

# Parliamentary Electorates and Elections Act 1912 No 41

[1912-41]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Parliamentary Electorates and Elections Amendment Act 2006 No 68](#), Schs 5 [3] and 15 (not commenced)
  - [Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)
- **See also**
  - [Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2008](#)

### Authorisation

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# Parliamentary Electorates and Elections Act 1912 No 41



New South Wales

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# Parliamentary Electorates and Elections Act 1912 No 41



New South Wales

An Act to consolidate enactments relating to Parliamentary electorates and elections.

## Part 1 Name of Act and interpretation

### 1 Name of Act

This Act may be cited as the *Parliamentary Electorates and Elections Act 1912*.

### 2 Repeal

- (1) The Acts mentioned in Schedule 1, to the extent therein expressed, are hereby repealed.
- (2), (3) (Repealed)

### 3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**Abbreviation**, in relation to the name of a party, includes an alternative name of the party.

**Antarctic elector** means an elector who is entitled under Division 18 of Part 5 to be treated as an Antarctic elector.

**Assembly** means the Legislative Assembly of New South Wales.

**Assembly general election** means an election held for the return of members of the Assembly pursuant to writs issued by the Governor upon the dissolution or expiry of the Assembly.

**Australian medical practitioner** means a person registered as a medical practitioner under a law of this or another State or Territory.

**Authorised agent** includes any person holding the written authority of any candidate to act on the candidate's behalf for the election then pending.

**Authorised witness** means a person who is an authorised witness for the purposes of this Act by virtue of section 114B.

**By-election** means an election held for the return of a member of the Assembly pursuant to a writ other than a writ issued in respect of an Assembly general election.

**Commission** means the New South Wales Electoral Commission constituted by section 21A.

**Commonwealth Act** means the [Commonwealth Electoral Act 1918](#) of the Commonwealth.

**Commonwealth subdivision** means a subdivision of an electoral division for the election of a member of the House of Representatives pursuant to the Commonwealth Act.

**Council** means the Legislative Council of New South Wales.

**Divisional returning officer** means the Commonwealth divisional returning officer for the Commonwealth electoral division in which the particular State subdivision is situate.

**Election assistant** means a person appointed as an election assistant under section 21AE.

**Election official** means:

- (a) a returning officer or acting returning officer, or
- (b) a polling place manager, or
- (c) an election assistant.

**Elector** means any person whose name appears on a roll.

**Electoral Commissioner** means the Electoral Commissioner appointed under section 21AA.

**Electoral paper** includes any electoral claim and any prescribed form.

**Election** means an election of any member or members of the Assembly or a periodic Council election.

**Electoral district** or **district** means a district for the election of a member to serve in the Assembly.

**Eligible overseas elector** means an elector who is enrolled or remains enrolled under section 20A or 20B and treated as an eligible overseas elector.

**Endorsed** means endorsed, selected or otherwise accredited to stand as a representative of a party.

**Enrolled** means named on the electoral roll in force and applicable for the time being.

**Exercise** a function includes perform a duty.

**Function** includes a power, authority or duty.

**Group** means a group constituted in accordance with clause 3 of the Sixth Schedule to the [Constitution Act 1902](#).

**Group voting square** means a square printed on a ballot paper for a periodic Council election above the names of the candidates included in a group who have duly requested under section 81C (1A) a group voting square for the purposes of the election.

**Hospital** includes a convalescent home and an institution similar to a hospital or convalescent home.

**Itinerant elector** means an elector who is enrolled under section 20C and treated as an itinerant elector.

**Member** means member of the Assembly or member of the Council.

**Member of the staff of the Commission** means a member of the staff of the Office of the New South Wales Electoral Commission employed under the [Public Sector Employment and Management Act 2002](#).

**Office** of the Commission means the only or the principal office of the Commission.

**Officer** includes any person discharging the duties of any office under Part 4.

**Party** means a body or organisation, incorporated or unincorporated, having as one of its objects or activities the promotion of the election to the Assembly or the Council of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part.

**Periodic Council election** has the meaning ascribed thereto by section 3 of the [Constitution Act 1902](#).

**Polling place** means a place appointed by the Electoral Commissioner under section 84 to be a polling place for the purpose of taking the poll at an election.

**Polling place manager** means a person appointed as a polling place manager under section 21AE.

**Postal voting officer** means a postal voting officer appointed under Division 5 of Part 3A.

**Pre-poll voting officer** means:

- (a) a returning officer for any district, or
- (b) an election official assigned by a returning officer for any district to conduct pre-poll voting.

**Prescribed** means prescribed by this Act, or by any Schedule thereto, or by any regulation made thereunder.

**President** means the President of the Council.

**Proclaimed** means published by proclamation.

**Proclamation** means proclamation by the Governor in the Gazette.

**Real place of living** includes the place of living to which a person, when temporarily living elsewhere, has a fixed intention of returning for the purpose of continuing to live at that place.

**Registered officer** of a registered party means the person shown in the Register of Parties under Part 4A as the registered officer of the party, and (except in Part 4A) includes a person shown in that Register as a deputy registered officer of the party.

**Registered party** means a party registered in accordance with Part 4A.

**Registrar** means registrar of the subdivision.

**Regulations** means regulations made under this Act.

**Returning officer** includes any person lawfully authorised to act for a returning officer, or to act in the place of a returning officer.

**Roll** means a roll of electors entitled to vote at elections under this Act.

**Silent elector** means an elector whose residence is not shown on a roll because of a request made under section 38A.

**Speaker** means the Speaker of the Assembly.

**Subdivision** means subdivision of a district and includes also any unsubdivided district.

**Territory** means the Australian Capital Territory or the Northern Territory.

- (2) A reference in this Act to a poll for a district or an election for a district is a reference to a poll or an election for the return of a member of the Assembly.
- (3) A reference (however expressed) to **residence** or **reside**:

- (a) in any provision of this Act relating to the preparation, alteration or revision of rolls, or
- (b) in any regulation, form or electoral paper relating to or used in connection with the preparation, alteration or revision of rolls,

shall be read as a reference to place of living or live, as the case may be.

- (4) Notes included in this Act are explanatory notes and do not form part of this Act.
- (5) A reference (however expressed) in this Act to the place of residence as enrolled of an elector is, in relation to a silent elector, a reference to the place of residence in respect of which the person is enrolled, even though the particulars of the elector's residence are not shown on the roll because of a request made under section 38A.

## **Part 2 Distribution of electorates**

### **3A-5 (Repealed)**

#### **6 Appointment of commissioners for redistribution of seats**

- (1) When any distribution of electoral districts becomes necessary under the provisions of the *Constitution Act 1902*, the Governor shall, by commission under the Great Seal, appoint three persons to be commissioners for the purposes of this Part, and to be called the "Electoral Districts Commissioners", to carry out the distribution.
- (2) Of the persons appointed:
  - (a) one must be, or have been, a Judge of the Supreme Court, and
  - (b) one must be the person who for the time being holds the office of Electoral Commissioner, and
  - (c) one must be the person holding office or acting as the Surveyor-General under Chapter 2 of the *Public Sector Employment and Management Act 2002*.
- (3) The names of the persons so appointed shall be published in the Gazette.
- (4) (Repealed)
- (5) In any other case, the appointment of commissioners under this section must occur no more than 2 years after the date of return of the writs for choosing the Legislative Assembly that exists at the time the distribution becomes necessary under the provisions of the *Constitution Act 1902*. However, if that 2 year period has passed when the distribution becomes necessary, then the commissioners must be appointed within 6 months after the day that the distribution becomes necessary.

## **6A Commissioners may use services of officers of Public Service**

For the purposes of carrying out the powers and duties conferred and imposed upon the Electoral Districts Commissioners with respect to the carrying out of a distribution, the Electoral Districts Commissioners may, with the approval of the Minister of the department concerned, make use of the services of any of the officers and employees of the Public Service including police officers.

## **7 Duration of office etc**

- (1) The office of a commissioner shall be tenable for the period named in such commission, and, if necessary, for such extended period, to be named in a further commission, as the Governor may deem proper for the completion of the distribution in respect whereof such firstmentioned commission has been issued.
- (2) The office of a commissioner shall be vacated if for any cause the commissioner ceases to possess the qualification for appointment mentioned in section 6 (2).
- (3) A commissioner may be paid such remuneration as may be determined by the Governor. Each commissioner shall be entitled to such travelling allowances as may be fixed by the Governor.

## **8 Chairperson**

At any meeting of the commissioners the person who is or has been a Judge of the Supreme Court shall, when present, be chairperson; and in that person's absence the Electoral Commissioner shall be chairperson.

## **9 Rules**

The commissioners may, subject to the provisions of this Act, make rules for the conduct of their proceedings (including the conduct of their proceedings in public), but no such rule shall have any force until the same has been approved by the Governor.

## **10 Quorum—casting vote of chairperson**

At all meetings of the commissioners two shall form a quorum, and in the event of an equality of votes the chairperson shall have a casting vote in addition to his or her original vote.

## **11 Disqualifications for appointment as commissioner**

- (1) A person shall not be appointed a commissioner under this Act if he or she is a person:
  - (a) who is a bankrupt, is applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, whose debts are subject to a composition with his or her creditors, or whose remuneration would, on his or her appointment, be subject to an assignment for their benefit,

(b) who has been convicted in New South Wales of a crime or an offence which is punishable by imprisonment for 12 months or more, or has been convicted elsewhere than in New South Wales of a crime or an offence which, if committed in New South Wales, would have been a crime or an offence so punishable, or

(c) who is a mentally incapacitated person.

(2) A commissioner shall be deemed to have vacated office if the commissioner:

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,

(b) is convicted in New South Wales of a crime or an offence which is punishable by imprisonment for 12 months or more, or is convicted elsewhere than in New South Wales of a crime or an offence which, if committed in New South Wales, would be a crime or an offence so punishable, or is convicted of a crime or an offence, whether in New South Wales or elsewhere, and is sentenced to imprisonment for that crime or offence, or

(c) becomes a mentally incapacitated person.

## **12 Appointments to fill vacancies**

If any commissioner dies or becomes permanently incapable from illness of performing the commissioner's duties, or resigns office, or vacates office by reason of any of the causes mentioned in section 7 (2) or in section 11, the Governor shall by commission under the Great Seal appoint a person eligible under section 6 as commissioner in place of the original commissioner.

## **13 Redistribution of electoral districts by commissioners etc**

(1) It shall be the duty of the commissioners, and they are hereby directed, to distribute New South Wales into electoral districts and to do so with all due diligence after their appointment.

(2) As soon as practicable after they have been appointed, the commissioners shall, by advertisement published in the Gazette:

(a) invite suggestions in writing to be lodged with the commissioners, within 30 days after the date of advertisement, relating to the distribution of New South Wales into electoral districts,

(b) invite comments to be lodged with the commissioners, within 14 days after the expiration of the period referred to in paragraph (a), relating to any suggestions received by the commissioners in pursuance of that paragraph, and

(c) give notice that any suggestions or comments lodged with them pursuant to



paragraph (a) or (b) will, immediately after the expiration of:

- (i) in relation to suggestions—the period referred to in paragraph (a), or
- (ii) in relation to comments—the 14 day period referred to in paragraph (b),

be made available at their office situated at a place specified in the advertisement.

- (3) Immediately after the expiration of the period referred to in subsection (2) (a), the commissioners shall make available for perusal at their office copies of any suggestions lodged with them in pursuance of that paragraph.
- (4) Immediately after the expiration of the 14 day period referred to in subsection (2) (b), the commissioners shall make available for perusal at their office copies of any comments lodged with them in pursuance of that paragraph.
- (5) The commissioners shall consider any suggestions or comments lodged with them in pursuance of subsection (2) before determining the names and boundaries of electoral districts.
- (6) The commissioners shall also obtain, and consider, the advice of a recognised demographer before determining the boundaries of electoral districts.
- (7) If the comments lodged with the commissioners under subsection (2) (b) are made orally, the obligation to make them available for perusal is an obligation to make a transcript or summary of the comments available.

#### **14 Notice of proposed alteration of existing boundaries to be given**

- (1) The prescribed notice of any proposed alteration of an electoral district shall be given by the commissioners in the Gazette and in some newspaper published or circulating in the district.
- (1A) That notice must refer to the fact that a written statement of the commissioners' reasons for making the proposed alteration will be available for inspection at no cost during office hours at the offices of the Electoral Commissioner, for the period referred to in subsection (2).
- (1B) For that purpose, the commissioners must ensure that such a statement is provided to the Electoral Commissioner and the Electoral Commissioner must ensure that the statement is made available in accordance with the notice.
- (2) Suggestions or objections in writing may be lodged with the commissioners in relation to a proposed alteration of an electoral district within:
  - (a) a period of 30 days, or
  - (b) where some other period is prescribed, the prescribed period,

after the publication in the Gazette of the notice referred to in subsection (1).

- (3) The commissioners shall consider any suggestions or objections lodged with them in pursuance of subsection (2) before determining the names and boundaries of electoral districts.
- (4) The commissioners must complete:
  - (a) their consideration of any suggestions or objections lodged with them under subsection (2), and
  - (b) any inquiries under subsection (5) into those suggestions or objections, as soon as practicable and in any event before the end of the period of 60 days after the period referred to in subsection (2) or, at their discretion and if an extension is required, before the end of a further period of 10 days. The 60-day and the further 10-day period does not cover the process of formulating and making the commissioners' determination or draft determination under subsection (12).
- (5) The commissioners must hold an inquiry into any suggestion or objection unless the commissioners are of the opinion that:
  - (a) the matters raised in the suggestion or objection were raised, or are substantially the same as matters that were raised, in suggestions or comments relating to the redistribution lodged with the commissioners in pursuance of section 13, or
  - (b) the suggestion or objection is frivolous or vexatious.
- (6) The commissioners may hold one inquiry into a number of suggestions and objections.
- (7) Proceedings before the commissioners at an inquiry into any suggestion or objection must be held in public.
- (8) At an inquiry into any suggestion or objection, submissions in relation to the suggestion or objection may be made to the commissioners by or on behalf of the person who, or the organisation that, lodged the suggestion or objection with the commissioners and any person who, or organisation that, lodged suggestions or comments relating to the redistribution with the commissioners in pursuance of section 13.
- (9) At an inquiry into any suggestion or objection, the commissioners must consider all of the submissions made to them in relation to the suggestion or objection.
- (10) The commissioners are not bound by the legal rules of evidence and may regulate the conduct of proceedings at an inquiry into any suggestion or objection as they think fit.

- (11) Without limiting the generality of subsection (10), the following matters are within the absolute discretion of the commissioners:
- (a) the manner in which submissions may be made to the commissioners,
  - (b) the time within which submissions may be made to the commissioners,
  - (c) the extent to which the commissioners may be addressed, and the persons by whom they may be addressed, on any submission.
- (12) As soon as practicable after the commissioners have concluded their consideration of any suggestion or objection (including any inquiries into any suggestion or objection), they must consider the form of a draft determination of the names and boundaries of electoral districts, and:
- (a) if the commissioners are of the opinion that the draft determination would not be significantly different from the proposal notified under subsection (1)—determine the names and boundaries of electoral districts in accordance with the draft determination, or
  - (b) if the commissioners are of the opinion that the draft determination is significantly different from the proposal notified under subsection (1) in respect of an electoral district—the commissioners must publish in the Gazette and in a newspaper published or circulating in that district a notice containing a summary of the draft determination so far as is relevant and a statement to the effect that:
    - (i) a person who, or an organisation that, was entitled to make submissions under subsection (8) may within the prescribed period (or the period determined by the commissioners if there is no prescribed period) lodge with the commissioners a written objection, and
    - (ii) subject to subsection (5), the commissioners will hold an inquiry into any such objection.
- (13) (Repealed)
- (14) If such a statement is published:
- (a) a person who, or an organisation that, was entitled to make submissions to an inquiry under this section may, within the prescribed period (or the period determined by the commissioners if there is no prescribed period) after the publication of the statement, lodge with the commissioners a written objection, and
  - (b) subject to subsection (5), the commissioners must hold an inquiry into any such objection, and
  - (c) subsections (5)–(11) apply to an inquiry into any such objection as if the objection

were a suggestion or objection made under subsection (2).

(14A) The commissioners must complete:

- (a) their consideration of any objections lodged with them under subsection (14), and
- (b) any inquiries under subsection (5) (as applied by subsection (14)) into those objections,

as soon as practicable and before the end of the prescribed period (if any). That prescribed period does not cover the process of formulating and making the commissioners' determination under subsection (15).

(15) As soon as is practicable after the commissioners have concluded their inquiries into any objection lodged under subsection (14), they must determine the names and boundaries of electoral districts. The commissioners are not required to invite further submissions, suggestions or objections or to hold any inquiries into any such further submissions, suggestions or objections that are received.

(16) The Electoral Commissioner must ensure, as far as is reasonably practicable, that maps indicating the proposed boundaries of electoral districts under proposed alterations under subsection (1) are available for inspection:

- (a) at the office of the Commission, and
- (b) at the offices of the councils of the local government areas within current or proposed boundaries, and
- (c) on the Commission's internet website.

#### **14A Manner of identifying boundaries of electoral districts**

- (1) The commissioners are required to determine the boundaries of electoral districts by determining the area of each district by reference to such matters (including cadastral, topographical, administrative and other spatial information) as they think fit.
- (2) The commissioners are required to cause the area of each electoral district to be recorded in digital or electronic form in such a way as to be capable of generating a digital or electronic version and a printed version of a map of the area of each district.
- (3) If for any reason it is not practicable to record the area of an electoral district in digital or electronic form, the area may be identified and recorded as or by means of:
  - (a) a printed version of a map of the area of the district, or
  - (b) a printed version describing the physical boundaries of the area of the district, or
  - (c) a printed version of the area of the district prepared by reference to other matters

(such as local government areas or parts of local government areas).

- (4) The commissioners are required to lodge a copy of the printed version of the areas of the electoral districts, signed by the commissioners, with the Surveyor-General, who is required to keep that copy at least until the next distribution of electoral districts.
- (5) The copy lodged with the Surveyor-General is evidence of the areas of the electoral districts to which it relates.

**Note—**

Section 9C of the *Surveying Act 2002* requires details of electoral districts to be included in the register of public surveys.

**15 Proclamation of names and maps of electoral districts**

- (1) The commissioners shall report to the Governor the names and boundaries of the electoral districts determined by them under any provision of this Part.
- (2) The Governor shall thereupon cause a proclamation setting out the names of such electoral districts to be published in the Gazette, together with a printed version of the area of each district generated as referred to in section 14A (2) or a description of the area of each district identified as referred to in section 14A (3).
- (3) Upon publication of a proclamation under subsection (2), the electoral districts specified in the proclamation shall, until altered by a further distribution under the *Constitution Act 1902*, be the electoral districts of New South Wales.
- (4) Notwithstanding subsection (3), the electoral districts existing immediately before the publication of a proclamation under subsection (2) shall, for the purposes of any by-election to be held before the dissolution or expiry of the Assembly next succeeding that publication, be the electoral districts of New South Wales.

**16, 17 (Repealed)**

**17A Criteria for distributions**

- (1) In carrying out a distribution, the commissioners shall, subject to complying with section 28 of the *Constitution Act 1902*:
  - (a) have regard to demographic trends within the State and, as far as practicable, endeavour to ensure on the basis of those trends that, at the relevant future time, the number of electors enrolled in each electoral district will be equal (within a margin of allowance of 3 per cent more or less of the average enrolment in electoral districts at that future time), and
  - (b) subject to paragraph (a), give due consideration, in relation to each electoral district, to:

- (i) community of interests within the electoral district, including economic, social and regional interests,
  - (ii) means of communication and travel within the electoral district,
  - (iii) the physical features and area of the electoral district,
  - (iv) mountain and other natural boundaries, and
  - (v) the boundaries of the existing electoral districts.
- (2) For the purposes of subsection (1) (a), the relevant future time is 4 years from the day of the return of the writs for choosing the Legislative Assembly that exists at the time the distribution is carried out.

**18 (Repealed)**

**19 Application to commissioners of [Royal Commissions Act 1923](#)**

The Electoral Districts Commissioners shall have the powers and immunities of a Commissioner, and the chairperson of the Electoral Districts Commissioners shall have the powers of a chairperson within the meaning of Division 1 of Part 2 of the [Royal Commissions Act 1923](#), and the provisions of that Act with the exception of section 13 and Division 2 of Part 2 shall, mutatis mutandis, apply to any witness or person summoned by or appearing before the Electoral Districts Commissioners.

**Part 3 Qualification of electors**

**20 Qualification of electors**

- (1) Subject to sections 21 and 32–41, all persons:
- (a) who have attained 18 years of age, and
  - (b) who are:
    - (i) Australian citizens, or
    - (ii) persons (other than Australian citizens) who would, if the relevant Commonwealth law had continued in force, be persons who have the status of a British subject and who were, immediately before 26 January 1984, enrolled as electors for the Assembly or enrolled in any other State or Territory of the Commonwealth as electors for the House of Representatives,
- shall be entitled to enrolment.
- (2) Subject to subsections (3) and (4) and section 21, an elector whose name is on the roll for a subdivision is entitled to vote at any election for the Assembly for the district.
- (3) An elector:

(a) whose name has been placed on a roll in pursuance of a claim made under section 33A, and

(b) who has not attained 18 years of age on the date appointed for the taking of the poll for an election,

is not entitled to vote at that election.

(4) Notwithstanding section 33A or any enrolment in pursuance of a claim made under that section, for the purposes of this Act in its application in relation to an election, a person who has not attained 18 years of age on the date appointed for the taking of the poll for that election shall not be taken to be:

(a) entitled to be enrolled on a roll, or

(b) enrolled on a roll.

(5) A person is not entitled to vote more than once at any Assembly general election, by-election or periodic Council election, or at more than one election for the Assembly or Council held on the same day.

(6) An elector, other than a relevant elector, is not entitled to vote at an election as an elector of the subdivision of the district in respect of which the elector is enrolled unless the real place of living of the elector was, at some time within the 3 months immediately preceding polling day for that election, within that subdivision.

(7) Notwithstanding anything in this Act:

(a) an elector who has changed address to another place within the same subdivision, or to another subdivision of the same district, shall not be deemed by reason only of that change to be dispossessed of the qualification in respect of which the elector is enrolled, and

(b) an elector who, within 3 months before any election has changed address to another district, may vote at that election for the district for which the elector's name appears on the roll as provided by this Act for the purposes of that election.

(8) In this section:

**relevant Commonwealth law** means the [Australian Citizenship Act 1948](#) of the Commonwealth as amended and in force immediately before 1 May 1987 and the regulations in force immediately before that day under that Act as so amended and in force.

**relevant elector** means:

(a) an Antarctic elector,

(b) an eligible overseas elector, or

(c) an itinerant elector.

## **20A Enrolled electors leaving Australia**

An elector:

- (a) whose name is on the roll for a subdivision,
- (b) who intends to cease to reside in Australia and then, not later than 6 years after the day on which the elector ceases to reside there, to resume residing in Australia, whether in that subdivision or elsewhere, and
- (c) whose name appears on the electoral roll maintained under the Commonwealth Act for a Commonwealth subdivision and that roll is annotated to indicate that the elector is an eligible overseas elector under section 94 of the Commonwealth Act,

is, while the elector's name continues to be included and annotated on the Commonwealth roll referred to in paragraph (c), entitled:

- (d) to have the elector's name retained on the roll for the subdivision corresponding with the Commonwealth subdivision referred to in paragraph (c) with an annotation to indicate that the elector is an eligible overseas elector, and
- (e) to vote as an elector of the subdivision.

## **20B Eligibility of spouse or child of eligible overseas elector**

(1) A person:

- (a) who is the spouse or child of a person who is an eligible overseas elector in relation to a subdivision by virtue of section 20A,
- (b) who is living at a place outside Australia so as to be with or near the eligible overseas elector,
- (c) who had not attained 18 years of age when last ceasing to reside in Australia,
- (d) whose name is not, and has not been, on a roll,
- (e) who is not qualified for enrolment under section 20 but would be so qualified if the person resided in a subdivision,
- (f) who intends to resume residing in Australia not later than 6 years after the day on which the person attains 18 years of age, and
- (g) whose name has been added to an electoral roll maintained under the Commonwealth Act for a Commonwealth subdivision and that roll is annotated to indicate that the elector is an eligible overseas elector under section 95 of the Commonwealth Act,



shall be enrolled for the subdivision corresponding with the Commonwealth subdivision referred to in paragraph (g) for which the eligible overseas elector is enrolled with an annotation to indicate that the person is an eligible overseas elector and is, while the person's name continues to be included and annotated on the Commonwealth roll referred to in paragraph (g), entitled:

- (h) to have the person's name retained on the roll for the subdivision, and
- (i) to vote as an elector of the subdivision.

(2) For the purposes of this section, where a child is adopted by a person, that child shall be taken to be the child of that person.

(3) In this section:

**child** includes an exnuptial child.

**spouse**, in relation to a person (in this subsection referred to as the **relevant person**) includes a person who, although not legally married to the relevant person, lives with the relevant person as the spouse of the relevant person on a permanent and bona fide domestic basis.

## **20C Itinerant electors**

A person:

- (a) who is in Australia but does not reside in any subdivision,
- (b) who is not entitled to have his or her name placed on or retained on the roll for any subdivision only because the person does not reside in any subdivision, and
- (c) whose name has been added to an electoral roll maintained under the Commonwealth Act for the Commonwealth subdivision with which the person has established a connection under section 96 of that Act and the roll maintained under that Act is annotated to indicate that the elector is an itinerant elector under section 96 of that Act,

shall have the person's name added to the roll for the subdivision corresponding with the Commonwealth subdivision referred to in paragraph (c) with which the person has the connection with an annotation to indicate that the elector is an itinerant elector and is, while the person's name continues to be included and annotated on the Commonwealth roll referred to in paragraph (c), entitled:

- (d) to have the person's name retained on the roll for the subdivision, and
- (e) to vote as an elector of the subdivision.

## **21 Disqualifications from voting**

A person shall not be entitled to have his or her name placed or retained on any roll if the person:

- (a) is, because of being of unsound mind, incapable of understanding the nature and significance of enrolment and voting, or
- (b) has been convicted of a crime or an offence, whether in New South Wales or elsewhere, and has been sentenced in respect of that crime or offence to imprisonment for 12 months or more and is in prison serving that sentence, or
- (c) is the holder of a temporary entry permit or is a prohibited immigrant under the [Migration Act 1958](#) of the Parliament of the Commonwealth, as amended and in force for the time being.

## **Part 3A Electoral administration**

### **Division 1 New South Wales Electoral Commission**

#### **21A New South Wales Electoral Commission**

- (1) There is constituted by this Act a corporation with the corporate name of the New South Wales Electoral Commission.
- (2) The Commission has the functions conferred or imposed on it by or under this or any other Act.
- (3) The functions of the Commission are exercisable by the Electoral Commissioner, and any act, matter or thing done in the name of, or on behalf of, the Commission by the Electoral Commissioner, or with the authority of the Electoral Commissioner, is taken to have been done by the Commission.
- (4) Any functions conferred or imposed on the Electoral Commissioner by or under this or any other Act may be exercised by the Electoral Commissioner in his or her official name as Electoral Commissioner or in the name of the Commission.
- (5) The Commission cannot employ any staff.

**Note—**

Staff may be employed under Chapter 1A of the [Public Sector Employment and Management Act 2002](#) in the Government Service to enable the Commission to exercise its functions.

### **Division 2 Electoral Commissioner**

#### **21AA Electoral Commissioner**

- (1) The Governor may appoint an Electoral Commissioner for New South Wales.

- (2) Subject to this Act, the Electoral Commissioner has the responsibility of administering this Act and any provisions of any other Act, so far as this Act and those provisions relate to the enrolment of electors, the preparation of rolls of electors, and the conduct of elections.
- (3) In addition to the functions conferred or imposed by this Act, the Electoral Commissioner has the functions conferred or imposed on the Commissioner by or under any other Act.

**21AB Tenure of office of Electoral Commissioner**

- (1) The Electoral Commissioner:
  - (a) holds office for a term of such period, not exceeding 10 years, as is specified in the instrument of appointment, and
  - (b) may be re-appointed for no more than one term of such period (commencing as from the end of the term referred to in paragraph (a)), not exceeding 10 years, as is specified in the instrument of re-appointment.
- (2) The office of Electoral Commissioner becomes vacant if the holder:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is absent from duty for a period of 14 consecutive days except on leave granted by the Minister, or
  - (e) engages in any paid employment outside the duties of the office, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (i) is imprisoned in respect of a conviction for an offence punishable in New South Wales by imprisonment or for an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be an offence so punishable, or

- (j) becomes a member of a party, or
  - (k) is removed from office by the Governor under this section.
- (3) The Electoral Commissioner may be suspended from office by the Governor for misbehaviour or incompetence, but cannot be removed from office except in the following manner:
- (a) The Minister is to cause to be laid before each House of Parliament a full statement of the grounds of suspension within 7 sitting days of that House after the suspension.
  - (b) An Electoral Commissioner suspended under this subsection is restored to office by force of this Act unless each House of Parliament at the expiry of the period of 21 days from the day when the statement was laid before that House declares by resolution that the Electoral Commissioner ought to be removed from office.
  - (c) If each House of Parliament does so declare within the relevant period of 21 days, the Electoral Commissioner is to be removed from office by the Governor accordingly.
- (4) A person who:
- (a) is a member of a party, or
  - (b) has been a member of a party at any time during the period of 5 years immediately preceding the date of the proposed appointment,
- cannot be appointed to be the Electoral Commissioner.
- (5) A person who holds or has held office as Electoral Commissioner is not entitled to re-appointment, or further appointment, as Electoral Commissioner except as permitted by subsection (1) (b).

#### **21AC Provisions applicable to Electoral Commissioner**

- (1) The provisions of the *Public Sector Employment and Management Act 2002* do not apply to the appointment of the Electoral Commissioner, and the Electoral Commissioner is not subject to the provisions of that Act during his or her tenure of office.
- (2) The Electoral Commissioner is entitled to be paid remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*.
- (3) The Governor may by order fix the terms and conditions of appointment that are applicable to the Electoral Commissioner.

## **21AD Acting Electoral Commissioner**

- (1) **Appointment by Governor—vacancy** The Governor may appoint a person to act as Electoral Commissioner during a vacancy in the office of Electoral Commissioner. The person so appointed may act as Electoral Commissioner during such a vacancy, until a person is appointed to the office under section 21AA.
- (2) **Appointment by Minister—illness or absence** The Minister may appoint a person to act as Electoral Commissioner during the illness or absence of the Electoral Commissioner. The person so appointed may act as Electoral Commissioner during such an illness or absence.
- (3) **Appointment by Electoral Commissioner—substitute to act during election period** The Electoral Commissioner may appoint a member of the staff of the Commission to act as Electoral Commissioner in the event of a future vacancy in the office of Electoral Commissioner or in the event of a future illness or absence of the Electoral Commissioner occurring during an election period. The person so appointed may, during an election period, act as Electoral Commissioner:
  - (a) during such a vacancy, until a person is appointed by the Governor as or to act as Electoral Commissioner under section 21AA or under subsection (1), or
  - (b) during such an illness or absence, until a person is appointed by the Minister to act as Electoral Commissioner under subsection (2).
- (4) **Functions of person acting as Electoral Commissioner** A person, while acting as Electoral Commissioner under this section, has and may exercise the functions of the Electoral Commissioner and is taken to be the Electoral Commissioner.
- (5) **Ineligibility for appointment** A person who:
  - (a) is a member of a party, or
  - (b) has been a member of a party at any time during the period of 5 years immediately preceding the date of the proposed appointment,cannot be appointed to act as Electoral Commissioner under this section.
- (6) **Notification of appointment of substitute** The Electoral Commissioner must, as soon as practicable, advise the Minister of any appointment under subsection (3) or of the termination of any such appointment.
- (7) **Termination of appointment of member of staff** The appointment of a person under subsection (3) terminates if the person ceases to be a member of the staff of the Commission.
- (8) **Remuneration** A person, while acting as Electoral Commissioner under this section, is entitled to be paid such remuneration (including travelling and subsistence

allowances) as the Minister may from time to time determine in respect of the person while so acting.

- (9) **Implied powers not affected** Nothing in this section limits the application of section 47 of the *Interpretation Act 1987* in relation to any appointment under this section.
- (10) **No inquiry into certain matters** No person is to be concerned to inquire whether or not occasion has arisen authorising a person to be appointed to act as Electoral Commissioner, or authorising such a person to act as Electoral Commissioner, under this section.
- (11) **Definition of “election period”** In this section:

***election period*** means the period between the issue of the writ or writs for an election and the return of the writ or all the writs.

### **Division 3 Election officials for districts**

#### **21AE Election officials**

- (1) The Electoral Commissioner may, by instrument in writing, appoint appropriate persons to be:
- (a) returning officers, or
  - (b) polling place managers, or
  - (c) election assistants.
- (2) An election official is to be appointed for a specified district and for a specified term. The term may be specified by reference to a particular period of time or by reference to a particular Assembly general election (and the concurrent periodic Council election) or a particular by-election.
- (3) A person is not qualified for appointment as an election official unless the person is an elector. A person is not ineligible for appointment as an election official for a district merely because the person is not enrolled as an elector on the electoral roll for the district.

#### **21AF Acting returning officers**

- (1) The Electoral Commissioner may appoint a person (whether or not already an election official) to act as a returning officer for a district during the illness or absence of the returning officer or during a vacancy in the office of returning officer for the district. The appointment need not be in writing, but is to be confirmed in writing as soon as is practicable afterwards.
- (2) The person may act as, and is taken to be, the returning officer during the illness or

absence of the returning officer or during a vacancy in the office of the returning officer.

- (3) This section does not prevent the appointment of a person as a returning officer to fill a vacancy in that office.

#### **21AG Functions of election officials**

The functions of a class of persons appointed under this Division are:

- (a) the functions specified by or under this or any other Act in respect of that class of persons, and
- (b) any other functions not inconsistent with this or any other Act as may be specified by the Electoral Commissioner by:
  - (i) the instrument of appointment of persons of that class, or
  - (ii) another instrument applicable to persons of that class or a particular person of that class.

#### **21AH Returning officer not eligible to vote at Assembly election**

A returning officer is ineligible to vote at any election of a member of the Assembly.

### **Division 4 Election assistants for periodic Council elections**

#### **21AI Appointment of assistants for Electoral Commissioner for periodic Council elections**

The Electoral Commissioner may appoint one or more persons who are electors to act as his or her assistants in the exercise of the Commissioner's functions in relation to the conduct of periodic Council elections.

### **Division 5 Postal voting officers**

#### **21AJ Postal voting officers and deputy postal voting officers**

- (1) The Electoral Commissioner may, by instrument in writing, appoint appropriate persons to be:

- (a) postal voting officers, or
- (b) deputy postal voting officers,

at a place outside New South Wales (whether overseas or in Australia), for the purposes of all elections.

