

South Australia

# First Nations Voice Act 2023

An Act to give First Nations people a voice that will be heard by the Parliament of South Australia, the Government of South Australia and other persons and bodies, to establish Local First Nations Voices and the State First Nations Voice, to repeal the *Aboriginal Lands Parliamentary Standing Committee Act 2003*, to amend the *Constitution Act 1934*, and for other purposes.

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## Preamble

- 1 For millennia Aboriginal people thrived as the custodians of the land and waters of this State.
  - 2 Since colonisation Aboriginal and Torres Strait Islander people have faced unacceptable levels of disadvantage.
  - 3 It is now intended that there be a platform for Aboriginal and Torres Strait Islander people to be better heard by government so that they have more of a say in the decisions that affect their lives.
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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *First Nations Voice Act 2023*.

#### 2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

#### 3—Interpretation

In this Act—

*administrative unit* has the same meaning as in the *Public Sector Act 2009*;

*First Nations person*—see section 4;

*Local First Nations Voice*, in respect of a region, means the Local First Nations Voice for that region established under section 10;

**region**, for the purposes of this Act, means a region from time to time constituted under section 9;

**serious offence** means—

- (a) an offence against the following provisions of the *Criminal Law Consolidation Act 1935*:
  - (i) Part 3;
  - (ii) Part 3A;
  - (iii) Part 3B;
  - (iv) Part 3D;
  - (v) Part 4;
  - (vi) Part 5;
  - (vii) Part 6A;
  - (viii) Part 6B;
  - (ix) Part 7;
  - (x) Part 7B (being an offence consisting of aiding, abetting, counselling or procuring the commission of an offence referred to in a preceding subparagraph);
  - (xi) section 270A (being an offence consisting of attempting to commit an offence referred to in a preceding subparagraph);
  - (xii) section 270AB;
  - (xiii) section 270B;
  - (xiv) section 270C;
  - (xv) section 270D; or
- (b) any other offence prescribed by the regulations (being an indictable offence, or a summary offence with a maximum penalty of 12 months imprisonment or more); or
- (c) an offence against a law of the Commonwealth, or of another State or Territory, corresponding to an offence referred to in a preceding paragraph;

**State First Nations Voice** means the State First Nations Voice established under section 23;

**traditional owner**—see section 5.

#### 4—Meaning of *First Nations person*

- (1) For the purposes of this Act, a person will be taken to be a **First Nations person** if the person—
  - (a) is of Aboriginal or Torres Strait Islander descent; and
  - (b) regards themselves as Aboriginal or Torres Strait Islander (as the case requires); and

- (c) is accepted as an Aboriginal or Torres Strait Islander person by the relevant Aboriginal or Torres Strait Islander community.
- (2) For the purposes of this Act, a person will be taken to be of Aboriginal or Torres Strait Islander descent if the person is biologically descended from the persons who inhabited Australia or the Torres Strait Islands (as the case requires) before European settlement.

## **5—Meaning of *traditional owner***

For the purposes of this Act, a reference to a *traditional owner* in relation to a particular place will be taken to be a reference to a First Nations person who, in accordance with First Nations tradition, has social, economic, or spiritual affiliations with the place.

## **6—Act does not require disclosure of certain information**

Nothing in this Act requires a Local First Nations Voice, the State First Nations Voice or any First Nations person to disclose information (however described) that should not, according to First Nations tradition, be disclosed (either generally or in particular circumstances).

## **7—Act does not limit functions of other First Nations persons or bodies etc**

- (1) Nothing in this Act limits or otherwise affects the functions of any other First Nations persons or bodies under any other Act or law.
- (2) Nothing in this Act limits or otherwise affects an agreement or arrangement (however described) entered into or relating to First Nations persons or bodies (including, to avoid doubt, an agreement under the *Native Title Act 1993* of the Commonwealth or any other Act or law), or the ability of First Nations persons or bodies to enter into such agreements or arrangements.
- (3) Nothing in this Act limits or otherwise affects anything that First Nations persons or bodies can do in accordance with First Nations tradition.

## **8—Act to be read in conjunction with other relevant Acts**

The provisions of this Act are intended to be read in conjunction with, and to complement, the provisions of any other Act that implements measures to progress Truth and Treaty, as identified in the Uluru Statement from the Heart.

# **Part 2—Local First Nations Voices**

## **Division 1—State to be divided into regions**

### **9—Constitution of regions**

- (1) South Australia is to be divided into the prescribed number of regions for the purposes of this Act.
- (2) Each region—
  - (a) consists of the area or areas from time to time specified by the regulations;
  - and

- (b) may be known by the name from time to time assigned to the region by the State First Nations Voice after consultation with the relevant Local First Nations Voice.
- (3) Without limiting subsection (2), the area or areas comprising a region may be identified by reference to a plan of regions lodged in the General Registry Office from time to time.
- (4) For the purposes of this section, the *prescribed number of regions* is—
  - (a) if the regulations from time to time prescribe a number of regions—that number; or
  - (b) if the regulations do not prescribe a number of regions—6.

## Division 2—Local First Nations Voices

### 10—Establishment of Local First Nations Voices

- (1) There is to be a Local First Nations Voice in respect of each region in the State.
- (2) Each Local First Nations Voice—
  - (a) is a body corporate with perpetual succession and a common seal; and
  - (b) is capable of suing and being sued; and
  - (c) is, for the purpose of carrying out its functions, capable of—
    - (i) holding, acquiring, dealing with and disposing of real and personal property; and
    - (ii) acquiring or incurring any other rights or liabilities.
- (3) A Local First Nations Voice is independent of direction or control by the Crown or any Minister or officer of the Crown.
- (4) A Local First Nations Voice is not an agency or instrumentality of the Crown (and is not, to avoid doubt, a public sector agency under the *Public Sector Act 2009*).
- (5) If an apparently genuine document purports to bear the common seal of a Local First Nations Voice, it is to be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Local First Nations Voice has been duly affixed to that document.

### 11—Composition of Local First Nations Voice

A Local First Nations Voice consists of such number of members as may be prescribed by the regulations (which may, to avoid doubt, consist of different numbers of members for different Local First Nations Voices) elected in accordance with this Act and reflecting the gender diversity contemplated by Schedule 1.

### 12—Joint presiding members

- (1) Each Local First Nations Voice must elect 2 of its members (being persons of different gender) to be joint presiding members of the Local First Nations Voice.

- (2) A joint presiding member who is removed from the State First Nations Voice under section 27—
  - (a) ceases, by force of this section, to be a joint presiding member of the Local First Nations Voice; and
  - (b) is not eligible to be re-elected as a joint presiding member of the Local First Nations Voice.
- (3) To avoid doubt, nothing in subsection (2) requires a member referred to in that subsection to also be removed as an ordinary member of the Local First Nations Voice.

