



New South Wales

Local Government (General) Amendment (Elections) Regulation 2008

under the

Local Government Act 1993

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Local Government Act 1993*.

PAUL LYNCH, M.P.,
Minister for Local Government

Explanatory note

The object of this Regulation is to make a series of amendments to the *Local Government (General) Regulation 2005* (the **2005 Regulation**) in relation to local government elections. The amendments include the following (the references in parentheses to clauses and other provisions being references to clauses and other provisions of the 2005 Regulation as amended, inserted or deleted by the amendments made by this Regulation):

- (a) to transfer various electoral functions from councils and returning officers to the Electoral Commission, and to change the terminology used in connection with electoral officers so as to refer to “election officials” (comprising returning officers, polling place managers and other election officials),
- (b) to make it the responsibility of the Electoral Commission to undertake advertising in connection with elections and to provide greater flexibility as to when and how advertisements may be published (clauses 277B, 280, 288 and 300),
- (c) to require information about an election, including the list of candidates, to be published on the internet (clauses 277B, 280, 288, 290, 300, 351 and 356),
- (d) to enable nomination proposals, nomination withdrawals, certain applications and other material to be transmitted by facsimile or email (clauses 289, 291, 312, 314, 351, 356P and 388A),
- (e) to provide how and when ward changes impinge on approaching elections (clause 277A),
- (f) to change the date for close of nominations (“nomination day”) to the fifth Wednesday before election day, and to change the time by which nomination proposals must be lodged or may be withdrawn to 12 noon (clauses 286, 289 and 291),

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- (g) to enable the deposit for a nomination proposal to be lodged by and refunded to a person on behalf of the person proposed for nomination (clauses 289 and 293),
- (h) to require only the suburb, town or other locality of a candidate's residential address to be publicly displayed (clause 294),
- (i) to remove the restriction on appointing a polling place after nomination day (clause 297),
- (j) to require election officials to initial the front, rather than the back, of ballot-papers (various clauses including clauses 311, 317, 322, 330 and 341),
- (k) to revise the provisions regarding the supply of ballot-papers at a polling place that does not have or runs out of ballot-papers (clause 312),
- (l) to provide that a silent elector (ie an elector whose place of living is not included on a roll because of a request made under section 739 of the Act) is qualified to vote by post (clause 313 and Form 7),
- (m) to change the time and date by which an elector must be registered as a general postal voter to 6 pm on the day the rolls close (clause 315),
- (n) to provide for the eligibility of silent electors, pregnant electors or disabled electors to apply for pre-poll votes (clause 321),
- (o) to set out the procedures that apply to voting at nursing homes and other declared institutions, rather than applying provisions of the *Parliamentary Electorates and Elections Act 1912* with various modifications (clauses 328–330),
- (p) to enable pre-poll voting at mobile booths in remote local government areas (clause 332A),
- (q) to change the form of the question that an election official may (or must if required by a scrutineer) put to an elector from "Are you 18 years of age or older?" to "What is your date of birth?" (clause 339),
- (r) to require an elector to vote for at least half the number of candidates that equals the number of vacancies (clause 345 and Forms 4, 5 and 6),
- (s) to provide that a ballot-paper is not informal just because the elector has placed one or more numbers, a tick or one or more crosses adjacent to but outside a square or squares if, in the opinion of the returning officer, the elector's intention is clearly indicated (clause 345),
- (t) to provide further options for notifying candidates of the results of an election (clause 351),
- (u) to revise the provisions in Part 11 of the 2005 Regulation regarding activities during the period (the "regulated period") before and on election day, and replace them with a new Division 9A containing the following:
 - (i) offences applicable during the regulated period, regarding posters and other electoral material (Subdivision 3),
 - (ii) additional offences applicable on pre-poll voting days, regarding posters and canvassing at pre-poll voting offices (Subdivision 4),
 - (iii) additional offences applicable on election day, regarding posters and canvassing at polling places and distribution of unregistered electoral material (Subdivision 5),

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- (iv) registration of electoral material for distribution or display on election day (Subdivision 6),
- (v) definitions and other miscellaneous provisions (Subdivisions 1, 2 and 7),
- (v) to provide for ballot-papers to be issued in braille format (clause 388A),
- (w) to require the Electoral Commission to be notified, by close of nominations, of the question to be asked at a constitutional referendum or council poll and to publicise the referendum or poll when publishing a notice of the election after close of nominations (Schedule 10, clause 4),
- (x) to remove references, in the context of postal voting, to claiming to vote where an elector's name is not on the roll of electors, without affecting such claims in the context of other kinds of voting (Schedule 11, Forms 7 and 8),
- (y) to provide separate forms for a claim to vote before election day and for a claim to vote on election day, where the elector's name is not on the roll of electors (Schedule 11, Forms 10 and 11).

This Regulation is made under the *Local Government Act 1993*, including sections 305, 306, 308A, 308D, 310 and 748 (the general regulation-making power), and Schedule 6 items 4, 14 and 21.

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Clause 1 Local Government (General) Amendment (Elections) Regulation 2008

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under the

Local Government Act 1993

1 Name of Regulation

This Regulation is the *Local Government (General) Amendment (Elections) Regulation 2008*.

2 Amendment of Local Government (General) Regulation 2005

The *Local Government (General) Regulation 2005* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 2)

[1] Clause 275 Definitions

Omit the definitions of *electoral material*, *electoral official*, *polling day* and *senior deputy returning officer* from clause 275 (1).

[2] Clause 275 (1)

Insert in alphabetical order:

closing date or *roll closing date*, in relation to an election, means the date prescribed by clause 278 for the closing of the roll of electors for the election.

Note. Clause 278 provides that the closing date is the fortieth day preceding election day, except where the election is delayed.

election official means:

- (a) a returning officer or substitute returning officer, or
- (b) an electoral official appointed by the returning officer under section 296 (3) of the Act.

Electoral Commission means the New South Wales Electoral Commission constituted by section 21A of the *Parliamentary Electorates and Elections Act 1912*, and includes the Electoral Commissioner.

Note. Section 21A of that Act provides that:

- (a) the functions of the Electoral Commission are exercisable by the Electoral Commissioner, and
- (b) any functions conferred or imposed on the Electoral Commissioner by or under any Act may be exercised by the Electoral Commissioner in his or her official name as Electoral Commissioner or in the name of the Commission.

polling place manager, in relation to a polling place, means:

- (a) the electoral official appointed by the returning officer under section 296 (3) of the Act and in charge of the polling place, or
- (b) the returning officer if authorised by the Electoral Commission to act as polling place manager at the polling place.

pre-poll voting office means a pre-poll voting office appointed under clause 298.

pre-poll voting officer means:

- (a) the returning officer, or

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(b) an election official assigned by the Electoral Commission or returning officer to conduct pre-poll voting.

registered officer of a registered political party includes a deputy registered officer of the party.

registered political party means a political party registered under Part 7 of Chapter 10 of the Act.

silent elector means an elector whose place of living is not included on a roll of electors because of a request made under section 739 of the Act.

[3] Clause 275 (3)

Insert after clause 275 (2):

- (3) In this Part, a reference to the Electoral Commission includes a reference to the returning officer where the Commission authorises the returning officer to exercise a specified function conferred or imposed on the Commission by this Part.

[4] Clause 276 Election official cannot be candidate

Omit “as an electoral official” from clause 276 (1).

Insert instead “other election official”.

[5] Clause 276 (2)

Omit “an electoral official”. Insert instead “other election official”.

[6] Clauses 277A and 277B

Insert after clause 277:

277A Effect of changes to wards on approaching elections

(1) Application of this clause

This clause applies if a council divides its area into wards, abolishes all its wards, alters its ward boundaries, or names or renames a ward in its area. Each such action is a *change* for the purposes of this clause.

(2) Effect on approaching election (other than by-election)

The next election (other than a by-election) held after a change is made is to be held as if the change had not been made if it was made during the period of 6 months before the roll closing date, unless the Electoral Commission approves in special circumstances determined by the Commission.

(3) **Effect on approaching by-election**

A by-election held after a change is made and before the next ordinary election is to be held as if the change had not been made. This subclause does not apply to an alteration of ward boundaries (which is provided for by section 210 (6) of the Act).

(4) **Transitional**

Subclause (2) does not apply in relation to the ordinary election to be held in September 2008.

277B Advertising by Electoral Commission

(1) **General power to advertise**

The Electoral Commission may publish (at such times as the Commission thinks fit) such electoral information as the Commission thinks fit, including but not limited to:

- (a) information of the fact that an election is to be held, and
- (b) information about:
 - (i) the nomination process for an election, and
 - (ii) entitlements and obligations to vote in an election, and
 - (iii) the location of polling places for the election and who may vote at the respective polling places.

(2) **Types of advertising**

The information may be published by way of newspaper notices, by display on the Electoral Commission's internet website, or in any other manner the Commission thinks appropriate.

(3) **Coverage of advertisement**

A publication of information may relate to one or more areas.

(4) **Relationship of clause to other provisions**

This clause has effect subject to the specific requirements of clauses 280, 288 and 300, but nothing in those clauses prevents the Electoral Commission from publishing additional notices or information under this clause.

[7] Clause 280 Advertising of enrolments

Omit "general manager is to give notice" from clause 280 (1).

Insert instead "Electoral Commission is to give notice under clause 277B".

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[8] Clause 280 (3)

Omit the subclause. Insert instead:

- (3) The notice is to be given at least once in the 14 days before the roll closing date for the election, constitutional referendum or council poll. The notice is to be given by advertisement in a newspaper circulating generally in the State or another newspaper circulating in the relevant area, or both.

[9] Clause 280 (5) and (6)

Insert after clause 280 (4):

- (5) The Electoral Commission must cause the information contained in a notice under this clause to be published on the Electoral Commission's internet website until at least 6 pm on the roll closing date for the election.
- (6) The council must cause the information referred to in subclause (5) to be published on the council's internet website, or provide a link on its website to the relevant part of the Electoral Commission's website, until at least 6 pm on the roll closing date for the election.

[10] Clause 286 Nomination day

Omit "Friday". Insert instead "Wednesday".

[11] Clause 288 Notice of election and call for nomination proposals

Omit "returning officer" from clause 288 (1).

Insert instead "Electoral Commission".

[12] Clause 288 (5) and (6)

Insert after clause 288 (4):

- (5) The Electoral Commission must cause the information contained in a notice under this clause to be published on the Electoral Commission's internet website until at least 12 noon on the nomination day for the election.
- (6) The council must cause the information referred to in subclause (5) to be published on the council's internet website, or provide a link on its website to the relevant part of the Electoral Commission's website, until at least 12 noon on the nomination day for the election.

[13] Clause 289 Nomination proposals

Omit clause 289 (1) (b). Insert instead:

- (b) in Form 3 by the registered officer of a registered political party.

[14] Clause 289 (5)–(5B)

Omit clause 289 (5). Insert instead:

- (5) A nomination paper must be delivered or sent (by post or otherwise), or transmitted by facsimile or email, so as to reach the returning officer by 12 noon on the nomination day. The returning officer must give a receipt for it if asked to do so.
- (5A) A nomination paper is not validly transmitted by email unless:
 - (a) an image of the completed nomination paper signed by the proposers and the person proposed for nomination is included in or attached to the email, and
 - (b) that image includes an image of the actual signatures as appearing on the nomination paper.
- (5B) The returning officer may make such inquiries as he or she thinks fit to confirm the authenticity of a nomination paper if he or she considers it appropriate to do so in the circumstances.

[15] Clause 289 (7)

Omit “general manager”. Insert instead “Electoral Commission”.