- (2) A deputy postal voting officer may act as, and is taken to be, the postal voting officer during the illness or absence of the postal voting officer or during a vacancy in the office of the postal voting officer.

- (3) This section does not prevent the appointment of a person as a postal voting officer to fill a vacancy in that office.

**21AK Appointment of assistants for postal voting officer**

A postal voting officer may appoint persons to act as his or her assistants in the exercise of the officer's functions.

**Division 6 Miscellaneous**

**21AL Definition of "appointed official"**

In this Division:

***appointed official*** means a person who holds an appointment as:

- (a) an election official, or
- (b) a postal voting officer or deputy postal voting officer, or
- (c) an assistant to the Electoral Commissioner under section 21AI, or
- (d) an assistant to a postal voting officer under section 21AK.

**21AM Delegation**

- (1) The Commission may delegate any of the Commission's functions to:
  - (a) the Electoral Commissioner, or
  - (b) an appointed official, or
  - (c) a member of the staff of the Commission.
- (2) The Electoral Commissioner may delegate any of the Commissioner's functions to:
  - (a) an appointed official, or
  - (b) a member of the staff of the Commission.
- (3) Without limiting subsection (2), the Electoral Commissioner may delegate to a returning officer the Commissioner's functions relating to the appointment or termination of the appointment (or both) of polling place managers or election assistants (or both).
- (4) A delegation under this section may be to a particular person or the holder of a particular position or to a class of persons or holders of positions.

**21AN Appointed officials subject to control and direction**

An appointed official is subject to the control and direction of the Electoral Commissioner



in respect of his or her functions under or in connection with:

- (a) this Act, or
- (b) the *Constitution Act 1902* so far as those functions relate to the conduct of elections (within the meaning of this Act) or referendums, or
- (c) any other legislation so far as those functions relate to the conduct of elections (of any kind), polls or referendums under that or any other legislation.

**21AO Declarations to be made by appointed officials**

- (1) An appointed official must, before he or she enters upon any of the duties assigned to him or her by or under this Act with regard to any election, make and sign before a justice of the peace, a school teacher or a prescribed person a declaration:
  - (a) in a form approved by the Electoral Commissioner, unless paragraph (b) applies, or
  - (b) in a form prescribed by the regulations.
- (2) The declaration must be transmitted to:
  - (a) the Electoral Commissioner, unless paragraph (b) applies, or
  - (b) a returning officer or polling place manager, as directed by the Electoral Commissioner.
- (3) Justices of the peace, school teachers and prescribed persons are authorised to receive any such declaration.
- (4) Part 4 of the *Oaths Act 1900* applies to any such declaration as if it were made under that Act.

**21AP Remuneration of appointed officials**

Appointed officials are entitled to be paid the remuneration and allowances (if any) determined by the Electoral Commissioner after consultation with the Director of Public Employment.

**21AQ Termination of appointment of appointed officials**

- (1) An appointed official ceases to hold his or her appointment if:
  - (a) he or she dies, or
  - (b) his or her appointment was for a term and the term expires, or
  - (c) he or she resigns the appointment by instrument in writing addressed to the Electoral Commissioner, or

(d) the Electoral Commissioner terminates his or her appointment.

(2) The Electoral Commissioner may terminate the appointment of an appointed official at any time, for any or no reason, without notice and without affording a hearing. This subsection does not limit section 47 of the *Interpretation Act 1987* in its application to or in respect of holders of those appointments.

**21AR Notification of appointments and termination of appointments of returning officers**

Notice of any appointment or termination of an appointment of a returning officer is to be published in the Gazette at a time determined by the Electoral Commissioner.

**Part 3B Arrangement with the Commonwealth as to rolls**

**21BAA Definition**

In this Part:

**State election** means an election for the Assembly, a periodic Council election or a referendum and includes an election for a council of a local government area.

**21B Arrangement with Commonwealth as to rolls**

(1) The Governor may arrange with the Governor-General of the Commonwealth for the preparation, alteration, and revision of rolls of electors for State elections in any manner consistent with the provisions of this Act, jointly by the State of New South Wales and the Commonwealth to the intent that the rolls may be used as electoral rolls for Commonwealth elections as well as for State elections and for such other purposes as the Governor may determine.

(2)

(a) When any such arrangement has been made the rolls may contain for the purposes of Commonwealth elections:

(i) the names and descriptions of persons who are not entitled to be enrolled thereon as electors for State elections: Provided that it is clearly indicated in the prescribed manner that those persons are not enrolled thereon as electors for State elections, and

(ii) distinguishing marks against the names of persons enrolled as electors for State elections to show that those persons are or are not also enrolled as electors for Commonwealth elections, and

(iii) other particulars in addition to the prescribed particulars.

(b) For the purposes of this Act, the names and descriptions, marks and particulars so contained shall not be deemed part of the roll.

- (3) The Electoral Commissioner and officers acting under the direction of the Electoral Commissioner are exempt from any requirements of the *Privacy and Personal Information Protection Act 1998* relating to the collection, use or disclosure of personal information to the extent that personal information is furnished to the Australian Electoral Commission:
- (a) for the purposes of or in connection with any arrangement referred to in this section, or
  - (b) for any other purpose relating to the rolls.

### **21C Rolls**

- (1) As soon as practicable after the making of an arrangement in pursuance of section 21B, rolls of electors for State elections shall be prepared as directed by the Governor in a proclamation published in the Gazette, and in the manner specified in the proclamation.
- (2) For the purposes of the first rolls prepared under the arrangement, any person who is enrolled on a Commonwealth roll in pursuance of any claim signed by the person, and who is entitled to be enrolled for State elections, shall be deemed to have made a claim under this Act for enrolment on the corresponding roll for State elections.
- (3) (Repealed)
- (4) If any such arrangement ceases to operate:
- (a) the rolls then in existence as added to or altered from time to time, or as compiled under the provisions of the law for the time being in force, shall be the rolls of electors for State elections until superseded by new rolls compiled under this Act,
  - (b) for the purposes of such rolls or new rolls all officers prescribed may have and perform all the duties and functions of Commonwealth divisional returning officers under this Act.

### **21D Failure of registrar or Commonwealth divisional returning officer to prepare, alter or revise joint rolls for State elections**

- (1) Where:
- (a) rolls of electors for the purpose of State elections and of Commonwealth elections are required to be prepared, altered or revised jointly under an arrangement referred to in section 21B, and
  - (b) a registrar or Commonwealth divisional returning officer prepares, alters or revises any such roll for a subdivision for the purpose of Commonwealth elections but not for the purpose of State elections,
- that roll shall, subject to any direction referred to in subsection (2):

- (c) be, for the purpose of State elections, the roll in force for the subdivision:
  - (i) that has the same boundaries as the subdivision referred to in paragraph (b),  
or
  - (ii) if there is no such subdivision, that has the same name as the subdivision so referred to, and
- (d) be deemed to have been duly prepared, altered or revised in accordance with this Act and the arrangement.

(2) Where the Electoral Commissioner is satisfied that a roll in force pursuant to subsection (1) contains the names and descriptions of persons who are not entitled to be enrolled thereon as electors for State elections, the Electoral Commissioner shall, by a notice published in the Gazette, specify the names and descriptions of those persons and direct that:

- (a) an indication in the manner prescribed for the purposes of section 21B (2) (a) (i) shall be deemed to have been made on the roll in respect of the names and descriptions of those persons at the time they were enrolled, and
- (b) if those persons are entitled to be enrolled on another roll for the purpose only of elections for State elections, the names and descriptions of those persons and the distinguishing marks referred to in section 21B (2) (a) (ii) shall be deemed to have been added to that other roll at the time they were enrolled.

## **Part 4 Officers and enrolment**

### **Division 1 Districts and subdivisions**

#### **22 (Repealed)**

#### **23 Power of Governor as to subdivision of districts**

- (1) The Governor may, by proclamation published in the Gazette:
  - (a) divide any district into subdivisions,
  - (b) specify the boundaries and names of subdivisions, and
  - (c) alter the boundaries and name of any subdivision.
- (2) The subdivisions and the boundaries and names thereof shall be such as are specified in any such proclamation.
- (3) No subdivision shall be established, altered or abolished after the issue of the writ for an election, and before the time appointed for its return.
- (4) (Repealed)

## **24 Changes to be made in rolls on subdivision of districts or alteration of boundaries**

Where:

- (a) a district is divided into subdivisions, or
- (b) the boundaries of a district or of a subdivision are altered,

such changes in rolls as are thereby rendered necessary for the transfer of names of electors from one roll to another shall be made in the prescribed manner.

## **Division 2 Officers**

### **25 Appointment of officers**

- (1) The Electoral Commissioner may appoint for any one or more subdivisions an electoral inspector and an electoral registrar.
- (2) The Electoral Commissioner may remove any such person from office.
- (3) Any person appointed under this section may resign office.
- (4) By arrangement with the Australian Electoral Officer for New South Wales the divisional returning officer may act as electoral registrar for any subdivision for which an electoral registrar is not appointed, and any Commonwealth officer may act as electoral inspector for any subdivision for which an electoral inspector is not appointed.
- (5) Electoral inspectors shall have such powers and perform such duties as are prescribed.
- (6) Every electoral registrar and every electoral inspector shall act under and be subject to the control of the Electoral Commissioner for New South Wales, who may inspect all books, rolls and documents kept by any electoral registrar for the purposes of this Act, and satisfy himself or herself that the duties imposed on electoral registrars by this Act have been carried out.
- (7) Every electoral registrar and every electoral inspector shall be paid such allowance as is fixed by the Governor.

## **Division 3 Rolls**

### **26 Rolls for districts and subdivisions**

- (1) There shall be a roll for each district.
- (2) There shall be a separate roll for each subdivision.
- (3) The rolls for all the subdivisions of a district shall together form the roll for the district.

(4) The rolls:

- (a) may be in the prescribed form,
- (b) shall set out the surname, given name or names, residence, date of birth, occupation (or other prescribed particulars) and sex of each elector,
- (c) shall contain such further particulars as are prescribed,
- (d) shall be arranged in alphabetical order of surnames, and where the surnames are identical then in alphabetical order of the given name or names.

(5) Where the elector is an eligible overseas elector or an itinerant elector, the roll shall not set out the residence of the elector.

**27 New rolls**

- (1) New rolls generally and new rolls for any district or subdivision shall be prepared whenever directed by the Governor by proclamation published in the Gazette.
- (2) The rolls shall be prepared under a system of compulsory enrolment.
- (3) The proclamation may specify the manner in which the rolls shall be prepared; and may require every person entitled to enrolment on any new roll, other than an eligible overseas elector or an itinerant elector, to sign and send to the proper officer in accordance with this Act or the regulations, a form of claim for enrolment, and otherwise to comply with the provisions of this Act or the regulations relating to compulsory enrolment:

Provided that where an elector is enrolled for the subdivision in which the elector lives in pursuance of a claim signed by the elector, he or she shall not be required to sign and send in any further claim for enrolment in connection with the preparation of a new roll for that subdivision.

**28 Alterations which may be made in new roll by registrar**

(1) The registrar, upon the receipt of a new roll for a subdivision shall:

- (a) make additions, alterations and corrections therein, and
- (b) remove names therefrom,

pursuant to claims or notifications received by the registrar between the date of the proclamation directing the preparation of the new rolls and the date of the notification that such rolls have been prepared where such additions, alterations or corrections have not already been made in or such removals have not been made from such new roll.

(2) Where objections have been lodged or notices of objection have been issued and

action in respect of such objections or notices of objection has not been completed prior to the notification that new rolls have been prepared, such objections or notices of objection shall have effect in relation to the new rolls as if such rolls had been in existence at the time of the lodging of the objections or the issuing of the notices of objection.

## **29 Printing of rolls**

- (1) Rolls generally, or the roll for any district shall be printed whenever the Electoral Commissioner so directs.
- (2) (Repealed)
- (3) Forthwith after the printing of rolls copies thereof shall be furnished to registrars.

## **30 (Repealed)**

## **31 Persons who are to furnish information**

- (1) All officers in the service of the Government of New South Wales, all police officers, all employees of any council within the meaning of the *Local Government Act 1993*, and all electors or persons qualified to be electors, shall upon request furnish to the Electoral Commissioner or to any officer acting under the direction of the Electoral Commissioner all such information as is required in connection with the preparation, maintenance or revision of the rolls.
- (2) Without limiting subsection (1), all officers and employees referred to in that subsection must upon request furnish to the Electoral Commissioner or to any officer acting under the direction of the Electoral Commissioner:
  - (a) any information of a kind required by the Electoral Commissioner or any such officer for any purpose relating to the rolls, or
  - (b) without limiting paragraph (a), all such information as is required to enable the Electoral Commissioner or any such officer to detect:
    - (i) persons or classes of persons who may be incorrectly enrolled, or
    - (ii) persons or classes of persons (whether of particular ages or otherwise) who may be entitled to enrolment or who, being 17 years but not 18 years of age, may be entitled to make claims under section 33A to have their names placed on a roll, or
    - (iii) other persons or classes of persons who may be affected by this Part or regulations made for the purposes of this Part.
- (3) The Electoral Commissioner may inform any persons who, from information obtained under subsection (2):

- (a) appear to be incorrectly enrolled—of their obligation to be correctly enrolled, or
  - (b) appear not to be enrolled—of their present or forthcoming obligation to be enrolled.
- (4) Persons and public service agencies are exempt from any requirements of the *Privacy and Personal Information Protection Act 1998* relating to the disclosure of personal information to the extent that personal information is furnished under this section to the Electoral Commissioner or any officer acting under the direction of the Electoral Commissioner.
- (5) The Electoral Commissioner and officers acting under the direction of the Electoral Commissioner are exempt from any requirements of the *Privacy and Personal Information Protection Act 1998* relating to the collection, use or disclosure of personal information to the extent that personal information is furnished under this section.
- (6) Without limiting the meaning of the term “officers in the service of the Government of New South Wales” in subsection (1), that term includes persons employed in a public sector service within the meaning of the *Public Sector Employment and Management Act 2002*.

## **Division 3A Inspection of rolls and provision of enrolment information**

### **31A Electoral Commissioner to determine manner and form of access to rolls and enrolment information**

- (1) The Electoral Commissioner may determine the manner and form in which information is to be provided under this Division.
- (2) Without limiting subsection (1), the Electoral Commissioner may determine that the information is to be provided electronically or in electronic form.
- (3) If the Electoral Commissioner:
- (a) makes a copy of a roll available for public inspection in a particular form, or
  - (b) gives a copy of a roll to a person in a particular form,
- the copy is, subject to section 31B (3), to be a copy of the most up-to-date version of the roll that is available in that form.
- (4) Information provided under this Division must not contain:
- (a) particulars of a silent elector’s residence, or
  - (b) any prescribed particulars relating to an elector.

**Note—**



Section 38A provides for the exclusion of the address of an elector from the roll in certain circumstances.

- (5) A reference in this section to information being provided includes a reference to:
- (a) a copy of a roll being made available for public inspection, and
  - (b) a copy of a roll or list of electors being given to a person.

### **31B Public inspection of rolls**

- (1) A copy of a roll for a district is to be available, at any time during ordinary office hours, for public inspection without fee at:
- (a) the office of the Commission, and
  - (b) such other place or places as the Electoral Commissioner determines.
- (2) The Electoral Commissioner may make a copy of a roll available for public inspection without fee in any other way that the Commissioner considers appropriate.
- (3) The copy of a roll for a district to be available under this section is to be the copy of the roll as in force as at the time of the last Assembly general election or the last by-election for the district, whichever is the later.
- (4) A person inspecting a copy of a roll under this section is not entitled to use a device (such as a photocopier, camera, telephone, mobile phone, voice recorder or video recorder) to copy, record or transmit the contents of the roll or any part of the roll, but this subsection does not prevent a person taking hand-written notes of any of those contents.
- (5) A copy of a roll available under this section must not contain any particulars relating to a person's occupation.

### **31C Provision of enrolment information to parties, members and candidates**

- (1) **Registered parties** The Electoral Commissioner must provide to each registered party, free of charge, a list specifying electors and their particulars:
- (a) once each 4 years, and
  - (b) as soon as practicable after the redistribution of the State into districts, and
  - (c) on receiving a request from the registered officer of the party.
- (2) **Members of Council** The Electoral Commissioner must provide to each member of the Council, free of charge, a list specifying electors and their particulars:
- (a) once each 4 years, and
  - (b) as soon as practicable after the redistribution of the State into districts, and

- (c) on receiving a request from the member but not more than once each year.
- (3) **Members of Assembly** The Electoral Commissioner must provide to each member of the Assembly, free of charge, a list specifying electors and their particulars for the district for which the member was elected:
- (a) once each 4 years, and
- (b) on receiving a request from the member but not more than once each year.
- (4) On a redistribution of the State into districts, the Electoral Commissioner must provide to each member of the Assembly, free of charge:
- (a) a list specifying electors for the district for which the member was elected, and
- (b) a list specifying electors for the district whose name and area are published under section 15 and that, in the opinion of the Commissioner, most resemble the district for which the member was elected,
- and their particulars:
- (c) as soon as practicable after the redistribution, and
- (d) on receiving a request from the member but not more than once each year.
- (5) At the request of a member of the Assembly but not more than 6 times each year, the Electoral Commissioner must provide to the member, free of charge:
- (a) a list specifying electors whose addresses for which they are enrolled were in the district represented by the member immediately before a list was last provided under this subsection but are no longer in that district, and
- (b) a list specifying electors whose addresses for which they are enrolled were not in the district represented by the member immediately before a list was last provided under this subsection but are now in that district,
- and their particulars.
- (6) **Candidates for Council** At the request of any candidate for a periodic Council election, the Electoral Commissioner must provide to the candidate, free of charge, a list of electors and their particulars in a form determined by the Commissioner.
- (7) **Candidates for Assembly** At the request of any candidate for an Assembly general election or by-election, the Electoral Commissioner must provide to the candidate, free of charge, a list of electors for the district for which the candidate is seeking election and their particulars in a form determined by the Commissioner.

**31D Provision of enrolment information to others**

- (1) After receiving a request from any person not referred to in section 31C for a list of electors and their particulars, the Electoral Commissioner must:
  - (a) identify the public interest in providing the requested information, and
  - (b) make a finding whether or not the public interest in providing the requested information outweighs the public interest in protecting the privacy of personal information in the particular circumstances.
- (2) Subject to subsection (3), if the Electoral Commissioner has made a finding under subsection (1) that the public interest in providing the requested information outweighs the public interest in protecting the privacy of personal information, the Commissioner may:
  - (a) provide to the person a list specifying electors and their particulars, and
  - (b) charge a fee that covers the cost to the Commissioner of providing the list.
- (3) The Electoral Commissioner must obtain from the person to be provided with information under this section an undertaking that the person will:
  - (a) only use the information for the purpose for which the Commissioner agreed to provide the information, and
  - (b) not copy the information or give it to any other person, and
  - (c) return the information to the Commissioner or destroy the information after using it for the purpose for which the Commissioner agreed to provide the information.
- (4) If the Electoral Commissioner provides enrolment information under this section:
  - (a) to a person who conducts medical research, or
  - (b) to a person who provides a health screening program,the Commissioner may include in the enrolment information the age ranges and sex of electors in a form determined by the Commissioner.
- (5) The Electoral Commissioner must make available for public inspection, free of charge, at the office of the Commission, any finding made under subsection (1) and the reasons for that finding.
- (6) A summary of any findings made under subsection (1) and the reasons for each of them during a year must be included in the annual report of the Commission relating to that year.

### **31E Use of enrolment information**

- (1) A registered party or other person must not use enrolment information that is provided by the Electoral Commissioner under section 31C or 31D except for a purpose that is a permitted purpose in relation to the party or person to whom the information was provided.

Maximum penalty: 1,000 penalty units.

- (2) The permitted purposes in relation to a registered party or a candidate are:
  - (a) any purpose in connection with an election, and
  - (b) monitoring the accuracy of information contained on a roll, and
  - (c) any purpose prescribed by the regulations.
- (3) The permitted purposes in relation to a member of the Council are:
  - (a) any purpose in connection with an election, and
  - (b) monitoring the accuracy of information contained on a roll, and
  - (c) exercising the functions of a member in relation to an elector.
- (4) The permitted purposes in relation to a member of the Assembly are:
  - (a) any purpose in connection with an election, and
  - (b) monitoring the accuracy of information contained on a roll, and
  - (c) exercising the functions of a member in relation to the member's constituents.
- (5) The permitted purpose in relation to a person (other than a registered party, a candidate or a member of the Assembly or the Council) is the purpose for which the Electoral Commissioner agreed to provide the information.
- (6) Proceedings for an alleged contravention of subsection (1) by a registered party that is not a corporation may be brought against the registered officer of the party in a representative capacity. The maximum penalty in that case is the maximum penalty applicable to a corporation.

### **31F Prohibition of disclosure or commercial use of enrolment information**

- (1) For the purposes of this section, enrolment information is protected information in relation to a person if the person knows, or has reasonable grounds for believing, that the information has been provided under section 31C or 31D.
- (2) A person must not disclose protected information unless the disclosure would be a use of the information for a permitted purpose under section 31E.

- (3) A person must not use protected information for a commercial purpose.
- (4) Without limiting subsection (3), protected information is used for a commercial purpose if it is sold or offered for sale.
- (5) Subsection (3) does not apply to the use of protected information provided under section 31D for a commercial purpose where that use is in accordance with or is implicit in the finding of the Electoral Commissioner under that section concerning the public interest in providing the information.

Maximum penalty: 1,000 penalty units.

### **31G On-line access by an individual to information about the individual**

- (1) The Electoral Commissioner may provide internet on-line access to information contained in the roll for a district for the purpose of allowing an individual to ascertain whether or not he or she is correctly enrolled for the district.
- (2) The Electoral Commissioner may determine the manner and form in which information is to be available under this section.
- (3) The Electoral Commissioner must provide such security measures as the Commissioner considers necessary to ensure that information relating to an individual is available only to:
  - (a) that individual, or
  - (b) a person who is authorised by that individual to access that information.

### **31H Division does not affect arrangements with Commonwealth**

Nothing in this Division applies in relation to the furnishing of information to the Australian Electoral Commission for the purposes of or in connection with an arrangement referred to in section 21B.

## **Division 4 Enrolment**

### **32 Addition of names to rolls**

- (1) Names may be added to rolls pursuant to claims for enrolment or transfer of enrolment or claims for provisional enrolment.
- (2) A claim shall:
  - (a) be in the prescribed form,
  - (b) subject to subsection (3), be signed by the claimant, and
  - (c) either:

- (i) be attested by an elector or a person entitled to have the person's name placed on a roll (who must sign the claim as witness in the witness's own hand writing), unless subparagraph (ii) applies, or
  - (ii) be supported by the evidence of the claimant's identity that is required by the regulations, if regulations for the purposes of this subparagraph are in force when the claim is made.
- (3) If a person wishes to make a claim for enrolment, for transfer of enrolment or for provisional enrolment and a registered medical practitioner has certified, in writing, that the person is so physically incapacitated that the person cannot sign the claim, another person may, on behalf of the person, fill out and sign the claim in accordance with the directions of the first-mentioned person.
- (4) A claim shall be completed in accordance with the directions prescribed in the form.
- (5) A certificate referred to in subsection (3) shall be lodged with the claim to which it relates.
- (6) The regulations may:
  - (a) require a claim to be supported by evidence of the claimant's identity for the purposes of subsection (2) (c) (ii), and
  - (b) impose additional requirements in relation to identification for enrolment, including requirements as to:
    - (i) the attestation of a claim, or
    - (ii) the inclusion in a claim, or the attachment to a claim, of particulars or material regarding identification.

### **33 Claims for enrolment or transfer of enrolment**

- (1) Any person qualified for enrolment, who lives at an address in a subdivision, and has lived at that address for a period of one month last past, shall be entitled to have his or her name placed on the roll for that subdivision.
- (2) Any elector whose name is on the roll for any subdivision and who lives at an address in any other subdivision, and has lived at that address for a period of one month last past, shall be entitled, in respect of residence at that address, to have his or her name transferred to the roll for the subdivision in which the elector lives.
- (3) Subject to sections 20A–20C and Division 18 of Part 5, no person is entitled to have his or her name placed on more than one roll or upon any roll other than the roll for the subdivision in which the person lives, or to have his or her name placed on a roll in respect of any address other than the address at which the person is living at the date of lodgment of the claim.

### 33A Claims for provisional enrolment

- (1) Any person who is 17 years of age and who, if the person were 18 years of age, would be entitled to have the person's name placed on a roll for a subdivision may send or deliver a claim to have the person's name placed on the roll for the subdivision to any registrar of a subdivision.
- (2) A claim made under subsection (1) shall be treated as a claim for enrolment for the subdivision to which the claim relates and the provisions of sections 35, 38 and 38A apply in relation to the claim as if the person making the claim were 18 years of age and the claim were made pursuant to section 34.

### 34 Compulsory enrolment and transfer

- (1) Every person who is entitled to have his or her name placed on the roll for any subdivision otherwise than by virtue of section 20A, 20B, 20C or 33A (whether by way of enrolment or transfer of enrolment) and whose name is not on the roll, shall forthwith fill in and sign a claim in the prescribed form and send or deliver the claim to the registrar for the subdivision.
- (2) Where a person sends or delivers a claim for enrolment, or for transfer of enrolment, to the registrar for a subdivision other than the subdivision (in this subsection referred to as the **proper subdivision**) on the roll for a subdivision of which the person is entitled to be enrolled, the registrar shall note on the claim the date of its receipt by the registrar and forthwith send the claim and any documents sent or delivered by the person with the claim to the registrar for the proper subdivision.
- (3) Every person who is entitled to have his or her name placed on the roll for any subdivision otherwise than by virtue of section 20A, 20B, 20C or 33A (whether by way of enrolment or transfer of enrolment) and whose name is not on the roll upon the expiration of 21 days from the date upon which becoming so entitled, or at any subsequent date while continuing to be so entitled, shall be guilty of an offence unless the person proves that the non-enrolment is not because of the person's failure to send or deliver to the registrar a claim, duly filled in and signed in accordance with the directions printed on it.
- (4) If a person (including a person whose residence, in pursuance of a request made under section 38A, is not entered on a roll) changes residence from one address in the subdivision for which the person is enrolled to another address in that subdivision, the person shall, within 21 days after the date of making the change, give notice in writing of the new address to the registrar for the subdivision.
- (5) A person who is guilty of an offence against subsection (1) or (3) is liable to a penalty not exceeding 0.5 penalty unit.
- (6) When a person sends or delivers a claim for enrolment, or for transfer of enrolment, to

a registrar, proceedings shall not be instituted against that person for any offence against subsection (1) or (3) committed before the person sent or delivered that claim.

### **35 Registration of claims**

- (1) Subject to subsection (4), when, pursuant to section 34, a registrar receives a claim for enrolment or transfer of enrolment for a subdivision, the registrar shall:
  - (a) note on the claim the date of its receipt by the registrar,
  - (b) if the claim is in order and the registrar is satisfied that the claimant is entitled to be enrolled for the subdivision, forthwith:
    - (i) enter on the roll for the subdivision the name of the claimant and particulars relating to the claimant,
    - (ii) notify the claimant in writing that he or she has been enrolled for that subdivision,
    - (iii) in the case of a claim for a transfer of an enrolment from the roll for another subdivision in the same district—delete the name of the claimant from the roll for the last-mentioned subdivision,
    - (iv) in the case of a claim for transfer of enrolment from a subdivision not included in the same district—give notice of the transfer to the registrar for that last-mentioned subdivision, and
    - (v) in a case where the name of the claimant is entered on the roll for the subdivision for which the claimant is entitled to be enrolled—notify the claimant in writing that, in the registrar’s opinion, the claimant’s existing enrolment is correct, and
  - (c) if the claim is not in order or the registrar is not satisfied that the claimant is entitled to be enrolled in a subdivision of that district—forthwith notify the claimant in writing that his or her claim has been rejected.
- (2) Where a registrar receives notice, pursuant to subsection (1) (b) (iv), of the transfer of a person’s enrolment from a subdivision, the registrar shall delete the name of, and particulars relating to, the person from the roll for the subdivision.
- (3) Notice of a decision given to a claimant by a registrar under subsection (1) (b) (v) or (1) (c) shall include:
  - (a) a statement of the reasons for the decision, and
  - (b) a statement advising the claimant that the claimant is entitled at any time within one month after the receipt of the notice to appeal to a Local Court for an order directing that the claimant’s name be enrolled.



- (4) If a claim under section 34 by a person to have the person's name placed on the roll for a subdivision is received during the period commencing at 6 pm on the date of issue of the writ for the election and ending on the close of polling at the election, the claim is not to be considered until after the expiration of that period.
- (5) A name may, at any time, be removed from a roll pursuant to a notice of transfer of enrolment.
- (6) The regulations may make provision for or with respect to the giving of notice by the Electoral Commissioner to an elector of his or her enrolment and the signing of that notice by the elector.

**36, 37 (Repealed)**

**38 Penalty on officer neglecting to enrol claimants**

Any registrar who receives a claim for enrolment or transfer of enrolment, and who without just excuse fails to do everything necessary on his or her part to be done to secure the enrolment of the claimant in pursuance of the claim shall be liable to a penalty not exceeding 10 penalty units.

**38A Request for residence not to be shown on roll**

- (1) If a person considers that having the person's residence shown on the roll for the subdivision for which the person is claiming enrolment would place the personal safety of the person or of members of the person's family at risk, the person may lodge with the claim for enrolment or transfer of enrolment a request, in the prescribed form, that the person's residence not be entered on the roll for the subdivision for which the person is claiming enrolment.
- (2) Where:
  - (a) the residence of a person is included in the particulars relating to the person that are entered on the roll for a subdivision, and
  - (b) the person considers that having the residence so shown places the personal safety of the person or of members of the person's family at risk,the person may lodge with the registrar for the subdivision a request, in the prescribed form, that the person's residence be deleted from the particulars relating to the person that are entered on that roll.
- (3) A request under subsection (1) or (2) shall give particulars of the relevant risk and shall be verified by statutory declaration by the person making the request or some other person.
- (4) If:

- (a) a request has been made under subsection (1) or (2), and
- (b) the registrar is satisfied that having the residence of the person making the request entered on the roll for the subdivision would place or places the personal safety of the person or of members of the person's family at risk,

the registrar:

- (c) in a case where the request was lodged under subsection (1)—shall not include the residence of the person in the particulars relating to the person that are entered on the roll for the subdivision, and

- (d) in a case where the request is lodged under subsection (2)—shall delete the residence of the person from the particulars relating to the person that are entered on the roll for the subdivision.

- (5) When a registrar grants or refuses a request made by a person under subsection (1) or (2), the registrar shall notify the person in writing of the decision.
- (6) Notwithstanding anything contained in section 40, where an address is deleted from a roll in pursuance of subsection (4), the address so deleted shall be obliterated.
- (7) A registrar, when directed to do so by the Electoral Commissioner, shall:
  - (a) conduct a review of the roll for the subdivision in relation to electors whose residences are not shown on the roll by virtue of this section, and
  - (b) on completion of the review, make such alterations to the roll as the registrar thinks necessary to ensure that the only electors whose residences are not shown on the roll by virtue of this section are electors the personal safety of whom or of whose family, the registrar is satisfied, would be at risk if their residence were shown on the roll.

### **39 Alteration of rolls**

- (1) In addition to other powers of alteration conferred by this Act, a registrar may alter any roll kept by the registrar by:
  - (a) correcting any mistake or omission in the particulars of the enrolment of an elector,
    - (a1) altering any particulars of the enrolment of an elector necessitated:
      - (i) by the numbering or re-numbering or naming or re-naming of the elector's place of residence,
      - (ii) by the naming or re-naming of a street, public place or locality, or
      - (iii) for any other like reason,

- (b) altering, on the written application of an elector, the original name, address, or occupation of the elector on the same subdivision roll,
- (c) removing the name of any deceased elector,
- (d) removing the name of an elector who has been convicted and sentenced to a term of imprisonment of one year or longer and is in prison pursuant to such sentence,
- (e) striking out the superfluous entry where the name of the same elector appears more than once on the same subdivision roll,
- (f) reinstating any name removed by mistake as the name of a deceased elector,
- (g) reinstating, by direction of the divisional returning officer, any name removed as the result of an objection:

Provided that the divisional returning officer shall not direct the reinstatement of any such name unless satisfied that the objection was based on a mistake as to fact and that the person objected to still retains and has continuously retained the right to the enrolment in respect of which the objection was made,

- (h) reinstating by direction of the divisional returning officer any other name removed by mistake or which has been accidentally omitted, and
- (i) removing a name from the roll by direction of the divisional returning officer upon the certificate of the Electoral Commissioner:

Provided that the Electoral Commissioner shall not issue such a certificate unless satisfied that the elector has ceased to be qualified for enrolment on that roll and has secured enrolment on another roll:

Provided further that where a registrar removes any such name the registrar must send by post to the elector whose name is so removed notice of the fact.

- (2) Where the name of an elector has, pursuant to a claim, been incorrectly placed on the roll for a subdivision other than the subdivision in which the elector was living at the date of the claim, and the elector was entitled on that date to have his or her name placed on the roll for the subdivision in which the elector was living:
  - (a) if the two subdivisions are in the same district the divisional returning officer may direct the registrar keeping the roll on which the elector is enrolled to remove the name of the elector from that roll, and the registrar keeping the roll for the subdivision in which the elector is living to place the name of the elector on that roll and to notify the elector of the change of enrolment, and the respective registrars shall comply with those directions accordingly, and
  - (b) if the two subdivisions are not in the same district the Electoral Commissioner shall forward a certificate setting forth the facts to the divisional returning officer

for the district in which the elector is enrolled and to the divisional returning officer for the district in which the elector is living, and thereupon the divisional returning officer for the district for which the elector is enrolled shall direct the registrar keeping the roll on which the elector is enrolled to remove the name of the elector from that roll, and the divisional returning officer for the district in which the elector is living shall direct the registrar keeping the roll for the subdivision in which the elector is living to place the name of the elector on that roll and to notify the elector of the change of enrolment, and the respective registrars shall comply with those directions accordingly.

- (3) No alteration pursuant to this section shall, without the authority of the divisional returning officer, be made at any time after six o'clock in the afternoon of the day of the issue of the writ for an election and before the close of the polling at the election.

### **39A Incorrect enrolment**

Where a person, whose name has been placed on the roll for a district, is not entitled to enrol for that district and that person secured enrolment pursuant to a claim in which the person made a false statement, the divisional returning officer for that district, upon receipt of a certificate from the Electoral Commissioner setting forth the facts, may, at any time between the date of the issue of the writ for an election, and before the close of the polling at that election, direct the registrar keeping that roll to remove the name of that person from that roll and the registrar shall comply with that direction accordingly.