### **13—Terms and conditions of office**

- (1) Subject to this Act, a member of a Local First Nations Voice holds office until the next election of members of the Local First Nations Voice and is eligible for re-election.
- (2) A member of a Local First Nations Voice is entitled to such remuneration, allowances and expenses as may be determined by the Governor.

### **14—Vacancies**

- (1) The office of a member of a Local First Nations Voice becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not re-elected; or
  - (c) resigns by written notice to the Governor; or
  - (d) is sentenced to serve a period of imprisonment for an offence; or
  - (e) is found guilty of a serious offence; or
  - (f) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
  - (g) is removed from office by the Governor under subsection (2).
- (2) The Governor may, on the recommendation of the State First Nations Voice made at the written request of a Local First Nations Voice, remove a member of that Local First Nations Voice from office—
  - (a) for misconduct or conduct that may bring the Local First Nations Voice into disrepute; or
  - (b) for breach of, or non-compliance with, a condition of office; or
  - (c) for failure to comply with the duty under section 19; or
  - (d) for breach of, or non-compliance with, the code of conduct under section 20; or
  - (e) if the member has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
  - (f) if the member has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily.



- (3) A Local First Nations Voice may only make a written request under subsection (2) in accordance with a resolution passed by a majority of members of the Local First Nations Voice.
- (4) Subject to subsection (5), the following rules apply to the filling of a casual vacancy that occurs in the office of a member:
  - (a) if the vacancy occurs within 18 months after the member's election, and there was more than 1 candidate at the election, the Governor must appoint the person of the appropriate gender who received the next highest number of votes at that election;
  - (b) if—
    - (i) there was only 1 candidate at the member's election; or
    - (ii) the person with the next highest number of votes is no longer suitable, or is unavailable or unwilling to be appointed; or
    - (iii) the vacancy occurs later than 18 months after that election,a supplementary election to fill the vacant office must be held.
- (5) If a casual vacancy occurs in the office of a member less than 12 months before the next scheduled election of members (not being a supplementary election) the Local First Nations Voice may determine not to fill the vacancy for the remainder of the period until the next election.
- (6) A member appointed to a vacant office under subsection (4) holds office for the balance of the term of the member's predecessor.
- (7) An act or proceeding of a Local First Nations Voice is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

## 15—Functions of Local First Nations Voices

- (1) A Local First Nations Voice has the following functions:
  - (a) to consider and discuss matters of interest to First Nations people in its region;
  - (b) to promote, encourage and assist First Nations people in its region to communicate their views on matters of interest;
  - (c) to receive the views of First Nations people in its region and pass those views on to the State First Nations Voice;
  - (d) to liaise and collaborate with the State First Nations Voice on matters of interest to First Nations people in its region;
  - (e) at the discretion of the Local First Nations Voice, to collaborate with and assist public sector agencies and other organisations in the development of policies and procedures that affect First Nations people in its region;
  - (f) at the discretion of the Local First Nations Voice, to engage with local government and with other organisations on matters of interest to First Nations people in its region;
  - (g) such other functions as may be assigned to the Local First Nations Voice by or under this Act or by the Minister.

- (2) Subject to this Act, a Local First Nations Voice has such powers as may be necessary or expedient for the performance of the Local First Nations Voice's functions.

## **16—Procedures of Local First Nations Voices**

- (1) Subject to this Act, a quorum of a Local First Nations Voice consists of one half the total number of its members (ignoring any fraction resulting from the division) plus 1.
- (2) Subject to this section, a Local First Nations Voice must meet not less than 4, and not more than 6, times in each year.
- (3) A Local First Nations Voice may, with the approval of the Minister, meet more than 6 times in a year.
- (4) The joint presiding members will preside at a meeting of a Local First Nations Voice and, in the absence of 1 of the joint presiding members, the remaining joint presiding member will preside and, in the absence of both joint presiding members, a member chosen by the members present at the meeting will preside.
- (5) A question arising for decision at a meeting of a Local First Nations Voice will be decided by a majority of the votes cast by the members present at the meeting.
- (6) Each member present at a meeting of a Local First Nations Voice will be entitled to 1 vote on any question arising for decision at the meeting and, if the votes are equal, the question will be decided in accordance with procedures determined by the Local First Nations Voice.
- (7) A meeting of a Local First Nations Voice may be conducted remotely using 1 or both of the following means of communication:
  - (a) audio visual;
  - (b) audio,

and a member who participates in a meeting in accordance with this subsection is taken to be present at the meeting, and to form part of any quorum for the meeting, even if the member is not physically present at the same place as another member participating in the meeting.

- (8) To avoid doubt, a meeting of a Local First Nations Voice may be conducted by members attending in person, attending by audio visual or audio means, or by a combination of both.
- (9) A Local First Nations Voice must have accurate minutes kept of its meetings.
- (10) Subject to this Act, a Local First Nations Voice may determine its own procedures.

## **17—Delegation**

- (1) A Local First Nations Voice may delegate a function under this Act to a member of the Local First Nations Voice.
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the Local First Nations Voice to act in any matter; and

(d) is revocable at will.

- (3) A function delegated under this section may, if the instrument of delegation so provides, be further delegated.

## **18—Accounts and audit**

- (1) A Local First Nations Voice must keep proper accounting records in relation to its financial affairs, and must have annual statements of account prepared in respect of each financial year.
- (2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of a Local First Nations Voice.

## **19—Duty to act honestly**

A member of a Local First Nations Voice must at all times act honestly in the performance of the functions of their office, whether within or outside the State.

## **20—Code of conduct**

- (1) The Minister may, by notice in the Gazette, after consultation with the State First Nations Voice, publish a code of conduct for members of Local First Nations Voices (which may be combined with the code of conduct for members of the State First Nations Voice).
- (2) Members of Local First Nations Voices must comply with the code of conduct.

## **Division 3—Elections of members of Local First Nations Voices**

### **21—Conduct of elections of members of Local First Nations Voices**

- (1) Subject to this Act, an election of members of a Local First Nations Voice (including, to avoid doubt, a supplementary election) must be conducted in accordance with Schedule 1.
- (2) Except in the case of a supplementary election, an election of members of a Local First Nations Voice—
- (a) must be conducted in the course of each general election (within the meaning of the *Electoral Act 1985*); and
  - (b) must be conducted by the Electoral Commissioner—
    - (i) in accordance with the rules set out in Schedule 1; and
    - (ii) to the extent that the rules set out in Schedule 1 fail to deal with a matter that, in the opinion of the Electoral Commissioner, is necessary for the proper conduct of the election, or if, in the opinion of the Electoral Commissioner, the circumstances of a particular election require modifications to the rules set out in Schedule 1—in accordance with rules determined by the Electoral Commissioner after consultation with the State First Nations Voice and the Minister in relation to that matter.
- (3) The validity of any election or return may only be disputed in accordance with Schedule 1.