[16] Clause 289 (8)

Insert “, by the person proposed for nomination or some person on his or her behalf,” after “paid” where firstly occurring.

[17] Clause 289 (8)

Omit “5 pm on the day 2 days before”. Insert instead “12 noon on”.

[18] Clause 290 Candidate information sheets

Omit “the returning officer or” from clause 290 (3).

[19] Clause 290 (4) and (5)

Insert after clause 290 (3):

- (4) As soon as practicable after a candidate is nominated, the Electoral Commission must cause the information contained in the candidate’s information sheet to be published on the Electoral Commission’s internet website until at least election day. The

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Electoral Commission may edit the format in which the information is presented on the website and may delete any material the Commission thinks inappropriate to be included.

- (5) The council must cause the information referred to in subclause (4) to be published on the council's internet website, or provide a link on its website to the relevant part of the Electoral Commission's website, until at least election day.

[20] **Clause 291**

Omit the clause. Insert instead:

291 Withdrawal of nomination proposals

(1) **Manner of withdrawal**

A nomination proposal may be withdrawn by the delivery or sending (by post or otherwise), or the transmission by facsimile or email, to the returning officer of a notice in writing signed personally by the person proposed for nomination.

(2) **Timing of withdrawal**

The notice must be delivered, sent or transmitted so as to reach the returning officer by 12 noon on the nomination day.

(3) **Emailed withdrawal notice**

The notice is not validly transmitted by email unless:

- (a) an image of the completed notice signed by the person proposed for nomination is included in or attached to the email, and
- (b) that image includes an image of the actual signature as appearing on the notice.

(4) **Inquiries as to authenticity of withdrawal notice**

The returning officer may make such inquiries as he or she thinks fit to confirm the authenticity of a withdrawal notice if he or she considers it appropriate to do so in the circumstances.

[21] **Clause 292 Multiple nomination proposals**

Omit "11 am" from clause 292 (1). Insert instead "12 noon".

[22] Clause 293

Omit the clause. Insert instead:

293 Refund of deposit

- (1) A deposit in respect of the nomination of a person (the *candidate*) is to be returned if:
 - (a) the candidate withdraws the proposal for nomination or cannot be nominated because the candidate is not qualified to hold civic office, or
 - (b) the candidate dies before election day, or
 - (c) the candidate is elected (whether or not a poll is taken), or
 - (d) the candidate receives at least 4 per cent of the total number of formal first preference votes, or
 - (e) the name of the candidate appears in a group on the ballot-papers and any candidate whose name appears in that group is elected or receives at least 4 per cent of the total number of formal first preference votes, or
 - (f) a poll is not taken in the ward or area for which the candidate has been nominated.
- (2) The deposit that is to be returned under subclause (1) is to be returned:
 - (a) to the candidate (or to some person authorised in writing by the candidate to receive it), unless paragraph (b) applies, or
 - (b) to the candidate's personal representatives, if the candidate died before election day.
- (3) A deposit that is not required to be returned is to be forfeited to the council.

[23] Clause 294 Inspection of names of persons proposed for nomination

Omit clause 294 (1). Insert instead:

- (1) A person is to be allowed, at any reasonable time in office hours, to inspect, without charge, a list prepared by the returning officer of:
 - (a) the full names of persons proposed for nomination, and
 - (b) the names under which those persons have requested, in the consents to their nomination papers, that they be shown on the ballot-papers, and

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- (c) the suburb, town or other locality of the place of living as enrolled of those persons (as stated on the nomination papers).

[24] **Clause 295 Returning officer to nominate candidates**

Omit clause 295 (1). Insert instead:

- (1) On the nomination day, and in the presence of such scrutineers and such reasonable number of other persons as choose to be present, the returning officer is to do the following, commencing at 12 noon:
 - (a) attend at the place of nomination, and
 - (b) announce any withdrawals of nominations, and
 - (c) cancel the nomination papers of the persons who have withdrawn, and
 - (d) nominate as candidates for election the persons whose nomination papers the returning officer believes to be valid and that have not been cancelled.

[25] **Clause 295 (3)**

Insert after clause 295 (2):

- (3) On or as soon as practicable after the nomination day, the returning officer is to deliver or send to the Electoral Commission a list or lists of:
 - (a) the persons proposed for nomination and the names under which the persons have requested, in the consents to their nomination papers, that they be shown on the ballot-papers and of the wards or area for which they are proposed, and
 - (b) the persons nominated as candidates under subclause (1).

[26] **Clause 297 Polling places**

Omit clause 297 (2). Insert instead:

- (2) If an area is divided into wards, at least one polling place is to be appointed by the Electoral Commission for all wards, at which a person enrolled in any such ward may vote.

[27] **Clause 297 (3)**

Omit the subclause.

[28] Clause 298

Omit the clause. Insert instead:

298 Pre-poll voting offices

(1) The Electoral Commission must appoint one or more places as pre-poll voting offices for the purpose of enabling electors to vote in person before election day.

(2) The office of the returning officer is taken to be appointed as a pre-poll voting office under subclause (1).

Note. Subdivision 4 of Division 7 of Part 11 (clauses 332 and 332A) provides for mobile booths for the purposes of voting.

[29] Clause 300 Notice of contested election

Omit “the returning officer must at the time and place of nomination publicly announce” from clause 300 (1).

Insert instead “the Electoral Commission must on the nomination day or as soon as practicable afterwards publish a notice stating”.

[30] Clause 300 (2)

Omit “returning officer”. Insert instead “Electoral Commission”.

[31] Clause 300 (3)

Insert after clause 300 (2):

(3) As soon as practicable after the nomination day, the Electoral Commission must cause a list of those details to be displayed on the Commission’s internet website until at least election day.

[32] Clause 302 Order of candidates and groups on ballot-papers

Insert “ungrouped” before “candidates” in the heading to the clause.

[33] Clause 303 Order of ungrouped candidates on ballot-papers

Omit “Order” from the heading to the clause.

Insert instead “Determining the order”.

[34] Clause 304 Order of groups of candidates on ballot-papers

Omit “Order” from the heading to the clause.

Insert instead “Determining the order”.

[35] Clause 305 Form of ballot-papers

Omit “ticket” wherever occurring in clause 305 (5).

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[36] Clause 305 (5)

Omit “returning officer”. Insert instead “Electoral Commission”.

[37] Clauses 306–308

Omit the clauses.

[38] Clause 309 Supply of rolls and ballot-papers

Omit “senior deputy returning officer” from clause 309 (1) (b).

Insert instead “polling place manager”.

[39] Clause 309 (3)

Omit “polling day”. Insert instead “election day”.

[40] Clause 311

Omit the clause. Insert instead:

311 Ballot-paper to be initialled

A ballot-paper, before being delivered or sent to an elector, is to be initialled on the front by an election official.

[41] Clause 312

Omit the clause. Insert instead:

312 Ballot-paper may be photocopied, written or otherwise reproduced

- (1) If a polling place, pre-poll voting office or declared institution does not have or runs out of ballot-papers printed in accordance with clause 305, the returning officer, polling place manager or other election official in charge at the time may have the ballot-paper reproduced by photocopying or writing or may use copies obtained by facsimile or email.
- (2) A ballot-paper so reproduced or obtained is still required to be in Form 4, 5 or 6 and is to be in the same general format as the ballot-paper printed in accordance with clause 305.
- (3) A ballot-paper so reproduced or obtained and complying with subclause (2) is as valid as a form printed in accordance with clause 305.

[42] Clause 313 Postal voting: qualifications

Omit “prison” from clause 313 (g).

Insert instead “correctional centre (within the meaning of the *Crimes (Administration of Sentences) Act 1999*)”.

[43] Clause 313 (j)

Insert at the end of clause 313 (i):

, or

(j) is a silent elector.

[44] Clause 314

Omit the clause. Insert instead:

314 Postal voting: application**(1) Qualified persons may apply**

A person qualified under this Subdivision may apply to the returning officer for a postal ballot-paper and postal voting envelope.

(2) Form, completion and witnessing of application

The application:

- (a) is to be in Form 7, and
- (b) is to be completed and signed by the applicant, and
- (c) is to be witnessed as shown on the application.

(3) Despatch of application to returning officer

The application:

- (a) must be delivered or sent (by post or otherwise), or transmitted by facsimile or email, so as to reach the returning officer between the roll closing date and 5 pm on the fifth day before election day, and
- (b) if received by the returning officer within that period, is to be given a number.

(4) Physical delivery or sending of application

If the application is to be delivered or sent (by post or otherwise) to the returning officer but not transmitted by facsimile or email, the application:

- (a) is to be placed by the applicant in an envelope addressed to the returning officer and sealed, and

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- (b) is to be delivered or sent directly to the returning officer by the applicant (or if the applicant is physically incapable of delivering or sending the application and entrusts it to another person for that purpose, by that person).

(5) Emailed application

If the application is to be emailed to the returning officer, the application is not validly transmitted by email unless:

- (a) an image of the completed application signed by the elector and witness is included in or attached to the email, and
- (b) that image includes an image of the actual signatures as appearing on the application.

(6) Inquiries as to authenticity of application

The returning officer may make such inquiries as he or she thinks fit to confirm the authenticity of an application if he or she considers it appropriate to do so in the circumstances.

Note. Clause 388A provides that an application for postal voting is taken to be duly made if an elector intending to vote by a postal vote applies under that clause for a ballot-paper in braille format.

[45] Clause 315 Registration of general postal voters

Omit “5 pm on the nomination day” from clause 315 (3).

Insert instead “6 pm on the roll closing date”.

[46] Clause 317 Issue of postal ballot-paper

Omit clause 317 (1) (b). Insert instead:

- (b) deliver or send to the elector a ballot-paper that is initialled on the front by an election official, and

[47] Clause 318 Postal voting procedure

Omit “senior deputy returning officer” wherever occurring in clause 318 (5) and (6).

Insert instead “polling place manager”.

[48] Clause 318 (5)

Insert “The envelope is to be placed in the ballot-box at the polling place.” after “day.”.

[49] Clause 320 Receipt of postal ballot-papers

Omit “appropriate notation on the record referred to in clause 317 (1) (a)” from clause 320 (1).

Insert instead “appropriate record of the receipt of the envelope”.

[50] Clause 320 (2)

Omit “If the elector’s name is on the roll of electors, the”. Insert instead “The”.

[51] Clause 320 (3)

Omit the subclause.

[52] Part 11, Division 7, Subdivision 2, heading

Omit the heading. Insert instead:

Subdivision 2 Pre-poll voting at pre-poll voting offices

[53] Clause 321 Pre-poll voting qualifications

Insert after clause 321 (c):

- (c1) is disabled and so will be prevented from attending at any such polling place to vote, or
- (c2) is prevented by approaching maternity from attending at any such polling place to vote, or

[54] Clause 321 (g)

Insert at the end of clause 321 (f):

, or

- (g) is a silent elector.

[55] Clauses 322–324

Omit the clauses. Insert instead:

323 Pre-poll voting procedure

(1) Application may be made

A person qualified under this Subdivision may apply for a pre-poll ballot paper. The application is to be made orally:

- (a) by the elector in person, and
- (b) to a pre-poll voting officer at a place, on a day and during hours, respectively appointed by or under clauses 298 and 326.

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(2) **Oral declaration by elector**

The elector is to make an oral declaration to a pre-poll voting officer stating:

- (a) the name under which the elector claims to vote and such other particulars as the officer requires for the purpose of checking the name on the roll of electors, and
- (b) that the elector is entitled to vote at the election, and
- (c) that the elector has not already voted in connection with the election and will not vote anywhere else in connection with the election, and
- (d) the ground on which the elector is making the application.