### **40 Alterations to be initialled**

Every alteration of a roll shall be made in such a manner that the original entry shall not be obliterated, and the reason for each alteration and the date thereof shall be set against the alteration, together with the initials of the registrar.

### **41 Information as to deaths and convictions**

- (1) The Registrar of Births, Deaths and Marriages shall cause to be forwarded, within three days after the end of each month or at such other times as are arranged, to the Electoral Commissioner a list setting out the surname and given name or names, and the occupation and age at the time of death, and the last known place of residence at the date of the death of every person of the age of 17 years or upwards whose death was registered during such month.
- (2)
  - (a) The Corrective Services Commission of New South Wales shall, in respect of any person of the age of 17 years or upwards who is in prison pursuant to being sentenced to a term of imprisonment of one year or longer, as soon as possible after the end of each month in which any such person is sentenced, forward to the Electoral Commissioner a list setting forth the surname and given name or names, and the occupation and age, and the last known place of residence of every

person so sentenced during such month, and the date of the sentence, the nature of the offence, the period of imprisonment, and the electoral roll (if any) in which such person's name is included.

(b), (c) (Repealed)

- (3) The Electoral Commissioner after receipt of any list referred to in subsection (1) or subsection (2), shall forthwith forward a copy of any particulars included in the list to the divisional returning officer for each district or subdivision to which such particulars relate.
- (4) Each divisional returning officer shall, upon receipt of information pursuant to this section, take action under this Part to effect such alterations of the rolls as are necessary.

#### **41A Computer records relating to roll**

- (1) If but for this subsection a registrar is required or permitted under this Act or the regulations to record particulars (including make an annotation) in a written form on a roll, the registrar may do so by recording or storing those particulars, or causing those particulars to be recorded or stored, on a mechanical, electrical or other device approved by the Electoral Commissioner.
- (2) If a registrar is required or permitted under this Act or the regulations to vary or remove particulars which, but for this section, would be on a roll but which have been recorded or stored in accordance with this section, the registrar shall do so by varying or removing the particulars so recorded or stored, or causing the particulars so recorded or stored to be varied or removed, as the case may be.
- (3) If particulars are recorded or stored by virtue of this section, the registrar responsible for the roll on which, but for this section, those particulars would be recorded shall ensure that means are provided by which those particulars are available, without fee, for public inspection in a written form at the registrar's office during ordinary office hours.
- (4) If a registrar who is required under this Act or the regulations to enter particulars on, vary particulars on, or remove particulars from, a roll complies with the requirement by taking action in accordance with this section, the registrar shall, for the purposes of this Act, including any provisions imposing obligations on the registrar, be taken to have entered those particulars on the roll, varied those particulars or removed those particulars, as the case may be.
- (5) Section 40 does not apply to alterations of a roll made in pursuance of this section.

### **Division 5 Objections**

#### **42 Name on roll may be objected to**

Any name on a roll may be objected to by objection in writing lodged with or made by the divisional returning officer.

#### **43 Objection**

The objection may be in the prescribed form, and shall be signed by an elector enrolled on the roll for the same subdivision as the person objected to, or by the divisional returning officer or registrar, or other prescribed officer.

#### **44 Duty to object**

It shall be the duty of each divisional returning officer and of each registrar or other prescribed officer to lodge or make an objection in writing, setting forth the grounds of such objection, in respect of any name which he or she has reason to believe ought not to be retained on the roll.

#### **45 Notice of objection**

- (1) Subject to subsection (3), if an objection is made by or lodged with a divisional returning officer, the divisional returning officer shall forthwith give notice of the objection to the person objected to.
- (2) Notice under subsection (1) shall be in the prescribed form, and may be given to the person objected to by being posted to:
  - (a) in a case where the person objected to has notified, in writing, the divisional returning officer for the division in which the subdivision for which the person is enrolled is situate of an address to which notices may be given to the person—the address so notified,
  - (b) in a case where paragraph (a) does not apply to the person objected to and the place of living of the person objected to is known to the person giving the notice—the place of living of the person objected to, or
  - (c) in any other case—the place of living of the person objected to as appearing on the roll.
- (3) Where the divisional returning officer is satisfied that an objection is frivolous or vexatious, he or she may dismiss the objection without giving notice of objection to the person objected to.
- (4) An objection on the ground that a person does not live in the subdivision for which the person is enrolled shall be deemed not to be good unless it alleges that the person objected to does not live in the subdivision, and has not so lived for at least one month last past.

#### **46 Answer to objection**

The person objected to may, orally or in writing, in the prescribed manner, answer the objection.

#### **47 Determination of objection**

- (1) The divisional returning officer shall determine the objection forthwith on receipt of the answer of the person objected to, or if no answer is received within a period of twenty days after the posting of the notice, then after the expiration of that period; and if it appears that the person objected to is not entitled to be enrolled on the roll in respect of which the objection has been made, the divisional returning officer shall direct the registrar to remove the name of such person from that roll:

Provided that no name shall be removed from a roll in pursuance of this section after the issue of the writ for an election and before the close of the polling at the election, unless the name is removed on the ground referred to in subsection (4).

- (2) The divisional returning officer shall give notice in the prescribed form of his or her determination of an objection under subsection (1) to the objector and to the person objected to.
- (3) Notice under subsection (2) may be given to the person objected to by being posted to an address or place to which a notice of objection could be posted to the person objected to under section 45 (2).
- (4) The divisional returning officer must not remove an elector's name from the roll on the ground specified in section 21 (a) unless the objection is accompanied by a certificate of an Australian medical practitioner stating that, in the opinion of the medical practitioner, the elector, because of unsoundness of mind, is incapable of understanding the nature and significance of enrolment and voting.

#### **47A Assistant divisional returning officers**

Sections 42–45 and 47 apply in relation to a State subdivision corresponding to a Commonwealth subdivision for which an assistant divisional returning officer has been appointed as if references in those sections, in relation to a subdivision, to a divisional returning officer were references to an assistant divisional returning officer.

### **Division 6 Appeals**

#### **48 Appeal to Local Court**

- (1) Any person:
  - (a) who has sent or delivered to a registrar a claim for enrolment or transfer of enrolment or provisional claim for enrolment, and who has not been enrolled pursuant thereto, or

(b) whose name has been removed from a roll by direction of the divisional returning officer pursuant to an objection,

may, at any time within one calendar month after the receipt of the notice of the rejection of the claim or of notice of the determination of the objection, as the case may be, in the prescribed manner make application to a Local Court for an order directing that the person's name be enrolled or reinstated on the roll, as the case requires.

- (2) Where an objection has been determined by the divisional returning officer adversely to the person objecting, that person, if not an officer, may in the prescribed manner apply to a Local Court for an order sustaining the objection.
- (3) Where the application has reference to the decision of the divisional returning officer upon an objection, the applicant shall as prescribed serve the objector or the person objected to (as the case may be) with notice of the application, and the person so served may appear or may in writing authorise any person to appear on his or her behalf to resist the application.

#### **49 Power of Local Court to hear and determine appeals etc**

- (1) A local court presided over by a magistrate may hear and determine any appeal or application under this Part, and may make such order as it thinks fit as to costs, which costs may be recovered in the same manner as costs awarded in any other proceedings in a local court.
- (2) The clerk of the local court shall send by post to the divisional returning officer a certified copy of the order of the court, and it shall be the duty of the divisional returning officer to direct the registrar to make such entries (if any) upon the roll as are necessary to give effect to the order.

### **Division 7 Copy of roll for election**

#### **50 Roll for purposes of election**

- (1) The Australian Electoral Officer for New South Wales must, as soon as practicable after the issue of the writ for an election in any district, certify, sign and transmit to the Electoral Commissioner a printed copy of the roll for each subdivision in the district as in force at 6 pm on the day of the issue of the writ.
- (2) A copy of the roll so transmitted to the Electoral Commissioner is the electoral roll for the subdivision.
- (3) The regulations may make provision for or with respect to the supply and certification of a composite roll for a district made up of all rolls for a subdivision.
- (4) A registrar must comply with any direction of the Australian Electoral Officer for New



South Wales given to enable that Electoral Officer to comply with this section.

- (5) If the Electoral Commissioner is satisfied that the Australian Electoral Officer for New South Wales, or any other person, refuses or has failed to perform any duty under this section, the Electoral Commissioner (or a person authorised by the Electoral Commissioner) may perform that duty and, for that purpose, has all the functions of the Australian Electoral Officer for New South Wales or any registrar.
- (6) A copy of a roll referred to in this section must not contain any particulars relating to a person's occupation.

## **Division 8 Miscellaneous**

### **51 Witness to application must be satisfied of truth of statements**

Any person who witnesses any claim for enrolment or transfer of enrolment or provisional claim for enrolment who signs the claim before being satisfied, by inquiry from the claimant or otherwise, that the statements contained in the claim are true, shall be liable to a penalty not exceeding 10 penalty units.

### **52 Failure to transmit claim**

Any person who accepts the custody of a claim for enrolment or transfer of enrolment or provisional claim for enrolment for transmission on behalf of any other person to a registrar, and does not transmit the claim forthwith to the registrar, shall be liable to a penalty not exceeding 10 penalty units.

### **52A, 52B (Repealed)**

### **53 Electoral papers may be sent by post**

All electoral papers provided for by this Part may be sent through the post.

### **54 Correction of errors**

- (1) Where any accidental or unavoidable impediment, misfeasance or omission has happened in the preparation or transmission or printing of any roll under this Part, the Governor may by order:
  - (a) take all such measures as may be necessary for removing such impediment or rectifying such misfeasance or omission, or
  - (b) declare any such roll valid as to and notwithstanding such impediment, misfeasance or omission.
- (2) Every such order shall state specifically the nature of the impediment, misfeasance or omission and shall be forthwith published in the Gazette.

### **55-66 (Repealed)**

## Part 4A Registration of parties

### 66A Definitions and related provisions

(1) In this Part:

**address** does not include a postal address that consists of a post office box number.

**eligible party** means (subject to subsection (2)) a party:

- (a) that has at least 750 members, and
- (b) that is established on the basis of a written constitution (however expressed) that sets out the platform or objectives of the party.

**member** of a party means a member of the party who is an elector.

**Parliament** means the Parliament of New South Wales.

**secretary** of a party means the person who holds the office (however expressed) the duties of which involve responsibility for the carrying out of the administration, and for the conduct of the correspondence, of the party.

(2) Two or more parties cannot rely on the same member for the purpose of qualifying or continuing to qualify as an eligible party. The following provisions apply accordingly:

- (a) a member who is relied on by 2 or more parties may nominate the party entitled to rely on the member, but if a party is not nominated after the Electoral Commissioner has (in accordance with the regulations) given the member an opportunity to do so, the member is not entitled to be relied on by any of those parties,
- (b) the members on whom a registered party relies may be changed at any time by an amendment of the Register of Parties,
- (c) the registration of a party is not to be cancelled because of this subsection unless the party is given an opportunity by the Electoral Commissioner (in accordance with the regulations) to change the members on whom it relies.

### 66B Registration of parties

Subject to this Part, an eligible party may be registered under this Part for the purposes of this Act and the [Election Funding Act 1981](#).

### 66C Register of Parties

(1) The Electoral Commissioner is required to keep a register, to be called the Register of Parties, containing the names of the parties registered under this Part and other particulars or documents required by this Part.

- (2) The Register of Parties is to be kept in such form and manner as the Electoral Commissioner thinks fit.

**66D Application for registration**

- (1) An application for the registration of a party may be made to the Electoral Commissioner (in the form and manner approved by the Electoral Commissioner) by the secretary of the party.
- (2) An application for the registration of a party must:
- (a) set out the name of the party, and
  - (b) if the party wishes to be able to use an abbreviation of its name on ballot papers or electoral material—set out that abbreviation, and
  - (c) set out the name and address of the natural person who is to be the registered officer of the party for the purposes of this Act, and
  - (d) set out the name and address of a natural person (if any) who is to be a deputy registered officer of the party for the purposes of this Act, and
  - (e) set out the address of the party headquarters in New South Wales, and
  - (f) be accompanied by a copy of the constitution of the party, and
  - (g) set out the names and addresses (as enrolled) of 750 electors who are members of the party and on whom the party relies for the purpose of qualifying as an eligible party, and
  - (g1) be accompanied by declarations of membership of the party (in the form prescribed by the regulations) completed and signed by the members on whom the party relies for the purpose of qualifying as an eligible party, and
  - (h) state whether or not the party wishes to be registered for the purposes of the *Election Funding Act 1981*, and
  - (i) set out such other particulars (or be accompanied by such other documents) as are required by the regulations or the approved form of application.
- (2A) An application for the registration of a party may include an additional list of names and addresses of electors who are members of the party (and accompanying declarations) to supplement the required list of 750 electors who are members of the party in the event that the Electoral Commissioner determines that the party is not entitled to rely on any person named in the application as a member of the party.
- (3) An application for the registration of a party must be accompanied by a fee of \$2,000.
- (4) On receipt of an application for the registration of a party, the Electoral Commissioner

may carry out preliminary tests and inquiries (including any test or inquiry referred to in section 66G) to determine whether the party is an eligible party and the application is duly made.

**66DA Notice of application for registration**

- (1) If, after carrying out any preliminary tests and inquiries with respect to an application for the registration of a party, the Electoral Commissioner is satisfied that the party may be an eligible party and the application may be duly made, the Electoral Commissioner must cause a notice to be published in one or more newspapers circulating throughout New South Wales.
- (2) The notice must state that the application has been received and request that any objections to the application be lodged with the Electoral Commissioner within 14 days after the date of publication of the notice.
- (3) The notice must set out the particulars that are required by section 66D to be set out in the application and must state that the application can be inspected at a specified address.
- (4) However, subsection (3) does not require the following particulars to be set out in the notice: the names and addresses of 750 electors, and any other particulars prescribed by the regulations for the purposes of this subsection. Nor does it require documents accompanying the application to be set out in or to accompany the notice.
- (5) The Electoral Commissioner must consider all objections received during the period of 14 days, for the purpose of determining:
  - (a) whether the party referred to in the application is an eligible party, and
  - (b) whether the application was duly made, and
  - (c) whether the Electoral Commissioner should refuse to register the party.
- (6) This section does not limit the matters that the Electoral Commissioner may take into consideration when determining the matters referred to in subsection (5).
- (7) The Electoral Commissioner must not register the party until the period of 14 days has expired and all the objections have been considered.
- (8) The decision of the Electoral Commissioner on any such objection is final.
- (9) This section extends to an amended application referred to in section 66G (4), unless the Electoral Commissioner is of the opinion that the amendment is of a minor nature only and does not warrant publication of a further notice under this section.
- (10) This section does not apply to applications received by the Electoral Commissioner before the commencement of this section, nor does it affect the registration of any

party effected before that commencement.

#### **66E Registration**

- (1) If an application for the registration of an eligible party is duly made, the Electoral Commissioner must (subject to this Part) register the party by the insertion in the Register of Parties of the name of the party.
- (2) The particulars or documents with respect to a registered party that were set out in or accompanied the application for the registration of the party are to be included in or form part of the Register of Parties.

#### **66F Party not to be registered during election**

- (1) A party may not be registered under this Part in the period commencing on the day of the issue of the writ in an election and ending on and including the day fixed for the taking of the poll in the election.
- (2) No action is to be taken during that period in relation to an application for registration.

#### **66FA Entitlements resulting from party registration not available until first anniversary of registration**

- (1) A party that becomes registered under this Part is not a registered party until the first anniversary of its registration for the following purposes:
  - (a) Division 6B of Part 5 (Party endorsement on ballot papers),
  - (b) section 79 (Nomination of Assembly candidates) and section 81B (Nomination of Council candidates),
  - (c) section 151G (Registration of electoral matter).
- (2) A party that becomes registered under this Part is not, until the first anniversary of its registration:
  - (a) a registered party for the purposes of the *Election Funding Act 1981*, or
  - (b) a party for the purposes of sections 60 and 61 of that Act.
- (3) This section extends to a party whose registration was previously cancelled under this Part.
- (4) If the registration of a party has been wrongfully delayed by any act or omission of the Electoral Commissioner, the Supreme Court or the Electoral Commissioner may, by order, backdate the registration of the party to the date on which the party should have been registered. Such an order cannot be made so as to backdate the registration of a party to a date during or before a previous period referred to in section 66F.

- (5) The Register of Parties cannot be amended to backdate the registration of a party, except as authorised by an order under subsection (4).

**66G Refusal to register**

- (1) The Electoral Commissioner may refuse to register a party if it is not an eligible party or if its application for registration has not been duly made under this Part.
- (2) Without limiting subsection (1), the Electoral Commissioner may refuse to register a party if the Electoral Commissioner believes on reasonable grounds that particulars set out in or documents accompanying the application are incomplete or not correct, but may, if the Electoral Commissioner thinks fit, register the party despite any such defect.
- (2A) The Electoral Commissioner:
- (a) may, before registering a party, require a written response from at least a specified percentage of all or any specified number of the members relied on for registration of the party confirming that they are in fact members of the party, and
  - (b) may adopt any other test for verifying membership of the party that must be satisfied before the party is registered, and
  - (c) may make other inquiries about the members of the party or the party for the purpose of determining whether the party is an eligible party and the application for its registration is duly made.

The regulations may (but need not) sanction particular tests or inquiries for the purposes of this subsection.

- (3) The Electoral Commissioner is to refuse to register a party if, in the opinion of the Electoral Commissioner, the name of the party or the abbreviation of the name (if any) as set out in the application for registration of the party:
- (a) comprises more than 6 words, or
  - (b) is obscene or offensive, or
  - (c) is the name, is an abbreviation or acronym of the name, or is a derivative of the name, of a registered party or a party currently represented in Parliament, or
  - (d) so nearly resembles the name, or an abbreviation or acronym of the name, of a registered party or a party currently represented in Parliament that it is likely to be confused with or mistaken for that name or that abbreviation or acronym, or
  - (e) comprises the words “Independent Party” or comprises or contains the word “Independent” and:
    - (i) the name, or an abbreviation or acronym of the name, of a registered party or

a party currently represented in Parliament, or

- (ii) matter that so nearly resembles the name, or an abbreviation or acronym of the name, of a registered party or a party currently represented in Parliament that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym.

(3A) A reference in subsection (3) (c)–(e) to a registered party includes a reference to any party that was registered under this Part at any time during the previous 4 years, except where the application for registration is made with the approval of a person who was the last registered officer or deputy registered officer of that previously registered party.

(4) If the Electoral Commissioner refuses to register a party:

- (a) the Electoral Commissioner must forthwith notify the applicant of the refusal and of the reasons for the refusal, and
- (b) the applicant may, within 30 days after the date of the notification by the Electoral Commissioner, amend the application for registration and the Electoral Commissioner may deal with the amended application.

#### **66H Amendment of Register**

(1) An application may be made to the Electoral Commissioner (in the form and manner approved by the Electoral Commissioner) for the amendment of the particulars in the Register of Parties with respect to a registered party.

(2) The application may be made:

- (a) by the registered officer of the party, or
- (b) if the application is to change the registered officer of the party—by the secretary of the party.

(3) The provisions of this Part relating to an application for the registration of a party apply (subject to the regulations) to an application for the amendment of the Register of Parties. For that purpose, the application is to be regarded as an application for registration setting out particulars as proposed to be amended.

(3A) Section 66D (3) does not apply to an application for the amendment of the particulars in the Register of Parties. The regulations may prescribe a fee to accompany any such application.

(3B) Section 66DA does not apply to an application for the amendment of the particulars in the Register of Parties if the Electoral Commissioner is of the opinion that the amendment is of a minor nature only and does not warrant publication of a notice under that section.

- (4) If the application is approved, the Electoral Commissioner is to make the necessary changes in the Register of Parties.
- (5) A reference in this section to the amendment of the particulars included in the Register of Parties includes a reference to the replacement of documents forming part of the Register.

**66HA Annual returns and other inquiries with respect to continued registration or applications for registration**

- (1) The registered officer of a party must, by 30 June each year, furnish to the Electoral Commissioner a return as to its continued eligibility for registration under this Part in the form prescribed by the regulations. The form so prescribed may require the return to be accompanied by specified documents.
- (2) A return is not required to be furnished under subsection (1) if the party has been registered for less than 6 months before the return is due to be furnished.
- (3) The Electoral Commissioner may at any time, by notice in writing, require:
  - (a) an applicant for registration, or
  - (b) the registered officer of a party,to provide such information as is specified in the notice for the purpose of dealing with the application or of determining whether the party is an eligible party.
- (4) If an applicant for registration fails to comply with a requirement made under this section, the Electoral Commissioner may decline to deal with the application.
- (5) If the registered officer of a party fails to comply with a requirement made under this section, the Electoral Commissioner may cancel the registration of the party.

**66I Cancellation of registration**

- (1) The Electoral Commissioner may cancel the registration of a party at the written request of the registered officer of the party.
- (2) If the Electoral Commissioner is satisfied on reasonable grounds that:
  - (a) a registered party has ceased to exist (whether by amalgamation with another party or otherwise), or
  - (b) a registered party is no longer an eligible party, or
  - (c) the candidates at a general election held after the registration of a party did not include at least one candidate endorsed by the party, or
  - (d) the registration of a party was obtained by fraud or misrepresentation,



the Electoral Commissioner may, subject to and in accordance with the regulations, cancel the registration of the party.

- (2A) Without limiting subsection (2), the Electoral Commissioner may, for the purpose of determining whether a registered party is still an eligible party:
- (a) carry out the tests and inquiries referred to in section 66G (2A), and
  - (b) require any such test to be satisfied within a reasonable period determined by the Electoral Commissioner.
- (3) If the registration of a party is cancelled, the Electoral Commissioner must:
- (a) give notice of the cancellation and the reasons for the cancellation to the person who was the registered officer of the party immediately before the cancellation and cause notice of the cancellation to be published in the Gazette, and
  - (b) remove from the Register of Parties the name and other particulars or documents relating to the party.

#### **66J Public access to registers**

- (1) The Register of Parties kept under this Part must be available for public inspection during ordinary office hours.
- (2) Applications for registration or for the amendment of the particulars in the Register of Parties must also be made available for public inspection during ordinary office hours.

#### **66JA Distribution of information to electors about registered parties**

- (1) The Electoral Commissioner is required to prepare, for each periodic Council election, a registered party information sheet for each registered party.
- (2) Any such information sheet is to contain the following information:
  - (a) the name of the registered party,
  - (b) the name and address of the registered officer of the party,
  - (c) a statement (not exceeding 500 words) setting out the platform or objectives of the party provided by the registered officer of the party (but only if such a statement is provided within the time requested by the Electoral Commissioner).
- (3) The Electoral Commissioner is required to publish a copy of each such information sheet on the world wide web at least 1 month before the date on which the Legislative Assembly is due to expire or, if it is dissolved earlier, as soon as practicable after its dissolution.
- (4) The Electoral Commissioner is to make any such information sheet available for public

inspection, at any reasonable time before the periodic Council election concerned is held, at the office of the Electoral Commissioner and at any public library or other place determined by the Electoral Commissioner.

- (5) In complying with this section, the Electoral Commissioner:
- (a) may reduce the length of information supplied by a registered party officer if the Electoral Commissioner is satisfied that the information is longer than that permitted by this section, or
  - (b) may omit information supplied by a registered party officer if the Electoral Commissioner is of the opinion that its publication might be unlawful or defamatory.

#### **66K Statutory declarations**

- (1) A form that is prescribed or approved under this Part may require any information provided to be verified by statutory declaration.
- (2) The Electoral Commissioner may also require any information in an application or return under this Part, or any information provided pursuant to a requirement under this Part, to be verified by statutory declaration.
- (3) This section extends to verification of information provided by persons relied on as members of a party for the purposes of registration or continued registration.

#### **66L False statements**

A person who, in any application made under this Part, makes a statement that the person knows to be false or misleading is guilty of an offence.

Maximum penalty: 100 penalty units.

#### **66M Evidence**

A certificate signed by the Electoral Commissioner certifying:

- (a) that a specified party was or was not registered under this Part at a specified time or during a specified period, or
- (b) that a specified person was or was not the registered officer or a deputy registered officer of a specified party at a specified time or during a specified period,

is admissible in any proceedings and is prima facie evidence of the matters so certified.

#### **66N Transitional and other arrangements**

- (1) In this section:

***existing registered party*** means any party registered under this Part immediately

before the commencement of the new registration requirements, and includes any party registered under this Part after that commencement and before the registration confirmation day in pursuance of an application for registration made before that commencement.

**new registration requirements** means the amendments to this Part made by Schedule 2 [1] and [2] to the [Parliamentary Electorates and Elections Amendment Act 1999](#) relating to the membership requirements for the qualification of a party as an eligible party for the purposes of this Part.

**registration confirmation day** means 31 December next after the commencement of the new registration requirements.

- (2) The new registration requirements do not, until the registration confirmation day, apply to an existing registered party.
- (3) An existing registered party is not entitled to continue to be registered, on and after the registration confirmation day, unless:
  - (a) the registered officer of the party has made an application for continued registration of the party in accordance with this section, and
  - (b) the Electoral Commissioner is satisfied that the party is an eligible party under the new registration requirements and approves the application.
- (4) An application for continued registration of an existing registered party is to be made to the Electoral Commissioner (in the form and manner approved by the Electoral Commissioner) and must:
  - (a) set out the particulars, and be accompanied by the documents, that are referred to in section 66D (2) (g) and (g1) and such additional particulars and documents as are required by the approved form, and
  - (b) be accompanied by a fee of \$2,000.
- (5) Sections 66DA, 66E (2), 66HA (2) and (3), 66J (2) and 66K apply (subject to the regulations) to an application for continued registration under this section in the same way as they apply to an application for registration.
- (6) The Electoral Commissioner is to cancel the registration of an existing registered party that is not entitled to continue to be registered by virtue of this section. Section 66I (3) applies to any such cancellation of registration.
- (7) Before the Electoral Commissioner cancels the registration of any such existing party, the Electoral Commissioner is required to give the registered officer of the party notice of the proposed cancellation and the date of and reasons for the proposed cancellation. The Electoral Commissioner may accept a late application for continued

registration made before that date and defer a decision on the proposed cancellation until the application is dealt with.

- (8) If an existing registered party has made an application for continued registration in accordance with this section before the registration confirmation day, but the application has not been determined by the Electoral Commissioner before that day, the party is entitled to continue to be registered until the application is determined.
- (9) Section 66FA does not apply to an existing registered party while it remains a registered party.
- (10) In the case of an existing registered party, a return is not required to be furnished under section 66HA (1) if the return would otherwise be required to be furnished in the year in which the registration confirmation day occurs or in the following year.
- (11) If a form is not prescribed by the regulations for the purposes of section 66D (2) (g1) or 66HA (1), the relevant form is to be a form approved by the Electoral Commissioner.
- (12) An amendment of this Part made by the *Parliamentary Electorates and Elections Amendment Act 1999* does not apply to the determination of an application for registration of a party that is made before the commencement of the amendment but not determined before that commencement. The amendment applies to the application if it is not determined before the registration confirmation day, but the applicant is to be given an opportunity to amend the application before it is determined.
- (13) The power conferred on the Electoral Commissioner by section 66G (2A), or by any other provision made by the *Parliamentary Electorates and Elections Amendment (Party Registration) Act 2002*, is taken to have been conferred on and from the commencement of the new registration requirements, and anything done or omitted by the Electoral Commissioner before the commencement of the provision that would have been validly done or omitted if the provision had been in force when it was done or omitted is validated.
- (14) Without limiting subsection (13), the Electoral Commissioner was entitled (and continues to be entitled) to refuse to register (or to continue the registration of) a party until at least 75% of a sample of or of about 300 members relied on for registration or continued registration of the party (and chosen by the Electoral Commissioner) have replied to a letter from the Electoral Commissioner confirming that they are members of the party.
- (15) Despite anything to the contrary in this Part:
  - (a) the initial registration of the party called Save Our Suburbs that was directed to be made by order of the Supreme Court on 30 August 2002 is not affected by any amendment to this Part made by the *Parliamentary Electorates and Elections*

*Amendment (Party Registration) Act 2002*, and

(b) that party is taken to have been registered on 1 March 2002, and

(c) the Register of Parties may be amended accordingly.

(16) Subsections (13) and (14) have effect in connection with an application for the registration or continued registration of a party even though proceedings are pending in a court on the commencement of those subsections in connection with that application or registration.

## **67 (Repealed)**

## **Part 5 Conduct of elections**

### **Division 1 Application of Part**

#### **67A Application of Part**

Except where otherwise expressly provided, Divisions 2, 3, 6B, 7, 8, 9, 10, 11, 11A, 12, 13, 15, 16 and 17 apply to and in respect of all elections.

### **Division 1A Writs for Assembly elections**

#### **68 Within what time writs for general elections to be issued and made returnable**

All writs for Assembly general elections shall be issued within four clear days after the publication in the Gazette of the proclamation dissolving the Assembly, or after the Assembly has been allowed to expire by effluxion of time, and every such writ shall be made returnable on a day not later than the sixtieth clear day after the date of the issue thereof or on such later day as the Governor may by proclamation in the Gazette direct.

#### **69 Meeting of Assembly after return of writs**

The day to be fixed for the meeting of the Assembly after the return of writs for an Assembly general election shall not be later than the seventh clear day after the date for the return of the writs for that election or the date for the return of the writ for the periodic Council election the day for the taking of the poll for which was the same day as the day for the taking of the poll for that Assembly general election, whichever date is the later.

#### **69A Governor to issue writ for vacancy occurring before Assembly meets after general election**

Where a seat in the Assembly becomes vacant after an Assembly general election and before the first meeting of the Assembly after that general election, the writ for the election to fill the vacancy shall be issued by the Governor.

## **70 Speaker to issue writs to fill vacancies**

When and so often as a vacancy occurs in the Assembly, the Speaker shall, upon a resolution by the Assembly declaring such vacancy, and the reason thereof, cause a writ to be issued for filling such vacancy; and on the death or resignation of any member of the Assembly, the Speaker shall, in like manner, upon a resolution of the Assembly, issue such writ, and in case the Assembly be not in session, or when such vacancy occurs during any adjournment for a longer period than seven days, the Speaker shall also issue the writ.

## **71 If no Speaker, Governor to issue writ**

If at the time of the occurrence of any such vacancy, caused by death or resignation, there be no Speaker, and the Assembly be not in session, or if the Speaker be absent from New South Wales, the Governor shall, if satisfied of the existence of such vacancy, issue a writ for the election of a member to fill such vacancy.

### **Note—**

Section 31A of the [Constitution Act 1902](#) provides that, during the absence from New South Wales of the Speaker, the Deputy Speaker of the Legislative Assembly is to act in his or her place and has and may exercise and perform all the powers, authorities, duties and functions of the Speaker, including those functions conferred under this section.

## **72 Writs directed to Electoral Commissioner**

- (1) Every writ for the election of a member to serve in the Assembly shall be directed to the Electoral Commissioner. And in every such writ shall be named the day on which all nominations of candidates at and for any election must be made (hereinafter called the day of nomination), the day for taking the poll at the several polling places in the event of the election being contested, and the day on which the writ shall be returnable to the Governor or Speaker, as the case may be.
- (2) Subsection (1) has effect subject to section 22A (3) of the [Constitution Act 1902](#) and to section 120I.

## **73 (Repealed)**

## **74 Duties of Electoral Commissioner on receipt of writ**

- (1) The Electoral Commissioner must, on receiving a writ under section 72, endorse on it the date of its receipt, and forthwith give public notice of:
  - (a) the purport of the writ, and
  - (b) the day of nomination, the day of polling and the return day mentioned in the writ, and
  - (c) a place within the district concerned (to be appointed by the Commissioner) at which the returning officer will receive nomination papers for the election to which

the writ relates, and the time by which they must be received, and

(d) a place within the State (to be appointed by the Commissioner) at which the Commissioner will receive nomination papers for the election to which the writ relates delivered by registered officers of registered parties, and the time by which they must be received.

(2) The public notice is to be by way of notice:

(a) in any newspaper published or circulating in the district to which the writ relates, and

(b) on the Commission's internet website.

(3) The returning officer must attend at all reasonable hours in the daytime, in the interval between being notified of the receipt of the writ and noon on the day of nomination, at the place appointed for receiving nomination papers.

(4) The Electoral Commissioner must attend at all reasonable hours in the daytime, in the interval between the receipt of the writ and noon on the day before the day of nomination, at the place appointed for receiving nomination papers.

## **Division 1B Writs for periodic Council elections**

### **74A Writs for periodic Council elections**

A writ for a periodic Council election shall be issued within four clear days after the publication in the Gazette of the proclamation dissolving an Assembly, or after an Assembly has been allowed to expire by effluxion of time, and the writ shall be made returnable on a day not later than the sixtieth clear day after the date of the issue thereof or on such later day as the Governor may by proclamation in the Gazette direct.

### **74B Meeting of Council after return of writs**

The day to be fixed for the meeting of the Council after the return of a writ for a periodic Council election shall not be later than the seventh clear day after the date for the return of the writ or the date for the return of the writs for the Assembly general election the day for the taking of the poll for which was the same day as the day for the taking of the poll for that periodic Council election, whichever date is the later.

### **74C Writ directed to Electoral Commissioner**

(1) Every writ for a periodic Council election shall be directed to the Electoral Commissioner.

(2) In every such writ shall be named the day on which all nominations of candidates at and for any such election must be made (hereinafter called the day of nomination), the day for taking the poll at the several polling places in the event of the election

being contested, and the day on which the writ shall be returnable to the Governor.

- (3) Subsection (2) has effect subject to section 22A (3) of the *Constitution Act 1902*, and to section 120I.

#### **74D Duties of Electoral Commissioner on receipt of writ**

- (1) The Electoral Commissioner must, on receiving a writ under section 74C, endorse on it the date of its receipt, and forthwith give public notice of:
- (a) the purport of the writ, and
  - (b) the day of nomination, the day of polling, and the return day mentioned in the writ, and
  - (c) a place within the State (to be appointed by the Electoral Commissioner) at which the Electoral Commissioner will receive the nomination papers for the election to which the writ relates, and the time by which they must be received.
- (2) The public notice is to be by way of notice:
- (a) in any newspaper circulating in the State, and
  - (b) on the Commission's internet website.
- (3) The Electoral Commissioner must attend at all reasonable hours in the daytime, in the interval between the receipt of the writ and noon on the day of nomination, at the place appointed for receiving nomination papers.

## **Division 2 General conduct of Assembly and Council elections**

### **75 General conduct of Assembly elections**

- (1) The Electoral Commissioner is, subject to this Act and the *Constitution Act 1902*, responsible for the conduct and administration of Assembly general elections and by-elections.
- (2) The returning officer for a district is, subject to this Act, responsible to the Electoral Commissioner for the administration of the election of a member of the Assembly for the district at a general election or by-election.