## **Division 4—Annual meeting of Local First Nations Voices**

### **22—Annual meeting of Local First Nations Voices**

- (1) The State First Nations Voice must convene, at least once in each year, a meeting of all Local First Nations Voices.
- (2) An annual meeting may be held at the time and place determined by the State First Nations Voice.
- (3) An annual meeting is to be conducted in accordance with any procedures determined by the State First Nations Voice.
- (4) However, nothing in this section requires a Local First Nations Voice, or a member of a Local First Nations Voice, to attend an annual meeting.

## **Part 3—State First Nations Voice**

### **23—Establishment of State First Nations Voice**

- (1) The State First Nations Voice is established.
- (2) The State First Nations Voice—
  - (a) is a body corporate with perpetual succession and a common seal; and
  - (b) is capable of suing and being sued; and
  - (c) is, for the purpose of carrying out its functions, capable of—
    - (i) holding, acquiring, dealing with and disposing of real and personal property; and
    - (ii) acquiring or incurring any other rights or liabilities.
- (3) The State First Nations Voice is independent of direction or control by the Crown or any Minister or officer of the Crown.
- (4) The State First Nations Voice is not an agency or instrumentality of the Crown (and is not, to avoid doubt, a public sector agency under the *Public Sector Act 2009*).
- (5) If an apparently genuine document purports to bear the common seal of the State First Nations Voice, it is to be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the State First Nations Voice has been duly affixed to that document.

### **24—Composition of State First Nations Voice**

The State First Nations Voice consists of the joint presiding members of each Local First Nations Voice.

### **25—Joint presiding members**

The State First Nations Voice must elect 2 of its members (being persons of different gender) to be joint presiding members of the State First Nations Voice.

## 26—Terms and conditions of office

- (1) A member of the State First Nations Voice holds office for as long as they are a joint presiding member of the relevant Local First Nations Voice.
- (2) A member of the State First Nations Voice is entitled to such remuneration, allowances and expenses as may be determined by the Governor.

## 27—Vacancies

- (1) The office of a member of the State First Nations Voice becomes vacant if the member—
  - (a) dies; or
  - (b) resigns by written notice to the Governor; or
  - (c) is sentenced to serve a period of imprisonment for an offence; or
  - (d) is found guilty of a serious offence; or
  - (e) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
  - (f) is removed from office by the Governor under subsection (2).
- (2) The Governor may, at the written request of the State First Nations Voice, remove a member of the State First Nations Voice from office—
  - (a) for misconduct or conduct that may bring the State First Nations Voice into disrepute; or
  - (b) for breach of, or non-compliance with, a condition of office; or
  - (c) for failure to comply with the duty under section 36; or
  - (d) for breach of, or non-compliance with, the code of conduct under section 37; or
  - (e) if the member has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
  - (f) if the member has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily.
- (3) The State First Nations Voice may only make a written request under subsection (2) in accordance with a resolution passed by a majority of members of the State First Nations Voice.
- (4) An act or proceeding of the State First Nations Voice is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

## 28—Functions of State First Nations Voice

- (1) The State First Nations Voice has the following functions:
  - (a) to represent the diversity of First Nations people in South Australia;
  - (b) to liaise with the Local First Nations Voices to ascertain their views in relation to matters of interest and to present those views to the South Australian Parliament and the South Australian Government and other bodies;

- (c) to engage with and provide advice to the South Australian Parliament and the South Australian Government on matters of interest to First Nations people;
  - (d) at the discretion of the State First Nations Voice, to engage with and provide advice to other levels of government and other organisations (including, to avoid doubt, the Commonwealth and other States and Territories) on policy and procedures that relate to matters of interest to First Nations people;
  - (e) to assign names to regions constituted for the purposes of this Act;
  - (f) such other functions as may be assigned to the State First Nations Voice by or under this Act or by the Minister.
- (2) The State First Nations Voice must, in carrying out its functions, endeavour to represent the views of First Nations persons in the State.
- (3) Subject to this Act, the State First Nations Voice has such powers as may be necessary or expedient for the performance of the State First Nations Voice's functions.
- (4) The State First Nations Voice cannot delegate a function under this Act.

## **29—Procedures of State First Nations Voice**

- (1) Subject to this Act, a quorum of the State First Nations Voice consists of one half the total number of its members (ignoring any fraction resulting from the division) plus 1.
- (2) Subject to this section, the State First Nations Voice must meet not less than 4, and not more than 6, times in each year.
- (3) The State First Nations Voice may, with the approval of the Minister, meet more than 6 times in a year.
- (4) The joint presiding members will preside at a meeting of the State First Nations Voice and, in the absence of 1 of the joint presiding members, the remaining joint presiding member will preside and, in the absence of both joint presiding members, a member chosen by the members present at the meeting will preside.
- (5) A question arising for decision at a meeting of the State First Nations Voice will be decided by a majority of the votes cast by the members present at the meeting.
- (6) Each member present at a meeting of the State First Nations Voice will be entitled to 1 vote on any question arising for decision at the meeting and, if the votes are equal, the question will be decided in accordance with procedures determined by the State First Nations Voice.
- (7) A meeting of the State First Nations Voice may be conducted remotely using 1 or both of the following means of communication:
  - (a) audio visual;
  - (b) audio,

and a member who participates in a meeting in accordance with this subsection is taken to be present at the meeting, and to form part of any quorum for the meeting, even if the member is not physically present at the same place as another member participating in the meeting.

- (8) To avoid doubt, a meeting of the State First Nations Voice may be conducted by members attending in person, attending by audio visual or audio means, or by a combination of both.

- (9) A member of the State First Nations Voice may, by written instrument, appoint 1 member of the Local First Nations Voice to which the office of the member relates (whether or not they are a member of the State First Nations Voice) to act as the member's proxy at a meeting specified in the instrument of appointment (however a proxy so appointed must be of a gender that ensures that the representatives of the Local First Nations Voice present at the meeting are of different genders).
- (10) A First Nations person appointed to act as a proxy for a member at a specified meeting may only so act if the First Nations person—
  - (a) is present at the specified meeting; and
  - (b) exercises the proxy vote at the meeting in accordance with any instructions of the appointing member in the instrument of appointment.
- (11) A member of the State First Nations Voice is not entitled to additional remuneration for acting as a proxy (however a proxy who is not a member of the State First Nations Voice is entitled to receive such remuneration, allowances and expenses as the appointing member would have received had they attended the meeting).
- (12) To avoid doubt, a proxy vote that is exercised other than in accordance with this section is void and of no effect.
- (13) The State First Nations Voice must have accurate minutes kept of its meetings.
- (14) Subject to this Act, the State First Nations Voice may determine its own procedures.

