

South Australia

# Electoral Act 1985

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

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## Contents

### Part 1—Preliminary

- 1 Short title
- 4 Interpretation

### Part 2—Administration

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

- 5 Appointment of Electoral Commissioner and Deputy Electoral Commissioner
- 6 Acting appointments
- 7 Remuneration and conditions of office

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

- 8 Powers and functions of the Electoral Commissioner
- 9 Delegation
- 10 Duties of the Deputy Electoral Commissioner

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

- 12 Staff
- 13 Candidates and persons holding official positions in political parties not to be electoral officers

### Part 3—Electoral districts and subdivisions

#### Division 1—Electoral districts

- 14 Electoral districts

#### Division 2—Electoral subdivisions

- 15 Electoral subdivisions

#### Division 3—District returning officers

- 16 The district returning officers
- 17 Duty to assist public

#### Division 4—District polling places

- 18 Polling places

## Part 4—Electoral rolls

### Division 1—District and subdivisional rolls

19 District and subdivisional rolls

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

20 Information to be contained on the roll

21 Suppression of elector's address

### Division 3—Revision of the rolls

22 Revision of the rolls

23 Rolls to be kept up to date

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

24 Rolls to be kept by computer

25 Printing of rolls

26 Inspection and provision of rolls

### Division 5—Power to require information

27 Power to require information

### Division 5A—Provision of certain information

27A Provision of certain information

### Division 6—Joint Commonwealth-State arrangements

28 Collaboration with the Commonwealth

## Part 5—Enrolment

### Division 1—Entitlement to enrolment

29 Entitlement to enrolment

### Division 2A—Itinerant persons

31A Itinerant persons

### Division 3—Compulsory enrolment and transfer

32 Making of claim for enrolment or transfer of enrolment

32A Notification of transfer within the same subdivision

32B Enrolment or transfer of enrolment

### Division 4—Objections

33 Right of objection

34 Elector to have opportunity to be heard on objection

35 Determination of objection

## Part 6—Registration of political parties

36 Definitions and related provisions

37 Registration of political parties

38 Register of Political Parties

39 Application for registration

- 
- 40 Order in which applications are to be determined
  - 41 Publication of notice of application
  - 42 Registration
  - 42A Registered officers
  - 43 Changes to Register
  - 43A Annual returns and other inquiries
  - 44 Voluntary de-registration
  - 45 De-registration of political party
  - 46 De-registration
  - 46A False statements
  - 46B Membership information to be confidential

## Part 7—Writs for elections

- 47 Issue of writ
- 48 Contents of writ
- 49 Deferral of election
- 50 Failure of election

## Part 8—Preparations for an election

### Division 1—Nomination

- 51 Candidates must be nominated
- 52 Qualifications of candidate
- 53 Nominations of candidates endorsed by political party
- 53A Nomination of candidate by a person
- 54 Declaration of nominations
- 55 Proceedings on nomination day
- 56 Death of candidate after nomination
- 57 Deposit to be forfeited in certain cases

### Division 2—Ballot papers

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

- 58 Grouping of candidates in Legislative Council election
- 59 Printing of Legislative Council ballot papers

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

- 60 Ballot papers for House of Assembly elections

#### Subdivision 3—Ballot papers generally

- 61 Form of ballot papers
- 62 Printing of descriptive information on ballot papers
- 63 Voting tickets
- 64 Photographs of candidates

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

- 65 Properly staffed polling booths to be provided
- 66 Preparation of certain electoral material

### Division 4—Scrutineers

- 67 Appointment of scrutineers

## Division 5—Certified list of electors

68 Certified list of electors

## Part 9—Voting

### Division 1—Entitlement to vote

69 Entitlement to vote  
70 Errors etc in roll not to forfeit entitlement to vote

### Division 2—General provisions as to voting

71 Manner of voting  
72 Questions to be put to person claiming to vote  
73 Issue of voting papers  
74 Issue of declaration voting papers by post or other means  
74A Offence to distribute application form for issue of declaration voting papers  
75 Fresh ballot paper may be issued where ballot paper spoiled

### Division 3—Indication of vote

76 Marking of votes on ballot papers

### Division 4—Voting at polling booths

77 Times and places for polling  
78 Right of elector to receive ballot paper  
79 Vote to be marked in private  
80 Voter may be accompanied by an assistant in certain circumstances  
80A Voting near polling booth in certain circumstances  
81 Voting by elector to whom declaration voting papers have been issued

### Division 5—Declaration voting

82 Declaration vote, how made  
83 Taking of declaration votes by electoral visitors  
84 Security of facilities

### Division 5A—Electronically assisted voting for sight-impaired electors

84A Electronically assisted voting for sight-impaired electors  
84B Applying provisions of Act to elector using electronic assisted voting  
84C Electoral Commissioner may determine that electronically assisted voting is not to be used

### Division 6—Compulsory voting

85 Compulsory voting

### Division 7—Miscellaneous

86 Presiding officer may appoint substitute  
87 Ballot boxes or other facilities to be kept secure  
88 Adjournment of polling

## Part 10—The scrutiny

### Division 1—Preliminary

89 Scrutiny

---

90	Scrutineers
91	Preliminary scrutiny
Division 2—Interpretation and validity of ballot papers	
92	Interpretation of ballot papers in Legislative Council elections
93	Interpretation of ballot papers in House of Assembly elections
94	Informal ballot papers
Division 3—Counting of votes	
95	Scrutiny of votes in Legislative Council election
96	Scrutiny of votes in House of Assembly election
Division 3A—Computer vote counting in Legislative Council elections	
96A	Application of Division
96B	Approval of computer program
96C	Protection of approved computer program from interference
96D	Use of approved computer program in election
96E	Manual counting of votes not prevented
Division 4—Re-count	
97	Re-count
Part 11—The return of the writs	
98	Return of writ for election of members of the Legislative Council
99	Declaration of poll and return of writs for House of Assembly
Part 12—Appeals	
Division 1—Administrative appeals	
100	Reviewable decisions
101	Administrative appeals
Division 2—Disputed elections and returns	
102	Method of disputing elections
103	The Court of Disputed Returns
104	Requisites of petition
105	Respondents to petitions
106	Principles to be observed
107	Orders that the Court is empowered to make
108	Decisions to be final
Part 13—Offences	
Division 1—Bribery, undue influence etc	
109	Bribery
110	Undue influence
111	Interference with political liberty
Division 2—Electoral advertisements, commentaries and other material	
112	Publication of electoral advertisements, notices etc
112A	Special provision relating to how-to-vote cards

- 112B Certain descriptions not to be used
- 113 Misleading advertising
- 114 Heading to electoral advertisements
- 115 Limitations on display of electoral advertisements
- 115A Automated political calls
- 116 Published material to identify person responsible for political content
- 116A Evidence

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

- 117 Candidates not to take part in elections
- 118 Persons present at polling
- 119 Offender may be removed from polling booth
- 120 Secrecy of vote
- 121 Conduct of officers, scrutineers etc
- 122 Cards in polling booth
- 123 Witnessing electoral papers
- 124 Other offences relating to ballot papers etc
- 125 Prohibition of canvassing near polling booths
- 126 Prohibition of advocacy of forms of voting inconsistent with Act
- 127 Failure to transmit claim
- 128 Forging or uttering electoral papers
- 129 Protection of the official mark

### Division 4—Employers

- 130 Employers to allow employees leave of absence to vote

## Part 13A—Election funding, expenditure and disclosure

### Division 1—Preliminary

- 130A Interpretation
- 130B Objects of Part
- 130C Application of Part

### Division 2—Agents

- 130D Interpretation
- 130E Appointment of agents by parties, candidates and groups
- 130F Third parties may appoint agents
- 130G Requisites for appointment
- 130H Registration of agents
- 130I Termination of appointment of agent
- 130J Responsibility for action in case of political parties

### Division 3—State campaign accounts

- 130K Requirement to keep State campaign account
- 130L Gifts to be paid into State campaign account
- 130M Payments into State campaign account
- 130N State campaign account to be used for political expenditure

### Division 4—Public funding of candidates and groups for elections

- 130O Interpretation
- 130P General entitlement to funds
- 130Q Payment not to be made or to be reduced in certain circumstances

- 
- 130R Making of payments
  - 130S Death of candidate

#### Division 5—Special assistance funding for political parties

- 130T Preliminary
- 130U Entitlement to and claims for half yearly entitlement to special assistance funding
- 130UA Entitlement to and claim for one-off payment of special assistance funding
- 130V Making of payments
- 130W Special assistance funding not to be used for political expenditure

#### Division 6—Limitations on political expenditure

- 130X Interpretation
- 130Y Application of Division
- 130Z Expenditure caps
- 130ZA Prohibition on political expenditure in excess of expenditure cap during capped expenditure period
- 130ZB Regulation of political expenditure by parties and candidates endorsed by parties
- 130ZC Prohibition on arrangements to avoid applicable expenditure cap

#### Division 7—Disclosure of donations

- 130ZD Interpretation
- 130ZE Division not to apply to gifts returned within 6 weeks
- 130ZF Returns by certain candidates and groups
- 130ZG Gifts, loans to candidates etc
- 130ZH Gifts to relevant entities
- 130ZI Special reporting of large gifts
- 130ZJ Certain gifts not to be received
- 130ZK Certain loans not to be received
- 130ZL Limitation on entry fees for certain events

#### Division 8—Returns

- 130ZM Interpretation
- 130ZN Returns by registered political parties
- 130ZO Returns by associated entities
- 130ZP Returns by third parties
- 130ZQ Returns relating to political expenditure during capped expenditure period
- 130ZR Annual returns relating to political expenditure
- 130ZS Annual returns relating to gifts received for political expenditure
- 130ZT Related matters

#### Division 9—Related matters

- 130ZV Audit certificates
- 130ZW Auditor to give notice of contravention
- 130ZX Electoral Commissioner to determine manner in which returns to be furnished
- 130ZY Public inspection of returns
- 130ZZ Nil returns
- 130ZZA Records to be kept
- 130ZZB Investigation etc
- 130ZZC Inability to complete returns
- 130ZZD Amendment of returns
- 130ZZE Offences
- 130ZZF Non-compliance with Part does not affect election

130ZZG Appropriation

130ZZH Regulations

## Part 14—Miscellaneous

131 Signature to electoral paper

132 Injunctions

133 Disqualification for bribery and undue influence

134 Service by post

135 Preservation of ballot papers

136 Offences committed with connivance of person other than offender

138 Exemption from stamp duty

139 Regulations

## 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;

***medical practitioner*** means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

***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 or any other 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 group of candidates;

**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.
- (1a) The Electoral Commissioner must, where relevant in the carrying out of the Electoral Commissioner's functions under this Act, promote and encourage the casting of votes at a polling booth on polling day.
- (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**

### **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 or any other 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 provision 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.
- (1a) A person may only inspect a copy of the roll available for inspection under subsection (1) if the person—
  - (a) provides the person's name and address to the Electoral Commissioner; and
  - (b) if requested to do so by the Electoral Commissioner, produces evidence of the correctness of the name or address as provided in a form determined by the Commissioner; and
  - (c) complies with conditions (if any) prescribed by the regulations.
- (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 or contains the word "Independent".

- (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.

#### **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; or

- (e) the registered officer of a registered political party has failed to comply with a requirement under section 43A,  
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—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—
  - (a) nominate on a nomination paper a candidate endorsed by the party for election as a member of the House of Assembly or the Legislative Council; or
  - (b) 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 to be paid in the prescribed manner 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.
- (11) In this section—

***prescribed amount*** means—

  - (a) in the case of a candidate nominating for election as a member of the House of Assembly—\$1 000, or such lesser amount as may be prescribed by the regulations; or
  - (b) in the case of a candidate nominated for election as a member of the Legislative Council—the amount prescribed by the regulations for the purposes of this paragraph.

### **53A—Nomination of candidate by a person**

- (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 to be paid in the prescribed manner.
- (3) A nomination paper must be in a form approved by the Electoral Commissioner and—
  - (a) be signed by at least—

- (i) in the case of a nomination for election as a member of the House of Assembly—20 electors for the relevant district; or
  - (ii) in the case of a nomination for election as a member of the Legislative Council—250 electors 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.
- (3a) If—
- (a) 2 or more candidates in a Legislative Council election apply under section 58 to have their names grouped together on the ballot paper; and
  - (b) an elector signs a nomination paper under subsection (3)(a)(ii) for—
    - (i) a candidate in the group; and
    - (ii) another candidate in the election (including another candidate in the group),
 the elector's signature is to be taken not to count for any of the candidates for the purposes of subsection (3)(a)(ii).
- (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.
- (4a) If a nomination paper lodged under subsection (2) does not fully comply with the requirement under subsection (3)(a)(ii), the relevant district returning officer must, if practicable, give the nominated candidate notice of the non-compliance sufficient to enable the candidate to fully comply with the requirement before the hour of nomination.
- (5) A nomination is not invalid because of a formal defect or error if the provisions of this Act have been substantially complied with.
- (6) In this section—
- prescribed amount*** means—
- (a) in the case of a candidate nominating for election as a member of the House of Assembly—\$1 000, or such lesser amount as may be prescribed by the regulations; or
  - (b) in the case of a candidate nominated for election as a member of the Legislative Council—the amount prescribed by the regulations for the purposes of this paragraph.

#### **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 of all candidates duly nominated for the election in that district; and
  - (c) declare the addresses of all candidates duly nominated for the election in that district; but if the address of a candidate is suppressed from the roll under section 21—
    - (i) in the case of a candidate nominated for election as a member of the House of Assembly—the returning officer must instead declare the name of the House of Assembly electoral district in which that candidate resides; and
    - (ii) in the case of a candidate nominated for election as a member of the Legislative Council—the returning officer must not declare the address of that candidate.
- (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, with the groups endorsed by registered political parties appearing before the groups who are not so endorsed (and 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 endorsed by registered political parties in the ballot papers must be determined by lot; and
  - (ba) the order of the groups not endorsed by registered political parties 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."

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**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 3 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**

- (a1) The following provisions apply in relation to the entitlement to lodge a voting ticket under this section:
- (a) in the case of a House of Assembly election—any candidate is entitled to lodge a voting ticket;
  - (b) in the case of a Legislative Council election—any group of candidates is entitled to lodge a voting ticket.
- (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 entitled to lodge a voting ticket under subsection (a1).
- (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 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
    - (ia) by use of a word or set of words that comprises or contains the word "Independent" and—
      - (A) the name, or an abbreviation or acronym of the name, of a parliamentary party or a registered political party; or
      - (B) matter that so nearly resembles the name, or an abbreviation or acronym of the name, of a registered political party that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym; 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(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
  - (fa) must not identify a candidate by use of the word "Independent" if the candidate is endorsed by a registered political party; 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 a resident 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.