### **75A (Repealed)**

### **76 General conduct of Council elections**

- (1) The Electoral Commissioner is, subject to this Act and the *Constitution Act 1902*, by this Act appointed to conduct periodic Council elections as Council returning officer.
- (2) The returning officer for a district is, subject to this Act, responsible to the Electoral Commissioner for the administration of a periodic Council election within the district.



**77, 78 (Repealed)**

**Divisions 2A, 3**

**78AA-78E (Repealed)**

**Division 4 Nominations for the Assembly**

**79 Nomination of Assembly candidates**

- (1) Every person enrolled as an elector for any district shall be qualified to be nominated as a candidate to be elected for that or any other district, unless disqualified under the *Constitution Act 1902* or this Act.
- (2) Before, and in order that, any person may be a candidate at any election for a district, the person must be nominated by:
  - (a) the registered officer of a registered party which has endorsed the person for the election, or
  - (b) not fewer than 15 persons each of whose names is on the roll for the district.
- (3) A nomination of a candidate is to be made by delivering a nomination paper:
  - (a) in the case of a nomination made by the registered officer—to the Electoral Commissioner at some time after the issue of the writ and before noon on the day before the day of nomination, or
  - (b) in any case—to the returning officer at some time after the issue of the writ and before noon on the day of nomination.

The person receiving the nomination paper must, if required to do so, give a receipt for it.

- (3A) A nomination paper in which the candidate is nominated by the registered officer is to be in the following form, namely:

I, the person whose name appears on this form as the registered officer of the registered party which has endorsed the candidate, do hereby nominate (*here state name in full, date of birth and place of residence as enrolled of the person nominated*) for election as a member of the Legislative Assembly for the electoral district of

Dated this                      day of                      20 .

**Name in full of  
registered officer**

**Name of party**

**Signature of registered  
officer**

I, the abovenamed                      , hereby consent to such nomination and certify that the

place of residence stated above is my place of residence as enrolled.

(Signed)

- (4) A nomination paper in which the candidate is nominated by electors is to be in the following form, namely:

We, the undersigned, electors of the electoral district of \_\_\_\_\_ do hereby nominate *(here state name in full, date of birth, and place of residence being the place of residence as enrolled of the person nominated)* for election as a member of the Legislative Assembly for the abovenamed district.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 .

<b>Signatures of nominators</b>	<b>Place of residence as enrolled</b>	<b>Date of birth</b>	<b>District</b>
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I, the abovenamed \_\_\_\_\_ hereby consent to such nomination and certify that the place of residence stated above is my place of residence as enrolled.

(Signed)

- (4AA) A nomination paper of a candidate for election under this section must be accompanied by a child-related conduct declaration that complies with section 81L.
- (4A) No person, unless nominated in accordance with the requirements of this section (including subsection (4AA)), shall be deemed to be a candidate for election as a member of the Assembly.
- (5) No elector shall nominate more than one candidate for an electoral district.
- (5A) If at the close of nominations for a district a person is nominated for an election for any other district or for a periodic council election each of those nominations is void.
- (6) Where a candidate for an election for a district dies, after being nominated and before noon on the day of nomination for the election, the day named as the day of nomination for the election shall be taken to be the day next succeeding the day so named.
- (7) A member of the Parliament of the Commonwealth shall be incapable of being nominated as a candidate for, or elected as a member of, the Assembly.
- (7A) The nomination of a candidate is not valid unless at the time of the delivery of the nomination paper the person nominated or some person on his or her behalf deposits

the sum of \$250, in cash or in a cheque drawn by an authorised deposit-taking institution, with:

- (a) the Electoral Commissioner, if the nomination paper was delivered to the Electoral Commissioner, or
- (b) the returning officer, if the nomination paper was delivered to the returning officer.

(7B) The deposit is to be retained pending the election.

(7C) The deposit is to be returned if:

- (a) the candidate is elected, or
- (b) the total number of votes polled in the candidate's favour as first preferences is at least 4 per cent of the total number of first preference votes polled in the district, or
- (c) the candidate dies before the date of the election, or
- (d) the candidate withdraws his or her name from nomination under section 79A.

(7D) The deposit that is to be returned under subsection (7C) is to be returned:

- (a) if the candidate was nominated by the registered officer of a registered party which has endorsed the person for the election—to the registered officer of the party, or
- (b) in any other case:
  - (i) to the candidate (or to some person authorised by the candidate to receive it), unless subparagraph (ii) applies, or
  - (ii) to the candidate's personal representatives, if the candidate died before the date of the election.

(7E) In any other case the deposit is forfeited to Her Majesty.

(8) Notwithstanding anything to the contrary in this Act, whenever any vacancy occurs in the Assembly by reason of any member resigning his or her seat for the purpose of seeking election for the Parliament of the Commonwealth of Australia, if such member tenders his or her resignation prior to the date of the issue of the writ for the said election and notifies in writing to the Speaker his or her intention to seek such election, and his or her intention in the event of failing to secure such election to become again a candidate for the vacancy aforesaid, then the issue of the writ for the election of a Member to fill such vacancy shall be delayed until the result of such Commonwealth election shall have been first officially declared by the Returning Officer.

(9) As soon as practicable after a nomination paper for a candidate is delivered to the Electoral Commissioner or returning officer under this section, the Electoral Commissioner must cause the following details relating to the nomination to be displayed on the Commission's internet website:

- (a) the candidate's name,
- (b) the district for which the candidate is nominated for election,
- (c) the suburb, town or other locality of the place of residence as enrolled of the candidate (as stated on the nomination paper).

#### **79A Withdrawal of nomination for Assembly election**

Any candidate for an election for an electoral district may withdraw his or her name from nomination by delivering a notice under his or her hand to:

- (a) the Electoral Commissioner, if the nomination paper for the candidate was delivered to the Electoral Commissioner, or
- (b) the returning officer, if the nomination paper for the candidate was delivered to the returning officer,

before noon on the day of nomination for that election.

#### **80 Proceedings on nomination day if one candidate only**

- (1) If at noon on the day of nomination there is only one candidate for election for a district, the returning officer must, at that time and at the place named for the delivery of nomination papers to the returning officer, publicly declare that candidate to be duly elected.
- (2) The returning officer must notify the Electoral Commissioner in writing (including, without limitation, by facsimile transmission, email or other electronic means) of that declaration.
- (3) The Electoral Commissioner must publish the declaration in a newspaper published or circulating in the district, and return the writ indorsed according to that declaration.

#### **81 When poll to be taken**

- (1) If at noon on the day of nomination there are two or more candidates for election for a district, a poll is to take place on the day named in the writ for that purpose and at the several polling places for the district.
- (2) The returning officer must, at noon on the day of nomination and at the place named in the public notice for the delivery of nomination papers to the returning officer, announce:

- (a) that a poll is to be taken, and
  - (b) the names of the candidates, and
  - (c) the suburb, town or other locality of the place of residence as enrolled of each candidate (as stated on the nomination paper).
- (3) The returning officer must, as soon as practicable, notify the Electoral Commissioner of the matters referred to in subsection (2).
- (4) The Electoral Commissioner must publish in a newspaper published or circulating in the district an announcement of the matters referred to in subsection (2), together with the date of the poll and a list of polling places for the district.

#### **81A Death of candidate**

If after the nominations for an election for any district have been declared, and before 6 pm on polling day, any candidate dies, the election shall be deemed to have wholly failed, and a new writ shall forthwith be issued for an election for the district.

### **Division 5 Nominations for the Council**

#### **81B Nomination of Council candidates**

- (1) Every person enrolled as an elector for a district shall be qualified to be nominated as a candidate for a periodic Council election, unless disqualified under the *Constitution Act 1902* or this Act.
- (2) Before, and in order that, any person may be a candidate at any periodic Council election, the person must be nominated by:
- (a) the registered officer of a registered party that has endorsed the person for the election, or
  - (b) not fewer than 15 persons each of whose names is on a roll.
- (3) Every such nomination shall be made by delivering to the Electoral Commissioner a nomination paper at some time after the issue of the writ and before noon on the day of nomination and the Electoral Commissioner shall, if required to do so, give a receipt for it.
- (3A) A nomination paper in which the candidate is nominated by the registered officer is to be in the following form, namely:
- I, the person whose name appears on this form as the registered officer of a registered party that has endorsed the candidate, do hereby nominate for election to the Legislative Council the following person:

**\*Name in full of person nominated      Date of birth      Place of residence as enrolled      \*\*Signature of person nominated**

\* Underline surname.

\*\* The signature of the person nominated must appear opposite the person's name to signify the person's consent to nomination and to certify that the place of residence stated opposite the person's name is the person's place of residence as enrolled.

Dated this                  day of                  20 .

**Name in full of registered officer                  Name of party                  Signature of Registered officer**

- (4) A nomination paper in which the candidate is nominated by electors is to be in the following form, namely:

We, the persons whose names appear on this form as nominators, being persons each of whose names is on a roll, do hereby nominate for election to the Legislative Council the following person:

**\*Name in full of person nominated      Date of birth      Place of residence as enrolled      \*\*Signature of person nominated**

\* Underline surname.

\*\* The signature of the person nominated must appear opposite the person's name to signify the person's consent to nomination and to certify that the place of residence stated opposite the person's name is the person's place of residence as enrolled.

Dated this                  day of                  20 .

**Name in full of each nominator (Not fewer than 15)      Place of residence as enrolled      Occupation      Electoral district      Signature of each nominator**

- (4A) A nomination paper of a candidate for election under this section must be accompanied by a child-related conduct declaration that complies with section 81L.
- (5) No elector shall nominate more than one candidate.
- (6) No person, unless nominated in accordance with the requirements of this section (including subsection (4A)), shall be deemed to be a candidate at a periodic Council

election.

- (7) Where a candidate at a periodic Council election dies, after being nominated and before noon on the day of nomination for the election, the day named as the day of nomination for the election shall be taken to be the day next succeeding the day so named.
- (8) As soon as practicable after a nomination paper for a candidate is delivered to the Electoral Commissioner under this section, the Electoral Commissioner must cause the following details relating to the nomination to be displayed on the Commission's internet website:
  - (a) the candidate's name,
  - (b) the suburb, town or other locality of the place of residence as enrolled of the candidate (as stated on the nomination paper).
- (9) Where two or more candidates are included in a group, the names and other details required by subsection (8) to be exhibited on the Commission's internet website are to be displayed in the order referred to in section 81C (2) in which they are included in that group.

#### **81C Grouping of candidates**

- (1) Two or more candidates nominated for a periodic Council election may, in the prescribed form and before noon on the day of nomination for that election, claim:
  - (a) to have their names included in a group in the ballot papers to be used in that election, and
  - (b) to have their names included in that group in the order specified in that claim.
- (1A) A claim under subsection (1) may also include a request for a group voting square for the group on the ballot papers to be used in the election concerned, but only if there are at least 15 candidates in the group at the close of nominations for the election.
- (2) Subject to subsections (3), (4) and (5), candidates nominated for a periodic Council election who have under subsection (1) made a claim referred to in that subsection shall, for the purposes of that election, be included in a group in the order specified in the claim.
- (3) Two or more candidates who have made a claim under subsection (1) may, in the prescribed form and before noon on the day of nomination referred to in that subsection, withdraw that claim.
- (4) A claim under subsection (1) is of no force or effect if:

- (a) the name of any candidate included in the claim is included in any other claim under that subsection, or
  - (b) the nomination of any candidate whose name is included in the claim is withdrawn under section 81G.
- (5) Where a claim is made under subsection (1) in respect of a periodic Council election and any of the persons who made the claim:
- (a) dies before the making of the declaration of the persons elected at that election,
  - (b) is, before the making of that declaration, declared by any court to be incapable of being elected at that election, or
  - (c) is a person whose nomination is void under section 81D,
- then:
- (d) where there are 2 or more other persons who made that claim, the group shall thereafter consist of the remainder of those persons only, or
  - (e) where there is only 1 other person who made that claim, the claim shall thereafter be of no force or effect.
- (6) The candidates who are included in a group for a periodic Council election and who have duly requested a group voting square for the election, are required to nominate, for the purposes of section 129EB, one other group of candidates in the election for whom a second preference vote is taken to be recorded on all ballot papers on which only a first preference vote is recorded for the first-mentioned group if that group ceases to have 15 candidates because of the operation of subsection (5).
- (7) The following provisions apply to nominations under subsection (6):
- (a) A nomination may be made at the time the candidates request a group voting square for the election or within 24 hours after the close of nominations for the election. However, the Electoral Commissioner may accept a late nomination so long as it is made before the day for the taking of the poll in the election.
  - (b) A nomination may be made on behalf of the candidates in the group by the first candidate in the group or by the registered officer of a registered party that has endorsed all or any of the candidates for the election.
  - (c) A group of candidates is not eligible to be nominated unless the candidates in that group have duly requested a group voting square for the election.
  - (d) The Electoral Commissioner is to cause notice of the nominations to be published, at least one week before the day for the taking of the poll in the election, in one or more newspapers circulating throughout New South Wales.



- (e) Once a nomination has been lodged with the Electoral Commissioner in respect of the election, the nomination may not be changed, nor may a further nomination be made for the election by or on behalf of any of the candidates concerned.

**81D Dual nominations**

If at the close of nominations for a periodic Council election a person is nominated for that election more than once or for that election and for any election for a district each of those nominations is void.

**81E Member of Commonwealth Parliament ineligible for Council**

A member of the Parliament of the Commonwealth shall be incapable of being nominated as a candidate for, or elected as a member of, the Council.

**81F Deposit for periodic Council election**

- (1) A nomination shall not be valid unless at the time of the delivery of the nomination paper the person nominated or some person on his or her behalf deposits with the Electoral Commissioner the sum of \$500 in cash or in a cheque drawn by an authorised deposit-taking institution.
- (1A) However, the amount of the deposit for a candidate included in a group comprising more than 10 candidates (but not more than 21 candidates) is \$5,000 divided by the number of candidates in that group.
- (2) The deposit shall be retained pending the election.
- (3) The deposit is to be returned if:
- (a) the candidate is elected, or
  - (b) at least one of the candidates in the group in which the candidate is included is elected, or
  - (c) the total number of votes polled as first preference votes in the candidate's favour or in favour of the members of the group in which the candidate is included is at least 4 per cent of the total number of first preference votes polled in the election, or
  - (d) the candidate dies before the date of the election, or
  - (e) the candidate withdraws his or her name from nomination under section 81G.
- (4) The deposit that is to be returned under subsection (3) is to be returned:
- (a) if the candidate is included in a group that consists only of persons who belong to the same registered party—to the registered officer of the party, or

- (b) if the candidate is included in a group that does not consist only of persons who belong to the same registered party and all the members of the group have authorised the same person to receive their deposits—to that person, or
- (c) in any other case:
  - (i) to the candidate (or to some person authorised by the candidate to receive it), unless subparagraph (ii) applies, or
  - (ii) to the candidate's personal representatives, if the candidate died before the date of the election.

(5) (Repealed)

(6) In any other case the deposit shall be forfeited to Her Majesty.

### **81G Withdrawal of nomination for a periodic Council election**

- (1) Subject to subsection (2), any candidate for a periodic Council election may withdraw his or her name from nomination by delivering a notice under his or her hand to the Electoral Commissioner before noon on the day of nomination for that election.
- (2) Where two or more candidates are included in a group, any of those candidates may not, under subsection (1), withdraw his or her name from nomination except with the consent of the others.

### **81H Proceedings after close of nominations**

- (1) If at noon on the day of nomination there are not more than 21 candidates for election at a periodic Council election the Electoral Commissioner shall at that time and at the place appointed for the receipt of the nomination papers publicly declare those candidates to be duly elected and shall publish the declaration in some newspaper circulating in the State and return the writ indorsed according to that declaration.
- (2) If after noon on the day of nomination and before the day for the taking of the poll for a periodic Council election any candidate dies and there are not more than 21 candidates remaining, the Electoral Commissioner shall forthwith publicly declare the remaining candidates to be duly elected and shall publish the declaration in some newspaper circulating in the State and return the writ indorsed according to that declaration.
- (3) Subject to subsection (2), if at noon on the day of nomination there are more than 21 candidates for election at a periodic Council election a poll shall take place on the day named in the writ for that election and the Electoral Commissioner shall, at noon on the day of nomination and at the place appointed for the receipt of the nomination papers, publicly announce that a poll will be so taken and the names of the persons who have become candidates, that announcement specifying the names of any candidates who are included in a group, and shall also forthwith publish in some

newspaper circulating in the State a like announcement, including a statement specifying the date of the poll.

- (4) As soon as practicable after making an announcement referred to in subsection (3), the Electoral Commissioner shall notify the returning officer for each electoral district:
- (a) that a poll for a periodic Council election shall take place on the day named in the writ for that election, and
  - (b) of the particulars required by section 83B to be printed on the ballot papers and of the manner in which those particulars are to be so printed.

### **81I (Repealed)**

## **Division 5A Child sexual offences etc disclosures by candidates for the Assembly or Council**

### **81J Application of Division**

This Division applies to a child-related conduct declaration that is required to accompany the nomination paper of a candidate for election to the Assembly or the Council.

### **81K Definitions**

- (1) In this Division:

***child sexual offence*** means:

- (a) an offence involving sexual activity or acts of indecency that was committed in New South Wales and that was punishable by penal servitude or imprisonment for 12 months or more, and that was committed against, with or in the presence of a child (including a child pornography offence that is so punishable), or
- (b) an offence involving sexual activity or acts of indecency, that was committed elsewhere and that would have been an offence punishable by penal servitude or imprisonment for 12 months or more if committed in New South Wales, and that was committed against, with or in the presence of a child (including a child pornography offence that is so punishable), or
- (c) an offence under section 80D or 80E of the *Crimes Act 1900*, where the person against whom the offence is committed is a child, or
- (d) an offence under sections 91D–91G of the *Crimes Act 1900* (other than if committed by a child prostitute) or a similar offence under a law other than a law of New South Wales, or
- (e) an offence under section 91H, 578B or 578C (2A) of the *Crimes Act 1900* or a similar offence under a law other than a law of New South Wales, or

- (f) an offence an element of which is an intention to commit an offence referred to in the preceding paragraphs, or
- (g) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in the preceding paragraphs.

**conviction** includes a finding that the charge for an offence is proven, or that a person is guilty of an offence, even though the court does not proceed to a conviction, but does not include a conviction that is quashed by any court.

**CYP Commission**—see section 81M (2).

**murder** includes an offence of murder committed outside New South Wales or an offence of attempting, or of conspiracy or incitement, to commit murder.

**Presiding Officer** means the President of the Legislative Council or Speaker of the Legislative Assembly.

**relevant apprehended violence order** means a relevant apprehended violence order, within the meaning of Part 7 of the [Commission for Children and Young People Act 1998](#), that was made by a court for the protection of a child from sexual activity or acts of indecency.

- (2) An offence that was a child sexual offence at the time of its commission is not a child sexual offence for the purposes of this Division if the conduct constituting the offence has ceased to be an offence in New South Wales.
- (3) An offence involving sexual activity or an act of indecency is not a child sexual offence for the purposes of this Division if the conduct constituting the offence:
  - (a) occurred in a public place, and
  - (b) would not have constituted an offence in New South Wales if the place were not a public place.
- (4) For the purposes of this Division, section 579 of the [Crimes Act 1900](#) does not apply to or in respect of a child sexual offence.

#### **81L Child-related conduct declarations**

- (1) A child-related conduct declaration is to state:
  - (a) whether or not the candidate has ever been convicted of the murder of a child or of a child sexual offence, and
  - (b) whether or not any criminal proceedings have ever been commenced against the candidate for the murder of a child, or for a child sexual offence, other than proceedings relating to a conviction disclosed under paragraph (a), and

(c) whether or not any relevant apprehended violence order has ever been made against the candidate.

- (2) The child-related conduct declaration is to identify any such conviction, proceedings or order.
- (3) A child-related conduct declaration is to be in such form (if any) as is prescribed by the regulations.
- (4) A candidate who makes a child-related conduct declaration knowing it to be false, or not believing it to be true, is guilty of an indictable offence.

Maximum penalty (subsection (4)): Imprisonment for 5 years.

### **81M Duties of Electoral Commissioner with respect to child-related conduct declarations**

- (1) The Electoral Commissioner must cause a copy of a child-related conduct declaration received by the Commissioner or a returning officer to be made public in such manner as the Commissioner thinks fit.
- (2) The Electoral Commissioner must provide a copy of the child-related conduct declarations of those candidates elected at an election to the Commission for Children and Young People (the **CYP Commission**).

### **81N Duties of CYP Commission with respect to child-related conduct declarations**

- (1) The CYP Commission must, as soon as practicable after receiving a copy of a child-related conduct declaration under section 81M, audit the accuracy of the declaration.
- (2) For the purpose of carrying out an audit, the CYP Commission:
  - (a) may exercise any of the functions it has under Part 7 of the *Commission for Children and Young People Act 1998*, and
  - (b) has the same protections as are conferred by that Act on the Commission when exercising its functions under that Part.
- (3) If the CYP Commission has reason to believe that a child-related conduct declaration is inaccurate, the Commission must consult with the member of Parliament concerned before making a report on the audit.
- (4) The CYP Commission must present a report on the result of audits carried out by it after an election to the Presiding Officer of the House of Parliament to which the members concerned have been elected. A copy of a report furnished to the Presiding Officer of a House of Parliament is to be laid before that House as soon as practicable after it is received by the Presiding Officer.

#### **Note—**

Section 81P provides for the procedure where a House of Parliament is not sitting when a report is

presented.

- (5) The CYP Commission may, if the Commission thinks it appropriate to do so, report on the results of any such audits over more than one report.

### **81NA Duty of persons to assist the CYP Commission**

- (1) It is the duty of a prescribed person to provide the CYP Commission with full and unrestricted access to records that are under the person's control, or whose production the person may, in an official capacity, reasonably require, being records to which the CYP Commission reasonably requires access for the purpose of exercising its functions under this Part.
- (2) A provision of any Act or law that restricts or denies access to records does not prevent a person to whom subsection (1) applies from complying, or affect the person's duty to comply, with that subsection.
- (3) Access to which the CYP Commission is entitled under subsection (1) includes:
  - (a) the right to inspect and, on request, to be provided with copies of, any record referred to in that subsection, and
  - (b) the right to inspect any non-documentary evidence associated with any such record.
- (4) In this section:

**prescribed person** means any of the following persons:

- (a) the Registrar or other proper officer of a court,
- (b) the Commissioner of Police,
- (c) any person holding a statutory office prescribed by the regulations,
- (d) any person employed under Chapter 1A (The Government Service) of the *Public Sector Employment and Management Act 2002* to hold a position or an office prescribed by the regulations.

**record** means any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means.

### **81O Unauthorised disclosure or dishonest disclosure of information**

- (1) A person must not directly or indirectly disclose any information obtained by the person in connection with the conduct of an audit or consultation under section 81N, unless the disclosure:
  - (a) is made in good faith for the purposes of the audit or consultation, or

- (b) is made with the consent of the person to whom the information relates, or
  - (c) is ordered by a court, or any other body or person exercising judicial functions, for the purposes of the hearing or determination by the court, body or person of any matter, or
  - (d) is made for the purpose of providing information to the Commissioner of Police in connection with a possible criminal offence, or
  - (e) is made for the purposes of exercising a function under this Division, or
  - (f) is made for the purpose of reporting to the Director-General of the Department of Community Services that a child may be at risk of harm.
- (2) A person who dishonestly obtains confidential information relating to the conduct of an audit or consultation under section 81N is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

### **81P Reports presented to Presiding Officer of House of Parliament**

- (1) If a House of Parliament is not sitting when the CYP Commission presents a report under section 81N to the Presiding Officer of the House, the Presiding Officer is to make the report public instead of laying the report before the House.
- (2) A report that is made public by the Presiding Officer of a House of Parliament:
- (a) is, for all purposes, taken to have been laid before the House, and
  - (b) is to be printed by authority of the Presiding Officer of the House, and
  - (c) is, for all purposes, taken to be a document published by order or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Council, in the Minutes of the Proceedings of the Legislative Council, and
    - (ii) in the case of the Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Presiding Officer.

## **Division 6 Ballot papers for Assembly elections**

### **82 Ballot papers to be provided**

- (1) Ballot papers to be used for an election for a district shall be provided by the Electoral

Commissioner after a poll has been appointed.

- (2) Such papers shall be in or to the effect of the form prescribed in Schedule 4.

**82A Returning officer to determine order in which candidates' names are to be entered on ballot paper**

- (1) If after noon on the day of nomination there are two or more candidates for election for a district, the returning officer shall forthwith hold a ballot to determine the order in which the candidates' names are to be entered on the ballot papers.
- (2) Every such ballot shall be held in accordance with the procedure prescribed by regulations made under this Act.

**83 Printing of ballot papers**

In printing the ballot papers:

- (a) the names of all candidates duly nominated shall be entered on the ballot papers in the order in which those names were drawn by a ballot held pursuant to section 82A,
- (b) the surname of each candidate shall be in more conspicuous type than that used for the candidate's given name or names,
- (c) where similarity in the names of two or more candidates is likely to cause confusion, the Electoral Commissioner may arrange the names with such description or addition as will distinguish them from one another,
- (d) a square shall be printed opposite the name of each candidate, and
- (e) if required by Division 6B, the names of registered parties or the word "Independent" shall be printed in accordance with that Division.

**Division 6A Ballot papers for periodic Council elections**

**83A Ballot papers to be provided**

- (1) Ballot papers to be used for a periodic Council election shall be provided by the Electoral Commissioner after a poll has been appointed.
- (2) The ballot papers shall be in or to the effect of the form prescribed in Schedule 4A.
- (3) The Electoral Commissioner shall deliver or arrange to be delivered to the returning officer for each district such number of ballot papers as is sufficient for the use of electors entitled to vote in the district.

**83B Printing of ballot papers**

- (1) If after noon on the day of nomination for a periodic Council election there are:



- (a) two or more groups of candidates for that election, the Electoral Commissioner shall forthwith hold a ballot to determine the order in which those groups are to be entered on the ballot papers, or
  - (b) two or more candidates, not included in a group, for that election, the Electoral Commissioner shall forthwith hold a ballot to determine the order in which those candidates' names are to be entered on the ballot papers.
- (2) Every such ballot shall be held in accordance with the procedure prescribed by regulations made under this Act.
- (3) In printing the ballot papers for a periodic Council election:
  - (a) for which there is only one group, the names of candidates included in that group shall be printed in a group before the names of candidates, if any, not included in that group,
  - (b) for which there are two or more groups, the names of candidates included in the groups shall be printed in groups across the ballot papers in the order determined under subsection (1) (a), before the names of candidates, if any, not included in any such group,
  - (c) the order, within a group, in which the names of candidates in that group shall be printed in the ballot papers shall be the order specified in the claim made by them in accordance with section 81C (1), and
  - (d) the names of candidates, if any, not included in any group shall be printed as a group, without any identification referred to in subsection (5) (a), in the ballot papers in the order determined under subsection (1) (b).
- (4) In printing the ballot papers for a periodic Council election for which there are no groups, the names of the candidates shall be printed in the order determined under subsection (1) (b).
- (5) In printing the ballot papers:
  - (a) each group (and any group voting square relating to the group) shall be identified by the word "Group" followed by a successive letter of the English alphabet, starting with the letter "A", and if there are more than 26 groups each group (and any group voting square relating to the group) after the twenty-sixth shall be identified by such symbol as may be determined by the Electoral Commissioner,
  - (b) the surname of each candidate shall be in conspicuous type,
  - (c) each candidate shall also be identified, as may be determined by the Electoral Commissioner, by the candidate's given name or names, by the initial letter of the candidate's given name or names or by a combination of the candidate's given

name or one or more of the candidate's given names and the initial letter of the candidate's other given name or names, if any,

- (d) the given name or names or the initial letter or letters of the given name or names of each candidate shall be in less conspicuous type than the type in which the candidate's surname is printed,
- (e) any given name or the initial of any given name of the candidate may be printed on a line after the line on which the candidate's surname is printed,
- (f) where similarity in the names of two or more candidates is likely to cause confusion, the Electoral Commissioner may arrange the names with such description or addition as will distinguish them from one another,
- (g) a square shall be printed opposite the name of each candidate, and
- (h) if required by Division 6B, the names of registered parties or the word "Independent" shall be printed in accordance with that Division.

(5A) If the candidates in a group have duly requested under section 81C (1A) a group voting square for a periodic Council election, an additional square shall be printed on the ballot papers for the election above the names of the candidates included in the group.

(5B) (Repealed)

(6) Where, before the day for the taking of the poll at any periodic Council election:

- (a) any candidate has died, or
- (b) any candidate is declared by any court to be incapable of being elected at that election,

the Electoral Commissioner shall take such action with respect to the printing of the ballot papers (including, if the Electoral Commissioner thinks fit, causing the ballot papers to be reprinted, causing notations or marks to be made on them or causing further ballots of the kind referred to in subsection (1) to be held) as in the Electoral Commissioner's opinion is necessary as a consequence of the circumstances referred to in paragraph (a) or (b).

### **83C (Repealed)**

## **Division 6B Party endorsement on ballot papers**

### **83D Notification of party endorsement**

- (1) The registered officer of a registered party may request that either the registered name of that party or the registered abbreviation of the name of that party be printed

on the ballot papers for an election adjacent to the name of a candidate who has been endorsed by that party.

- (2) Any such request is to be in writing signed by the person making the request.
- (3) Any such request is to be given before noon on the day of nomination to:
  - (a) in the case of a periodic Council election—the Electoral Commissioner, or
  - (b) in the case of an election of a Member of the Assembly for an electoral district—the returning officer for the district or the Electoral Commissioner.
- (4) If:
  - (a) any such request has been made in respect of candidates in a periodic Council election, and
  - (b) the candidates have duly requested under section 81C (1A) a group voting square for the purposes of the election,

the request may include a further request that the name of the registered party that endorsed the candidates, or a composite name formed from the registered parties that endorsed the candidates, be printed on the ballot papers adjacent to the candidates' group voting square.

- (5) A reference in this section to a registered name or abbreviation is a reference to a name or abbreviation entered in the Register of Parties under Part 4A.

### **83E Notification of independent candidacy**

- (1) A candidate in an election may request that the word "Independent" be printed adjacent to the candidate's name on the ballot papers for the election.
- (2) Any such request is to be in writing signed by the person making the request.
- (3) Any such request is to be given before noon on the day of nomination to:
  - (a) in the case of a periodic Council election—the Electoral Commissioner, or
  - (b) in the case of an election of a Member of the Assembly for an electoral district—the returning officer for the district or the Electoral Commissioner.
- (4) A candidate may not make both a request under this section and a claim under section 81C to have the candidate's name included in a group on the ballot paper.

### **83F Verification of party endorsement**

- (1) For the purposes of this Act, a person is taken to have been endorsed by a registered party as a candidate in an election if:

- (a) the candidate is nominated by the registered officer of the party, or
  - (b) the name of the candidate is included in a statement, signed by the registered officer of the party, setting out the names of the candidates endorsed by the party in the election and given to the Electoral Commissioner before noon on the day of nomination, or
  - (c) the Electoral Commissioner is satisfied, after making such inquiries as the Commissioner thinks appropriate of the registered officer or otherwise, that the candidate is so endorsed.
- (2) If a person has been endorsed as a candidate in an election by 2 or more registered parties, the person is, for the purposes of this Division, taken to have been endorsed:
- (a) if the person is nominated by the registered officer of one of the parties—by that party, or
  - (b) if a request has been made under this Division by the registered officer of one of the parties (and paragraph (a) does not apply)—by that party, or
  - (c) if paragraphs (a) and (b) do not apply—by the party specified by the person in a written notice given to the Electoral Commissioner.

### **83G Combination of requests**

A request under this Division:

- (a) may be written on the same paper as the nomination of the candidate to whom the request relates, and
- (b) if 2 or more requests are to be made by the same person—may be combined with the other requests.

### **83H Printing of party name etc on ballot papers**

- (1) If a person:
- (a) has been endorsed by a registered party as a candidate in an election, and
  - (b) a request has been made in respect of the candidate under section 83D,
- the name of that party is to be printed adjacent to the name of the candidate on the ballot papers.
- (2) If 2 or more persons have been endorsed by a registered party as candidates in a periodic Council election and a claim has been made to include the names of those candidates in a group in the ballot papers, the following requirements apply to the printing of the ballot papers:
- (a) the name of the party by which each candidate was endorsed is to be printed

adjacent to the name of that candidate on the ballot papers,

- (b) if all the candidates were endorsed by the same party and a group voting square is printed on the ballot papers in relation to the candidates—the name of the party is to be printed on the ballot papers adjacent to that square,
- (c) if the request under section 83D included a request that a composite name be printed adjacent to the group voting square on the ballot papers in relation to the candidates—the composite name is to be printed on the ballot papers adjacent to that square.

- (3) If a candidate in an election has made a request under section 83E, the word “Independent” is to be printed adjacent to the name of the candidate on the ballot papers.

### **83I Form of party name on ballot papers**

- (1) Where a provision of this Act requires the name of the registered party to be printed on ballot papers for use in an election:
  - (a) the name to be so printed is the name of the party entered in the Register of Parties under Part 4A, or
  - (b) if a request has been duly made under this Division for the abbreviation of the name of the party to be so printed—the abbreviation to be so printed is the abbreviation entered in the Register of Parties under Part 4A.
- (2) The names of registered parties, or the abbreviations of such names, printed adjacent to the names of candidates on ballot papers are to be printed in capital letters in type that is uniform in size and style for all those names or abbreviations.
- (3) The names of registered parties, or the abbreviations of such names, printed adjacent to group voting squares on ballot papers are to be printed in capital letters in type that is uniform in size and style for all those names or abbreviations.

## **Division 7 Polling places**

### **84 Polling places**

- (1) The Electoral Commissioner may:
  - (a) (Repealed)
  - (b) appoint such polling places for each district as the Electoral Commissioner thinks necessary,
  - (c) abolish any polling place,
  - (d)–(f) (Repealed)

- (2) Notice of any appointment or abolition of a polling place under this section is to be published in the Gazette at a time determined by the Electoral Commissioner.

#### **85 Booths to be erected or rooms hired**

- (1) The returning officer shall cause such booths to be erected, or rooms to be hired or otherwise provided, for taking the poll at any election at each polling place, as the convenient conduct of the election may require.
- (2) (Repealed)
- (3) Premises licensed for the sale of intoxicating liquor may be used for the purpose of a polling booth if, and only if, the Electoral Commissioner is satisfied that, during the hours of polling on polling day:
  - (a) intoxicating liquor will not be available for sale or consumption on the part of the premises proposed for use for the purpose of a polling booth, and
  - (b) the part of the premises proposed for use for the purpose of a polling booth will be segregated from the part of the premises where intoxicating liquor will be available for sale or consumption, and
  - (c) access to the part of the premises proposed for use for the purpose of a polling booth will not involve passing through the part of the premises where intoxicating liquor will be available for sale or consumption.