### **30—First Nations Elders Advisory Committee**

- (1) The State First Nations Voice must establish a committee (the *First Nations Elders Advisory Committee*) to advise the State First Nations Voice in relation to matters affecting First Nations elders.
- (2) The First Nations Elders Advisory Committee consists of 2 persons of different gender nominated by each Local First Nations Voice.
- (3) A member of the State First Nations Voice or a Local First Nations Voice is not eligible to be a member of the First Nations Elders Advisory Committee.
- (4) Each member of the First Nations Elders Advisory Committee must be a First Nations person.
- (5) The procedures of the First Nations Elders Advisory Committee will be—
  - (a) as determined by the State First Nations Voice; and
  - (b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.
- (6) A member of the First Nations Elders Advisory Committee is entitled to such remuneration, allowances and expenses (if any) as may be determined by the Minister after consultation with the State First Nations Voice.

### **31—First Nations Youth Advisory Committee**

- (1) The State First Nations Voice must establish a committee (the *First Nations Youth Advisory Committee*) to advise the State First Nations Voice in relation to matters affecting First Nations youth.

- (2) The First Nations Youth Advisory Committee consists of 2 persons of different gender nominated by each Local First Nations Voice.
- (3) A member of the State First Nations Voice or a Local First Nations Voice is not eligible to be a member of the First Nations Youth Advisory Committee.
- (4) Each member of the First Nations Youth Advisory Committee must be a First Nations person.
- (5) The procedures of the First Nations Youth Advisory Committee will be—
  - (a) as determined by the State First Nations Voice; and
  - (b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.
- (6) A member of the First Nations Youth Advisory Committee is entitled to such remuneration, allowances and expenses (if any) as may be determined by the Minister after consultation with the State First Nations Voice.

### **32—Stolen Generations Advisory Committee**

- (1) The State First Nations Voice must establish a committee (the ***Stolen Generations Advisory Committee***) to advise the State First Nations Voice in relation to matters affecting members of the stolen generations.
- (2) The Stolen Generations Advisory Committee consists of 6 members appointed by the State First Nations Voice.
- (3) A member of the State First Nations Voice or a Local First Nations Voice is not eligible to be a member of the Stolen Generations Advisory Committee.
- (4) Each member of the Stolen Generations Advisory Committee must be a First Nations person.
- (5) The procedures of the Stolen Generations Advisory Committee will be—
  - (a) as determined by the State First Nations Voice; and
  - (b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.
- (6) A member of the Stolen Generations Advisory Committee is entitled to such remuneration, allowances and expenses (if any) as may be determined by the Minister after consultation with the State First Nations Voice.

### **33—Native Title Bodies Advisory Committee**

- (1) The State First Nations Voice must establish a committee (the ***Native Title Bodies Advisory Committee***) to advise the State First Nations Voice in relation to matters of interest to native title bodies.
- (2) The Native Title Bodies Advisory Committee consists of the persons appointed by the State First Nations Voice (being 1 person nominated by each native title body prescribed by the regulations for the purposes of this section).
- (3) A member of the State First Nations Voice or a Local First Nations Voice is not eligible to be a member of the Native Title Bodies Advisory Committee.
- (4) Each member of the Native Title Bodies Advisory Committee must be a First Nations person.



- (5) The procedures of the Native Title Bodies Advisory Committee will be—
  - (a) as determined by the State First Nations Voice; and
  - (b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.
- (6) A member of the Native Title Bodies Advisory Committee is entitled to such remuneration, allowances and expenses (if any) as may be determined by the Minister after consultation with the State First Nations Voice.

### **34—Other advisory committees**

- (1) The State First Nations Voice may establish such other committees to advise the State First Nations Voice as the State First Nations Voice considers appropriate.
- (2) The membership of a committee established under subsection (1) will be determined by the State First Nations Voice and may, but need not, consist of, or include, members of the State First Nations Voice or a Local First Nations Voice.
- (3) Each member of a committee must (unless the State First Nations Voice determines otherwise in relation to a particular committee) be a First Nations person.
- (4) The procedures to be observed in relation to the conduct of the business of a committee will be—
  - (a) as determined by the State First Nations Voice; and
  - (b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.
- (5) A member of a committee is entitled to such remuneration, allowances and expenses (if any) as may be determined by the Minister after consultation with the State First Nations Voice.

### **35—Accounts and audit**

- (1) The State First Nations Voice must keep proper accounting records in relation to its financial affairs, and must have annual statements of account prepared in respect of each financial year.
- (2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the State First Nations Voice.

### **36—Duty to act honestly**

A member of the State First Nations Voice must at all times act honestly in the performance of the functions of their office, whether within or outside the State.

### **37—Code of conduct**

- (1) The Minister may, by notice in the Gazette, after consultation with the State First Nations Voice, publish a code of conduct for members of the State First Nations Voice.
- (2) Members of the State First Nations Voice must comply with the code of conduct.

## **Part 4—Addresses to Parliament**

### **38—State First Nations Voice to deliver annual report and address to Parliament**

- (1) The State First Nations Voice must, on the day or days in each year determined by the presiding officers of each House of Parliament after consultation with the State First Nations Voice—
  - (a) present to a joint sitting of Parliament a written report setting out a summary of its operations during the preceding year, as well as any other matters of interest to First Nations people; and
  - (b) present to a joint sitting of Parliament a written report (which may be combined with the report under paragraph (a)) setting out a summary of the operations of each Local First Nations Voice during the preceding year; and
  - (c) address, through 1 of the joint presiding members of the State First Nations Voice, a joint sitting of Parliament in relation to the reports.
- (2) To avoid doubt, only 1 address may be made under this section in each year.

### **39—State First Nations Voice to be notified of introduction of Bills**

- (1) The clerk of the Legislative Council or House of Assembly (as the case requires) must cause the State First Nations Voice to be given notice of the introduction of each Bill in the Council or Assembly.
- (2) However, a failure to comply with this section does not affect the validity of the Bill or any proceedings of the Parliament.

### **40—State First Nations Voice entitled to address Parliament in relation to Bills**

- (1) The State First Nations Voice is, by force of this section, entitled to address, through 1 of the joint presiding members of the State First Nations Voice, either House of Parliament (but not both) in relation to any Bill that has been introduced into the relevant House.
- (2) The State First Nations Voice must give to the presiding officer of the relevant House at least 7 days' written notice of the intention of the State First Nations Voice to address the House.
- (3) However, the State First Nations Voice need not give notice in accordance with subsection (2) if, in the case where a Bill is to be debated or otherwise progressed urgently through the relevant House, it is not reasonably practicable to do so.
- (4) For the purposes of this section, 1 of the joint presiding members of the State First Nations Voice may—
  - (a) be admitted to the floor of the relevant House; and
  - (b) address the relevant House on behalf of the State First Nations Voice in relation to the relevant Bill.
- (5) To avoid doubt, only 1 address may be made, and only 1 House addressed, under subsection (4) in relation to each Bill.

- (6) Nothing in this section prevents the State First Nations Voice or the joint presiding members of the State First Nations Voice from doing any other thing with the permission of the relevant House.
- (7) Nothing in this section prevents the relevant House from conducting its business (including, to avoid doubt, the consideration or passing of Bills about which the State First Nations Voice wishes to address the House) prior to being addressed by the State First Nations Voice under this section.