- (3a) An application under this section for the issue of declaration voting papers to an elector, or for registration of an elector as a declaration voter, may be made by a person other than the elector if the application is accompanied by a certificate from a medical practitioner, in a form approved by the Electoral Commissioner, certifying that the elector is, because of physical disability, unable to sign the elector's own name.
- (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;
  - (e) in the case of a voter making a declaration vote—
    - (i) by assisting the voter to complete the appropriate declaration on the envelope; or
    - (ii) if the voter is unable to do so—by completing and signing the declaration on the voter's behalf in the presence of an officer (who must sign the envelope as witness); or
    - (iii) by folding and placing the ballot paper in the appropriate envelope and sealing the envelope.
- (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) The following provisions apply to a voter to whom subsection (1) applies:
  - (a) in the case of a voter casting an ordinary vote—after the voter has marked a vote on the ballot paper, the presiding officer must, in the presence of the scrutineers, ensure—
    - (i) that the ballot paper is folded to conceal the vote and placed in an envelope that is then sealed; and
    - (ii) that the envelope is opened inside the polling booth and the folded ballot paper is placed in the ballot box;



- (b) in the case of a voter casting a declaration vote—the voter must—
- (i) sign the appropriate declaration on the envelope (which must be signed by the person before whom the vote is taken as witness); and
  - (ii) mark a vote on the ballot paper and fold it so as to conceal the vote; and
  - (iii) place the ballot paper in the envelope provided and seal the envelope, and the presiding officer must then, in the presence of the scrutineers, ensure that the envelope is deposited in the ballot box;
- (c) if a voter satisfies the presiding officer that the voter is unable to vote without assistance, the voter may be assisted in accordance with section 80 as if the voter were in the polling booth.

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

An elector to whom declaration voting papers have been issued (otherwise than at a polling booth) is entitled to an ordinary vote at a polling booth, but a 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) Subject to this Part, if an elector makes a declaration vote otherwise than at a polling booth, he or she must—
- (a) unless the elector is an elector referred to in section 74(3a), 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 residents of the institution; and
  - (b) any other information that is reasonably required in order to determine whether a resident 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 2 or more residents of a declared institution to make applications by post for the issue of declaration voting papers.  
Maximum penalty: \$750.

**84—Security of facilities**

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 5A—Electronically assisted voting for sight-impaired electors****84A—Electronically assisted voting for sight-impaired electors**

- (1) The regulations may make provision in relation to voting in an election by sight-impaired electors by means of an electronically assisted voting method.

- (2) Without limiting the generality of subsection (1), regulations made for the purposes of this Division may—
- (a) determine, or provide for the determination of, the following:
    - (i) the electronically assisted voting method;
    - (ii) matters related to the voting using the electronically assisted voting method, including the provision of assistance to electors using the method, requirements to be followed after an elector has used the method and matters of privacy and secrecy;
    - (iii) the number of places where the electronically assisted voting method is to be available, the location of those places and the days and times at which the method is to be available;
    - (iv) which electors may use the electronically assisted voting method; and
  - (b) require the making of a record of each person who has voted using the electronically assisted voting method; and
  - (c) specify the information that is to be included in a record; and
  - (d) provide for the production of a record of the vote each person has cast, which must not contain any means of identifying the person who cast the vote; and
  - (e) provide for the appointment by the Electoral Commissioner of officers in relation to the conduct of the electronically assisted voting method; and
  - (f) provide for the application of this Act, or provisions of this Act, in relation to votes cast using the electronically assisted voting method, including the modification of the application of this Act or a provision of this Act in relation to such votes; and
  - (g) make provision for any other matters related to electronically assisted voting.
- (3) To avoid doubt, nothing in this Division (or in regulations made for the purposes of this Division) authorises any elector to vote more than once at an election.
- (4) In this section—
- sight-impaired elector* means an elector whose sight is impaired such that the elector is unable to vote without assistance.

#### **84B—Applying provisions of Act to elector using electronic assisted voting**

- (1) The prescribed electronically assisted voting method must be such that an elector using the method in relation to an election—
- (a) receives the same information (in the same order), and has the same voting options, as would appear in the ballot paper for the election that the elector would be given if the elector were voting at a polling booth under this Part; and
  - (b) is able to indicate a vote in a way that, if the elector were marking a ballot paper, would satisfy the requirements of section 76.

- (2) Subject to this Division, if an elector votes using the electronically assisted voting method (an *electronically assisted vote*)—
- (a) this Act applies (subject to any modifications prescribed under section 84A(2)(f)) in relation to an electronically assisted vote as if it were a declaration vote; and
  - (b) the record of the electronically assisted vote produced in accordance with the regulations is to be taken to be a ballot paper for the purposes of this Act; and
  - (c) the requirements of this Act in relation to the elector's right to receive a ballot paper are to be taken to have been satisfied.

#### **84C—Electoral Commissioner may determine that electronically assisted voting is not to be used**

- (1) The Electoral Commissioner may, by notice in the Gazette, determine that the prescribed electronically assisted voting method is not to be used either generally or at 1 or more specified places.
- (2) A notice under subsection (1) must specify the election in respect of which the determination applies.

### **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, if satisfied—
      - (A) that the signature of the declarant corresponds with the signature on the application for declaration voting papers (other than in the case of an application made on behalf of an elector referred to in section 74(3a)); and
      - (B) that the vote was recorded before the close of the poll, accept the ballot paper for further scrutiny and proceed with the process by—
        - (C) tearing off the extensions to the envelope flap on the envelope containing the ballot paper; and

(D) rearranging the envelopes that no longer bear their tear-off extensions so that the anonymity of the voter is maintained; and

(E) withdrawing the ballot paper from its envelope and placing it in a securely closed ballot box or other facility reserved for such ballot papers,

but, if the officer is not so satisfied, the officer must disallow the ballot paper without opening the envelope in which it is contained; or

(ii) in the case of declaration voting papers of voters whose votes were taken before an officer, proceed with the process by—

(A) tearing off the extensions to the envelope flap on the envelope containing the ballot paper; and

(B) rearranging the envelopes that no longer bear their tear-off extensions so that the anonymity of the voter is maintained; and

(C) withdrawing the ballot paper from its envelope and placing it in a securely closed ballot box or other facility reserved for such ballot papers,

unless the officer 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 tear-off extensions removed from envelopes; and

(ii) all opened declaration envelopes relating to declaration ballot papers accepted for further scrutiny; and

(iii) 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 group; and
  - (b) there is 1 voting ticket registered for the purposes of the election in relation to that 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 group; and
  - (b) there are 2 voting tickets registered for the purposes of the election in relation to that 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

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- (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.

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- (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
  - (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.
- (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.
- (7) An election may be declared void on the ground of a breach of section 130ZA if the Court of Disputed Returns finds, 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.
- (5a) If the Electoral Commissioner is satisfied that a how-to-vote card has been distributed in contravention of this section, the Electoral Commissioner may request that the person who authorised the card do either or both of the following:
- (a) immediately cease distributing, or causing or permitting the distribution of, the how-to-vote card;
  - (b) publish a retraction in specified terms and a specified manner and form,
- (and in proceedings for an offence against this section arising from the distribution of the how-to-vote card, the authorised person's response to a request under this subsection will be taken into account in assessing any penalty to which the person may be liable).
- (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
  - (ab) by use of the word or a set of words containing 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 registered political party that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym; 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(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.

- (1a) A person must not publish or distribute an electoral advertisement or a how-to-vote card that identifies a candidate by use of the word "Independent" if the candidate is endorsed by a registered political party.

Maximum penalty: \$5 000.

- (2) Subsections (1) and (1a) apply to publication by any means (including radio or television).
- (3) Subsections (1) and (1a) do 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.

### 115A—Automated political calls

- (1) A person must not make, or cause or permit the making of, a telephone call consisting of a pre-recorded electoral advertisement unless, immediately after that part of the call consisting of the advertisement, the following statements are made:
- (a) the name and address (not being a post office box) of the person who is making, or who authorises the making of, the call;
  - (b) if the call is authorised for a registered political party or a candidate endorsed by a registered political party—the name of the political party;
  - (c) if the call is authorised for a relevant third party—the name of the relevant third party.

Maximum penalty:

- (a) if the offender is a natural person—\$5 000;
  - (b) if the offender is a body corporate—\$10 000.
- (2) 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 on which the call to which subsection (1) relates is made, intends to spend more than \$2 000 on electoral advertisements—
    - (i) if the call is made 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 on which the call to which subsection (1) relates is made.

## 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.

### **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; or
  - (c) identical to a card permitted to be distributed under section 112A.

Maximum penalty: \$2 500.

- (3) A person must not publicly advocate that an elector may exercise their vote in a manner inconsistent with the provisions of this Act relating to the manner in which an elector may exercise a vote.

Maximum penalty: \$2 500.

- (4) It is a defence to a charge of an offence against subsection (3) to prove that acts alleged to constitute the offence arose from an honest and reasonable misunderstanding or mistake on the part of the defendant.

### **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 13A—Election funding, expenditure and disclosure

### Division 1—Preliminary

#### 130A—Interpretation

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

*administrative expenditure* means expenditure relating to the administration and operation of a registered political party;

*agent* means a person appointed under Division 2;

*applicable expenditure cap*—see section 130Z;

*associated entity* means—

- (a) an entity that is controlled by 1 or more registered political parties; or
- (b) an entity that operates wholly, or to a significant extent, for the benefit of 1 or more registered political parties; or
- (c) an entity that is a financial member of a registered political party; or
- (d) an entity on whose behalf another person is a financial member of a registered political party; or
- (e) an entity that has voting rights in a registered political party; or
- (f) an entity on whose behalf another person has voting rights in a registered political party;

*auditor* means a person who—

- (a) has the qualifications or experience prescribed for the purposes of this definition; and
- (b) is not, and has not been within the period of 10 years immediately before acting as an auditor for the purposes of this Part, a member of a registered political party;

*capped expenditure period* means—

- (a) in the case of a general election—the period commencing at the start of the financial year in which polling day for the election is to occur and ending 30 days after that polling day; or
- (b) in the case of any other election—the period commencing on the day on which the vacancy giving rise to the election is announced in the House of Assembly by, or on behalf of, the Speaker and ending 30 days after polling day for that election;

*CPI* means the Consumer Price Index (All groups index for Adelaide);

*designated period* means—

- (a) in the case of a general election—the period commencing on 1 January in the year in which the election is to be held and ending 30 days after polling day for that election; or

- (b) in the case of any other election—the period commencing on the day on which the vacancy giving rise to the election is announced in the House of Assembly by, or on behalf of, the Speaker and ending 30 days after polling day for that election;

**disposition of property** means any conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, and includes—

- (a) the allotment of shares in a company; and
- (b) the creation of a trust in property; and
- (c) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property; and
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of any debt, contract or chose in action, or of any interest in property; and
- (e) the exercise by a person of a general power of appointment of property in favour of any other person; and
- (f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of any other person;

**election** means an election of members of the Legislative Council or an election of a member of the House of Assembly;

**entity** means—

- (a) an incorporated or unincorporated body; or
- (b) the trustee of a trust;

**financial controller**, in relation to an entity, means—

- (a) if the entity is a company—the secretary of the company; or
- (b) if the entity is the trustee of a trust—the trustee; or
- (c) in other cases—the person responsible for maintaining the financial records of the entity;

**financial member**, in relation to a registered political party, means a person—

- (a) who pays an annual subscription to the party; or
- (b) who is defined by the party's constitution, or treated by the party, as a financial member;

**gift** means any disposition of property made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration, but does not include—

- (a) an annual subscription or compulsory levy paid to a political party by a person in respect of the person's membership of the party; or
- (b) a payment under Division 4 or Division 5; or

(c) a disposition of a prescribed kind;

**group** means a group of 2 or more candidates nominated for election to the Legislative Council who have their names grouped together on ballot papers in accordance with section 58;

**GST** means the tax payable under the GST law;

**GST law** means—

- (a) *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth); and
- (b) the related legislation of the Commonwealth dealing with the imposition of a tax on the supply of goods, services and other things;

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

**person to whom Division 6 applies**—see section 130X;

**political expenditure** means expenditure incurred—

- (a) for the purposes of the public expression of views on a political party, a candidate in an election or a member of the House of Assembly or the Legislative Council by any means; or
- (b) for the purposes of the public expression of views on an issue in an election by any means; or
- (c) for the purposes of the production of any political material (not being material referred to in paragraph (a) or (b)) that is required under section 112, 115A or 116 to include the name and address of the author of the material or of the person who takes responsibility for the publication or authorisation of the material (as the case requires); or
- (d) for the purposes of the carrying out of an opinion poll, or other research, relating to an election or the voting intentions of electors; or
- (e) for any other prescribed purpose,

and includes expenditure of a prescribed kind, but does not include—

- (f) expenditure that is a GST payment; or
- (g) expenditure of an electorate allowance or another allowance, expense or benefit (as determined by the Remuneration Tribunal) under section 4(1)(c) of the *Parliamentary Remuneration Act 1990*; or
- (h) administrative expenditure; or
- (i) expenditure of an allowance or benefit of a kind contemplated under section 6A(1) of the *Parliamentary Remuneration Act 1990*; or
- (j) expenditure of a prescribed kind;

**property** includes money;

**registered industrial organisation** means an organisation registered under the *Fair Work Act 1994* or under a law of the Commonwealth or another State or a Territory concerning the registration of industrial organisations;

**relevant entity** means any of the following:

- (a) a registered political party;

- (b) an associated entity;
- (c) a third party;

***State campaign account***—see Division 3;

***third party*** means a person, other than—

- (a) a member of the House of Assembly or Legislative Council; or
- (b) the Crown (including a public sector agency (within the meaning of the *Public Sector Act 2009*)); or
- (c) a registered political party, group or candidate; or
- (d) a person engaged in a broadcasting service (within the meaning of the *Broadcasting Services Act 1992* of the Commonwealth) or a datacasting service; or
- (e) the publisher of a journal (including a journal published in electronic form on the Internet),

who—

- (f) incurs or intends to incur more than \$10 000 in political expenditure during the designated period in relation to an election; or
  - (g) incurred more than \$10 000 in political expenditure during the designated period in relation to the last preceding general election (other than where the last preceding general election was the first general election occurring after the commencement of section 4 of the *Electoral (Funding, Expenditure and Disclosure) Amendment Act 2013*).
- (1a) For the purposes of this Part, if the disclosure period for a return required to be furnished under this Part by a candidate or group has not commenced, a requirement in this Part that a return be furnished at a prescribed time during a designated period is not to be taken to require the furnishing of a return by the candidate or group at that prescribed time.
  - (2) For the purposes of this Part, the amount or value of a gift consisting of, or including, a disposition of property other than money will, if the regulations so provide, be determined in accordance with principles set out or referred to in the regulations.
  - (3) For the purposes of this Part—
    - (a) a body corporate and any other body corporate that is related to the first-mentioned body corporate is to be taken to be the same person; and
    - (b) the question whether a body corporate is related to another body corporate will be determined in the same manner as the question whether a corporation is related to another corporation is determined under the *Corporations Act 2001* of the Commonwealth.
  - (4) For the purposes of this Part, a reference to person includes a reference to an unincorporated association.
  - (5) For the purposes of this Part—
    - (a) a gift or loan made to a candidate who is a member of a group is made to the group (and not to the candidate) if it is made to the candidate for the benefit of all members of the group; and



- (b) a gift or loan made to a group all of whose members are endorsed as candidates by the same registered political party is to be treated as a gift or loan made to the party (and not to the group); and
  - (c) a gift or loan made to a candidate who is endorsed as a candidate by a registered political party and who is not a member of a group is to be treated as a gift or loan made to the party (and not to the candidate).
- (6) Subject to subsection (6a), for the purposes of this Part, political expenditure is taken to be incurred when the services for which the expenditure is incurred are actually provided or the goods for which the expenditure is incurred are actually delivered.
- (6a) Political expenditure on electoral matter in relation to a candidate or group for election that is incurred—
- (a) after polling day for the last preceding general election and before the commencement of the capped expenditure period for the election; and
  - (b) for the primary purpose of publication, use or display of that electoral matter during the capped expenditure period,
- will be taken to have been incurred during the capped expenditure period.
- (7) For the purposes of this Part, a campaign committee appointed or formed to assist the campaign of a candidate or group in an election is, if the candidate is endorsed as a candidate by a registered political party, or all members of the group are endorsed as candidates by the same registered political party, to be treated as a part of the party.
- (8) For the purposes of this Part, if a monetary amount is followed by the word (*indexed*), the amount is to be adjusted on 1 July of each financial year by multiplying the stated amount by a proportion obtained by dividing the CPI for the March quarter of the immediately preceding financial year by the CPI for the March quarter 2014 with the amount so adjusted being rounded up to—
- (a) in the case of an amount referred to in section 130P—the nearest whole cent; or
  - (b) in any other case—the nearest whole number.