#### **86 Booths—arrangements, ballot boxes etc**

Every booth shall be so arranged as to have one or more inner compartments opening only into that part in which the ballot box is kept; and the polling place manager shall provide in every such compartment pencils or other writing implements for the use of the voters, and shall also provide for each booth a ballot box with a cleft or opening therein capable of receiving the ballot papers.

#### **86A (Repealed)**

#### **87 Polling place—arrangements**

- (1) The returning officer must assign a polling place manager to preside at each polling place.
- (2) The returning officer or polling place manager must assign at least one election assistant to assist in taking the poll at a polling place.
- (3) If the returning officer's instrument of appointment or another instrument issued by the Electoral Commissioner 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 under this section must be made in writing.
- (5) The functions of polling place managers and election assistants are to be as determined by the returning officer, subject to this Act and any directions of the Electoral Commissioner.
- (6) The functions of election assistants are to be as determined by the polling place manager, subject to this Act and any directions of the Electoral Commissioner.

**87A Mobile booths in hospitals etc**

- (1) Where a polling place has been appointed in any convalescent home, hospital or similar institution, the returning officer shall provide such number of polling booths therein as the Electoral Commissioner may determine.
- (2) Where one booth is so provided such booth shall in addition to being used as a stationary booth be used as a mobile booth, and where more than one booth is so provided one or more of such booths designated by the returning officer shall be used as a mobile booth or booths. A mobile booth shall be used for the purpose of affording an opportunity to vote to every elector who:
  - (a) is for the time being resident in the home, hospital or institution in which the booth is situated, and
  - (b) by reason of illness or infirmity, or, in the case of a woman, by reason of approaching maternity, is unable to attend at the polling place to record the elector's vote, and
  - (c) has, by message to the polling place manager, requested him or her to afford the elector an opportunity to record the elector's vote at such mobile booth.

Every person to whom any such message is given for delivery to the polling place manager, shall, unless otherwise ordered, on medical grounds, by a legally qualified medical practitioner, deliver such message forthwith to the polling place manager.

Any person contravening this subsection shall be liable to a penalty not exceeding 0.5 penalty unit.

- (3) Where any such message has been received by the polling place manager he or she shall direct the election official in charge of a mobile booth to afford the elector an opportunity to record the elector's vote by visiting the elector at some time before the close of the poll. On any such visit the election official shall take with him or her the ballot box provided for the booth and shall be accompanied by another election official and such of the scrutineers appointed in respect of the booth as choose to accompany him or her.

On any such visit to an elector the elector's vote shall so far as is reasonably practicable be taken in all respects as if the vote were recorded in a polling booth

under usual conditions.

No visit shall be made under this section if such visit is forbidden, on medical grounds, by a legally qualified medical practitioner.

**88 (Repealed)**

**89 Polling place managers to be furnished with copies of rolls and ballot papers**

(1) Before the day of polling the returning officer shall:

- (a) provide for use at each polling place sufficient copies certified under his or her hand of the printed rolls in force for the district in which the poll is to be taken, and
- (b) deliver to each polling place manager, and retain, such numbers, respectively, of the ballot papers as are sufficient for the use of the electors entitled to vote at each booth at which the returning officer and polling place managers, respectively, are to take the poll,

and shall keep an exact count of all those ballot papers.

(1A) The returning officer shall retain for use at his or her office:

- (a) at least one copy of the printed rolls in force for his or her district, and
- (b) such number of ballot papers as he or she considers will be required for the use of electors who are permitted to vote at his or her office before polling day,

and shall keep an exact count of those ballot papers.

(1B) The ballot papers for a periodic Council election to be delivered or retained pursuant to subsection (1) or (1A) shall be taken from the ballot papers delivered to the returning officer for the district pursuant to section 83A (3).

(2) It is the duty of an election official:

- (a) to initial the front of a ballot paper when issued to a voter at the polling booth at which the election official is presiding, and
- (b) to write or cause to be written any additional ballot papers that may be required, and to initial the front of any such additional ballot papers.

(3) A certified copy of the roll referred to in subsection (1) shall be a copy of the roll of the electors (including persons whose names have been placed on the roll in pursuance of a claim made under section 33A and who will have attained the age of 18 years on polling day) on the roll in force for the district for which the polling place has been declared to be a polling place.

(4) A copy of a roll referred to in this section must not contain any particulars relating to a



person's occupation.

## **90 Scrutineers**

- (1) Each candidate shall be entitled to appoint scrutineers on his or her behalf at each polling booth; save as is hereinafter provided such scrutineers shall be entitled to be present in that part of the booth in which the ballot papers are received.
- (2) A scrutineer shall not:
  - (a) interfere with or attempt to influence any elector within the polling booth, or
  - (b) communicate with any person in the polling booth except so far as is necessary in the discharge of his or her functions.
- (3) A scrutineer shall not be prevented from entering or leaving a polling booth during the polling, and, during his or her absence, a relieving scrutineer may act in his or her place; but only one scrutineer for each candidate shall be entitled to be present in a polling booth at any one time.
- (4) A scrutineer who commits any breach of this section, or who misconducts himself or herself, or who fails to obey the lawful directions of the returning officer or polling place manager shall be liable to a penalty not exceeding 10 penalty units or to imprisonment for a period not exceeding 6 months, or both.
- (5) A reference in subsection (1) or (3) to a candidate shall, in relation to a candidate who is included in a group for the purpose of a periodic Council election, be construed as a reference only to the candidate first in the order, referred to in section 81C (2), in that group.
- (6) A scrutineer does not breach subsection (2) (a) only because the scrutineer wears or displays any badge or emblem of a candidate or political party.
- (7) Without limiting the generality of section 114, a scrutineer who, within a polling booth:
  - (a) commits any breach of this section,
  - (b) misconducts himself or herself, or
  - (c) fails to obey the lawful directions of the returning officer or polling place manager,may, on the request of the returning officer or polling place manager at the polling booth, be removed from the polling booth by a police officer.

### **Note—**

Section 137 contains provisions relating to the appointment of and declarations by scrutineers.

## **91 (Repealed)**

## **Division 8 General provisions for the regulation of voting**

### **92 Exercise of functions of election officials under this Division by election assistants**

A function expressed to be conferred or imposed on an election official by this Division may be exercised by an election assistant only if the election assistant has been assigned to exercise the function by the returning officer or polling place manager.

### **93 Who may be present at polling place**

- (1) The following persons may, at any time during the taking of a poll, be present at the polling place:
  - (a) the Electoral Commissioner,
  - (b) election officials,
  - (c) scrutineers,
  - (d) any police officer designated by the polling place manager,
  - (e) voters actually engaged in voting, such voters to be designated, if thought necessary, by the polling place manager.
- (2) Any person who, without lawful authority, the proof of which shall be on him or her, enters any polling place or, being therein, refuses to quit the polling place forthwith on being required by the polling place manager, or by any police officer acting under the direction or authority of such polling place manager, may be removed from the polling place, and shall be liable to a penalty not exceeding 5 penalty units.

### **94 Ballot box to be exhibited before taking of poll**

Immediately before proceeding to take the poll at any polling place the polling place manager shall exhibit for the inspection of the candidates, scrutineers, and other election officials present, the ballot box open and empty, and shall immediately afterwards close and seal, and place the same empty and keep the same unopened upon the table at which he or she is to preside, and in full view of all persons present in the polling place.

### **95 Hours of polling**

- (1) Subject to subsection (2), every polling shall commence at 8 am on the day appointed for the polling to take place, and shall, unless lawfully adjourned, close at 6 pm on that day.
- (2) Subject to sections 111 (d) and 114 (1) (b) (iii), if any elector is in a polling place at 6 pm on polling day and desires to vote, his or her vote shall be taken and the polling shall not close until he or she has voted.

**96 Permission to be granted to employees to go to polling place**

Every employer shall at the request of any elector employed by him or her allow such elector to go, at a reasonable time, to a polling place and record his or her vote at any election.

If any person contravenes the above provision he or she shall be liable to a penalty not exceeding 3 penalty units:

Provided that the above provision shall not apply where the elector has a half-holiday on the day of the election.

**97 Where electors may vote**

- (1) Any elector may vote at any polling place which has been declared to be a polling place for the district for which he or she is enrolled.
- (2) If the elector is of Jewish persuasion, and has made the declaration prescribed under section 109, the declaration under section 115, may be made orally, and the signature of the elector provided for in these declarations may be made by an election official.

**98 Appointment of polling places outside electoral district**

- (1) The Electoral Commissioner, in any case in which he or she is satisfied that the convenience of a large number of electors of any district would be furthered by appointing polling places outside such district, may appoint such polling places.

The Electoral Commissioner may abolish any polling place so appointed.

- (2) Where an elector votes outside his or her district at a polling place duly appointed under subsection (1), he or she shall deposit such ballot paper in a ballot box specially set apart for ballot papers for the district in respect of which the voter claims to vote, and upon the close of the poll such ballot papers, together with all documents received by the polling place manager in connection with the poll, shall be dealt with in accordance with the provisions of section 123 or 129C, as the case may require.
- (3) Notice of any appointment or abolition of a polling place under this section is to be published in the Gazette at a time determined by the Electoral Commissioner.

**99 Questions to be put to voter**

- (1) An election official shall put the following questions to each person attending before him or her and claiming to vote in an election or elections:
  - (a) What is your full name?
    - (a1) What is your date of birth?
  - (b) Where do you reside?

(c) Have you voted before in this election? *or* Have you voted before in these elections? (as the case requires)

(2) In addition to the questions put under subsection (1), an election official shall ask each person claiming to vote as an absent voter in an election to identify the electoral district for which the person is enrolled.

(3) Where, in answer to the question specified in subsection (1) (b) put to the person by an election official, a person (other than an absent voter, an eligible overseas elector or an itinerant elector) gives a place of residence other than:

(a) the person's residence shown on the roll, or

(b) another residence in the electoral district in respect of which the person claims to vote,

the election official shall ask the following question: At what other place or places have you lived during the last 3 months?

(4) If the answers to the questions specified in subsection (1) (a), (a1) and (b) that are given by a person claiming to vote are not sufficient to distinguish that person from another person on the roll, the election official may, for the purpose of distinguishing the 2 persons, ask the person claiming to vote another question or other questions relating to matters shown on the roll in relation to those persons.

(5) Subject to section 99A, if a person claiming to vote to whom questions are put under this section:

(a) refuses to answer fully any question so put to the person,

(b) so answers the question specified in subsection (1) (b) and the question specified in subsection (3) as to indicate that the person is not entitled to vote by virtue of section 20 (6), or

(c) answers a question specified in subsection (1) (c) in the affirmative,

the person's claim to vote shall be rejected.

#### **99A Person whose residence is not on the roll**

Where an elector for an electoral district whose name appears, but whose residence does not appear, on the roll for a subdivision claims to vote at an election and to be an elector to whom section 38A applies, the elector may, subject to this Act and the regulations, be permitted to vote if the elector makes a declaration of residence in the prescribed form on an envelope, or, if the elector is an absent voter, on the envelope bearing the declaration made by the voter under section 115 (1), before an election official at the polling place.

### **100 Questions to be put if voter challenged**

- (1) An election official may, and at the request of any scrutineer shall, put to any person claiming to vote all or any of the following questions:
  - (a) Are you the person whose name appears as [*here state name under which the person claims to vote*] on the roll for [the district of                    ]?
  - (b) Are you of or above the age of eighteen years?
  - (c) Have you already voted, either here or elsewhere, at this election?
  - (d) Are you disqualified from voting?
  - (e) Is your place of living within the district [*here state the name of the district in respect of which the elector claims to vote*]?
  - (f) (*If the question set out in paragraph (e) is answered in the negative*)—Was your place of living at any time within the last three months within the district of [*here state the name of the district in respect of which the elector claims to vote*]?
- (2) If any person refuses to answer fully any question put to him or her by the election official, or by his or her answer shows that he or she is not entitled to vote, his or her claim to vote shall be rejected.
- (3) The voter's answer to the question shall be conclusive, and the matter shall not be further inquired into during the polling.
- (4) (Repealed)

### **101 Errors not to forfeit vote**

No omission of any given name or names, or entry of a wrong given name or names, or address, or date of birth, and no mistake in the spelling of any surname, shall warrant the rejection at any polling of any claim to vote if the voter is sufficiently identified in the opinion of the election official. No female elector shall be disqualified from voting under the name appearing on the roll because her surname has been changed by marriage, but in such case a note of the fact shall be made by the election official.

### **101A (Repealed)**

### **102 Ballot papers to be initialled**

No ballot paper is to be issued to any voter without being first initialled by an election official on the front of the ballot paper, and an exact count must be kept of all initialled ballot papers.

### **103 Vote, how given**

- (1) Upon receipt of a ballot paper the voter shall, without delay:
  - (a) retire alone to some unoccupied compartment of the booth, and there in private record his or her vote on the ballot paper,
  - (b) fold the ballot paper so as to conceal the names of the candidates, and then forthwith openly, and without unfolding it, deposit it in the ballot box,
  - (c) quit the booth.
- (2) In the case of the election of a member of the Assembly, a voter shall record his or her vote for at least one candidate by placing the number "1" in the square opposite the name of the candidate for whom he or she desires to give his or her first preference vote and may, if he or she wishes, vote for additional candidates by placing consecutive numbers beginning with the number "2" in the squares opposite the names of those additional candidates in the order of his or her preferences for them.
- (3) In the case of a periodic Council election, a voter shall record his or her vote for at least 15 candidates by placing the numbers "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14" and "15" in the squares opposite the names of 15 candidates in the order of his or her preferences for them and may, if he or she wishes, vote for additional candidates by placing consecutive numbers beginning with the number "16" in the squares opposite the names of those additional candidates in the order of his or her preferences for them.
- (4) If the ballot paper in a periodic Council election contains one or more group voting squares, the voter may record a vote by placing the number "1" in any one of those squares instead of recording a vote in accordance with subsection (3) and may, if he or she wishes, vote for additional groups of candidates by placing consecutive numbers beginning with the number "2" in the group voting squares above the names of those additional groups of candidates in the order of his or her preferences for them.

### **103A Vote of person whose residence is not shown on the roll**

- (1) Notwithstanding section 103 (1), if an elector votes under the provisions of section 99A, the elector shall mark and fold the elector's ballot papers in the manner prescribed in this Act and return it so folded to an election official.
- (2) The election official shall thereupon, in the presence of the elector and of such scrutineers as are present, and without unfolding the ballot paper, enclose it in an envelope bearing the declaration of the voter and addressed to the returning officer for the district for which the elector is enrolled and shall forthwith securely fasten the envelope and deposit it in the ballot box.

- (3) The returning officer or the polling place manager shall, without opening the envelope, forthwith transmit it to the returning officer for the district for which the elector is enrolled.
- (4) The returning officer or an election official authorised by the returning officer, on receipt of the envelope containing the ballot paper, shall, before opening the envelope or allowing any other person to do so, examine the declaration of the elector, and, if it is in order and he or she is satisfied that the residence specified in the declaration is the residence specified in a request under section 38A by the elector (as affected by any change of residence annotated on the request) shall deal with the ballot paper in the manner prescribed in connection with the scrutiny of absent voters' ballot papers.
- (5) Subsections (1), (2), (3) and (4) do not apply in relation to a ballot paper marked by an absent voter who makes a declaration of residence under section 99A, but, where a returning officer for a district receives an envelope bearing such a declaration in relation to the district, he or she shall examine the declaration and, if it is in order and he or she is satisfied that the residence specified in the declaration is the residence specified in a request under section 38A by the absent voter (as affected by any change of residence annotated on the request), shall deal with the ballot paper in the scrutiny of absent votes.

#### **104 Spoilt ballot papers**

If any voter satisfies an election official, before his or her ballot paper is deposited in the ballot box, that he or she has spoilt it by mistake or accident, he or she may, on giving it up, receive a new ballot paper from an election official, who shall there and then cancel and preserve the spoilt ballot paper.

#### **105 (Repealed)**

#### **106 Disputed vote**

- (1) If, at any election, any ballot paper has been delivered to any person having tendered a vote, and if any other person subsequently tenders a vote at the election in the name of, or as purporting to be, such first-mentioned person, an election official shall put to the person so subsequently tendering a vote the prescribed questions. If the person answers the questions satisfactorily, and makes a declaration in the prescribed form, he or she may be permitted to vote.
- (1A) If a person whose name has been noted (on the certified copy of the roll used at the polling place for the subdivision in which the elector is enrolled) as that of an elector to whom a postal ballot paper or pre-poll vote has been issued claims to vote in the election at that polling place, an election official shall put to the person the prescribed questions. If the person answers the questions satisfactorily, states that he or she has not applied for a postal ballot paper or pre-poll vote and makes a declaration in the prescribed form, the person may be permitted to vote.

(2) Notwithstanding anything contained in this Act, when any person who is entitled to be enrolled on the roll for a district claims to vote at an election at a polling place prescribed for a subdivision of that district, and his or her name has been omitted from or struck out of the certified copy of the roll being used at such election owing to an error of an officer or a mistake of fact, or when any person who is enrolled on the roll for a district claims to vote at an election at a polling place prescribed for a subdivision of that district and his or her name cannot be found by an election official on the certified copy of the roll being used at such election, he or she may, subject to this Act and the regulations, be permitted to vote if:

(a) in the case of a person whose name has been omitted from the roll:

- (i) he or she sent or delivered to the registrar for the subdivision a duly completed claim for enrolment or transfer of enrolment, as the case requires, in respect of the subdivision, and the claim was received by the registrar before the period commencing at 6 pm on the date of issue of the writ for the election and ending on the close of polling at the election, and
- (ii) he or she did not after sending or delivering the claim and before the period referred to in subparagraph (i) become qualified for transfer of enrolment to another subdivision, or

(b) in the case of a person whose name has been struck out of the roll:

- (i) his or her name was not, to the best of his or her knowledge, removed from the roll for the district owing to objection, or transfer or duplication of enrolment, or disqualification, and
- (ii) he or she had, from the time of his or her enrolment for a subdivision of the district to the date of the issue of the writ for the election, continuously retained his or her right to enrolment for a subdivision of that district, or

(c) in the case of a person whose name is on the roll for a district for which he or she claims to vote, but cannot be found by an election official, he or she claims that his or her name appears or should appear on the roll,

and makes a declaration in the prescribed form.

(3) For the purpose of giving effect to this section, the following provisions shall be observed:

(a)

- (i) The form of declaration may be printed or written on an envelope addressed to the returning officer for the district and must, after being filled in, be signed by the voter in the presence of an election official, and completed and attested by him or her.



- (ii) After the declaration has been made, the election official shall hand to the voter a ballot paper.
  - (iii) The voter, after receiving the ballot paper, shall without delay retire alone into an unoccupied compartment of the polling place and there in private mark his or her vote on the ballot paper.
  - (iv) The voter shall then fold and fasten the ballot paper so that the vote cannot be seen without unfastening it, and at once return the ballot paper so fastened to the election official before whom he or she made the declaration.
  - (v) The election official shall then in the presence of the voter forthwith enclose the ballot paper in the envelope bearing the declaration of the voter and securely fasten the envelope.
- (b) If any person makes any declaration under this section knowing that the same is untrue in any material particular he or she shall be liable to a penalty not exceeding 10 penalty units or to imprisonment for a period not exceeding 6 months, or both.
- (c) Every envelope containing a vote given under this section shall be promptly delivered by the polling place manager or forwarded under registered cover where practicable to the returning officer for the district.
- (d) The polling place manager must, immediately after the close of the poll, send to the returning officer advice of the number of envelopes delivered and forwarded.
- (e) The returning officer or election official assisting him or her shall in the presence of the scrutineers examine the declaration on the envelope containing the ballot paper; and, if after making such enquiries as he or she may deem necessary, it appears to him or her that the person whose name is signed to the declaration is entitled to vote, and that the declaration is duly attested, he or she shall accept the ballot paper for further scrutiny, but otherwise he or she shall reject the ballot paper without opening the envelope.
- If he or she accepts the ballot paper for further scrutiny, he or she shall open the envelope without destroying the declaration and extract the ballot paper, and shall, without unfolding it, place the ballot paper in the ballot box.
- (f) The returning officer or election official assisting him or her shall then proceed with the scrutiny of the ballot papers which have been accepted for further scrutiny by removing them from the ballot box in which they were placed in accordance with paragraph (e) and:
- (i) by opening any of those ballot papers relating to an election for the Assembly and allowing and counting those which are formal and disallowing and rejecting those which, by virtue of section 122, are informal, and

(ii) by opening any of those ballot papers relating to a periodic Council election and counting the votes recorded for each candidate.

(g) (Repealed)

(4) Where the returning officer or election official assisting him or her accepts the ballot paper of a person voting in pursuance of subsection (2), he or she shall forthwith make the necessary correction in the roll used by him or her for the purpose of the election, and report the matter to the Electoral Commissioner who shall take such action as is necessary to secure the enrolment of the elector.

(5) Where the claim of any person to vote under this section is refused the polling place manager shall make a note in writing of the fact of the claim and the reasons for the refusal thereof.

The polling place manager and another election official shall sign the note in the presence of such scrutineers as are present.

Any of those scrutineers may also sign the note.

(6) (Repealed)

#### **107 (Repealed)**

#### **108 Assistance to certain electors**

(1) If an elector satisfies an election official that his or her sight is so impaired or that he or she is so physically incapacitated that he or she is unable to vote without assistance, the election official shall permit a person appointed by the elector to enter an unoccupied compartment of the booth with the elector and mark, fold and deposit the elector's ballot paper for him or her.

(2) If any such elector fails to appoint a person in pursuance of subsection (1), or if any elector satisfies an election official that he or she is so illiterate that he or she is unable to vote without assistance, the election official, in the presence of such scrutineers as are present, or if there are no scrutineers present, then in the presence of:

(a) another election official, or

(b) if the elector so desires, in the presence of a person appointed by such elector, instead of an election official,

shall mark the ballot paper according to the instruction of such elector, and shall fold and deposit the ballot paper in the ballot box.

#### **108A Instructions**

The instruction of a person under section 108, section 114H (1) (f), section 114T or

section 114ZS may be given by handing to the election official or to the authorised witness, as the case may be, a “how to vote” card, or a printed or written statement indicating the candidate for whom the elector desires to vote or the candidates for whom the elector desires to vote and the order of his or her preferences for them.

**109 Provision when poll falls on Saturday**

If, when the day appointed for taking any poll falls on a Saturday or on any day on which occurs a Jewish fast or festival, any person to whom a ballot paper has been delivered, declares at the prescribed time and in prescribed form that he or she is of the Jewish persuasion, and objects on religious grounds to vote in the manner provided by this Act, an election official shall, at the request of such person, and in presence of such person, and for him or her, and in presence of another election official and the scrutineers (if any), mark the ballot paper according to the instruction of such person, and deal with such ballot paper in the manner provided by section 108.

**110 When votes to be rejected**

If upon examination of the several rolls used at any election or of any other documents or writings in his or her possession, or if from evidence satisfactory to him or her (from whatever source derived) it appears to the election official or election officials that any person has voted in more than one district at and for one and the same election, the vote given outside the proper district of such person shall, if ascertainable from any such evidence as aforesaid, be rejected.

**111 Ballot papers not to be removed from polling booth etc**

A person shall not, without lawful authority:

- (a) remove a ballot paper from any polling booth or, where the office of a returning officer is open to enable electors to vote before polling day, remove a ballot paper from that office,
- (b) enter into a compartment of a polling booth while any person is in the compartment,
- (c) remain in the compartment of a polling booth, or, where he or she is voting at the office of a returning officer before polling day, remain at that office for a longer period than is necessary for the purpose of marking his or her ballot paper, or
- (d) obstruct or unnecessarily delay the proceedings at a polling booth or, where the office of a returning officer is open to enable electors to vote before polling day, the proceedings at that office.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

**112 False answer to questions etc or double voting**

- (1) If any person:

- (a) to whom any of the prescribed questions is so put as aforesaid wilfully makes a false answer to the same or any part thereof, or
- (b) wilfully makes a false declaration in respect of any matter or thing for which a declaration is required by this Part, or
- (c) personates any elector for the purpose of voting at any election, or
- (d) votes twice at any election, or
- (e) knowingly deposits in the ballot box at any polling place more ballot papers than one,

the person is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 3 years, or both.

- (2) A person does not commit an offence arising under subsection (1) (e) by reason only of his or her depositing in the ballot box, used for elections referred to in section 120], the ballot papers used by him or her for voting in each of those elections.

### **113 Penalty for obstructing elector from access to polling place**

A person shall not, on polling day, or on any day to which polling is adjourned, or on any day on which the office of a returning officer is open to enable electors to vote before polling day, obstruct the access or approaches to the polling booth or the office of the returning officer, as the case may be.

Maximum penalty: 0.5 penalty unit.

### **114 Maintenance of order**

- (1) Every police officer shall have and may exercise such powers as may be necessary to maintain order and keep the peace at any election or polling under this Act, and for that purpose and without prejudice to any other powers conferred on him or her by law:

(a) may:

- (i) without warrant, arrest or cause to be arrested any person who he or she has reasonable grounds to believe is committing or has committed or is attempting to commit an offence under this Act at or in the immediate vicinity of any polling place or, where the office of the returning officer is open to enable electors to vote before polling day, at or in the vicinity of that office, or
- (ii) instead of arresting or causing the arrest of the person, remove or cause the removal of that person from the polling place or immediate vicinity of that polling place or, as the case may be, from the office of the returning officer or immediate vicinity of that office, and

- (b) may remove or cause to be removed from a polling booth and from the immediate vicinity of the polling booth, and, where the office of the returning officer is open to enable electors to vote before polling day, from that office and from the immediate vicinity of that office, any person:
- (i) who, having been given a lawful direction by or under the authority of the returning officer or polling place manager, fails to comply with that direction,
  - (ii) who is obstructing the access or approaches to the polling booth or, as the case may be, to that office,
  - (iii) who is obstructing or unnecessarily delaying the proceedings at the polling booth or, as the case may be, at that office, or
  - (iv) who is behaving in a disorderly manner or is causing a disturbance.
- (2) Any person arrested under subsection (1) shall, as soon as practicable thereafter, be taken before a Magistrate or an authorised officer within the meaning of the *Criminal Procedure Act 1986* to be dealt with according to law for the offence for which he or she was arrested.
- (3) Every returning officer and polling place manager may give such directions as are necessary to maintain order at any election or polling under this Act.
- (4) A person must not, without lawful authority, contravene any such direction.
- Maximum penalty (subsection (4)): 5 penalty units.

## **Division 9 Voting by post**

### **114A Application for a postal vote certificate and postal ballot paper**

- (1) An elector who:
- (a) will not throughout the hours of polling on polling day be within the State,
  - (b) will not throughout the hours of polling on polling day be within eight kilometres by the nearest practicable route of any polling booth open for the purposes of an election,
  - (c) will throughout the hours of polling on polling day be travelling under conditions which will preclude him or her from voting at any polling booth,
  - (d) is seriously ill or infirm, and by reason of such illness or infirmity will be precluded from attending at any polling booth to vote, or, in the case of a woman, will, by approaching maternity, be precluded from attending at any polling booth to vote,
  - (d1) is, at a place other than a hospital, caring for a person who is seriously ill or infirm or approaching maternity and by reason of caring for the person will be

precluded from attending at any polling booth to vote,

(e) is, by reason of his or her membership of a religious order or his or her religious beliefs:

(i) precluded from attending at a polling booth, or

(ii) precluded from voting throughout the hours of polling on polling day or throughout the greater part of those hours,

(f) is, by reason of his or her being kept in a correctional centre (within the meaning of the *Crimes (Administration of Sentences) Act 1999*), precluded from attending at any polling booth to vote,

(g) will, by reason of being engaged for fee, gain or reward in any work throughout the hours of polling on polling day, be precluded from attending at any polling booth to vote, or

(h) is a silent elector,

may make an application for a postal vote certificate and a postal ballot paper to the Electoral Commissioner or the returning officer for the district for which the elector is enrolled or, if the elector has reason to believe that the application may not reach the Electoral Commissioner or that returning officer so as to enable him or her to receive from the Electoral Commissioner or that returning officer the postal vote certificate and the postal ballot paper in time to permit him or her to vote at the election, to some other district returning officer.

(2) An application under subsection (1) shall:

(a) be in or to the effect of the prescribed form and specify the ground on which the elector is making the application,

(b) be signed by the elector, and

(c) be witnessed by an authorised witness.

(d) (Repealed)

(2AA) Nothing in subsection (1) entitles an elector who is an inpatient or inmate of a declared institution within the meaning of Division 11A and will be such an inpatient or inmate on the fifth, fourth and third days immediately preceding polling day to a postal ballot paper and postal vote certificate.

(2A) An elector who has made an application under subsection (1) shall, notwithstanding that the application complies with subsection (2), be entitled to a postal ballot paper and postal vote certificate only if the application is received by the Electoral Commissioner or the returning officer to whom it is addressed:

- (a) in the case of an application sent from within Australia, before 6 pm on the third day preceding polling day, or
- (b) in the case of an application sent from outside Australia, before 6 pm on the fifth day preceding polling day.

(2B) A person shall not persuade or induce or associate with any person in persuading or inducing any person to make application for a postal vote certificate and postal ballot paper.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

(3) An elector shall not make, and a person shall not induce an elector to make, any false statement in an application for a postal vote certificate and postal ballot paper, or in the declaration contained in such application.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

#### **114AA Registration of general postal voters**

(1) In this section:

***prescribed elector*** means:

- (a) an elector whose real place of living is not within 20 kilometres, by the nearest practicable route, of a polling place,
  - (a1) if the regulations so provide, an elector who will not be within the State during any particular period,
- (b) an elector who:
  - (i) is a patient in a hospital (not being a hospital that is a polling place or a declared institution under section 114ZN), and
  - (ii) by reason of being seriously ill or infirm, is unable to travel from the hospital,
- (c) an elector who:
  - (i) is not a patient in a hospital, and
  - (ii) by reason of being seriously ill or infirm, is unable to travel from the place where he or she resides,
- (c1) an elector who, because he or she will be at a place (other than a hospital) caring for a person who is seriously ill or infirm, is unable to travel from that place to a polling place,
- (d) an elector who is being kept in a correctional centre (within the meaning of the *Crimes (Administration of Sentences) Act 1999*),

- (e) an elector who is enrolled pursuant to a claim made under section 32 (3),
- (f) an elector whom an Australian medical practitioner has certified, in writing, to be so physically incapacitated that the elector cannot sign the elector's name,
- (g) an elector who is a silent elector, or
- (h) an elector who, because of his or her religious beliefs or membership of a religious order:
  - (i) is precluded from attending a polling booth, or
  - (ii) for the greater part of the hours of polling on polling day, is precluded from attending a polling booth.

**register** means Register of General Postal Voters for a subdivision kept in accordance with subsection (11).

- (2) A prescribed elector may make application to the registrar for the subdivision of the district for which the elector is enrolled to be registered as a general postal voter for the subdivision.
- (3) An application under subsection (2) in relation to an elector to whom subsection (1) (e) or (f) applies may be made by another person acting on behalf of the elector.
- (4) The certificate referred to in subsection (1) (f) shall be lodged with the application under subsection (2) to which it relates.
- (5) An application under subsection (2) shall be in the prescribed form.
- (6) If a registrar is satisfied that an elector making an application under subsection (2) is:
  - (a) enrolled in the subdivision for which he or she is a registrar, and
  - (b) a prescribed elector,the registrar shall register the elector as a general postal voter for the subdivision by entering the name of the elector in the register referred to in subsection (11).
- (6A) A registrar may register an elector to whom subsection (1) (a1) applies as a general postal voter only during the period that the elector has specified as the period during which he or she will not be within the State.
- (7) If a claim for enrolment or transfer of enrolment is made in respect of a person pursuant to section 32 (3) and the claim indicates that the person wishes to be a registered general postal voter, the registrar for the subdivision for which the person is claiming enrolment shall, forthwith upon enrolment, register the person as a general postal voter by entering the name of the person in the register.



- (8) If a registrar for a subdivision registers an elector as a general postal voter for the subdivision, the registrar shall advise the elector, in writing, of the registration.
- (9) If a registrar for a subdivision is not satisfied that an elector making an application under subsection (2) is enrolled for the subdivision, the registrar shall advise the elector, in writing, to that effect.
- (10) If a registrar for a subdivision is not satisfied that an elector who is enrolled for the subdivision and who makes an application under subsection (2) is a prescribed elector, the registrar shall advise the elector, in writing, to that effect.
- (11) A registrar for a subdivision shall cause a Register of General Postal Voters for the subdivision to be kept and shall cause to be entered in the register in relation to an elector who is registered as a general postal voter for the subdivision:
- (a) the name of the elector,
    - (a1) in the case of an elector to whom subsection (1) (a1) applies, the period of registration, the fact that the elector is registered under subsection (1) (a1) and the address of the place outside New South Wales to which ballot papers are to be sent,
    - (b) the residence shown on the roll for the subdivision for which the elector is enrolled as the real place of living of the elector, and
    - (c) such other particulars as the Electoral Commissioner determines.
- (12) A copy of a register is to be open for public inspection, without fee, during ordinary office hours at the office of the registrar. The copy must not contain:
- (a) any particulars of a silent elector's residence, or
  - (b) any prescribed particulars relating to an elector.
- (13) A registrar for a subdivision may cancel the registration of an elector as a general postal voter for the subdivision in such circumstances as are prescribed.
- (14) A person shall not make, and a person shall not induce another person to make, any false statement in, or in connection with, an application under subsection (2) or in any declaration contained in, or made in connection with, such application.
- Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.
- (15) (Repealed)
- (16) Where an elector who is a registered general postal voter for a subdivision (in this subsection referred to as the **original subdivision**) makes a claim under Part 4 for transfer of enrolment to another subdivision (in this subsection referred to as the **new subdivision**):

- (a) the registrar for the original subdivision shall, upon receipt under section 35 (1) (b) (iv) of notice of the transfer of enrolment, give notice in writing to the registrar for the new subdivision that the elector was a registered general postal voter for the original subdivision and cancel the registration of the elector as a general postal voter for the original subdivision, and
  - (b) the registrar for the new subdivision shall, upon receipt of notice under paragraph (a), register the elector as a general postal voter for the new subdivision unless the registrar is satisfied that the elector would not be entitled to be so registered if the elector made an application under subsection (2).
- (17) A registrar for a subdivision shall, when directed to do so by the Electoral Commissioner, conduct a review of the register for the subdivision and, upon completion of the review, shall make such alterations to the register as he or she thinks necessary to ensure that:
- (a) only electors entitled to be registered general postal voters for the subdivision are so registered, and
  - (b) the details entered in the register in relation to registered general postal voters are accurate.
- (18) The regulations may provide that all or any specified functions of a registrar under this section are to be exercised by the Electoral Commissioner instead of the registrar. For that purpose, the regulations may provide for the Electoral Commissioner to keep a separate register and may make any other necessary modifications to the operation of this section.

