

South Australia

# Electoral Act 1985

An Act to regulate the conduct of parliamentary elections; and for other purposes.

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### Legislative history

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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 *Electoral Act 1985*.

### **4—Interpretation**

(1) In this Act, unless the contrary intention appears—

*abbreviation*, in relation to the name of a political party, includes an alternative name of the party;

*authorised witness* means a person (not being a candidate in an election) who is over, or apparently over, the age of 18 years;

*bribery* means an offence against section 109;

*Commonwealth Act* means the *Commonwealth Electoral Act 1918* of the Commonwealth;

*Commonwealth roll* means the roll of electors for the State of South Australia kept under section 81 of the Commonwealth Act;

*counting centre* means premises at which the scrutiny of ballot papers is being, or is to be, conducted;

*declaration ballot paper* means the ballot paper of a voter who makes a declaration vote;

*declaration voting papers*, in relation to an election, means—

- (a) the ballot paper for the election; and
- (b) an envelope endorsed with a declaration to be made by the voter;

*election period*, in relation to an election, means the period commencing on the issue of the writ for the election and expiring at 6 p.m. on polling day;

*elector* means a person whose name appears on a roll as an elector (not being a person under the age of 18 years who is provisionally enrolled) and includes a person whose name should appear on a roll as an elector but has been, by error, omitted from the roll;

*electoral advertisement* means an advertisement containing electoral matter;

*the Electoral Commissioner* means the person for the time being holding, or acting in, the office of the Electoral Commissioner under this Act;

*electoral district* or *district* means—

- (a) in relation to a Legislative Council election—the whole of the State;
- (b) in relation to a House of Assembly election—a district for the return of a member of the House of Assembly;

*electoral matter* means matter calculated to affect the result of an election;

*electoral paper* means any document or form for use under this Act;

***electoral roll*** or ***roll*** means an electoral roll kept under this Act;

***electoral visitor*** means an electoral visitor appointed by the Electoral Commissioner;

***general election*** means a general election of members of the House of Assembly;

***the hour of nomination*** means 12 noon on the day fixed by a writ for the nomination;

***how-to-vote card*** means a card, in the form of a ballot paper, indicating the manner in which a vote should be recorded by a voter;

***institution*** means—

- (a) a hospital; or
- (b) a convalescent home; or
- (c) a nursing home; or
- (d) a home for the aged; or
- (e) a hostel for the aged or infirm; or
- (f) a prison or other place of confinement; or
- (g) an institution of a prescribed kind,

or any part of an institution as defined above;

***name***, of a candidate for election, includes a name by which the candidate is generally known;

***officer*** means a person appointed to an office under this Act or assisting the Electoral Commissioner in the administration of this Act or engaged by the Electoral Commissioner under this Act;

***ordinary vote*** means a vote that is not a declaration vote;

***organisation*** means an incorporated or unincorporated association, group or organisation (including an association, group or organisation that constitutes a branch or division of a larger association, group or organisation);

***political party*** means an organisation of which an object or activity is the promotion of the election to the House of Assembly or the Legislative Council of a candidate or candidates endorsed by it;

***polling booth*** means a building, structure, vehicle or enclosure or part of a building, structure, vehicle or enclosure, for taking votes at an election;

***polling place*** means a place appointed as a polling place under this Act;

***registered name***, in relation to a registered political party, means the name of the party, or an abbreviation of the name of the party, entered in the Register of Political Parties under Part 6;

***registered officer***, in relation to a registered political party, means the person shown on the Register of Political Parties as the registered officer of that party and includes a person nominated by that registered officer as his or her deputy;

***registered political party*** means a political party registered under Part 6;

***registered voting ticket*** means a voting ticket lodged under section 63;

***Register of Political Parties*** means the register of political parties kept under Part 6;



**remote subdivision** means a subdivision declared by the Electoral Commissioner under section 15 to be a remote subdivision;

**returning officer** includes an assistant returning officer;

**scrutiny** of ballot papers includes the counting of the votes recorded on ballot papers;

**subdivision** means a subdivision of a district and, in relation to a district that is not divided into subdivisions, means the whole of the district;

**to publish** includes to authorise, cause or permit to be published;

**undue influence** means an offence against section 110;

**voting papers**, in relation to an election, means any ballot paper or declaration voting papers required by an elector for the purpose of voting at the election;

**voting ticket** means a written statement of a particular order in which a voter might allocate preferences in an election, being a statement for use under this Act in interpreting the votes of voters who—

- (a) in relation to a Legislative Council election—choose to vote in accordance with the voting ticket;
- (b) in relation to a House of Assembly election—do not indicate an order of preference covering all candidates;

**voting ticket square** means a square printed on a ballot paper for a Legislative Council election for use by voters who choose to vote in accordance with a voting ticket or voting tickets that have been registered under this Act in relation to a candidate or group;

**writ** means a writ for an election.

- (2) For the purposes of this Act, an organisation endorses a candidate in an election if a part of the organisation, or some other organisation of which the organisation is part, endorses the candidate in the election.



## **Part 2—Administration**

### **Division 1—The Electoral Commissioner and Deputy Electoral Commissioner**

#### **5—Appointment of Electoral Commissioner and Deputy Electoral Commissioner**

- (1) The Governor may—
  - (a) on a recommendation made by resolution of both Houses of Parliament, appoint a person to be the Electoral Commissioner; and
  - (b) appoint a person to be the Deputy Electoral Commissioner.
- (2) On a vacancy occurring in the office of Electoral Commissioner, the matter of inquiring into and reporting on a suitable person for appointment to the vacant office is referred by force of this subsection to the Statutory Officers Committee established under the *Parliamentary Committees Act 1991*.
- (3) Neither the Electoral Commissioner nor the Deputy Electoral Commissioner may, without the consent of the Minister, engage in any remunerative employment outside the functions and duties of their respective offices.

#### **6—Acting appointments**

- (1) If—
  - (a) the office of Electoral Commissioner is temporarily vacant or the Electoral Commissioner is absent from the duties of his or her office; and
  - (b) the office of Deputy Electoral Commissioner is vacant or the Deputy Electoral Commissioner is unavailable to act in the office of the Electoral Commissioner,the Governor may appoint a suitable person (who may, but need not, be a Public Service employee) to act in the office of the Electoral Commissioner.
- (2) If the office of Deputy Electoral Commissioner is temporarily vacant, or the Deputy Electoral Commissioner is absent from the duties of his or her office, the Governor may appoint a suitable person (who may, but need not, be a Public Service employee) to act in the office of Deputy Electoral Commissioner.

#### **7—Remuneration and conditions of office**

- (1) The Electoral Commissioner and the Deputy Electoral Commissioner hold office, subject to this Act, on terms and conditions determined by the Governor.
- (2) The Electoral Commissioner and the Deputy Electoral Commissioner are entitled to the remuneration determined by the Remuneration Tribunal in relation to the respective offices.
- (3) A salary determined by the Remuneration Tribunal for the Electoral Commissioner or the Deputy Electoral Commissioner cannot be reduced by subsequent determination during the term of office of the Electoral Commissioner or the Deputy Electoral Commissioner (as the case may be).

- (5) The Electoral Commissioner and Deputy Electoral Commissioner are employees within the meaning and for the purposes of the *Superannuation Act 1988*.
- (6) A person appointed as Electoral Commissioner is so appointed for a term expiring on the day on which he or she attains the age of 65 years.
- (6a) A person appointed after the commencement of this subsection as Deputy Electoral Commissioner is so appointed for a term expiring 1 year after polling day of the general election second occurring after the person's appointment under this section and, at the expiration of a term of appointment, is eligible for reappointment.
- (7) The Governor may remove the Electoral Commissioner or Deputy Electoral Commissioner from office on presentation of an address from both Houses of Parliament praying for his or her removal.
- (8) The Governor may suspend the Electoral Commissioner or Deputy Electoral Commissioner from office on the ground of incompetence or misbehaviour and, in the event of such a suspension—
  - (a) a full statement of the reason for the suspension must be laid before Parliament within 3 sitting days if Parliament is then in session or, if not, within 3 sitting days of the commencement of the next session of Parliament; and
  - (b) if within 12 sitting days of the statement being laid before Parliament no address praying for removal of the Electoral Commissioner or Deputy Electoral Commissioner is presented to the Governor under subsection (7), he or she must be restored to office, but if such an address is presented, he or she may be removed from office.
- (9) The office of the Electoral Commissioner or Deputy Electoral Commissioner becomes vacant if—
  - (a) he or she dies;
  - (b) he or she resigns his or her office by written notice addressed to the Governor, or his or her term of office expires;
  - (c) in the case of the Electoral Commissioner—having reached the age of 55 years, he or she retires from office by written notice addressed to the Governor;
  - (d) he or she is removed from office under subsection (7) or (8);
  - (e) he or she is convicted of an indictable offence or sentenced to imprisonment for an offence;
  - (f) he or she becomes a member, or a candidate for election as a member, of the Parliament of the State, the Commonwealth, or any other State of the Commonwealth;
  - (g) he or she becomes, in the opinion of the Governor, physically or mentally incapable of satisfactorily carrying out his or her functions and duties.
- (10) The Electoral Commissioner and the Deputy Electoral Commissioner may only be removed or suspended from office as provided in this section.
- (11) Subject to this section, the office of—
  - (a) the Electoral Commissioner; and

- (b) the Deputy Electoral Commissioner,  
may not become vacant.

## **Division 2—The powers and functions of the Electoral Commissioner and the Deputy Electoral Commissioner**

### **8—Powers and functions of the Electoral Commissioner**

- (1) The Electoral Commissioner—
- (a) is responsible to the Minister for the administration of this Act;
  - (b) is responsible for the proper conduct of elections in accordance with this Act;
  - (c) is responsible for the carrying out of appropriate programmes of publicity and public education in order to ensure that the public is adequately informed of their democratic rights and obligations under this Act;
  - (d) is empowered—
    - (i) to conduct and promote research into electoral matters;
    - (ii) to publish the results of such research and other material on electoral matters.
- (2) The Electoral Commissioner—
- (a) has the powers and functions conferred on or assigned to him or her under this Act or any other Act; and
  - (b) may, with the permission of the Minister, carry out any other statutory or non-statutory functions on terms and conditions approved by the Minister.

### **9—Delegation**

- (1) The Electoral Commissioner may delegate any of his or her powers or functions under this or any other Act.
- (2) A delegation under this section—
- (a) may be absolute or conditional; and
  - (b) does not prevent the Electoral Commissioner from acting personally in any matter; and
  - (c) is revocable at will.

### **10—Duties of the Deputy Electoral Commissioner**

The Deputy Electoral Commissioner—

- (a) must perform such duties as the Electoral Commissioner may direct; and
- (b) must, if the office of the Electoral Commissioner is temporarily vacant or the Electoral Commissioner is absent or unavailable to discharge the duties of his or her office, act in the office of the Electoral Commissioner.

## **Division 3—Staff of the Electoral Commissioner**

### **11—Staff**

The Electoral Commissioner may have such staff as is necessary for the proper administration of this Act.

### **12—Staff**

- (1) The Electoral Commissioner's staff consists of—
  - (a) Public Service employees assigned to assist the Commissioner; and
  - (b) persons employed by the Commissioner, on terms and conditions determined by the Commissioner, for the purposes of an election or otherwise on a temporary basis as required for the administration of this Act.
- (2) A person employed under subsection (1)(b) is to be remunerated in accordance with a scale of fees and allowances fixed by the Minister.

### **13—Candidates and persons holding official positions in political parties not to be electoral officers**

- (1) No candidate or person holding an official position in a political party may be appointed as an officer.
- (2) If an officer becomes a candidate, or accepts an official position in a political party, his or her office or position is vacated.

## **Part 3—Electoral districts and subdivisions**

### **Division 1—Electoral districts**

#### **14—Electoral districts**

- (1) For the purposes of this Act—
  - (a) the whole of the State constitutes the Legislative Council electoral district; and
  - (b) the State is divided into House of Assembly electoral districts in accordance with the *Constitution Act 1934*.
- (2) Each House of Assembly electoral district constitutes a division of the Legislative Council electoral district.
- (4) If a by-election is to be held in a House of Assembly electoral district—
  - (a) the district will be taken to be as it existed at the previous general election of members of the House of Assembly; and
  - (b) the electoral rolls must be prepared for the purposes of the by-election accordingly.

### **Division 2—Electoral subdivisions**

#### **15—Electoral subdivisions**

- (1) The Electoral Commissioner may, by notice published in the Gazette—
  - (a) divide an electoral district into subdivisions; or
  - (b) alter the boundaries of a subdivision; or
  - (c) abolish a subdivision.
- (2) The Electoral Commissioner may appoint an electoral registrar in respect of one or more subdivisions.
- (3) The Electoral Commissioner may, by notice published in the Gazette—
  - (a) declare a particular subdivision to be a remote subdivision; or
  - (b) revoke a declaration under paragraph (a).

### **Division 3—District returning officers**

#### **16—The district returning officers**

- (1) There must be a returning officer for the Legislative Council district.
- (2) In respect of each House of Assembly district there must be—
  - (a) a returning officer (who must be deputy returning officer for the corresponding Legislative Council division); and
  - (b) such assistant returning officers as the Electoral Commissioner thinks fit.

## **17—Duty to assist public**

Each returning officer must keep a supply of the forms required for the purposes of this Act, and assist the public in their proper use.

## **Division 4—District polling places**

### **18—Polling places**

- (1) Each district must have such polling places as the Electoral Commissioner thinks fit.
- (2) The Electoral Commissioner may, by notice published in the Gazette—
  - (a) appoint such polling places for a district as he or she thinks fit; or
  - (b) abolish a polling place.
- (3) No polling place may be abolished during an election period unless the Electoral Commissioner is of the opinion that it would be impracticable to take the poll at that polling place.
- (4) When a writ is issued for an election in a district, the Electoral Commissioner must, between the date of the issue of the writ and polling day, give public notice by advertisement in a newspaper circulating generally throughout the State of the position of all polling places for the district.



## **Part 4—Electoral rolls**

### **Division 1—District and subdivisional rolls**

#### **19—District and subdivisional rolls**

- (1) There must be an electoral roll for each district.
- (2) The electoral roll for a district consists of the rolls for the various divisions or subdivisions of the district.

### **Division 2—Information to be contained in rolls**

#### **20—Information to be contained on the roll**

- (1) Subject to this section, a roll must contain the following information in relation to each elector enrolled on that roll:
  - (a) the surname; and
  - (b) the Christian or given names; and
  - (c) the address of the principal place of residence; and
  - (d) such further particulars as may be prescribed.
- (2) The place of residence of an elector whose place of residence is suppressed from the roll under this Division must not be shown on a roll.

#### **21—Suppression of elector's address**

- (1) Where an electoral registrar is satisfied that the inclusion on a roll of the address of an elector's place of residence would place at risk the personal safety of the elector, a member of the elector's family or any other person, he or she may suppress the address from the roll.
- (2) If a person's address has not been included on, or has been deleted from, the Commonwealth roll under section 104 of the Commonwealth Act, the person's address must be suppressed from any roll under this Act.

### **Division 3—Revision of the rolls**

#### **22—Revision of the rolls**

Where—

- (a) a new district or a new subdivision is created; or
  - (b) the boundaries of an existing district or subdivision are altered,
- the rolls must be revised accordingly.

#### **23—Rolls to be kept up to date**

The electoral registrars must keep the rolls under revision by—

- (a) adding the names of electors entitled to be enrolled in accordance with Part 5;
- (b) removing the names of deceased electors;

- (c) correcting mistakes and omissions in the rolls;
- (d) registering changes of name;
- (e) bringing up to date particulars appearing in the rolls;
- (f) in relation to a person who is enrolled on the Commonwealth roll—reflecting any change under the Commonwealth Act in relation to that enrolment.

## **Division 4—Keeping, printing and inspection of the rolls**

### **24—Rolls to be kept by computer**

The rolls may be kept by computer.

### **25—Printing of rolls**

A roll must be printed whenever the Electoral Commissioner or the Minister so directs.

### **26—Inspection and purchase of rolls**

- (1) Copies (whether in printed or electronic form) of the latest prints of the rolls must be available for inspection without fee—
  - (a) at the office of the Electoral Commissioner; and
  - (b) at the offices of the electoral registrars; and
  - (d) at such other places as the Electoral Commissioner determines.
- (2) The Electoral Commissioner must, on request—
  - (a) provide a member of the House of Assembly with an up-to-date copy of the electoral roll for the member's district;
  - (b) provide a member of the Legislative Council with an up-to-date copy of the electoral roll for the Legislative Council district;
  - (c) provide the registered officer of a registered political party with an up-to-date copy of any electoral roll for any district;
  - (d) provide a person who is a nominated candidate in an election with an up-to-date copy of the electoral roll for—
    - (i) in the case of a person who is a candidate in an election for a House of Assembly district—that district; or
    - (ii) in the case of a person who is a candidate in a Legislative Council election—the Legislative Council district.
- (3) If, in accordance with an electoral redistribution under the *Constitution Act 1934*, the area of a House of Assembly district (the *relevant district*) will, from the day on which a general election of members of the House of Assembly is next held, be altered to include any part of the area of another House of Assembly district, the Electoral Commissioner must, on request, provide an up-to-date copy of the electoral roll for that other House of Assembly district to—
  - (a) the current House of Assembly member for the relevant district;

- (b) any person who is a nominated candidate for an election in the relevant district.
- (4) The following provisions apply in connection with the operation of subsections (2) and (3):
- (a) a request under subsection (2) may be made on the basis that a copy of the relevant roll (or rolls) will be provided on a monthly basis (and the Electoral Commissioner is not required to provide a roll to a particular person (or registered political party) more frequently than once in each month);
- (b) a copy of a roll may be provided in electronic form (as determined by the Electoral Commissioner);
- (c) a copy of a roll must be provided without the requirement to pay a fee.
- (5) If a copy of the roll is provided to a person under this section, a person who uses that copy of the roll, or information contained in that copy of the roll, for a purpose other than—
- (a) the carrying out of functions of a member of the Parliament of the State or the Commonwealth or a council constituted under the *Local Government Act 1999*; or
- (b) the distribution of matter calculated to affect the result of a State, Commonwealth or local government election or purposes related to the holding of such elections,

is guilty of an offence.

Maximum penalty: \$10 000.

## Division 5—Power to require information

### 27—Power to require information

- (1) The Electoral Commissioner may, by notice in writing, require—
- (a) an agency or instrumentality of the Crown, or any other prescribed authority; or
- (ab) any public sector employee; or
- (b) a local governing body, or any officer of a local governing body; or
- (c) the occupier of residential premises; or
- (d) the proprietor or person in charge of an institution,
- to provide him or her with information required in connection with the preparation, maintenance or revision of the rolls.
- (1a) The regulations may provide that subsection (1) does not apply to—
- (a) a particular agency or instrumentality of the Crown, prescribed authority, or public sector employee; or
- (b) specified information or material in the possession or control of an agency, instrumentality, authority, body or person.

- (2) A person who fails to provide information required under this section within the time allowed in the notice is guilty of an offence.

Maximum penalty: \$250.

## **Division 5A—Provision of certain information**

### **27A—Provision of certain information**

- (1) The Electoral Commissioner may, on application by a prescribed authority, provide the authority with any information in the Electoral Commissioner's possession about an elector.
- (2) The Electoral Commissioner may, on application by a person of a prescribed class, provide the person with any of the following information about an elector:
- (a) the elector's sex;
  - (b) the elector's place of birth;
  - (c) the elector's date of birth.
- (4) The Electoral Commissioner—
- (a) may provide information under this section subject to conditions notified in writing to the authority or person to whom the information is given; and
  - (b) may charge a fee (to be fixed by the Electoral Commissioner) for providing information.
- (5) An authority or person who contravenes or fails to comply with a condition under subsection (4)(a) is guilty of an offence.
- Maximum penalty: \$10 000.
- (6) A fee is not payable under subsection (4)(b) if the person to whom the information is provided is a Member of Parliament or is a nominated candidate for an election.

## **Division 6—Joint Commonwealth-State arrangements**

### **28—Collaboration with the Commonwealth**

- (1) The Governor may arrange with the Governor-General of the Commonwealth—
- (a) for the preparation, alteration or revision of the rolls; or
  - (b) for the carrying out of functions related to the preparation, alteration or revision of the rolls,
- jointly by the Commonwealth and the State.
- (2) Where any such arrangement is in force, the rolls may contain—
- (a) names and particulars of persons who are enrolled as electors of the Commonwealth but not as electors of the State, provided that those persons who are not enrolled as electors for the State are clearly differentiated;
  - (b) distinguishing marks against the names of persons enrolled as State electors but not as Commonwealth electors to show that they are not enrolled as Commonwealth electors;

- (c) any other particulars in addition to those required by this Act to be included in the rolls,

and those names, marks and particulars are not, for the purposes of this Act, to be regarded as part of the rolls.



## Part 5—Enrolment

### Division 1—Entitlement to enrolment

#### 29—Entitlement to enrolment

- (1) A person is entitled to be enrolled on the roll for a subdivision if—
- (a) the person—
    - (i) has attained the age of 18 years; and
    - (ii) —
      - (A) is an Australian citizen; or
      - (B) is a person who by virtue of his or her status as a British subject was, at some time within the period of 3 months commencing on 26 October 1983, enrolled under the repealed Act as an Assembly elector or enrolled on an electoral roll maintained under a law of the Commonwealth or a Territory of the Commonwealth; and
    - (iii) has his or her principal place of residence in the subdivision and has lived at that place of residence for a continuous period of at least 1 month immediately preceding the date of the claim for enrolment; and
    - (iv) is not of unsound mind; or
  - (b) the person is properly enrolled on the Commonwealth roll, other than under section 100 of the Commonwealth Act, in respect of an address in the subdivision.
- (2) A person is entitled to provisional enrolment on the roll for a subdivision if—
- (a) the person—
    - (i) has attained the age of 16 years; and
    - (ii) would, if he or she had attained the age of 18 years, be entitled to be enrolled on the roll for that subdivision under subsection (1); or
  - (b) the person is properly enrolled on the Commonwealth roll under section 100 of the Commonwealth Act in respect of an address in the subdivision.
- (3) No person is entitled to be at the same time enrolled for more than one subdivision.
- (4) Where a person is imprisoned within the State, it will be presumed, for the purposes of this Act, that the prisoner's principal place of residence is—
- (a) the place that constituted the prisoner's principal place of residence immediately before the commencement of the imprisonment; or
  - (b) if—

- (i) the prisoner, or a parent, spouse, domestic partner or child of the prisoner who was residing with the prisoner immediately before the commencement of the imprisonment, acquires during the term of imprisonment some other place of residence in lieu of the place referred to in paragraph (a);
  - (ii) the prisoner intends to reside at that new place of residence on release from prison;
  - (iii) the prisoner elects to be enrolled in respect of that place, that place; or
- (c) if—
  - (i) there is no place of residence in the State in respect of which the prisoner may be enrolled under paragraph (a) or (b); and
  - (ii) the prisoner has been sentenced to imprisonment for 2 years or more—  
the place at which the prisoner is imprisoned.
- (5) A prisoner will, for the purposes of the provisions of this Act relating to enrolment, and entitlement to vote, be taken to reside at the place that constitutes the prisoner's principal place of residence under subsection (4).