(3) **Written declaration by elector**

The elector is then to make a written declaration. The declaration:

- (a) is to be in Form 10, and
- (b) is to be printed or written on a ballot-paper envelope, and
- (c) is to be obtained by the applicant from the pre-poll voting officer, who, before handing it to the applicant, must fill in on the declaration:
 - (i) the name of the area and ward (if any), and
 - (ii) the full name and full address of the elector, and
- (d) is to be completed and signed by the elector in the presence of the officer, and
- (e) is to be returned to the officer who is to witness the elector's signature.

Note. Form 10 also includes the declaration to be made by an elector whose name does not appear on the roll of electors.

(4) **Questions**

A pre-poll voting officer may, and must if requested to do so by any scrutineer, put to the elector who made the application under this clause any of the questions set out in clause 339 that are applicable to the case.

(5) **Ballot-paper to be handed to elector**

If:

- (a) the elector answers the questions satisfactorily or no questions are to be put to the elector, and
 - (b) the elector makes the declaration under subclause (3),
- the pre-poll voting officer must hand to the elector a ballot-paper in Form 4, 5 or 6 that is initialled on the front by the officer.

(6) Record of voting

The pre-poll voting officer is to make an appropriate notation on the roll of electors to show that the elector has received a ballot-paper.

(7) Ballot-paper to be completed and given to officer

On receiving a pre-poll ballot-paper, the elector is:

- (a) to mark his or her vote on the ballot-paper in accordance with the directions on it in view of the pre-poll voting officer but so that the officer is unable to see the vote, and
- (b) to fold the ballot-paper so that the vote cannot be seen, and then return the ballot-paper so folded to the officer.

(8) How ballot-paper to be dealt with by officer

When a ballot-paper has been so returned to the pre-poll voting officer, the officer must, in the presence of the elector:

- (a) enclose the ballot-paper in the envelope bearing the elector's declaration and seal the envelope, and
- (b) put the sealed envelope in the pre-poll ballot-box.

324 Pre-poll ballot-box to be delivered or sent to returning officer

A pre-poll ballot-box is to be delivered or sent unopened to the returning officer as soon as the ballot-box is no longer required for further voting.

[56] Clause 325 Surrender of postal ballot-papers

Omit "the returning officer or senior deputy returning officer".

Insert instead "a pre-poll voting officer".

[57] Clause 326 Pre-poll voting offices and times

Omit "the pre-poll voting offices for senior deputy returning officers" from clause 326 (2).

Insert instead "one or more other pre-poll voting offices".

[58] Clause 326 (3)

Omit "returning officer or senior deputy returning officer".

Insert instead "pre-poll voting officer".

[59] Clause 327 Declared institutions

Omit "a ward or area" from clause 327 (1). Insert instead "an area".

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[60] Clause 327 (1)

Omit “patients or inmates”.

Insert instead “permanent or temporary residents”.

[61] Clause 327 (1)

Omit “the ward or area”. Insert instead “the area”.

[62] Clauses 328–331

Omit the clauses. Insert instead:

328 Taking of poll at declared institutions

- (1) The returning officer for an area in which a declared institution is situated must assign one or more pre-poll voting officers to take the poll at the institution.
- (2) The pre-poll voting officers may, on any one or more of the fifth, fourth and third days before election day, enter into and remain in the institution for the purpose of taking the poll at the institution.

329 Entitlement to vote at declared institutions

- (1) An elector who:
 - (a) is, for the time being, a permanent or temporary resident of a declared institution, and
 - (b) has, by message to the returning officer for the area in which the institution is situated or a pre-poll voting officer assigned to take the poll at the institution, requested an opportunity to record his or her vote at the institution,is entitled to vote under this Subdivision while the pre-poll voting officers are at the institution for the purpose of taking the poll.
- (2) An elector to whom a postal vote certificate and postal ballot paper have been issued is not entitled to vote under this Subdivision unless he or she first delivers for cancellation to a pre-poll voting officer who takes the poll at the institution of which the elector is a permanent or temporary resident, his or her postal vote certificate and postal ballot paper.
- (3) A person to whom any message referred to in subclause (1) (b) is given for delivery to a pre-poll voting officer must, unless otherwise ordered on medical grounds by a legally qualified medical practitioner, deliver the message to a pre-poll voting officer before, or forthwith after, a pre-poll voting officer enters, for the purpose of taking the poll, the declared institution of

which the person making the request is a permanent or temporary resident.

Maximum penalty: 0.5 penalty unit.

330 Procedure for voting at declared institutions

(1) Opportunity to vote to be given

The pre-poll voting officers must afford an elector entitled to vote under this Subdivision the opportunity to record his or her vote by visiting the elector at the declared institution of which the elector is, for the time being, a permanent or temporary resident.

(2) Visit may be forbidden on medical grounds

A visit to an elector must not be made under this clause if the pre-poll voting officer is informed, by a legally qualified medical practitioner or member of the staff of the declared institution of which the elector is, for the time being, a permanent or temporary resident, that the visit is forbidden, on medical grounds, by a legally qualified medical practitioner.

(3) Oral declaration by elector

The elector is to make an oral declaration to a pre-poll voting officer stating:

- (a) the name under which the elector claims to vote and such other particulars as the officer requires for the purpose of checking the name on the roll of electors, and
- (b) that the elector is entitled to vote at the election, and
- (c) that the elector has not already voted in connection with the election and will not vote anywhere else in connection with the election.

(4) Written declaration by elector

The elector is then to make a written declaration. The declaration:

- (a) is to be in Form 10, and
- (b) is to be printed or written on a ballot-paper envelope, and
- (c) is to be obtained by the elector from the pre-poll voting officer, who, before handing it to the elector, must fill in on the declaration:
 - (i) the name of the area and ward (if any), and
 - (ii) the full name and address of the elector, and
- (d) is to be completed and signed by the elector in the presence of the officer, and

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- (e) is to be returned to the officer who is to witness the elector's signature.

Note. Form 10 also includes the declaration to be made by an elector whose name does not appear on the roll of electors.

(5) **Questions**

A pre-poll voting officer may, and must if requested to do so by any scrutineer, put to an elector visited by him or her under this Subdivision any of the questions set out in clause 339 that are applicable to the case.

(6) **Ballot-paper to be handed to elector**

If:

- (a) the elector answers the questions satisfactorily or no questions are to be put to the elector, and
 - (b) the elector makes the declaration under subclause (4),
- the pre-poll voting officer must hand to the elector a ballot-paper in Form 4, 5 or 6 that is initialled on the front by the officer.

(7) **Record of voting**

The pre-poll voting officer is to make an appropriate notation on the roll of electors to show that the elector has received a ballot-paper.

(8) **Ballot-paper to be completed and given to officer**

On receiving the ballot-paper, the elector is:

- (a) to mark his or her vote on the ballot-paper in accordance with the directions on it in the view of the pre-poll voting officer but so that the officer is unable to see the vote, and
- (b) to fold the ballot-paper so that the vote cannot be seen, and then return the ballot-paper so folded to the officer.

(9) **How ballot-paper to be dealt with by officer**

When a ballot-paper has been so returned to the pre-poll voting officer, the officer must, in the presence of the elector:

- (a) enclose the ballot-paper in the envelope bearing the elector's declaration and seal the envelope, and
- (b) put the sealed envelope in the declared institutions ballot-box.

331 Declared institutions ballot-box to be delivered or sent to returning officer

A declared institutions ballot-box is to be delivered or sent unopened to the returning officer as soon as the ballot-box is no longer required for further voting.

[63] Clause 332 Mobile booths in convalescent homes, hospitals or similar institutions

Insert “in any convalescent home, hospital or similar institution” after “the Act” wherever occurring in clause 332 (1) and (2).

[64] Clause 332A

Insert after clause 332:

332A Mobile booths for pre-poll voting in remote local government areas

(1) Electoral Commission’s functions

The Electoral Commission:

- (a) may declare an area to be a remote area for the purposes of this clause, and
- (b) may determine the places in that area that a team will visit for the purposes of this clause, and
- (c) may determine the days and times when a team will visit those places (such a day must be after nomination day and before election day or a day to which the polling is adjourned), and
- (d) must take such steps as it thinks fit to give public notice of:
 - (i) the places determined under paragraph (b), and
 - (ii) the days and times determined under paragraph (c) when a team will visit such a place for the purposes of this clause.

(2) Teams

A team consists of two or more election officials, one of whom must be a pre-poll voting officer who is designated by the Electoral Commission as team leader. The team leader is to exercise the functions of the pre-poll voting officer under the following provisions of this clause.

(3) Visits and variation of places, days or times

A team must make a visit or visits as notified under subclause (1) (d), but, if the team is unable for reasonable cause, or the pre-poll

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voting officer considers it inappropriate, to make such a visit, the officer may substitute another place, day or time for the visit and, in that event, must:

- (a) take such steps as he or she thinks fit to give public notice of the substituted place, day or time, and
- (b) inform the Electoral Commission.

(4) **Failure to visit does not invalidate election result**

Any failure by a team to make a visit in accordance with this clause does not invalidate the result of the election.

(5) **Voting**

At any time when a team is at a place for the purposes of taking votes under this clause in an election:

- (a) the pre-poll voting officer must have a pre-poll ballot-box, ballot-papers and such other things as are necessary for the votes of electors to be taken at the place, and
- (b) every person at the place who is entitled to vote in the election for the area is entitled to have his or her vote taken under this clause, and
- (c) for purposes of, and in connection with, the taking of votes under this clause:
 - (i) the place is taken to be a pre-poll voting office, and
 - (ii) the pre-poll voting officer is taken to be the pre-poll voting officer at that office, and
- (d) an elector's vote is so far as is reasonably practicable to be taken and dealt with in all respects as if the vote were recorded at a pre-poll voting office under usual conditions, but the following provisions are to be disregarded for this purpose:
 - (i) clause 321 regarding the qualifications to vote before election day,
 - (ii) clause 326 regarding pre-poll voting times and candidate information sheets.

(6) **Ballot-box to be secured and forwarded to returning officer**

At the end of the last visit made by a team for the purposes of this clause, the pre-poll voting officer must, in the presence of any other election official assisting the officer and any scrutineers who are present:

-
- (a) publicly close, fasten, seal and take charge of the ballot-box used by the officer for the purposes of this clause, and
 - (b) with the least possible delay, forward it for the purposes of scrutiny to the returning officer for the area concerned.

(7) **Relationship of this clause to other provisions**

In relation to an area declared by the Electoral Commission to be a remote area, and without affecting subclause (5) (d), the provisions of this clause apply in addition to, and without derogation from, the application of any other provision of this Regulation. However, any such other provision applies with any necessary modifications.

[65] Clause 333 Assistance of officers

Omit “or a senior deputy returning officer”.

Insert instead “, a polling place manager or a pre-poll voting officer”.

[66] Clause 334 Principal polling place

Omit the clause.

[67] Clause 335

Omit the clause. Insert instead:

335 Polling place—arrangements

(1) **Assignment of polling place manager**

The returning officer must assign an election official to preside at each polling place as polling place manager.

(2) **Assignment of other election officials to assist**

The returning officer must assign at least one other election official to assist in taking the poll at a polling place.

(3) **Returning officer polling place manager**

If the returning officer’s instrument of appointment or another instrument issued by the Electoral Commission authorises him or her to do so, the returning officer may act as the polling place manager at a polling place, in which case the returning officer is taken to be a polling place manager duly assigned to preside at the polling place.

(4) **Assignments to be in writing**

Assignments under this clause must be made in writing.

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(5) **Functions of polling place managers and other election officials**

The functions of polling place managers and other election officials are, subject to the Act and this Regulation, to be as determined by the Electoral Commission.