### **130B—Objects of Part**

The objects of this Part are as follows:

- (a) to enhance public confidence in the electoral process by fairly and effectively regulating matters relating to electoral funding, expenditure and disclosure;
- (b) to promote integrity and accountability in the electoral process by providing for—
  - (i) public funding of elections; and
  - (ii) caps on political expenditure;
- (c) to ensure transparency in political donations;
- (d) to promote participation in the electoral process by any elector (including an elector of limited means).

### **130C—Application of Part**

A registered political party is only required under this Part to disclose donations and amounts received or applied for State electoral purposes.

## **Division 2—Agents**

### **130D—Interpretation**

In this Division—

*appointing person or body* means the registered political party, candidate, group, or third party that appoints a person to be its agent under this Division.

### **130E—Appointment of agents by parties, candidates and groups**

- (1) A registered political party must appoint a person to be the agent of the party for the purposes of this Part.
- (2) Subject to subsection (4), a candidate in an election (including a member of a group of candidates) may appoint a person to be the agent of the candidate, for the purposes of this Part, in relation to the election.
- (3) Subject to subsection (4), the members of a group of candidates in an election may appoint a person to be the agent of the group, for the purposes of this Part, in relation to the election.
- (4) However, if a registered political party has endorsed—
  - (a) a candidate; or
  - (b) all the members of a group of candidates,the agent of the party is the agent of the candidate or group (as the case requires), for the purposes of this Part, in relation to the election.
- (5) Subject to subsection (4), during any period during which there is no appointment in force under subsection (2) of an agent of a candidate, the candidate is to be taken to be his or her own agent for the purposes of this Part.
- (6) Subject to subsection (4), during any period during which there is no appointment in force under subsection (3) of an agent of a group, the candidate whose name is to appear first in the group on the ballot papers is to be taken to be the agent of the group for the purposes of this Part.

### **130F—Third parties may appoint agents**

- (1) A third party may appoint a person to be the agent of the third party for the purposes of this Part.
- (2) During any period during which there is no appointment in force of an agent of a third party—
  - (a) if the third party is a natural person, the third party; or
  - (b) in any other case—each member of the executive committee of the third party,

is taken to be the third party's own agent for the purposes of this Part (and, in the case referred to in paragraph (b) above, this Part applies to each such member as if the obligation rested on that member alone).

### **130G—Requisites for appointment**

- (1) An appointment of an agent under this Division has no effect unless—
  - (a) the person appointed is a natural person who has attained the age of 18 years; and
  - (b) written notice of the appointment is given to the Electoral Commissioner by the appointing person or body; and
  - (c) the name and address of the person appointed are set out in the notice; and
  - (d) the person appointed—
    - (i) has signed a form of consent to the appointment; and
    - (ii) has signed a declaration that he or she is eligible for appointment.
- (2) A consent or declaration under subsection (1) may be incorporated in, or written on the same paper as, a notice under that subsection.
- (3) If a person who is the agent of an appointing person or body is convicted of an offence against this Part or Part 20 of the *Commonwealth Electoral Act 1918* in relation to a particular State or Commonwealth election, the person is not eligible to be appointed or to hold office as an agent for the purposes of this Part for the purposes of any subsequent election.
- (4) An appointment (other than an appointment by a registered political party) is not effective in relation to anything required by this Part to be done—
  - (a) in respect of a return under this Part in relation to an election; or
  - (b) during a specified period after polling day for an election,if notice of the appointment was given to the Electoral Commissioner after the close of nominations for the election.

### **130H—Registration of agents**

- (1) The Electoral Commissioner must establish and maintain a register, to be known as the *Register of Agents* (the *Register*).
- (2) The Register must contain the name and address of every person appointed to be an agent for the purposes of this Part.
- (3) The appointment of an agent—
  - (a) takes effect on the entry of the name and address of the agent in the Register; and
  - (b) ceases to have effect if the name and address of the agent are removed from the Register.
- (4) The name and address of a person may not be removed from the Register unless—
  - (a) the person gives to the Electoral Commissioner written notice that he or she has resigned the appointment as agent; or

- (b) the appointing person or body gives to the Electoral Commissioner—
    - (i) written notice that the person has ceased to be its agent; and
    - (ii) in the case of an appointing person or body that is required under this Part to have an agent—also gives notice under this Part of the appointment of another person as its agent; or
  - (c) the person is convicted of an offence against this Part or Part 20 of the *Commonwealth Electoral Act 1918*.
- (5) If a person who is an agent dies, the appointing person or body must, within 28 days after the death of the person, give to the Electoral Commissioner—
- (a) written notice of the death; and
  - (b) notice under this Part of the appointment of another person as its agent.
- (6) If a person who is an agent of an appointing person or body that is required under this Part to have an agent is convicted of an offence against this Part or Part 20 of the *Commonwealth Electoral Act 1918*, the appointing person or body must give notice under this Part of a fresh appointment within 28 days after the conviction or, if an appeal against the conviction is instituted and the conviction is affirmed, within 28 days after the appeal is determined.
- (7) An entry in the Register is, for all purposes, conclusive evidence that the person described in the entry is the agent, for the purposes of this Part, of the appointing person or body named in the entry.

### **130I—Termination of appointment of agent**

- (1) A candidate, the members of a group or a third party may, by giving written notice to the Electoral Commissioner, revoke the appointment of a person as the agent of the candidate, group or third party as the case may be.
- (2) A notice under subsection (1) has no effect unless it is signed by the candidate, by each member of the group or the third party (as the case requires).
- (3) If the agent of a candidate, group or third party dies or resigns, the candidate, the member of the group whose name is to appear first in the group on the ballot papers or the third party (as the case requires) must, without delay, give to the Electoral Commissioner notice in writing of the death or resignation.

### **130J—Responsibility for action in case of political parties**

If—

- (a) this Part imposes an obligation on the agent of a registered political party; and
- (b) there is no agent of the party,

the obligation rests on each member of the executive committee of the party, and this Part applies to each such member as if the obligation rested on that member alone.

## **Division 3—State campaign accounts**

### **130K—Requirement to keep State campaign account**

- (1) The agent of a registered political party, third party, candidate or group must keep a separate account (a *State campaign account*) with an ADI for State electoral purposes.
- (2) Subsection (1) does not apply to a third party if the third party does not receive any amounts of a kind required to be paid into a State campaign account under this Act.

### **130L—Gifts to be paid into State campaign account**

An agent of a registered political party, third party, candidate or group must ensure each gift that is an amount of money received by or on behalf of the registered political party, third party, candidate or group (as the case may be) is paid into the State campaign account kept by the agent of the registered political party, third party, candidate or group, unless—

- (a) the gift is made or received in contravention of this Part; or
- (b) in relation to a gift received by or on behalf of a registered political party—the gift is not intended by the registered political party to be used for State electoral purposes; or
- (c) the gift is otherwise a gift that must not be paid into such an account in accordance with this Division.

### **130M—Payments into State campaign account**

- (1) The regulations may make provision in relation to amounts that the agent of a registered political party, candidate or group must, or must not, pay into the State campaign account kept by the agent.
- (1a) If a registered political party keeps an account with an ADI for federal electoral purposes, the agent of the registered political party must ensure that no amount is paid or transferred from that account into the State campaign account.
- (2) The agent of a third party must ensure the following are not paid into the third party's State campaign account:
  - (a) a gift that is not intended by the third party to be used for political expenditure;
  - (b) a gift that is made or received in contravention of this Part;
  - (c) any other amount of a kind prescribed by regulation.
- (3) A person does not commit an offence against this Part for a contravention of, or failure to comply with a provision of this section (or the regulations) if the person, on becoming aware that an amount of money was paid into the State campaign account in contravention of the relevant provision, takes all reasonable steps to immediately withdraw the amount from the account.

### **130N—State campaign account to be used for political expenditure**

An agent required to keep a State campaign account under this Division must ensure that the registered political party, third party, candidate or group on behalf of which the State campaign account is kept does not pay an amount of money for political expenditure unless the amount is paid from its State campaign account.

## **Division 4—Public funding of candidates and groups for elections**

### **130O—Interpretation**

In this section—

*eligible vote* means a first preference vote on a formal ballot paper in an election;

*total primary vote* means the total number of eligible votes cast in favour of all of the candidates in an election by electors for the relevant electoral district.

### **130P—General entitlement to funds**

- (1) Subject to this Division, the amount of election funding payable for each eligible vote given for—
  - (a) each candidate in a House of Assembly election or Legislative Council election endorsed by a registered political party at least 1 member of which—
    - (i) in the case of a general election—was a member of Parliament at the time of the dissolution of the Parliament in relation to the election; or
    - (ii) in any other case—is a member of Parliament; and
  - (b) each candidate in a House of Assembly election or Legislative Council election (other than a candidate of a kind referred to in paragraph (a)) who—
    - (i) in the case of a general election—was a member of Parliament at the time of the dissolution of the Parliament in relation to the election; or
    - (ii) in any other case—was a member of Parliament at the time of the event that resulted in the vacancy that gave rise to the election; and
  - (c) each group in a Legislative Council election endorsed by a registered political party at least 1 member of which—
    - (i) in the case of a general election—was a member of Parliament at the time of the dissolution of the Parliament in relation to the election; or
    - (ii) in any other case—is a member of Parliament,

is \$3.00 (indexed).
- (2) Subject to this Division, the amount of election funding payable for each eligible vote given for each candidate in a House of Assembly election or each candidate or group in a Legislative Council election (other than a candidate or group of a kind referred to in subsection (1)) is as follows:
  - (a) for each eligible vote given to the candidate or group that falls within the range of 0% to 10% of the total primary vote—\$3.50 (indexed);
  - (b) for each eligible vote given to the candidate or group that falls within the range of 10.01% to 100% of the total primary vote—\$3.00 (indexed).

### **130Q—Payment not to be made or to be reduced in certain circumstances**

- (1) A payment under this Division will not be made in respect of votes given in an election for a candidate unless—
  - (a) the total number of eligible votes cast in favour of the candidate is at least 4% of the total primary vote; or
  - (b) the candidate is elected.
- (2) A payment under this Division will not be made in respect of votes given in an election for a group unless—
  - (a) the total number of eligible votes cast in favour of the group is at least 4% of the total primary vote; or
  - (b) a member of the group is elected.
- (3) A payment under this Division will not be made in respect of votes given in an election for a candidate or group unless the agent of the candidate or group has lodged a certificate under section 130Y to receive funding in respect of the election.
- (4) If the agent of a person to whom Division 6 applies fails to ensure that the person does not incur political expenditure in excess of the person's applicable expenditure cap during the capped expenditure period in relation to an election—
  - (a) the amount payable under this Division to that agent is reduced by an amount equal to 20 times the excess amount; or
  - (b) if the excess amount is greater than the amount payable under this Division—a payment under this Division will not be made to the relevant agent.
- (5) If, in relation to a payment to be made under this Division to an agent, the Electoral Commissioner is not satisfied, based on an expenditure return under section 130ZQ furnished by the relevant agent, that—
  - (a) in the case of a payment to be made to the agent of a registered political party—the combined political expenditure of the party and candidates endorsed by the party; or
  - (b) in the case of a payment to be made to the agent of a candidate not endorsed by a registered political party or a group whose members are not endorsed by a registered political party—the political expenditure of the candidate or group (as the case requires),exceeds the amount that would, apart from this subsection, be payable under this Division to the relevant agent—
  - (c) in a case where there is no satisfactory evidence of political expenditure—a payment under this Division will not be made to the relevant agent; or
  - (d) in a case where there is satisfactory evidence of political expenditure but the total of that expenditure is less than the amount that would otherwise be payable under this Division to the relevant agent—the amount payable under this Division is reduced to an amount equal to the amount of that expenditure.

(6) In this section—

*excess amount* means the amount by which—

- (a) the political expenditure of the person; and
- (b) any political expenditure of a third party incurred under an agreement or arrangement with the person in contravention of section 130ZC,

exceed the applicable expenditure cap.

### **130R—Making of payments**

- (1) Subject to this Division, an amount payable under this Division will be paid by the Electoral Commissioner within a period, and in a manner, prescribed by the regulations.
- (2) If an amount is payable under this Division in respect of votes given in an election or elections for a candidate, the Electoral Commissioner must (subject to section 130S) pay the amount to the agent of the candidate.
- (3) If an amount is payable under this Division in respect of votes given in a Legislative Council election for a group, the Electoral Commissioner must (subject to section 130S) pay the amount to the agent of the group.
- (4) A notice may be lodged with the Electoral Commissioner for the purposes of this section requesting that, in the case of payments in respect of a group whose members were endorsed by 2 or more registered political parties, the payments be divided into such shares as agreed by the relevant agents and the shares paid to those agents in accordance with the agreement (or, in the absence of an agreement, in such shares as the Electoral Commissioner determines).
- (5) A notice under subsection (4)—
  - (a) must be signed by the agent of each of the parties specified in the notice; and
  - (b) can only be withdrawn by a notice lodged with the Electoral Commissioner and signed by the agent of each of those parties.
- (6) If a notice is lodged under subsection (4), payments under this section must be made in accordance with the notice for any election for which the polling day is—
  - (a) after the day on which the notice was lodged; and
  - (b) before the day (if any) on which the notice is withdrawn.
- (7) If a payment is made under this section and the recipient is not entitled to receive the whole or a part of the amount paid, that amount or that part of that amount may be recovered by the Crown as a debt due to the Crown by action against the person in a court of competent jurisdiction.

### **130S—Death of candidate**

- (1) If a candidate for whom eligible votes were given in an election dies, a payment under this Division in respect of the eligible votes given for the candidate may be made despite the death of the candidate.
- (2) If a candidate referred to in subsection (1) was not endorsed by a registered political party, any amount payable to the candidate may be paid to the legal personal representative of the candidate.



- (3) If a member of a group for whom eligible votes were given in a Legislative Council election dies, a payment under this Division in respect of the eligible votes given for the group may be made notwithstanding the death of the member and, if—
- (a) the group was not a group the members of which were endorsed by a registered political party or by registered political parties; and
  - (b) the candidate was the agent of the group for the purposes of this Part,
- the payment may be made to another member of the group as if the other member were the agent of the group for the purposes of this Part.

## **Division 5—Special assistance funding for political parties**

### **130T—Preliminary**

- (1) In this Division—
- half yearly entitlement*—see section 130U(2).
- (2) For the purposes of this Division, a person is taken to have been a member of the Parliament of South Australia between the dissolution of the Parliament of which the person was a member and the sitting of the next Parliament if the person—
- (a) was a member of the Parliament of South Australia at the time of the dissolution; and
  - (b) is a member of the next Parliament at the first sitting of that Parliament.
- (3) For the purposes of this Division—
- (a) 2 or more registered political parties cannot rely on the same person in relation to the entitlement to, and payment of, special assistance funding; and
  - (b) a person who is relied on by 2 or more registered 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.

