebook (these posts are election material and must currently be individually authorised) and when candidates make comments on other people's posts.
41A Assisted voting	This section primarily enables Regulations to be made to put in place arrangements that will assist certain people to vote (eg people with a disability)		The content of the relevant Regulations will be important to ensure the security and effectiveness of these provisions.
55A Filling vacancy if successful candidate dies	In circumstances where a candidate dies, a countback process will be used to select from the other candidates. The precise process will be set out in the Regulations.		How well the scheme works in practice will depend on the content of the Regulations which ought not be made without consultation with councils via the LGA.
57 Violence, intimidation, bribery etc	The definition of 'bribe' is limited so that food, drink and entertainment is only a bribe if it is over a 'prescribed value'.		This change will add clarity and certainty. The LGA intends to have input into the decision about the appropriate 'prescribed value' and feedback is sought on this.
73 Principles to be observed by a council	Section 73 already sets out a range of illegal election practices' (eg misleading election material, defamation). The additions to section 73 clarify that an election will only be declared void if the Court of Disputed Returns is satisfied that the illegal practice affected the result of the election.		These changes are consistent with the approach taken in State and Federal elections. Minor breaches of election rules are common. Whilst disputed elections are very rare in local government, substantial costs are incurred when elections need to be re-held. Election results should only be overturned if the breach would have affected the result.

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80, 81A Returns for candidates	Candidates already have an obligation after an election to provide the Returning Officer with a 'Campaign Donations Return'. Candidates will also be required to provide a 'Large Gifts Return'. This will include the value of each large gift and the name of the donor. If the donor is an unincorporated association of a foundation, the Return must include the names of the executive members of these bodies.		The minimum value of a 'large gift' will be prescribed at a later date. It would be useful to consolidate all of the required 'returns' for candidates into one consolidated form. LGA advocacy on the Elections Regulations will reflect this aim.
83, 84, 86, 87 & 89 Returning Officer/CEO Roles	These changes clarify that the Returning Officer is ultimately responsible for a range of election functions (and not the council CEO).		Changes which remove council responsibility for these functions and bestow responsibility on the Electoral Commissioner or Returning Officer are consistent with the LGA's previous local government reform submission. Note that the Returning Officer will appoint council staff as 'Deputy Returning Officers'. The LGA queries whether these amendments might have the effect of making a council employee – who may not be a senior officer – responsible for these functions instead.
91A Conduct of council during election period.	The section requires a Council's Caretaker Policy to include information about the making of 'designated decisions' and the use of council resources during the election period. Designated decisions include decisions on the remuneration or termination of a CEO and decisions with an impact exceeding 1% of council rates revenue.		Most Council Caretaker Policies already deal with these matters. The proposed amendments do not address a substantive issue faced by councils since the commencement of this Section, which is clarification that the use of council resources by elected members for the ordinary performance and discharge of their official functions and duties will not be a contravention of a Caretaker Policy. This is consistent with recommendations from the SA Ombudsman.

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93 Regulations	The new Regulation-making power could bestow new powers and discretions on the Electoral Commissioner to make a range of decisions.		<p>The LGA seeks clarity on what new powers are proposed for the Electoral Commissioner through Regulations. In particular, the Commissioner may have powers to direct councils and their staff, which would have resourcing implications for councils.</p> <p>A preferable approach will be for the Elections Regulations to specify and limit each new power, outline the Commissioner's decision-making criteria and ensure that the consent of the relevant council must be obtained if the exercise of the power will have a resourcing impact on a council.</p>

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