#### **41—State First Nations Voice may present report to Parliament**

- (1) Without limiting any other provision of this Act, the State First Nations Voice may provide to the Parliament a report on any matter that is, in the opinion of the State First Nations Voice, a matter of interest to First Nations people.
- (2) A copy of the report must be delivered to the President of the Legislative Council, the Speaker of the House of Assembly and the Minister.
- (3) The President of the Legislative Council and the Speaker of the House of Assembly must, on the first sitting day after receiving a report, lay it before their respective Houses.
- (4) The Minister must, as soon as is reasonably practicable after receiving the report (but in any event not later than 6 months after receiving the report)—
  - (a) provide a copy of the report to each Minister responsible for an area identified in the report as requiring action; and
  - (b) prepare a report setting out—
    - (i) each Minister's response to any part of the report that falls within that Minister's responsibility; and
    - (ii) if any action has been taken, or is proposed to be taken, (whether by a Minister, a public sector agency or any other person or body) in response to the report or a part of the report—details of that action or proposed action; and
    - (iii) if no action is to be taken (whether by a Minister, a public sector agency or any other person or body) in response to the report or a part of the report—the reasons for not taking action; and
    - (iv) any other information required by the regulations.
- (5) The Minister must, within 6 sitting days after preparing a report under subsection (4), cause a copy of the report to be laid before both Houses of Parliament.

#### **42—State First Nations Voice may be requested to provide report to Parliament etc**

- (1) The President of the Legislative Council or the Speaker of the House of Assembly may, by written notice, request the State First Nations Voice to provide to the Council or Assembly (as the case requires) a report in relation to a specified Bill addressing the matters specified in the notice.

- (2) The President of the Legislative Council or the Speaker of the House of Assembly may, by written notice and with the agreement of the State First Nations Voice, request a specified member of the State First Nations Voice to attend and address the Council or Assembly (as the case requires) in relation to a specified Bill.
- (3) However, the State First Nations Voice or a member of the State First Nations Voice cannot be compelled to provide a report or attend Parliament under this section.
- (4) To avoid doubt, nothing in this section limits the general privilege of Parliament to send for persons, papers or records.

## Part 5—Interaction with South Australian Government

### Division 1—Meeting with Cabinet

#### 43—State First Nations Voice to meet with Cabinet

- (1) The State First Nations Voice and the Cabinet must, in accordance with any procedures determined by the State First Nations Voice and the Premier, meet at least twice in each year.
- (2) Despite subsection (1), the State First Nations Voice and the Cabinet may meet less than twice in a year if—
  - (a) the joint presiding members of the State First Nations Voice are of the opinion that it is not reasonably practicable for a particular meeting to take place; and
  - (b) it is not reasonably practicable to reschedule the meeting to take place in the relevant year.
- (3) The procedures for meetings between the State First Nations Voice and the Cabinet will be as determined by agreement between the State First Nations Voice and the Premier.

#### 44—Protection of communications etc with Cabinet

For the purposes of the *Freedom of Information Act 1991* and any other Act or law, information and documents prepared for, or provided to, the Cabinet by the State First Nations Voice will be taken to have been specifically prepared for submission to Cabinet.

### Division 2—Briefings with Chief Executives of administrative units

#### 45—Briefings with Chief Executives of administrative units

- (1) The Premier must, in accordance with any requirements set out in the regulations, cause a meeting (a ***Chief Executive's briefing***) to be held at least twice in each year between the State First Nations Voice and the Chief Executives of each administrative unit of the Public Service specified by the State First Nations Voice for the purposes of the Chief Executive's briefing.
- (2) The purpose of a Chief Executive's briefing is to allow the State First Nations Voice to be briefed by, and ask questions of, the Chief Executives present at the Chief Executive's briefing in relation to matters of interest identified by the State First Nations Voice.

- (3) The procedures for a Chief Executive's briefing under this section will be as determined by agreement between the State First Nations Voice and the Premier.

### **Division 3—Annual engagement hearing with administrative units etc**

#### **46—Annual engagement hearing with administrative units etc**

- (1) The Premier must, in accordance with any requirements set out in the regulations, cause a meeting (an *engagement hearing*) to be held in each year between the joint presiding members of the State First Nations Voice and—
- (a) each Minister specified by the State First Nations Voice for the purposes of the engagement hearing; and
  - (b) the Chief Executive of each administrative unit of the Public Service specified by the State First Nations Voice for the purposes of the engagement hearing.
- (2) The purpose of an engagement hearing is to allow the State First Nations Voice to ask questions of the Ministers and Chief Executives relating to the operations, expenditure, budget and priorities of administrative units as they affect—
- (a) the health, welfare or education of First Nations people; or
  - (b) the structure, organisation and efficiency of the administrative unit as they relate to matters affecting First Nations people, and the ways in which those areas might be enhanced; or
  - (c) any other matter determined by agreement between the joint presiding members of the State First Nations Voice and the Premier.
- (3) The procedures for an engagement hearing under this section will be as determined by agreement between the joint presiding members of the State First Nations Voice and the Premier.
- (4) The Premier must cause a transcript of each engagement hearing to be prepared and published.

### **Part 6—Administration and resourcing**

#### **47—Secretariat**

There will be a secretariat for the Local First Nations Voices and the State First Nations Voice, consisting of such Public Service employees as may be assigned to the secretariat.

#### **48—Resources**

Before determining the resources to be provided to Local First Nations Voices and the State First Nations Voice for the purposes of this Act, the Minister must consult with each such body and then, having regard to any submissions made during that consultation, determine the resourcing that, in the Minister's opinion, each body reasonably needs to carry out its functions under this Act.

## **49—Use of staff etc of Public Service**

A Local First Nations Voice and the State First Nations Voice may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

## **Part 7—Review of Act**

### **50—Review of Act**

- (1) The Minister must cause a review of the operation of this Act to be undertaken, and a report on the review to be prepared and submitted to the Minister.
- (2) The review must be conducted by a First Nations person or body appointed by the Minister on the recommendation of the State First Nations Voice.
- (3) The review must be completed after the third, but before the fourth, anniversary of the commencement of this section.
- (4) Without limiting the matters that may be the subject of the review, the review must consider and report on such matters as may be specified by the Minister or the State First Nations Voice.
- (5) A report may contain such recommendations as the reviewer considers appropriate.
- (6) The Minister must cause a copy of the report provided under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

## **Part 8—Miscellaneous**

### **51—Confidentiality**

- (1) A person engaged or formerly engaged in the administration of this Act must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—
  - (a) as required or authorised by or under this Act or any other Act or law; or
  - (b) with the consent of the person to whom the information relates; or
  - (c) in connection with the administration or enforcement of this or any other Act; or
  - (d) for the purposes of referring the matter to a law enforcement agency; or
  - (e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions; or
  - (f) if the disclosure is reasonably necessary for the protection of the lawful interests of that person.