[68] **Clause 339 Questions put to elector**

Omit “Are you 18 years of age or older?” from clause 339 (4).

Insert instead “What is your date of birth?”.

[69] **Clause 339 (5)**

Omit the subclause. Insert instead:

- (5) A person who:
 - (a) fails to satisfy a requirement under subclause (1) or (3), or
 - (b) does not answer “yes” to questions 1 and 3, and “no” to questions 4 and 5, in subclause (4), or
 - (c) whose answer to question 2 in subclause (4) does not correspond to the person’s date of birth as appearing on the roll of electors,must not be given a ballot-paper and must not be allowed to vote.

[70] **Clause 339 (7) (a)**

Omit the paragraph. Insert instead:

- (a) because of errors or omissions in the entry of the person’s name or date of birth as appearing on the roll of electors if he or she satisfies the election official of his or her identity as the person referred to in the roll, or

[71] **Clause 341**

Omit the clause. Insert instead:

341 Delivery of ballot-paper to elector

- (1) An election official is to deliver a ballot-paper initialled on the front by an election official to each person who is entitled to vote.
- (2) The election official is to make an appropriate notation on the roll of electors to show that the elector has received a ballot-paper.

[72] **Clause 342 Voting**

Omit “but to show clearly the initials on the back, show it so folded to an electoral official” from clause 342 (b).

[73] Clause 343

Omit the clause. Insert instead:

343 Elector whose name is not on roll (section 305 votes)

- (1) An elector who claims to vote under section 305 of the Act on election day, after making the declaration required by that section and receiving a ballot-paper, is to mark the ballot-paper and fold it to conceal the vote marked on it and return it so folded to the polling place manager.
- (2) The polling place manager on receiving the ballot-paper must, in the presence of the elector and of any scrutineers present, and without unfolding the ballot-paper, enclose it in the envelope, seal the envelope and put it in the ballot-box.
- (3) The polling place managers are each to make a list of section 305 votes. On it each polling place manager is to note:
 - (a) the giving of a ballot-paper at the polling place where the polling place manager is in charge to an elector who has made a declaration under section 305 of the Act, and
 - (b) the number of such votes delivered or sent to the returning officer from that polling place (or, if the polling place manager is the returning officer, retained by him or her).

[74] Clause 344 Voting if name already marked on roll

Omit “, show the initials on the back of the ballot-paper to an electoral official and deliver it to the official” from clause 344 (2).

Insert instead “and deliver it to an election official”.

[75] Clause 345 Informal ballot-papers

Omit clause 345 (1) (b). Insert instead:

- (b) it has not been initialled on the front by an election official,
or

[76] Clause 345 (3)

Omit the subclause.

[77] Clause 345 (4)

Omit “half of”.

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[78] Clause 345 (5)

Omit “back by the returning officer or an electoral official”.

Insert instead “front by an election official”.

[79] Clause 345 (6A)

Insert after clause 345 (6):

- (6A) Despite subclause (1), a ballot-paper is not informal by reason only that the elector has placed one or more numbers, a tick or one or more crosses adjacent to but outside a square or squares if, in the opinion of the returning officer, the elector’s intention is clearly indicated on the ballot-paper. In such a case, each such number, tick or cross is taken to have been placed within the relevant square.

[80] Clause 346 Persons present at scrutiny and count

Omit “the Electoral Commissioner, the returning officer, electoral officials”.

Insert instead “the Electoral Commission, election officials”.

[81] Clause 347 Postal, pre-poll and declared institution votes

Omit the clause.

[82] Clause 348

Omit the clause. Insert instead:

348 Initial scrutiny of ballot-papers and counting of votes

- (1) On the close of the poll at an election each polling place manager must with the assistance of the election officials, and in the presence of the scrutineers, then present and on duty at the polling place:
- (a) open the ballot-box, and
 - (b) scrutinise the ballot-papers, and
 - (c) reject the informal ballot-papers, and
 - (d) place the envelopes containing postal votes, section 305 votes and tendered votes on one side as they are taken from the ballot-box, and
 - (e) count:
 - (i) the first preferences recorded for each candidate and group of candidates, and
 - (ii) the number of informal votes, and

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- (iii) the number of envelopes containing declarations under this Part.

- (2) The polling place manager must send to the returning officer returns in Form 14:
 - (a) stating the details of those counts, and
 - (b) signed by:
 - (i) the polling place manager and another election official, and
 - (ii) any scrutineer who desires to sign the returns.

[83] Clause 349 Sending ballot-papers to returning officer

Omit “senior deputy returning officer” wherever occurring.

Insert instead “polling place manager”.

[84] Clause 349 (1) (b)

Omit the paragraph. Insert instead:

- (b) in a second parcel:
 - (i) the envelopes containing postal votes, the envelopes containing section 305 votes and the envelopes containing tendered votes, and
 - (ii) the ballot-papers that have not been used, and
 - (iii) the cancelled postal ballot-papers and forms of declaration, and
 - (iv) the spoilt ballot-papers, and
 - (v) the list of section 305 votes and the list of tendered votes, and

[85] Clause 349 (2) (e)

Omit “senior deputy returning officer’s”.

Insert instead “polling place manager’s”.

[86] Clause 349 (3)

Omit “on duty at the principal polling place”.

Insert instead “then present and on duty”.

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[87] Clause 350

Omit the clause. Insert instead:

350 Checking of ballot-papers in sealed envelopes

(1) **Postal votes**

The returning officer must on election day (at any time after 8 am) produce the applications for postal votes, produce the list and signature indications of general postal voters forwarded to the returning officer, and open the ballot-boxes containing postal votes received by the returning officer and take all the envelopes from them.

(2) Postal votes received after the close of the poll but before 6 pm on the first business day following election day (including those delivered to polling place managers on election day under clause 318 (5)) are to be dealt with in the same way as postal votes received before the close of the poll.

(3) The returning officer is then to do the following or have the following done:

- (a) count the sealed ballot-paper envelopes unopened and record the count,
- (b) check the names on the envelopes against the roll of electors and, if the Form 8 declaration on the envelope has been duly signed and witnessed, mark the roll of electors in the manner determined by the Electoral Commission,
- (c) compare the signature of the elector on each postal vote declaration with the signature of the applicant on the correspondingly numbered application for a postal vote (or the signature of the applicant for registration as a general postal voter), allow the scrutineers to inspect both signatures, and examine each declaration as to its formality or informality,
- (d) if the returning officer is not satisfied that the signature of the elector on the declaration is that of the applicant who signed the application or that the declaration is formal—mark, initial and keep apart unopened the sealed ballot-paper envelope on which the declaration appears,
- (e) if the returning officer is satisfied that the signature of the elector on the declaration is that of the applicant who signed the application and that the declaration is formal—turn the sealed ballot-paper envelope so that the declaration is face downwards, then open the envelope (without damaging the writing on it) and take out the

ballot-paper and, without inspecting or unfolding it or allowing any other person to do so, place it in a securely fastened ballot-box for further scrutiny,

- (f) after dealing with all the envelopes and ballot-papers in accordance with paragraphs (d) and (e), open the ballot-box, take out the ballot-papers, unfold and scrutinise them and reject the informal ones.

(4) Pre-poll votes, declared institution votes and section 305 votes

The returning officer must:

- (a) on election day (at any time after 8 am) produce all the sealed envelopes containing pre-poll votes and declared institution votes (including section 305 votes cast before election day), and
- (b) on the close of poll produce all the sealed envelopes containing section 305 votes cast on election day, and deal with them in accordance with subclause (5).

(5) The returning officer is to do the following or have the following done in relation to the envelopes referred to in subclause (4):

- (a) count the sealed ballot-paper envelopes unopened and record the count,
- (b) examine the declaration on each envelope before it is opened and, if necessary, make inquiries to determine whether the declaration is in order and the elector is entitled to vote,
- (c) in the case of section 305 votes—check the names on the envelopes against the roll of electors and, if an elector's name is on the roll of electors, mark the roll in the manner determined by the Electoral Commission,
- (d) if the declaration is in order and it appears to the returning officer that the elector is entitled to vote, the returning officer is to open the envelope containing the ballot-paper, extract the ballot-paper and, without damaging the writing on the envelope, place the ballot-paper still folded in a securely fastened ballot-box for further scrutiny,
- (e) if the declaration is not in order, or it appears to the returning officer that the elector is not entitled to vote, the returning officer is to leave the envelope containing the ballot-paper unopened,
- (f) after dealing with all the envelopes and ballot-papers in accordance with paragraphs (d) and (e), open the

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ballot-box, take out the ballot-papers, unfold and scrutinise them and reject the informal ones.

(6) **Tendered votes**

The returning officer must on the close of the poll produce all envelopes containing tendered votes and do the following or have the following done:

- (a) count the number of envelopes containing tendered votes for each polling place,
- (b) in the presence of the scrutineers examine the declarations on the envelopes and make such inquiries as the returning officer considers necessary as to whether the persons who signed the declarations are entitled to vote,
- (c) if the returning officer is not satisfied that the person who signed the declaration is entitled to vote or that the declaration is duly witnessed, keep apart and unopened the envelope on which the declaration appears,
- (d) if the returning officer is satisfied that the person who signed the declaration is entitled to vote and that the declaration is duly witnessed, turn the envelope so that the declaration is face downwards, then open the envelope (without damaging the writing on it) and take out the ballot-paper and, without inspecting or unfolding it or allowing any other person to do so, place it in a securely fastened ballot-box for further scrutiny,
- (e) after dealing with all the envelopes and ballot-papers in accordance with paragraphs (c) and (d), open the ballot-box, take out the ballot-papers, unfold and scrutinise them and reject the informal ones.

[88] Clause 351 Finalising the count

Omit clause 351 (1) (e). Insert instead:

- (e) inform the candidates (in person, in writing, by facsimile, by telephone, by email, by text message or in any other way) as soon as practicable after the result is ascertained:
 - (i) of the result of the count, and
 - (ii) when the returning officer's declaration under clause 356 will be available for inspection at the office of the relevant council, and

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- (iii) that the information contained in a notice under clause 356 (5) is to be published on the Electoral Commission's internet website for at least one month,

[89] Clause 356 Declaring the election

Omit "After declaring the election, the returning officer" from section 356 (3).
Insert instead "After the election is declared, the Electoral Commission".

[90] Clause 356 (3) (a)

Omit "at the principal polling place and".

[91] Clause 356 (3) (b)

Omit "the Electoral Commissioner,".

[92] Clause 356 (3) (b)

Omit "and" where lastly occurring.

[93] Clause 356 (3) (c)

Omit the paragraph.

[94] Clause 356 (5)–(8)

Insert after clause 356 (4):

- (5) The Electoral Commission must cause the information in the declaration to be published on the Electoral Commission's internet website for at least one month.
- (6) The council must cause the information in the declaration to be published on the council's internet website, or provide a link on its website to the relevant part of the Electoral Commission's website, for at least one month.
- (7) The Electoral Commission must insert, in a newspaper circulating generally in the State or another newspaper circulating in the relevant area or both, a notice stating:
 - (a) the names of the candidates declared elected, and
 - (b) the ward or area for which they have been elected, and
 - (c) that detailed results are available on the Electoral Commission's internet website and for inspection at the office of the relevant council, and

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(d) such other information relating to the election as the Electoral Commission thinks fit.

(8) A notice under subclause (7) may relate to one or more areas.