#### **114AB Dispatch of ballot papers to registered general postal voters**

The Electoral Commissioner shall, as soon as practicable after the issue of the writ for an election to be held in a district, deliver or post to each elector who is, on that day, a registered general postal voter for a subdivision of the district:

- (a) a postal vote certificate printed on an envelope addressed to the returning officer, and
- (b) one postal ballot paper for a periodic Council election, or one postal ballot paper for an Assembly general election or by-election, or both, as the case requires.

#### **114B Authorised witnesses**

- (1) Subject to subsection (2) an elector whose name appears on the roll for the State of New South Wales, on the Commonwealth roll for any other State, on the roll for the Australian Capital Territory or on the roll for the Northern Territory of Australia is an authorised witness for the purposes of this Act.

Outside Australia the following persons are also authorised witnesses for the purposes of this Act:

- (a) an officer of the naval, military or air forces of the Commonwealth or of some other part of the Queen's dominions,
- (b) a person employed in the Public Service of the Commonwealth or of a Territory of the Commonwealth or of a part of the Queen's dominions,
- (c) a justice of the peace for or a minister of religion or medical practitioner resident in a territory of the Commonwealth or a part of the Queen's dominions,
- (d) an Australian citizen.

(1A) (Repealed)

(2) A person is not eligible to be an authorised witness at or in connection with an election if he or she is a candidate at the election.

**114C Duty of witnesses**

- (1) An authorised witness shall not witness the signature of any elector to an application for a postal vote certificate and postal ballot paper unless:
- (a) he or she has satisfied himself or herself as to the identity of the applicant,
  - (b) he or she has seen the applicant sign the application, and
  - (c) he or she knows that the statements contained in the application are true, or has satisfied himself or herself by inquiry from the applicant or otherwise that the statements contained in the application are true.

Maximum penalty: 5 penalty units.

(2) The authorised witness witnessing the signature of any elector to an application for a postal vote certificate and postal ballot paper shall sign his or her name in his or her own handwriting on the application in the space provided for the purpose, and shall add his or her address and the date.

(3) (Repealed)

**114D Issue of certificate and ballot paper**

- (1) Where the Electoral Commissioner or a returning officer receives an application made in accordance with section 114A, he or she shall deliver or post to the elector who made the application:
- (a) a postal ballot paper that is in or to the effect of the form prescribed in Schedule 4 or postal ballot papers one of which is in or to the effect of the form prescribed in Schedule 4 and the other of which is in or to the effect of the form prescribed in Schedule 4A, as the case may require, and

- (b) an envelope bearing:
  - (i) the address of the returning officer for the district for which the elector has declared that he or she is enrolled, and
  - (ii) a postal vote certificate that is in or to the effect of the prescribed form.
- (2) Before delivering or posting a ballot paper for an election for the Assembly under subsection (1), the Electoral Commissioner or returning officer shall, if the particulars of the candidates are not already printed thereon, enter on the ballot paper:
  - (a) the name of the electoral district for which the elector has declared that he or she is enrolled, and
  - (b) the names of the candidates for that district in the order in which those names were drawn by ballot held pursuant to section 82A, and
  - (c) if required by Division 6B, the names of registered parties or the word "Independent".
- (3) The returning officer shall not, under subsection (1), deliver or post a ballot paper for a periodic Council election on which particulars relating to the candidates are not already printed, until he or she has been notified of those particulars in accordance with section 81H (4) (b) and has entered those particulars on the ballot paper in the manner specified in that notification.

#### **114E Inspection of applications**

- (1) All applications for postal vote certificates and postal ballot papers received by a returning officer shall, if they relate to applicants claiming to be enrolled for the district for which he or she is returning officer, be kept by him or her, or if they relate to applicants claiming to be enrolled for another district, after being endorsed by him or her with the date of the issue of the postal vote certificate and postal ballot paper, forthwith be sent by him or her to the returning officer for that district, but any application which has not been received before the time specified in section 114A (2A) (a) or (b), whichever is applicable shall be kept by the returning officer to whom it was made.
- (1A) All applications for postal vote certificates and postal ballot papers received by the Electoral Commissioner must be sent to the returning officer for the district to which the applications relate.
- (2) All applications for postal vote certificates and postal ballot papers shall be open to public inspection at all convenient times during office hours, from and including the third day after polling day until the election can be no longer questioned.

**114F Postal ballot papers to be initialled**

No postal ballot paper is to be delivered or posted to any elector without being first initialled by an election official on the front of the ballot paper, and an exact count must be kept of all initialled postal ballot papers.

**114G Returning officer to notify issue of postal vote certificates and postal ballot papers**

- (1) The returning officer for the district in which the applicants for postal vote certificates and postal ballot papers claim to be enrolled shall, if there is time conveniently to do so, note on the certified copies of the roll the names of all electors to whom postal vote certificates and postal ballot papers have been issued.
- (2) If there is not time conveniently to note on the certified copies of the roll the issue of a postal vote certificate and postal ballot paper, the returning officer shall immediately advise the polling place manager to whom the certified copies of the roll have been furnished of the issue of the postal vote certificate and postal ballot paper.
- (3) An elector to whom a postal vote certificate has been issued shall not be entitled to vote at any polling booth unless he or she first delivers to an election official for cancellation his or her postal vote certificate and postal ballot paper.

**114GA Person claiming to vote, whose name is noted under section 114G**

- (1) Notwithstanding anything contained in section 114G, if a person whose name has been noted on a certified copy of the roll as an elector to whom a postal vote certificate and postal ballot paper have been issued:
  - (a) claims to vote in an election at a polling booth, and
  - (b) states, when requested to deliver to an election official for cancellation of the person's postal vote certificate and postal ballot paper, that the person has not received, or has lost, a postal vote certificate or a postal ballot paper,the person may, subject to sections 20 and 99 and the regulations, be permitted to vote, if the person makes a declaration in the prescribed form before an election official at the polling booth.
- (2) The ballot paper of a voter voting under this section shall be dealt with in accordance with the provisions of section 106 (3).

**114H Directions for postal voting**

- (1) The following directions for regulating voting by means of postal ballot papers are to be substantially observed:
  - (a) The elector shall exhibit his or her postal ballot paper (in blank) and his or her postal vote certificate to an authorised witness.

- (b) The elector shall there and then, in the presence of the authorised witness, sign his or her name on the postal ballot certificate in the place provided for the signature of the voter, unless the elector became a registered general postal voter pursuant to an application made under section 114AA as an elector to whom paragraph (e) or (f) of the definition of **prescribed elector** in section 114AA (1) applies.

**Note—**

Paragraphs (e) and (f) of the definition of **prescribed elector** refer to persons who are physically incapacitated.

- (b1) The elector is to insert the date on the postal vote certificate, in the place provided for the date.
- (c) The authorised witness shall then and there sign his or her name in his or her own handwriting on the postal vote certificate in the place provided for the signature of the authorised witness, and shall add the title under which he or she acts as an authorised witness and the date.
- (d) (Repealed)
- (e) The elector shall then and there in the presence of the authorised witness, but so that the authorised witness cannot see the vote:
- (i) mark his or her vote on the ballot paper in the manner directed on the ballot paper,
  - (ii) fold the ballot paper so that the vote cannot be seen,
  - (iii) place the ballot paper in the envelope addressed to the returning officer and fasten the envelope.

After the envelope has been fastened the elector shall forthwith post or deliver it or cause it to be posted or delivered to the returning officer.

- (f) If the elector's sight is so impaired, or the elector is otherwise so physically incapacitated or so illiterate, that he or she cannot vote without assistance, a person appointed by the elector shall mark the elector's vote on the ballot paper in the presence of the authorised witness, and shall then and there fold the ballot paper so that the vote cannot be seen, place it in the envelope addressed to the returning officer, fasten the envelope, and hand it to the voter who shall forthwith post or deliver it or cause it to be posted or delivered, to the returning officer:

Provided that if no person is appointed by the elector, the authorised witness, if so requested by the elector, shall take the action required by this paragraph to be taken by a person appointed by the elector, and in taking such action shall mark the ballot paper according to the instructions of the elector.

(g) The authorised witness shall not, otherwise than pursuant to a request made by the elector in accordance with paragraph (f), look at or make himself or herself acquainted with the vote given by the elector, and, except as provided in paragraph (f), shall not suffer or permit any person (other than the elector) to see or become acquainted with the elector's vote or to assist the elector to vote or to interfere in any way with the elector in relation to his or her vote.

(1A) Without limiting the generality of the proviso to subsection (1) (f), an elector to whom the proviso applies may indicate to the authorised witness the manner in which the elector wishes the authorised witness to mark the elector's ballot paper for the elector by presenting to the authorised witness a statement in writing (which may be, or include, a how-to-vote card) that specifies the manner in which the ballot paper is to be marked.

(2) Notwithstanding anything contained in this section, in any case in which a postal ballot paper, if posted prior to the close of the poll, as provided in paragraph (e) or paragraph (f) of subsection (1), would not reach the returning officer for the district in respect of which the elector claims to be enrolled before the end of the period of 4 days immediately succeeding the close of the poll, or if delivered as provided in paragraph (e) or paragraph (f) of that subsection, would not reach that returning officer before the close of the poll, the envelope in which the ballot paper is enclosed may be addressed to, and posted or delivered to, any other returning officer, or may be delivered on polling day to any polling place manager, and the returning officer or the polling place manager, as the case may be, shall deal with it in the prescribed manner.

#### **114I Duty of authorised witness**

Every authorised witness shall:

- (a) comply with the preceding section in so far as it is to be complied with on his or her part,
- (b) see that the directions in the preceding section are complied with by every elector voting by post before him or her, and by every person present when the elector votes, and
- (c) refrain from disclosing any knowledge of the vote of any elector voting by post before him or her.

An authorised witness shall not influence or attempt to influence, in any way, the vote of an elector voting by post before him or her.

An authorised witness who has discharged the functions prescribed by section 114H in relation to an elector, shall not persuade or induce the elector to hand to him or her for posting or delivery the envelope containing the postal ballot paper, but nothing contained

in this paragraph shall be construed to prohibit an authorised witness from posting or delivering any such envelope at the request of the elector.

Any person contravening any of the provisions of this section shall be liable to a penalty not exceeding 10 penalty units.

**114J Penalty for unlawfully marking etc ballot paper**

(1) No person other than:

- (a) the elector to whom the postal ballot paper has been issued, or
- (b) a person appointed by the elector or an authorised witness acting in pursuance of paragraph (f) of subsection (1) of section 114H, assisting an elector whose sight is so impaired, or who is otherwise so physically incapacitated or so illiterate, that he or she cannot vote without assistance,

shall mark a vote upon the ballot paper.

Any person contravening any of the provisions of this subsection shall be liable to a penalty not exceeding 5 penalty units or to imprisonment for a term not exceeding six months.

(2) No person other than the returning officer for the district in which an applicant, to whom a postal ballot paper has been issued, claimed to be enrolled or an election official acting under his or her directions shall open the envelope in which the postal ballot paper has been placed and which has been fastened in accordance with section 114H.

Maximum penalty: 5 penalty units.

(3) Any person to whom an application for a postal vote certificate and postal ballot paper or an envelope containing or purporting to contain a postal ballot paper is entrusted by an elector for the purpose of posting or delivery to a returning officer or delivery to a polling place manager and who fails to post or deliver forthwith the application or envelope, shall be guilty of an offence.

Maximum penalty: 10 penalty units.

**114K Duty of persons present when an elector votes by post**

Any person present when an elector is before an authorised witness for the purpose of voting by post shall:

- (a) obey all directions of the authorised witness, and
- (b) except as provided in paragraph (f) of subsection (1) of section 114H:
  - (i) refrain from making any communication whatever to the elector in relation to his or her vote,



(ii) refrain from assisting the elector or in any manner interfering with him or her in relation to his or her vote, and

(iii) refrain from looking at the elector's vote or from doing anything whereby he or she may become acquainted with the elector's vote.

(c), (d) (Repealed)

Maximum penalty: 10 penalty units.

#### **114L Preliminary scrutiny of postal ballot papers**

At the scrutiny the returning officer or an election official assigned by the returning officer shall produce all applications for postal vote certificates and postal ballot papers, and shall produce unopened all envelopes containing postal votes received up to 6 pm on the fourth day immediately succeeding the close of the poll by him or her, or received up to the close of the poll by any other returning officer or any polling place manager in pursuance of section 114H (2), and shall:

(a) compare the signature of the elector on each postal vote certificate with the signature of the same elector on the application for the certificate, and allow the scrutineers to inspect both signatures,

(b) if he or she is satisfied that:

(i) the signature on the certificate is that of the elector who signed the application for the certificate,

(ii) the signature purports to have been witnessed by an authorised witness,

(iii) in the case of a certificate that was delivered, the certificate was delivered before the close of the poll,

(iv) in the case of a certificate that was posted, the certificate was completed before the close of the poll, and

(v) the elector is enrolled for the district for which he or she claimed to be enrolled,

accept the ballot paper for further scrutiny, but if he or she is not so satisfied, disallow the ballot paper without opening the envelope,

(c) withdraw from the envelopes bearing the postal vote certificates all postal ballot papers accepted for further scrutiny, and, without inspecting or unfolding the ballot papers or allowing any other person to do so, place them in a sealed ballot box by themselves for further scrutiny, and

(d) proceed with the scrutiny of the postal ballot papers which have been accepted for further scrutiny by removing them from the ballot box in which they were placed in accordance with paragraph (c) and:

- (i) by opening any of those ballot papers relating to an election for the Assembly and allowing and counting those which are formal and disallowing and rejecting those which, by virtue of section 122, are informal, and
- (ii) by opening any of those ballot papers relating to a periodic Council election and counting the votes recorded for each candidate.

(e) (Repealed)

**114M Postal and absent voters' ballot papers not to be informal because of certain omissions or mistakes**

A postal ballot paper or an absent voter's ballot paper shall not be informal because in the case of any candidate his or her surname only has been written thereon if no other candidate has the same surname, or by reason of any mistake in spelling, if the elector has made clear his or her intention.

**114N Spoilt postal ballot paper**

If an elector to whom a postal ballot paper has been issued, satisfies the Electoral Commissioner or returning officer who issued the same that he or she has spoilt his or her postal ballot paper by mistake or accident, he or she may on giving it up, receive a new postal ballot paper from the Electoral Commissioner or returning officer (as the case may be), who shall cancel and preserve the spoilt ballot paper.

**114NA Application of this Division**

Nothing in this Division applies to or in respect of a postal vote certificate or a postal ballot paper, or an application therefor, under Division 11.

**114O Assistance for returning officer**

A returning officer may be assisted by other election officials in the exercise of his or her functions under this Division (except section 114L), and a reference in this Division (except section 114L) to a returning officer includes a reference to other election officials so assisting him or her.

**Division 10 Pre-poll voting (electoral offices and appointed places)**

**114P Application for permission to vote before polling day**

- (1) An elector who:
  - (a) will not throughout the hours of polling on polling day be within New South Wales,
  - (b) will not throughout the hours of polling on polling day be within eight kilometres by the nearest practicable route of any polling booth open for the purposes of the election,

- (c) will throughout the hours of polling on polling day be travelling under conditions which will preclude him or her from voting at any polling booth,
- (d) by reason of his or her membership of a religious order or his or her religious beliefs:
  - (i) is precluded from attending at a polling booth, or
  - (ii) will be precluded from voting throughout the hours of polling on polling day or throughout the greater part of those hours,
- (e) will be, at a place other than a hospital, caring for a person who is seriously ill or infirm or approaching maternity and by reason of caring for the person will be precluded from attending at any polling booth to vote,
- (f) will, by reason of being engaged for fee, gain or reward in any work throughout the hours of polling on polling day, be precluded from attending at any polling booth to vote, or
- (g) is a silent elector,

may make an application to any pre-poll voting officer (whether for the district for which he or she is enrolled or for some other district) for permission to vote before polling day.

- (2) An application under subsection (1) shall:
  - (a) be made by the elector in person, and
  - (b), (c) (Repealed)
  - (d) be made between noon on the day of nomination and 6 pm on the day preceding polling day to a pre-poll voting officer:
    - (i) at the office of a returning officer during the ordinary business hours of that office, or
    - (ii) at a place, and during hours, respectively appointed under subsection (6).
- (2A) The elector making an application under subsection (1) must inform the pre-poll voting officer to whom the application is made of:
  - (a) the district for which the elector is enrolled, and
  - (b) the ground on which the elector is making the application, and
  - (c) any matters prescribed by the regulations.
- (3) An elector must not in or in connection with an application under subsection (1) make any statement to a pre-poll voting officer that is, to the knowledge of the elector, false

or misleading as to a material particular.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

- (4) A person must not persuade or induce an elector to make any statement to a pre-poll voting officer in or in connection with an application under subsection (1) that is, to the knowledge of that person, false or misleading as to a material particular.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

- (5) A person shall not:

(a) persuade or induce, or

(b) associate with any other person in persuading or inducing,

an elector to make an application under subsection (1).

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

- (6) The Electoral Commissioner may appoint places and hours for the purposes of this section. Notice of any appointment under this subsection is to be published in the Gazette at a time determined by the Electoral Commissioner.

- (7) (Repealed)

**114Q Procedure for voting before polling day**

- (1) Where an application is made to a pre-poll voting officer in accordance with section 114P, he or she may, and, if requested to do so by any scrutineer, shall, put to the elector who made the application any of the questions prescribed by section 100 (1) which are applicable to the case, and, if the elector answers the questions satisfactorily or if no questions are put to the elector, the elector shall, after making a declaration in the prescribed form, be permitted to vote.
- (2) The form of declaration shall be either printed or written on an envelope and shall, after being filled in, be signed by the elector in the presence of the pre-poll voting officer who shall then witness the elector's signature.
- (3) Subject to subsection (4), the pre-poll voting officer shall then hand to the elector a ballot paper that is in or to the effect of the form prescribed in Schedule 4 or ballot papers one of which is in or to the effect of the form prescribed in Schedule 4 and the other of which is in or to the effect of the form prescribed in Schedule 4A, as the case may require, and on receiving any such ballot paper, the elector shall:
- (a) mark his or her vote on the ballot paper in accordance with the directions thereon in the view of the pre-poll voting officer but so that the pre-poll voting officer is unable to see what marks he or she makes on the ballot paper,

- (b) fold the ballot paper so that the marks made by him or her cannot be seen, and
  - (c) at once return the ballot paper so folded to the pre-poll voting officer.
- (4) Before handing a ballot paper for an election for the Assembly to the elector under subsection (3), the pre-poll voting officer shall:
- (a) if the particulars of the candidates are not already printed on it, enter on the ballot paper:
    - (i) the name of the electoral district for which the elector has declared that he or she is enrolled, and
    - (ii) the names of the candidates for that district in the order in which those names were drawn by ballot held pursuant to section 82A, and
    - (iii) if required by Division 6B, the names of registered parties or the word "Independent", and
  - (b) initial the front of the ballot paper.
- (4A) The pre-poll voting officer shall not, for the purposes of subsection (3), hand an elector a ballot paper for a periodic Council election on which particulars relating to the candidates are not already printed until the returning officer has been notified of those particulars in accordance with section 81H (4) (b) and has entered those particulars on the ballot papers in the manner specified in that notification.
- (5) On any such ballot paper being returned to him or her in accordance with subsection (3) (c), the pre-poll voting officer shall:
- (a) in the presence of the elector, enclose it in the envelope bearing the elector's declaration and securely fasten the envelope, and
  - (b) subject to section 114QA, retain the envelope and ballot paper until the close of the poll.
- (6) (Repealed)
- (7) An authorised witness shall not, in any way, influence or attempt to influence the vote of an elector voting under this section.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

**114QA Ballot papers etc forwarded to district for which elector enrolled**

If a ballot paper returned to a pre-poll voting officer for a district under section 114Q contains the vote of an elector enrolled for some other district, the returning officer for the first-mentioned district must deal with the ballot paper in the same manner as that in which the returning officer is required by section 116 to deal with an absent voter's ballot

paper.

**114R (Repealed)**

**114S Returning officer to notify polling place managers that elector has voted before polling day**

When an elector has voted in accordance with section 114Q, the returning officer shall, if certified copies of the roll have been furnished to the polling place managers responsible for the subdivision for which the elector is enrolled, immediately notify those polling place managers that the elector has voted and, on being so notified, each such polling place manager shall enter a note of that fact on the certified copies of the roll furnished to him or her, but if certified copies of the roll have not been so furnished, the returning officer shall enter such a note on the certified copies of the roll in his or her possession.

**114T Assistance to certain electors**

- (1) If an elector permitted to vote under section 114Q satisfies the pre-poll voting officer that the elector's sight is so impaired or that the elector is otherwise so physically incapacitated or so illiterate that the elector is unable to vote without assistance, the pre-poll voting officer shall permit a person appointed by the elector to assist the elector, and the person so appointed shall, in the same manner as would be required if he or she were the elector, mark a vote on the ballot paper according to the instructions of the elector and then fold and return the ballot paper to the pre-poll voting officer.
- (2) If any such elector fails to appoint a person as provided by subsection (1), the pre-poll voting officer, in the presence of such scrutineers as are present, or, if there are no scrutineers present, in the presence of any person employed in his or her office, shall, in the same manner as would be required if he or she were the elector, mark a vote on the ballot paper according to the instructions of the elector and then fold the ballot paper.

**114U Scrutineers**

- (1) A candidate may appoint one or more scrutineers in order to observe voting by electors under section 114Q.
- (2) Subject to subsection (3), a scrutineer so appointed is entitled to be present at any part of a place in which voting under section 114Q takes place, during the ordinary business hours of that place on that day.
- (3) If a scrutineer so appointed leaves that part of that place during the period he or she is entitled to be present, another scrutineer so appointed may act in his or her place, but only one scrutineer is entitled to be present at that part of that place in respect of a candidate at any one time.

(4) A scrutineer appointed under subsection (1) shall not:

- (a) fail or refuse to comply with any lawful direction given to him or her by the returning officer,
- (b) interfere with or attempt to influence an elector who is making an application under section 114P (1) or who is voting under section 114Q,
- (c) communicate with any such elector, except so far as it is necessary to do so in the discharge of his or her functions, or
- (d) misconduct himself or herself at a place when voting under section 114Q takes place at that place pursuant to subsection (2) or (3).

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

(5), (6) (Repealed)

**Note—**

Section 137 contains provisions relating to the appointment of and declarations by scrutineers.

**114V Penalty for unlawfully marking ballot paper**

A person shall not mark or attempt or purport to mark a vote on a ballot paper handed to an elector under section 114Q unless he or she:

- (a) is that elector, or
- (b) is a person appointed by that elector under section 114T (1) or is the pre-poll voting officer acting in accordance with section 114T (2).

Maximum penalty: 10 penalty units.

**114W Duty of persons present when elector votes under section 114Q**

A person who is present when an elector is attending a place at which voting under section 114Q takes place for the purpose of voting under that section shall not:

- (a) fail or refuse to comply with any lawful direction given to him or her by the pre-poll voting officer, or
- (b) except as provided in section 114T:
  - (i) communicate with the elector in relation to the marking of that elector's vote,
  - (ii) assist the elector or in any manner interfere with the elector in relation to the marking of that elector's vote, or
  - (iii) look at the elector's vote or do anything which may result in his or her obtaining knowledge of the elector's vote.

Maximum penalty: 10 penalty units.

**114X Preliminary scrutiny of ballot papers of electors under section 114Q**

- (1) At the scrutiny the returning officer shall produce unopened all envelopes containing ballot papers marked by electors who have voted under section 114Q.
- (2) The returning officer must allow the scrutineers to examine the unopened envelopes and if the returning officer is satisfied that:
  - (a) the signature purports to have been witnessed, and
  - (b) the elector is enrolled for the district for which the returning officer is appointed, he or she shall remove the ballot paper from the envelope and, without unfolding the ballot paper or allowing any other person to do so, place the ballot paper in a locked and sealed ballot box for further scrutiny, together with any other ballot papers accepted for further scrutiny under this subsection, but if he or she is not so satisfied he or she shall disallow the ballot paper without opening the envelope.
- (3) After dealing with all envelopes and ballot papers in the manner prescribed by subsection (2), the returning officer shall proceed with the scrutiny of the ballot papers which have been accepted for further scrutiny by removing them from the ballot box in which they were placed in accordance with subsection (2) and:
  - (a) by opening any of those ballot papers relating to an election for the Assembly and allowing and counting those which are formal and disallowing and rejecting those which, by virtue of section 122, are informal, and
  - (b) by opening any of those ballot papers relating to a periodic Council election and counting the votes recorded for each candidate.
- (4) This section is subject to section 114QA.

**114Y Spoilt ballot papers**

If any elector voting under section 114Q satisfies the pre-poll voting officer that he or she has spoilt the ballot paper handed to him or her under that section by reason of accident or mistake, and that ballot paper has not been enclosed in an envelope in accordance with subsection (5) of that section, the pre-poll voting officer, on receipt of the spoilt ballot paper, shall:

- (a) hand to the elector a new ballot paper, and
- (b) cancel and preserve the spoilt ballot paper.

**114Z Assistance for pre-poll voting officer**

A pre-poll voting officer may be assisted by other election officials in the exercise of his or



her functions under sections 114P, 114Q, 114QA, 114T, 114V, 114W (a) and 114Y, and a reference in those sections to a pre-poll voting officer includes a reference to other election officials so assisting him or her.

## **Division 11 Voting by post (interstate and overseas)**

### **114ZA Application for a postal vote certificate and postal ballot paper**

- (1) An elector who will not throughout the hours of polling on polling day be within New South Wales may make an application to a postal voting officer for a postal vote certificate and a postal ballot paper.
- (2) An application under subsection (1) shall:
  - (a) be in or to the effect of the prescribed form,
  - (b) be signed by the elector,
  - (c) be witnessed by an authorised witness, and
  - (d) subject to section 114ZB (3), be made before the close of business on:
    - (i) in the case of an application made to a place within Australia—the day preceding polling day, or
    - (ii) in the case of an application made to a place outside Australia—the second day preceding polling day.
- (3) An elector shall not in an application under subsection (1) make any statement which is, to his or her knowledge, false or misleading as to a material particular.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.
- (4) A person shall not persuade or induce an elector to make any statement in an application under subsection (1) which is, to the knowledge of that person, false or misleading as to a material particular.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.
- (5) A person shall not:
  - (a) persuade or induce, or
  - (b) associate with any other person in persuading or inducing,an elector to make an application under subsection (1).

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.
- (6) An authorised witness shall not witness the signature of an elector to an application under subsection (1) unless:

- (a) he or she has satisfied himself or herself as to the identity of the elector,
- (b) he or she has seen the elector sign the application, and
- (c) he or she knows that the statements contained in the application are true, or has satisfied himself or herself by inquiring from the elector or otherwise that the statements contained in the application are true.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

- (7) An authorised witness witnessing the signature of an elector making an application under subsection (1) shall sign his or her name in his or her own handwriting on the application in the space provided for that purpose, and shall add his or her address and the date.

**114ZB Procedure for polling before polling day**

- (1) Where a postal voting officer receives an application made in accordance with section 114ZA, he or she shall deliver or post to the elector who made the application:
  - (a) a postal ballot paper that is in or to the effect of the form prescribed in Schedule 4 or postal ballot papers one of which is in or to the effect of the form prescribed in Schedule 4 and the other of which is in or to the effect of the form prescribed in Schedule 4A, as the case may require, and
  - (b) an envelope bearing:
    - (i) the address of the postal voting officer, and
    - (ii) a postal vote certificate that is in or to the effect of the prescribed form.
- (2) Before delivering or posting a ballot paper for an election for the Assembly under subsection (1), the postal voting officer shall, if the particulars of the candidates are not already printed thereon, enter on the ballot paper:
  - (a) the name of the electoral district for which the elector has declared that he or she is enrolled, and
  - (b) the names of the candidates for that district in the order in which those names were drawn by ballot held pursuant to section 82A, and
  - (c) if required by Division 6B, the names of registered parties or the word "Independent".
- (2A) The returning officer shall not, under subsection (1), deliver or post a ballot paper for a periodic Council election on which particulars relating to the candidates are not already printed, until he or she has been notified of those particulars in accordance with section 81H (4) (b) and has entered those particulars on the ballot paper in the manner specified in that notification.

- (3) Notwithstanding anything in this Division an elector who has made an application under section 114ZA (1) shall, notwithstanding that the application complies with section 114ZA (2), not be entitled to be sent by post a postal ballot paper and postal vote certificate unless the postal voting officer received the application before the close of business on the same date as the third day preceding polling day.
- (4) Notwithstanding anything in this Division, an elector who has made an application under section 114ZA (1) to a postal voting officer at a place outside Australia shall, notwithstanding that the application complies with section 114ZA (2), not be entitled to be sent by post a postal ballot paper and postal vote certificate if the address to which they are to be sent is within New South Wales.

**114ZC Postal ballot papers to be initialled**

No ballot paper is to be issued to any voter without being first initialled by the postal voting officer on the front of the ballot paper, and an exact count must be kept of all initialled postal ballot papers.

**114ZD Directions for postal voting**

The following directions for regulating voting by means of postal ballot papers are to be substantially observed:

- (a) The elector shall exhibit his or her postal ballot paper (in blank) and his or her postal vote certificate to an authorised witness.
- (b) The elector shall then and there, in the presence of the authorised witness, sign his or her name on the postal vote certificate in the place provided for the signature of the voter and insert the date in the place provided for the date.
- (c) The authorised witness shall then and there sign his or her name in his or her own handwriting on the postal vote certificate in the place provided for the signature of the authorised witness, and shall add the title under which he or she acts as an authorised witness and the date.
- (d) The elector shall then and there in the presence of the authorised witness, but so that the authorised witness cannot see the vote:
  - (i) mark his or her vote on the ballot paper in the manner directed on the ballot paper,
  - (ii) fold the ballot paper so that the vote cannot be seen, and
  - (iii) place the ballot paper in the envelope addressed to the postal voting officer and fasten the envelope.
- (e) After the envelope has been fastened, the elector shall forthwith post or deliver it or cause it to be posted or delivered to the postal voting officer.

- (f) If the elector's sight is so impaired, or the elector is otherwise so physically incapacitated or so illiterate, that he or she cannot vote without assistance, a person appointed by the elector shall mark the elector's vote on the ballot paper in the presence of the authorised witness, and shall then and there fold the ballot paper so that the vote cannot be seen, place it in the envelope addressed to the postal voting officer, fasten the envelope, and hand it to the elector who shall forthwith post or deliver it or cause it to be posted or delivered to the postal voting officer.
- (g) If the elector fails to appoint a person as provided by paragraph (f), the authorised witness, if so requested by the elector, shall take the action required by that paragraph, and in taking that action shall mark the ballot paper according to the instructions of the elector.

**114ZE Applications etc to be sent to Electoral Commissioner and returning officer**

- (1) Each application for a postal ballot paper and postal vote certificate received by a postal voting officer shall:
  - (a) if a ballot paper and certificate were issued in pursuance of the application—be endorsed by him or her with the date of issue thereof and sent by him or her to the Electoral Commissioner as soon as practicable but not later than polling day, or
  - (b) if a ballot paper and certificate were not so issued—be endorsed by him or her to that effect and sent by him or her to the Electoral Commissioner as soon as practicable.
- (2) The postal voting officer shall, forthwith after receiving a completed postal ballot paper and postal vote certificate, send them to the Electoral Commissioner.
- (3) When an application and the corresponding ballot paper and certificate are received by the Electoral Commissioner after being sent under this section, the Commissioner shall send them to the returning officer for the electoral district for which the elector has declared that he or she is enrolled.

**114ZF Returning officer to note issue of ballot papers etc**

- (1) The returning officer for the district in which the applicants for postal vote certificates and postal ballot papers claim to be enrolled shall, if there is time conveniently to do so, note on the certified copies of the roll the names of all electors to whom postal ballot papers and postal vote certificates have been issued.
- (2) An elector to whom a postal vote certificate has been issued shall not be entitled to vote at any polling booth unless he or she first delivers to the polling place manager or election official assigned by the polling place manager for cancellation his or her postal ballot paper and postal vote certificate.

### **114ZG Scrutiny of postal ballot papers**

- (1) At the scrutiny the returning officer or election official assisting him or her shall produce all applications for postal vote certificates and postal ballot papers received by him or her, and shall produce unopened all envelopes containing postal votes received by him or her up to 6 pm on the fourth day immediately succeeding the close of the poll, and shall:
  - (a) compare the signature of the elector on each postal vote certificate with the signature of the same elector on the application for the certificate, and allow the scrutineers to inspect both signatures,
  - (b) if he or she is satisfied that:
    - (i) the signature on the certificate is that of the elector who signed the application for the certificate,
    - (ii) the signature purports to have been witnessed by an authorised witness,
    - (iii) in the case of a certificate that was delivered, the certificate was delivered before the close of the poll,
    - (iv) in the case of a certificate that was posted, the certificate was completed before the close of the poll, and
    - (v) the elector is enrolled for the district for which he or she claimed to be enrolled,accept the ballot paper for further scrutiny, but if he or she is not so satisfied, disallow the ballot paper without opening the envelope,
  - (c) withdraw from the envelopes bearing the postal vote certificates all postal ballot papers accepted for further scrutiny, and, without inspecting or unfolding the ballot papers or allowing any other person to do so, place them in a sealed ballot box by themselves for further scrutiny, and
  - (d) proceed with the scrutiny of the postal ballot papers which have been accepted for further scrutiny by removing them from the ballot box in which they were placed in accordance with paragraph (c) and:
    - (i) by opening any of those ballot papers relating to an election for the Assembly and allowing and counting those which are formal and disallowing and rejecting those which, by virtue of section 122, are informal, and
    - (ii) by opening any of those ballot papers relating to a periodic Council election and counting the votes recorded for each candidate.
  - (e) (Repealed)

(2)-(4) (Repealed)

**114ZH Postal ballot paper not to be informal because of certain omissions or mistakes**

A postal ballot paper shall not be informal because in the case of any candidate his or her surname only has been written thereon if no other candidate has the same surname, or by reason of any mistake in spelling, if the elector has made clear his or her intention.

**114ZI Spoilt postal ballot paper**

- (1) If an elector to whom a postal ballot paper has been issued, satisfies the postal voting officer who issued it that he or she has spoilt his or her postal ballot paper by mistake or accident, he or she may, on giving it up, receive a new postal ballot paper from the postal voting officer, who shall cancel the spoilt ballot paper.
- (2) The postal voting officer shall send the cancelled ballot paper forthwith to the Electoral Commissioner, who shall send it to the returning officer.