- (6) In this section—

*domestic partner* means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

*spouse*—a person is the spouse of another if they are legally married.

## **Division 2A—Itinerant persons**

### **31A—Itinerant persons**

- (1) A person may apply for enrolment under this section if the person—
  - (a) is in South Australia and has lived in South Australia for a continuous period of 1 month prior to the date of the application for enrolment; and
  - (b) qualifies for enrolment under section 29(1)(a)(i), (ii) and (iv) but does not qualify for enrolment under section 29(1)(a)(iii) because he or she does not have a fixed place of residence (whether within the State or elsewhere).
- (2) An application under this section—
  - (a) must be made to the Electoral Commissioner in a form approved by the Electoral Commissioner; and
  - (b) must be signed.
- (3) If the Electoral Commissioner is satisfied that a person has made a valid application in accordance with subsections (1) and (2)—
  - (a) the person is entitled to be enrolled as an elector under this Act despite the provisions of Division 1; and
  - (b) a further claim for enrolment need not be made under Division 3; and



- 
- (c) the Electoral Commissioner will cause the name of the person to be entered on the roll—
- (i) for the subdivision for which the person last had an entitlement to be enrolled; or
  - (ii) if the person has never had such an entitlement, for a subdivision for which any of the person's next of kin is enrolled; or
  - (iii) if neither subparagraph (i) nor subparagraph (ii) applies, for the subdivision in which the person was born; or
  - (iv) if none of subparagraphs (i), (ii) and (iii) applies, the subdivision with which the person has the closest connection.
- (4) The Electoral Commissioner may, in connection with the operation of subsection (3), include on the roll an address in the subdivision that is to be taken to be the person's principal place of residence for the purposes of this Act and any other Act or law relating to enrolment under this Act.
- (5) The Electoral Commissioner will also annotate the roll so as to indicate that the person is enrolled under this section.
- (6) While a person is the subject of an annotation under subsection (5), the person is entitled (despite any other provision of this Act)—
- (a) to have his or her name retained on the roll for the relevant subdivision; and
  - (b) to vote as an elector for that subdivision.
- (7) Despite a preceding subsection, the Electoral Commissioner will not deal with an application under this section received between the time on which rolls for an election in the relevant district close and polling day for that election.
- (8) If an application under this section is rejected, the Electoral Commissioner must take reasonable steps to notify the applicant in writing—
- (a) of the rejection of the application; and
  - (b) of the reason for its rejection; and
  - (c) of the applicant's rights under this Act to appeal against the decision.
- (9) If a person who is enrolled under this section—
- (a) qualifies for enrolment with respect to a place of residence under section 29(1)(a)(iii); or
  - (b) forms the intention to leave South Australia and to remain outside the State for a continuous period of at least 1 month,
- the person must, as soon as practicable, give notice to the Electoral Commissioner in a form approved by the Electoral Commissioner.
- (10) A person ceases to be entitled to be enrolled under this section if—
- (a) the person gives notice under subsection (9); or
  - (b) the person fails to vote at a general election while enrolled under this section; or
  - (c) the Electoral Commissioner becomes aware that the person—

- (i) has qualified for enrolment with respect to a place of residence under section 29(1)(a)(iii); or
  - (ii) has ceased to be entitled to be enrolled under this Act (otherwise than with respect to the operation of section 29(1)(a)(iii)); or
  - (iii) has remained outside the State for a continuous period of at least 1 month.
- (11) If a person ceases to be entitled to be enrolled under this section, the Electoral Commissioner will remove the person's name, and the relevant annotation, from the roll (but may then, if relevant, re-enter the name in accordance with any entitlement that exists apart from this section).
- (12) A person who falls within the ambit of subsection (10) may make a new application under this section if or when he or she again qualifies under the terms of subsection (1).

### **Division 3—Compulsory enrolment and transfer**

#### **32—Making of claim for enrolment or transfer of enrolment**

- (1) Subject to this Division, a person who is entitled to be enrolled for any subdivision, whether by way of enrolment or transfer of enrolment, and whose name is not on the Roll for that subdivision must, within 21 days from the date on which the person became so entitled, make a claim in accordance with this Act for enrolment or for transfer of enrolment (as the case may require).
- (1a) A claim for enrolment or the transfer of enrolment—
- (a) must be made in a manner and form approved by the Electoral Commissioner; and
  - (b) must be made to an electoral registrar.
- (2) Subsection (1) does not apply to a person who is entitled to be enrolled in accordance with section 29(2) or 31A.
- (3) A person who fails, without proper excuse, to make a claim for enrolment or transfer of enrolment in accordance with this section is guilty of an offence.  
Maximum penalty: \$75.
- (4) Proceedings for an offence against subsection (3) may not be commenced after a claim for enrolment or transfer of enrolment (as the case may require) has been made.

#### **32A—Notification of transfer within the same subdivision**

- (1) Subject to section 32B(4), an elector whose principal place of residence changes from one address to another within the same subdivision must, within 21 days of the change, notify an electoral registrar of the address of the elector's current principal place of residence.
- (2) An elector who fails, without proper excuse, to give a notification under this section is guilty of an offence.  
Maximum penalty: \$75.
- (3) Proceedings for an offence against subsection (2) may not be commenced after an appropriate notification has been given.

### **32B—Enrolment or transfer of enrolment**

- (1) Where a claim for enrolment or transfer of enrolment made in accordance with section 32(1a) is received at the office of an electoral registrar, the electoral registrar must—
  - (a) if satisfied of the validity of the claim—enrol the claimant or transfer the enrolment of the claimant, in accordance with the claim; or
  - (b) if not satisfied of the validity of the claim—reject the claim.
- (2) No enrolment may—
  - (a) be made on the roll for a subdivision; or
  - (b) be transferred from or to the roll for a subdivision,on the basis of a claim received at the office of an electoral registrar or by operation of subsection (4) between the time on which rolls for an election in the relevant district close and polling day for that election.
- (3) Where a claim is rejected, the electoral registrar must notify the claimant in writing—
  - (a) of the rejection of the claim; and
  - (b) of the reasons for its rejection; and
  - (c) of the claimant's rights under this Act to appeal against the decision.
- (4) If a person is enrolled on the Commonwealth roll and the person's address recorded on that roll is an address in a subdivision—
  - (a) the person is, for the purposes of this Act, to be taken—
    - (i) in the case of a person enrolled on the Commonwealth roll under section 100 of the Commonwealth Act—
      - (A) to have made a claim for enrolment; and
      - (B) to be provisionally enrolled; and
    - (ii) in any other case—
      - (A) to have made a claim in accordance with this Act, or given notice under section 32A (as the case requires); and
      - (B) to be enrolled as an elector for the subdivision for the purposes of this Act; and
  - (b) the particulars on the Commonwealth roll in relation to the person are, with such modifications (if any) as an electoral registrar considers necessary for the purposes of Part 4 of this Act, to be taken to be the particulars in relation to the person on the roll for the subdivision, unless the electoral registrar is satisfied that the person's particulars on the roll for the subdivision are more up-to-date than his or her particulars on the Commonwealth roll.

## Division 4—Objections

### 33—Right of objection

- (1) Any elector may object to—
  - (a) the enrolment of a particular person as an elector; or
  - (b) the enrolment of a particular person on the roll for a particular subdivision; or
  - (c) the enrolment of a particular person on the roll for a subdivision in respect of a particular address.
- (2) An electoral registrar, if of the opinion that a person whose name appears on a roll for a subdivision—
  - (a) should not be enrolled as an elector; or
  - (b) should not be enrolled on the roll for that subdivision; or
  - (c) should be enrolled on the roll for that subdivision but in respect of a different address,will object to the enrolment.
- (3) An objection—
  - (a) must be in a form approved by the Electoral Commissioner; and
  - (b) must set out the grounds on which the objection is made; and
  - (c) in the case of an objection under subsection (1)—must be accompanied by a deposit of \$2.
- (4) A deposit under subsection (3)(c) must be returned to the objector on determination of the objection unless the electoral registrar is of the opinion that the objector had no reasonable grounds for making the objection, in which case it will be forfeited to the Crown.

### 34—Elector to have opportunity to be heard on objection

- (1) Subject to subsection (2), where an objection is made under this Division, the electoral registrar must afford the person to whose enrolment the objection relates a reasonable opportunity to answer the objection.
- (2) If, in the opinion of the electoral registrar, an objection is frivolous or vexatious, he or she may reject the objection without notifying the person to whose enrolment the objection relates.

### 35—Determination of objection

- (1) When a person has been afforded a reasonable opportunity to answer an objection under this Division, the electoral registrar may, after considering the answer (if any) made to the objection—
  - (a) reject the objection; or
  - (b) uphold the objection and, according to the nature of the case—
    - (i) remove the name of the person to whom the objection relates from the roll; or

- (ii) transfer the enrolment of the person to whom the objection relates to the roll for the appropriate subdivision; or
  - (iii) change the address in respect of which the person to whom the objection relates is enrolled.
- (2) No name may be removed from a roll in pursuance of this section between the time at which the rolls for an election in the relevant district close and polling day for that election.
- (3) Where a decision is made on an objection under this section, the electoral registrar must give written notice to the person to whose enrolment objection is taken and, if the objection was not made by the electoral registrar, the objector, of—
  - (a) the decision made on the objection; and
  - (b) the reasons for that decision; and
  - (c) if applicable, the rights of the person to whom the notice is given to appeal against the decision.



## Part 6—Registration of political parties

### 36—Definitions and related provisions

- (1) In this Part, unless the contrary intention appears—

*eligible political party* means—

- (a) a parliamentary party; or
- (b) a political party (other than a parliamentary party) whose membership includes at least 200 electors;

*parliamentary party* means a political party at least 1 member of which is—

- (a) a member of the Parliament of South Australia; or
- (b) a Senator for the State of South Australia; or
- (c) a member of the House of Representatives chosen in the State of South Australia;

*secretary*, in relation to a political party, means the secretary or chief administrative officer (however described) of the party.

- (2) For the purposes of this Part, two political parties will be taken to be related if—
- (a) one is a part of the other; or
  - (b) both are parts of the same political party.
- (3) For the purposes of this Part, 2 or more political parties cannot rely on the same person for the purpose of qualifying or continuing to qualify as an eligible political party.
- (4) The following provisions apply in connection with the membership requirements for political parties:
- (a) a person who is relied on by 2 or more political parties may nominate the party entitled to rely on the person, but if a party is not nominated after the Electoral Commissioner has, in accordance with the regulations, given the person an opportunity to do so, the person is not entitled to be relied on by any of those parties;
  - (b) the registration of a party is not to be cancelled because of the provisions of this section unless the party is given an opportunity by the Electoral Commissioner, in accordance with the regulations, to change the person or persons on whom it relies.

### 37—Registration of political parties

Subject to this Part, an eligible political party may be registered under this Part.

### 38—Register of Political Parties

- (1) The Electoral Commissioner must establish and maintain a register, to be known as the *Register of Political Parties*, (the **Register**) setting out a list of the political parties that are registered under this Part.

- (2) The Register must be open for public inspection, without fee, during ordinary office hours, at the principal office of the Electoral Commissioner.

### **39—Application for registration**

- (1) An application for the registration of an eligible political party may be made to the Electoral Commissioner by the secretary of the party, or any other person authorised by the party to make the application.
- (2) An application for the registration of an eligible political party must be in writing, signed by the applicant, and must—
  - (a) set out the name of the party; and
  - (b) if the party wishes to be able to use an abbreviation of its name for the purposes of this Act—set out that abbreviation; and
  - (c) set out the name and address of the person who is to be the registered officer of the party for the purposes of this Act and contain a specimen signature of that person; and
  - (d) set out the name and address of the applicant and particulars of the capacity in which the applicant makes the application; and
  - (e) be accompanied by a copy of the constitution of the party; and
  - (f) in the case of a party that is not a parliamentary party—
    - (i) set out the names and addresses (as enrolled) of 200 electors who are members of the party and on whom the party relies for the purpose of qualifying as an eligible political party; and
    - (ii) be accompanied by declarations of membership of the party (in the form determined by the Electoral Commissioner) completed and signed by the members on whom the party relies for the purpose of qualifying as an eligible political party; and
  - (g) in the case of a parliamentary party—
    - (i) set out the name and address of the member on whom the party relies for the purpose of qualifying as an eligible political party; and
    - (ii) be accompanied by a declaration of membership of the party (in the form determined by the Electoral Commissioner) completed and signed by the member on whom the party relies for the purpose of qualifying as an eligible political party; and
  - (h) be accompanied by a \$500 application fee (which is not refundable).

### **40—Order in which applications are to be determined**

- (1) Subject to this section, applications for registration of political parties must be determined in the order in which they are received by the Electoral Commissioner.
- (2) If within the period of 3 months immediately following the commencement of this Part applications are received by the Electoral Commissioner for registration of parliamentary and other political parties, the applications in respect of parliamentary parties must be determined before the others.



- (3) If, during the period of 6 months immediately preceding the day on which a general election must be held under section 28(1) of the *Constitution Act 1934*, an application is received by the Electoral Commissioner for registration of a political party, that application must not be determined until after the general election.

#### **41—Publication of notice of application**

- (1) Where an application for registration is lodged with the Electoral Commissioner, the Electoral Commissioner must publish notice of the application in the Gazette and in a newspaper circulating generally in the State.
- (2) A notice under subsection (1) in relation to an application must—
- (a) set out—
    - (i) particulars of the name of the party and of any abbreviation of that name that the party desires to use for the purposes of this Act; and
    - (ii) the name of the applicant; and
  - (b) invite any elector who desires to object to the application to submit a written objection, containing particulars of the grounds of the objection, to the Electoral Commissioner within 1 month after the date of the publication of the notice in the Gazette.
- (3) An objection submitted to the Electoral Commissioner in response to an invitation under subsection (2)—
- (a) must be signed by the objector; and
  - (b) must set out the postal address of the objector.

#### **42—Registration**

- (1) After considering all objections to an application for registration of a political party submitted under this Part, the Electoral Commissioner must determine the application.
- (2) An application for the registration of a political party must be refused if, in the opinion of the Electoral Commissioner, the name of the party or the abbreviation of its name (if any) that it wishes to be registered—
- (a) comprises more than 6 words; or
  - (b) is obscene; or
  - (c) is the name, or is an abbreviation or acronym of the name, of another political party (not being a related political party) that is a parliamentary party or a registered political party; or
  - (d) so nearly resembles the name, or an abbreviation or acronym of the name, of another political party (not being a related political party) that is a parliamentary party or a registered political party that it is likely to be confused with or mistaken for that name, abbreviation or acronym; or
  - (e) comprises the words "Independent Party" or comprises or contains the word "Independent" and—
    - (i) the name, or an abbreviation or acronym of the name, of a parliamentary party or a registered political party; or

- (ii) matter that so nearly resembles the name, or an abbreviation or acronym of the name, of a parliamentary party or a registered political party that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym.
- (3) An application for the registration of a political party may be refused if, in the opinion of the Electoral Commissioner the name of the party, or the abbreviation (if any) of the name, that it wishes to be registered—
  - (a) is the name, or an abbreviation or acronym of the name, of a prominent public body, or so nearly resembles the name, or an abbreviation or acronym of the name, of a prominent public body that it is likely to be confused with that name, abbreviation or acronym; or
  - (b) comprises or contains a word or set of words—
    - (i) that constitute a distinctive aspect or part of the name of another political party (not being a related political party) that is a parliamentary party or a registered political party; or
    - (ii) that so nearly resemble a distinctive aspect or part of the name of another political party (not being a related political party) that is a parliamentary party or a registered political party that it appears that that distinctive aspect or part of that name is being adopted by the political party applying for registration.

**Note—**

For example, the underlined words constitute distinctive aspects or parts of the names of political parties:

Australian Democrats (South Australian Division Inc)

Australian Labor Party (South Australian Branch)

The Liberal Party of Australia (SA Division)

The National Party of Australia (SA) Inc

No Pokies Campaign Inc.

- (3a) Subsection (3)(b) does not apply if the applicant for registration provides the Electoral Commissioner with a declaration (in the form determined by the Electoral Commissioner) that has been signed by a person authorised by the relevant parliamentary party or registered political party (as the case may require) and states that the party consents to the use of the particular word or set of words.
- (4) Where a writ for an election has been issued, a political party must not be registered during the election period.
- (5) Where the Electoral Commissioner decides that a political party should be registered, he or she must—
  - (a) register the party by entering in the Register—
    - (i) the name of the party; and
    - (ii) if an abbreviation of the name of the party was set out in the application—that abbreviation; and
    - (iii) the name and address of the person who has been nominated as the registered officer of the party for the purposes of this Act; and

- (b) give written notice to the applicant that he or she has registered the party; and
  - (c) if any person or persons submitted objections to the application—give written notice to the objector or objectors that he or she has registered the party, setting out in the notice to each objector the reasons for rejecting the objection; and
  - (d) publish in the Gazette notice of the registration of the party.
- (6) Where the Electoral Commissioner decides that an application for the registration of a political party should be refused, he or she must give the applicant written notice of—
- (a) the refusal; and
  - (b) the reasons for the refusal; and
  - (c) the rights of the applicant to appeal against the decision of the Electoral Commissioner.

#### **42A—Registered officers**

- (1) A registered political party must have a registered officer.
- (2) The registered officer and any deputy registered officer of a registered political party must be an elector.
- (3) If a registered officer of a registered political party ceases to be an elector, he or she ceases to be the registered officer of the party.
- (4) A registered political party must not be without a registered officer for a period longer than one month.  
Maximum penalty: \$750.  
Expiation fee: \$105.
- (5) A registered political party must, within one month after any change in the identity or address of its registered officer, give notice in writing to the Electoral Commissioner containing details of the change.  
Maximum penalty: \$750.  
Expiation fee: \$105.
- (6) It is a defence to a charge of an offence against subsection (4) or (5) for the registered political party to prove that the matters alleged against it did not arise from a failure by the party to exercise proper diligence.

#### **43—Changes to Register**

- (1) Where a political party is registered under this Part, an application may be made to the Electoral Commissioner, by the registered officer of the party, or any other person authorised by the party to make the application, to change the Register by—
  - (a) changing the name of the party to a name specified in the application;
  - (b) if an abbreviation of the name of the party is entered in the Register—changing that abbreviation to an abbreviation specified in the application;

- (c) if an abbreviation of the name of the party is not entered in the Register—entering in the Register an abbreviation of the name of the party, being an abbreviation specified in the application.
- (2) An application under subsection (1) must be dealt with in the same way and determined by reference to the same principles as an application for registration of a political party.

#### **43A—Annual returns and other inquiries**

- (1) The registered officer of a registered political party must, by 30 September each year, furnish to the Electoral Commissioner a return as to the party's continued eligibility for registration under this Part in the form prescribed by the regulations.
- (2) A return under subsection (1) must be accompanied by any documents required under the regulations.
- (3) A return is not required under subsection (1) if the party has been registered for less than 6 months before the return is due to be furnished.
- (4) The Electoral Commissioner may at any time, by notice in writing, require a registered officer of a registered political party to provide such information as is specified in the notice for the purpose of determining whether the party is still eligible to be registered under this Part.
- (5) If the registered officer of a registered political party fails to comply with a requirement under this section, the Electoral Commissioner may de-register the party.

#### **44—Voluntary de-registration**

- (1) A political party that is registered under this Part must be de-registered by the Electoral Commissioner if an application for de-registration is made to the Electoral Commissioner by the registered officer or some other person authorised by the party to make the application.
- (2) An application under subsection (1) must—
  - (a) be in writing, signed by the applicant; and
  - (b) set out the name and address of the applicant and particulars of the capacity in which he or she makes the application.
- (3) Where a political party is de-registered under subsection (1), that party, or a party that has a name that so nearly resembles the name of the de-registered party that it is likely to be confused with or mistaken for that name, is ineligible for registration under this Part until after the general election next following the de-registration.

#### **45—De-registration of political party**

- (1) If the Electoral Commissioner is satisfied on reasonable grounds that—
  - (a) a political party registered under this Part has ceased to exist (whether by amalgamation with another political party or otherwise); or
  - (b) a political party so registered has ceased to have the required number of members (or, in the case of a parliamentary party, an appropriate member) to enable the party to continue as an eligible political party; or

- (c) a political party so registered, not being a parliamentary party, has not at either of the last 2 general elections for the House of Assembly, or a simultaneous Legislative Council election, endorsed a candidate for election; or
- (d) the registration of a political party was obtained by fraud or misrepresentation,

the Electoral Commissioner may de-register the party.

- (2) A political party may not be de-registered under this section unless the Electoral Commissioner has, by notice in writing addressed to the registered officer of the party—
  - (a) informed the registered officer of his or her intention to de-register the party; and
  - (b) allowed the registered officer a reasonable opportunity to show cause why the party should not be de-registered.

#### **46—De-registration**

- (1) Where a writ for an election has been issued, a political party may not be de-registered under this Part during the election period.
- (2) Where a political party is de-registered under this Part, the Electoral Commissioner must cause the particulars on the Register that relate to that party to be cancelled.

#### **46A—False statements**

A person who, in furnishing information for the purposes of this Part, knowingly makes a statement that is false or misleading in a material particular is guilty of an offence.

Maximum penalty: \$5 000.

#### **46B—Membership information to be confidential**

- (1) Subject to subsection (2), the names and addresses of electors appearing in material provided to the Electoral Commissioner in connection with the membership requirements for registration, or continued registration, as a political party under this Part will be held by the Electoral Commissioner on a confidential basis (and therefore that material will not be available for public inspection under this Part).
- (2) Subsection (1) does not prevent the Electoral Commissioner providing information to a prescribed person or body, or a person or body of a prescribed class, (if any) for purposes connected with the operation or administration of this Act.



## Part 7—Writs for elections

### 47—Issue of writ

- (1) Subject to subsection (2), the Governor is the sole authority by whom a writ for an election may be issued.
- (2) If—
  - (a) a casual vacancy in the membership of the House of Assembly occurs; or
  - (b) an election to fill a vacancy in the membership of the House of Assembly is declared void by the Court of Disputed Returns,the Speaker of the House of Assembly must issue a writ for a by-election.
- (2a) In the case of a general election for the House of Assembly, the writ or writs for the elections in all House of Assembly districts must be issued 28 days before the date fixed for the polling in each district under section 48.
- (3) Where a writ for an election is issued, it will, for the purposes of this Act, be presumed that the writ was issued at 1 minute past midnight on the date of the issue of the writ.