[95] Part 11, Division 9A

Insert after clause 356:

Division 9A Provisions relating to activities during regulated periods

Subdivision 1 Preliminary

356A Interpretation

(1) In this Division:

display a poster or electoral material includes exhibit or post up the poster or electoral material; and *publicly display* means display, as so defined, within or within view of a public place.

electoral material means a how-to-vote card, poster or advertisement containing electoral matter, or anything else containing electoral matter.

electoral matter means:

- (a) any matter that is intended or calculated or likely to affect or is capable of affecting the result of any election held or to be held or that is intended or calculated or likely to influence or is capable of influencing an elector in relation to the casting of his or her vote at any election, or
- (b) the name of a candidate at any election, the name of the party of any such candidate, the name or address of the committee rooms of any such candidate or party, the photograph of any such candidate, and any drawing or printed matter that purports to depict any such candidate or to be a likeness or representation of any such candidate.

how-to-vote card means any card, handbill, pamphlet or notice having any voting directions within it, whether or not it contains:

- (a) any representation or partial representation of a ballot-paper or portion of a ballot-paper, or
- (b) any representation or partial representation apparently intended to represent a ballot-paper or portion of a ballot-paper.

joint owner of premises or property means one of two or more persons who own the premises or property jointly, whether as joint tenants or tenants in common or otherwise.

poster means any electoral matter printed, drawn or depicted on any material whatsoever and where any electoral matter is printed, drawn or depicted in sections, those sections, both severally and collectively, are to be treated as a poster.

recognised group of candidates means a group of candidates who have claimed under section 308A of the Act to have their names included in a group on the ballot-papers.

regulated period for an election means:

- (a) the period starting with the roll closing date and ending at 6 pm on election day, and
- (b) all days to which polling for the election is adjourned.

street address does not include a post office box number or a DX box number.

voting directions means directions or suggestions (whether express or implied) in relation to the casting of votes.

- (2) If premises or other property referred to in a provision of Subdivision 2 are subject to a lease for a term of 6 months or more, a reference in that provision to the owner or a joint owner of the premises or property is to be read as a reference to the lessee or a joint lessee of the premises or property.

Subdivision 2 Non-complying electoral material

356B Non-complying electoral material

For the purposes of this Division, electoral material contravenes this Subdivision if:

- (a) the material contains voting directions intended or likely to mislead or improperly interfere with an elector in or in relation to the casting of his or her vote, or
- (b) the material contains an untrue or incorrect statement intended or likely to mislead or improperly interfere with an elector in or in relation to the casting of his or her vote, or
- (c) without limiting paragraph (b), the material contains information that is incorrect or misleading about whether a person is or is not:
 - (i) a candidate for the election, or
 - (ii) a candidate for a particular area or ward, or

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- (iii) a member of a registered political party or recognised group of candidates, or
- (iv) endorsed by a registered political party, or
- (d) the material uses:
 - (i) the name, an abbreviation or acronym of the name or a derivative of the name of a party respectively included in the Local Government Register of Political Parties (or a name or abbreviation resembling such a name, abbreviation, acronym or derivative) in a way that is intended or likely to mislead any elector, or
 - (ii) the word “Independent” and the name or an abbreviation or acronym of the name or a derivative of the name of a party respectively included in that Register in a way that suggests or indicates an affiliation with that party (unless the name of the party in that Register includes the word “Independent”), or
- (e) in the case of material that contains voting directions—any of the directions are contrary to the requirements of the Act or this Regulation or are contrary to the directions or instructions contained in the relevant ballot-papers, including (for example) a direction:
 - (i) to leave the ballot-paper blank, or
 - (ii) to write or draw unauthorised matter on the ballot-paper, or
 - (iii) to repeat or leave out a number when indicating preferences, or
- (f) the material could result in an elector casting an informal vote, or
- (g) the material contains a statement (express or implied) to the effect that voting is not compulsory, or
- (h) the material contains words that are or other matter that is obscene or offensive.

356C Non-complying electoral material—additional provisions regarding how-to-vote cards

(1) Application of clause

Without limiting clause 356B, electoral material consisting of or containing a how-to-vote card contravenes this Subdivision if the card does not comply with this clause.

(2) **Non-complying how-to-vote cards for registered political parties**

A how-to-vote card containing voting directions as to how to vote for or in accordance with the recommendations of a registered political party does not comply with this clause if:

- (a) the party has endorsed no candidate for the election, or
- (b) the voting directions give a preference to a candidate not endorsed by it without first giving higher preferences to all candidates endorsed by it.

(3) **Non-complying how-to-vote cards for recognised groups of candidates**

A how-to-vote card containing voting directions as to how to vote for or in accordance with the recommendations of a recognised group of candidates does not comply with this clause if the voting directions give a preference to a candidate who is not a member of the group without first giving higher preferences to all candidates who are members of the group.

(4) **Non-complying how-to-vote cards for individual candidates**

A how-to-vote card containing voting directions as to how to vote for or in accordance with the recommendations of a particular candidate does not comply with this clause if:

- (a) whether or not the candidate is a member of a recognised group of candidates—the voting directions do not contain a voting direction for the candidate to receive the first preference, or
- (b) where the candidate is a member of a recognised group of candidates—the voting directions give a preference to a candidate who is not a member of the group without first giving higher preferences to all candidates who are members of the group.

(5) **Non-complying how-to-vote cards using group voting squares—voting above and below the line**

A how-to-vote card containing voting directions as to how to vote for or in accordance with the recommendations of a recognised group of candidates by using a group voting square does not comply with this clause if the voting directions also give preferences (“below the line”) for:

- (a) some only of the individual members of the group, or

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- (b) individual members of the group in a different order from that appearing in the list of candidates in the group on the ballot-paper.

Note. Subclause (5) ensures that in these circumstances the material must be internally consistent, since voting by using a group voting square implies voting for all the candidates in the group and in the order in which their names appear.

- (6) **Non-complying how-to-vote cards without group voting squares—no indication of requirement to vote for at least half the candidates**

A how-to-vote card containing voting directions as to how to vote without using group voting squares and that do not give preferences for at least half the number of candidates to be elected does not comply with this clause if the voting directions do not contain a statement as to how many other preferences must be marked on the ballot-paper.

- (7) **Non-complying how-to-vote cards relating to two or more areas**

A how-to-vote card containing voting directions does not comply with this clause if the voting directions relate to two or more areas.

Subdivision 3 Offences applicable during regulated period

356D Printing, publishing and distributing non-complying electoral material

A person must not, during the regulated period, print, publish or distribute electoral material that contravenes Subdivision 2.

Maximum penalty: 10 penalty units.

356E Display of posters

- (1) A person must not, during the regulated period, publicly display or permit or cause to be publicly displayed, a poster containing or consisting of electoral material that contravenes Subdivision 2.

Maximum penalty: 10 penalty units.

- (2) A person must not, during the regulated period, display or permit or cause to be displayed a poster:

- (a) on or within any premises occupied or used by, or under the control or management of:
- (i) the Crown or a NSW Government agency, or
 - (ii) any council or county council, or

- (b) on or within any other premises, unless the person:
 - (i) was the owner or a joint owner of the premises, or
 - (ii) performed the act concerned with the permission in writing of the owner or a joint owner of the premises.

Maximum penalty: 2.5 penalty units.

356F Writing, drawing or depicting electoral matter

- (1) A person must not, during the regulated period, write, draw or depict any electoral matter directly on any property, being a roadway, footpath, building, vehicle, vessel, hoarding or place (whether it is or is not a public place and whether on land or water).

Maximum penalty: 3 penalty units.

- (2) A person is not guilty of an offence under this clause if the person:
 - (a) was the owner or joint owner of the property, or
 - (b) performed the act concerned with the permission in writing of the owner or a joint owner of the property.
- (3) Without limiting subclause (2), a person is not guilty of an offence under this clause involving a vehicle, vessel or hoarding if the person:
 - (a) was the owner or joint owner of the premises on which the vehicle, vessel or hoarding was situated, or
 - (b) performed the act concerned with the permission in writing of the owner or a joint owner of the premises.
- (4) Subclauses (2) and (3) do not apply to any premises or property occupied or used by, or under the control or management of:
 - (a) the Crown or a NSW Government agency, or
 - (b) any council or county council.

356G Name and address on electoral material

- (1) A person must not, during the regulated period, print, publish, distribute or publicly display electoral material (other than the announcement in a newspaper of the holding of a meeting), without legibly showing on the material:
 - (a) the name and address of the person on whose instructions the material was printed, and

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- (b) the name of the printer and the street address of the premises at which it was printed.

Maximum penalty: 5 penalty units.

- (2) If a newspaper contains electoral material and the name of the printer of the newspaper and the street address of the premises at which it was printed appear on the newspaper in accordance with any Act, subclause (1) does not require that name and address to be shown separately on the material itself.

356H Encouraging ticks or crosses on ballot-papers

A person must not, during the regulated period, print, publish, distribute or publicly display any electoral material that encourages any elector to place a tick or a cross in a square on a ballot-paper.

Maximum penalty:

- (a) in the case of corporation—50 penalty units, or
- (b) in any other case—10 penalty units.

356I Defences and exceptions

(1) Defences

A person is not guilty of an offence for a breach of a provision of this Subdivision if it is established that:

- (a) the breach was not of a material nature, or
- (b) the breach was not intended, or was not likely, to mislead an elector in or in relation to the casting of his or her vote, or
- (c) the person was not aware that the act or omission concerned was a breach of the provision when it occurred and took all reasonable steps to remedy the breach when the person became aware that it was or may have been such a breach.

(2) Exceptions

Nothing in this Subdivision prohibits:

- (a) the display, writing, drawing or depicting of a sign on or at the office or committee room of a candidate or political party indicating only that the office or room is the office or committee room of the candidate or party, and specifying the name of the candidate, or the names of the candidates, or the name of the party concerned, or

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- (b) the projection by means of any cinematograph or other similar apparatus of any electoral matter on to any screen in any theatre or public hall the subject of a development consent in force under the *Environmental Planning and Assessment Act 1979* in relation to its use as a place of public entertainment, or
 - (c) the display, writing, drawing or depicting of any poster within a hall or room that is being or is about to be used for a meeting held by or on behalf of a candidate in connection with an election, or
 - (d) the display of any poster on or at the office of a councillor.

Subdivision 4 Additional offences applicable on pre-poll voting days

356J Display of posters on pre-poll voting days

(1) Posters at pre-poll voting office

A person must not display, or cause to be displayed, any poster of any size:

- (a) within a pre-poll voting office, or
- (b) on the exterior of a building used as a pre-poll voting office,

on any day on which pre-poll voting is conducted at the pre-poll voting office.

Maximum penalty: 5 penalty units.

(2) Application of this clause to grounds of enclosure

If:

- (a) a building used as a pre-poll voting office is situated in grounds within an enclosure, and
- (b) the appointment by the Electoral Commission of the pre-poll voting office does not indicate whether or not the grounds are part of the pre-poll voting office,

the grounds are not, but the building is, taken to be part of the pre-poll voting office for the purposes of subclause (1), unless a notice to the contrary is displayed under clause 356U. If such a notice is displayed, the grounds are taken to be part of the pre-poll voting office for the purposes of subclause (1).

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356K Canvassing on pre-poll voting days

(1) Canvassing in pre-poll voting office

A person must not:

- (a) canvass for votes, or
 - (b) solicit the vote of any elector, or
 - (c) induce any elector not to vote for any particular candidate or group of candidates, or
 - (d) induce any elector not to vote at the election,
- within a pre-poll voting office on any day on which pre-poll voting is conducted at the pre-poll voting office.

Maximum penalty: 5 penalty units.