### **130U—Entitlement to and claims for half yearly entitlement to special assistance funding**

- (1) Subject to this Division, a registered political party is to be paid its half yearly entitlement to special assistance funding if—
- (a) for all or part of the half yearly period, at least 1 member of the party is a member of the Parliament of South Australia; and
  - (b) the party—
    - (i) was a registered political party on polling day for the last preceding general election; and
    - (ii) continued to be a registered political party for all of the half yearly period; and
  - (c) the agent of the party submits a claim to the Electoral Commissioner, in accordance with subsection (3), setting out the amount of administrative expenditure incurred by the party during that period.

- (2) The amount to be paid to a registered political party under this Division for a half yearly period is the amount of administrative expenditure incurred by the party during that period up to a maximum of—
- (a) in the case of a party which has 5 or fewer members of Parliament (as at the last day of the relevant period)—\$7 000 (indexed) or a greater amount prescribed by regulation; or
  - (b) in the case of a party which has 6 or more members of Parliament (as at the last day of the relevant period)—\$12 000 (indexed) or a greater amount prescribed by regulation,
- (the *half yearly entitlement*).
- (3) A claim under subsection (1)(c) must—
- (a) be submitted within 30 days after the end of the half yearly period to which it relates; and
  - (b) be in a form determined by the Electoral Commissioner; and
  - (c) be in writing and signed by the agent.

***130UA—Entitlement to and claim for one-off payment of special assistance funding***

- (1) *Subject to this Division, a registered political party is entitled to a one-off payment of special assistance funding if—*
- (a) *the party is entitled to special assistance funding under section 130U and has received a half yearly entitlement payment; and*
  - (b) *the agent of the party submits a claim to the Electoral Commissioner, in accordance with subsection (3), setting out the amount of prescribed administrative expenditure incurred by the party.*
- (2) *The amount to be paid to a registered political party under subsection (1) is the amount of prescribed administrative expenditure up to a maximum of—*
- (a) *in the case of a party which has 5 or fewer members of Parliament (as at the date of the claim)—\$56 000; or*
  - (b) *in the case of a party which has 6 or more members of Parliament (as at the date of the claim)—\$96 000.*
- (3) *A claim under subsection (1)(b) must—*
- (a) *be submitted by 31 July 2017; and*
  - (b) *be in a form determined by the Electoral Commissioner; and*
  - (c) *be in writing and signed by the agent.*
- (4) *To avoid doubt, a registered political party that has received a one-off payment of special assistance funding under this Division is not entitled to any further such payment.*
- (5) *This section expires on 31 August 2017.*

(6) *In this section—*

*prescribed administrative expenditure means administrative expenditure incurred by a registered political party for the purpose of complying with this Part that is in excess of the administrative expenditure incurred by the party in relation to which a payment of a half yearly entitlement to special assistance funding has been paid.*

*Note—*

*Section 130UA has expired.*

### **130V—Making of payments**

- (1) The Electoral Commissioner must, within 28 days after receipt of a claim under this Division from the agent of a registered political party, pay to the agent the entitlement of the party.
- (2) A payment under this section may be made electronically.

### **130W—Special assistance funding not to be used for political expenditure**

If an amount is paid to a registered political party for special assistance funding under this Division, the agent of the party must ensure that no part of the amount—

- (a) is deposited in a State campaign account kept under this Part; or
- (b) is used for political expenditure in relation to an election (whether held under this Act or any other Act or law relating to elections).

## **Division 6—Limitations on political expenditure**

### **130X—Interpretation**

(1) In this Division—

*person to whom this Division applies means—*

- (a) a registered political party; or
- (b) a candidate; or
- (c) a group,

that has lodged a certificate under section 130Y.

(2) If—

- (a) 2 or more registered political parties are associated in respect of an election; or
- (b) a registered political party and a candidate not endorsed by a registered political party are associated in respect of an election,

the regulations may prescribe modifications to this Division so that the applicable expenditure caps will be shared between the associated parties and candidates.

(3) For the purposes of subsection (2)—

- (a) registered political parties are *associated* in respect of an election if—
  - (i) they endorse the same candidate for the election; or

- (ii) they endorse candidates included in the same group in a Legislative Council election; or
  - (iii) they form a recognised coalition and endorse different candidates for the election or endorse candidates in different groups in a Legislative Council election; and
- (b) a registered political party and a candidate not endorsed by a registered political party are *associated* in respect of an election if they form, or have formed, a recognised coalition, or if the candidate is, or has been, a member of Cabinet in a government formed by members of the party.

### 130Y—Application of Division

- (1) This Division applies to a registered political party, candidate or group whose agent lodges a certificate, in relation to an election, certifying that the relevant party, candidate or group is—
- (a) to be subject to the limitations on political expenditure set out in this Division for the election; and
  - (b) —
    - (i) in the case of a party—to receive election funding under Division 4 for the election on behalf of candidates or groups of candidates endorsed by the party for that election; or
    - (ii) in any other case—to receive election funding under Division 4 for the election.
- (2) A certificate under subsection (1) must be lodged with the Electoral Commissioner by the agent of the relevant party, candidate or group, in accordance with any requirements of the Electoral Commissioner—
- (a) in the case of a certificate lodged by the agent of—
    - (i) a candidate who—
      - (A) is not endorsed by a party; and
      - (B) is a member of Parliament; or
    - (ii) a group—
      - (A) that is not endorsed by a party; and
      - (B) a member of which is a member of Parliament,at least 24 months before polling day for the election; or
  - (b) in the case of a certificate lodged by the agent of a candidate or group not endorsed by a party (other than a candidate or group referred to in paragraph (a))—on or before 5 pm on the day on which—
    - (i) the capped expenditure period commences in relation to the candidate or group for the election; or
    - (ii) the disclosure period for a return required to be furnished under this Part by the candidate or group in relation to the election commences, whichever period commences later; or

- (c) in the case of a certificate lodged by the agent of a registered political party—
  - (i) in the case of a general election—
    - (A) in the case of a party registered 24 months or less before polling day for the election—within 1 month after registration as a registered political party; or
    - (B) in any other case—at least 24 months before polling day for the election; or
  - (ii) in the case of any other election—on or before 5 pm on the day on which the capped expenditure period commences in relation to the party for the election.
- (3) The agent of a registered political party may lodge a certificate under this section in relation to candidates or groups of candidates that are to be endorsed by the party in a general election, even though the identity of the candidates or groups are not determined at the time of lodgement.
- (4) A certificate lodged under this section cannot be withdrawn.
- (5) If, after a certificate has been lodged by the agent of a party in accordance with this section, a candidate who—
  - (a) is a member of Parliament; or
  - (b) is a member of a group a member of which is a member of Parliament,ceases to be endorsed by the party in relation to the relevant election, the agent of the candidate will be taken, for the purposes of this Part, to have lodged a certificate in accordance with this section at the time specified in subsection (2)(a) unless the candidate, within 48 hours after ceasing to be so endorsed notifies the Electoral Commissioner (in a manner determined by the Electoral Commissioner) that he or she does not wish to be taken to have lodged a certificate in accordance with this section (in which case the agent of the candidate may not lodge a certificate in relation to the relevant election).

### **130Z—Expenditure caps**

- (1) The *applicable expenditure cap* on political expenditure of a person to whom this Division applies is as follows:
  - (a) for a registered political party that endorses candidates for election in the Legislative Council district only—the cap is \$500 000 (indexed);
  - (b) for a registered political party that endorses candidates for election in 1 or more House of Assembly districts—the cap is—
    - (i) \$75 000 (indexed) multiplied by the number of electoral districts in which the party endorses a candidate (as at the hour of nomination) less the sum of the amounts allocated to candidates in accordance with subsection (2) (as at the end of the capped expenditure period in relation to the party for the election); plus

- (ii) if the party also endorses candidates for election in the Legislative Council district, \$100 000 (indexed) multiplied by the number of candidates endorsed (as at the end of the capped expenditure period in relation to the party for the election but only up to a maximum of 5);
  - (c) for a candidate for election in a House of Assembly district who is endorsed by a registered political party—the cap is an amount allocated to the candidate in accordance with subsection (2);
  - (d) for a candidate for election in a House of Assembly district not endorsed by a registered political party—the cap is \$100 000 (indexed);
  - (e) for a group of candidates in a Legislative Council election whose members are not endorsed by a registered political party—the cap is \$500 000 (indexed);
  - (f) for a candidate in a Legislative Council election not endorsed by a registered political party—the cap is \$125 000 (indexed).
- (2) For the purposes of subsection (1)(c), a registered political party must allocate an amount to each candidate for election in a House of Assembly district endorsed by the party, being—
  - (a) the amount agreed between the candidate and the agent of the party (being not more than \$100 000); or
  - (b) if no amount is so agreed—\$40 000.
- (2a) For the purpose of subsection (2)(a), the amount agreed between the candidate and the agent of the party may vary at different times, provided that the candidate and agent may not vary the amount agreed after notice of the agreement has been given to the Electoral Commissioner under subsection (3).
- (3) The agent of a registered political party who agrees to an amount under subsection (2)(a) must ensure that written notice of the agreement, specifying the amount agreed, is given to the Electoral Commissioner at least 8 days before polling day for the election.
- (3a) The Electoral Commissioner must not publish an agreement given to the Electoral Commissioner under subsection (3) until after the end of the capped expenditure period for the election to which the agreement relates.
- (4) For the purposes of this Part, a candidate for election to the Legislative Council who is endorsed by a registered political party does not have an applicable expenditure cap but political expenditure incurred by the candidate will be taken to be political expenditure incurred by the registered political party.

**130ZA—Prohibition on political expenditure in excess of expenditure cap during capped expenditure period**

The agent of a person to whom this Division applies must ensure that the person does not incur political expenditure in excess of the applicable expenditure cap during the capped expenditure period in relation to an election.

### **130ZB—Regulation of political expenditure by parties and candidates endorsed by parties**

- (1) The agent of a person to whom this Division applies that is a registered political party must ensure that the party does not incur political expenditure for an election that relates to the election of a candidate endorsed by the party in an electoral district such that the applicable expenditure cap for the candidate is exceeded.
- (2) The agent of a person to whom this Division applies who is a candidate endorsed by a registered political party must ensure that the political expenditure of the candidate for an election only relates to the election of the candidate to the relevant electoral district.
- (3) For the purposes of this section, political expenditure *relates to the election of a candidate* in an electoral district if the expenditure relates to an electoral district in a House of Assembly election and is for electoral matter that—
  - (a) expressly mentions the name or displays the image of a candidate seeking to be elected in the district or expressly mentions the name of the district; and
  - (b) is communicated to electors in the district; and
  - (c) is not mainly communicated to electors outside the district.

### **130ZC—Prohibition on arrangements to avoid applicable expenditure cap**

If a person to whom this Division applies enters into an agreement or arrangement with a third party such that the third party will incur political expenditure in relation to an election during the capped expenditure period for the purpose of the person to whom this Division applies avoiding its applicable expenditure cap for the election, the person to whom this Division applies is guilty of an offence.

Maximum penalty: \$25 000.

## **Division 7—Disclosure of donations**

### **130ZD—Interpretation**

In this Division—

*campaign donations return* means a return under section 130ZF.

### **130ZE—Division not to apply to gifts returned within 6 weeks**

- (1) Subject to subsection (2), this Division does not apply to a gift that is returned within 6 weeks after its receipt.
- (2) If the gift is returned within 6 weeks after its receipt, any return under this Division that includes the amount or value of the gift must also include a statement to the effect that the gift was returned.

### **130ZF—Returns by certain candidates and groups**

- (1) The agent of each person (including a member of a group) who is a candidate in an election must, at the prescribed times, furnish to the Electoral Commissioner a campaign donations return for that candidate, in a form approved by the Electoral Commissioner.

- (2) The agent of each group must, at the prescribed times, furnish to the Electoral Commissioner a campaign donations return for that group, in a form approved by the Electoral Commissioner.
- (3) A campaign donations return for a candidate or group of candidates in an election must set out the details prescribed by the regulations in relation to gifts and loans received during the disclosure period.
- (4) A campaign donations return under this section need not set out any details of a gift or loan if—
  - (a) in all cases—the amount or value of the gift or loan is \$5 000 (indexed) or less; or
  - (b) in the case of a gift or loan made to a candidate (including a member of a group)—the gift or loan was made in a private capacity to the candidate for his or her personal use and the candidate has not used, and will not use, the gift or loan solely or substantially for a purpose related to an election.
- (5) For the purposes of this section—
  - (a) the ***disclosure period***, in relation to a campaign donations return, is the period commencing—
    - (i) in relation to a new candidate in an election (other than a candidate referred to in subparagraph (ii))—on the day on which the person announced that he or she would be a candidate in the election or on the day on which the person was nominated as a candidate, whichever was the earlier; or
    - (ii) in relation to a new candidate in an election who was, when he or she became a candidate in the election, a member of Parliament chosen by an assembly of members of both Houses of Parliament under the *Constitution Act 1934* to fill a casual vacancy—on the day on which the person was so chosen to be a member of Parliament; or
    - (iii) in relation to a candidate in an election who is not a new candidate—at the end of 30 days after polling day for the last preceding election in which the person was a candidate; or
    - (iv) in relation to a group of candidates in an election—on the day on which the members of the group applied under section 58 to have their names grouped together on the ballot papers for the election, and ending 30 days after polling day for the election; and
  - (b) a candidate is a ***new candidate***, in an election if the candidate was not a candidate in an earlier election the polling day for which was—
    - (i) in the case of a candidate for a House of Assembly election—within 5 years before polling day for the election; or
    - (ii) in the case of a candidate for a Legislative Council election—within 9 years before polling day for the election; and
  - (c) the ***prescribed times*** for furnishing a campaign donations return are as follows:



- (i) within 30 days of the end of the period commencing from the start of the disclosure period for the election until the start of the designated period for the election;
  - (ii) within 5 days of the end of the period commencing from the start of the designated period for the election until 30 days after the start of that designated period;
  - (iii) within 5 days of the end of each period of 7 days from the end of the period referred to in subparagraph (ii) until 30 days after polling day for the election;
  - (iv) if the number of days from the end of the last 7 day period referred to in subparagraph (iii) until the day falling 30 days after polling day for the election is less than 7 days—within 5 days of the end of the designated period for the election; and
- (d) 2 or more gifts with an amount or value of more than \$200 (excluding private gifts) or 2 or more loans of more than \$1 000 (excluding private loans) made by the same person to a candidate or group during the disclosure period are to be treated as 1 gift or loan (as the case requires).
- (5a) Despite section 130ZZ, if no details are required to be included in a return required to be furnished under this section by the agent of a candidate or group of candidates endorsed by a registered political party, the return need not be furnished to the Electoral Commissioner as required by this section.