### 48—Contents of writ

- (1) A writ must be addressed to the Electoral Commissioner.
- (2) A writ must fix—
  - (a) the date and time for the close of the rolls; and
  - (b) the date for—
    - (i) the nomination; and
    - (ii) the polling; and
    - (iii) the return of the writ.
- (3) The date fixed for the close of the rolls must be—
  - (a) subject to paragraph (b)—
    - (i) in the case of a general election for the House of Assembly—the date falling 6 days after the date of the issue of the writ; or
    - (ii) in any other case—the date falling 10 days after the date of the issue of the writ;
  - (b) if the day that would apply under paragraph (a) would be a Saturday, Sunday or public holiday—the date falling on the day next following the Saturday, Sunday or public holiday that is not itself a Saturday, Sunday or public holiday.
- (4) The date fixed for the nomination must be—
  - (a) in the case of a general election for the House of Assembly—the date falling 3 days after the date fixed for the close of the rolls; or

- (b) in any other case—a date falling not less than 3 days nor more than 14 days after the date fixed for the close of the rolls.
- (5) The date fixed for the polling must be a Saturday falling not less than 14 days nor more than 30 days after the date fixed for the nomination.
- (6) In the case of a general election for the House of Assembly—
  - (a) a single writ may be issued in respect of all elections in all House of Assembly districts;
  - (b) irrespective of whether a single writ is issued, the same day must be fixed for polling in each district;
  - (c) if more than one writ is issued, all writs must be returnable on the same day.
- (7) As soon as practicable after the issue of a writ for an election—
  - (a) its terms must be advertised by the Electoral Commissioner in a newspaper circulating throughout the State; and
  - (b) the Electoral Commissioner must notify all returning officers affected by the writ of its terms.

#### **49—Deferral of election**

- (1) Despite any other provision of this Act, the person who issued a writ for an election may, in order to meet a difficulty that has arisen in relation to the conduct of the election, by notice published in a newspaper circulating generally throughout the State, defer—
  - (a) the date and time for the close of the rolls;
  - (b) the date for—
    - (i) the nomination; or
    - (ii) the polling; or
    - (iii) the return of the writ.

- (2) A date or time fixed by notice under subsection (1) will be taken to have been validly fixed by the writ.
- (3) A deferment will not be granted under subsection (1) if the effect of the deferment would be to postpone polling by more than 21 days from the date originally fixed by the writ.

#### **50—Failure of election**

- (1) Whenever an election wholly or partially fails, a new writ must immediately be issued for a supplementary election.
- (2) An election will be taken to have wholly failed if no candidate is nominated or returned as elected.
- (3) A Legislative Council election will be taken to have partially failed if one or more candidates are returned as elected but not the full number required to be elected.



- (4) A supplementary election must, unless more than 3 months have elapsed between the date fixed for the return of the writ for the election that failed and the date of the writ for the supplementary election, be held on the same rolls as were prepared for the earlier election.



## **Part 8—Preparations for an election**

### **Division 1—Nomination**

#### **51—Candidates must be nominated**

No person is capable of being elected as a member of the House of Assembly or the Legislative Council unless duly nominated for election.

#### **52—Qualifications of candidate**

- (1) A person is not qualified to be a candidate for election as a member of the House of Assembly or the Legislative Council unless the person is an elector.
- (1a) A person is not qualified to be a candidate for election as a member of the House of Assembly or the Legislative Council if the person would, if elected at the relevant election, be required to immediately vacate his or her seat under section 17 or 31 of the *Constitution Act 1934* (as the case requires).
- (2) If 2 or more elections are to be held under this Act on the same day, a person is not entitled to be a candidate in more than 1 of those elections and, if on the declaration of nominations the same person is nominated as a candidate in more than 1 of those elections, each of those nominations is invalid.

#### **53—Multiple nominations of candidates endorsed by political party**

- (1) The registered officer of a registered political party may, after the issue of the writ for the election, nominate on the same nomination paper candidates endorsed by the party for election as members of the House of Assembly or the Legislative Council.
- (2) In order to make a nomination under subsection (1), the registered officer of the party must, at least 48 hours before the hour of nomination, lodge at the office of the Electoral Commissioner—
  - (a) a duly completed nomination paper; and
  - (b) a deposit of the prescribed amount in cash or a banker's cheque in respect of each candidate nominated.
- (3) A nomination paper must be in a form approved by the Electoral Commissioner and—
  - (a) be signed by the registered officer of the party; and
  - (b) contain a declaration, signed by each candidate, that he or she—
    - (i) consents to stand as a candidate in the election; and
    - (ii) is qualified to stand as a candidate in the election; and
    - (iii) authorises the registered officer to make an application under section 62(1), and to lodge a voting ticket under section 63(1), on behalf of the candidate.
- (4) The Electoral Commissioner must, in respect of each district for which a candidate has been nominated under this section, deliver to the returning officer a copy or facsimile of the nomination paper as soon as practicable after the receipt of the nomination paper under this section (and in any event before the hour of nomination).

- (5) If a nominated candidate, by notice in writing lodged with the appropriate district returning officer before the hour of nomination, withdraws consent to stand as a candidate in an election, the nomination of that candidate is revoked.
- (6) The returning officer must immediately inform the registered officer of the party of the revocation of the nomination.
- (7) The registered officer of the party may, if—
  - (a) the nomination of a candidate is revoked; or
  - (b) a nominated candidate dies before the hour of nomination,nominate some other person as the candidate endorsed by the party for the district by lodging with the appropriate district returning officer before the hour of nomination a duly completed nomination paper.
- (8) If the registered officer does not nominate another candidate under subsection (7), the deposit paid in respect of a candidate whose nomination has been revoked or a candidate who has died must be returned to the party.
- (9) A nomination is not invalid because of a formal defect or error if the provisions of this Act have been substantially complied with.
- (10) A person who is endorsed by a registered political party as a candidate for election but is not nominated under subsection (1) may be nominated as a single candidate for election under section 53A.

### **53A—Nomination of single candidate**

- (1) A person may, after the issue of the writ for the election, nominate on a nomination paper a candidate for election as a member of the House of Assembly or the Legislative Council.
- (2) In order to make a nomination under subsection (1), the person must, before the hour of nomination, lodge at the office of the appropriate district returning officer—
  - (a) a duly completed nomination paper; and
  - (b) a deposit of the prescribed amount in cash or a banker's cheque.
- (3) A nomination paper must be in a form approved by the Electoral Commissioner and—
  - (a) be signed by 2 electors enrolled for the relevant district; and
  - (b) contain a declaration, signed by the candidate, that he or she—
    - (i) consents to stand as a candidate in the election; and
    - (ii) is qualified to stand as a candidate in the election.
- (4) If a nominated candidate, by notice in writing lodged with the appropriate district returning officer before the hour of nomination, withdraws consent to stand as a candidate in an election, the nomination of that candidate is revoked and the candidate's deposit must be returned.
- (5) A nomination is not invalid because of a formal defect or error if the provisions of this Act have been substantially complied with.

#### **54—Declaration of nominations**

- (1) The returning officer for each district must, at the hour of nomination, attend at the district office where the returning officer must—
  - (a) publicly produce all nomination papers received by the returning officer; and
  - (b) declare the names and addresses of all candidates duly nominated for the election in that district.
- (2) The returning officer may, with the concurrence of the Electoral Commissioner, reject a nomination if in the opinion of the returning officer the name under which the candidate is nominated—
  - (a) is obscene; or
  - (b) is frivolous; or
  - (c) has been assumed for an ulterior purpose.
- (3) Where a nomination is to be rejected under subsection (2), the returning officer must, if practicable, give the nominee sufficient notice of the proposed rejection to enable the withdrawal of the nomination and the making of a fresh nomination under a different name before the hour of nomination.

#### **55—Proceedings on nomination day**

- (1) In the case of a Legislative Council election, if the number of candidates nominated is not greater than the number of candidates required to be elected—
  - (a) the returning officer will make a declaration to that effect; and
  - (b) the candidate or candidates will be taken to be duly elected as from polling day.
- (2) In the case of a House of Assembly election, if one candidate only is nominated—
  - (a) the returning officer will make a declaration to that effect; and
  - (b) the candidate will be taken to be duly elected as from polling day.
- (3) If, in any election, the number of candidates nominated is greater than the number required to be elected, the proceedings will, subject to this Act, stand adjourned to polling day.

#### **56—Death of candidate after nomination**

- (1) If after the nominations for an election for the Legislative Council have been declared, and before polling day, two or more candidates die, the election will be taken to have wholly failed.
- (2) If after the nominations for an election for the House of Assembly have been declared, and before polling day, any candidate dies, the election will be taken to have wholly failed.

## **57—Deposit to be forfeited in certain cases**

- (1) The deposit made by or on behalf of a candidate will be retained pending the election, and after the election must be returned to the candidate, or to some person authorised to receive it, if—
  - (a) the candidate is elected; or
  - (b) the total number of votes polled in the candidate's favour as first preference votes exceeds 4 per cent of the total number of formal votes cast in the election; or
  - (c) where the candidate is a member of a group, the total number of votes polled in favour of members of the group as first preference votes exceeds 4 per cent of the total number of formal votes cast in the election,but otherwise the deposit will, subject to subsection (2), be forfeited to the Crown.
- (2) If a candidate dies before polling day, his or her deposit must be returned to the candidate's personal representative.

## **Division 2—Ballot papers**

### **Subdivision 1—Ballot papers for a Legislative Council election**

#### **58—Grouping of candidates in Legislative Council election**

- (1) Subject to this section, if two or more candidates in a Legislative Council election apply under this section to have their names grouped together on the ballot paper, the names of those candidates must be grouped together on the ballot paper.
- (2) An application under subsection (1)—
  - (a) must be in a form approved by the Electoral Commissioner; and
  - (b) must be signed by all the candidates who are to be included in the group; and
  - (c) must set out the order in which the names of the candidates are to be included in the group; and
  - (d) must be received by the returning officer for the Legislative Council not later than the hour of nomination.
- (3) A candidate is not entitled to have his or her name included in more than one group.
- (4) The number of candidates in a group must not exceed the number of candidates required to be elected at the particular election.

#### **59—Printing of Legislative Council ballot papers**

- (1) In printing the ballot papers to be used in a Legislative Council election—
  - (a) the names of candidates included in groups must be printed in groups on the ballot papers before the names of candidates not included in groups (on the basis that the groups and then the individual candidates will be placed sequentially on the ballot paper starting towards the left-hand side of the ballot paper and then moving across the ballot paper (towards the right-hand side) and, if necessary, on to and across a second or subsequent row or rows); and

- (b) the order of the groups in the ballot papers must be determined by lot; and
  - (c) the order of the names of the candidates whose names are not included in any group must be determined by lot; and
  - (d) where similarity in the names of two or more candidates is likely to cause confusion, the names of those candidates may be arranged with such description or addition as will distinguish them from one another; and
  - (e) a square must be printed opposite the name of each candidate.
- (2) If notice of an intention to lodge a voting ticket or voting tickets has been given in accordance with this Division, an additional square must be printed on the ballot paper in order to provide for the casting of votes in accordance with that ticket or those tickets.

## **Subdivision 2—Ballot papers for a House of Assembly election**

### **60—Ballot papers for House of Assembly elections**

In printing the ballot papers to be used in a House of Assembly election—

- (a) the order of the names of the candidates in the ballot papers must be determined by lot; and
- (b) where similarity in the names of two or more candidates is likely to cause confusion, the names of those candidates may be arranged with such description or addition as will distinguish them from one another; and
- (c) a square must be printed opposite the name of each candidate.

## **Subdivision 3—Ballot papers generally**

### **61—Form of ballot papers**

- (1) Subject to this Act, ballot papers must be in a form prescribed by regulation.
- (2) The following statement must be included on each ballot paper at or near the top of the ballot paper and in clearly legible print—

"You are not legally obliged to mark the ballot paper."

### **62—Printing of descriptive information on ballot papers**

- (1) Subject to this section, where an application is made under this section by or on behalf of a candidate—
  - (a) to have the registered name of a registered political party printed adjacent to the candidate's name on the ballot papers for use in the election; or
  - (b) to have a composite name consisting of the registered names of 2 registered political parties printed adjacent to the candidate's name on the ballot papers for use in the election; or
  - (c) to have the description "Independent" printed adjacent to the candidate's name on the ballot papers for use in the election; or

- (d) to have a description consisting of the word "Independent" followed by not more than 5 additional words printed adjacent to the candidate's name on the ballot papers for use in the election,
- the ballot papers must be printed accordingly.
- (1a) An application under subsection (1) can only be made—
- (a) by the candidate to whom the application relates; or
  - (b) if the candidate is a member of a registered political party and has given an appropriate written authorisation to the registered officer of that party—by that registered officer.
- (2) An application under subsection (1)—
- (a) must be in a form approved by the Electoral Commissioner; and
  - (b) must be signed by the candidate or the registered officer authorised to act on the candidate's behalf; and
  - (ba) in the case of an application signed by a registered officer on behalf of a candidate—must be accompanied by the appropriate written authorisation signed by the candidate; and
  - (c) in the case of an application for printing the name of a registered political party or a composite name consisting of the registered names of 2 political parties—
    - (i) must contain a declaration, signed by the registered officer of the political party or each of the political parties, stating that the party supports the application; and
    - (ii) if the registered political party has more than one registered name—must specify which of those names is to be printed in the ballot paper in pursuance of the application; and
    - (iii) if the application is for the printing of a composite name—must specify the form of the composite name; and
  - (d) where the name of the candidate is to be included in a group—must be in the form of an application made by or on behalf of all members of the group for the printing of the same name or description adjacent to the name of each member of the group (and, in the case of an application made on behalf of all members of the group, must be accompanied by the appropriate written authorisation signed by all of the members of the group); and
  - (e) must be received by the Electoral Commissioner not later than the hour of nomination.
- (3) The Electoral Commissioner may reject an application under subsection (1)(d) if—
- (a) the description to which the application relates is, in the opinion of the Electoral Commissioner, obscene or frivolous; or



- (b) the word or words constituting the description could not be, or may not be able to be, registered as the name, or as part of the name, of a political party under Part 6 because of the operation of section 42(2)(e) or (3)(b), other than where the application includes a declaration (in the form determined by the Electoral Commissioner) that has been signed by a person authorised by the relevant parliamentary party or registered political party and states that the party supports the application.
- (4) A decision of the Electoral Commissioner to accept or reject an application under subsection (1)(d) is final and conclusive and not subject to review or appeal.

### 63—Voting tickets

- (1) One voting ticket, or two separate voting tickets, may be lodged with the Electoral Commissioner or the returning officer in relation to a candidate or a group of candidates (but where a candidate is a member of a group, a voting ticket must relate to the group as a whole and not to an individual member of it).
- (2) A voting ticket will not be regarded as validly lodged under subsection (1) unless—
  - (a) written notice of intention to lodge a voting ticket or voting tickets is given to the Electoral Commissioner or the returning officer at or before the hour of nomination by or on behalf of the candidate or candidates; and
  - (b) the voting ticket is lodged within 72 hours after the close of nominations.
- (3) A voting ticket may be lodged under this section by—
  - (a) the candidate or candidates to whom it relates; or
  - (b) a person authorised in writing by the candidate or candidates to act on their behalf.
- (3a) An authorisation under subsection (3)(b) may only be given to—
  - (a) a registered officer of a registered political party of which the candidate or candidates are members; or
  - (b) a member of a group who is, in terms of the authorisation, to act on behalf of all members of the group.
- (4) A voting ticket lodged under subsection (1) must—
  - (a) indicate by consecutive numbers commencing with the number 1 an order of preference for all candidates in the election; and
  - (b) —
    - (i) in the case of a voting ticket lodged by or on behalf of an individual candidate—indicate a preference for that candidate over all other candidates in the election;
    - (ii) in the case of a voting ticket lodged by or on behalf of a group of candidates—indicate preferences for the candidates comprising the group—
      - (A) in the order in which the names of those candidates are to appear in the ballot paper; and

(B) over all candidates in the election who are not included in that group.

(5) If—

- (a) notice of intention to lodge a voting ticket for a Legislative Council election is given under subsection (2)(a); but
- (b) a voting ticket is not then lodged in accordance with the requirements of subsection (2)(b),

the Electoral Commissioner must take reasonable steps to inform the candidate or candidates to whom the voting ticket was to relate of the failure to lodge the voting ticket in accordance with the requirements of this section (but the Electoral Commissioner need not take any other action in relation to the matter).

## **64—Photographs of candidates**

- (1) If the Electoral Commissioner so decides, photographs of all candidates in an election may be printed on the ballot paper for that election.
- (2) Notice of a decision under subsection (1) must be given to the candidates in the election on or before the day fixed for the nomination.
- (3) A candidate whose photograph is to be printed on a ballot paper in pursuance of subsection (1) must, within 3 days after the day fixed for the nomination, submit to the returning officer a photograph—
  - (a) that was taken of the candidate within 12 months before submission of the photograph; and
  - (b) that complies with the requirements of the regulations.
- (4) If a candidate fails to submit a photograph that conforms with the requirements of subsection (3) within the time allowed by that subsection or such further time as may be allowed by the Electoral Commissioner, the nomination of that candidate becomes void.
- (5) A photograph of a candidate printed on a ballot paper must appear opposite the name of the candidate.

## **Division 3—Establishment and staffing of polling booths**

### **65—Properly staffed polling booths to be provided**

- (1) Where a poll is to be taken at an election, it is the responsibility of the returning officer for the district to ensure—
  - (a) that a polling booth is properly established at each polling place within the district; and
  - (b) that each polling booth—
    - (i) is properly divided into compartments so that voters may mark their votes without the vote being observed; and
    - (ii) is properly equipped with ballot boxes and other necessary equipment; and

- (iii) is properly staffed with a presiding officer, poll clerks and any other necessary staff.
- (2) No premises licensed for the sale of liquor may be used as a polling booth unless the Electoral Commissioner has taken reasonable steps to ensure that liquor will not be sold or consumed on the premises while the polling booth is open for voting or otherwise being used for the purposes of the poll.
- (3) Any premises under the control of the Government of the State, and any premises of a local governing body, may be used for the purposes of the poll on terms and conditions approved by the Electoral Commissioner.

## **66—Preparation of certain electoral material**

- (1) The Electoral Commissioner must have the following electoral material prepared for use in polling booths on polling day:
  - (a) posters formed from how-to-vote cards submitted by the candidates in the election; and
  - (b) in relation to a Legislative Council election—posters or booklets, or posters and booklets containing the voting tickets registered for the purposes of the election.
- (2) Material submitted for inclusion under subsection (1)—
  - (a) must list candidates in the same order as their names will appear on the relevant ballot paper; and
  - (b) must comply with any other requirement prescribed by the regulations; and
  - (c) must be submitted in a quantity determined by the Electoral Commissioner; and
  - (d) in the case of how-to-vote cards, must be received by the Electoral Commissioner not later than 4 days after the day for nomination; and
  - (e) if 2 or more candidates form a group for the purposes of a Legislative Council election—must be jointly submitted by or on behalf of all candidates in the group; and
  - (f) must not identify a candidate—
    - (i) by reference to the registered name of a registered political party or a composite name consisting of the registered names of 2 registered political parties; or
    - (ii) by the use of a word or set of words that could not be, or may not be able to be, registered as the name, or as part of the name, of a political party under Part 6 because of the operation of section 42(2)(e) or (3)(b),  
  
unless the candidate provides the Electoral Commissioner with a declaration (in the form determined by the Electoral Commissioner) that is signed by a person authorised by the relevant parliamentary party or registered political party (as the case may require) and states that—
      - (iii) the candidate is endorsed by the party; or

- (iv) the party has consented to the use of the relevant name or names or word or words; and
  - (g) in the case of how-to-vote cards—must, in relation to how-to-vote cards submitted by or on behalf of the same candidate or group of candidates, be in identical form.
- (3) The form of a poster or booklet prepared under this section will, subject to this section, be as determined by the Electoral Commissioner.
  - (4) The order in which the electoral material referred to in subsection (1) is arranged will correspond to the order in which the names of candidates will appear on the relevant ballot paper.
  - (5) The presiding officer at each polling booth must—
    - (a) ensure that, in relation to a House of Assembly election, posters prepared under subsection (1)(a) are displayed in each voting compartment; and
    - (b) ensure that all other posters and booklets prepared under subsection (1) are displayed or made available (as the case may be) in a prominent position in the polling booth and in accordance with any direction issued by the Electoral Commissioner.

## **Division 4—Scrutineers**

### **67—Appointment of scrutineers**

- (1) Each candidate may appoint 1 or more scrutineers for the purposes of an election.
- (2) A person cannot act as a scrutineer at a particular place on behalf of a candidate unless or until a copy of a written notice of appointment of the person as a scrutineer, signed by the candidate, is presented to the officer presiding at that place.
- (3) Except where the returning officer allows a greater number of scrutineers—
  - (a) for each polling booth there must not be more than two scrutineers in respect of each individual candidate or group of candidates;
  - (b) for each counting centre there must not be more than—
    - (i) two scrutineers in respect of each individual candidate or group of candidates; or
    - (ii) if counting of votes takes place simultaneously at two or more places in the counting centre—one scrutineer for each such place in respect of each individual candidate or group of candidates.
- (4) A scrutineer may, by notice given to the officer presiding at a polling booth or counting centre, appoint a substitute to act for him or her during a temporary absence of the scrutineer from the polling booth or counting centre.

## **Division 5—Certified list of electors**

### **68—Certified list of electors**

- (1) The relevant electoral registrars in relation to a district must, as soon as practicable after the date fixed for the closing of the rolls for an election, supply the Electoral Commissioner with a certified list of the electors enrolled for the district.
- (2) The Electoral Commissioner must, as soon as practicable after receipt of the certified list of electors for a district, supply the returning officer for the district with a copy of the certified list of electors.



## Part 9—Voting

### Division 1—Entitlement to vote

#### 69—Entitlement to vote

- (1) Subject to this section, a person is entitled to vote at an election if he or she is enrolled for the district in which the election is held.
- (2) A person is not entitled to vote at an election if—
  - (a) he or she was provisionally enrolled; and
  - (b) he or she has not, as at polling day, attained the age of 18 years.
- (4) Except as otherwise provided in this Act, the enrolment of a person on a district roll is conclusive evidence of the right of that person to vote at an election for that district.

#### 70—Errors etc in roll not to forfeit entitlement to vote

- (1) No error or omission in the roll disqualifies an elector from voting.
- (2) No female elector is disqualified from voting under the name appearing in the roll because her surname has been changed by marriage.