(2) Amplified canvassing audible in pre-poll voting office

A person must not contravene this subclause. This subclause is contravened if on any day on which pre-poll voting is conducted at a pre-poll voting office each of the following paragraphs apply:

- (a) the person engages in:
 - (i) canvassing for votes, or
 - (ii) soliciting the vote of an elector, or
 - (iii) inducing an elector not to vote for a particular candidate or group of candidates, or
 - (iv) inducing an elector not to vote at the election, and
- (b) the person engages, in any public or private place, in that activity any distance away from the pre-poll voting office, and
- (c) the person uses any of the following to engage in that activity:
 - (i) a loud speaker,
 - (ii) a public address system,
 - (iii) an amplifier (whether fixed or mobile),
 - (iv) a broadcasting van,
 - (v) a sound system,
 - (vi) radio equipment,
 - (vii) any other equipment or device for broadcasting, and
- (d) that activity is audible within the pre-poll voting office.

Maximum penalty: 5 penalty units.

(3) Canvassing includes distributing electoral material

Without limiting the generality of subclause (1), a reference to canvassing for votes includes a reference to distributing electoral material, whether or not the material is registered in accordance with Subdivision 6.

(4) Application of this clause to grounds of enclosure

If:

- (a) a building used as a pre-poll voting office is situated in grounds within an enclosure, and
- (b) the appointment by the Electoral Commission of the pre-poll voting office does not indicate whether or not the grounds are part of the pre-poll voting office,

the grounds are not, but the building is, taken to be part of the pre-poll voting office for the purposes of this clause, unless a notice to the contrary is displayed under clause 356U. If such a notice is displayed, the grounds are taken to be part of the pre-poll voting office for the purposes of this clause.

Subdivision 5 Additional offences applicable on election days

356L Extended operation of this Subdivision

- (1) In the application of this Subdivision to electoral material, electoral matter is, without limiting the definition of that term in clause 356A, taken to include any matter consisting of an express or implicit reference to or comment on:
 - (a) an election, or
 - (b) any council or any previous council, or
 - (c) any councillor or previous councillor, or
 - (d) the Government, the Opposition, a previous Government or a previous Opposition, of this or any other State or Territory or of the Commonwealth, or
 - (e) a member or former member of the Parliament of this or any other State or Territory or of the Commonwealth, or
 - (f) a political party, a branch or division of a political party or a candidate in an election, or
 - (g) an issue submitted to, or otherwise before, the electors in connection with an election.
- (2) References in this Subdivision to election day include references to all days to which polling is adjourned.

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356M Distribution of electoral material on election days

- (1) A person must not, in a public place, distribute any electoral material on election day unless the material has been registered under Subdivision 6 for the election.
Maximum penalty: 10 penalty units.
- (2) For the purposes of this clause and without limiting its operation, material is taken to be distributed if it is left in such a position and in such circumstances as to indicate that it is intended to be available for collection by members of the public who are in a public place.
- (3) This clause does not apply to the handing out, distribution, sale or otherwise making available of a newspaper by or on behalf of a newsagent, newspaper seller or distributor if the handing out, distribution, sale or making available is in the course of the newsagent's, newspaper seller's or distributor's employment or business.

356N Display of posters on election days

- (1) **Posters at polling place**
A person must not, on election day, display or cause to be displayed any poster of any size:
 - (a) within a polling place, or
 - (b) within 6 metres of an entrance to a polling place, or
 - (c) on the exterior of a building used as a polling place.Maximum penalty: 5 penalty units.
- (2) **Posters in grounds of enclosure of polling place**
Without limiting subclause (1), a person must not, on election day, display or cause to be displayed any poster exceeding 8,000 square centimetres in area within the grounds of an enclosure in which a building used for polling is situated.
Maximum penalty: 3 penalty units.
- (3) **Posters on boundary of enclosure of polling place**
A person must not, on election day, display or cause to be displayed any poster exceeding 8,000 square centimetres in area on the outer wall, fence or other boundary of the grounds of an enclosure in which a building used for polling is situated.
Maximum penalty: 3 penalty units.

(4) Application of this clause to grounds of enclosure

If:

- (a) a building used as a polling place is situated in grounds within an enclosure, and
- (b) the appointment by the Electoral Commission of the polling place does not indicate whether or not the grounds are part of the polling place,

the grounds are not, but the building is, taken to be part of the polling place for the purposes of subclause (1), unless a notice to the contrary is displayed under clause 356U. If such a notice is displayed, the grounds are taken to be part of the polling place for the purposes of subclause (1), and subclause (2) does not apply.

356O Canvassing on election days**(1) Canvassing in or near polling place**

A person must not:

- (a) canvass for votes, or
- (b) solicit the vote of any elector, or
- (c) induce any elector not to vote for any particular candidate, or
- (d) induce any elector not to vote at the election,

on election day:

- (e) within a polling place, or
- (f) within 6 metres of an entrance to a polling place.

Maximum penalty: 5 penalty units.

(2) Amplified canvassing audible in or near polling place

A person must not contravene this subclause. This subclause is contravened if on election day each of the following paragraphs apply:

- (a) the person engages in:
 - (i) canvassing for votes, or
 - (ii) soliciting the vote of an elector, or
 - (iii) inducing an elector not to vote for a particular candidate, or
 - (iv) inducing an elector not to vote at the election, and
- (b) the person engages, in any public or private place, in that activity 6 metres or more from an entrance to a polling place, and

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- (c) the person uses any of the following to engage in that activity:
 - (i) a loud speaker,
 - (ii) a public address system,
 - (iii) an amplifier (whether fixed or mobile),
 - (iv) a broadcasting van,
 - (v) a sound system,
 - (vi) radio equipment,
 - (vii) any other equipment or device for broadcasting, and
- (d) that activity is audible:
 - (i) within the polling place, or
 - (ii) within 6 metres of an entrance to the polling place.

Maximum penalty: 5 penalty units.

(3) Canvassing includes distributing electoral material

Without limiting the generality of subclause (1), a reference to canvassing for votes includes a reference to distributing electoral material, whether or not the material is registered in accordance with Subdivision 6.

(4) Application of this clause to grounds of enclosure

If:

- (a) a building used as a polling place is situated in grounds within an enclosure, and
- (b) the appointment by the Electoral Commission of the polling place does not indicate whether or not the grounds are part of the polling place,

the grounds are not, but the building is, taken to be part of the polling place for the purposes of this clause, unless a notice to the contrary is displayed under clause 356U. If such a notice is displayed, the grounds are taken to be part of the polling place for the purposes of this clause.

Subdivision 6 Registration of electoral material

356P Application for registration of electoral material

(1) Application for registration may be made

For the purposes of clause 356M, an application may be made to the Electoral Commission (in a form approved by the Commission) for the registration of electoral material for a particular area for any one or more of the following:

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- (a) a particular election of one or more councillors,
 - (b) a particular election of mayor by electors,
 - (c) a particular constitutional referendum, or two or more particular constitutional referendums being held at the same time,
 - (d) a particular council poll, or two or more particular council polls being held at the same time.
- (2) **Applications by or on behalf of parties, groups or candidates**
- An application may be made:
- (a) by the registered officer of a registered political party—on behalf of the party, or
 - (b) by the first candidate listed in a recognised group of candidates—on behalf of the group, or
 - (c) by a candidate—on his or her own behalf.
- (3) **Applications by or on behalf of others**
- An application may be made:
- (a) by an officer or representative of an incorporated or unincorporated body (other than a registered political party or a recognised group of candidates) who is not a candidate—on behalf of the body, or
 - (b) by an individual who is not a candidate—on his or her own behalf.
- (4) **Timing of application**
- An application may be made only during the period starting with nomination day and ending at 5 pm on the Friday that is 8 days before election day.
- (5) **Draft or sample to be provided**
- An application must contain a draft or sample of the electoral material.
- (6) **Alteration or replacement of draft or sample**
- The Electoral Commission may allow the draft or sample to be altered or replaced during the period specified in subclause (4) before agreeing to registration.
- (7) **Preliminary advice**
- A person authorised by subclause (2) or (3) to apply for registration of electoral material may, during the period specified in subclause (4), apply to the Electoral Commission (in a form

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approved by the Commission) for preliminary advice as to whether particular electoral material may be registered.

- (8) The Electoral Commission may provide that advice, even if the material is incomplete, but the application for registration of the material must nevertheless be made during that period.

(9) **Manner of application**

An application under this clause must be signed by the applicant and may be delivered or sent (by post or otherwise) or may be transmitted by facsimile or email.

- (10) An application is not validly transmitted by email unless:
- (a) an image of the completed application signed by the applicant is included in or attached to the email, and
 - (b) that image includes an image of the actual signature as appearing on the application.

356Q Consideration of application for registration

(1) **Complying material must be registered**

The Electoral Commission must register the electoral material if satisfied that registration is not prohibited by this Subdivision.

(2) **Refusal for non-complying application**

However, the Electoral Commission may refuse to register the electoral material if the application for registration was not made in accordance with this Subdivision.

(3) **When material must be refused registration**

The Electoral Commission must not register the electoral material if it appears to the Electoral Commission that:

- (a) the material contravenes Subdivision 2, or
- (b) the material is, or contains a section, in a language other than English and the application for registration was not accompanied by:
 - (i) an accurate translation into English of the material or section, and
 - (ii) a declaration that the translation is accurate, or
- (c) the material does not include in legible characters:
 - (i) the name and address of the person on whose instructions the material was printed, and
 - (ii) the name of the printer and the street address at which it was printed, or

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- (d) in the case of an application for registration purporting to be made on behalf of an entity referred to in clause 356P (2) or (3)—the application was not made by a person authorised by the relevant subclause to make the application, or
 - (e) in the case of an application not purporting to be made on behalf of an entity referred to in clause 356P (2) or (3) for the registration of material that contains voting directions as to how to vote for or in accordance with the recommendations of such an entity—the application was not made by a person authorised by the relevant subclause to make an application on behalf of the entity, or
 - (f) in the case of an application for the registration of material that contains any representation or indication (whether express or implied) that any candidate:
 - (i) is a member of, or
 - (ii) pursues or supports any or all of the objects or platform (whether with or without modification) of, or
 - (iii) is affiliated in some way (whether officially or unofficially) with,
a particular registered political party or recognised group of candidates—the application was not made by or with the consent of the registered officer of the party or the first candidate listed in the group.

(4) **Offence for false statement in declaration about translated material**

A person must not make a declaration for the purposes of subclause (3) (b) knowing that the translation of the material or section is inaccurate in a material respect.

Maximum penalty: 10 penalty units.

(5) **Inquiries as to authenticity of application or consent**

The Electoral Commission may make such inquiries as the Commission thinks fit to confirm the authenticity of:

- (a) an application, or
- (b) any consent referred to in subclause (3) (f).

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356R Registration of electoral material

(1) **Certificate of registration**

Registration of the electoral material is effected by the issue of a certificate of registration (in a form approved by the Electoral Commission) in respect of a draft or sample of the electoral material.

(2) **Details to be included in certificate**

The certificate of registration must specify:

- (a) the elections, constitutional referendums and council polls, and
- (b) the area, for which the electoral material is registered.

(3) **Registration may be conditional or unconditional**

Registration may be unconditional or subject to conditions specified in the certificate of registration.

(4) **Evidence of registration**

A certificate signed by the Electoral Commissioner or by a person authorised by the Electoral Commission and certifying that specified material was or was not registered:

- (a) on a specified day or during a specified period, or
- (b) for a particular election, constitutional referendum or council poll, or
- (c) for a particular area,

is admissible in proceedings for an offence under clause 356G and is prima facie evidence of the matters certified.

(5) **Immaterial differences not to affect registration**

Electoral material is to be taken to be registered in accordance with this clause even though the material contains some differences from the draft or sample in respect of which the certificate of registration was issued, so long as the material is substantially the same as the draft or sample.