### **130ZG—Gifts, loans to candidates etc**

- (1) A person must provide a return in accordance with this section if—
- (a) the person makes a gift or gifts, or a loan or loans, during the disclosure period in relation to an election, to any candidate in the election or a member of a group; and
  - (b) the total amount or value of the gift or gifts, or the loan or loans, is more than \$5 000 (indexed); and
  - (c) at the time the person makes the gift or gifts, or loan or loans, the person is not—
    - (i) a registered political party; or
    - (ii) an associated entity; or
    - (iii) a candidate in an election; or
    - (iv) a member of a group.
- (2) A person must provide a return in accordance with this section if—
- (a) the person makes a gift or gifts, or a loan or loans, during the disclosure period in relation to an election, to a person or body (whether incorporated or not) specified by the Electoral Commissioner by notice in the Gazette; and
  - (b) the total amount or value of the gift or gifts, or loan or loans, is more than \$5 000 (indexed); and
  - (c) at the time the person makes the gift or gifts, or loan or loans, the person is not—

- (i) a registered political party; or
  - (ii) an associated entity; or
  - (iii) a candidate in an election; or
  - (iv) a member of a group.
- (3) The person must provide to the Electoral Commissioner a return setting out the required details of—
  - (a) all gifts and loans covered by subsections (1) and (2) made during the disclosure period; and
  - (b) all gifts and loans of more than \$5 000 (indexed), received by the person at any time, that the person used during the period (either wholly or partly)—
    - (i) to enable the person to make the gifts or loans mentioned in paragraph (a); or
    - (ii) to reimburse the person for making such gifts or loans.
- (4) A return must be provided to the Electoral Commissioner, in a form approved by the Electoral Commissioner—
  - (a) if the gift or loan is made during the period commencing at the start of the disclosure period and ending at the start of the designated period for the relevant election—within 30 days of the start of the designated period for the relevant election; or
  - (b) if the gift or loan is made during the designated period for the relevant election—at the end of the designated period.
- (5) For the purposes of this section, the required details of a gift or loan are its amount or value, the date on which it was made and any other details prescribed by the regulations.
- (6) For the purposes of this section, the *disclosure period*, in relation to an election, is the period that commenced at the end of 30 days after polling day for the last general election preceding the election and that ended at the end of 30 days after polling day for the election.
- (7) If the agent of a candidate, group or specified person or body knows that the candidate, group or specified person or body (as the case may be) has received a gift or loan requiring a return to be furnished under this section, the agent must inform the person who gave the gift or loan of the requirement that the person furnish a return in relation to the gift or loan under this Part.

### **130ZH—Gifts to relevant entities**

- (1) If a person makes gifts with amounts or values totalling more than \$5 000 (indexed) to the same relevant entity in a financial year, the person must furnish a return to the Electoral Commissioner in accordance with this section.
- (2) If a person makes a gift to any person or body with the intention of benefiting a particular relevant entity, the person is taken for the purposes of subsection (1) to have made that gift directly to that relevant entity.

- (3) For each gift, the return must set out the following:
  - (a) the amount or value of the gift;
  - (b) the date on which it was made;
  - (c) the name and address of the relevant entity.
- (4) The return must also set out the details prescribed by the regulations in relation to all gifts of more than \$5 000 (indexed), received by the person at any time, that the person used (either wholly or partly)—
  - (a) to enable the person to make the gifts to which the return relates; or
  - (b) to reimburse the person for making such gifts.
- (5) A return must be in a form approved by the Electoral Commissioner and furnished at the prescribed times.
- (6) This section does not apply to gifts made by any of the following:
  - (a) a relevant entity;
  - (b) a candidate in an election;
  - (c) a member of a group.
- (7) For the purposes of this section—
  - (b) the *prescribed times* for furnishing a return are as follows:
    - (i) in relation to a gift made between the period commencing 30 days after polling day in a general election until the start of the designated period for the next general election—
      - (A) if the gift was made after 1 January in a year—within 30 days of 1 July in that year; or
      - (B) if the gift was made after 1 July in a year—within 30 days of 1 January in the next year;
    - (ii) in relation to a gift made during the designated period for the relevant election—at the end of the designated period.
- (8) If the agent of a relevant entity knows that the entity has received a gift requiring a return to be furnished under this section, the agent must inform the person who gave the gift of the requirement that the person furnish a return in relation to the gift under this Part.

### **130ZI—Special reporting of large gifts**

- (1) If a registered political party receives a gift the amount or value of which is more than \$25 000, the agent of the party must, within 7 days of receiving the gift, furnish a return to the Electoral Commissioner, in a form determined by the Electoral Commissioner, setting out the following:
  - (a) the amount or value of the gift;
  - (b) the date on which it was made;
  - (c) the name and address of the relevant entity;
  - (d) other details relating to the gift prescribed by the regulations.

- (2) If the agent of a registered political party knows that the party has received a gift requiring a return to be furnished under this section, the agent must inform the person who gave the gift of the requirement that the person furnish a return in relation to the gift under this Part.

### **130ZJ—Certain gifts not to be received**

- (1) It is unlawful for—

- (a) a relevant entity; or
- (b) a person acting on behalf of a relevant entity,

to receive a gift made to or for the benefit of the relevant entity by another person, being a gift the amount or value of which is at least \$200 or a greater amount prescribed by regulation, unless—

- (c) the name and address of the person making the gift are known to the person receiving the gift; or
- (d) at the time when the gift is made—
  - (i) the person making the gift gives to the person receiving the gift his or her name and address; and
  - (ii) the person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.

- (2) It is unlawful for—

- (a) a candidate; or
- (b) a member of a group; or
- (c) a person acting on behalf of a candidate or group,

to receive a gift made to or for the benefit of the candidate or the group, as the case may be, being a gift the amount or value of which is at least \$200 or a greater amount prescribed by regulation, unless—

- (d) the name and address of the person making the gift are known to the person receiving the gift; or
- (e) at the time when the gift is made—
  - (i) the person making the gift gives to the person receiving the gift his or her name and address; and
  - (ii) the person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.

- (3) A reference in subsection (1) or (2) to the name and address of a person making a gift is—

- (a) in the case of a gift made on behalf of the members of an incorporated or unincorporated association—a reference to—
  - (i) the name of the association; and

- (ii) the names and addresses of the members of the executive committee (however described) of the association; and
  - (b) in the case of a gift purportedly made out of a trust fund or out of the funds of a foundation—a reference to—
    - (i) the names and addresses of the trustees of the fund or of the funds of the foundation; and
    - (ii) the title or other description of the trust fund or the name of the foundation, as the case requires; and
  - (c) in the case of a gift made by or on behalf of a body corporate—a reference to—
    - (i) the name of the body corporate; and
    - (ii) the names and addresses of the members of the board of the body corporate; and
    - (iii) the name of any parent, subsidiary or related body corporate of the body corporate; and
  - (d) in any other case—the name and address of the person or organisation.
- (4) For the purposes of subsection (2), a person who is a candidate in an election is taken to remain a candidate for 30 days after the polling day for the election.
- (5) For the purposes of subsection (2), persons who constituted a group in an election are taken to continue to constitute the same group for 30 days after the polling day for the election.
- (6) If a relevant entity or other person receives a gift that, by virtue of this section, it is unlawful for the relevant entity or person to receive, an amount equal to the amount or value of the gift is payable to the Crown (and may be recovered by the Crown as a debt by action, in a court of competent jurisdiction) by the relevant entity or person, or, in the case of a relevant entity that is an unincorporated body, each member of the executive committee (who are, for the purposes of this subsection, jointly and severally liable for the debt).

### **130ZK—Certain loans not to be received**

- (1) It is unlawful for a relevant entity or a person acting on behalf of a relevant entity to receive a loan of \$1000 or more from a person other than a financial institution unless the loan is made in accordance with subsection (3).
- (2) It is unlawful for a candidate or a member of a group or a person acting on behalf of a candidate or group to receive a loan of \$1 000 or more from a person other than a financial institution unless the loan is made in accordance with subsection (3).
- (3) The receiver of the loan must keep a record of the following:
  - (a) the terms and conditions of the loan;
  - (b) if the loan was received from a registered industrial organisation other than a financial institution—
    - (i) the name of the organisation; and

- (ii) the names and addresses of the members of the executive committee (however described) of the organisation;
  - (c) if the loan was received from an incorporated or unincorporated association—
    - (i) the name of the organisation or association; and
    - (ii) the names and addresses of the members of the executive committee (however described) of the association or organisation;
  - (d) if the loan was paid out of a trust fund or out of the funds of a foundation—
    - (i) the names and addresses of the trustees of the fund or of the foundation; and
    - (ii) the title or other description of the trust fund, or the name of the foundation, as the case requires;
  - (e) if the loan was received from a body corporate—
    - (i) the name of the body corporate; and
    - (ii) the names and addresses of the members of the board of the body corporate; and
    - (iii) the name of any parent, subsidiary or related body corporate of the body corporate;
  - (f) in any other case—the name and address of the person or organisation.
- (4) For the purpose of subsection (2), a person who is a candidate in an election is taken to remain a candidate for 30 days after the polling day in the election.
- (5) For the purpose of subsection (2), persons who constituted a group in an election are taken to continue to constitute the same group for 30 days after the polling day in the election.
- (6) If a relevant entity or other person receives a loan that, by virtue of this section, it is unlawful for the registered political party or person to receive, an amount equal to the amount or value of the loan is payable to the Crown (and may be recovered by the Crown as a debt by action, in a court of competent jurisdiction) by the relevant entity or person, or, in the case of a relevant entity that is an unincorporated body, each member of the executive committee (who are, for the purposes of this subsection, jointly and severally liable for the debt).
- (7) For the purposes of this section, if credit is provided on a credit card in respect of card transactions, the credit is to be treated as a separate loan for each transaction.
- (8) In this section—
- credit card** means—
- (a) any article of a kind commonly known as a credit card; or
  - (b) any similar article intended for use in obtaining cash, goods or services on credit,

and includes any article of a kind that persons carrying on business commonly issue to their customers or prospective customers for use in obtaining goods or services from those persons on credit;

*financial institution* means a body which carries on a business that consists of, or includes, the provision of financial services or financial products and which is—

- (a) an ADI; or
- (b) a body prescribed by the regulations for the purposes of this paragraph;

*loan* means any of the following:

- (a) an advance of money;
- (b) a provision of credit or any other form of financial accommodation;
- (c) a payment of an amount for, on account of, on behalf of or at the request of, a person, if there is an express or implied obligation to repay the amount;
- (d) a transaction (whatever its terms or form) which in substance effects a loan of money.

### **130ZL—Limitation on entry fees for certain events**

- (1) It is unlawful for a registered political party to receive an amount of money of more than \$500 for entry to a relevant event.
- (2) In this section—

*relevant event* means an event that—

- (a) is intended to raise money for the benefit of a registered political party; and
- (b) is advertised or promoted as an event at which, or in connection with which, attendees will be given access to—
  - (i) a Minister of the Crown or a Member of the Parliament of South Australia; or
  - (ii) a member of staff of a Minister of the Crown or a Member of the Parliament of South Australia.

## **Division 8—Returns**

### **130ZM—Interpretation**

In this Division—

*amount* includes the value of a gift, loan or bequest.

### **130ZN—Returns by registered political parties**

- (1) Subject to this Division, the agent of each registered political party must, at the prescribed times, furnish to the Electoral Commissioner a *political party return*, in respect of each prescribed period, in a form approved by the Electoral Commissioner.
- (2) A political party return must set out—
  - (a) the total amount received by, or on behalf of, the party during each prescribed period; and
  - (b) the particulars prescribed by the regulations in relation to each amount of more than \$5 000 (indexed) received by, or on behalf of, the party from a person or organisation during each prescribed period; and

- (c) the total outstanding amount, as at the end of each prescribed period, of all debts incurred by, or on behalf of, the party; and
  - (d) if the sum of all outstanding debts incurred by, or on behalf of, the party to a person or organisation during a prescribed period is more than \$5 000 (indexed), the particulars prescribed by the regulations in relation to each such sum.
- (3) For the purposes of this section—
- (a) each of the following periods is a ***prescribed period*** in respect of a political party return:
    - (i) if no previous political party return has been furnished to the Electoral Commissioner under this Part—the period commencing on the day on which this Part first applied to the registered political party until 30 June or 31 December (whichever is the earlier);
    - (ii) from 30 days after polling day in a general election until the start of the designated period for the next general election—
      - (A) each period from 1 January to 30 June; and
      - (B) each period from 1 July to 31 December;
    - (iii) from the start of the designated period for the relevant general election until the expiration of 30 days after the relevant polling day—
      - (A) the period commencing from the start of the designated period until 30 days after the start of the designated period; and
      - (B) each period of 7 days from the end of the period referred to in subparagraph (A); and
      - (C) if the number of days from the end of the last period referred to in subparagraph (B) until the expiration of 30 days after the relevant polling day is less than 7 days—the period commencing from the end of the last prescribed period referred to in subparagraph (B) until the day falling 30 days after the relevant polling day; and
  - (b) the ***prescribed times*** for furnishing a political party return in respect of a prescribed period are as follows:
    - (i) for the prescribed periods referred to in subsection (3)(a)(i) and (ii)—within 30 days of the end of each prescribed period;
    - (ii) for the prescribed periods referred to in subsection (3)(a)(iii)—within 5 days of the end of each prescribed period.
- (4) For the purposes of this section, 2 or more amounts of more than \$200 received by a registered political party from the same person during a financial year are to be treated as 1 amount received by the political party.



### 130ZO—Returns by associated entities

- (1) The financial controller of an associated entity must, at the prescribed times, furnish to the Electoral Commissioner an *associated entity return*, in respect of each prescribed period, in a form approved by the Electoral Commissioner, setting out—
  - (a) the total amount received by, or on behalf of, the entity during each prescribed period; and
  - (b) the particulars prescribed by the regulations in relation to each amount of more than \$5 000 (indexed) received by, or on behalf of, the entity from a person or organisation during each prescribed period; and
  - (c) the total outstanding amount, as at the end of each prescribed period, of all debts incurred by, or on behalf of, the entity; and
  - (d) if the sum of all outstanding debts incurred by, or on behalf of, the entity to a person or organisation during a prescribed period is more than \$5 000 (indexed), the particulars prescribed by the regulations in relation to each such sum.
- (2) Amounts received or paid at a time when the entity was not an associated entity are not to be counted for the purposes of subsection (1).
- (3) If an entity is not an associated entity for an entire period for which a return is required to be furnished under subsection (1), the entity is not required to furnish a return for that period.
- (4) If any amount required to be set out under subsection (1)(c) or (d)—
  - (a) was paid to or for the benefit of one or more registered political parties; and
  - (b) was paid out of funds generated from capital of the associated entity,the associated entity return must also set out the following details about each person who contributed to that capital after the commencement of this section:
  - (c) the name and address of the person;
  - (d) the total amount of the person's contributions to that capital, up to the end of the period to which the associated entity return relates.
- (5) Subsection (4) does not apply to contributions that have been set out in a previous associated entity return under this section.
- (6) For the purposes of this section—
  - (a) each of the following periods is a *prescribed period* in respect of an associated entity return:
    - (i) from 30 days after polling day in a general election until the start of the designated period for the next general election—
      - (A) each period from 1 January to 30 June; and
      - (B) each period from 1 July to 31 December;
    - (ii) from the start of the designated period for the relevant general election until the expiration of 30 days after the relevant polling day—

- (A) the period commencing at the start of the designated period until 30 days after the start of the designated period; and
  - (B) each period of 7 days from the end of the period referred to in subparagraph (A); and
  - (C) if the number of days from the end of the last period referred to in subparagraph (B) until the expiration of 30 days after the relevant polling day is less than 7 days—the period commencing from the end of the last prescribed period referred to in subparagraph (B) until the day falling 30 days after the relevant polling day; and
- (b) the *prescribed times* for furnishing an associated entity return in respect of a prescribed period are as follows:
- (i) for the prescribed periods referred to in subsection (6)(a)(i)—within 30 days of the end of each prescribed period;
  - (ii) for the prescribed periods referred to in subsection (6)(a)(ii)—within 5 days of the end of each prescribed period.
- (7) For the purposes of this section, 2 or more amounts of more than \$200 received by an associated entity from the same person during a financial year are to be treated as 1 amount received by the entity.