### Division 2—General provisions as to voting

#### 71—Manner of voting

- (1) An elector who is entitled to vote at an election may exercise that vote—
  - (a) by attending at a polling place for the district for which he or she is enrolled and voting in the manner prescribed by this Act; or
  - (b) in the case of an elector entitled to do so by virtue of subsection (2)—by making a declaration vote.
- (2) An elector—
  - (a) who attends on polling day at a polling booth outside the district for which he or she is enrolled as an elector; or
  - (b) who—
    - (i) will not, throughout the hours of polling on polling day, be within 8 kilometres by the nearest practicable route of any polling booth; or
    - (ii) will, throughout the hours of polling on polling day, be travelling under conditions that preclude voting at a polling booth; or
    - (iii) is, by reason of illness, infirmity or disability, precluded from voting at a polling booth; or
    - (iv) is, by reason of caring for a person who is ill, infirm or disabled, precluded from voting at a polling booth; or
    - (v) is, by reason of advanced pregnancy, precluded from voting at a polling booth; or

- (vi) is, by reason of membership in a religious order, or religious beliefs, precluded from attending at a polling booth or precluded from voting throughout the hours of polling on polling day or the greater part of those hours; or
  - (vii) is, for a reason of a prescribed nature, precluded from voting at a polling booth; or
- (ba) who—
- (i) will be working in his or her employment throughout the hours of polling; and
  - (ii) could not reasonably be expected to be absent from work for the purpose of voting; or
- (c) who is an inmate of a declared institution; or
- (d) whose name, as a result of an official error, does not appear on the certified list of electors for a district; or
- (e) who appears from a record erroneously made under this Act to have voted already in the election; or
- (f) whose address has been suppressed from publication under Part 4 Division 2, is entitled to make a declaration vote.
- (3) In addition, a person whose name has been removed from the electoral roll by virtue of an objection under Part 5 Division 4 is entitled to make a declaration vote at an election if—
- (a) the ground for the objection was that the person failed to notify an electoral registrar of a change of address in accordance with the requirements of this Act; and
  - (b) the previous address and the new address are both in the same House of Assembly district.
- (4) A person who satisfies the requirements of subsection (3) will be taken to be an elector for the purposes of the other provisions of this Act (with respect to the election or elections held on the day in relation to which the entitlement under that subsection arises).

## **72—Questions to be put to person claiming to vote**

- (1) An authorised officer must, before issuing voting papers to a person who appears personally before him or her claiming to vote, put the following questions to that person:
- (a) such questions as are necessary to establish the identity and the address of the principal place of residence of the claimant; and
  - (b) the following question: Have you voted before in this election? *or* Have you voted before in these elections? (as the case requires),
- and may put such further questions as are necessary to establish whether the claimant is entitled to vote.



- (2) If a person claiming to vote to whom questions are put under this section—
- (a) refuses to answer fully any such question;
  - (b) so answers any such question as to indicate that he or she is not entitled to vote,
- the person's claim to vote must be rejected.

### **73—Issue of voting papers**

- (1) Voting papers may be issued to an elector claiming to vote by an officer authorised for the purpose.
- (2) Declaration voting papers must not be issued to an elector (not being a registered declaration voter) except on an application made in the prescribed manner, and such an application must be supported by a written declaration of the ground of the applicant's entitlement to make a declaration vote, which—
- (a) if the application is made orally—must be made before the officer to whom the application is made; or
  - (b) if the application is made in writing—must be made in the application.
- (3) When a ballot paper is issued to a voter it must be authenticated—
- (a) by the initials of the officer by whom it is issued; or
  - (b) by a prescribed mark.
- (4) An exact record must be kept of all persons to whom ballot papers are issued.

### **74—Issue of declaration voting papers by post or other means**

- (1) Declaration voting papers must be issued under this section in respect of an election—
- (a) to any elector who is entitled to vote at the election and is registered on the register of declaration voters maintained under this section; or
  - (b) to an elector who applies, by letter, for the issue of declaration voting papers and whose application is received by the officer to whom it is addressed before 5 p.m. on the Thursday last preceding polling day.
- (2) An officer who receives an application, by letter, for the issue of declaration voting papers before 5 p.m. on the Thursday last preceding polling day must ensure that a written response to the application is dispatched to the applicant before 6 p.m. on that Thursday.
- (2a) Declaration voting papers under subsection (1) or a response under subsection (2) may be issued or dispatched—
- (a) by post; or
  - (b) in some other manner prescribed by the regulations.
- (3) If an elector, on application to the Electoral Commissioner, satisfies the Electoral Commissioner that—
- (a) the elector's address has been suppressed from publication under Part 4 Division 2; or
  - (b) because of—

(i) physical disability; or  
(ii) membership of a religious order or religious beliefs; or  
(iii) caring for a person who is seriously ill, infirm or disabled,  
the elector is likely to be precluded from attending at polling booths to vote;  
or

- (c) the elector's place of residence is not within 20 kilometres, by the shortest practicable route—
- (i) of any place likely to be a polling place appointed under this Act; or  
(ii) of any place likely to constitute the site of a mobile polling booth established under this Act,

the Electoral Commissioner may register the elector as a declaration voter.

- (4) The Electoral Commissioner must maintain a register of electors who are declaration voters containing the following information in relation to each elector:
- (a) the surname; and  
(b) the Christian or given names; and  
(c) other than in the case of an elector whose address has been suppressed from publication under Part 4 Division 2—
- (i) the address of the principal place of residence; and  
(ii) if an elector has provided an address to which declaration voting papers are to be issued that is different from the address of the principal place of residence—the address to which the papers are to be issued.
- (5) The Electoral Commissioner must from time to time revise the register of declaration voters.
- (6) A person may inspect the register of declaration voters at the office of the Electoral Commissioner and, on payment of a fee to be determined by the Electoral Commissioner, may be given a copy of, or of any part of, the register.
- (6a) The Electoral Commissioner must, on request, provide (in a form determined by the Electoral Commissioner)—
- (a) the registered officer of a registered political party with a copy of the information contained in the register in relation to electors in any district; or  
(b) a person who is a nominated candidate in an election with a copy of the information contained in the register in relation to electors for—
- (i) in the case of a person who is a candidate in an election for a House of Assembly district—that district; or  
(ii) in the case of a person who is a candidate in a Legislative Council election—the Legislative Council district.

- (6b) If a copy of information contained in the register is provided to a person under subsection (6a), a person who uses that copy, or information contained in that copy, for a purpose other than the distribution of matter calculated to affect the result of a State election or purposes related to the holding of such election is guilty of an offence.

Maximum penalty: \$10 000.

- (7) A person who is given an application by an elector for the issue of declaration voting papers under this section on the basis that the person will deliver the application to the appropriate officer must transmit the application to the appropriate officer as soon as possible.

Maximum penalty: \$1 250.

#### **74A—Offence to distribute application form for issue of declaration voting papers**

- (1) A person, other than a person authorised by the Electoral Commissioner, must not distribute, or cause or permit to be distributed, a form for the application by an elector for the issue of declaration voting papers (an *application form*) unless—

- (a) the application form is in the prescribed form; and
- (b) it is stated on the form that it must be returned directly to the Electoral Commissioner; and
- (c) no additional information or matter appears on the form or on the reverse side of the form.

Maximum penalty: \$5 000.

- (2) In this section—

*distribute* an application form includes make the form available (including in electronic form) to other persons.

#### **75—Fresh ballot paper may be issued where ballot paper spoiled**

If a person to whom voting papers have been issued satisfies the officer by whom they were issued, or some other officer with authority to issue voting papers, that the voting papers have been inadvertently spoiled, the person is, on delivering up the papers to the officer, entitled to fresh voting papers.

### **Division 3—Indication of vote**

#### **76—Marking of votes on ballot papers**

- (1) In a Legislative Council election a voter must mark his or her vote on the ballot paper as follows:
- (a) by placing the number 1 in the square opposite the name of the candidate for whom he or she votes as his or her first preference, and consecutive numbers in the squares opposite the names of the remaining candidates so as to indicate the order of preference for all candidates; or
  - (b) if the ballot paper contains a voting ticket square—by placing the number 1 in that square.

- (2) In a House of Assembly election, a voter must mark his or her vote on the ballot paper by placing the number 1 in the square opposite the name of the candidate for whom he or she votes as his or her first preference, and consecutive numbers in the squares opposite the names of the remaining candidates so as to indicate the order of preference for all candidates.
- (3) For the purposes of this Act, where a voter places a tick or a cross on a ballot paper, the tick or cross will be taken to be equivalent to the number 1.

## **Division 4—Voting at polling booths**

### **77—Times and places for polling**

- (1) Polling is to be conducted—
    - (a) at an appointed polling place—in the polling booth established for that place;
    - (b) at such other places within a remote subdivision as may be determined by the Electoral Commissioner—in a mobile polling booth.
  - (2) Polling at a polling booth must be conducted at the following times:
    - (a) in the case of polling at a polling booth at an appointed polling place—
      - (i) the poll must open at 8 a.m. on polling day and must not close until all electors present in the polling booth at 6 p.m., and desiring to vote, have voted; and
      - (ii) the doors of the polling booth must be closed at 6 p.m. and no person may be admitted after that hour to the polling booth for the purpose of voting;
    - (b) in the case of polling at a mobile polling booth in a remote subdivision—the poll must open and close at such times (being times that fall within the 12 days up to and including polling day) as may be determined by the Electoral Commissioner.
  - (3) The Electoral Commissioner must, by notice published in a newspaper circulating generally throughout the State, advise the times and places for polling at a mobile polling booth.
- (3a) The times or places for polling at a mobile polling booth may be altered—
- (a) —
    - (i) by the Electoral Commissioner publishing in a newspaper circulating generally throughout the State no later than the day before the day previously fixed for polling at a particular place another notice advising electors of the alteration in polling times at that place, or of the alteration of the place for polling; and
    - (ii) if it is apparent that the newspaper referred to in subparagraph (i) will not be widely available in the relevant subdivision before the day previously fixed for polling—
      - (A) by the Electoral Commissioner publishing a further notice advising electors of the alteration in a local newspaper that will circulate in that subdivision before that day; or

- (B) if there is no such newspaper—by the Electoral Commissioner taking such steps as are reasonably practicable to notify electors in the particular subdivision of the alteration; or
  - (b) in exceptional circumstances that render compliance with paragraph (a) impracticable—by the presiding officer taking such steps as are reasonably practicable to notify electors in the particular subdivision of the alteration.
- (3b) Where the times or places for polling at a mobile polling booth in a House of Assembly election are altered, the Electoral Commissioner or presiding officer making the alteration must take reasonable steps to inform candidates standing for election in the particular district of the alteration.
- (4) Where an election is held in some districts only, it is not necessary to open polling booths in districts in which no election is held.

### **78—Right of elector to receive ballot paper**

- (1) Subject to this Act, where an elector who is entitled to vote in an election attends at a polling booth and claims to vote, a ballot paper must be issued to that elector.
- (2) Where a person claiming to vote is entitled, and applies, to make a declaration vote, the appropriate declaration voting papers must be issued to the person.
- (3) The presiding officer must, at the request of a scrutineer, note any objection by the scrutineer to the right of any person to vote, and must keep a record of the objection.

### **79—Vote to be marked in private**

- (1) Subject to this Part, the voter, on receipt of the ballot paper (not being a declaration ballot paper) must without delay—
  - (a) retire alone to some unoccupied compartment of the booth, and there, in private, mark his or her vote on the ballot paper; and
  - (b) deposit the ballot paper in the ballot box; and
  - (c) leave the booth.
- (2) Subject to this Part, where the voter makes a declaration vote, the voter must—
  - (a) sign the appropriate declaration on the envelope that is to contain the ballot paper in the presence of an officer (who must sign the envelope as witness); and
  - (b) retire alone to some unoccupied compartment of the booth and there, in private, mark his or her vote on the ballot paper; and
  - (c) enclose the ballot paper in the envelope, seal the envelope and deposit it in the ballot box; and
  - (d) leave the booth.

### **80—Voter may be accompanied by an assistant in certain circumstances**

- (1) Subject to this section, if a voter satisfies the presiding officer that he or she is unable to vote without assistance, the voter may be accompanied by an assistant of his or her choice while in the polling booth.

- (2) The presiding officer may express disapproval of a person chosen to assist a voter under this section and, in that event, some other person, acceptable to the presiding officer, must be chosen by the voter.
- (3) The assistant may assist the voter in any of the following ways:
  - (a) by acting as an interpreter;
  - (b) by explaining the ballot paper, and the voter's obligations under this Act in relation to the marking of the ballot paper, to the voter;
  - (c) by assisting the voter to mark the ballot paper, or by marking the ballot paper at the voter's direction;
  - (d) by folding and depositing the ballot paper in the ballot box.
- (4) A candidate, or a scrutineer appointed by a candidate, must not act as an assistant under this section.

Maximum penalty: \$1 250.

### **80A—Voting near polling booth in certain circumstances**

- (1) If a voter satisfies the presiding officer that the voter is unable (because of illness, disability, advanced pregnancy or other condition) to enter the polling booth to vote, the presiding officer may allow the voter to vote at or near the polling place outside of the polling booth.
- (2) The presiding officer must, before issuing the voter with a ballot paper, inform any scrutineers present of the proposed action and invite 1 scrutineer for each candidate to be present at the place where the voting will occur.
- (3) After the voter has marked a vote on the ballot paper, the presiding officer must, in the presence of the scrutineers, ensure—
  - (a) that the ballot paper is folded to conceal the vote and placed in an envelope that is then sealed; and
  - (b) that the envelope is opened inside the polling booth and the folded ballot paper is placed in the ballot box.

### **81—Voting by elector to whom declaration voting papers have been issued**

- (1) A person to whom declaration voting papers have been issued (otherwise than at the polling booth) is not entitled to vote at a polling booth unless—
  - (a) he or she delivers up the declaration voting papers to the presiding officer for cancellation; or
  - (b) he or she makes a declaration, in the prescribed form, to the effect that the declaration voting papers have not been received by the person.
- (2) Where an elector exercises an ordinary vote at a polling place after making a declaration under subsection (1)(b), any declaration ballot paper purporting to be a ballot paper of that elector must not be admitted to the scrutiny.

## Division 5—Declaration voting

### 82—Declaration vote, how made

- (1) An elector who is entitled, and desires, to make a declaration vote must vote in the following manner:
  - (a) if the vote is taken at a polling booth—it must be taken in the manner set out in Division 4;
  - (b) if the declaration voting papers are issued to the elector personally but not at a polling booth—the vote must be taken before the officer issuing the declaration voting papers;
  - (c) if the declaration voting papers are issued to the elector under section 74(2a)—the vote must be taken before an authorised witness.
- (2) Where an elector makes a declaration vote otherwise than at a polling booth, he or she must—
  - (a) sign the appropriate declaration on the envelope (which must be signed by the person before whom the vote is taken as witness);
  - (b) mark his or her vote, in private, on the ballot paper and fold it so as to conceal the vote;
  - (c) place the ballot paper in the envelope provided and seal the envelope;
  - (d) —
    - (i) if the vote is taken before an officer—the envelope must then be deposited in a ballot box, or placed in another secured facility, or immediately transmitted or caused to be transmitted by the officer before whom the vote was taken to the appropriate returning officer;
    - (ii) if the vote is taken before an authorised witness who is not an officer—the envelope must be lodged with the returning officer for the appropriate district before the close of poll on polling day, or delivered or sent by post so as to reach that returning officer, before the expiration of 7 days from the close of poll.
- (3) An elector who satisfies the person before whom he or she is to make a declaration vote (otherwise than at a polling booth) that he or she is unable to vote without assistance may be assisted by—
  - (a) the person before whom the vote is taken; or
  - (b) a person who is acceptable to that person.
- (4) The assistant may assist the voter in any of the following ways:
  - (a) by acting as an interpreter;
  - (b) by explaining the ballot paper and the voter's obligations under this Act in relation to the marking of the ballot paper;
  - (c) by assisting the voter to mark the ballot paper, or by marking the ballot paper at the voter's direction;

- (d) by folding the ballot paper, placing it in the appropriate envelope and sealing the envelope;
  - (e) by assisting the voter to complete the appropriate declaration on the envelope;
  - (f) by depositing the envelope in a ballot box, or lodging it with, or forwarding it by post to, the appropriate district returning officer (as the case may require).
- (4a) A person who is given an envelope containing a declaration vote of an elector for transmission to a returning officer must lodge it with, or forward it by post to, the appropriate district returning officer as soon as possible.

Maximum penalty: \$1 250.

- (5) Where an elector makes a declaration vote before an officer (otherwise than in a polling booth) the officer must make available for the assistance of the elector copies of any how-to-vote cards and other electoral materials in the possession of the officer that are to be exhibited in the polling booth on polling day.
- (6) A person who—
- (a) makes a declaration vote after the close of poll on polling day; or
  - (b) when acting as an authorised witness to a declaration vote, falsely certifies that the declaration vote was made before the close of poll on polling day; or
  - (c) delivers or posts to a returning officer under subsection (2) an envelope containing a declaration vote knowing that the vote was made after the close of poll on polling day,

is guilty of an offence.

Maximum penalty: \$2 500 or imprisonment for 6 months.

### **83—Taking of declaration votes by electoral visitors**

- (1) The Electoral Commissioner may, by notice published in the Gazette—
- (a) declare the whole or a specified part of an institution to be a declared institution; or
  - (b) vary or revoke a declaration under this section.
- (2) The Electoral Commissioner must, in respect of each election—
- (a) appoint a sufficient number of assistant returning officers to be electoral visitors; and
  - (b) make the necessary arrangements for all declared institutions within the district in which the election is being held to be visited by electoral visitors so that the votes of those persons at the declared institution who are entitled to declaration votes may be taken before them.
- (3) A declared institution may be visited under this section at any time between the expiration of 3 days from the date fixed for the nomination and the close of poll on polling day.
- (4) An electoral visitor may require the person apparently in charge of a declared institution to furnish him or her with the following information:
- (a) the names and addresses of the inmates of the institution; and



- (b) any other information that is reasonably required in order to determine whether an inmate is entitled to exercise a declaration vote.
- (5) A person who—
  - (a) hinders an electoral visitor in the exercise of functions under this section; or
  - (b) refuses or fails, without reasonable excuse, to furnish information when required to do so under subsection (4),is guilty of an offence.  
Maximum penalty: \$750.
- (6) A person must not counsel or procure two or more inmates of a declared institution to make applications by post for the issue of declaration voting papers.  
Maximum penalty: \$750.

#### **84—Security of facilities**

At the close of poll, all ballot boxes or other secured facilities containing declaration ballot papers must be opened and the ballot papers forwarded as soon as practicable to the appropriate returning officers or deputy returning officers.

### **Division 6—Compulsory voting**

#### **85—Compulsory voting**

- (1) Subject to subsection (2), it is the duty of every elector to record his or her vote at each election in a district for which the elector is enrolled.
- (2) An elector who leaves the ballot paper unmarked but who otherwise observes the formalities of voting is not in breach of the duty imposed by subsection (1).
- (3) Within the prescribed period after the close of each election, the Electoral Commissioner must send by post to each elector who appears not to have voted at the election a notice, in the prescribed form—
  - (a) notifying the elector that he or she appears to have failed to vote at the election and that it is an offence to fail to vote at an election without a valid and sufficient reason; and
  - (b) calling on him or her to show cause why proceedings for failing to vote at the election without a valid and sufficient reason should not be instituted against him or her,but the Electoral Commissioner, if satisfied that the elector is dead or had a valid and sufficient reason for not voting, need not send such a notice.
- (4) Before sending any such notice, the Electoral Commissioner must insert in the notice a date, not being less than 21 days after the date of posting of the notice, on which the form attached to the notice, duly filled up and signed by the elector, is to be in the hands of the Electoral Commissioner.
- (5) Every elector to whom a notice under this section has been sent must complete the form in the indicated place by stating the reasons (if any) why proceedings for failing to vote at the election should not be instituted against him or her, and then sign the form and return it to the Electoral Commissioner not later than the date inserted in the notice.

- (6) If an elector is absent or unable, by reason of physical incapacity, to complete, sign and return the form, within the time allowed under subsection (4), any other elector who has personal knowledge of the facts may complete, sign and return the form, duly witnessed, within that time, and, in that case, the elector will be taken to have complied with subsection (5).
- (7) An elector must not—
- (a) fail to vote at an election without a valid and sufficient reason for the failure; or
  - (b) on receipt of a notice under subsection (3), fail to complete, sign and return the form (duly witnessed) that is attached to the notice within the time allowed under subsection (4).

Maximum penalty: \$50.

Expiation fee: \$10.

- (8) An elector has a valid and sufficient reason for failing to vote at an election if—
- (a) the elector was ineligible to vote at the election; or
  - (b) the elector was absent from the State on polling day; or
  - (c) the elector had a conscientious objection, based on religious grounds, to voting at the election; or
  - (d) there is some other proper reason for the elector's failure to vote.
- (9) A prosecution for an offence against this section—
- (a) cannot be commenced except by the Electoral Commissioner or an officer authorised in writing by the Electoral Commissioner;
  - (b) in the case of a prosecution for failing to vote at an election or failing to return a notice to the Electoral Commissioner in accordance with subsection (4)—may be commenced at any time within 12 months of polling day.
- (10) In proceedings for an offence against this section—
- (a) a certificate apparently signed by the Electoral Commissioner certifying that an officer named in the certificate was authorised to commence the prosecution will, in the absence of proof to the contrary, be accepted as proof of that authority;
  - (b) a certificate apparently signed by an officer certifying that the defendant failed to vote at a particular election will be accepted as proof of that failure to vote in the absence of proof to the contrary;
  - (c) a certificate apparently signed by an officer certifying that a notice under subsection (3) was posted to an elector, at the address appearing on the electoral roll or at a postal address provided by the elector, on a date specified in the certificate, will be accepted, in the absence of proof to the contrary, as proof—
    - (i) that the notice was duly sent to the elector on that date; and
    - (ii) that the notice complied with the requirements of this Act; and

- (iii) that it was received by the elector on the date on which it would, in the ordinary course of post, have reached the address to which it was posted;
- (d) a certificate apparently signed by an officer certifying that the defendant failed to return a form under this section to the Electoral Commissioner within the time allowed under subsection (4) will be accepted, in the absence of proof to the contrary, as proof of the failure to return the form within that time.

## **Division 7—Miscellaneous**

### **86—Presiding officer may appoint substitute**

- (1) The presiding officer at a polling booth may appoint a suitable person to act in the position during a temporary absence of the presiding officer from the polling booth.
- (2) A person appointed under subsection (1) has, while acting in the position of the presiding officer, all the powers, functions and responsibilities of the presiding officer.

### **87—Ballot boxes or other facilities to be kept secure**

- (1) Subject to subsection (2), a ballot box or other facility used for keeping voting papers must be kept securely closed and sealed so as to prevent the introduction or removal of any paper or object except—
  - (a) when it 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 officer must, before voting papers are first deposited in a ballot box or other secured facility for the purposes of an election, publicly exhibit it empty.

### **88—Adjournment of polling**

- (1) If for any reason it is not practicable to proceed with polling at a polling place on polling day, the Electoral Commissioner may adjourn polling at that polling place for a period not exceeding 21 days.
- (2) Where for any reason the polling is adjourned at any polling place, only those electors for the district for which the polling place is appointed who were entitled to vote on polling day and who have not already voted, are entitled to vote at the adjourned polling.