(6) **Registration not a defence for certain offences**

Registration of electoral material is not a defence to a prosecution for an offence under Subdivision 3 or 4.

(7) **Copy of material and certificate to be available for inspection**

A copy of electoral material registered under this clause and referring to an election, constitutional referendum or council poll for an area, and the relevant certificate of registration, must be available for inspection:

- (a) at the office of the returning officer for the area, during the hours of polling on election day and on all days to which the polling is adjourned, and
- (b) at such other places (if any), and during such of those hours, as the Electoral Commission determines,

at the request of any person enrolled for the area or of any scrutineer.

356S Revocation of registration or imposition of condition on registration

- (1) If the Electoral Commission is satisfied that electoral material was erroneously registered, the Commission may:
 - (a) revoke the registration of the material, or
 - (b) attach a condition to the registration of the material, requiring the material to be altered in a specified way, whether by way of omitting matter or inserting matter or both, or otherwise.
- (2) The revocation or condition takes effect from the time the revocation or condition is communicated to the candidates concerned or their representatives, and accordingly:
 - (a) electoral material whose registration has been revoked ceases to be registered from that time, and
 - (b) electoral material to whose registration a condition has been attached is from that time taken to be registered only if the condition is complied with.

Subdivision 7 Miscellaneous

356T Confiscation of posters and other electoral material

(1) **Confiscation by election officials**

The returning officer or any polling place manager, or any other election official authorised by the Electoral Commission, may remove and confiscate, or cause to be removed and confiscated:

- (a) any poster displayed in contravention of Subdivision 4 or 5, or

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(b) any electoral material that is apparently available for distribution in contravention of Subdivision 5.

(2) **Confiscation by police**

Any police officer may remove and confiscate, or cause to be removed and confiscated:

(a) any poster displayed in contravention of Subdivision 3, 4 or 5, or

(b) any electoral material that is apparently available for distribution in contravention of Subdivision 5.

(3) **Use of force**

A police officer may use reasonable force for the purposes of this clause. This clause does not authorise any other person to use force.

(4) **Confiscated material to be destroyed**

Confiscated electoral material must be destroyed without undue delay, but destruction may be delayed if the material is or may reasonably be required for evidentiary purposes.

356U Notice applying provisions to grounds of polling place

(1) This clause applies for the purposes of clauses 356J, 356K, 356N or 356O, in a case where:

(a) a building used for polling is situated in grounds within an enclosure, and

(b) the appointment by the Electoral Commission of the pre-poll voting office or polling place concerned does not indicate whether or not the grounds are part of the pre-poll voting office or polling place.

(2) The returning officer may, with the concurrence of the Electoral Commission, cause a notice to be displayed, during the hours of polling, at each entry to the grounds stating that those grounds are treated as part of the pre-poll voting office or polling place.

Note. Clauses 356J (2), 356K (4), 356N (4) and 356O (4) state the effect of displaying such a notice.

356V Official notices

Nothing in this Division applies to the printing, publishing, distribution or display of official notices.

356W Double jeopardy

A person is not liable to be convicted of both an offence under Subdivision 3 and an offence under Subdivision 4 or 5 if the offences arose out of the same circumstances.

[96] Clause 358 Misconduct in voting

Insert “(whether oral or written)” after “declaration” where firstly occurring in clause 358 (1) (a).

[97] Clause 362 Misconduct by person present at pre-poll or declared institution voting

Omit “a pre-poll voting office for the purpose of pre-poll voting” from clause 362 (1).

Insert instead “a pre-poll voting office or other place for the purpose of voting before election day”.

[98] Clause 362 (1)

Omit “returning officer or senior deputy returning officer”.

Insert instead “pre-poll voting officer”.

[99] Clause 362 (1) (a)

Omit “the returning officer or an electoral official”.

Insert instead “an election official”.

[100] Clause 367

Omit the clause. Insert instead:

367 Obstructing access

A person must not obstruct access to:

- (a) a polling place, a pre-poll voting office or a place being used for voting under clause 332A, or
- (b) a space set aside for voting at a polling place, a pre-poll voting office or a place being used for voting under clause 332A.

Maximum penalty: 0.5 penalty unit.

[101] Clause 368 Persons present in polling place

Omit “the returning officer or an electoral official” from clause 368 (2).

Insert instead “an election official”.

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- [102] Clause 368 (3) (a)**
Omit “the Electoral Commissioner, the returning officer, electoral officials”.
Insert instead “the Electoral Commission, election officials”.
- [103] Clause 369 Misconduct by scrutineers**
Omit “of the returning officer or” from clause 369 (2).
- [104] Clauses 378–382**
Omit the clauses.
- [105] Clause 383 Adjournment of poll**
Omit “senior deputy returning officer” wherever occurring in clause 383 (1).
Insert instead “returning officer”.
- [106] Clause 383 (2)**
Omit “senior deputy returning officer” wherever occurring.
Insert instead “polling place manager”.
- [107] Clause 383 (3)**
Omit “polling day” wherever occurring.
Insert instead “election day”.
- [108] Clause 383 (3)**
Omit “senior deputy returning officer” where firstly occurring.
Insert instead “returning officer”.
- [109] Clause 383 (3)**
Omit “senior deputy returning officer” where secondly occurring.
Insert instead “Electoral Commission”.
- [110] Clause 384 Notice of adjournment to Electoral Commission**
Omit clause 384 (1). Insert instead:
- (1) A returning officer who adjourns the taking of a poll must give immediate notice of the adjournment to the Electoral Commission.

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- [111] Clause 387 Spoilt ballot-papers**
Omit “the returning officer or an electoral official”.
Insert instead “an election official”.
- [112] Clause 387**
Omit “officer or official”. Insert instead “election official”.
- [113] Clause 388 Assistance to certain electors**
Omit “is so disabled or so illiterate that the elector” from clause 388 (1).
- [114] Clause 388 (3) and (4)**
Omit “senior deputy returning officer” wherever occurring.
Insert instead “polling place manager or pre-poll voting officer (as the case requires)”.
- [115] Clause 388A**
Insert after clause 388:
- 388A Special format of ballot-papers**
- (1) **Braille ballot-papers**
The Electoral Commission may, on application made to the Commission by an elector, arrange for the elector to be provided with a ballot-paper in braille format:
- (a) at a polling place nominated by the elector in the application, or
 - (b) at a pre-poll voting office nominated by the elector in the application, or
 - (c) by post if the elector states in the application that he or she intends to vote by a postal vote.
- (2) **Applications for braille ballot-papers**
An application to the Commission under this clause may be made orally to an officer authorised by the Commission to receive such applications or in writing addressed to the Commission. In making an application, the elector must:
- (a) state his or her full name, residential address and date of birth, and

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- (b) make a declaration to the effect that he or she is not able to read an ordinary ballot-paper but will be able to understand a ballot-paper in braille format and to vote in accordance with the directions on or accompanying the ballot-paper, and
- (c) state whether he or she intends to vote:
 - (i) on election day—in which case the elector is to nominate the polling place at which the elector intends to vote, or
 - (ii) at a pre-poll voting office—in which case the elector is to nominate the pre-poll voting office at which the elector intends to vote, or
 - (iii) by a postal vote—in which case the application is taken to be an application duly made under clause 314 for a postal ballot-paper and postal voting envelope (even if the application was made orally), and
- (d) make the application:
 - (i) if made orally—during the period starting with the thirtieth day before nomination day and ending at 5 pm on nomination day, or
 - (ii) if made in writing—so as to reach the Electoral Commission during that period.

(3) **Manner of making application**

An oral application may be made in person or by telephone or similar technology. If made in writing, the application must be delivered or sent (by post or otherwise), or transmitted by facsimile or email.

(4) **Emailed applications**

An application is not validly transmitted by email unless:

- (a) an image of the completed application signed by the elector, or the person making the application on the elector's behalf, is included in or attached to the email, and
- (b) that image includes an image of the actual signature as appearing on the application.

(5) **Inquiries as to authenticity**

The Electoral Commission may make such inquiries as the Commission thinks fit to confirm the authenticity of an application if the Commission considers it appropriate to do so in

the circumstances. The Commission may decline to act on an application if not satisfied as to its authenticity.

(6) **Voting directions on ballot-paper**

The Electoral Commission may include directions on or accompanying the ballot-paper stating how the elector must or may indicate his or her vote.

(7) **Postal voting**

If the elector intends to vote by a postal vote:

- (a) Subdivision 1 of Division 7 has effect subject to this clause, and
- (b) the Electoral Commission may provide the postal vote certificate in braille format and separate from the postal voting envelope, and
- (c) the signature of the elector on the postal vote certificate must be in writing.

(8) **How ballot-paper dealt with**

Subject to this clause, the ballot-paper is to be dealt with as nearly as possible in accordance with the provisions of this Regulation that apply to ordinary ballot-papers, but the Electoral Commission may:

- (a) determine that special arrangements apply to ensure that the ballot-paper is appropriately and properly dealt with, and
- (b) for that purpose may determine that those provisions apply with such modifications as the Commission thinks appropriate in the circumstances.

(9) **Ballot-paper not informal because of format**

A ballot-paper is not informal under clause 345 (1) (c), or under clause 4 (d) of Schedule 10, just because the braille format of the ballot-paper makes it possible or likely that the elector could be identified.

(10) **Circumstances in which braille ballot-paper not provided**

The Electoral Commission is not obliged to arrange for a ballot-paper to be provided in braille format to an elector under this clause if satisfied:

- (a) that it is not reasonable in the circumstances to do so, or
- (b) without limiting paragraph (a), that:

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- (i) there is insufficient time to produce the ballot-paper in that format, or
- (ii) no facilities or insufficient facilities are reasonably available to produce the ballot-paper in that format, in time for it to be provided to the elector.

The Commission is to notify the elector as soon as possible that the ballot-paper will not be provided in braille format.

(11) **Limits on Electoral Commission's role**

The Electoral Commission is not obliged to provide or arrange the provision of:

- (a) ballot-papers in braille format otherwise than as provided in this clause, or
- (b) ballot-papers in any format other than as specified in this or any other clause of this Regulation.

(12) **Meaning of braille in this clause**

References in this clause to braille are references to braille in a form or version determined by the Electoral Commission.

[116] Clause 391 Security of election materials

Omit clause 391 (3)–(5). Insert instead:

- (3) The returning officer is to forward the parcels to the Electoral Commission.
- (4) The Electoral Commission must have the parcels kept securely for 6 months, and then destroyed, unless the Electoral Commission decides to keep them longer than 6 months.

[117] Clause 392

Omit the clause. Insert instead:

392 Access to election materials

If a court so directs, or the Electoral Commission so decides, or any legislation so requires or permits:

- (a) the Electoral Commission is to allow any person to inspect any of the election materials kept under clause 391 (4), except the sealed parcels of marked ballot-papers, or
- (b) the general manager is to allow any person to inspect any of the election materials kept under clause 391 (6).

[118] Clause 392A

Insert after clause 392:

392A Section 305 votes—prescribed form of declaration

For the purposes of section 305 (c) of the Act, the prescribed form of declaration is:

- (a) in the case of a person who is voting by pre-poll voting (including pre-poll voting at a declared institution)—Form 10 written or printed on an envelope, or
- (b) in any other case—Form 11 written or printed on an envelope.

[119] Clause 417

Insert after clause 416:

417 Determinations by councils of councillor numbers for the purposes of September 2008 elections

The change of date for the ordinary elections of councillors effected by the *Local Government Amendment (Election Date) Act 2008* does not affect the validity of an otherwise valid determination made by a council under section 224 (2) of the Act of the number of its councillors for the following term of office.