**114ZJ Applications to be available for public inspection**

The returning officer shall retain every application sent to him or her under section 114ZE (3) or 114ZG (4) until the election can no longer be questioned and shall, on being requested to do so by any person attending his or her office at any time during the ordinary business hours of that office from and including the third day after polling day or after being received (whichever is the later) until the election can no longer be questioned, make any such application available for inspection by that person.

**114ZK Assistance for postal voting officer**

A postal voting officer may be assisted by assistants appointed under section 21AK in the exercise of his or her functions under this Division, and a reference in this Division to a postal voting officer includes a reference to assistants so assisting him or her.

**114ZL Application of this Division**

Nothing in this Division applies to or in respect of a postal vote certificate or a postal ballot paper, or an application therefor, under Division 9.

**Division 11A Pre-poll voting (declared institutions)**

**114ZM Definition**

In this Division, except in so far as the context or subject-matter otherwise indicates or requires, **declared institution** means an institution for the time being declared under section 114ZN to be a declared institution for the purposes of this Division.

**114ZN Declared institutions**

- (1) The Electoral Commissioner may declare an institution, being a convalescent home,

hospital or similar institution in which a polling place has not been appointed, to be a declared institution for the purposes of this Division.

- (2) Notice of any declaration under this section is to be published in the Gazette at a time determined by the Electoral Commissioner.

**114ZO Taking of poll at declared institutions**

- (1) The returning officer for a district in which a declared institution is situated may assign at least two 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 preceding polling day, enter into and remain in the institution for the purpose of taking the poll at the institution.
- (3) Both or at least two of the pre-poll voting officers must be present for the taking of the poll at the institution.
- (4) A person must not hinder or obstruct a pre-poll voting officer or scrutineer in the exercise of his or her functions in relation to voting under this Division.

Maximum penalty (subsection (4)): 2 penalty units.

**114ZP Entitlement to vote at declared institution**

- (1) An elector who:
  - (a) is, for the time being, an inpatient or inmate of a declared institution, and
  - (b) has, by message to the returning officer for the district 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 Division 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 Division 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 an inpatient or inmate, his or her postal vote certificate and postal ballot paper.

**114ZQ Duty to deliver request to vote**

A person to whom any message referred to in section 114ZP (1) (b) is given for delivery to a pre-poll voting officer shall, 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 an inpatient or inmate.

Maximum penalty: 0.5 penalty unit.

**114ZR Procedure for voting at declared institutions**

- (1) The pre-poll voting officers shall afford an elector entitled to vote under this Division 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, an inpatient or inmate.
- (2) A visit to an elector shall not be made under this section 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, an inpatient or inmate, that the visit is forbidden, on medical grounds, by a legally qualified medical practitioner.
- (3) A pre-poll voting officer may, and, if requested to do so by any scrutineer, shall, put to an elector visited by him or her under this Division any of the questions prescribed by section 100 (1) which are applicable to the case and, if the elector answers the questions satisfactorily or if no questions are put to the elector, the elector shall, after making a declaration in the prescribed form, be permitted to vote.
- (4) The form of the declaration referred to in subsection (3) shall be either printed or written on an envelope and shall, after being filled in, be signed by the elector in the presence of a pre-poll voting officer who shall then witness the elector's signature.
- (5) Subject to subsections (6) and (6A), a pre-poll voting officer shall, after a declaration has been made by an elector in the form prescribed for the purposes of subsection (3), hand to the elector a ballot paper that is in or to the effect of the form prescribed in Schedule 4 or ballot papers, one of which is in or to the effect of the form prescribed in Schedule 4 and the other of which is in or to the effect of the form prescribed in Schedule 4A, as the case may require, and on receiving any such ballot paper, the elector shall:
  - (a) mark his or her vote on the ballot paper in accordance with the directions thereon in the view of the pre-poll voting officer but so that the pre-poll voting officer is unable to see what marks he or she makes on the ballot paper,
  - (b) fold the ballot paper so that the marks made by him or her cannot be seen, and
  - (c) at once return the ballot paper so folded to the pre-poll voting officer.
- (6) Before handing a ballot paper for an election for the Assembly to the elector under subsection (5), a pre-poll voting officer shall:
  - (a) if the particulars of the candidates are not already printed on it, enter on the ballot paper:
    - (i) the name of the electoral district for which the elector has declared that he or she is enrolled, and



- (ii) the names of the candidates for that district in the order in which those names were drawn by ballot held pursuant to section 82A, and
    - (iii) if required by Division 6B, the names of registered parties or the word “Independent”, and
  - (b) initial the front of the ballot paper.
- (6A) The following provisions have effect for the purpose of enabling electors engaging in pre-poll voting at a declared institution to peruse registered “how to vote” electoral material:
- (a) When or immediately after handing a ballot paper for an election to an elector under subsection (5) and before the elector marks the ballot paper, the pre-poll voting officer must:
    - (i) ask the elector if the elector wishes to view any “how to vote” electoral material applicable to the election, and
    - (ii) if the elector gives a positive response, permit the elector to peruse:
      - (A) a folder of relevant electoral material relating to the election of a member of the Assembly for the district concerned, and
      - (B) a separate folder of relevant electoral material relating to the periodic Council election, if such an election is being held,being a folder or folders and electoral material that comply with this subsection, and
    - (iii) provide the elector with assistance, as far as practicable, in locating particular electoral material in a folder, if the elector requests assistance for that purpose.
  - (b) The electoral material relating to candidates must be arranged in a folder in the order in which their names appear on the ballot paper.
  - (c) The pre-poll voting officer must ensure that:
    - (i) a folder and any material in the folder are used only for the purposes of perusal by electors voting at the declared institution and of inspection by scrutineers at the declared institution, and
    - (ii) the folder is returned to the officer together with the ballot paper, and
    - (iii) no material in the folder is copied in any way at the declared institution, other than on the ballot paper itself.
  - (d) Electoral material relating to a candidate must not be made available for perusal

under this subsection unless:

- (i) the material was registered under section 151G for the election and for the district concerned, and
- (ii) the application for registration of the material under that section indicated that it should be available for perusal under this subsection, and
- (iii) the electoral material complies with the requirements (if any) regarding the size and shape of the electoral material prescribed by the regulations or, if the regulations do not prescribe any such requirements, determined by the Electoral Commissioner, and
- (iv) any additional requirements prescribed by the regulations are satisfied.

(6B) Subsection (6A) does not have effect in relation to a declared institution if no relevant electoral material is available for perusal at the institution.

(7) A pre-poll voting officer shall not, for the purposes of subsection (5), hand an elector a ballot paper for a periodic Council election on which particulars relating to the candidates are not already printed until the returning officer has been notified of those particulars in accordance with section 81H (4) and has entered those particulars on the ballot paper in the manner specified in that notification.

(8) On any such ballot paper being returned to him or her in accordance with subsection (5) (c), the pre-poll voting officer shall:

(a) in the presence of the elector, enclose it in the envelope bearing the elector's declaration and securely fasten the envelope, and

(b) in the case of:

- (i) the returning officer—retain the envelope and ballot paper until the close of the poll, or
- (ii) another election official—as soon as practicable forward the ballot paper to the returning officer who shall deal with it in the manner provided in subsection (10).

(9) When an elector has voted under this section, a pre-poll voting officer shall record the fact that the elector has voted and the date of the vote.

(10) As soon as practicable after the receipt by a returning officer of a ballot paper under subsection (5) or (8), the returning officer shall:

(a) if the ballot paper contains the vote of an elector enrolled for the district for which he or she is the returning officer and:

- (i) if certified copies of the roll have been furnished to the polling place managers

responsible for the district for which the elector is enrolled, immediately notify those polling place managers that the elector has voted, or

(ii) if certified copies of the roll have not been so furnished, enter a note of the fact that the elector has voted on the certified copies of the roll in his or her possession, or

(b) if the ballot paper contains the vote of an elector enrolled for a district not referred to in paragraph (a)—deal with the ballot paper in the same manner as that in which he or she is required by section 116 to deal with an absent voter's ballot paper.

(11) A polling place manager, on being notified, under subsection (10) (a) (i), that an elector has voted, shall enter a note of that fact on the certified copies of the roll furnished to him or her.

#### **114ZS Assistance to certain electors**

(1) If an elector permitted to vote under section 114ZR satisfies a pre-poll voting officer:

(a) that his or her sight is so impaired or that he or she is so physically incapacitated that he or she is unable to vote without assistance, or

(b) that:

(i) the day upon which the pre-poll voting officer visits the elector for the purpose of taking the poll at the declared institution of which the elector is an inpatient or inmate is a day on which occurs a Jewish fast or festival, and

(ii) the elector is of Jewish persuasion,

the pre-poll voting officer shall permit a person appointed by the elector to assist the elector and the person so appointed shall, in the same manner as would be required if he or she were the elector, after making a declaration referred to in section 114ZR (3), mark a vote on the ballot paper according to the instructions of the elector and then fold and return the ballot paper to the pre-poll voting officer.

(2) If any such elector fails to appoint a person as provided by subsection (1) or satisfies the pre-poll voting officer that he or she is so illiterate that he or she is unable to vote without assistance, the pre-poll voting officer, in the presence of such scrutineers as are present, shall, in the same manner as would be required if he or she were the elector, after making a declaration referred to in section 114ZR (3), mark a vote on the ballot paper according to the instructions of the elector and then fold the ballot paper.

(3) The signature of an elector provided for in a declaration referred to in section 114ZR (3) may be made by a person who, pursuant to subsection (1) or (2), makes the declaration.

### **114ZT Scrutineers**

- (1) A candidate may appoint one or more scrutineers in order to observe voting by electors under this Division.
- (2) Subject to subsection (3), a scrutineer so appointed is entitled to accompany the pre-poll voting officers while they are performing their duties at a declared institution.
- (3) If a scrutineer so appointed leaves the company of the pre-poll voting officers while they are performing their duties at a declared institution, another scrutineer so appointed may act in his or her place, but only one scrutineer is entitled, at any one time in respect of any one candidate, to accompany the pre-poll voting officers while they are performing their duties at a declared institution.
- (4) A scrutineer appointed under subsection (1) shall not:
  - (a) fail or refuse to comply with any lawful direction given to him or her by a pre-poll voting officer on a visit, under this Division, to an elector,
  - (b) interfere with or attempt to influence an elector who is voting under this Division,
  - (c) communicate with any such elector, except so far as it is necessary to do so in the discharge of his or her functions, or
  - (d) misconduct himself or herself when accompanying a pre-poll voting officer on a visit, under this Division, to an elector.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

(5)–(7) (Repealed)

#### **Note—**

Section 137 contains provisions relating to the appointment of and declarations by scrutineers.

### **114ZU Penalty for unlawfully marking ballot paper etc**

A person shall not mark or attempt or purport to mark a vote on a ballot paper handed to an elector under section 114ZR or 114ZX unless he or she:

- (a) is that elector, or
- (b) is a person appointed by that elector under section 114ZS (1) or is a pre-poll voting officer acting in accordance with section 114ZS (2).

Maximum penalty: 10 penalty units.

### **114ZV Duty of persons present when elector votes under this Division**

A person who is present when an elector is visited by a pre-poll voting officer for the

purpose of voting under this Division shall not:

- (a) fail or refuse to comply with any lawful direction given to him or her by the pre-poll voting officer, or
- (b) except as provided in section 114ZS:
  - (i) communicate with the elector in relation to the marking of that elector's vote,
  - (ii) assist the elector or in any manner interfere with the elector in relation to the marking of that elector's vote, or
  - (iii) look at the elector's vote or do anything which may result in his or her obtaining knowledge of the elector's vote.

Maximum penalty: 10 penalty units.

**114ZW Preliminary scrutiny of ballot papers of certain electors under this Division**

- (1) At the scrutiny the returning officer shall produce unopened all envelopes containing ballot papers marked by electors who have voted under this Division, being ballot papers of persons claiming to be enrolled for a subdivision of the district for which he or she is the returning officer.
- (2) If the returning officer is satisfied that the elector is enrolled for the district for which the returning officer is appointed, he or she shall remove the ballot paper from the envelope and, without unfolding the ballot paper or allowing any other person to do so, place the ballot paper in a sealed ballot box for further scrutiny, together with any other ballot papers accepted for further scrutiny under this subsection, but if he or she is not so satisfied he or she shall disallow the ballot paper without opening the envelope.
- (3) After dealing with all envelopes and ballot papers in the manner prescribed by subsection (2), the returning officer shall proceed with the scrutiny of the ballot papers which have been accepted for further scrutiny by removing them from the ballot box in which they were placed in accordance with subsection (2) and:
  - (a) by opening any of those ballot papers relating to an election for the Assembly and allowing and counting those which are formal and disallowing and rejecting those which, by virtue of section 122, are informal, and
  - (b) by opening any of those ballot papers relating to a periodic Council election and counting the votes recorded for each candidate.

**114ZX Spoilt ballot papers**

If any elector voting under this Division satisfies a pre-poll voting officer who takes the poll at the institution in which the elector is resident that he or she has spoilt the ballot paper

handed to him or her under section 114ZR (5) by reason of accident or mistake, and that ballot paper has not been enclosed in an envelope in accordance with section 114ZR (8), the pre-poll voting officer on receipt of the spoilt ballot paper, shall:

- (a) hand to the elector a new ballot paper, and
- (b) cancel and preserve the spoilt ballot paper.

#### **114ZY Assistance for pre-poll voting officer**

A pre-poll voting officer may be assisted by other election officials in the exercise of his or her functions under this Division, and a reference in this Division to a pre-poll voting officer includes a reference to other election officials so assisting him or her.

### **Division 12 Absent voters**

#### **115 Voting outside electoral district**

- (1) An elector who on polling day is absent from the electoral district for which he or she is enrolled may, subject to the following provisions, vote at any polling place in any other electoral district, being a polling place open for polling on that day:
  - (a) The elector must state his or her name, and place of residence in the electoral district in which he or she claims to be enrolled, together with his or her date of birth.
  - (b) An election official may, if he or she thinks fit, and at the request of any scrutineer shall put to the elector any of the questions prescribed by section 100 which are applicable to the case.
  - (c) If the elector answers the questions satisfactorily, or if no questions are put to him or her, he or she may be allowed to vote as an absent voter upon making a declaration in the prescribed form.
  - (d) The form of declaration may be printed or written on an envelope addressed to the returning officer for the district for which the elector is enrolled, and must, after being filled in, be signed by the elector in his or her own handwriting in the presence of the election official, who shall then attest the signature of the elector.
  - (e) After the declaration has been made, the election official shall hand to the elector a ballot paper which shall be in or to the effect of the form prescribed in Schedule 4 or ballot papers one of which is in or to the effect of the form prescribed in Schedule 4 and the other of which is in or to the effect of the form prescribed in Schedule 4A, as the case may require. Before handing a ballot paper to the elector the election official shall, if the particulars are not already printed thereon, insert on the ballot paper, if it relates to an election for the Assembly, the name of the electoral district and the names of all the candidates for that district in the order in

which those names were drawn by ballot held pursuant to section 82A or, if it relates to a periodic Council election, the particulars relating to the candidates for that election in the manner prescribed by section 83B. Each ballot paper shall be initialled on the front by the election official.

- (f) (Repealed)
  - (g) The elector, after receiving a ballot paper, shall without delay retire alone into an unoccupied compartment of the polling booth, and there in private mark his or her vote on the ballot paper in the manner directed on the ballot paper and shall then fold the ballot paper so that the vote cannot be seen, and at once return the ballot paper so folded to the election official before whom he or she made the declaration, and shall again state his or her name if so required by the election official.
  - (h) The election official shall then, in the presence of the elector, forthwith enclose the ballot paper in the envelope bearing the declaration of the elector and securely fasten the envelope.
- (2) If the election official is unable to supply the elector with a printed or a partly printed and partly written ballot paper in or to the effect of the prescribed form, he or she shall, after the declaration has been made by the elector pursuant to subsection (1) (d), supply to the elector a paper which is initialled by the election official on the front and on which is written:
- (a) where the paper is supplied for the purpose of an election for the Assembly, the words “Legislative Assembly Election” and:
    - (i) the name of the electoral district,
    - (ii) the names of the candidates in the order in which those names were drawn by ballot held pursuant to section 82A, and
    - (iia) if required by Division 6B, the names of registered parties or the word “Independent”, and
    - (iii) the directions as to the method of voting set out in Schedule 4, and
  - (b) where the paper is supplied for the purpose of a periodic Council election, the words “Legislative Council Election” and:
    - (i) the name of the electoral district,
    - (ii) particulars relating to the candidates for that election in the manner prescribed by section 83B, and
    - (iii) the directions as to the method of voting set out in Schedule 4A.

(2A) On receiving any such paper, the elector shall:

- (a) retire alone into an unoccupied compartment of the polling booth and there in private record his or her vote in the manner directed on the paper,
- (b) fold the paper so that the vote so recorded cannot be seen, and
- (c) at once return the paper so folded to the election official.

(2B) Any such paper shall, on being supplied to an elector, be deemed to be a ballot paper.

(3) If any person makes any such declaration knowing that the same is untrue in any material particular he or she shall be liable to a penalty not exceeding 10 penalty units or to imprisonment for a period not exceeding 6 months, or both.

#### **116 Forwarding of absent voters' ballot papers**

- (1) Every absent voter's ballot paper containing a vote shall be promptly delivered by the returning officer or a person authorised in that behalf by him or her or forwarded under registered cover where practicable to the returning officer for the district for which the voter declares that he or she is enrolled.
- (2) Immediately after the close of the poll, the returning officer or another election official is, in writing (including, without limitation, by facsimile transmission, email or other electronic means), to send to each returning officer to whom envelopes containing absent voters' ballot papers have been forwarded under subsection (1), advice of the number of envelopes so forwarded.

#### **117 Returning officer satisfied to accept ballot paper for further scrutiny**

- (1) The returning officer for the district for which the voter declares that the voter is enrolled or the election official assisting the returning officer shall, in the presence of the scrutineers, examine the declaration on the envelope containing the absent voter's ballot paper, and if it appears to the returning officer:
  - (a) that a person of the same name and description as the person whose name is signed to the declaration is enrolled for the district and that the declaration is duly attested, shall accept the ballot paper for further scrutiny, or
  - (b) that the person whose name is signed to the declaration is enrolled for some other district than that for which the person declared he or she is enrolled, shall arrange for the envelope to be promptly delivered to the returning officer for the district for which the person is enrolled to be dealt with in the manner set out in subsection (4),but otherwise shall reject the ballot paper without opening the envelope.



- (2) Notwithstanding subsections (1) and (4), an absent voter's ballot paper shall not be rejected for further scrutiny only because the voter's declaration is not attested if, before the declaration of the poll, the returning officer for the district in which the declaration was made has in accordance with section 116 (2) sent advice in writing to the returning officer for the district for which the voter declares that he or she is enrolled that an envelope containing the absent voter's ballot paper has been forwarded in accordance with section 116 (1).
- (3) If the returning officer or election official assisting him or her accepts the ballot paper for further scrutiny, he or she shall open the envelope without destroying the declaration and extract the ballot paper, and without unfolding it, place the ballot paper in the ballot box.
- (4) The returning officer for a district to whom an envelope is forwarded under subsection (1) (b) or election official assisting the returning officer shall, if the person whose name is signed to the declaration on the envelope is enrolled for the district and the declaration is duly attested, open the envelope and withdraw any ballot paper contained in the envelope and, without, as far as practicable, inspecting or unfolding the ballot paper or allowing any other person to do so:
  - (a) in the case of any ballot paper for a periodic Council election, shall accept the ballot paper for further scrutiny and place it in the ballot box, and
  - (b) in the case of any ballot paper for an Assembly election, shall disallow the ballot paper,but otherwise shall reject the ballot paper without opening the envelope.

### **118 Further scrutiny**

- (1) When the absent voters' ballot papers have been dealt with as above directed, the returning officer or the election official assisting him or her shall open and proceed with the scrutiny of the absent voters' ballot papers which have been accepted for further scrutiny by removing them from the ballot box in which they were placed in accordance with section 117 and:
  - (a) by opening any of those ballot papers relating to an election for the Assembly and allowing and counting those which are formal and disallowing and rejecting those which, by virtue of section 122, are informal, and
  - (b) by opening any of those ballot papers relating to a periodic Council election and counting the votes recorded for each candidate.
- (2), (3) (Repealed)

### **119 Decision of returning officer re validity of ballot paper**

In relation to an election for the Assembly, the decision of the returning officer as to the

allowance or disallowance or the acceptance or rejection of:

- (a) the ballot paper of an absent voter,
- (b) the ballot paper of an elector who has voted by post,
- (c) the ballot paper of an elector who has voted before polling day, or
- (d) any ballot paper to which section 106 applies,

shall, subject to review by the Court of Disputed Returns when hearing a petition in accordance with Part 6, be final.

### **120 Exercise of functions of election officials under this Division by election assistants**

A function expressed to be conferred or imposed on an election official by this Division may be exercised by an election assistant only if the election assistant has been assigned to exercise the function by the returning officer or polling place manager.

## **Division 13 Compulsory voting**

### **120A (Repealed)**

### **120B Electoral Commissioner to prepare list of electors failing to vote**

The Electoral Commissioner must after every election prepare a list of the names of the electors who were entitled to vote at the election and did not vote.

### **120C Penalty notices for certain offences**

- (1) If an elector is indicated on a list prepared under section 120B as not having voted at an election, the Electoral Commissioner shall, within 3 months after the close of the poll, serve a penalty notice on the elector by leaving it at, or sending it by post to, the residence of the elector set out on the roll used at the election.
- (2) A penalty notice is a notice in the prescribed form to the effect that, if the elector does not desire to have the failure to vote dealt with by a court, he or she may, within the prescribed time:
  - (a) give the Electoral Commissioner a sufficient reason for the failure, or
  - (b) pay to the Electoral Commissioner a penalty, specified in the notice, not exceeding \$25.
- (3) The Electoral Commissioner is not required to serve a penalty notice on an elector if it appears to the Commissioner that the elector has a sufficient reason for the failure to vote.
- (4) If, in response to a penalty notice and within the time prescribed for the response:

- (a) the Electoral Commissioner is given a sufficient reason for the failure to vote, or
  - (b) the penalty specified in the notice is paid to the Electoral Commissioner,
- proceedings against any person for the failure to vote are prohibited.
- (5) If, in response to a penalty notice, the Electoral Commissioner is given a reason for the failure to vote but the reason is not a sufficient reason, the Electoral Commissioner shall include a statement to that effect in any penalty reminder notice served under the *Fines Act 1996*.
- (6) For the purposes of this section, it is a sufficient reason for the failure of an elector to vote at an election if the Electoral Commissioner is satisfied that he or she:
- (a) is dead,
  - (b) was absent from New South Wales on polling day,
  - (c) was ineligible to vote at the election,
  - (d) had an honest belief that abstention from voting was part of his or her religious duty, or
  - (e) was unable for any reason acceptable to the Electoral Commissioner to vote at the election.
- (7) In this section, a reference to the prescribed time for a response to a penalty notice is a reference to:
- (a) the time for response specified in the notice, or
  - (b) if the Electoral Commissioner extends that time (whether before or after its expiration)—the extended time.

**120D Notation on list of non-voters of response to penalty notice**

The Electoral Commissioner shall note on the list prepared under section 120B in relation to each elector on whom a penalty notice is served:

- (a) whether or not there has been a response to the notice, and
- (b) if there has been a response—whether or not a sufficient reason has been given or the penalty paid.

**120E List to be evidence**

- (1) An entry on the list prepared under section 120B to the effect:
- (a) that an elector was served with a penalty notice—is evidence of service of the notice,

- (b) that there was no response to a penalty notice served on an elector—is evidence that there was no such response within the prescribed time under section 120C, or
- (c) that a reason for an elector’s failure to vote was given in response to a penalty notice but was insufficient—is evidence that the reason given was not a sufficient reason under section 120C.

- (1A) The list prepared under section 120B containing the name of an elector is evidence that the elector did not vote at the election.
- (2) Subsections (1) and (1A) apply in relation to a copy of, or an extract from, the list prepared under section 120B certified by the Electoral Commissioner to be such a copy or extract in the same way as it applies in relation to the list prepared under section 120B.

#### **120F Offences relating to failure to vote**

- (1) An elector who fails to record his or her vote at an election when required to do so is guilty of an offence and liable to a penalty not exceeding 0.5 penalty unit.
- (2) A person (whether or not an elector) who, in response to a penalty notice, gives a false reason for the failure of an elector to vote is guilty of an offence and liable to a penalty not exceeding 0.5 penalty unit.
- (3) In this section, **elector** does not include:
  - (a) an Antarctic elector,
  - (b) an eligible overseas elector, or
  - (c) an itinerant elector.

#### **120G Opening sealed parcels containing rolls and list used at election**

For the purposes of this Act the Electoral Commissioner at any election:

- (a) with such assistance as he or she may deem necessary shall open and if necessary break the seal of any parcel containing the rolls used at the election, and examine the same for the purpose of indicating on the list being prepared under section 120B the names of the electors who have not voted at the election, and
- (b) at the conclusion of the said examination shall replace such rolls in the parcels from which they were taken, and re-seal the same, and then comply with the provisions of section 127 or 129H, as the case may require.

#### **120H (Repealed)**

### **Division 13A Concurrent Assembly and periodic Council elections**

**120I Issue of writs and nomination day for concurrent Assembly and periodic Council elections**

Writs for elections that, by section 22A (3) of the *Constitution Act 1902*, are required to name the same day as the day for the taking of the poll at those elections shall be issued on the same day and shall name the same day as the day of nomination for each of those elections.

**120J Additional provisions applicable where polling day for Assembly and periodic Council elections is same day**

Where:

- (a) a poll for an election for a district and a poll for a periodic Council election are required by law to take place on the same day, or
- (b) the day for the taking of the adjourned poll at any place for an election for a district and the day for the taking of the adjourned poll at that place for a periodic Council election are required by section 130 (4) to be the same day,

then:

- (c) an application for a postal vote certificate and postal ballot paper or an application or request to vote before polling day made in respect of one of the elections is a corresponding application or request, as the case may require, in respect of the other election,
- (d) a declaration or certificate which enables an elector to vote under any provision of this Act at one of the elections enables him or her to vote under the corresponding provision at the other election,
- (e) the answers by a person claiming to vote at either election, put to him or her pursuant to this Act, may be accepted as sufficient to enable him or her to vote at the other election if they are satisfactory as regards the election in respect of which they were put,
- (f) the ballot papers used for one of the elections shall be of a different colour from those used for the other election,
- (g) where the name of any candidate for one of the elections is similar to the name of any candidate for the other election, the Electoral Commissioner may include on the ballot papers for each of the elections such description or addition as will distinguish them from one another,
- (h) a ballot paper shall not be issued to a person for one of the elections unless a ballot paper is issued to that person for the other election,
- (i) where a ballot paper used at one of the elections is required to be placed in an

envelope by a voter, the ballot paper used at the other election shall be placed in the same envelope,

- (j) the copy of the printed roll and the certified copies of rolls in force provided for the purposes of the election for the district shall be used for the purposes of the periodic Council election,
- (k) the same polling booths and ballot boxes shall be used for the purposes of both elections,
- (l) a reference in this Act to a scrutineer shall be construed as a reference to a scrutineer appointed by a candidate for either election,
- (m) a person who is precluded by this or any other Act from voting at the periodic Council election shall not be entitled to vote at the election for the district, and
- (n) a reference in Division 13 of Part 5 to an election shall be construed as a reference to those elections and the Electoral Commissioner shall not under section 120C send more than one penalty notice to the same elector.

## **Division 14 Proceedings after close of poll at Assembly elections**

### **120K Application of Division**

This Division applies only in relation to a poll for a district.

### **121 How and when number of votes to be ascertained**

Immediately upon the close of the poll the polling place manager for each polling place and other election officials assigned by the polling place manager for the purpose shall, in the presence and subject to the inspection of such of the scrutineers as choose to be present, but of no other persons, open the ballot box, and proceed to count the number of first preference votes recorded for each candidate.

### **122 Informal ballot papers**

- (1) A ballot paper shall be informal if:
  - (a) it is not duly initialled by an election official, pre-poll voting officer or postal voting officer, as the case may require, or
  - (b) the voter has failed to record his or her vote in the manner directed on the ballot paper, or
  - (c) it has upon it any mark or writing not authorised by this Act to be put upon it, which, in the opinion of the returning officer, will enable any person to identify the voter.
- (2) Informal ballot papers shall be rejected at the scrutiny.

**122A Ballot papers not to be informal in certain circumstances**

- (1) Notwithstanding anything to the contrary in this Act, a ballot paper shall not, by reason of any marking thereon that is not authorised or required by this Act, be treated as informal, or be rejected or disallowed at the scrutiny, if, in the opinion of the returning officer, the voter's intention is clearly indicated on the ballot paper.
- (2) Notwithstanding anything to the contrary in this Act, a ballot paper on which the voter has recorded his or her vote by placing in one square the number "1" shall not be treated as informal by reason only that:
  - (a) the same preference (other than his or her first preference) has been recorded on the ballot paper for more than 1 candidate, or
  - (b) there is a break in the order of preferences recorded on the ballot paper.
- (3) Notwithstanding anything to the contrary in this Act, a ballot paper is not informal by reason only that it is not duly initialled by an election official, pre-poll voting officer or postal voting officer, as the case may require, if it bears such mark as is prescribed as an official mark.
- (4) Notwithstanding anything to the contrary in this Act, a ballot paper shall not be informal by reason only that the voter has recorded a vote by placing a cross or a tick in a square and not placing any mark or writing in any other square, but the ballot paper shall be treated as if the cross or tick were the number "1".
- (5) Notwithstanding anything to the contrary in this Act, a ballot paper shall not be informal by reason only that the voter has recorded a vote by placing the number "1" or a tick in a square and placing a cross in (or a line through) all or some of the other squares on the ballot paper, but the ballot paper shall be treated as if the marks in those other squares did not appear on the ballot paper and any such tick were the number "1".
- (5A) Notwithstanding anything to the contrary in this Act, a ballot paper is not informal by reason only that the voter 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 voter'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.
- (6) Notwithstanding anything to the contrary in this Act, nothing in this section authorises any person to encourage a voter to place a cross or a tick in a square on a ballot paper or to place a number, tick or cross on a ballot paper outside a square.

Maximum penalty:

- (a) if the person is a corporation—a penalty not exceeding 50 penalty units, or

(b) in any other case—a penalty not exceeding 10 penalty units or to imprisonment for a period not exceeding 6 months, or both.

(7) Any person who prints, publishes or distributes any “how to vote” card, electoral advertisement, notice, handbill, pamphlet or card which encourages any elector to place a cross or a tick in a square on a ballot paper or to place a number, tick or cross on a ballot paper outside a square, will be liable:

(a) if the person is a corporation—to a penalty not exceeding 50 penalty units, or

(b) in any other case—to a penalty not exceeding 10 penalty units or to imprisonment for a period not exceeding 6 months, or both.

### **123 Sealing and transmission by polling place managers of separate parcels of ballot papers etc**

Immediately after ascertaining the total number of first preference votes recorded for each candidate, each polling place manager shall make up:

(a) in one parcel the ballot papers which have been used in voting at his or her polling place during the election,

(b) in a second separate parcel, the ballot papers which have remained unused thereat, and

(c) in a third separate parcel, the certified copies of rolls supplied to the polling place manager, signed by him or her, and all books, rolls, and papers kept or used by him or her during the polling,

and shall seal up the said several parcels; and shall permit any of the scrutineers who may desire to do so to affix his, her or their seals to such parcels; and shall indorse the same severally with a description of the contents thereof, and with the name of the district and polling place, and the date of the polling; and sign with his or her name the said indorsement; and shall transmit the said parcels to the returning officer.

### **124 Account of ballot papers and verification thereof and of list of votes**

Each polling place manager shall, together with the parcels aforesaid, transmit to the returning officer a list of the total number of first preference votes recorded for each candidate and also an account in which the polling place manager shall charge himself or herself with the number of ballot papers originally delivered to him or her, and the number (if any) written out by him or her, specifying therein the number thereof delivered to and used by voters, and the number not so delivered or left unused; and every such list and account respectively shall be verified as well by the signatures of the polling place manager and one or more other election officials as also by the signatures of such of the scrutineers as are present and consent to sign the same.



## **125 Returning officers' parcels**

The returning officer shall, in respect of the polling booth at which the returning officer has presided, make up in separate parcels in like manner as is herein required of polling place managers, all ballot papers used or unused, and all books, rolls and papers kept or used by him or her at such polling booths; and shall seal up and also permit to be sealed up by the scrutineers, and shall indorse in like manner as aforesaid the several parcels and deal with the same as hereinafter provided; and shall also make out in respect of the said booth the like list as is herein required in the case of polling place managers, which said list shall be verified by the signature of the returning officer, one or more other election officials and scrutineers in manner aforesaid.

### **125A Parcels of postal, pre-poll or absent ballot papers etc**

- (1) The returning officer for each electoral district shall, as soon as practicable after the close of the poll, make up and seal separate parcels, each of which contains only:
  - (a) envelopes from which any ballot papers of a single class have been taken,
  - (b) unopened envelopes containing ballot papers of that single class,
  - (c) ballot papers, referred to in paragraph (a), of a single class allowed as formal, and
  - (d) ballot papers, referred to in paragraph (a), of a single class disallowed or rejected as informal,received by him or her in connection with the election conducted in the electoral district for which he or she is the returning officer.
- (2) A reference in subsection (1) to ballot papers of a single class is, in relation to a poll for a district, a reference to ballot papers used by electors voting in that district by virtue of section 106 or of Division 9, 10, 11, 11A or 12.
- (3) The provisions of sections 127, 128 and 129 apply to parcels referred to in subsection (1) as if they were parcels of used ballot papers referred to in those provisions.

## **126 Declaration of poll**

- (1) The returning officer shall, as soon as practicable after the close of the poll, in the presence of such scrutineers as choose to be present, and with such assistance as he or she may deem necessary, ascertain the result of the election in accordance with the Seventh Schedule to the [Constitution Act 1902](#).
- (1A) (Repealed)
- (2) If the returning officer is satisfied, after inquiry, that any ballot papers have been lost, destroyed or mislaid and that those ballot papers, if counted, could not alter the result of the poll he or she may complete the count without counting those ballot papers.