## Part 10—The scrutiny

### Division 1—Preliminary

#### 89—Scrutiny

- (1) The result of an election is to be ascertained by scrutiny.
- (2) The scrutiny must commence as soon as practicable after the close of poll and may be adjourned from time to time as may be necessary until the counting of the votes is complete.
- (3) Despite subsection (2), the returning officer or a deputy returning officer may undertake a preliminary scrutiny of declaration voting papers (without opening any envelope) before the close of poll.

#### 90—Scrutineers

- (1) All proceedings at the scrutiny are open to the inspection of the scrutineers.
- (2) If a scrutineer objects to a ballot paper as being informal, the officer conducting the scrutiny must mark the ballot paper "admitted" or "rejected" according to his or her decision to admit or reject the ballot paper.
- (3) Nothing in this section prevents the officer conducting the scrutiny from rejecting a ballot paper as informal although it is not objected to.

#### 91—Preliminary scrutiny

- (1) For the purposes of the scrutiny of declaration voting papers, the returning officer or a deputy returning officer—
    - (a) must begin by producing the relevant applications for declaration voting papers and, unopened, the envelopes containing declaration ballot papers, being such envelopes received by him or her up to the end of the period of 7 days immediately following the close of the poll, or received by any other officer up to the close of the poll; and
    - (b) must then—
      - (i) in the case of declaration voting papers of voters whose votes were not taken before an officer, satisfy himself or herself—
        - (A) that the signature of the declarant corresponds with the signature on the application for declaration voting papers; and
        - (B) that the vote was recorded before the close of the poll,
- and if so satisfied, accept the ballot paper for further scrutiny by withdrawing the ballot paper from its envelope and, without inspecting or unfolding it or allowing any other person to do so, by placing it in a securely closed ballot box or other facility reserved for such ballot papers but, if not so satisfied, disallow the ballot paper without opening the envelope in which it is contained;

- (ii) in the case of declaration voting papers of voters whose votes were taken before an officer, proceed with the process by withdrawing the ballot paper from its envelope and, without inspecting or unfolding it or allowing any other person to do so, by placing it in a securely closed ballot box or other facility reserved for such ballot papers, unless he or she determines that there is proper cause at this stage for not accepting the ballot paper for further scrutiny under this Act; and
  - (c) must then seal up in separate parcels and preserve—
    - (i) all envelopes endorsed with declarations relating to declaration ballot papers accepted for further scrutiny; and
    - (ii) all unopened envelopes containing declaration ballot papers disallowed; and
  - (d) must then proceed with the scrutiny of the declaration ballot papers that have been accepted for further scrutiny.
- (1a) However, if a ballot paper for a House of Assembly election and a ballot paper for a Legislative Council election are contained in the same envelope, and the ballot paper for the Legislative Council election is to be accepted for further scrutiny but not the ballot paper for the House of Assembly election, the returning officer must—
  - (a) withdraw the ballot paper for the Legislative Council election and place it in the securely closed and sealed ballot box or other facility reserved for declaration ballot papers accepted for further scrutiny; and
  - (b) seal up the envelope with the disallowed ballot paper for the House of Assembly election; and
  - (c) place the envelope with the other envelopes containing disallowed declaration ballot papers.
- (1b) The returning officer, when acting under subsection (1a), must comply with the following provisions:
  - (a) the returning officer must, if practicable, avoid removing the disallowed House of Assembly ballot paper from the envelope but, if not, both ballot papers may be removed from the envelope but the disallowed ballot paper for the House of Assembly must be returned to the envelope; and
  - (b) the returning officer must, if practicable, avoid unfolding the ballot papers before dealing with them as required by this section but, if not, the returning officer may unfold them to the extent necessary to separate them; and
  - (c) the returning officer must, as far as practicable, avoid looking at votes recorded on the ballot papers and must not allow anyone else to do so before dealing with them as required by this section.
- (2) If, in conducting a scrutiny, it appears to a returning officer or deputy returning officer that 2 or more declaration ballot papers in respect of the same election have been received from the same elector, the returning officer or deputy returning officer must, subject to this section, accept the first such ballot paper that came into his or her hands and reject the remainder from further scrutiny.

## **Division 2—Interpretation and validity of ballot papers**

### **92—Interpretation of ballot papers in Legislative Council elections**

- (1) This section applies only in relation to a Legislative Council election.
- (2) Subject to subsection (4), where—
  - (a) a voter marks a ballot paper by placing the number 1 in the voting ticket square for a particular candidate or group; and
  - (b) there is 1 voting ticket registered for the purposes of the election in relation to that candidate or group,

the ballot paper will be taken to have been marked in accordance with that voting ticket.

- (3) Subject to subsection (4), where—
  - (a) a voter marks a ballot paper by placing the number 1 in the voting ticket square for a particular candidate or group; and
  - (b) there are 2 voting tickets registered for the purposes of the election in relation to that candidate or group,

then the ballot paper is to be grouped with other ballot papers marked in the same manner and—

- (c) if the number of those ballot papers is an even number—half of them will be taken to have been marked in accordance with one ticket and half in accordance with the other; or
  - (d) if the number of those ballot papers is not an even number—
    - (i) one of the ballot papers will be taken to have been marked in accordance with whichever of the 2 tickets is determined by lot by the returning officer; and
    - (ii) half the remainder (if any) will be taken to have been marked in accordance with one ticket and half in accordance with the other.
- (4) Where a voter marks a ballot paper by placing the number 1 in a voting ticket square but also indicates preferences for individual candidates, the following provisions apply:
    - (a) if the indication of preferences for individual candidates would, if it stood alone, constitute a valid vote, that indication of preferences will be taken to be the vote of the voter and the mark in the voting ticket square will be disregarded;
    - (b) if the indication of preferences for individual candidates would not, if it stood alone, constitute a valid vote, it will be disregarded and the vote of the voter will be taken to have been expressed by the mark in the voting ticket square.

### **93—Interpretation of ballot papers in House of Assembly elections**

- (1) This section applies only in relation to a House of Assembly election.

(2) Where—

- (a) a voter marks a ballot paper by placing the number 1 in the square opposite the name of a particular candidate and indicates no further preference; and
- (b) there is 1 voting ticket registered for the purposes of the election in relation to that candidate,

the ballot paper will be taken to have been marked in accordance with that voting ticket.

(3) Where—

- (a) a voter marks a ballot paper by placing the number 1 in the square opposite the name of a particular candidate and indicates no further preference; and
- (b) there are 2 voting tickets registered for the purposes of the election in relation to that candidate,

then the ballot paper is to be grouped with other ballot papers marked in the same manner and—

- (c) if the number of those ballot papers is an even number—half of them will be taken to have been marked in accordance with one ticket and half in accordance with the other; or
- (d) if the number of those ballot papers is not an even number—
  - (i) one of the ballot papers will be taken to have been marked in accordance with whichever of the 2 tickets is determined by lot by the returning officer; and
  - (ii) half the remainder (if any) will be taken to have been marked in accordance with one ticket and half in accordance with the other.

(4) Where—

- (a) a voter marks a ballot paper by placing the number 1 in the square opposite the name of a particular candidate and proceeds to indicate further preferences by consecutive numbers; and
- (b) there is 1 voting ticket registered for the purposes of the election in relation to that candidate; and
- (c) the preferences indicated by the voter are consistent with that voting ticket; and
- (d) the ballot paper would, apart from this subsection, be informal,

the ballot paper will be taken to have been marked in accordance with that voting ticket.

(5) Where—

- (a) a voter marks a ballot paper by placing the number 1 in the square opposite the name of a particular candidate and proceeds to indicate further preferences by consecutive numbers; and
- (b) there are 2 voting tickets registered for the purposes of the election in relation to the candidate; and



- (c) the preferences indicated by the voter are consistent with one or both of those voting tickets; and
- (d) the ballot paper would, apart from this subsection, be informal,

the ballot paper, if consistent with both voting tickets, will be treated as if it had been marked only with the number 1 and dealt with in accordance with subsection (3), but if it is consistent with one only of the voting tickets, it will be taken to have been marked in accordance with that voting ticket.

#### **94—Informal ballot papers**

- (1) Subject to this section, a ballot paper is informal if—
  - (a) it is not authenticated by the initials of the officer by whom it was issued, or by an official mark as prescribed; or
  - (b) it has no vote indicated on it, or it does not indicate, in the manner required by this Act, the order of the voter's preference for all candidates in the election; or
  - (d) in the case of a ballot paper required by this Act to be deposited in a ballot box or other secured facility—it is not so deposited.
- (2) A ballot paper that is not duly authenticated by initials or an official mark is not informal by reason of subsection (1)(a) if the officer responsible for considering whether the ballot paper should be admitted is satisfied that it is an authentic ballot paper on which a voter has marked his or her vote.
- (3) Where a voter indicates by consecutive numbers commencing with the number 1 the order of his or her preference for all candidates on a ballot paper except one—
  - (a) the ballot paper is not informal; and
  - (b) it will be presumed that the candidate for whom no preference is expressed is the one least preferred by the voter and that the voter has accordingly indicated the order of his or her preference for all candidates.
- (4) A ballot paper to which effect can be given under the provisions of this Division relating to registered voting tickets is not informal by reason of subsection (1)(b).
- (4a) If—
  - (a) notice of intention to lodge a voting ticket for a Legislative Council election was given under section 63(2)(a) but a voting ticket was not then lodged in accordance with the requirements of section 63(2)(b); and
  - (b) the ballot papers for the election contain a voting ticket square on the basis that the voting ticket was to be lodged; and
  - (c) a voter uses that voting ticket square,then the ballot paper is informal unless—
  - (d) subsection (4) of section 92 applies; or
  - (e) subsection (6) of this section applies.

- (5) Where a candidate in a Legislative Council election dies between the date of nomination and polling day—
- (a) a ballot paper is not informal by reason only—
    - (i) of the inclusion on the ballot paper of the name of the deceased candidate; or
    - (ii) of the marking of any consecutive number opposite that name; or
    - (iii) of the omission to place any number opposite that name, or of any resultant failure to indicate in consecutive order the voter's preferences; and
  - (b) a preference indicated on the ballot paper for that candidate must be ignored and subsequent preferences renumbered accordingly.
- (6) Where—
- (a) a ballot paper has not been marked by a voter in the manner required by this Act; but
  - (b) despite that fact, the voter's intention is clear,
- the ballot paper is not informal and will be counted as if the voter's intention had been properly expressed in the manner required by this Act.
- (7) A ballot paper is not informal except for a reason specified in this section.

### **Division 3—Counting of votes**

#### **95—Scrutiny of votes in Legislative Council election**

- (1) In a Legislative Council election, the scrutiny must, subject to this Act, be conducted, and the vacancies must be filled, in the manner set out in this section.
- (2) Each assistant returning officer must, in the presence of an assistant presiding officer or a poll clerk, and of such authorised scrutineers as may attend—
- (a) open all ballot boxes sent to him or her, or received from polling places within or for that portion of the district in which he or she exercises his or her powers; and
  - (b) reject all informal ballot papers, and arrange the unrejected ballot papers under the names of the respective candidates by placing in a separate parcel all those on which a first preference is indicated for the same candidate; and
  - (c) count the first preference votes given for each candidate on all unrejected ballot papers; and
  - (d) make out and sign a statement setting out the number of first preference votes given for each candidate, and the number of informal ballot papers; and
  - (e) place in a separate parcel all the ballot papers which have been rejected as informal; and
  - (f) transmit the following information, in an expeditious manner, to the deputy returning officer for the division:
    - (i) the number of first preference votes given for each candidate; and

- (ii) the total number of ballot papers rejected as informal; and
  - (g) seal up the parcels and endorse on each parcel a description of its contents; and
  - (h) transmit the parcels to the deputy returning officer with the least possible delay, together with the statement specified in paragraph (d).
- (3) The deputy returning officer must—
  - (a) open all ballot boxes and other facilities used for keeping voting papers not opened by an assistant returning officer and must conduct the scrutiny of the ballot papers contained in those boxes or facilities, as far as practicable, in the manner described above; and
  - (b) if authorised by the Electoral Commissioner—
    - (i) open the sealed parcels of ballot papers received from the assistant returning officers that comprise ballot papers where voting has occurred by the use of a voting ticket square; and
    - (ii) make a fresh scrutiny of the ballot papers contained in those parcels, and for that purpose he or she has the same powers as if the fresh scrutiny were the original scrutiny, and may reverse any decision given in the original scrutiny; and
    - (iii) arrange the unrejected ballot papers so scrutinised by him or her 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 by virtue of the voting ticket; and
    - (iv) count the first preference votes given for each candidate on all unrejected ballot papers arranged under subparagraph (iii); and
    - (v) make out and sign a statement setting out the number of first preference votes given for each candidate under subparagraph (iv), and the number of informal ballot papers under this paragraph; and
    - (vi) place in a separate parcel all the ballot papers which have been rejected as informal under this paragraph; and
  - (c) seal up all parcels created under this subsection and endorse on each parcel a description of its contents; and
  - (d) complete a return, in a form determined by the Electoral Commissioner, addressed to the returning officer for the Legislative Council; and
  - (e) transmit all voting papers, together with the return, to the returning officer for the Legislative Council.
- (4) Subject to subsection (4a), the returning officer for the Legislative Council must—
  - (a) open the sealed parcels of ballot papers received from the deputy returning officers and make a fresh scrutiny of the ballot papers contained in the parcels, and for that purpose he or she has the same powers as if the fresh scrutiny were the original scrutiny, and may reverse any decision given by an assistant or deputy returning officer in relation to the original scrutiny; and

- (b) arrange the unrejected ballot papers so scrutinised by him or her 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; and
  - (c) count the first preference votes given for each candidate on those ballot papers.
- (4a) The returning officer may, to such extent as he or she determines to be appropriate, rely on any information contained in a return under subsection (3) in substitution for conducting a fresh scrutiny under subsection (4) (and that information will then, to the extent determined by the returning officer, have full effect for the purposes of the succeeding provisions of this section).
- (5) Where, for the purposes of the succeeding provisions of this section, the number of ballot papers or votes in any category is required to be ascertained or a quota or transfer value is required to be determined, the returning officer must determine the quota or transfer value.
- (6) The number of first preference votes given for each candidate and the total number of all such votes is to be ascertained and a quota determined by dividing the total number of first preference votes by 1 more than the number of candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by 1, and any candidate who has received a number of first preference votes equal to or greater than the quota will be elected.
- (7) Unless all the vacancies have been filled, the number (if any) of votes in excess of the quota (in this section referred to as *surplus votes*) of each elected candidate will be transferred to the continuing candidates as follows:
  - (a) the number of surplus votes of the elected candidate will be divided by the number of first preference votes received by him or her and the resulting fraction will be the transfer value;
  - (b) the total number of ballot papers of the elected candidate that express the first preference vote for him or her and the next available preference for a particular continuing candidate will be multiplied by the transfer value, the number so obtained (disregarding any fraction) will be added to the number of first preference votes of the continuing candidate and all those ballot papers will be transferred to the continuing candidate,and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer will be elected.
- (8) Unless all the vacancies have been filled, the surplus votes (if any) of any candidate elected under subsection (7), or elected subsequently under this subsection, will be transferred to the continuing candidates in accordance with subsection (7)(a) and (b), and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer will be elected.
- (9) Where a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under subsection (7) or (8) of the surplus votes of a particular elected candidate, no votes of any other candidate will be transferred to the continuing candidate.

- (10) For the purposes of the application of subsection (7)(a) and (b) in relation to a transfer under subsection (8) or (12) of the surplus votes of an elected candidate, each ballot paper of the elected candidate that was obtained by him or her on a transfer under this section will be dealt with as if any vote it expressed for the elected candidate were a first preference vote, as if the name of any other candidate previously elected or excluded had not been on the ballot paper and as if the numbers indicating subsequent preferences had been altered accordingly.
- (11) Where, after the counting of first preference votes or the transfer of surplus votes (if any) of elected candidates, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes will be excluded and all his or her votes will be transferred to the continuing candidates as follows:
- (a) the total number of ballot papers of the excluded candidate that express the first preference vote for him or her and the next available preference for a particular continuing candidate will be transferred, each ballot paper at a transfer value of 1, to the continuing candidate and added to the number of votes of the continuing candidate and all those ballot papers will be transferred to the continuing candidate;
  - (b) the total number (if any) of other votes obtained by the excluded candidate on transfers under this section will be transferred from the excluded candidate in the order of the transfers on which he or she obtained them, the votes obtained on the earliest transfer being transferred first, as follows:
    - (i) the total number of ballot papers transferred to the excluded candidate from a particular candidate and expressing the next available preference for a particular continuing candidate will be multiplied by the transfer value at which the votes were so transferred to the excluded candidate;
    - (ii) the number so obtained (disregarding any fraction) will be added to the number of votes of the continuing candidate;
    - (iii) all those ballot papers will be transferred to the continuing candidate.
- (12) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer under subsection (11) or (13) of votes of an excluded candidate is elected, and, unless all the vacancies have been filled, the surplus votes (if any) of the candidate so elected will be transferred in accordance with subsection (7)(a) and (b), except that, where the candidate so elected is elected before all the votes of the excluded candidate have been transferred, the surplus votes (if any) of the candidate so elected will not be transferred until the remaining votes of the excluded candidate have been transferred in accordance with subsection (11)(a) and (b) to continuing candidates.
- (13) Subject to subsection (16), where, after the transfer of all the votes of an excluded candidate, no continuing candidate has received a number of votes greater than the quota, the continuing candidate who has the fewest votes is excluded and his or her votes transferred in accordance with subsection (11)(a) and (b).

- (14) Where a candidate is elected as a result of a transfer of the first preference votes of an excluded candidate or a transfer of all the votes of an excluded candidate that were transferred to the excluded candidate from a particular candidate, no other votes of the excluded candidate will be transferred to the candidate so elected.
- (15) In respect of the last vacancy, the continuing candidate who has the most votes will be elected despite the fact that the number may be below the quota.
- (16) However, if, in respect of the last vacancy, the continuing candidates have an equal number of votes, the matter must be referred, on the application of the Electoral Commissioner, to the Court of Disputed Returns for the Court to determine the validity of any disputed ballot papers and—
- (a) if the deadlock is resolved—the Court must declare the appropriate candidate elected; but
  - (b) if the deadlock is not resolved—the Court must order a fresh election to be held in accordance with any directions of the Court with the continuing candidates as the sole candidates in that election.
- (16a) Subsection (16) does not limit the jurisdiction of the Court of Disputed Returns under Division 2 of Part 12 in relation to an election.
- (17) Despite any other provision of this section, where, on the completion of a transfer of votes under this section, the number of continuing candidates is equal to the number of remaining unfilled vacancies, those candidates are elected.
- (18) The returning officer must, on the completion of the last count—
- (a) make out and sign a statement setting out the number of ballot papers and votes counted to each candidate at each count and the number of informal ballot papers, and forward the statement to the Electoral Commissioner; and
  - (b) place in a separate parcel all the ballot papers which have been rejected as informal; and
  - (c) place in a separate parcel all the unrejected ballot papers; and
  - (d) seal up the parcels and endorse on each parcel a description of its contents, and permit any scrutineers present, if they so desire, to countersign the endorsement.
- (19) For the purposes of this Act—
- (a) the order of election of candidates in a Legislative Council election will be taken to be in accordance with the order of the count or transfer as a result of which they were elected, the candidates (if any) elected on the count of first preference votes being taken to be the earliest elected; and

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- (b) where 2 or more candidates are elected as a result of the same count or transfer, the order in which they will be taken to have been elected will be in accordance with the relative numbers of their votes, the candidate with the largest number of votes being taken to be the earliest elected, but if any 2 or more of those candidates each have the same number of votes, the order in which they will be taken to have been elected will be taken to be in accordance with the relative numbers of their votes at the last count or transfer before their election at which each of them had a different number of votes, the candidate with the largest number of votes at that count or transfer being taken to be the earliest elected, and if there has been no such count or transfer the returning officer will determine the order in which they will be taken to have been elected.
- (20) Subject to subsections (21) and (22), where, after any count or transfer under this section, 2 or more candidates have surplus votes, the order of any transfers of the surplus votes of those candidates will be in accordance with the relative sizes of the surpluses, the largest surplus being transferred first.
- (21) Subject to subsection (22), where, after any count or transfer under this section, 2 or more candidates have equal surpluses, the order of any transfers of the surplus votes of those candidates will be in accordance with the relative numbers of votes of those candidates at the last count or transfer at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count or transfer being transferred first, but if there has been no such count or transfer the returning officer must determine the order in which the surpluses are to be dealt with.
- (22) Where, after any count or transfer under this section, a candidate obtains surplus votes, those surplus votes must not be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count or transfer.
- (23) Where the candidate who has the fewest votes is required to be excluded and 2 or more candidates each have the fewest votes, whichever of those candidates had the fewest votes at the last count or transfer at which each of those candidates had a different number of votes will be excluded, but if there has been no such count or transfer, the returning officer must determine which candidate is to be excluded.
- (24) Where a candidate is elected by reason that the number of first preference votes received by the candidate, or the aggregate of first preference votes received by the candidate and all other votes obtained by the candidate on transfers under this section, is equal to the quota, all the ballot papers expressing those votes must be set aside as finally dealt with.
- (25) In a case where a candidate has died between the date of nomination and polling day, a vote indicated on a ballot paper opposite the name of the deceased candidate must be counted to the candidate next in the order of the voter's preference, and the numbers indicating subsequent preferences will be taken to be altered accordingly.
- (26) For the purposes of this section, a transfer under subsection (7), (8) or (12) of the surplus votes of an elected candidate, a transfer in accordance with subsection (11)(a) of all first preference votes of an excluded candidate or a transfer in accordance with subsection (11)(b) of all the votes of an excluded candidate that were transferred to him or her from a particular candidate each constitutes a separate transfer.

(27) In this section—

*continuing candidate* means a candidate not already elected or excluded from the count.

(28) In this section, a reference to votes of or obtained or received by a candidate includes votes obtained or received by the candidate on any transfer under this section.