[120] Schedule 5 Counting of votes under proportional system

Omit “at the principal polling place and” from clause 15 (2).

[121] Schedule 10 Constitutional referendums and council polls

Omit clause 3 (b).

[122] Schedule 10, clause 3 (h) and (i)

Omit clause 3 (h). Insert instead:

- (h) clause 356 (7) (a) and (b) are taken to be omitted and the following paragraph inserted instead:
 - (a) the question on the poll-paper and the number of “Yes” votes and the number of “No” votes, and
- (i) if the constitutional poll or council poll is not to be held in conjunction with an election of councillors—a reference to the election day is taken to be a reference to the day on which the referendum or poll is held.

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[123] Schedule 10, clause 3A

Insert after clause 3:

3A In the application of Part 11 of this Regulation to a council poll, clause 356B (g) is taken to be omitted.

[124] Schedule 10, clause 4 (a1)

Insert after clause 4 (a):

(a1) if a constitutional referendum or council poll is to be held in conjunction with an election of councillors, the general manager must (if he or she has not already done so) notify the Electoral Commission of the question to be asked at the referendum or poll no later than 12 noon on the nomination day for the election,

[125] Schedule 10, clause 4 (b)

Omit “returning officer” where firstly occurring.

Insert instead “Electoral Commission”.

[126] Schedule 10, clause 4 (b) (i)

Omit “immediately after being notified by the Electoral Commissioner”.

Insert instead “as soon as practicable after being notified”.

[127] Schedule 10, clause 4 (b) (ii)

Omit the subparagraph. Insert instead:

(ii) in the case of a referendum or poll to be held in conjunction with an election of councillors—at the same time as the Electoral Commission publishes a notice under clause 300 of this Regulation in relation to the election,

[128] Schedule 10, clause 4 (d) (ii) and (f)

Omit “back” wherever occurring. Insert instead “front”.

[129] Schedule 11, Forms 2 and 3

Omit the statistical information sheets from the forms. Insert instead:

STATISTICAL INFORMATION SHEET

(Complete this sheet for ordinary elections only, not by-elections)

I, *(full name in BLOCK letters)*

of *(full residential address)*,

declare that:

(tick the squares that apply and insert other information as indicated)

- (a) I am male female
- (b) I am 18–24 years old
 25–29 years old
 30–39 years old
 40–49 years old
 50–59 years old
 60–69 years old
 70–79 years old
 80 years or older
- (c) I was a candidate at the last ordinary election of the council
 Yes No
- (d) I was elected at the last ordinary election of the council
 Yes No
- (e) My experience as a councillor in New South Wales is
 I have not served as a councillor before
 I was elected but served less than 1 complete term
 I completed 1 term
 I completed 2 terms
 I completed 3 terms
 I completed 4 terms
 I completed 5 terms
 I completed more than 5 terms (*please specify*) _____
- (f) I consider myself to be an Aboriginal person
 Yes No
- (g) I consider myself to be a Torres Strait Islander person
 Yes No
- (h) I consider myself to have a disability
 Yes No
- (i) The first language I learned to speak was
 English
 Arabic

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- | | | |
|-----|--------------------------------|---|
| | Cantonese | <input type="checkbox"/> |
| | Dutch | <input type="checkbox"/> |
| | German | <input type="checkbox"/> |
| | Greek | <input type="checkbox"/> |
| | Italian | <input type="checkbox"/> |
| | Lebanese | <input type="checkbox"/> |
| | Mandarin | <input type="checkbox"/> |
| | Vietnamese | <input type="checkbox"/> |
| | Other | <input type="checkbox"/> (please specify) _____ |
| (j) | My current occupation is | |
| | Professional | <input type="checkbox"/> |
| | Manager | <input type="checkbox"/> |
| | Primary Producer/Farmer | <input type="checkbox"/> |
| | Para-Professional/Tradesperson | <input type="checkbox"/> |
| | Property Developer | <input type="checkbox"/> |
| | Clerk | <input type="checkbox"/> |
| | Salesperson | <input type="checkbox"/> |
| | Real Estate Agent | <input type="checkbox"/> |
| | Labourer | <input type="checkbox"/> |
| | Plant/Machine Operator | <input type="checkbox"/> |
| | Home Duties | <input type="checkbox"/> |
| | Self-employed | <input type="checkbox"/> |
| | Student | <input type="checkbox"/> |
| | Retired | <input type="checkbox"/> |
| | Unemployed | <input type="checkbox"/> |
| | Other | <input type="checkbox"/> (please specify) _____ |

[signature of person proposed for nomination]

Note.

The information supplied above will be used for statistical purposes only. This information will be treated confidentially. All statistics will be published in aggregate or consolidated form only.

[130] Schedule 11, Form 4

Omit “*the number*” where thirdly, fourthly and fifthly occurring.

Insert instead “*half the number*”.

[131] Schedule 11, Form 4

Omit “[*This second direction should only be inserted if there are at least 2 more candidates than candidates to be elected*]”.

Insert instead “[*Where half the number to be elected is a fraction it is to be rounded up to the next integer*]”.

[132] Schedule 11, Form 5

Omit “*the number*” where secondly, thirdly and fourthly occurring.

Insert instead “*half the number*”.

[133] Schedule 11, Form 5

Omit “[*This second direction should only be inserted if there are at least 2 more candidates than candidates to be elected*]”.

Insert instead “[*Where half the number to be elected is a fraction it is to be rounded up to the next integer*]”.

[134] Schedule 11, Form 6

Insert before “You may vote in one of two ways”:

Directions for Voting

[135] Schedule 11, Form 6

Omit “Place the numbers (here insert the sequence of numbers which corresponds to the number of candidates to be elected) in the squares opposite the names of (here insert the number of candidates to be elected) candidates in order of your preference for them. If you wish to vote for additional candidates place consecutive numbers beginning with the number (here insert the next number after the number of candidates to be elected) in the squares opposite the names of those additional candidates in order of your preferences for them”.

Insert instead “Place the numbers (here insert the sequence of numbers which corresponds to half the number of candidates to be elected) in the squares opposite the names of (here insert half the number of candidates to be elected) candidates in order of your preference for them. If you wish to vote for additional candidates place consecutive numbers beginning with the number (here insert the next number after half the number of candidates to be elected) in the squares opposite the names of those additional candidates in order of your preferences for them”.

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[136] Schedule 11, Form 6

Omit:

Directions for Voting

[The following directions are to appear on the front or the back of the ballot-paper. If the directions appear on the back of the ballot-paper, an appropriate reference to their appearance on the back must be made on the front of the ballot-paper.]

Insert instead “[Where half the number to be elected is a fraction it is to be rounded up to the next integer]”.

[137] Schedule 11, Form 7

Omit “To the returning officer for [*here specify local government area*].”.

Insert instead “[*insert name of area*]”.

[138] Schedule 11, Form 7

Omit paragraph 3 and renumber paragraphs 4 and 5 as paragraphs 3 and 4.

[139] Schedule 11, Form 7

Omit “prison” from clause 4 (as renumbered).

Insert instead “a correctional centre”.

[140] Schedule 11, Form 7

Insert at the end of clause 4 (as renumbered):

I am a silent elector.

[141] Schedule 11, Form 8

Omit “and declaration where name not on roll” from the heading.

[142] Schedule 11, Form 8

Omit “(Clauses 314 and 343)”. Insert instead “(Clause 317)”.

[143] Schedule 11, Form 8

Omit “If or because my name is not on the roll of electors being used at the election, in accordance with section 305 of the *Local Government Act 1993* I claim to be entitled to vote at the election.”.

[144] Schedule 11, Form 8

Omit the heading “Postal votes”.

[145] Schedule 11, Form 8

Omit the heading “Voting at polling place” and the words that follow in the form.

[146] Schedule 11, Form 9

Omit “To the returning officer/senior deputy returning officer [*ward*] [*local government area*]”.

Insert instead “[*insert name of ward if applicable*] [*insert name of area*]”.

[147] Schedule 11, Form 9

Omit “senior deputy returning officer” where secondly occurring.

Insert instead “election official”.

[148] Schedule 11, Form 10

Omit the form. Insert instead:

Form 10 Declaration for pre-poll voting and declared institution declaration (including declaration where name is not on the roll)

(Clauses 323 and 330)

[*insert name of ward if applicable*] [*insert name of area*]

I declare that:

1 [*tick the appropriate square and complete the appropriate declaration*]
 I am the person enrolled as [*name on roll*] of [*address on roll, if address appears on roll*] on the roll of electors for that ward or area.

OR

My name is not on the appropriate roll of electors. My name is [*full name in BLOCK letters*] and the address of the land to which my voting entitlement relates (as resident, non-resident owner, occupier or ratepaying lessee) is [*address*]

*If you have changed your name since you enrolled for the above address please print your previous name here [*previous name*]*

To the best of my knowledge and belief I am enrolled on the New South Wales or Commonwealth electoral roll.

I claim to vote under section 305 of the *Local Government Act 1993* in that area or ward.

2 My date of birth is [*date*].

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- 3 I am entitled to vote at the forthcoming election to be held in that ward or area.
- 4 I have not already voted in connection with the election and if I vote here I will not vote again anywhere else in that area at the election.
- 5 If the vote is being cast otherwise than at a declared institution, I am qualified to vote before election day on the following ground [*insert ground or reference to ground*].
- [*signature of elector*]
This declaration was declared before me, and I have seen the elector sign the declaration [*date*]
[*signature of election official*]

[149] Schedule 11, Form 11

Omit the form. Insert instead:

Form 11 Declaration where name is not on the roll (election day)

(Clause 343)

[*insert name of ward if applicable*] [*insert name of area*]

I declare that:

- 1 My name is not on the appropriate roll of electors. My name is [*full name in BLOCK letters*]
and the address of the land to which my voting entitlement relates (as resident, non-resident owner, occupier or ratepaying lessee) is [*address*]
If you have changed your name since you enrolled for the above address please print your previous name here [*previous name*]
To the best of my knowledge and belief I am enrolled on the New South Wales or Commonwealth electoral roll.
- 2 My date of birth is [*date*].
- 3 I claim to vote under section 305 of the *Local Government Act 1993* in the [*name of ward*] ward of that area.
- 4 I am entitled to vote at this election [or the forthcoming election to be held in the abovementioned ward or area].
- 5 I have not already voted in connection with the election and if I vote here I will not vote again anywhere else in that area at the election.

[*signature of elector*]

This declaration was declared before me, and I have seen the elector sign the declaration [*date*]

[*signature of election official*]

[150] Schedule 11, Form 12

Omit “To the returning officer/senior deputy returning officer [*ward*] [*local government area*]”.

Insert instead “[*insert name of ward if applicable*] [*insert name of area*]”.

[151] Schedule 11, Form 13

Omit “returning officer/senior deputy returning officer”.

Insert instead “election official”.

[152] Schedule 11, Form 14

Omit “(4) (b)”.

[153] Schedule 11, Form 14

Omit “To the returning officer, [*local government area*]”.

Insert instead “[*insert name of area*]”.

[154] Schedule 11, Form 14

Omit “senior deputy returning officer” wherever occurring.

Insert instead “polling place manager”.

[155] The whole Regulation

Omit “Commissioner” and “Commissioner’s” wherever occurring (except in matter omitted or inserted by this Schedule, and in clauses 346 and 368).

Insert instead “Commission” and “Commission’s” respectively.

[156] The whole Regulation

Omit “electoral official” and “electoral officials” wherever occurring (except in matter omitted by this Schedule).

Insert instead “election official” and “election officials” respectively.