### 130ZP—Returns by third parties

- (1) The agent of a third party must, at the prescribed times, furnish to the Electoral Commissioner a *third party return*, in respect of each prescribed period, in a form approved by the Electoral Commissioner, setting out—
- (a) the total amount received by, or on behalf of, the third party during each prescribed period; and
  - (b) the particulars prescribed by the regulations in relation to each amount of more than \$5 000 (indexed) received by, or on behalf of, the third party from a person or organisation during each prescribed period; and
  - (c) the total outstanding amount, as at the end of each prescribed period, of all debts incurred by, or on behalf of, the third party; and
  - (d) if the sum of all outstanding debts incurred by, or on behalf of, the third party to a person or organisation during a prescribed period is more than \$5 000 (indexed), the particulars prescribed by the regulations in relation to each such sum.
- (2) For the purposes of this section—
- (a) each of the following periods is a *prescribed period* in respect of a third party return:
    - (i) if no previous third party return has been furnished to the Electoral Commissioner under this Part—the period commencing on the day on which this Part first applied to the third party until 30 June or 31 December (whichever is the earlier);
    - (ii) from 30 days after polling day in a general election until the start of the designated period for the next general election—

- (A) each period from 1 January to 30 June; and
- (B) each period from 1 July to 31 December;
- (iii) from the start of the designated period for the relevant general election until the expiration of 30 days after the relevant polling day—
  - (A) the period commencing at the start of the designated period until 30 days after the start of the designated period; and
  - (B) each period of 7 days from the end of the period referred to in subparagraph (A); and
  - (C) if the number of days from the end of the last period referred to in subparagraph (B) until the expiration of 30 days after the relevant polling day is less than 7 days—the period commencing from the end of the last prescribed period referred to in subparagraph (B) until the day falling 30 days after the relevant polling day; and
- (b) the *prescribed times* for furnishing a third party return in respect of a prescribed period are as follows:
  - (i) for the prescribed periods referred to in subsection (2)(a)(i) and (ii)—within 30 days of the end of each prescribed period; and
  - (ii) for the prescribed periods referred to in subsection (2)(a)(iii)—within 5 days of the end of each prescribed period.
- (3) For the purposes of this section, 2 or more amounts of more than \$200 received by a third party from the same person during a financial year are to be treated as 1 amount received by the third party.
- (4) A third party is not required to furnish a return under this section in respect of a prescribed period if the third party furnished an associated entity return under section 130ZO in respect of the prescribed period.

### **130ZQ—Returns relating to political expenditure during capped expenditure period**

- (1) This section applies to a registered political party, candidate, group or third party that, during the capped expenditure period for an election, incurs political expenditure of an amount of more than \$5 000 (indexed).
- (2) The agent of a person or body to which this section applies must furnish to the Electoral Commissioner an *expenditure return* setting out the details of political expenditure for the election incurred by the person or body.
- (3) The agent of a third party to which this section applies must set out in the return whether any political expenditure was incurred under an agreement or arrangement with a person to whom Division 6 applies, and, if so, details of the expenditure.
- (4) The expenditure return must—
  - (a) be provided within 60 days after polling day for the election; and
  - (b) be in a form approved by the Electoral Commissioner.

### **130ZR—Annual returns relating to political expenditure**

- (1) A person must provide a return for a financial year in accordance with this section if—
  - (a) the person incurred political expenditure during the year, by or with his or her own authority; and
  - (b) the amount of the expenditure was—
    - (i) in the case of a third party—more than \$10 000 (indexed); or
    - (ii) in any other case—more than \$5 000 (indexed); and
  - (c) at the time that the person gave the authority the person was not—
    - (i) the Crown (including a public sector agency (within the meaning of the *Public Sector Act 2009*)); or
    - (ii) a member of the House of Assembly or Legislative Council.
- (2) The person must provide to the Electoral Commissioner a return for the financial year setting out the details of the expenditure incurred.
- (3) The agent of a third party required to provide a return under this section must set out in the return whether any political expenditure was incurred under an agreement or arrangement with a person to whom Division 6 applies, and, if so, details of the expenditure.
- (4) However, nothing in this section requires the disclosure of any details required to be furnished in an expenditure return under section 130ZQ.
- (5) The return must—
  - (a) be provided before the end of 12 weeks after the end of the financial year; and
  - (b) be in a form approved by the Electoral Commissioner.

### **130ZS—Annual returns relating to gifts received for political expenditure**

- (1) A person must provide a return for a financial year in accordance with this section if—
  - (a) the person is required to provide a return for the year under section 130ZQ or section 130ZR (or both); and
  - (b) the person received a gift or gifts, at any time, that the person used during the year (either wholly or partly)—
    - (i) to enable the person to incur political expenditure; or
    - (ii) to reimburse the person for incurring political expenditure; and
  - (c) the amount of at least 1 such gift was more than \$5 000 (indexed); and
  - (d) at the time that the person received the gift, the person was not—
    - (i) a relevant entity; or
    - (ii) a candidate in an election; or
    - (iii) a member of a group.

- (2) The person must provide to the Electoral Commissioner a return for the financial year setting out the following details in respect of each gift of more than \$5 000 (indexed) that is mentioned in subsection (1)(b):
  - (a) the amount of the gift;
  - (b) the date on which the gift was made;
  - (c) in the case of a gift made on behalf of the members of an unincorporated association—
    - (i) the name of the association; and
    - (ii) the names and addresses of the members of the executive committee (however described) of the association;
  - (d) in the case of a gift purportedly made out of a trust fund, or out of the funds of a foundation—
    - (i) the names and addresses of the trustees of the fund, or of the funds of the foundation; and
    - (ii) the title or other description of the trust fund, or the name of the foundation, as the case requires;
  - (e) in any other case—the name and address of the person who made the gift.
- (3) The return must—
  - (a) be provided before the end of 12 weeks after the end of the financial year; and
  - (b) be in a form approved by the Electoral Commissioner.
- (4) For the purposes of subsection (2), 2 or more gifts of more than \$200 made, during the financial year, by the same person to another person are taken to be 1 gift.

### **130ZT—Related matters**

Returns provided in accordance with this Division are not to include lists of party membership.

### **Division 9—Related matters**

#### **130ZV—Audit certificates**

- (1) A—
  - (a) return under this Part other than a return to which subsection (2a) applies; or
  - (b) claim for special assistance funding under section 130U or 130UA,furnished to the Electoral Commissioner by or on behalf of a relevant entity, candidate or group must, subject to subsection (2), be accompanied by a certificate from an auditor in accordance with subsection (3).
- (2) An audit certificate that would, but for this subsection, be required to accompany a return may instead be furnished at such later date as is determined by the Electoral Commissioner (provided that the later date is within 30 days after the date on which the return is required to be furnished under this Part).

- (2a) If a return furnished to the Electoral Commissioner by or on behalf of a relevant entity, candidate or group under this Part relates to a designated period, an audit certificate in accordance with subsection (3) must, at the prescribed times, be furnished to the Electoral Commissioner by or on behalf of the relevant entity, candidate or group (as the case may be) in relation to all such returns furnished in respect of each of the following periods:
- (a) the period commencing at the start of the designated period for the relevant election until 7 days before the relevant polling day;
  - (b) the period commencing at the end of the period referred to in paragraph (a) until the expiration of 30 days after the relevant polling day.
- (2b) For the purposes of subsection (2a), the *prescribed times* for furnishing an audit certificate are as follows:
- (a) for the period referred to in subsection (2a)(a)—7 days before the relevant polling day;
  - (b) for the period referred to in subsection (2a)(b)—the day on which the last return is required to be furnished in respect of that relevant period.
- (3) A certificate from an auditor under this section must state that the auditor—
- (a) was given full and free access at all reasonable times to the accounts and documents of the agent responsible for giving the return or claim and of the relevant entity, candidate or group (as the case requires) relating directly or indirectly to a matter required to be disclosed in the return or claim; and
  - (b) examined the accounts and documents referred to in paragraph (a) that the auditor considered material for giving the certificate; and
  - (c) received all the information and explanations the auditor asked for in relation to any matter required to be stated in the certificate, subject to the qualifications, if any, stated in the certificate; and
  - (d) has no reason to think any statement in the declaration is not correct.
- (4) The Electoral Commissioner may waive compliance with the requirement to give an audit certificate if—
- (a) in the case of a return—the return is a nil return provided in accordance with section 130ZZ; or
  - (b) in any case—the Electoral Commissioner considers the cost of compliance with the requirement would be unreasonable.
- (5) A return or claim required to be accompanied by a certificate from an auditor is taken not to have been provided in accordance with the requirements of this Part if it is not accompanied by the certificate.

### **130ZW—Auditor to give notice of contravention**

If, in carrying out an audit to prepare an audit certificate for the purposes of this Part, an auditor becomes aware of a matter that is reasonably likely to constitute a contravention of this Part by a relevant entity, candidate or group, the auditor must, within 7 days after becoming aware of the matter, give the Electoral Commissioner written notice of the matter.

### **130ZX—Electoral Commissioner to determine manner in which returns to be furnished**

A return under this Part must be furnished in a manner determined by the Electoral Commissioner.

### **130ZY—Public inspection of returns**

- (1) The Electoral Commissioner must keep at his or her principal office each return furnished to the Electoral Commissioner under this Part.
- (2) The Electoral Commissioner must, at the end of the period prescribed for the purposes of subsection (5), make a copy of each return available on a website maintained by the Electoral Commissioner.
- (3) Subject to this section, a person is entitled to inspect a copy of a return, without charge, during ordinary business hours at the principal office of the Electoral Commissioner.
- (4) Subject to this section, a person is entitled, on payment of a fee determined by the Electoral Commissioner to be the cost of copying, to obtain a copy of a return.
- (5) A person is not entitled to inspect or obtain a copy of a return until the end of the prescribed period after the day before which the return was required to be furnished to the Electoral Commissioner.

### **130ZZ—Nil returns**

If no details are required to be included in a return required under this Part, the return must nevertheless be lodged and must include a statement to the effect that no gifts or, if relevant, loans of a kind required to be disclosed were received.

### **130ZZA—Records to be kept**

If—

- (a) a person makes or obtains a document or other thing that is or includes a record relating to a matter particulars of which are or could be required to be set out in a return under this Part relating to an election; and
- (b) the record is not a record that, in the normal course of business or administration, would be transferred to some other person,

the person must retain that record for at least 4 years commencing on the polling day for that election.

### **130ZZB—Investigation etc**

- (1) In this section—  
*authorised officer* means a person authorised by the Electoral Commissioner under subsection (2).
- (2) The Electoral Commissioner may, by instrument in writing signed by the Electoral Commissioner, authorise a person or a person included in a class of persons to perform duties under this section.

- (3) An authorised officer may, for the purpose of finding out whether the financial controller of an associated entity or the agent of a registered political party or third party has complied with this Part, by notice served personally or by post on—
- (a) the agent or any officer of the—
    - (i) registered political party; or
    - (ii) third party; or
  - (b) the financial controller or any officer of the associated entity,
- as the case may be, require the agent, financial controller or officer—
- (c) to produce, within the period and in the manner specified in the notice, the documents or other things referred to in the notice; or
  - (d) to appear, at a time and place specified in the notice, before the authorised officer to give evidence, either orally or in writing, and to produce the documents or other things referred to in the notice.
- (4) If a notice under subsection (3)(a) requires an officer of a registered political party or third party (other than the agent) to appear before an authorised officer under subsection (3)(d), then the agent of the registered political party or third party (as the case may be) is entitled—
- (a) to attend at the proceeding under subsection (3)(d); or
  - (b) to nominate another person in writing to attend on behalf of the agent.
- (5) Failure of the agent or nominee to attend under subsection (4) does not affect the powers of the authorised officer to conduct the proceeding under subsection (3)(d).
- (6) If an authorised officer has reasonable grounds to believe that a person is capable of producing documents or other things or giving evidence relating to a contravention, or possible contravention, of this Part, or relating to matters that are set out in, or are required to be set out in, a return under this Part, the authorised officer may, by notice served personally or by post on that person, require that person—
- (a) to produce, within the period and in the manner specified in the notice, such documents or other things as are referred to in the notice;
  - (b) to appear, at a time and place specified in the notice, before the authorised officer to give evidence, either orally or in writing, and to produce such documents or other things as are referred to in the notice.
- (7) If—
- (a) an authorised officer has reasonable grounds to believe that a person is capable of producing documents or other things, or giving evidence, relating to whether an entity is, or was at a particular time, an associated entity; and
  - (b) the person is, or has at any time been, the financial controller or an officer of the entity,
- the authorised officer may, by notice served personally or by post on the person, require the person—
- (c) to produce, within the period and in the manner specified in the notice, such documents or other things as are specified in the notice; or



- (d) to appear, at a time and place specified in the notice, before the authorised officer to give evidence, whether orally or in writing, and to produce the documents or other things specified in the notice.
- (8) The notice must not require the person to produce documents, or to appear, until after the end of the period of 14 days beginning on the day on which the notice was received, and must set out the person's right to request a review under subsection (9).
- (9) A person who is given a notice under subsection (7) may request that the Electoral Commissioner review the decision to issue the notice.
- (10) The request must be—
- (a) in writing; and
  - (b) given to the Electoral Commissioner during the period of 14 days beginning on the day on which the notice was received.
- (11) The Electoral Commissioner must—
- (a) review the decision as soon as practicable after receiving a request under subsection (9); and
  - (b) affirm, vary or set aside the decision; and
  - (c) notify the person in writing of his or her decision on the review.
- (12) If a person requests a review of a decision, the person is not taken to have refused or failed to comply with the notice to which the review relates at any time before the Electoral Commissioner has notified the person of his or her decision on the review.
- (13) An authorised officer may require any evidence that is to be given to him or her in compliance with a notice under subsection (3), (6) or (7) to be given on oath or affirmation and for that purpose the authorised officer may administer an oath or affirmation.
- (14) A person must not, without reasonable excuse, refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with the notice.  
Maximum penalty: \$5 000.
- (15) A person must not, in purported compliance with a notice under this section, give evidence that is, to the knowledge of the person, false or misleading in a material particular.  
Maximum penalty: \$5 000.
- (16) If—
- (a) an authorised officer has reasonable grounds for suspecting that there may be, at any time within the next following 24 hours, on any land or on or in any premises, vessel, aircraft or vehicle, a document or other thing that may afford evidence relating to a contravention of this Part; and
  - (b) the authorised officer has reasonable grounds to believe that, if a notice under this section were issued for the production of the document or other thing, the document or other thing might be concealed, lost, mutilated or destroyed,
- the authorised officer may make an application to a magistrate for the issue of a warrant under subsection (17).