Maximum penalty: \$10 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.

- (3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—
- (a) the person to whom the information was disclosed; or
  - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.
- Maximum penalty: \$10 000.
- (4) The regulations may make further provision in respect of the disclosure of information obtained in the course of the administration of this Act.

## **52—Obstruction etc**

A person must not, without reasonable excuse, obstruct, hinder, resist or improperly influence, or attempt to obstruct, hinder, resist or improperly influence, a Local First Nations Voice or the State First Nations Voice, or a member of those bodies, in the performance or exercise of a function under this Act.

Maximum penalty: \$10 000.

## **53—Protections, privileges and immunities**

- (1) No liability attaches to a Local First Nations Voice, the State First Nations Voice, a member of those bodies or any other person or body for any act or omission in good faith in the exercise or purported exercise of functions or powers under this or any other Act.
- (2) Nothing in this Act affects the privileges, immunities or powers of the Legislative Council or House of Assembly or their committees or members.
- (3) Nothing in this Act affects any rule or principle of law relating to—
- (a) legal professional privilege; or
  - (b) "without prejudice" privilege; or
  - (c) public interest immunity; or
  - (d) cabinet in confidence or commercial in confidence information; or
  - (e) any other requirement under a law that information be kept confidential.

## **54—Regulations and fee notices**

- (1) The Governor may, on the recommendation of the Minister made after consultation with the State First Nations Voice, make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for—
- (a) the exemption of a person, or a class of persons, from the operation of a specified provision or provisions of this Act; and
  - (b) fees in respect of any matter under this Act and their payment, recovery or waiver; and
  - (c) fines, not exceeding \$10 000, for offences against the regulations; and
  - (d) facilitation of proof of the commission of offences against the regulations.

- (3) The regulations may—
- (a) be of general or limited application; and
  - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
  - (c) make provisions of a saving or transitional nature consequent on the enactment or amendment of this Act or the regulations; and
  - (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of a specified person or body; and
  - (e) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body.
- (4) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.
- (5) If a code, standard or other document is referred to or incorporated in the regulations—
- (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
  - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

## Schedule 1—Rules of election for Local First Nations Voices

### Part 1—Preliminary

#### 1—Interpretation

In this Schedule—

***Court*** means the Court of Disputed Returns under Part 8 of this Schedule;

***declaration of eligibility***—see clause 3;

***election*** means an election of members of Local First Nations Voices;

***returning officer***—see clause 5;

***State election*** means a general election of members of the House of Assembly under the *Electoral Act 1985*;

***State electoral roll*** means the electoral roll (within the meaning of the *Electoral Act 1985*) kept under that Act for the purposes of a State election, as in force from time to time.

#### 2—Voters roll

The State electoral roll will be taken to be the electoral roll for the purposes of an election under this Act.



### 3—Declaration of eligibility

For the purposes of this Schedule, a *declaration of eligibility* in relation to an election means—

- (a) in the case of a declaration of eligibility to vote in an election—a declaration made in a manner and form determined by the returning officer declaring that a specified person—
  - (i) is a First Nations person; and
  - (ii) is, to the best of the person's knowledge, eligible to vote in the election; or
- (b) in the case of a declaration of eligibility to nominate for an office of member of a Local First Nations Voice—a declaration made in a manner and form determined by the returning officer declaring that a specified person—
  - (i) is a First Nations person; and
  - (ii) in the case where the person's nomination relates to an area in relation to which the person is a traditional owner—is a traditional owner of the relevant area; and
  - (iii) is not ineligible to nominate for an office of member of a Local First Nations Voice in the election.

### 4—Gender representation

The gender representation of members of a Local First Nations Voice should reflect the following:

- (a) one half of the membership (rounded down to the nearest whole number) are to be female persons;
- (b) one half of the membership (rounded down to the nearest whole number) are to be male persons;
- (c) in the case where there is an additional office arising out of the rounding down—that member may be of any gender.

## Part 2—Returning officer

### 5—Returning officer

- (1) The Electoral Commissioner will be the returning officer for the purposes of an election under this Act.
- (2) The returning officer may appoint 1 or more electoral officials to assist in the conduct of an election.
- (3) Without limiting the generality of subclause (2), an electoral official—
  - (a) may hand out nomination forms; and
  - (b) may receive nomination forms up to the close of nominations; and
  - (c) may take a photograph of each candidate and write the name of the candidate on the back.

## **6—Distribution of information and election publicity**

- (1) The returning officer will be responsible for publicity of an election in each region.
- (2) Without limiting subclause (1), the returning officer may authorise a specified person or body to assist in the publicity of an election (whether in a particular region or generally).
- (3) Publicity of an election under these rules must include—
  - (a) the description of the election process; and
  - (b) the period during which voting may take place; and
  - (c) the location or locations where—
    - (i) nominations will be called; and
    - (ii) voting will take place,in each region; and
  - (d) the eligibility of voters to vote in the election during the period in which voting may take place; and
  - (e) an explanation that each eligible voter can only vote once at an election in their region,and may include any other information the returning officer thinks fit in relation to the election.
- (4) To avoid doubt, nothing in this clause prevents any other person or body from distributing information relating to an election or otherwise engaging in publicising an election.

## **Part 3—Eligibility to vote**

### **7—Eligibility to vote in elections**

- (1) A First Nations person who—
  - (a) is enrolled on the State electoral roll; and
  - (b) has completed a declaration of eligibility in relation to voting in the election,is eligible to vote in an election of members of the Local First Nations Voice for the region in which the person's principal place of residence (as recorded on the State electoral roll) is located.
- (2) To avoid doubt, a First Nations person is only eligible to vote in relation to the Local First Nations Voice for 1 region.

## **Part 4—Eligibility and nomination for election to Local First Nations Voice**

### **8—Nominations for office of member of Local First Nations Voice**

- (1) A First Nations person—
  - (a) who is enrolled on the State electoral roll; and
  - (b) either—

- (i) whose principal place of residence (as recorded on the State electoral roll) is located within a particular region; or
    - (ii) who is a traditional owner in relation to an area located wholly or partly within a particular region; and
  - (c) who has completed a declaration of eligibility in relation to nominating for an office of member of the Local First Nations Voice in the election,
- is eligible to nominate for an office of member of the Local First Nations Voice for that region.
- (2) However, a person is ineligible to nominate for an office of member of a Local First Nations Voice in an election, or to hold office as a member of a Local First Nations Voice, if the person—
- (a) is serving a sentence of imprisonment for an offence, or is remanded in custody in relation to a charge of an offence; or
  - (b) has been found guilty of a serious offence within the preceding 2 years; or
  - (c) is, pursuant to a bail agreement, parole or other agreement, restricted from travelling within the State; or
  - (d) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth.
- (3) Nominations will be called in relation to each region at a time and location or locations determined by the returning officer, and will close 14 days after the nominations are called.
- (4) A person nominates for an office of member of a Local First Nations Voice by lodging with the returning officer—
- (a) a written nomination in a form determined by the returning officer; and
  - (b) the person's declaration of eligibility in relation to nominating for an office of member of the Local First Nations Voice; and
  - (c) an indication of the person's gender; and
  - (d) a photograph of the person of a kind determined by the returning officer; and
  - (e) either—
    - (i) a criminal history report (such as a National Police Certificate) relating to the person and provided by South Australia Police or a CrimTrac accredited agency or broker within the 6 months immediately preceding the nomination; or
    - (ii) an application for, and written consent to the returning officer obtaining, a criminal history report of a kind referred to in subparagraph (i).
- (5) At the close of nominations, the returning officer must forward any applications and consents received under subclause (4)(e)(ii) to South Australia Police.
- (6) The returning officer must bear the cost of obtaining a criminal history report referred to in subclause (4)(e)(ii) (whether or not the person to whom the criminal history report relates is, in fact, elected to an office of member of a Local First Nations Voice).