## 96—Scrutiny of votes in House of Assembly election

- (1) In a House of Assembly election, the scrutiny must, subject to this Act, be conducted in the following manner.
- (2) Each assistant returning officer must, in the presence of an assistant presiding officer or a poll clerk, and of such authorised scrutineers as may attend—
  - (a) open all ballot boxes sent to him or her, or received from polling places within or for that portion of the district in which he or she exercises powers; and
  - (b) reject all informal ballot papers, and arrange the unrejected ballot papers under the names of the respective candidates by placing in a separate parcel all those on which a first preference is indicated for the same candidate; and
  - (c) count the first preference votes given for each candidate on all unrejected ballot papers; and
  - (d) make out and sign a statement setting out the number of first preference votes given for each candidate, and the number of informal ballot papers; and
  - (e) place in a separate parcel all the ballot papers which have been rejected as informal; and
  - (f) transmit the following information, in an expeditious manner, to the district returning officer:
    - (i) the number of first preference votes given for each candidate; and
    - (ii) the total number of ballot papers rejected as informal; and
  - (g) seal up the parcels and endorse on each parcel a description of its contents and permit any scrutineers present, if they so desire, to countersign the endorsement; and
  - (h) transmit the parcels to the district returning officer with the least possible delay, together with the statement specified in paragraph (d), and the district returning officer must open all ballot boxes not opened by an assistant returning officer and conduct the scrutiny of the ballot papers contained in those boxes (as far as applicable) in the manner described above.
- (3) From the statements transmitted to the district returning officer by the assistant returning officers in or for the district, and the result of the scrutiny of the votes counted by him or her, the district returning officer will ascertain the total number of first preference votes given for each candidate for the district.
- (4) The candidate who has received the largest number of first preference votes is, if that number constitutes an absolute majority of votes, elected.



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- (5) If no candidate has received an absolute majority of first preference votes, the district returning officer—
- (a) must open the sealed parcels of ballot papers received from the assistant returning officers for the district; and
  - (b) must make a fresh scrutiny of the ballot papers contained in the parcels, and, for the purpose of that scrutiny, the district returning officer—
    - (i) has the same powers as if it were the original scrutiny; and
    - (ii) may reverse any decision given by an assistant returning officer in relation to the original scrutiny; and
  - (c) from the result of the scrutiny of the votes counted by the district returning officer and the fresh scrutiny conducted by him or her under this subsection—must ascertain the total number of first preference votes given for each candidate and the number of informal ballot papers; and
  - (d) must proceed with the scrutiny and the counting of the votes as follows:
    - (i) the candidate who has received the fewest first preference votes will be excluded, and each ballot paper counted to that candidate is to be counted to the candidate next in the order of the voter's preference; and
    - (ii) if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the fewest votes, and counting each of that candidate's ballot papers to the unexcluded candidate next in the order of the voter's preference, is to be repeated until 1 candidate has received an absolute majority of votes; and
    - (iii) the candidate who has received an absolute majority of votes will be elected.
- (6) If on any count 2 or more candidates have an equal number of votes, and one of them has to be excluded, the district returning officer must decide which are to be excluded, but if in the final count 2 candidates have an equal number of votes—
- (a) the matter must be referred, on the application of the Electoral Commissioner, to the Court of Disputed Returns;
  - (b) the Court must determine the validity of any disputed ballot papers;
  - (c) if it then appears that the deadlock has been resolved, the Court must declare the appropriate candidate elected, but if not, the Court must order a fresh election.
- (7) Subsection (6) does not limit the jurisdiction of the Court of Disputed Returns under Division 2 of Part 12 in relation to an election.
- (8) In this section, an absolute majority of votes means a greater number than one-half of the whole number of ballot papers other than informal ballot papers.
- (9) The district returning officer must—
- (a) place in a separate parcel all the ballot papers which have been rejected as informal; and
  - (b) place in a separate parcel all the unrejected ballot papers; and

- (c) seal up the parcels and endorse on each parcel a description of its contents, and permit any scrutineers present, if they so desire, to countersign the endorsement.
- (10) Where 3 or more candidates stood for election in a district, then, despite the election of a candidate, the process of excluding the candidate who has the fewest votes and attributing his or her votes to the candidate next in order of the voter's preference is to be continued until there are only 2 unexcluded candidates.
- (11) The Electoral Commissioner must, within 3 months after the return of the writ, cause to be published in the Gazette a notice showing the number of votes attributable to each of the 2 unexcluded candidates at the conclusion of the process referred to in subsection (10).

### **Division 3A—Computer vote counting in Legislative Council elections**

#### **96A—Application of Division**

This Division applies only in relation to a Legislative Council election.

#### **96B—Approval of computer program**

- (1) The Electoral Commissioner may approve a computer program to carry out steps involved in the scrutiny of votes in an election.
- (2) The Electoral Commissioner may revoke an approval of a computer program.
- (3) The Electoral Commissioner may only approve a computer program—
  - (a) after providing a demonstration of the use of the program for representatives of the registered political parties; and
  - (b) if the proper use of the program would produce the same result in the scrutiny of votes in an election as would be obtained if the scrutiny were conducted without computer assistance.
- (4) The Electoral Commissioner must determine processes that must be followed in relation to the use of an approved computer program in the scrutiny of votes in an election.

#### **96C—Protection of approved computer program from interference**

The Electoral Commissioner must take steps to ensure that an approved computer program is kept secure from interference at all times.

#### **96D—Use of approved computer program in election**

- (1) An approved computer program may, if the Electoral Commissioner so determines, be used in the scrutiny of votes in an election.
- (2) If an approved computer program is used in the scrutiny of votes in an election, the provisions of section 95 apply to the conduct of the scrutiny and the filling of vacancies as follows:
  - (a) subsections (2) and (3) apply according to their terms;

- (b) the processes described in subsections (4)(a) and (4)(b) are to be carried out in conjunction with the entry into the computer of the necessary data from the ballot papers and the operation of the computer to identify remaining informal ballot papers (after taking into account the operation of subsection (4a) (if relevant));
- (c) the computer must continue to be operated so as to carry out processes corresponding to those that would be required to be carried out according to subsections (4)(c) to (15) (inclusive), (17) and (20) to (28) (inclusive) (after taking into account the operation of subsection (4a) (if relevant));
- (d) however, if, in carrying out processes corresponding to those referred to in subsection (21) or (23), there has not been a count or transfer at which the candidates had a different number of votes, the computer processes must pause while the returning officer makes a determination in accordance with that subsection and causes the result of the determination to be entered into the computer;
- (e) continuing candidates who at any stage of the scrutiny have received a number of votes equal to or greater than the quota will be elected;
- (f) subsections (16), (16a), (18) and (19) apply according to their terms.

### **96E—Manual counting of votes not prevented**

The making of a determination by the Electoral Commissioner to use an approved computer program in an election, or the use of an approved computer program in an election, does not prevent counting or re-counting of votes in the election without computer assistance.

## **Division 4—Re-count**

### **97—Re-count**

- (1) At any time before the declaration of the result of a Legislative Council election, the returning officer may, if he or she thinks fit, and must, if so directed by the Electoral Commissioner, direct a re-count of the ballot papers from any division or portion of a division, or of the ballot papers contained in any parcel or in any other category.
- (2) A district returning officer must before the declaration of the result of a House of Assembly election have a re-count made of the relevant ballot papers.
- (2a) In addition to the requirements of subsection (2), at any time before the declaration of the result of a House of Assembly election, the district returning officer may, if the district returning officer thinks fit, and must, if so directed by the Electoral Commissioner, conduct one or more further re-counts of the ballot papers contained in any parcel.
- (3) The officer conducting a re-count—
  - (a) may reverse any decision taken at the scrutiny in relation to the allowance or disallowance of ballot papers; but
  - (b) is, subject to paragraph (a), bound by decisions and determinations made at the scrutiny so far as they are applicable to the re-count.

- (4) The officer conducting a re-count may, and at the request of any scrutineer must, reserve any ballot paper for the decision of the Electoral Commissioner.
- (5) The Electoral Commissioner must decide whether any ballot paper, reserved for the Electoral Commissioner's decision in pursuance of this section, is to be allowed and admitted or disallowed and rejected.

## **Part 11—The return of the writs**

### **98—Return of writ for election of members of the Legislative Council**

- (1) In a Legislative Council election, the returning officer must, as soon as practicable after the result of the election has been ascertained—
  - (a) publicly declare the result of the election and the names of the candidates elected;
  - (b) make out a statement setting out the result of the election and the names of the candidates elected and transmit the statement to the Electoral Commissioner.
- (2) The returning officer need not defer the making of a declaration and statement under subsection (1) by reason of the non-receipt of ballot papers if it is clear that those ballot papers cannot possibly affect the result of the election.
- (3) On receipt of the statement referred to in subsection (1)(b), the Electoral Commissioner must by endorsement certify on the writ for the election the names of the candidates elected and return the writ to the Governor.

### **99—Declaration of poll and return of writs for House of Assembly**

- (1) In a House of Assembly election, the district returning officer must, as soon as practicable after the result of the election has been ascertained—
  - (a) publicly declare the result of the election and the name of the candidate elected;
  - (b) make out a statement setting out the result of the election and the name of the candidate elected and transmit the statement to the Electoral Commissioner.
- (2) A district returning officer need not defer the making of a declaration and statement under subsection (1) by reason of the non-receipt of ballot papers if it is clear that those ballot papers cannot possibly affect the result of the election.
- (3) Where—
  - (a) in the case of a general election—the Electoral Commissioner has received statements from all district returning officers in pursuance of subsection (1)(b); or
  - (b) in any other case—the Electoral Commissioner has received a statement from the district returning officer for a district in pursuance of subsection (1)(b) in relation to the election held in the district,

the Electoral Commissioner must by endorsement certify on the writ for the election the name of each candidate elected for each district or the name of the candidate elected for the district, as the case requires, and return the writ to the Governor or the Speaker.



## Part 12—Appeals

### Division 1—Administrative appeals

#### 100—Reviewable decisions

- (1) An appeal under this Division may be made against any of the following decisions:
  - (a) a decision by the Electoral Commissioner or an officer as to the enrolment of any claimant for enrolment; or
  - (b) a decision by an electoral registrar on an objection to the enrolment of an elector on a roll; or
  - (c) a decision by the Electoral Commissioner as to the registration of a political party; or
  - (ca) a decision by the Electoral Commissioner as to the registration of a how-to-vote card; or
  - (d) a decision of a prescribed class taken under this Act by the Electoral Commissioner or an officer.
- (2) A person has, for the purposes of this Division, a proper interest in a decision that may be appealed against under this Division—
  - (a) if he or she is the person on whose claim or application the decision was taken; or
  - (b) if he or she objected, in accordance with this Act, to the claim or application in respect of which the decision was made, or the decision was made on his or her objection; or
  - (c) his or her rights under this Act are directly affected by the decision; or
  - (d) he or she is a person of a prescribed class.

#### 101—Administrative appeals

- (1) A person who has a proper interest in a decision that may be appealed against under this Division may appeal against the decision to—
  - (a) the Electoral Commissioner; or
  - (b) the Administrative and Disciplinary Division of the District Court.
- (2) An appeal must be instituted within one month after the person receives notice of the decision.
- (3) The following provisions apply in relation to an appeal to the Electoral Commissioner:
  - (a) the Electoral Commissioner may, if satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be instituted within the period fixed by subsection (2);
  - (b) the appeal must be in writing and set out in detail the grounds for the appeal;

- (c) the Electoral Commissioner must afford the appellant and all other persons with a proper interest in the decision the opportunity to make submissions, orally or in writing, on the appeal;
  - (d) the Electoral Commissioner must, after considering all submissions—
    - (i) affirm the decision appealed against; or
    - (ii) rescind the decision and substitute a decision that the Electoral Commissioner considers appropriate.
- (4) This section does not limit the powers of the District Court under Part 6 Division 2 of the *District Court Act 1991*.

## **Division 2—Disputed elections and returns**

### **102—Method of disputing elections**

The validity of any election or return may be disputed by petition addressed to the Court of Disputed Returns and not otherwise.

### **103—The Court of Disputed Returns**

- (1) The Supreme Court is the Court of Disputed Returns.
- (2) The jurisdiction of the Supreme Court, when sitting as the Court of Disputed Returns under this Act, is exercisable by a single judge.

### **104—Requisites of petition**

- (1) A petition disputing an election or return must—
  - (a) set out the facts relied on to invalidate the election or return;
  - (b) set out the relief to which the petitioner claims to be entitled;
  - (c) be signed by a candidate at the election in dispute or by a person who was qualified to vote at the election;
  - (d) be attested by 2 witnesses whose occupations and addresses are stated;
  - (e) be filed in the Court within 40 days after the return of the writ.
- (2) At the time of filing the petition, the petitioner must deposit with the Registrar of the Supreme Court \$200 as security for costs.

### **105—Respondents to petitions**

The Electoral Commissioner and the person who was the successful candidate at the relevant election are both respondents to any petition in which the validity of an election or return is disputed.

### **106—Principles to be observed**

- (1) The Court is to be guided by good conscience and the substantial merits of each case without regard to legal forms or technicalities.
- (2) The Court is not bound by the rules of evidence.



**107—Orders that the Court is empowered to make**

- (1) The Court may make any of the following orders:
  - (a) an order that a person found by the Court not to have been duly elected cease to be a member of the Legislative Council or the House of Assembly (as the case may require);
  - (b) an order that a person found by the Court to have been duly elected (but not returned as elected) take his or her seat as a member of the Legislative Council or the House of Assembly (as the case may require);
  - (c) an order declaring an election void and requiring a new election to be held.
- (2) The Court may award costs against an unsuccessful party to the petition.
- (3) An election will not be declared void on the ground of—
  - (a) a defect in a roll or certified list of electors; or
  - (b) an irregularity in, or affecting, the conduct of the election,unless the Court is satisfied on the balance of probabilities that the result of the election was affected by the defect or irregularity.
- (4) An election may be declared void on the ground of the defamation of a candidate but only if the Court of Disputed Returns is satisfied, on the balance of probabilities, that the result of the election was affected by the defamation.
- (5) An election may be declared void on the ground of misleading advertising but only if the Court of Disputed Returns is satisfied, on the balance of probabilities, that the result of the election was affected by that advertising.
- (6) An election may be declared void on the ground of a breach of section 109, 110 or 111 in accordance with the following provisions:
  - (a) if the Court of Disputed Returns finds, either on the basis of a conviction or on the balance of probabilities, that the successful candidate, or a person acting on behalf of the successful candidate with the successful candidate's knowledge, has committed such a breach, then the Court may declare the election to be void whether or not it is satisfied that the result of the election was affected by the breach;
  - (b) if the Court of Disputed Returns finds, on the balance of probabilities, that the breach was committed without the successful candidate's knowledge, then the Court may declare the election to be void only if satisfied, on the balance of probabilities, that the result of the election was affected by the breach.

**108—Decisions to be final**

All decisions of the Court are final, conclusive and without appeal, and may not be questioned in any way.



## Part 13—Offences

### Division 1—Bribery, undue influence etc

#### 109—Bribery

- (1) A person must not offer or solicit an electoral bribe.  
Maximum penalty: Imprisonment for 7 years.
- (2) In this section—  
*bribe* does not include a declaration of public policy or a promise of public action;  
*electoral bribe* means a bribe for the purpose of—
  - (a) influencing the vote of an elector; or
  - (b) influencing the candidature of any person in an election; or
  - (c) otherwise influencing the course or result of an election.

#### 110—Undue influence

A person must not, by violence or intimidation, influence or attempt to influence—

- (a) the vote of an elector; or
- (b) the candidature of any person in an election; or
- (c) the course or result of an election.

Maximum penalty: Imprisonment for 7 years.

#### 111—Interference with political liberty

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

Maximum penalty: Imprisonment for 1 year.

### Division 2—Electoral advertisements, commentaries and other material

#### 112—Publication of electoral advertisements, notices etc

- (1) A person must not publish or distribute, or cause or permit to be published or distributed, an electoral advertisement in printed form or through electronic publication on the Internet unless—
  - (a) the name (being the name by which the person is usually known) and address (not being a post office box) of the author of the advertisement, or the person who authorised its publication, appears at the end; and
  - (ab) if the advertisement is authorised for a registered political party or a candidate endorsed by a registered political party—the party's name or, if the Register of Political Parties includes an abbreviation of the party's name, that abbreviation appears at the end; and
  - (ac) if the advertisement is authorised for a relevant third party—the relevant third party's name appears at the end; and

- (b) in the case of an electoral advertisement that is printed but not in a newspaper—the name and place of business of the printer appears at the end.

Maximum penalty:

- (a) if the offender is a natural person—\$5 000;
  - (b) if the offender is a body corporate—\$10 000.
- (2) Subsection (1) does not apply in relation to—
- (a) a car sticker, T-shirt, lapel button, lapel badge, pen, pencil or balloon; or
  - (b) an article included in a prescribed class of articles.

- (3) In this section—

***relevant third party*** means an organisation or other person, other than a registered political party, candidate or natural person, who—

- (a) as at the day of publication of the advertisement to which subsection (1)(ac) relates, intends to spend more than \$2 000 on electoral advertisements—
  - (i) if the advertisement is published in an election period—during that election period; or
  - (ii) in any other case—during the election period for the next general election due to occur; or
- (b) spent more than \$2 000 on electoral advertisements during the election period for the general election immediately preceding the day of publication of the advertisement to which subsection (1)(ac) relates.

### **112A—Special provision relating to how-to-vote cards**

- (1) During the election period for an election, a person must not distribute, or cause or permit to be distributed, a how-to-vote card unless—
- (a) the name (being the name by which the person is usually known) and address (not being a post office box) of the person who authorised the card appears at the bottom of the card; and
  - (b) if the card is authorised—
    - (i) for a registered political party or a candidate endorsed by a registered political party—the party's name or, if the Register of Political Parties includes an abbreviation of the party's name, that abbreviation; or
    - (ii) for a candidate who is not endorsed by a registered political party—the candidate's name and the word "candidate",is stated on the card in accordance with any requirements prescribed by the regulations; and
  - (c) the card—
    - (i) has substantially the same appearance as a how-to-vote card that—
      - (A) has been submitted for inclusion in posters under section 66;or

- (B) has been lodged with the Electoral Commissioner no later than 12 noon on the day falling 8 days before polling day; or
- (ii) is a compilation of more than 1 how-to-vote card of a kind referred to in subparagraph (i) (provided that those how-to-vote cards relate to different electoral districts).

Maximum penalty: \$5 000.

- (2) A how-to-vote card lodged with the Electoral Commissioner under subsection (1)(c)(i)(B) must—
- (a) be lodged in a manner determined by the Electoral Commissioner; and
  - (b) comply with any requirements prescribed by the regulations.
- (3) If a how-to-vote card is lodged with the Electoral Commissioner under subsection (1)(c)(i)(B) by or on behalf of a candidate, no further how-to-vote card may be lodged in relation to the same election by or on behalf of that candidate.
- (4) If a how-to-vote card is submitted to the Electoral Commissioner by or on behalf of a candidate in accordance with section 66 (the *initial submitted how-to-vote card*), any how-to-vote card that—
- (a) is subsequently lodged with the Electoral Commissioner under subsection (1)(c)(i)(B) or distributed in relation to the same election; and
  - (b) relates to the candidate; and
  - (c) is authorised by or for the candidate or a registered political party of which the candidate is a member,

must have substantially the same appearance as the initial submitted how-to-vote card.

- (5) A person who distributes a how-to-vote card in contravention of subsection (4) is guilty of an offence.

Maximum penalty: \$5 000.

- (6) For the purposes of this section, how-to-vote cards will be taken to have *substantially the same appearance* if the cards are identical except for—
- (a) the size or shape of the cards; or
  - (b) the fonts used in the cards; or
  - (c) the material or medium on which the cards are printed or published; or
  - (d) the manner in which the cards suggest that a voter indicate the order of preference for candidates on the ballot paper; or
  - (e) any other matter prescribed by the regulations for the purposes of this subsection.
- (7) Despite subsection (6), a how-to-vote card distributed by or on behalf of a candidate (the *relevant candidate*) will be taken not to have substantially the same appearance as—
- (a) the relevant candidate's initial submitted how-to-vote card (if any); or
  - (b) a how-to-vote card lodged under subsection (1)(c)(i)(B) by or on behalf of the relevant candidate,

if—

- (c) the distributed how-to-vote card indicates that the first preference vote should be given to a different candidate from the relevant candidate or any other candidate indicated as a candidate to whom a first preference vote should be given on a how-to-vote card referred to in paragraph (a) or (b); and
- (d) the relevant candidate has not given written notice at least 8 days before the card is distributed and in accordance with any other requirements of the regulations to the candidate to whom the distributed how-to-vote card indicates that the first preference vote should be given.

(8) In this section—

*distribute* a how-to-vote card includes make the card available (including in electronic form) to other persons;

*how-to-vote card* includes any material that has the appearance of a how-to-vote card (whether published on its own or as part of any other material).

### **112B—Certain descriptions not to be used**

- (1) A person must not publish or distribute an electoral advertisement or a how-to-vote card that identifies a candidate—
  - (a) by reference to the registered name of a registered political party or a composite name consisting of the registered names of 2 registered political parties; or
  - (b) by the use of a word or set of words that could not be, or may not be able to be, registered as the name, or as part of the name, of a political party under Part 6 because of the operation of section 42(2)(e) or (3)(b),

unless—

- (c) the candidate is endorsed by the relevant parliamentary party or registered political party (as the case may be); or
- (d) the relevant parliamentary party or registered political party has consented to the use of the relevant name or names or word or words (as the case may be).

Maximum penalty: \$5 000.

- (2) Subsection (1) applies to publication by any means (including radio or television).
- (3) Subsection (1) does not prevent the publication of background information, a personal profile, or a declaration of policy, by or in relation to a candidate.
- (4) In this section—

*distribute* an electoral advertisement or how-to-vote card includes make the relevant advertisement or how-to-vote card available (including in electronic form) to other persons.

### **113—Misleading advertising**

- (1) This section applies to advertisements published by any means (including radio or television).

- (2) A person who authorises, causes or permits the publication of an electoral advertisement (an *advertiser*) is guilty of an offence if the advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent.
- Maximum penalty:
- (a) if the offender is a natural person—\$5 000;
  - (b) if the offender is a body corporate—\$25 000.
- (3) However, it is a defence to a charge of an offence against subsection (2) to establish that the defendant—
- (a) took no part in determining the content of the advertisement; and
  - (b) could not reasonably be expected to have known that the statement to which the charge relates was inaccurate and misleading.
- (4) If the Electoral Commissioner is satisfied that an electoral advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent, the Electoral Commissioner may request the advertiser to do one or more of the following:
- (a) withdraw the advertisement from further publication;
  - (b) publish a retraction in specified terms and a specified manner and form,
- (and in proceedings for an offence against subsection (2) arising from the advertisement, the advertiser's response to a request under this subsection will be taken into account in assessing any penalty to which the advertiser may be liable).
- (5) If the Supreme Court is satisfied beyond reasonable doubt on application by the Electoral Commissioner that an electoral advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent, the Court may order the advertiser to do one or more of the following:
- (a) withdraw the advertisement from further publication;
  - (b) publish a retraction in specified terms and a specified manner and form.

### **114—Heading to electoral advertisements**

- (1) This section applies to the publication of electoral matter in written form in—
- (a) a journal; or
  - (b) an electronic publication on the Internet,
- if payment or other consideration has been, or is to be, given for publication of the matter (whether the journal or electronic publication is published for sale or for distribution without charge).
- (2) If this section applies to the publication of electoral matter, the publisher of the matter must cause the word "advertisement" to be included as a headline to each article or paragraph containing the electoral matter—
- (a) in the case of matter published in a journal—in letters not smaller than 10 point or long primer; or

- (b) in the case of matter published in an electronic publication—in letters of a size that will be readily legible.