- (17) Subject to subsection (18), if an application under subsection (16) is made by an authorised officer to a magistrate, the magistrate may issue a warrant authorising the authorised officer or any other person named in the warrant, with such assistance as the officer or person thinks necessary and if necessary by force—
- (a) to enter on the land or on or into the premises, vessel, aircraft or vehicle; and
  - (b) to search the land, premises, vessel, aircraft or vehicle for documents or other things that may afford evidence relating to a contravention of this Part, being documents or other things of a kind described in the warrant; and
  - (c) to seize any documents or other things of the kind referred to in paragraph (b).
- (18) A magistrate may not issue a warrant under subsection (17) unless—
- (a) an affidavit has been furnished to the magistrate setting out the grounds on which the issue of the warrant is being sought; and
  - (b) the authorised officer applying for the warrant or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
  - (c) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (19) If a magistrate issues a warrant under subsection (17), the magistrate must state on the affidavit furnished in accordance with subsection (18) which of the grounds specified in that affidavit he or she has relied on to justify the issue of the warrant and particulars of any other grounds so relied on.
- (20) A warrant issued under subsection (17) must—
- (a) include a statement of the purpose for which the warrant is issued, which must include a reference to the contravention of this Part in relation to which the warrant is issued; and
  - (b) state whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
  - (c) include a description of the kind of documents or other things authorised to be seized; and
  - (d) specify a date, not being later than 1 month after the date of issue of the warrant, on which the warrant ceases to have effect.
- (21) If a document or other thing is seized by a person pursuant to a warrant issued under subsection (17)—
- (a) the person may retain the document or other thing for so long as is reasonably necessary for the purposes of the investigation to which the document or other thing is relevant; and
  - (b) when the retention of the document or other thing by the person ceases to be reasonably necessary for those purposes, the person must cause the document or other thing to be delivered to the person who appears to be entitled to possession of it.

### **130ZZC—Inability to complete returns**

- (1) If a person who is required to furnish a return under this Part considers that it is impossible to complete the return because he or she is unable to obtain particulars that are required for the preparation of the return, the person may—
- (a) prepare the return to the extent that it is possible to do so without those particulars; and
  - (b) furnish the return so prepared; and
  - (c) give to the Electoral Commissioner notice in writing—
    - (i) identifying the return; and
    - (ii) stating that the return is incomplete by reason that he or she is unable to obtain certain particulars; and
    - (iii) identifying those particulars; and
    - (iv) setting out the reasons why he or she is unable to obtain those particulars; and
    - (v) if the person believes, on reasonable grounds, that another person whose name and address he or she knows can give those particulars—stating that belief and the reasons for it and the name and address of that other person,

and a person who complies with this subsection is not, by reason of the omission of those particulars, to be taken, for the purposes of this Part, to have furnished a return that is incomplete (and the return may accordingly have effect for the purposes of this Part).

- (2) If the Electoral Commissioner has been informed under subsection (1) or (3) that a person can supply particulars that have not been included in a return, the Electoral Commissioner may, by notice in writing served on that person, require the person to furnish to the Electoral Commissioner, within the period specified in the notice and in writing, those particulars and, subject to subsection (3), the person must comply with that requirement.
- (3) If a person who is required to furnish particulars under subsection (2) considers that he or she is unable to obtain some or all of the particulars, the person must give to the Electoral Commissioner a written notice—
- (a) setting out the particulars (if any) that the person is able to give; and
  - (b) stating that the person is unable to obtain some or all of the particulars; and
  - (c) identifying the particulars the person is unable to obtain; and
  - (d) setting out the reasons why the person considers he or she is unable to obtain those particulars; and
  - (e) if the person believes, on reasonable grounds, that another person whose name and address he or she knows can give those particulars—setting out the name and address of that other person and the reasons why he or she believes that the other person is able to give those particulars.

### **130ZZD—Amendment of returns**

- (1) If the Electoral Commissioner is satisfied that a return under this Part contains a formal error or is subject to a formal defect, the Electoral Commissioner may amend the return to the extent necessary to correct the error or remove the defect.
- (2) A person who has furnished a return may request the permission of the Electoral Commissioner to make a specified amendment of the return for the purpose of correcting an error or omission.
- (3) If the return was furnished by a person as the agent of a registered political party, the request under subsection (2) may be made either by—
  - (a) the person who lodged the claim or return; or
  - (b) the person who is currently registered as the agent of the political party.
- (4) A request under subsection (2) must—
  - (a) be by notice in writing signed by the person making the request; and
  - (b) be lodged with the Electoral Commissioner.
- (5) If—
  - (a) a request has been made under subsection (2); and
  - (b) the Electoral Commissioner is satisfied that there is an error in, or omission from, the return to which the request relates,the Electoral Commissioner must permit the person making the request to amend the return in accordance with the request.
- (6) If the Electoral Commissioner decides to refuse a request under subsection (2), the Electoral Commissioner must give to the person making the request written notice of the reasons for the decision and the decision is reviewable under Part 12 Division 1.
- (7) The amendment of a return under this section does not affect the liability of a person to be convicted of an offence against this Part arising out of the furnishing of the return.

### **130ZZE—Offences**

- (1) A person who fails to furnish a return that the person is required to furnish under this Part within the time required by this Part is guilty of an offence.  
Maximum penalty:
  - (a) in the case of a return required to be furnished by the agent of a political party—\$10 000;
  - (b) in any other case—\$5 000.
- (2) A person who furnishes a return under this Part that is incomplete is guilty of an offence.  
Maximum penalty: \$1 500.
- (3) A person who furnishes a return or other information—
  - (a) that the person is required to furnish under this Part; and
  - (b) that contains a statement that is, to the knowledge of the person, false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: \$10 000.

- (4) A person who furnishes to another person who is required to furnish a return information—
- (a) that the person knows is required for the purposes of that return; and
  - (b) that is, to that person's knowledge, false or misleading in a material particular,
- is guilty of an offence.
- Maximum penalty: \$10 000.
- (5) A person who contravenes, or fails to comply with, a provision of this Part is guilty of an offence.
- (6) A person who is guilty of an offence against this Part for which no penalty is specifically provided is liable to a penalty not exceeding \$7 500.
- (7) If a person commits an offence by reason of a failure to furnish a return or other information, or to do any other thing, within a particular period as required under this Part—
- (a) the obligation to furnish the return or other information, or to do the other thing, continues despite the expiration of the period; and
  - (b) if the person is convicted of the offence and the failure continues after conviction, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the failure continues after the conviction of not more than an amount equal to one-fifth of the maximum penalty prescribed for the offence.
- (8) An allegation in a complaint that a specified person had not furnished a return of a specified kind as at a specified date will be taken to have been proved in the absence of proof to the contrary.
- (9) In proceedings against a person for an offence under this Part, it is a defence for the person to prove that the person exercised all reasonable diligence to prevent the commission of the offence.

### **130ZZF—Non-compliance with Part does not affect election**

Subject to section 107(7), a failure of a person to comply with a provision of this Part in relation to an election does not invalidate that election.

### **130ZZG—Appropriation**

Amounts of funding payable under this Part are payable out of the Consolidated Account (which is appropriated to the necessary extent).

### **130ZZH—Regulations**

- (1) The regulations may require greater detail to be provided in returns than is otherwise required by this Part.

- (2) Without limiting subsection (1), the regulations may—
  - (a) require that a return under Division 7 include additional information relating to persons making gifts, loans or bequests; or
  - (b) require that the total amounts referred to in section 130ZN be broken down in the way specified in the regulations.
- (3) The regulations may reduce the amount of information to be provided in returns under section 130ZO.

## **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—
  - (a) prescribe forms for the purposes of this Act; and
  - (b) prescribe fines (not exceeding \$5 000) for offences against the regulations; and
  - (c) prescribe fees or charges in respect of matters under this Act, and provide for the waiver or refund of such fees or charges; and
  - (d) be of general application or vary in their application according to prescribed factors; and
  - (e) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Electoral Commissioner; and
  - (f) refer to or incorporate, wholly or partially and with or without modification, any standard or other document prepared or published by a body referred to in the regulation, as is in force from time to time or as in force at a particular time; and
  - (g) modify the application of Part 13A, or a provision of that Part, where there has been a disendorsement of a candidate by a registered political party; and
  - (h) make provisions of a savings or transitional nature consequent on the enactment of Part 13A.



## Legislative history

### Notes

- This version is comprised of the following:

Part 1	14.6.2017
Part 2	14.6.2017
Part 3	12.12.2013
Part 4	14.6.2017
Part 5	12.12.2013
Part 6	14.6.2017
Part 7	12.12.2013
Part 8	14.6.2017
Part 9	14.6.2017
Part 10	14.6.2017
Part 11	12.12.2013
Part 12	14.6.2017
Part 13	14.6.2017
Part 13A	23.10.2017
Part 14	1.7.2015
- 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> )

**Electoral Act 1985—23.10.2017 to 11.12.2017**

## Legislative history

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> )
2013	48	<i>Electoral (Miscellaneous) Amendment Act 2013</i>	24.10.2013	12.12.2013 ( <i>Gazette 12.12.2013 p4630</i> )
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	16.1.2014 ( <i>Gazette 16.1.2014 p120</i> )
2016	28	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2016</i>	16.6.2016	Pt 7 (ss 19 & 20)—16.6.2016: s 2(1)
2016	58	<i>Electoral (Funding, Expenditure and Disclosure) Amendment Act 2016</i>	8.12.2016	9.6.2017 ( <i>Gazette 5.4.2017 p1022</i> )
2017	20	<i>Electoral (Miscellaneous) Amendment Act 2017</i>	14.6.2017	Pt 2 (ss 3—37) & Sch 1 (cl 2)—14.6.2017
2017	31	<i>Electoral (Legislative Council Voting and Other Measures) Amendment Act 2017</i>	22.8.2017	23.10.2017 ( <i>Gazette 17.10.2017 p4337</i> ) except ss 4 to 18—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)		
Commonwealth Act inserted by 48/2013 s 4(1)		12.12.2013
Commonwealth roll inserted by 48/2013 s 4(1)		12.12.2013
election period	amended by 22/1997 s 27 (Sch 2)	28.8.1997
group	inserted by 31/2017 s 4(1)	uncommenced—not incorporated
group voting square inserted by 31/2017 s 4(1)		uncommenced—not incorporated
hour of nomination	amended by 22/1997 s 27 (Sch 2)	28.8.1997

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how-to-vote card	amended by 48/2013 s 4(2)	12.12.2013
medical practitioner	inserted by 20/2017 s 3(1)	14.6.2017
officer	substituted by 84/2009 s 106	1.2.2010
	amended by 20/2017 s 3(2)	14.6.2017
registered voting ticket	amended by 31/2017 s 4(2)	uncommenced—not incorporated
voting ticket	substituted by 31/2017 s 4(3)	uncommenced—not incorporated
voting ticket square	substituted by 48/2009 s 4	6.1.2010
	amended by 93/2013 s 4	16.1.2014
	deleted by 31/2017 s 4(3)	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
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
	amended by 48/2013 s 5(1)	12.12.2013
s 7(6a)	inserted by 48/2013 s 5(2)	12.12.2013
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
	amended by 48/2013 s 5(3)	12.12.2013
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(1a)	inserted by 20/2017 s 4	14.6.2017
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
s 10	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 11	<i>amended by 22/1997 s 27 (Sch 2)</i>	28.8.1997
	<i>deleted by 20/2017 s 5</i>	14.6.2017
<i>s 12 before substitution by 84/2009</i>		

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**Electoral Act 1985—23.10.2017 to 11.12.2017**

## Legislative history

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s 12(1) and (3)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 12	substituted by 84/2009 s 108	1.2.2010
s 12(1)	amended by 20/2017 s 6	14.6.2017
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)	deleted by 22/1997 s 27 (Sch 2)	28.8.1997
s 14(4)	substituted by 22/1997 s 27 (Sch 2)	28.8.1997
s 14(5)	deleted by 22/1997 s 27 (Sch 2)	28.8.1997
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		
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		
s 21(1)	s 21 amended by 22/1997 s 27 (Sch 2)	28.8.1997
	s 21 redesignated as s 21(1) by 48/2013 s 6	12.12.2013
s 21(2)	inserted by 48/2013 s 6	12.12.2013
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
	amended by 48/2013 s 7(1), (2)	12.12.2013
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(1a)	inserted by 20/2017 s 7	14.6.2017
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
	substituted by 48/2013 s 8	12.12.2013
s 29(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	substituted by 48/2013 s 8	12.12.2013
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</i>		
<i>by 48/2013</i>		
s 30		
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>
s 31		
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>
Pt 5 Div 2	<i>deleted by 48/2013 s 9</i>	<i>12.12.2013</i>
Pt 5 Div 2A	inserted by 48/2009 s 8	6.1.2010
s 31A		
s 31A(1)	amended by 48/2013 s 10(1), (2)	12.12.2013
s 31A(2)	amended by 48/2013 s 10(3)	12.12.2013
s 31A(3)	amended by 48/2013 s 10(4)	12.12.2013
s 31A(9) and (10)	amended by 48/2013 s 10(2)	12.12.2013

**Electoral Act 1985—23.10.2017 to 11.12.2017**Legislative history

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*Pt 5 Div 3 before  
substitution by 48/2009**s 32*

<i>s 32(1)</i>	<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>
<i>s 32(2)</i>	<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>
<i>s 32(3)</i>	<i>substituted by 22/1997 s 7</i>	<i>28.8.1997</i>
<i>s 32(4)</i>	<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

*s 32*

<i>s 32(1)</i>	<i>amended by 48/2013 s 11(1)</i>	<i>12.12.2013</i>
<i>s 32(1a)</i>	<i>inserted by 48/2013 s 11(2)</i>	<i>12.12.2013</i>

*s 32A*

<i>s 32A(1)</i>	<i>amended by 48/2013 s 12</i>	<i>12.12.2013</i>
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*s 32B* inserted by 48/2013 s 13 12.12.2013

**Pt 5 Div 4***s 33*

<i>s 33(1) and (2)</i>	<i>substituted by 4/1988 s 7</i>	<i>5.5.1988</i>
<i>s 33(3) and (4)</i>	<i>amended by 22/1997 s 27 (Sch 2)</i>	<i>28.8.1997</i>

*s 34*

<i>s 34(1) and (2)</i>	<i>amended by 22/1997 s 27 (Sch 2)</i>	<i>28.8.1997</i>
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*s 35*

<i>s 35(1)</i>	<i>amended by 4/1988 s 8</i>	<i>5.5.1988</i>
<i>s 35(2)</i>	<i>amended by 22/1997 s 27 (Sch 2)</i>	<i>28.8.1997</i>
<i>s 35(3)</i>	<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(b))</i>	<i>1.6.2000</i>

**Pt 6***s 36*

<i>s 36(1)</i>		
<i>eligible political party</i>	<i>amended by 4/1988 s 9</i>	<i>5.5.1988</i>
	<i>substituted by 48/2009 s 9(1)</i>	<i>22.10.2011</i>
<i>parliamentary party</i>	<i>substituted by 48/2009 s 9(2)</i>	<i>22.10.2011</i>
<i>s 36(2)</i>	<i>amended by 22/1997 s 27 (Sch 2)</i>	<i>28.8.1997</i>
<i>s 36(3)</i>	<i>amended by 22/1997 s 27 (Sch 2)</i>	<i>28.8.1997</i>
	<i>substituted by 48/2009 s 9(3)</i>	<i>22.10.2011</i>
<i>s 36(4)</i>	<i>inserted by 48/2009 s 9(3)</i>	<i>22.10.2011</i>