- (7) The returning officer must, within 8 weeks after the close of nominations, make a declaration in respect of each person who is eligible to stand for election to an office of member of a Local First Nations Voice.
- (8) If more than 1 person nominates in an election for a particular region, a photograph of each candidate may be taken and used to assist voters.

## **Part 5—General rules relating to election**

### **9—Election timetable**

- (1) Subject to this Act, polling for an election under this Act will occur in the course of each State election.
- (2) Polling is to be conducted at the polling places established or determined for the State election under section 77 of the *Electoral Act 1985* (and may be conducted at such other polling places as may be determined by the returning officer).
- (3) Without limiting section 77(3) of the *Electoral Act 1985*, the returning officer must, in a manner likely to be seen by First Nations people, advise the times and places for polling at a mobile polling booth or other polling place determined by the returning officer.
- (4) Polling at a polling booth must be conducted at the same times as polling for the State election.

### **10—Uncontested elections**

If, after nominations have closed, it appears that the number of candidates of the relevant gender nominated to contest the election does not exceed the number of such persons to be elected, the returning officer must declare the nominated candidates elected.

### **11—Voting**

- (1) If more than 1 nomination is received in relation to an office to be filled at an election under this Act, an election by secret ballot in relation to the office will be held—
  - (a) at each place that the State election is held; and
  - (b) at any other location or locations determined by the returning officer.
- (2) The returning officer must determine such rules as the returning officer considers necessary as to enable the casting of absentee votes in an election.
- (3) Without limiting any other rules that may be determined by the returning officer, the rules referred to in subclause (2) must provide for—
  - (a) voting at polling places at the locations determined by the returning officer; and
  - (b) verification of the identity of persons casting absentee votes in an election; and
  - (c) verification of the eligibility of persons casting absentee votes in an election.
- (4) A person may only cast 1 vote in an election of members of a Local First Nations Voice.
- (5) To avoid doubt, voting is not compulsory.

## **12—Postal voting may be used**

- (1) Without limiting any other clause in this Schedule, voting at an election under this Act may be conducted partly on the basis of postal voting conducted in accordance with the rules and procedures determined by the returning officer.
- (2) Without limiting any other rules or procedures that may be determined by the returning officer, the rules referred to in subclause (1) must provide for—
  - (a) verification of the identity of persons casting postal votes in an election; and
  - (b) verification of the eligibility of persons casting postal votes in an election.

## **13—System of voting and determination of certain rules etc**

- (1) Voting in an election is to be conducted using a single transferable vote system in accordance with rules determined by the Electoral Commissioner after consultation with the State First Nations Voice and the Minister.
- (2) Without limiting the rules that may be determined under this clause, the Electoral Commissioner must make rules relating to—
  - (a) the method of voting in an election; and
  - (b) the counting of votes in an election; and
  - (c) scrutiny of the counting of votes in an election; and
  - (d) the gender representation requirements set out in clause 4 of this Schedule.
- (3) Without limiting clause 4 of this Schedule, the Electoral Commissioner must, in determining rules under this clause, as far as is reasonably practicable, ensure that the rules are consistent with the provisions of the *Electoral Act 1985* relating to the election of members of the Legislative Council.
- (4) Despite subclause (3) and any provisions of the *Electoral Act 1985* to the contrary, a ballot paper is not informal only by reason of the failure of the voter to mark a particular number of preferences on the ballot paper.

## **Part 6—Declaration of results**

### **14—Provisional declarations**

When the result of the election becomes apparent, the returning officer must make a provisional declaration of the result.

### **15—Recounts**

- (1) At any time within 48 hours after the returning officer has made a provisional declaration, a candidate (not being a candidate in whose favour the provisional declaration was made) may, in a manner determined by the returning officer, request a recount of the votes cast in relation to the relevant vacancy and, in the event of a request being made, the returning officer must cause a recount of votes to be made unless the returning officer considers that there is no prospect that a recount would alter the result of the election.
- (2) The returning officer may, on the returning officer's own initiative, during the period of 48 hours referred to in subclause (1), decide to conduct a recount of any votes cast in the election.

- (3) The following provisions apply to a recount:
- (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 a decision taken at the count;
  - (c) if the votes of 2 or more candidates are equal and 1 of them was excluded by lot at the count, the same candidate must be excluded at the recount.

## **16—Declaration of results and certificate**

- (1) If the period for requesting a recount for an election expires without such a request having been made and the returning officer has not decided to initiate a recount, the returning officer must confirm the relevant provisional declarations, and immediately make out a return to the Minister certifying the election of specified candidates to specified offices.
- (2) If a recount is made, the returning officer must, according to the result of the recount—
- (a) confirm the relevant provisional declaration; or
  - (b) revoke the provisional declaration and make a final declaration in accordance with the result of the recount,

and then immediately make out a return to the Minister certifying the result of the election accordingly.

- (3) The returning officer—
- (a) must notify all candidates, in writing, of the result of the election; and
  - (b) must within 1 month after the conclusion of the election cause the result of the election to be published—
    - (i) in the Gazette; and
    - (ii) in a newspaper circulating throughout the State; and
    - (iii) on a website determined by the returning officer; and
    - (iv) in any other manner determined by the returning officer.
- (4) When the returning officer certifies the result of an election under subclause (1) or (2), the election of the candidate or candidates takes effect immediately.

## **Part 7—Supplementary elections**

### **17—Supplementary elections**

- (1) Subject to this clause, if the election of members of a Local First Nations Voice fails because—
- (a) no person nominates for the office to which the election relates; or
  - (b) no votes are cast in the election,
- then the Minister may (but need not) require a supplementary election to be held in relation to the office.

- (2) Before making a determination to require, or not require, a supplementary election, the Minister must consult with—
  - (a) the State First Nations Voice; and
  - (b) the returning officer,and may consult with any other person or body the Minister thinks fit.
- (3) A supplementary election under this Part must be conducted in accordance with this Schedule (with such modifications as the returning officer thinks fit).