Maximum penalty:

- (a) if the offender is a natural person—\$1 250;
  - (b) if the offender is a body corporate—\$5 000.
- (3) In this section—

*journal* means a newspaper, magazine or other periodical.

### **115—Limitations on display of electoral advertisements**

- (1) A person must not exhibit an electoral advertisement on—

- (a) a vehicle or vessel; or
- (b) a building, hoarding or other structure,

if the advertisement occupies an area in excess of 1 square metre.

Maximum penalty: \$5 000.

- (2) For the purposes of subsection (1), electoral advertisements—

- (a) that are apparently exhibited by or on behalf of the same candidate or political party; and
- (b) that are at their nearest points within 1 metre of each other,

will be taken to form a single advertisement.

- (3) This section does not apply to—

- (a) the exhibition of an advertisement in a theatre (including a drive-in theatre) by means of a cinematograph; or
- (b) the exhibition of the name of a candidate or the name of a political party (or both) at or near an office or room, where—
  - (i) the name is so exhibited in order to indicate that the office or room is an office or committee room of that candidate or political party; and
  - (ii) the place of exhibition is more than 100 metres from the entrance to a polling booth; or
- (c) the exhibition of an advertisement of a prescribed kind or the exhibition of an advertisement in circumstances of a prescribed kind.

### **116—Published material to identify person responsible for political content**

- (1) A person must not, during an election period, publish material consisting of, or containing a commentary on, any candidate or political party, or the issues being submitted to electors, in written form, or by radio or television, unless the material or the programme in which the material is presented contains a statement of the name and address (not being a post office box) of a person who takes responsibility for the publication of the material.

Maximum penalty:

- (a) if the offender is a natural person—\$1 250;
- (b) if the offender is a body corporate—\$5 000.



- (2) This section does not apply to—
- (a) the publication in a journal of a leading article;
  - (b) the publication of a report of a meeting that does not contain any comment (other than comment made by a speaker at the meeting) on any candidate, or political party, or the issues being submitted to electors;
  - (c) the publication in a journal of an article, letter, report or other matter if the journal contains a statement to the effect that a person whose name and address (not being a post office box) appears in the statement takes responsibility for the publication of all electoral matter published in the journal;
  - (ca) the publication of a letter (otherwise than as described in paragraph (c)) that contains the name and address (not being a post office box) of the author of the letter;
  - (d) a news service or a current affairs programme on radio or television;
  - (e) any other prescribed material or class of material.
- (3) In this section—
- journal* means a newspaper, magazine or other periodical.

### **116A—Evidence**

In proceedings for an offence against this Division—

- (a) an electoral advertisement that includes a statement that its publication was authorised by a specified person; or
- (b) an electoral advertisement that includes a statement that it was printed by a specified person; or
- (c) material consisting of, or containing, a commentary on a candidate or political party, or the issues being submitted to electors, that includes a statement that a specified person takes responsibility for the publication of the material; or
- (d) an apparently genuine document purporting to be a certificate of the Electoral Commissioner certifying that the Electoral Commissioner made a request for the withdrawal of a misleading advertisement or the publication of a retraction,

is, in the absence of proof to the contrary, proof of that fact.

## **Division 3—Offences related to the conduct of an election**

### **117—Candidates not to take part in elections**

- (1) A person must not take part in the conduct of an election in which he or she is a candidate for election.  
Maximum penalty: \$1 250.
- (2) A candidate must not personally solicit the vote of any elector on polling day.  
Maximum penalty: \$1 250.

### **118—Persons present at polling**

- (1) No person (other than officers, scrutineers and the electors voting or about to vote) may be present in a polling booth during polling except by permission of the presiding officer.  
Maximum penalty: \$250.
- (2) A person who is present in a polling booth in contravention of subsection (1) may be removed by a member of the police force, or a person authorised by the presiding officer to remove him or her.

### **119—Offender may be removed from polling booth**

- (1) A person who engages in disorderly conduct in a polling booth, or fails to obey the lawful directions of the presiding officer, is guilty of an offence.  
Maximum penalty: \$750.
- (2) A person who contravenes subsection (1) (including a candidate or scrutineer) may be removed by a member of the police force or a person authorised by the presiding officer to remove him or her.
- (3) A person who has been removed from a polling booth by direction of the presiding officer under subsection (2) and who re-enters the polling booth without the permission of the presiding officer is guilty of a further offence.  
Maximum penalty: \$2 500 or imprisonment for 6 months.

### **120—Secrecy of vote**

- (1) A person must not, by clandestine or dishonest means, attempt to discover how a voter voted.  
Maximum penalty: \$1 250 or imprisonment for 3 months.
- (2) No person may open an envelope containing a declaration ballot paper except the returning officer to whom it is addressed, or an officer acting with the authority of that returning officer.  
Maximum penalty: \$750.

### **121—Conduct of officers, scrutineers etc**

- (1) An officer must not solicit the vote of an elector or take part in a campaign for the election of a particular candidate or of candidates of a particular political party.  
Maximum penalty: \$2 500 or imprisonment for 6 months.
- (2) An officer or scrutineer must not attempt to influence the vote of an elector.  
Maximum penalty: \$2 500 or imprisonment for 6 months.
- (3) An officer or scrutineer must not wear or display in a polling booth any badge or emblem of a candidate or political party.  
Maximum penalty: \$1 250.
- (4) An officer or other person who acquires knowledge of the vote of an elector through assisting the elector to vote, or otherwise in the exercise of powers or functions under this Act, must not divulge that knowledge.  
Maximum penalty: \$2 500 or imprisonment for 6 months.

- (5) An officer or other person must not mark a ballot paper so as to make possible identification of the voter.  
Maximum penalty: \$2 500 or imprisonment for 6 months.
- (6) An officer must not fail, without proper excuse, to carry out his or her official duties in connection with the conduct of an election.  
Maximum penalty: \$2 500 or imprisonment for 6 months.

### **122—Cards in polling booth**

- (1) A person must not, except as authorised by this Act, wilfully exhibit or leave in any polling booth any card or paper with any direction or instruction as to how an elector should vote or as to the method of voting.  
Maximum penalty: \$750.
- (2) This section does not apply to any official instructions exhibited by proper authority at any polling booth.

### **123—Witnessing electoral papers**

- (1) A person must not—
- (a) sign his or her name as witness on any electoral paper unless it has been signed by the person whose signature he or she purports to witness; or
  - (b) sign his or her name as witness on any electoral paper unless he or she has seen the person, whose signature he or she purports to witness, sign it; or
  - (c) write on any electoral paper as his or her own name—
    - (i) the name of another person; or
    - (ii) any name not being his own name.

Maximum penalty: \$1 250.

- (2) In this section—  
*electoral paper* includes any prescribed form.

### **124—Other offences relating to ballot papers etc**

- (1) A person must not—
- (a) exercise or attempt to exercise a vote to which he or she is not entitled; or
  - (b) vote more than once at the same election; or
  - (c) make a statement in any claim, application, return or declaration, or in answer to a question, under this Act that is, to his or her knowledge, false or misleading in a material respect.

Maximum penalty: \$2 500 or imprisonment for 6 months.

- (2) It is a defence to a charge of an offence against subsection (1)(a) or (b) to prove that acts alleged to constitute the offence arose from an honest misunderstanding or mistake on the part of the defendant.
- (2a) A person to whom a ballot paper is issued at a polling booth for the purpose of voting at the booth must not remove the ballot paper from the booth.  
Maximum penalty: \$250.

- (3) Except as authorised by this Act, a person (not being an elector 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.

Maximum penalty: \$2 500 or imprisonment for 6 months.

- (4) A person must not, without proper authority, destroy or interfere with voting papers.

Maximum penalty: \$2 500 or imprisonment for 6 months.

- (5) A person must not wilfully deface, mutilate, destroy or remove any notice, list or other document affixed by any district returning officer.

Maximum penalty: \$750.

### **125—Prohibition of canvassing near polling booths**

- (1) When a polling booth is open for polling, a person must not—

- (a) canvass for votes; or
- (b) solicit the vote of any elector; or
- (c) induce an elector not to vote for a particular candidate; or
- (d) induce an elector not to vote at the election; or
- (e) exhibit a notice or sign (other than an official notice) relating to the election,

at an entrance of, or within, the polling booth, or in any public or private place within 6 metres, or such lesser distance as may be fixed in a particular case by the presiding officer, of an entrance to the booth.

Maximum penalty: \$750.

- (2) If—

- (a) a building used as a polling booth is situated in grounds within an enclosure; and
- (b) the appropriate district returning officer causes to be displayed throughout the hours of polling at each entrance to those grounds a signed notice stating that those grounds are, for the purposes of subsection (1), part of the polling booth,

those grounds are, for the purposes of that subsection, to be taken to be part of the polling booth.

- (3) The reference in subsection (1) to a polling booth that is open for polling extends to—

- (a) a declared institution at which votes are being taken by an electoral visitor;
- (b) any other place where voting papers are issued.

### **126—Prohibition of advocacy of forms of voting inconsistent with Act**

- (1) A person must not publicly advocate that a voter should mark a ballot paper otherwise than in the manner set out in section 76(1) or (2).

Maximum penalty: \$2 500.

- (2) A person must not distribute how-to-vote cards in relation to an election unless each card is—
- (a) marked so as to indicate a valid vote in the manner prescribed in section 76(1) or (2); or
  - (b) identical to a card submitted for inclusion in posters under section 66.
- Maximum penalty: \$2 500.

### **127—Failure to transmit claim**

A person who accepts an electoral paper for transmission to an officer must immediately transmit it to the appropriate officer.

Maximum penalty: \$1 250.

### **128—Forging or uttering electoral papers**

A person must not—

- (a) forge any electoral paper; or
- (b) utter any forged electoral paper, knowing it to be forged.

Maximum penalty: \$10 000 or imprisonment for 2 years.

### **129—Protection of the official mark**

- (1) A person must not, without lawful authority—
- (a) make any mark purporting to be an official mark on or in any paper; or
  - (b) have in his or her possession any paper bearing any official mark; or
  - (c) make use of or have in his or her possession any instrument capable of making on or in any paper an official mark.

Maximum penalty: \$1 250.

- (2) A person who, without lawful authority, makes on or in any ballot paper, or on or in any paper purporting to be a ballot paper, an official mark, will be taken to have forged a ballot paper, and will be punishable accordingly.
- (3) All paper bearing an official mark, and all instruments capable of making on or in paper an official mark, made, used, or in the possession of any person without lawful authority will be forfeited to the Crown and may without warrant be seized by a member of the police force and destroyed or dealt with as prescribed.
- (4) In this section—

*official mark* means any prescribed mark to be placed or made on or in any electoral paper, and includes any mark so nearly resembling an official mark as to be likely to deceive.

## **Division 4—Employers**

### **130—Employers to allow employees leave of absence to vote**

- (1) If an employee who is an elector notifies his or her employer before the polling day that he or she desires leave of absence to enable him or her to vote at any election, the employer must, if the absence desired is necessary to enable the employee to vote at the election, allow him or her leave of absence without any penalty or disproportionate deduction of pay for such reasonable period, not exceeding 2 hours, as is necessary to enable the employee to vote at the election.

Maximum penalty: \$1 250.

- (2) An employee must not, under pretence that he or she intends to vote at the election but without a genuine intention of doing so, obtain leave of absence under this section.

Maximum penalty: \$750.

- (3) This section does not apply to any elector whose absence may cause danger or substantial loss in respect of the employment in which the employee is engaged.

## **Part 14—Miscellaneous**

### **131—Signature to electoral paper**

- (1) An electoral paper that is required by this Act to be signed by any person must be signed by that person with his or her personal signature.
- (2) If a person who is unable to sign his or her name in writing makes a mark as his or her signature to an electoral paper, the mark will be taken to be the personal signature, if it is identifiable as such and is made in the presence of a witness who signs the electoral paper as witness.

### **132—Injunctions**

- (1) If a person contravenes or fails to comply with this Act or some other law of the State applicable to elections, or there are reasonable grounds to suppose that a person may contravene or fail to comply with this Act or some other law of the State applicable to elections, the Supreme Court may, on application by the Electoral Commissioner, grant an injunction for one or more of the following purposes:
  - (a) to restrain the person from engaging in conduct in breach of this Act or the other law; or
  - (b) to require the person to comply with this Act or the other law; or
  - (c) to require the person to take specified action to remedy non-compliance with this Act or the other law.
- (2) However, an injunction cannot be granted under this section in relation to a contravention of, or non-compliance with, Division 2 of Part 13.<sup>1</sup>
- (3) The Court may—
  - (a) grant an injunction restraining conduct of a specified kind on an interim basis; or
  - (b) discharge or vary an injunction (whether or not granted on an interim basis).
- (4) No undertaking as to damages is to be required as a condition of granting an injunction under this section.

**Note—**

- 1 For power to give injunctive relief in relation to electoral advertising, see section 113.

### **133—Disqualification for bribery and undue influence**

Any person who is convicted of bribery or undue influence or an attempt to commit bribery or undue influence is, during a period of 2 years from the date of the conviction, disqualified from sitting or being elected as a Member of either House of the Parliament.

### **134—Service by post**

Any notice or other document that is to be served or given by the Electoral Commissioner under this Act may be served by post.

### **135—Preservation of ballot papers**

All ballot papers, certified lists of voters and declarations used at or in connection with an election must be preserved, until the election can no longer be questioned.

### **136—Offences committed with connivance of person other than offender**

Where a person commits an offence against this Act on behalf, and with the connivance, of another, that other person is also guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

### **138—Exemption from stamp duty**

No declaration made for the purposes of this Act is chargeable with stamp duty.

### **139—Regulations**

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may fix fines not exceeding \$750 for contravention of a regulation.



## Legislative history

### Notes

- This version is comprised of the following:

Part 1	12.12.2013
Part 2	12.12.2013
Part 3	12.12.2013
Part 4	12.12.2013
Part 5	12.12.2013
Part 6	12.12.2013
Part 7	12.12.2013
Part 8	12.12.2013
Part 9	12.12.2013
Part 10	12.12.2013
Part 11	12.12.2013
Part 12	12.12.2013
Part 13	12.12.2013
Part 14	12.12.2013
- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- 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).

### Legislation repealed by principal Act

The *Electoral Act 1985* repealed the following:

*Electoral Act 1929*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1985	77	<i>Electoral Act 1985</i>	6.6.1985	29.8.1985 ( <i>Gazette 29.8.1985 p604</i> )
1988	4	<i>Electoral Act Amendment Act 1988</i>	10.3.1988	5.5.1988 ( <i>Gazette 5.5.1988 p1114</i> )
1990	18	<i>Statutes Repeal and Amendment (Remuneration) Act 1990</i>	19.4.1990	19.4.1990 ( <i>Gazette 19.4.1990 p1136</i> )
1997	22	<i>Electoral (Miscellaneous) Amendment Act 1997</i>	27.3.1997	28.8.1997 ( <i>Gazette 28.8.1997 p456</i> )

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1997	41	<i>Electoral (Computer Vote Counting) Amendment Act 1997</i>	17.7.1997	28.8.1997 ( <i>Gazette 28.8.1997 p456</i> )
2000	4	<i>District Court (Administrative and Disciplinary Division) Amendment Act 2000</i>	20.4.2000	Sch 1 (cl 11)—1.6.2000 ( <i>Gazette 18.5.2000 p2554</i> )
2003	44	<i>Statute Law Revision Act 2003</i>	23.10.2003	Sch 1—24.11.2003 ( <i>Gazette 13.11.2003 p4048</i> )
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 30 (s 93)—1.6.2007 ( <i>Gazette 26.4.2007 p1352</i> )
2009	48	<i>Electoral (Miscellaneous) Amendment Act 2009</i>	22.10.2009	Pt 2 (ss 4—8, 16—45) & Sch 1 (cll 3 & 4)—6.1.2010 ( <i>Gazette 17.12.2009 p6350</i> ) except ss 9—15—22.10.2011 (s 7(5) <i>Acts Interpretation Act 1915</i> )
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 52 (ss 106—108)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
<b>2013</b>	<b>48</b>	<b><i>Electoral (Miscellaneous) Amendment Act 2013</i></b>	<b>24.10.2013</b>	<b>12.12.2013 (<i>Gazette 12.12.2013 p4630</i>)</b>
2013	51	<i>Electoral (Funding, Expenditure and Disclosure) Amendment Act 2013</i>	24.10.2013	1.7.2015: s 2
2013	93	<i>Electoral (Legislative Council Voting) Amendment Act 2013</i>	5.12.2013	uncommenced

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
Pt 1		
<i>ss 2 and 3</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
s 4		
s 4(1)		
<b>Commonwealth Act</b>	<b>inserted by 48/2013 s 4(1)</b>	<b>12.12.2013</b>
<b>Commonwealth roll</b>	<b>inserted by 48/2013 s 4(1)</b>	<b>12.12.2013</b>
election period	amended by 22/1997 s 27 (Sch 2)	28.8.1997
hour of nomination	amended by 22/1997 s 27 (Sch 2)	28.8.1997
<b>how-to-vote card</b>	<b>amended by 48/2013 s 4(2)</b>	<b>12.12.2013</b>
officer	substituted by 84/2009 s 106	1.2.2010
voting ticket square	substituted by 48/2009 s 4	6.1.2010
	amended by 93/2013 s 4	uncommenced—not incorporated
Pt 2		
s 5	substituted by 22/1997 s 3	28.8.1997
s 6		
s 6(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 84/2009 s 107(1)	1.2.2010

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s 6(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 84/2009 s 107(2)	1.2.2010
s 7		
s 7(1)	amended by 18/1990 s 7(a)	19.4.1990
	substituted by 22/1997 s 4	28.8.1997
s 7(2)	deleted by 18/1990 s 7(b)	19.4.1990
	inserted by 22/1997 s 4	28.8.1997
s 7(3)	substituted by 22/1997 s 4	28.8.1997
s 7(4)	<i>deleted by 22/1997 s 4</i>	28.8.1997
s 7(5)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 7(6)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	<b>amended by 48/2013 s 5(1)</b>	<b>12.12.2013</b>
<b>s 7(6a)</b>	<b>inserted by 48/2013 s 5(2)</b>	<b>12.12.2013</b>
s 7(7) and (8)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 7(9)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	<b>amended by 48/2013 s 5(3)</b>	<b>12.12.2013</b>
s 7(10)	substituted by 22/1997 s 27 (Sch 2)	28.8.1997
s 7(11)	inserted by 22/1997 s 27 (Sch 2)	28.8.1997
s 8		
s 8(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 9		
s 9(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
ss 10 and 11	amended by 22/1997 s 27 (Sch 2)	28.8.1997
<i>s 12 before substitution by 84/2009</i>		
<i>s 12(1) and (3)</i>	<i>amended by 22/1997 s 27 (Sch 2)</i>	<i>28.8.1997</i>
s 12	substituted by 84/2009 s 108	1.2.2010
s 13		
s 13(1) and (2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
Pt 3		
s 14		
s 14(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 14(3)	<i>deleted by 22/1997 s 27 (Sch 2)</i>	<i>28.8.1997</i>
s 14(4)	substituted by 22/1997 s 27 (Sch 2)	28.8.1997
s 14(5)	<i>deleted by 22/1997 s 27 (Sch 2)</i>	<i>28.8.1997</i>
s 16		
s 16(1) and (2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 17	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 18		
s 18(1)—(4)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
Pt 4		
Pt 4 Div 1		

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s 19		
s 19(1) and (2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
Pt 4 Div 2		
s 20		
s 20(1)	amended by 4/1988 s 3	5.5.1988
	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 20(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 21	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 21(1)	<b>s 21 redesignated as s 21(1) by 48/2013 s 6</b>	<b>12.12.2013</b>
s 21(2)	<b>inserted by 48/2013 s 6</b>	<b>12.12.2013</b>
Pt 4 Div 3		
s 22	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 23	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	<b>amended by 48/2013 s 7(1), (2)</b>	<b>12.12.2013</b>
Pt 4 Div 4		
s 25	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 26		
s 26(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 48/2009 s 5(1)	6.1.2010
	(c) deleted by 48/2009 s 5(2)	6.1.2010
s 26(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	substituted by 48/2009 s 5(3)	6.1.2010
s 26(3)—(5)	inserted by 48/2009 s 5(3)	6.1.2010
Pt 4 Div 5		
s 27		
s 27(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 48/2009 s 6(1)	6.1.2010
s 27(1a)	inserted by 48/2009 s 6(2)	6.1.2010
s 27(2)	substituted by 22/1997 s 5	28.8.1997
Pt 4 Div 5A	inserted by 22/1997 s 6	28.8.1997
s 27A		
s 27A(2)	amended by 48/2009 s 7(1), (2)	6.1.2010
s 27A(3)	<i>deleted by 48/2009 s 7(3)</i>	<i>6.1.2010</i>
s 27A(5)	amended by 48/2009 s 7(4)	6.1.2010
s 27A(6)	inserted by 48/2009 s 7(5)	6.1.2010
Pt 4 Div 6		
s 28		
s 28(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
Pt 5		
Pt 5 Div 1		
s 29		
s 29(1)	substituted by 4/1988 s 4(a)	5.5.1988
	<b>substituted by 48/2013 s 8</b>	<b>12.12.2013</b>

s 29(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	<b>substituted by 48/2013 s 8</b>	<b>12.12.2013</b>
s 29(4)	amended by 4/1988 s 4(b), (c)	5.5.1988
	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 43/2006 s 93(1)	1.6.2007
s 29(5)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 29(6)	inserted by 43/2006 s 93(2)	1.6.2007
<i>Pt 5 Div 2 before deletion by 48/2013</i>		
<i>s 30</i>		
s 30(1)	<i>amended by 22/1997 s 27 (Sch 2)</i>	<i>28.8.1997</i>
s 30(2)	<i>amended by 4/1988 s 5</i>	<i>5.5.1988</i>
<i>s 31</i>		
s 31(1) and (2)	<i>amended by 22/1997 s 27 (Sch 2)</i>	<i>28.8.1997</i>
s 31(3)	<i>amended by 22/1997 s 27 (Sch 2)</i>	<i>28.8.1997</i>
	<i>amended by 4/2000 s 9(1) (Sch 1 cl 11(a))</i>	<i>1.6.2000</i>
<b>Pt 5 Div 2</b>	<b><i>deleted by 48/2013 s 9</i></b>	<b><i>12.12.2013</i></b>
Pt 5 Div 2A	inserted by 48/2009 s 8	6.1.2010
<i>s 31A</i>		
s 31A(1)	<b>amended by 48/2013 s 10(1), (2)</b>	<b>12.12.2013</b>
s 31A(2)	<b>amended by 48/2013 s 10(3)</b>	<b>12.12.2013</b>
s 31A(3)	<b>amended by 48/2013 s 10(4)</b>	<b>12.12.2013</b>
s 31A(9) and (10)	<b>amended by 48/2013 s 10(2)</b>	<b>12.12.2013</b>
<i>Pt 5 Div 3 before substitution by 48/2009</i>		
<i>s 32</i>		
s 32(1)	<i>amended by 4/1988 s 6(a)</i>	<i>5.5.1988</i>
	<i>amended by 22/1997 s 27 (Sch 2)</i>	<i>28.8.1997</i>
s 32(2)	<i>amended by 4/1988 s 6(b)</i>	<i>5.5.1988</i>
	<i>amended by 22/1997 s 27 (Sch 2)</i>	<i>28.8.1997</i>
s 32(3)	<i>substituted by 22/1997 s 7</i>	<i>28.8.1997</i>
s 32(4)	<i>amended by 22/1997 s 27 (Sch 2)</i>	<i>28.8.1997</i>
Pt 5 Div 3	substituted by 48/2009 s 8	6.1.2010
<i>s 32</i>		
s 32(1)	<b>amended by 48/2013 s 11(1)</b>	<b>12.12.2013</b>
s 32(1a)	<b>inserted by 48/2013 s 11(2)</b>	<b>12.12.2013</b>
<i>s 32A</i>		
s 32A(1)	<b>amended by 48/2013 s 12</b>	<b>12.12.2013</b>
s 32B	<b>inserted by 48/2013 s 13</b>	<b>12.12.2013</b>
<i>Pt 5 Div 4</i>		
<i>s 33</i>		
s 33(1) and (2)	substituted by 4/1988 s 7	5.5.1988
s 33(3) and (4)	amended by 22/1997 s 27 (Sch 2)	28.8.1997