*s 38*

<i>s 38(1)</i>	<i>substituted by 22/1997 s 27 (Sch 2)</i>	<i>28.8.1997</i>
<i>s 38(2)</i>	<i>amended by 22/1997 s 27 (Sch 2)</i>	<i>28.8.1997</i>

*s 39*

<i>s 39(2)</i>	<i>amended by 48/2009 s 10</i>	<i>22.10.2011</i>
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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)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 42(2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 20/2017 s 8	14.6.2017
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 43A(5)	<i>deleted by 20/2017 s 9</i>	14.6.2017
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
	amended by 20/2017 s 10	14.6.2017
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
s 47(2a)	inserted by 48/2013 s 14	12.12.2013
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
	amended by 48/2013 s 15(1)	12.12.2013
s 48(4)	amended by 48/2013 s 15(2)	12.12.2013
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

**Electoral Act 1985—23.10.2017 to 11.12.2017**

## Legislative history

## 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

s 53(1) substituted by 20/2017 s 11(1) 14.6.2017

s 53(2) amended by 20/2017 s 11(2) 14.6.2017

s 53(3) amended by 31/2017 s 5 uncommenced—not incorporated

s 53(4) substituted by 48/2013 s 16 12.12.2013

s 53(11) inserted by 20/2017 s 11(3) 14.6.2017

s 53A inserted by 22/1997 s 10 28.8.1997

s 53A(2) amended by 20/2017 s 12(1) 14.6.2017

s 53A(3) amended by 93/2013 s 5(1) 16.1.2014

s 53A(3a) inserted by 93/2013 s 5(2) 16.1.2014

s 53A(4a) inserted by 20/2017 s 12(2) 14.6.2017

s 53(6) inserted by 20/2017 s 12(3) 14.6.2017

## s 54

s 54(1) substituted by 22/1997 s 27 (Sch 2) 28.8.1997

amended by 20/2017 s 13(1), (2) 14.6.2017

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

amended by 31/2017 s 6 uncommenced—not incorporated

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

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(2) amended by 31/2017 s 7 uncommenced—not incorporated

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) 16.1.2014

amended by 31/2017 s 8(1) 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
	substituted by 31/2017 s 8(2)	uncommenced—not incorporated
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
s 60A	inserted by 31/2017 s 9	uncommenced—not incorporated
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	16.1.2014
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 before deletion by 31/2017		
s 63(a1)	inserted by 93/2013 s 8(1)	16.1.2014
s 63(1)	substituted by 4/1988 s 11	5.5.1988
	amended by 93/2013 s 8(2)	16.1.2014
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)	16.1.2014
s 63	deleted by 31/2017 s 10	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>	<i>28.8.1997</i>
s 66(3)—(6)	<i>amended by 22/1997 s 27 (Sch 2)</i>	<i>28.8.1997</i>
s 66	substituted by 48/2009 s 23	6.1.2010
s 66(1)	substituted by 31/2017 s 11(1)	uncommenced—not incorporated

**Electoral Act 1985—23.10.2017 to 11.12.2017**

## Legislative history

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s 66(2)	amended by 20/2017 s 14(1)—(3)	14.6.2017
	amended by 31/2017 s 11(2)—(4)	uncommenced—not incorporated
s 66(3)	amended by 31/2017 s 11(5)	uncommenced—not incorporated
s 66(4)	amended by 31/2017 s 11(6)	uncommenced—not incorporated
s 66(5)	substituted by 31/2017 s 11(7)	uncommenced—not incorporated
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
	substituted by 48/2013 s 17	12.12.2013
Pt 9		
Pt 9 Div 1		
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
Pt 9 Div 2		
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
	amended by 20/2017 s 15	14.6.2017
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(3a)	inserted by 20/2017 s 16	14.6.2017
s 74(4)	amended by 4/1988 s 15(c)	5.5.1988
	substituted by 22/1997 s 13(a)	28.8.1997
	amended by 48/2013 s 18(1)	12.12.2013

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
s 74(6a) and (6b)	inserted by 48/2013 s 18(2)	12.12.2013
s 74(7)	inserted by 48/2009 s 26(6)	6.1.2010
s 74A	inserted by 48/2013 s 19	12.12.2013
s 75	amended by 22/1997 s 27 (Sch 2)	28.8.1997
Pt 9 Div 3		
s 76		
s 76(1)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 31/2017 s 12	uncommenced—not incorporated
s 76(2) and (3)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
Pt 9 Div 4		
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
	amended by 20/2017 s 17	14.6.2017
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 80A(3)	substituted by 20/2017 s 18	14.6.2017
<i>s 81 before substitution by 20/2017</i>		
s 81(1) and (2)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 81	substituted by 20/2017 s 19	14.6.2017
Pt 9 Div 5		
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

**Electoral Act 1985—23.10.2017 to 11.12.2017**

## Legislative history

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	amended by 48/2009 s 28(2)	6.1.2010
	amended by 20/2017 s 20(1), (2)	14.6.2017
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)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 83(4)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 20/2017 s 21(1), (2)	14.6.2017
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
	amended by 20/2017 s 21(3)	14.6.2017
s 84	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 48/2009 s 29	6.1.2010
	amended by 20/2017 s 22	14.6.2017
Pt 9 Div 5A	inserted by 20/2017 s 23	14.6.2017
s 84B		
s 84B(1)	amended by 31/2017 s 13	uncommenced—not incorporated
Pt 9 Div 6		
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
Pt 9 Div 7		
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

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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

amended by 20/2017 s 24 14.6.2017

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) amended by 22/1997 s 27 (Sch 2) 28.8.1997

amended by 20/2017 s 25 14.6.2017

substituted by 31/2017 s 14 uncommenced—not incorporated

s 92(3) amended by 22/1997 s 27 (Sch 2) 28.8.1997

amended by 20/2017 s 25 14.6.2017

substituted by 31/2017 s 14 uncommenced—not incorporated

s 92(4) amended by 22/1997 s 27 (Sch 2) 28.8.1997

deleted by 31/2017 s 14 uncommenced—not incorporated

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

(c) deleted by 48/2013 s 20 12.12.2013

amended by 31/2017 s 15(1) uncommenced—not incorporated

s 94(3) amended by 22/1997 s 27 (Sch 2) 28.8.1997

amended by 31/2017 s 15(2) uncommenced—not incorporated

s 94(4) amended by 31/2017 s 15(3), (4) uncommenced—not incorporated

s 94(4a) inserted by 48/2009 s 34(2) 6.1.2010

substituted by 31/2017 s 15(5) uncommenced—not incorporated

s 94(4b) inserted by 31/2017 s 15(5) uncommenced—not incorporated

s 94(5)—(7) amended by 22/1997 s 27 (Sch 2) 28.8.1997

Pt 10 Div 3

**Electoral Act 1985—23.10.2017 to 11.12.2017**

## Legislative history

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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
	amended by 48/2013 s 21	12.12.2013
s 95(3)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	substituted by 48/2009 s 35(2)	6.1.2010
	amended by 31/2017 s 16(1), (2)	uncommenced—not incorporated
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)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 95(6)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 95(7)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 31/2017 s 16(3)	uncommenced—not incorporated
s 95(7a)	inserted by 31/2017 s 16(4)	uncommenced—not incorporated
s 95(8) and (9)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 95(10)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 31/2017 s 16(5)	uncommenced—not incorporated
s 95(11)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 31/2017 s 16(6)—(8)	uncommenced—not incorporated
s 95(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
	amended by 31/2017 s 16(9)	uncommenced—not incorporated
s 95(16)	substituted by 41/1997 s 3(b)	28.8.1997
	amended by 31/2017 s 16(10)	uncommenced—not incorporated
s 95(16a)	inserted by 41/1997 s 3(b)	28.8.1997
s 95(17)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 31/2017 s 16(11)	uncommenced—not incorporated
s 95(18)—(24)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
s 95(25)	amended by 22/1997 s 27 (Sch 2)	28.8.1997
	amended by 31/2017 s 16(12), (13)	uncommenced—not incorporated
s 95(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
	amended by 48/2013 s 22	12.12.2013
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

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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
	amended by 48/2013 s 23	12.12.2013
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 107(7)	inserted by 58/2016 s 4	9.6.2017
s 108	amended by 22/1997 s 27 (Sch 2)	28.8.1997
Pt 13		

**Electoral Act 1985—23.10.2017 to 11.12.2017**

## Legislative history

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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
	amended by 48/2013 s 24(1)	12.12.2013
s 112(3)	inserted by 48/2013 s 24(2)	12.12.2013
s 112A	inserted by 48/2009 s 40	6.1.2010
	substituted by 48/2013 s 25	12.12.2013
s 112A(5a)	inserted by 20/2017 s 26	14.6.2017
s 112B	inserted by 48/2009 s 40	6.1.2010
s 112B(1)	amended by 20/2017 s 27(1), (2)	14.6.2017
s 112B(1a)	inserted by 20/2017 s 27(3)	14.6.2017
s 112B(2)	amended by 20/2017 s 27(4)	14.6.2017
s 112B(3)	amended by 20/2017 s 27(5)	14.6.2017
s 112B(4)		
distribute	amended by 48/2013 s 26	12.12.2013
s 113	substituted by 22/1997 s 19	28.8.1997
s 113(2)	amended by 48/2009 s 41	6.1.2010
<i>s 114 before substitution by 48/2009</i>		
<i>s 114(1)</i>	<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 115A	inserted by 20/2017 s 28	14.6.2017
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
	amended by 48/2013 s 27(1), (2)	12.12.2013
s 116(2)	amended by 48/2009 s 44(4)—(7)	6.1.2010
	amended by 48/2013 s 27(3)—(5)	12.12.2013
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)	amended by 22/1997 s 27 (Sch 1 cl 7) (Sch 2)	28.8.1997
<i>s 117(2)</i>	<i>amended by 22/1997 s 27 (Sch 1 cl 7) (Sch 2)</i>	28.8.1997
	<i>deleted by 20/2017 s 29</i>	14.6.2017
s 118		



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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
	amended by 48/2013 s 28	12.12.2013
	amended by 20/2017 s 30(1)	14.6.2017
s 126(3) and (4)	inserted by 20/2017 s 30(2)	14.6.2017
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

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**Electoral Act 1985—23.10.2017 to 11.12.2017**

## Legislative history

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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
s 130A		
s 130A(1)		
capped expenditure period	amended by 20/2017 s 31(1)	14.6.2017
designated period	amended by 20/2017 s 31(2)	14.6.2017
group	deleted by 31/2017 s 17	uncommenced—not incorporated
political expenditure	amended by 28/2016 s 19	16.6.2016
	substituted by 20/2017 s 31(3)	14.6.2017
s 130A(1a)	inserted by 20/2017 s 31(4)	14.6.2017
s 130A(5)	amended by 20/2017 s 31(5)	14.6.2017
s 130A(6)	amended by 20/2017 s 31(6)	14.6.2017
s 130A(6a)	inserted by 20/2017 s 31(7)	14.6.2017
s 130A(8)	amended by 58/2016 s 5	9.6.2017
s 130A(9) and (10)	deleted by 20/2017 s 31(8)	14.6.2017
s 130C	substituted by 20/2017 s 32	14.6.2017
s 130E		
s 130E(2)	amended by 58/2016 s 6(1)	9.6.2017
s 130E(4)	substituted by 58/2016 s 6(2)	9.6.2017
s 130E(5)	amended by 58/2016 s 6(3)	9.6.2017
s 130L	amended by 20/2017 s 33	14.6.2017
s 130M		
s 130M(1a)	inserted by 20/2017 s 34	14.6.2017
s 130Q		
s 130Q(1)	amended by 31/2017 s 18(1)	uncommenced—not incorporated
s 130Q(2)	amended by 31/2017 s 18(2)	uncommenced—not incorporated
s 130Q(5)	amended by 58/2016 s 7	9.6.2017
s 130U		
s 130U(2)	amended by 58/2016 s 8(1), (2)	9.6.2017
s 130U(3)	amended by 58/2016 s 8(3)	9.6.2017
s 130UA	inserted by 58/2016 s 9	9.6.2017
	expired: s 130UA(5)	(31.8.2017)
s 130V		
s 130V(1)	amended by 58/2016 s 10(1), (2)	9.6.2017
s 130Y		

s 130Y(2)	amended by 20/2017 s 35	14.6.2017
s 130Z		
s 130Z(1)	amended by 58/2016 s 11	9.6.2017
	amended by 20/2017 s 36(1)	14.6.2017
s 130Z(2a)	inserted by 20/2017 s 36(2)	14.6.2017
s 130Z(3)	amended by 20/2017 s 36(3)	14.6.2017
s 130Z(3a)	inserted by 20/2017 s 36(4)	14.6.2017
s 130ZF		
s 130ZF(5)	amended by 58/2016 s 12	9.6.2017
s 130ZF(5a)	inserted by 20/2017 s 37	14.6.2017
s 130ZH		
s 130ZH(1)	amended by 28/2016 s 20(1)	16.6.2016
s 130ZH(4)	amended by 28/2016 s 20(2)	16.6.2016
s 130ZH(7)	(a) deleted by 28/2016 s 20(3)	16.6.2016
	amended by 28/2016 s 20(4)	16.6.2016
s 130ZN		
s 130ZN(1)	amended by 58/2016 s 13(1)	9.6.2017
s 130ZN(2)	amended by 58/2016 s 13(2)—(5)	9.6.2017
s 130ZN(3)	substituted by 58/2016 s 13(6)	9.6.2017
s 130ZO		
s 130ZO(1)	amended by 58/2016 s 14(1)—(5)	9.6.2017
s 130ZO(3)	amended by 58/2016 s 14(6)	9.6.2017
s 130ZO(6)	substituted by 58/2016 s 14(7)	9.6.2017
s 130ZP		
s 130ZP(1)	amended by 58/2016 s 15(1)—(5)	9.6.2017
s 130ZP(2)	substituted by 58/2016 s 15(6)	9.6.2017
s 130ZP(4)	amended by 58/2016 s 15(7)	9.6.2017
<b>s 130ZU</b>	<b>deleted by 31/2017 s 19</b>	<b>23.10.2017</b>
s 130ZV		
s 130ZV(1)	amended by 58/2016 s 16(1), (2)	9.6.2017
s 130ZV(2)	amended by 58/2016 s 16(3)	9.6.2017
	(a) and (b) deleted by 58/2016 s 16(4)	9.6.2017
s 130ZV(2a) and (2b)	inserted by 58/2016 s 16(5)	9.6.2017
s 130ZZE		
s 130ZZE(9)	inserted by 58/2016 s 17	9.6.2017
s 130ZZF	amended by 58/2016 s 18	9.6.2017
<b>s 130ZZH</b>	<b>inserted by 31/2017 s 20</b>	<b>23.10.2017</b>
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 93/2013 s 9	16.1.2014
	substituted by 51/2013 s 5	1.7.2015

## 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.

### *Electoral (Miscellaneous) Amendment Act 2017, Sch 1 Pt 2—Transitional provision*

#### 2—Political expenditure on electoral matter

Section 130A(6a) of the *Electoral Act 1985* (as inserted by this Act) applies to political expenditure on electoral matter incurred on or after 1 May 2017 (but does not apply to political expenditure on electoral matter incurred before that date).

## 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

12.12.2013

16.1.2014

1.7.2015

16.6.2016

9.6.2017 (electronic only)

14.6.2017