## **Part 8—Disputed Returns**

### **18—Constitution of Court**

- (1) There will be a Court of Disputed Returns for the purposes of this Act.
- (2) The Court is constituted of a District Court Judge.
- (3) The Court, separately constituted under this clause, may sit contemporaneously to hear separate proceedings.
- (4) The Court is a court of record.
- (5) Subject to this Part, the procedure and powers of the Court are the same as those of the District Court when exercising its civil jurisdiction.

### **19—Clerk of Court**

- (1) There will be a clerk of the Court appointed by the Chief Judge of the District Court.
- (2) The office of clerk of the Court may be held in conjunction with any other office.

### **20—Jurisdiction of Court**

The Court has jurisdiction to hear and determine any petition addressed to it disputing the validity of an election under this Act.

### **21—Procedure upon petition**

- (1) A petition to the Court must—
  - (a) set out the facts relied on to invalidate the election; and
  - (b) set out the relief to which the petitioner claims to be entitled; and
  - (c) be signed by a candidate at the election in dispute or by an elector for that election; and
  - (d) be lodged with the clerk of the Court within 28 days after the conclusion of the election; and
  - (e) set out the respondents in relation to the petition (including, if appropriate, each candidate for election from the relevant region in the disputed election, the Electoral Commission and the relevant Local First Nations Voice); and
  - (f) be accompanied by the prescribed amount as security for costs.
- (2) A copy of the petition must be served on—
  - (a) any person declared elected in the disputed election; and
  - (b) the relevant Local First Nations Voice; and

- (c) if it is alleged that the election is invalid on account of an act or omission of an electoral official—the returning officer.
- (3) If, having been served under subclause (2), a person proposes to contest the petition, the person must, within 14 days after service, or such further time as may be allowed by the Court (on application made either before or after the expiration of the period of 14 days), lodge with the clerk of the Court, and serve on the petitioner, a reply.
- (4) A reply must—
  - (a) set out the facts on which the applicant proposes to rely; and
  - (b) ask for any relief to which the applicant claims to be entitled; and
  - (c) be executed by the applicant.

## **22—Powers of Court**

- (1) The Court must sit as an open court, and its powers include the following:
  - (a) to adjourn;
  - (b) to compel the attendance of witnesses and the production of documents;
  - (c) to examine witnesses on oath, affirmation or declaration;
  - (d) with the consent of the parties to the proceedings, to receive evidence on affidavit or by statutory declaration;
  - (e) subject to this Act and the rules, to determine its procedure in each case;
  - (f) to declare—
    - (i) that a person who was returned as elected was not duly elected; and
    - (ii) that a candidate who was not returned as elected was duly elected;
  - (g) to declare an election void;
  - (h) to dismiss or uphold a petition, in whole or in part;
  - (i) to amend or allow the amendment of a petition or reply;
  - (j) to punish contempt of its authority by fine or imprisonment.
- (2) The Court may exercise all or any of its powers under this clause on such grounds as the Court in its discretion thinks just and sufficient.
- (3) The Court is not bound by the rules of evidence.
- (4) The Court must act according to good conscience and the substantial merits of the case without regard to legal technicalities.
- (5) A decision of the Court is final and without appeal.

## **23—Effect of decision**

- (1) If pursuant to this Part a person returned as elected is declared not to have been duly elected, that person ceases to be a member of the relevant Local First Nations Voice and the person declared to have been duly elected will take their place accordingly.
- (2) If pursuant to this Part an election is declared void, a person returned as elected at the election ceases to be a member of the relevant Local First Nations Voice.



## **24—Right of appearance**

A party to proceedings before the Court may appear personally or be represented by counsel.

## **25—Case stated**

The Court may, of its own motion or on the application of a party to proceedings, state a question of law for the opinion of the Court of Appeal.

## **26—Costs**

- (1) The Court may make orders for costs as it thinks just.
- (2) If 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 official, 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 Crown.
- (3) An order under this clause may be enforced as an order of the District Court.

## **27—Rules of Court**

The Chief Judge of the District Court may make rules—

- (a) regulating the practices and procedures of the Court; and
- (b) fixing fees to be paid in respect of proceedings before the Court; and
- (c) making any other provision necessary or expedient for the purposes of this Schedule.

## **Part 9—Miscellaneous**

### **28—False or misleading statements**

A person must not make a statement knowing that it is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided for the purposes of an election under this Act.

Maximum penalty: Imprisonment for 4 years.

## **Schedule 2—Repeals, related amendments and transitional etc provisions**

### **Part 1—Repeal of *Aboriginal Lands Parliamentary Standing Committee Act 2003***

#### **1—Repeal of *Aboriginal Lands Parliamentary Standing Committee Act 2003***

The *Aboriginal Lands Parliamentary Standing Committee Act 2003* is repealed.

## Part 2—Amendment of *Constitution Act 1934*

### 2—Insertion of section 3

After section 2 insert:

#### 3—Recognition of importance of First Nations voices

- (1) The Parliament of South Australia recognises the importance of listening to the voices of First Nations people if there is to be a fair and truthful relationship between the First Nations and non-First Nations people of South Australia.
- (2) The Parliament acknowledges that the voice of First Nations people has not always been heard in Parliament, and intends that, through the *First Nations Voice Act 2023*, that voice will be heard, and will make a unique and irreplaceable contribution to South Australia that benefits all South Australians.

## Part 3—Transitional etc provisions

### 3—First election of members of Local First Nations Voices

- (1) Despite section 21 or any other provision of this Act, the following provisions apply to the first election of members of Local First Nations Voices after the commencement of this clause:
  - (a) the election need not occur in the course of a State election;
  - (b) each region will be known by the name assigned to the region by the regulations for the purposes of this paragraph;
  - (c) polling for the election will occur during the period, and at a location or locations, determined by the Electoral Commissioner after consultation with the Minister;
  - (d) if the Electoral Commissioner is of the opinion that the circumstances or timing of the first election requires modifications to the rules set out in Schedule 1—the Electoral Commissioner may, after consultation with the Minister, modify those rules, or determine new rules, for the purposes of the first election (and the first election is to be conducted in accordance with those rules).
- (2) However, nothing in subclause (1) authorises the Electoral Commissioner to make or modify rules altering a provision of this Act requiring or relating to gender diversity in membership of Local First Nations Voices.
- (3) Except as provided for in subclause (1), the first election of members of Local First Nations Voices after the commencement of this clause is to be conducted in accordance with Schedule 1.

#### **4—Consultation with State First Nations Voice**

The Minister, the Electoral Commissioner or any other person or body need not comply with a requirement under the Act requiring consultation with the State First Nations Voice until the State First Nations Voice is, following the first election of joint presiding members of each Local First Nations Voice, capable of performing its functions.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act

Year	No	Title	Assent	Commencement
2023	9	<i>First Nations Voice Act 2023</i>	26.3.2023	uncommenced