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s 34		
s 34(1) and (2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 35		
s 35(1)	amended by 4/1988 s 8	5.5.1988
s 35(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 35(3)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 4/2000 s 9(1) (Sch 1 cl 11(b))	1.6.2000
Pt 6		
s 36		
s 36(1)		
eligible political party	amended by 4/1988 s 9	5.5.1988
	substituted by 48/2009 s 9(1)	22.10.2011
parliamentary party	substituted by 48/2009 s 9(2)	22.10.2011
s 36(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 36(3)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	substituted by 48/2009 s 9(3)	22.10.2011
s 36(4)	inserted by 48/2009 s 9(3)	22.10.2011
s 38		
s 38(1)	substituted by 22/1997 s 27 (Sch 2)	28.8.1997
s 38(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 39		
s 39(2)	amended by 48/2009 s 10	22.10.2011
s 40		
s 40(1) and (2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 40(3)	inserted by 48/2009 s 11	22.10.2011
s 41		
s 41(1) and (2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 42		
s 42(1) and (2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 42(3)	substituted by 48/2009 s 12	22.10.2011
s 42(3a)	inserted by 48/2009 s 12	22.10.2011
s 42(4) and (5)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 42(6)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 4/2000 s 9(1) (Sch 1 cl 11(c))	1.6.2000
s 42A	inserted by 22/1997 s 8	28.8.1997
s 43		
s 43(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 43(3)	<i>deleted by 22/1997 s 9</i>	28.8.1997
s 43A	inserted by 48/2009 s 13	22.10.2011
s 44		
s 44(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 45		

s 45(1)	amended by 48/2009 s 14	22.10.2011
s 45(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 46		
s 46(1) and (2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
ss 46A and 46B	inserted by 48/2009 s 15	22.10.2011
Pt 7		
s 47		
s 47(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
<b>s 47(2a)</b>	<b>inserted by 48/2013 s 14</b>	<b>12.12.2013</b>
s 47(3)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 48		
s 48(3)	substituted by 48/2009 s 16	6.1.2010
	<b>amended by 48/2013 s 15(1)</b>	<b>12.12.2013</b>
<b>s 48(4)</b>	<b>amended by 48/2013 s 15(2)</b>	<b>12.12.2013</b>
s 48(7)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 49		
s 49(1)—(3)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 50		
s 50(1)—(4)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
Pt 8		
Pt 8 Div 1		
s 52		
s 52(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 52(1a)	inserted by 48/2009 s 17	6.1.2010
s 52(2)	substituted by 22/1997 s 27 (Sch 2)	28.8.1997
s 53	substituted by 22/1997 s 10	28.8.1997
<b>s 53(4)</b>	<b>substituted by 48/2013 s 16</b>	<b>12.12.2013</b>
s 53A	inserted by 22/1997 s 10	28.8.1997
s 53A(3)	amended by 93/2013 s 5(1)	uncommenced—not incorporated
s 53A(3a)	inserted by 93/2013 s 5(2)	uncommenced—not incorporated
s 54		
s 54(1)	substituted by 22/1997 s 27 (Sch 2)	28.8.1997
s 54(3)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 55	substituted by 22/1997 s 11	28.8.1997
s 56		
s 56(1) and (2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 57		
s 57(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 57(2)	substituted by 22/1997 s 27 (Sch 2)	28.8.1997
Pt 8 Div 2		
Pt 8 Div 2 Subdiv 1	heading preceding s 58 deleted and Subdiv 1 heading inserted by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 58		

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s 58(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 48/2009 s 18(1)	6.1.2010
s 58(3)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 58(4)	inserted by 48/2009 s 18(2)	6.1.2010
s 59		
s 59(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 48/2009 s 19(1)	6.1.2010
	amended by 93/2013 s 6(1), (2)	uncommenced—not incorporated
s 59(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	substituted by 48/2009 s 19(2)	6.1.2010
Pt 8 Div 2 Subdiv 2	heading preceding s 60 deleted and Subdiv 2 heading inserted by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 60	amended by 22/1997 s 27 (Sch 2)	28.8.1997
Pt 8 Div 2 Subdiv 3	heading preceding s 61 deleted and Subdiv 3 heading inserted by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 61		
s 61(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 62		
s 62(1)	amended by 4/1988 s 10(a), (b)	5.5.1988
	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 93/2013 s 7	uncommenced—not incorporated
s 62(1a)	inserted by 4/1988 s 10(c)	5.5.1988
s 62(2)	amended by 4/1988 s 10(d), (e)	5.5.1988
s 62(3)	substituted by 48/2009 s 20	6.1.2010
s 62(4)	inserted by 48/2009 s 20	6.1.2010
s 63		
63(a1)	inserted by 93/2013 s 8(1)	uncommenced—not incorporated
s 63(1)	substituted by 4/1988 s 11	5.5.1988
	amended by 93/2013 s 8(2)	uncommenced—not incorporated
s 63(2) and (3)	substituted by 4/1988 s 11	5.5.1988
s 63(3a)	inserted by 4/1988 s 11	5.5.1988
s 63(5)	inserted by 48/2009 s 21	6.1.2010
	amended by 93/2013 s 8(3)	uncommenced—not incorporated
s 64		
s 64(1) and (3)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
Pt 8 Div 3		
s 65		
s 65(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 48/2009 s 22	6.1.2010
<i>s 66 before substitution by 48/2009</i>		
s 66(1)	<i>amended by 4/1988 s 12</i>	<i>5.5.1988</i>
	<i>amended by 22/1997 s 12(a)</i>	<i>28.8.1997</i>



s 66(2)	<i>amended by 22/1997 s 12(b), (c)</i>	28.8.1997
s 66(3)—(6)	<i>amended by 22/1997 s 27 (Sch 2)</i>	28.8.1997
s 66	substituted by 48/2009 s 23	6.1.2010
Pt 8 Div 4		
s 67		
s 67(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	substituted by 48/2009 s 24	6.1.2010
s 67(2)	substituted by 48/2009 s 24	6.1.2010
s 67(4)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
Pt 8 Div 5		
s 68	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	<b>substituted by 48/2013 s 17</b>	<b>12.12.2013</b>
Pt 9		
s 69		
s 69(1) and (2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 69(3)	<i>deleted by 4/1988 s 13</i>	5.5.1988
s 71		
s 71(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 71(2)	amended by 4/1988 s 14	5.5.1988
	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 71(3) and (4)	inserted by 48/2009 s 25	6.1.2010
s 72		
s 72(1) and (2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 73		
s 73(2) and (4)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 74		
s 74(1)	amended by 4/1988 s 15(a)	5.5.1988
	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 48/2009 s 26(1)	6.1.2010
s 74(2)	substituted by 4/1988 s 15(b)	5.5.1988
	amended by 48/2009 s 26(2)	6.1.2010
s 74(2a)	inserted by 48/2009 s 26(3)	6.1.2010
s 74(3)	substituted by 22/1997 s 13(a)	28.8.1997
	amended by 48/2009 s 26(4), (5)	6.1.2010
s 74(4)	amended by 4/1988 s 15(c)	5.5.1988
	substituted by 22/1997 s 13(a)	28.8.1997
	<b>amended by 48/2013 s 18(1)</b>	<b>12.12.2013</b>
s 74(5)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 74(6)	substituted by 22/1997 s 13(b)	28.8.1997
<b>s 74(6a) and (6b)</b>	<b>inserted by 48/2013 s 18(2)</b>	<b>12.12.2013</b>
s 74(7)	inserted by 48/2009 s 26(6)	6.1.2010
<b>s 74A</b>	<b>inserted by 48/2013 s 19</b>	<b>12.12.2013</b>
s 75	amended by 22/1997 s 27 (Sch 2)	28.8.1997

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s 76		
s 76(1)—(3)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 77		
s 77(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 77(2)	substituted by 22/1997 s 14	28.8.1997
s 77(3)	substituted by 4/1988 s 16	5.5.1988
s 77(3a)	inserted by 4/1988 s 16	5.5.1988
	(a)(ii) dashes designated as (a)(ii)(A) and (B) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 77(3b)	inserted by 4/1988 s 16	5.5.1988
s 78		
s 78(1)—(3)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 79		
s 79(1) and (2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 80		
s 80(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 48/2009 s 27(1)	6.1.2010
s 80(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 80(3)	substituted by 22/1997 s 27 (Sch 2)	28.8.1997
s 80(4)	inserted by 48/2009 s 27(2)	6.1.2010
s 80A	inserted by 22/1997 s 15	28.8.1997
s 81		
s 81(1) and (2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 82		
s 82(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 48/2009 s 28(1)	6.1.2010
s 82(2)	amended by 4/1988 s 17(a)	5.5.1988
	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 48/2009 s 28(2)	6.1.2010
s 82(3)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 82(4)	substituted by 22/1997 s 27 (Sch 2)	28.8.1997
s 82(4a)	inserted by 48/2009 s 28(3)	6.1.2010
s 82(6)	inserted by 4/1988 s 17(b)	5.5.1988
	amended by 22/1997 s 27 (Sch 1 cl 1)	28.8.1997
s 83		
s 83(2) and (4)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 83(5)	amended by 22/1997 s 27 (Sch 1 cl 2(a)) (Sch 2)	28.8.1997
s 83(6)	amended by 22/1997 s 27 (Sch 1 cl 2(b)) (Sch 2)	28.8.1997
s 84	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 48/2009 s 29	6.1.2010
s 85		
s 85(1), (3) and (4)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 85(5)	amended by 4/1988 s 18(a)	5.5.1988

	substituted by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 48/2009 s 30(1), (2)	6.1.2010
s 85(6)	amended by 4/1988 s 18(b)	5.5.1988
	substituted by 22/1997 s 27 (Sch 2)	28.8.1997
s 85(7)	amended by 4/1988 s 18(c)	5.5.1988
	substituted by 22/1997 s 27 (Sch 2)	28.8.1997
s 85(9)	substituted by 4/1988 s 18(d)	5.5.1988
s 85(10)	substituted by 4/1988 s 18(e)	5.5.1988
s 86		
s 86(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 86(2)	substituted by 22/1997 s 27 (Sch 2)	28.8.1997
s 87		
s 87(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 48/2009 s 31(1), (2)	6.1.2010
s 87(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	substituted by 48/2009 s 31(3)	6.1.2010
s 88		
s 88(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
Pt 10		
Pt 10 Div 1		
s 89		
s 89(1) and (2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 89(3)	inserted by 48/2009 s 32	6.1.2010
s 90		
s 90(1) and (2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 91		
s 91(1)	amended by 4/1988 s 19	5.5.1988
	(ia) deleted by 22/1997 s 16(a)	28.8.1997
	amended by 22/1997 ss 16(b), 27 (Sch 2)	28.8.1997
	substituted by 48/2009 s 33(1)	6.1.2010
s 91(1a)	inserted by 22/1997 s 16(c)	28.8.1997
	amended by 48/2009 s 33(2)	6.1.2010
s 91(1b)	inserted by 22/1997 s 16(c)	28.8.1997
s 91(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	substituted by 48/2009 s 33(3)	6.1.2010
Pt 10 Div 2		
s 92		
s 92(2)—(4)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 93		
s 93(2)—(5)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 94		
s 94(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 48/2009 s 34(1)	6.1.2010

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	<b>(c) deleted by 48/2013 s 20</b>	<b>12.12.2013</b>
s 94(3)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 94(4a)	inserted by 48/2009 s 34(2)	6.1.2010
s 94(5)—(7)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
Pt 10 Div 3		
s 95		
s 95(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 95(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 48/2009 s 35(1)	6.1.2010
	<b>amended by 48/2013 s 21</b>	<b>12.12.2013</b>
s 95(3)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	substituted by 48/2009 s 35(2)	6.1.2010
s 95(4)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 48/2009 s 35(3)	6.1.2010
s 95(4a)	inserted by 48/2009 s 35(4)	6.1.2010
s 95(5)—(12)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 95(13)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 41/1997 s 3(a)	28.8.1997
s 95(14)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 95(15)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	substituted by 41/1997 s 3(b)	28.8.1997
s 95(16)	substituted by 41/1997 s 3(b)	28.8.1997
s 95(16a)	inserted by 41/1997 s 3(b)	28.8.1997
s 95(17)—(26)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 96		
s 96(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 96(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	<b>amended by 48/2013 s 22</b>	<b>12.12.2013</b>
s 96(3) and (4)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 96(5)	substituted by 22/1997 s 27 (Sch 2)	28.8.1997
s 96(6)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 96(9)—(11)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
Pt 10 Div 3A	inserted by 41/1997 s 4	28.8.1997
s 96D		
s 96D(2)	amended by 48/2009 s 36(1), (2)	6.1.2010
Pt 10 Div 4		
s 97		
s 97(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 97(2)	substituted by 4/1988 s 20	5.5.1988
s 97(2a)	inserted by 4/1988 s 20	5.5.1988
s 97(4) and (5)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
Pt 11		
s 98		

s 98(1) and (3)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 99		
s 99(1) and (2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
Pt 12	heading substituted by 4/2000 s 9(1) (Sch 1 cl 11(d))	1.6.2000
Pt 12 Div 1	heading substituted by 4/2000 s 9(1) (Sch 1 cl 11(d))	1.6.2000
s 100		
s 100(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 4/2000 s 9(1) (Sch 1 cl 11(e))	1.6.2000
	<b>amended by 48/2013 s 23</b>	<b>12.12.2013</b>
s 100(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 4/2000 s 9(1) (Sch 1 cl 11(f))	1.6.2000
s 101	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	substituted by 4/2000 s 9(1) (Sch 1 cl 11(g))	1.6.2000
Pt 12 Div 2		
s 103		
s 103(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 104		
s 104(1) and (2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 105	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 48/2009 s 37	6.1.2010
s 106		
s 106(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 107		
s 107(1) and (3)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 107(5) and (6)	inserted by 48/2009 s 38	6.1.2010
s 108	amended by 22/1997 s 27 (Sch 2)	28.8.1997
Pt 13		
s 109		
s 109(1)	substituted by 22/1997 s 17	28.8.1997
s 110	substituted by 22/1997 s 18	28.8.1997
s 111	amended by 22/1997 s 27 (Sch 1 cl 3) (Sch 2)	28.8.1997
s 112	substituted by 22/1997 s 19	28.8.1997
s 112(1)	amended by 48/2009 s 39(1)—(3)	6.1.2010
	<b>amended by 48/2013 s 24(1)</b>	<b>12.12.2013</b>
s 112(3)	<b>inserted by 48/2013 s 24(2)</b>	<b>12.12.2013</b>
ss 112A	inserted by 48/2009 s 40	6.1.2010
	<b>substituted by 48/2013 s 25</b>	<b>12.12.2013</b>
ss 112B	inserted by 48/2009 s 40	6.1.2010
s 112B(4)		
<b>distribute</b>	<b>amended by 48/2013 s 26</b>	<b>12.12.2013</b>
s 113	substituted by 22/1997 s 19	28.8.1997

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s 113(2)	amended by 48/2009 s 41	6.1.2010
<i>s 114 before substitution by 48/2009</i>		
s 114(1)	<i>amended by 22/1997 s 27 (Sch 1 cl 4) (Sch 2)</i>	28.8.1997
s 114	substituted by 48/2009 s 42	6.1.2010
s 115		
s 115(1)	amended by 22/1997 s 27 (Sch 1 cl 5) (Sch 2)	28.8.1997
	amended by 48/2009 s 43	6.1.2010
s 115(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 116		
s 116(1)	amended by 22/1997 s 27 (Sch 1 cl 6) (Sch 2)	28.8.1997
	amended by 48/2009 s 44(1)—(3)	6.1.2010
	<b>amended by 48/2013 s 27(1), (2)</b>	<b>12.12.2013</b>
s 116(2)	amended by 48/2009 s 44(4)—(7)	6.1.2010
	<b>amended by 48/2013 s 27(3)—(5)</b>	<b>12.12.2013</b>
s 116(3)	inserted by 48/2009 s 44(8)	6.1.2010
s 116A	inserted by 22/1997 s 20	28.8.1997
s 117		
s 117(1) and (2)	amended by 22/1997 s 27 (Sch 1 cl 7) (Sch 2)	28.8.1997
s 118		
s 118(1)	amended by 22/1997 s 27 (Sch 1 cl 8) (Sch 2)	28.8.1997
s 118(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 119	substituted by 22/1997 s 21	28.8.1997
s 119(2)	amended by 48/2009 s 45	6.1.2010
s 120		
s 120(1)	amended by 22/1997 s 27 (Sch 1 cl 9(a)) (Sch 2)	28.8.1997
s 120(2)	amended by 22/1997 s 27 (Sch 1 cl 9(b)) (Sch 2)	28.8.1997
s 121		
s 121(1) and (2)	amended by 22/1997 s 27 (Sch 1 cl 10(a)) (Sch 2)	28.8.1997
s 121(3)	amended by 22/1997 s 27 (Sch 1 cl 10(b)) (Sch 2)	28.8.1997
s 121(4) and (5)	amended by 22/1997 s 27 (Sch 1 cl 10(c)) (Sch 2)	28.8.1997
s 121(6)	inserted by 4/1988 s 21	5.5.1988
	amended by 22/1997 s 27 (Sch 1 cl 10(c))	28.8.1997
s 122		
s 122(1)	amended by 22/1997 s 27 (Sch 1 cl 11) (Sch 2)	28.8.1997
s 123		
s 123(1)	amended by 22/1997 s 27 (Sch 1 cl 12) (Sch 2)	28.8.1997
s 124		
s 124(1)	amended by 22/1997 s 27 (Sch 1 cl 13(a)) (Sch 2)	28.8.1997

s 124(2a)	inserted by 4/1988 s 22	5.5.1988
	amended by 22/1997 s 27 (Sch 1 cl 13(b))	28.8.1997
s 124(3) and (4)	amended by 22/1997 s 27 (Sch 1 cl 13(a)) (Sch 2)	28.8.1997
s 124(5)	amended by 22/1997 s 27 (Sch 1 cl 13(c)) (Sch 2)	28.8.1997
s 125		
s 125(1)	amended by 4/1988 s 23(a)	5.5.1988
	amended by 22/1997 s 27 (Sch 1 cl 14) (Sch 2)	28.8.1997
s 125(2)	substituted by 22/1997 s 27 (Sch 2)	28.8.1997
s 125(3)	inserted by 4/1988 s 23(b)	5.5.1988
s 126		
s 126(1)	substituted by 22/1997 s 22	28.8.1997
s 126(2)	amended by 22/1997 s 27 (Sch 1 cl 15) (Sch 2)	28.8.1997
	<b>amended by 48/2013 s 28</b>	<b>12.12.2013</b>
s 127	substituted by 22/1997 s 23	28.8.1997
s 128	amended by 22/1997 s 27 (Sch 1 cl 16) (Sch 2)	28.8.1997
s 129		
s 129(1)	amended by 22/1997 s 27 (Sch 1 cl 17) (Sch 2)	28.8.1997
s 129(2)	substituted by 22/1997 s 27 (Sch 2)	28.8.1997
s 129(3)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 129(4)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 130		
s 130(1)	amended by 22/1997 s 27 (Sch 1 cl 18) (Sch 2)	28.8.1997
s 130(2)	substituted by 22/1997 s 24	28.8.1997
s 130(3)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
Pt 13A	inserted by 51/2013 s 4	1.7.2015—not incorporated
Pt 14		
s 131		
s 131(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 131(2)	substituted by 22/1997 s 27 (Sch 2)	28.8.1997
s 132	substituted by 22/1997 s 25	28.8.1997
s 133	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 135	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 137	<i>deleted by 22/1997 s 27 (Sch 2)</i>	28.8.1997
s 139		
s 139(2)	amended by 22/1997 ss 26, 27 (Sch 2)	28.8.1997
	substituted by 41/1997 s 5	28.8.1997
	substituted by 51/2013 s 5	1.7.2015—not incorporated
	substituted by 93/2013 s 9	uncommenced—not incorporated

## Transitional etc provisions associated with Act or amendments

### *Electoral (Miscellaneous) Amendment Act 2009, Sch 1 Pt 2—Transitional provisions*

#### 3—Interpretation

In this Schedule—

*principal Act* means the *Electoral Act 1985*;

*relevant day* means the day on which sections 9 to 15 of this Act come into operation.

#### 4—Transitional provisions

- (1) The amendments effected to Part 6 of the principal Act by this Act will apply from 6 months after the relevant day with respect to a political party registered under that Part immediately before the relevant day.
- (2) A political party registered under Part 6 of the principal Act immediately before the relevant day is not required to furnish a return under section 43A of the principal Act (as enacted by this Act) until 30 September 2011.
- (3) An application for the registration of an eligible political party (not being a parliamentary party) made but not finally determined before the amendment of Part 6 of the principal Act must comply with the requirements of that Part as amended by this Act, but the Electoral Commissioner must allow the applicant a reasonable opportunity to amend the application in order to comply with those requirements.
- (4) The registration of an elector under paragraph (b)(iii) of section 74(3) of the principal Act is not affected by the amendment of that paragraph by this Act.

#### Historical versions

Reprint No 1—1.7.1991

Reprint No 2—28.8.1997

Reprint No 3—1.6.2000

Reprint No 4—24.11.2003

1.6.2007

6.1.2010

1.2.2010

22.10.2011