- (2A) As soon as practicable after the count has been completed, the returning officer must notify the Electoral Commissioner of the result of the election.
- (2B) As soon as practicable after being notified of the result of the election, the Electoral Commissioner must, by notice signed by the Commissioner and inserted in a newspaper circulating in the State, announce the result of the election.
- (3) The name of the person so elected shall be endorsed on the writ by the Electoral Commissioner, and the writ shall be by him or her returned to the Governor, or Speaker, as the case may be, within the time specified therein.
- (4) The writ for the electoral district which includes Lord Howe Island may be returned, notwithstanding that the result of the poll has not been received from Lord Howe Island, if the result of the election for the district cannot be affected thereby. It shall be permissible for the returning officer to accept information as to the votes polled at Lord Howe Island which is transmitted to him or her by cable or wireless, and which he or she is satisfied is authentic, in lieu of the list referred to in section 124.
- (5) At any time before the declaration that a candidate has been duly elected the returning officer may, if he or she thinks fit, on the request of any candidate setting forth the reasons for the request, or of his or her own motion, and shall, if so directed by the Electoral Commissioner, re-count the ballot papers contained in any parcel.

#### **126A Scrutiny for statistical information**

- (1) After the declaration that a candidate has been duly elected, the Electoral Commissioner may, for the purpose of obtaining statistical information, give the returning officer directions for the examination of the second and later preferences of candidates and for the distribution of those preferences in the manner specified in the directions.
- (2) The returning officer shall comply with those directions.
- (3) An examination and distribution of preferences under this section may be carried out by an officer of the Public Service or an election official if the Electoral Commissioner so directs.

#### **127 Separate parcels to be enclosed in packets, sealed etc**

- (1) The returning officer shall, as soon as practicable after the day of polling, enclose in separate packets in manner hereinafter mentioned, the parcels so transmitted to him or her, and those made up and sealed by himself or herself in respect of the polling booth at which he or she has presided, that is to say:—He or she shall enclose in one packet all parcels of used ballot papers; in a second, all parcels of unused ballot papers; and in a third, all parcels containing copies of rolls, books, or other papers as herein provided; and shall seal up the said several packets and indorse the same with a description of the contents thereof respectively, and the name of the district and the

date of the polling, and sign with his or her name the said indorsement, and shall forthwith forward the said packets to the Electoral Commissioner; and he or she shall also at the same time seal up and transmit to the Electoral Commissioner a parcel containing all ballot papers which have been printed or written for the election and not used by the returning officer or distributed for use to polling place managers; and the Electoral Commissioner shall forthwith give or send to the returning officer a receipt under his or her hand for the said packets and parcels:

Provided that the returning officer may, for the purpose of ascertaining whether plural voting or personation has been practised, retain in his or her possession for a reasonable time, and after notice to the candidates and intimation that a scrutineer of each candidate shall be entitled to be present, break the seal of parcels containing copies of rolls, books, and other papers sealed up and transmitted to him or her in pursuance of this Act, and shall, after such investigation, re-seal the same, and forward them as hereinbefore in this section prescribed, and shall report to the Electoral Commissioner the result of such investigation.

- (2) Packets and parcels transmitted to the Electoral Commissioner under this section must be safely kept by him or her until:
- (a) the period of 6 months after the day of polling has expired, or
  - (b) the period during which the validity of the election may be disputed under this Act has expired, or
  - (c) where a petition has or petitions have been filed under section 155—the Court of Disputed Returns has determined the matters referred to in the petition or petitions,

whichever is the latest, after which the Electoral Commissioner must cause the packets and parcels and their contents to be destroyed.

### **128 Ballot papers, copies of rolls and books to be evidence**

Any ballot paper, and any copy of a roll, and any book purporting to be taken from any such parcel as aforesaid, and having written thereon respectively under the hand of the Electoral Commissioner a certificate of the several particulars hereby required to be indorsed upon such parcel, and that the same was so taken from such parcel, shall be evidence in any court or before the Court of Disputed Returns that the same was so taken; and that the same, if a ballot paper, was deposited or transmitted pursuant to this Act, and, if a roll or book, was kept or used at the election and booth to which such indorsement and writing relate; and every such ballot paper so certified shall be evidence of a vote given at such election.

### **129 Penalty for breaking seal of or opening parcel or packet**

Any person who wilfully breaks the seal of, or opens, any such sealed parcel or sealed

packet as aforesaid, unless for the purposes of this Act or by direction of some competent court or other tribunal or person authorised in that behalf, or unless called upon to produce some portion of the contents of such parcel or packet to some such court or tribunal or person is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

## **Division 14A Proceedings after close of poll at periodic Council elections**

### **129A Application of Division**

This Division applies only in relation to a poll for a periodic Council election.

### **129B Counting of votes**

As soon as practicable after the close of the poll the polling place manager for each polling place and other election officials assigned by the polling place manager for the purpose shall, in the presence and subject to the inspection of such of the scrutineers as choose to be present, but of no other persons, having opened the ballot box, proceed to count the number of votes recorded for each candidate.

### **129C Sealing and transmission of separate parcels of ballot papers etc**

- (1) Immediately after ascertaining the total number of votes recorded for each candidate, the returning officer for each district and every polling place manager at the polling place at which each presides shall make up:
  - (a) in one parcel the ballot papers which have been used in voting at the polling place at which he or she presided during the polling,
  - (b) in a second separate parcel, the ballot papers which have remained unused thereat, and
  - (c) in a third separate parcel, the certified copies of rolls used by him or her, signed by him or her, and all books, rolls, and papers kept or used by him or her, during the polling,and shall:
  - (d) seal up those parcels,
  - (e) permit any of the scrutineers who may desire to do so to affix his, her or their seals to those parcels,
  - (f) indorse each of those parcels with a description of its contents, with the name of the district and polling place and the date of the polling,
  - (g) sign with his or her name that indorsement, and

(h) in the case of a polling place manager, transmit those parcels to the returning officer.

(2) Subsection (1) (c) does not apply where the election is an election referred to in section 120J.

(3) Each polling place manager shall, together with the parcels transmitted by him or her pursuant to subsection (1), transmit to the returning officer, and each returning officer making up parcels in accordance with subsection (1) shall make out, a list of the total number of votes recorded for each candidate and also an account in which he or she shall charge himself or herself with the number of ballot papers originally delivered to him or her, and the number (if any) written out at the relevant polling place, specifying therein the number delivered to and used by voters, and the number not so delivered or left unused; and every such list and account shall be respectively verified as well by the signatures of the returning officer or polling place manager and one or more other election officials as also by the signatures of such of the scrutineers as are present and consent to sign them.

#### **129D Returning officers' parcels**

(1) The returning officer shall, as soon as practicable after the close of the poll:

(a) make up and seal separate parcels, each of which contains only:

(i) envelopes from which any ballot papers of a single class have been taken,

(ii) unopened envelopes containing ballot papers of that single class, and

(iii) ballot papers, referred to in subparagraph (i), of that single class,

received by him or her in connection with the election conducted in the electoral district for which he or she is the returning officer,

(b) make up and seal in a separate parcel all of the separate parcels transmitted to him or her or sealed by himself or herself under section 129C,

(c) make up and seal in a separate parcel all other ballot papers which have been printed or written for the election conducted in the electoral district for which he or she is the returning officer, and

(d) make out a list of the total number of votes recorded for each candidate on the ballot papers contained in each such parcel and identify in that list the parcel to which it relates,

and shall:

(e) permit any of the scrutineers who may desire to do so to affix his, her or their seals to the parcels made up and sealed by the returning officer under this

section,

- (f) indorse each parcel so made up and sealed with a description of its contents, with the name of the electoral district for which he or she is the returning officer and the date of the polling,
  - (g) sign with his or her name that indorsement, and
  - (h) transmit the parcels so made up, sealed and indorsed and the lists so made out to the Electoral Commissioner.
- (2) A reference in subsection (1) to ballot papers of a single class is, in relation to a periodic Council election in an electoral district, a reference to ballot papers used by electors voting in that electoral district by virtue of section 106 or of Division 9, 10, 11, 11A or 12.
- (3) Subsection (1) (a) (i) and (ii) do not apply where the election is an election referred to in section 120J.
- (4) Notwithstanding subsection (1), the returning officer may, for the purpose of ascertaining whether plural voting or personation has been practised, retain in his or her possession for a reasonable time, and, after notice to the candidates and intimation that a scrutineer for each candidate shall be entitled to be present, break the seal of parcels containing copies of rolls, books and other papers sealed up and transmitted to him or her in pursuance of section 129C (1), and shall, after that investigation, re-seal them and transmit them as provided by subsection (1), and shall report to the Electoral Commissioner the result of that investigation.

### **129E Lists and accounts of ballot papers**

- (1) Each returning officer shall:
- (a) make out a final list of the total number of votes recorded for each candidate as ascertained by him or her from his or her scrutiny of the ballot papers referred to in section 129D (1) (a) (iii), as shown in the notification given to him or her pursuant to section 114ZG (3) and in the lists transmitted to or made out by him or her pursuant to section 129C (3), and
  - (b) make out an account in which he or she charges himself or herself with the number of ballot papers originally delivered to him or her or written out by election officials, specifying therein the number thereof delivered by election officials to and used by voters and the number not so delivered or left unused (the particulars in that account being ascertained from the accounts transmitted to him or her pursuant to section 129C (3) and from his or her own records).
- (2) Every list and account made out by a returning officer pursuant to subsection (1) shall be verified by his or her signature and by the signatures of such scrutineers as are

present and consent to sign them and shall be transmitted by him or her to the Electoral Commissioner.

**129EA Formal votes where vote recorded in group voting square**

- (1) If a voter records a vote on a ballot paper by placing the number “1” in the group voting square for one of the groups, the ballot paper is taken to have recorded on it a first preference vote for the first candidate included in the group and subsequent preferences for all other candidates included in the group in the order of the names of the candidates on the ballot paper.
- (2) If the voter also records a vote on the ballot paper by placing the number “2” in the group voting square for another group, the ballot paper is taken to have recorded on it a preference (subsequent to those referred to in subsection (1)) for the first candidate included in that other group and subsequent preferences for all other candidates included in that other group in the order of the names of the candidates on the ballot paper.
- (3) If the voter also records a vote on the ballot paper by placing the number “3” or subsequent numbers in the group voting squares for other groups, the ballot paper is taken to have recorded on it preferences (subsequent to those referred to in subsections (1) and (2)) for the first candidate included in those other groups and subsequent preferences for all other candidates included in those other groups in the order of the names of the candidates on the ballot paper.

**129EB Special provision where minimum size of group reduced by death of candidate etc**

- (1) This section applies to ballot papers in which the voter records a vote by placing the number “1” in the group voting square for one of the groups and does not record any other preference, where that group ceases to have 15 candidates because of the operation of section 81C (5).
- (2) The ballot papers to which this section applies are taken to have recorded on them a second preference vote for the group nominated under section 81C (6).

**129F Informal ballot papers**

- (1) A ballot paper shall be informal if:
  - (a) it is not duly initialled by the person required by this Act to initial it or does not bear such mark as is prescribed for the purpose of section 122A (3) as an official mark,
  - (b) subject to clause 2 (2) of the Sixth Schedule to the *Constitution Act 1902*, the voter has failed to record his or her vote in the manner directed on the ballot paper, or
  - (c) it has upon it any mark or writing not authorised or required by this Act to be put

upon it, which, in the opinion of the Electoral Commissioner, will enable any person to identify the voter.

- (2) Notwithstanding anything to the contrary in this Act, a ballot paper shall not, by reason of any mark or writing thereon that is not authorised or required by this Act, be rejected as informal if, in the opinion of the Electoral Commissioner, the voter has, by some mark or writing, clearly indicated his or her intention on the ballot paper.
- (2A) Notwithstanding anything to the contrary in this Act, if a voter records a vote on a ballot paper by placing a mark in a group voting square but also indicates preferences for individual candidates, the following provisions apply:
- (a) if the indication of preferences for individual candidates would, if it stood alone, constitute a formal vote, that indication of preferences shall be taken to be the vote of the voter and the mark in the group voting square shall be disregarded,
  - (b) if the indication of preferences for individual candidates would not, if it stood alone, constitute a formal vote, it shall be disregarded and the vote of the voter shall be taken to have been expressed by the mark in the group voting square.
- (2B) Notwithstanding anything to the contrary in this Act, a ballot paper shall not be informal by reason only that the voter has recorded a vote by placing a cross or a tick in a group voting square and not placing any mark or writing in any other group voting square, but the ballot paper shall be treated as if the cross or tick were the number "1".
- (2C) Notwithstanding anything to the contrary in this Act, a ballot paper shall not be informal by reason only that the voter has recorded a vote by placing the number "1" or a tick in a group voting square and placing a cross in (or a line through) all or some of the other group voting squares on the ballot paper, but the ballot paper shall be treated as if the marks in those other squares did not appear on the ballot paper and any such tick were the number "1".
- (2D) Notwithstanding anything to the contrary in this Act, a ballot paper on which the voter has recorded his or her vote by placing in one square the number "1" shall not be informal by reason only that:
- (a) the same preference (other than his or her first preference) has been recorded on the ballot paper for more than one candidate or one group of candidates, but the ballot paper shall be treated as if those preferences and any subsequent preferences had not been recorded on the ballot paper, or
  - (b) there is a break in the order of his or her preferences, but the ballot paper shall be treated as if any subsequent preference had not been recorded on the ballot paper.
- (2E) Notwithstanding anything to the contrary in this Act, a ballot paper is not informal by



reason only that the voter 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 Electoral Commissioner, the voter'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.

- (3) Notwithstanding anything to the contrary in this Act, the ballot papers used for a periodic Council election shall not be informal by reason only that they contain the name of:
  - (a) any candidate who has died, as referred to in section 83B (6) (a), or
  - (b) any candidate who is the subject of a declaration referred to in section 83B (6) (b),but a preference indicated on any such ballot paper (or taken to be indicated on any such ballot paper by a vote recorded in a group voting square) for any such candidate shall be disregarded and the numbers indicating any subsequent preference shall be reduced by the number of any such candidates.
- (4) Informal ballot papers shall be rejected by the Electoral Commissioner at the scrutiny.

#### **129G Declaration of poll**

- (1) The Electoral Commissioner shall, as soon as practicable after the close of the poll, in the presence of such scrutineers as choose to be present, and with such assistance as he or she may deem necessary, ascertain the result of the election in accordance with the Sixth Schedule to the *Constitution Act 1902*.
- (2) If the Electoral Commissioner is satisfied, after inquiry, that any ballot papers have been lost, destroyed or mislaid and that those ballot papers, if counted, could not alter the result of the poll he or she may complete the count without counting those ballot papers.
- (3) As soon as practicable after the count has been completed, the Electoral Commissioner shall, by notice signed by him or her and inserted in some newspaper circulating in the State, announce the result of the election.
- (4) The names of the candidates elected shall be indorsed on the writ by the Electoral Commissioner and the writ shall be by him or her returned to the Governor within the time specified therein.
- (5) At any time before the declaration that candidates have been duly elected the Electoral Commissioner may, if he or she thinks fit, on the request of any candidate setting forth the reasons for the request, or of his or her own motion, re-count the ballot papers contained in any parcel.

### **129H Retention and destruction of parcels**

- (1) The Electoral Commissioner shall, as soon as practicable after the day of polling, enclose in a packet indorsed with the words “Legislative Council Election” and the date of the polling the parcels transmitted to him or her under section 129D (1) and at the same time seal up a parcel containing all ballot papers which have been printed or written for the election and not used, other than any ballot papers enclosed in any such parcels.
- (2) Where the Electoral Commissioner receives any parcel transmitted to him or her under section 129D (4), he or she shall indorse on it the words “Legislative Council Election”, the name of the district to which the parcel relates and the date of the polling.
- (3) Packets and parcels transmitted to the Electoral Commissioner under this section must be safely kept by him or her until:
  - (a) the period of 6 months after the day of polling has expired, or
  - (b) the period during which the validity of the election may be disputed under this Act has expired, or
  - (c) where a petition has or petitions have been filed under section 155—the Court of Disputed Returns has determined the matters referred to in the petition or petitions,whichever is the latest, after which the Electoral Commissioner must cause the packets and parcels and their contents to be destroyed.

### **129I Ballot papers, copies of rolls and books to be evidence**

- (1) Any ballot paper, and any copy of a roll, and any book purporting to be taken from any packet or parcel referred to in section 129H, and having written thereon respectively under the hand of the Electoral Commissioner a certificate of the several particulars required by this Division to be indorsed upon the packet or parcel, and that it was taken from such a parcel, shall be evidence in any court or before the Court of Disputed Returns that it was so taken and that it, if a ballot paper, was deposited or transmitted pursuant to this Act, and, if a roll or book, was kept or used at the election and booth to which the indorsement and writing relate.
- (2) Every such ballot paper so certified shall be evidence of a vote given at the election.

### **129J Penalty for breaking seal of or opening packet or parcel**

Any person who wilfully breaks the seal of, or opens, any packet or parcel referred to in section 129H, unless for the purposes of this Act or by direction of some competent court or other tribunal or person authorised in that behalf, or unless called upon to produce some portion of the contents of the packet or parcel to some such court or tribunal or

person is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

## **Division 15 Adjournment of poll**

### **130 When polling may be adjourned etc**

- (1) When the proceedings for taking the poll at any election are interrupted or obstructed at any place by any riot or open violence, the returning officer or polling place manager (as the case may be) shall not for such cause finally close the poll, but shall adjourn the taking of the poll at the polling place at which such interruption or obstruction has happened to the following day; and, if necessary, such returning officer or polling place manager shall further adjourn such poll from day to day until such interruption or obstruction have ceased, when such returning officer or polling place manager shall again proceed with the taking of the poll at the place at which the same may have been so interrupted or obstructed.
- (2) If the returning officer or polling place manager (as the case may be) fails to open the polling at any booth of a polling place for one half-hour after the time appointed for the same, or if he or she becomes incapable of performing his or her duties from any cause after polling has opened, and for a period of one half-hour, then in each and every such case the election official (if one be present) or the senior election official (if more than one be present) shall be and is hereby empowered to act as and for such returning officer or polling place manager in respect of all matters required to be done by such returning officer or polling place manager in respect of such polling. And such election official so acting may forthwith appoint an election official to assist him or her in the conduct of such polling.
- (3) If from any other cause than riot or open violence no polling has been opened at any booth of a polling place for any district on the appointed day or where the polling has been opened but from the absence of necessary forms, documents, or materials the poll cannot be proceeded with, the polling at such booth shall be by the returning officer or polling place manager (as the case may be) adjourned to a day not later than twenty-one clear days following such appointed day; and the returning officer or polling place manager (as the case may be) shall forthwith cause public notice to be given thereof.
- (4) Where but for this section:
  - (a) a poll for an election for a district and a poll for a periodic Council election would be required to take place on the same day, and
  - (b) the taking of either poll at any place is adjourned,the other poll is adjourned at that place, and the day for the taking of both adjourned polls at that place shall be the same day.

### **131 Notice of adjournment to be given**

- (1) Where any poll has been so adjourned by any polling place manager, such polling place manager shall forthwith give notice thereof to the returning officer; and in every such case, and also where any polling stands adjourned as mentioned in section 130, the returning officer or Electoral Commissioner as the case may be shall not notify the total number of votes given or finally declare the result of the election until the poll so adjourned has been finally closed and the ballot papers transmitted to the returning officer or Electoral Commissioner as the case may be.
- (2) Whenever a poll has been adjourned at any place within an electoral district, the returning officer for that district shall forthwith give notice of the adjournment to the Electoral Commissioner, who may give public notice of the adjournment in such manner as the Commissioner thinks fit.

### **131A Votes at adjourned poll**

Where the poll has been adjourned at one or more booths within a subdivision or subdivisions within an electoral district, only those electors who are enrolled for the subdivision or subdivisions within which the booth or booths is or are situated shall be entitled to vote as provided in this Act at the adjourned poll.

### **132 Limits of adjournments**

No adjournment of the proceedings at any election shall be made or extend to the day named as the return day in the writ for such election, and if the polling has not been completed before the day named, the returning officer or the Electoral Commissioner, as the case may require, shall forthwith indorse that fact upon the writ, and shall return the same.

## **Division 16 General provisions**

### **133 Election not to be questioned for want of or defect of title of officers**

No election shall be liable to be questioned by reason only of any defect in the title, or any want of title, of the person by or before whom such election, or any polling for the same, has been held, if such person has been actually appointed to preside, or has been acting in the office giving the right so to preside at such election.

### **134 Election not to be questioned for omission etc of a formal nature**

No election for a district shall be void in consequence only of there having been no returning officer at the time of the issue of the writ, or of any delay in the return of the writ; and no election for a district and no periodic Council election shall be void in consequence only of there having been no Electoral Commissioner at the time of the issue of the writ, or of any delay in the return of the writ; and where any accidental or unavoidable impediment, misfeasance, or omission has happened, the Governor may take

all such measures as may be necessary for removing such impediment, or rectifying such misfeasance or omission; or may by proclamation declare any or all of the proceedings at or for any election valid as to and notwithstanding such impediment, misfeasance, or omission; and every such proclamation shall state specifically the nature of the impediment, misfeasance, or omission, and shall be forthwith published in the Gazette.

### **135 Violation of secrecy by officers**

If any election official, pre-poll voting officer, postal voting officer, deputy postal voting officer or scrutineer in the discharge of his or her duties under this Act at or concerning any election, learns, or has the means of learning, for what candidate any person votes or has voted at such election, he or she shall not by word or act, or any other means whatsoever, directly or indirectly divulge or disclose, or aid in divulging or disclosing the same, save in answer to some question which he or she is legally bound to answer, or in compliance with the express provisions of the law relating to elections; and every such official, officer or scrutineer who wilfully violates the provisions of this section shall be guilty of an indictable offence, and be liable to be fined any sum not exceeding 5 penalty units, or to be imprisoned for any term not exceeding six months, or to be both fined and imprisoned within such limits.

### **135A Electoral official to vacate office upon becoming a candidate**

(1) In this section:

***electoral official*** means an election official, a postal voting officer, a deputy postal voting officer, a pre-poll voting officer, an assistant appointed for the purposes of Division 11 or an assistant to the Electoral Commissioner.

(2) Upon any electoral official becoming a candidate for an election, he or she vacates his or her office as an electoral official.

### **136 Penalty for neglect etc by electoral officials**

If any electoral official as defined in section 135A, at any election, is guilty of any wilful misfeasance, or wilful or negligent act of commission or omission in violation of any of the provisions herein contained and not otherwise provided for, he or she shall, for every such offence, be liable to a penalty not exceeding 10 penalty units.

### **137 Appointment of and declaration by scrutineers**

(1) This section applies to scrutineers appointed under this Act.

**Note—**

Sections 90, 114U and 114ZT provide for the appointment of scrutineers.

(2) The regulations may prescribe a form for the purposes of this section that provides for both:

(a) the appointment of a scrutineer by a candidate, and

(b) a declaration to be made and signed by the scrutineer.

If there is no prescribed form, the Electoral Commissioner may approve a form for the purposes of this section.

- (3) The appointment by a candidate of a scrutineer is to be made in the form prescribed or approved under subsection (2).
- (4) A person appointed as a scrutineer is to make and sign a declaration in the form prescribed or approved under subsection (2).
- (5) The person appointed as a scrutineer cannot act as scrutineer on any day unless the person presents the completed form (comprising a single document) on that day to the returning officer or polling place manager or to the pre-poll voting officer, as the case requires.
- (6) The declaration is to be made and signed on each day referred to in subsection (5) before the returning officer or polling place manager or the pre-poll voting officer, as the case requires, at the place at which the scrutineer intends to act as scrutineer.
- (7) A reference in this section to a completed form includes a reference to a photocopy, carbon copy or similar identical copy of a completed form, but the copy is to be duly signed on each day as required by subsection (6).
- (8) Part 4 of the *Oaths Act 1900* applies to a declaration made under this section as if it were made under that Act.
- (9) A person is not qualified for appointment as a scrutineer unless the person is an elector. A person is not ineligible for appointment as a scrutineer for a district merely because the person is not enrolled as an elector on the electoral roll for the district.

### **138-146 (Repealed)**

## **Division 17 Bribery, treating, intimidation etc**

### **147 Bribery etc**

Every person shall be guilty of bribery who:

- (a) directly or indirectly, by himself or herself or by any other person on his or her behalf, gives or lends, or agrees to give or lend, or offers, promises, or procures, or promises or endeavours to procure, any money or valuable consideration to or for any elector or any other person on behalf of any elector, in order to induce any elector to vote or refrain from voting, or knowingly does any such act as aforesaid on account of such elector having voted or refrained from voting at any election,
- (b) directly or indirectly, by himself or herself or by any other person on his or her behalf, gives or procures, or agrees to give or procure, offers, promises, or promises to

procure, or to endeavour to procure any office, place, or employment to or for any elector or any other person, or who retains or dismisses any elector or other person in or from any office, place, or employment in order to induce such elector to vote or refrain from voting, or knowingly does any such act as aforesaid on account of any elector having voted or refrained from voting at any election,

- (c) directly or indirectly, by himself or herself or by any other person on his or her behalf, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure the return of any person to serve as a member or the vote of any elector at any election,
- (d) upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement procures or engages, promises, or endeavours to procure the return of any person to serve as a member or the vote of any elector at any election,
- (e) advances or pays, or causes to be advanced or paid, any money to or for the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at an election,
- (f) before, during, or after any election, directly or indirectly, by himself or herself or by any other person on his or her behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election,
- (g) before or during any election, directly or indirectly, by himself or herself or by any other person on his or her behalf, receives, agrees, or contracts for any money or valuable consideration, office, place, or employment for himself or herself or for any other person for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, or for inducing any other person to vote or to refrain from voting at any election,

and any person or elector so offending is guilty of an offence and also incapable of voting at the election.

Maximum penalty: 100 penalty units or imprisonment for 3 years, or both.

#### **148 Extended meaning of terms “candidate” and “election”**

- (1) For the purposes of sections 147, 149, 150, and 151, the words **candidate at an election** and the words **candidate at any election** shall include all persons elected to serve in Parliament at such election, and all persons nominated as candidates at such election, or who on or after the day of issuing the writ for such election, or after the dissolution or vacancy in consequence of which such writ has been issued, have

declared their intention of becoming candidates at such election or their consent so to do. And the words **at an election, at any election, and during any election** shall mean and include the whole period from the day of nomination up to the day on which the returning officer or the Electoral Commissioner, as the case may be, publishes and declares the result of such election, both days inclusive.

- (2) For the purposes of section 149, **candidate at an election**, in relation to an election, also includes any person who has declared his or her intention of becoming a candidate at the election or his or her consent so to do.

### **149 Electoral treating**

- (1) A candidate at an election must not, before or during the election, either directly or indirectly:

- (a) offer, promise or supply food, drink or entertainment, or
- (b) offer or promise to pay for, or pay for, food, drink or entertainment, or
- (c) offer or provide transport to or from polling places for the purpose of voting, or
- (d) offer, promise or give a gift, donation, voucher or prize to or for any person, club, association or body,

with the intention of corruptly influencing a person's election conduct at an election.

- (2) For the purposes of subsection (1):

**election conduct**, in relation to a person, means:

- (a) whether or not the person votes, or
- (b) whether or not the person votes for the candidate.

- (3) For the purposes of subsection (1), it is immaterial:

- (a) whether or not an offer is accepted and, if accepted, whether it is accepted before, on or after polling day, and
- (b) whether or not a promise is fulfilled and, if fulfilled, whether it is fulfilled before, on or after polling day.

- (4) In proceedings for an offence under subsection (1) (d) it is a defence to show that gifts, donations, vouchers or prizes similar in nature and in amount or value are regularly given to the club, association or body for similar purposes.

- (5) An elector who corruptly:

- (a) accepts:



- (i) food, drink or entertainment, or
  - (ii) transport, or
  - (iii) a gift, donation, voucher or prize, or
- (b) without limiting paragraph (a), accepts or agrees to:
- (i) an offer or promise of food, drink or entertainment, or
  - (ii) an offer or promise to pay for food, drink or entertainment, or
  - (iii) an offer of transport, or
  - (iv) an offer, a promise or the giving of a gift, donation, voucher or prize,
- referred to in subsection (1) during an election is incapable of voting at the election.

### **150 Penalty for electoral treating**

Any person who is guilty of an offence against section 149 before or during an election shall be liable to a fine not exceeding 100 penalty units, or to imprisonment for a term not exceeding 3 years, or to both such fine and imprisonment, and shall also be incapable of voting at such election.

### **151 Intimidation**

Every person who directly or indirectly, by himself or herself or by any other person on his or her behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens the infliction by himself or herself or by or through any other person of any injury, damage, harm, or loss, or in any other manner practises intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who by abduction, duress, or any fraudulent device or contrivance impedes, prevents, or otherwise interferes with the free exercise of the franchise by any elector, or thereby compels or induces or prevails upon any elector either to give or refrain from giving his or her vote at any election, is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 3 years, or both.

### **151A Printing etc false information**

- (1) Any person who:
- (a) prints, publishes or distributes any “how to vote” card, electoral advertisement, notice, handbill, pamphlet or card containing any representation of a ballot paper or any representation apparently intended to represent a ballot paper, and having thereon any directions intended or likely to mislead or improperly interfere with any elector in or in relation to the casting of his or her vote,

- (b) prints, publishes or distributes any “how to vote” card, electoral advertisement, notice, handbill, pamphlet or card containing any untrue or incorrect statement intended or likely to mislead or improperly interfere with any elector in or in relation to the casting of his or her vote, or
- (c) prints, publishes or distributes any “how to vote” card, electoral advertisement, notice, handbill, pamphlet or card using:
  - (i) the name, an abbreviation or acronym of the name or a derivative of the name of a party respectively included in the Register of Parties kept under Part 4A (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 or a party respectively included in that Register in a way that suggests or indicates an affiliation with that party,

shall be liable:

- (d) if the person is a corporation—to a penalty not exceeding 50 penalty units, or
  - (e) in any other case—to a penalty not exceeding 10 penalty units or to imprisonment for a period not exceeding 6 months, or both.
- (2) Subsection (1) shall not prevent the printing, publishing or distributing of any “how to vote” card, not otherwise illegal, which contains instructions how to vote for any particular candidate or candidates, so long as those instructions are not intended or likely to mislead any elector in or in relation to the casting of his or her vote.
- (3) Subsection (1) (c) (ii) does not apply in a case where the word “Independent” is included in the name of the party as registered in the Register of Parties.

#### **151B Exhibition of posters**

- (1) A person must not exhibit or post or cause to be exhibited or posted any poster of any size exceeding the prescribed size on the outer wall, fence or other boundary, or within 5 metres, of:
- (a) a polling place, or
  - (b) the grounds of an enclosure in which a building used as polling place is situated, at any time on the day of polling for an election.

Maximum penalty: 3 penalty units.

- (2) (Repealed)

- (2A) A person shall not post up, or permit or cause to be posted up, a poster:

- (a) on or within any premises occupied or used by, or under the control or management of:
    - (i) the Crown, any instrumentality or agency of the Crown, or any statutory body representing the Crown or any other body prescribed by the regulations as a statutory body representing the Crown, or
    - (ii) any local authority, or
  - (b) in the case of premises which have no one in occupation, on or within those premises, unless that person has obtained:
    - (i) in the case of premises owned by one person alone, the permission in writing of that person, or
    - (ii) in the case of premises owned by two or more persons, whether as joint tenants or as tenants in common or otherwise, the permission in writing of at least one of those persons.
- (3) Nothing in this section shall prohibit:
- (a) the posting up, exhibiting, 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,
  - (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,
  - (c) the posting up, exhibiting, 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 posting up or exhibition of any poster on or at the electoral office of any member.
- (4) (Repealed)
- (5) Any person who writes, draws or depicts any electoral matter directly on any roadway, footpath, building, vehicle, vessel, hoarding or place (whether it is or is not a public place and whether on land or water) shall be liable to a penalty not exceeding 3 penalty units.
- (6) In this section:

**electoral matter** means any matter which is intended or calculated or likely to affect or is capable of affecting the result of any election held or to be held under this Act or of any referendum of the electors held or to be held in accordance with the provisions of any Act or which 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 such election or referendum.

**electoral matter** also includes 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 which purports to depict any such candidate or to be a likeness or representation of any such candidate.

**local authority** means a council or a county council within the meaning of the [Local Government Act 1993](#).

**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, such sections, both severally and collectively, shall be deemed to be a poster.

**premises** includes any structure, building, vehicle or vessel or any place, whether built on or not, and any part thereof.

**the prescribed size** means an area which is not more than 8000 square centimetres.

- (7) Where premises referred to in paragraph (b) of subsection (2A) are subject to a lease for a term of six months or more, the reference in that paragraph to the owner of the premises shall be read as a reference to the lessee of the premises.

**151C (Repealed)**

**151D Removal and confiscation of posters**

- (1) The returning officer, any polling place manager or any election official assigned by the returning officer or polling place manager for the purpose may remove or cause to be removed any poster exhibited or posted in contravention of this Act:
  - (a) within a polling place, or
  - (b) in or on a public place within 6 metres of an entrance to a polling place.
- (2) Any police officer may remove or cause to be removed any poster exhibited or posted in contravention of this Act.
- (3) A police officer may use reasonable force for the purposes of this section.

**Note—**

Section 151J contains provisions concerning what forms part of a polling place for the purposes of this section

where the polling place is a building within an enclosure.

**151E Name and address of author and printer to be printed on advertisements etc**

(1) Any person who prints, publishes or distributes any matter, being an advertisement, “how to vote” card, handbill, pamphlet, poster, or notice, containing any electoral matter as defined in section 151B (other than the announcement in a newspaper of the holding of a meeting), without:

(a) the name and address of the person on whose instructions the matter was printed, and

(b) the name of the printer and address at which it was printed,

being printed in legible characters thereon, shall be guilty of an offence and liable to a penalty not exceeding 5 penalty units or to imprisonment for a term not exceeding six months.

(2) Where a newspaper contains an advertisement referred to in subsection (1) and the name of the printer of the newspaper and the address at which it was printed appear on the newspaper in accordance with any Act, subsection (1) does not apply so as to require that name and address to be printed on the advertisement.

**151F Distribution of electoral material on polling day**

(1) A person shall not, in a public place, distribute any electoral material on the polling day for an election, and on all days to which the polling is adjourned, unless the material has been registered under section 151G for the election.

Maximum penalty: 10 penalty units or imprisonment for 6 months.

(2) For the purposes of this section and without limiting its operation, material shall be 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.

(2A) Subsection (1) 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.

(3) In this section:

**electoral material** means a “how to vote” card, handbill, pamphlet or notice containing:

(a) electoral matter as defined in section 151B, or

(b) without limiting paragraph (a), an express or implicit reference to or comment on:

- (i) the election or referendum, or
- (ii) the Government, the Opposition, a previous Government or a previous Opposition, of the State, or
- (iii) the Government, the Opposition, a previous Government or a previous Opposition, of the Commonwealth or any other State or a Territory, or
- (iv) a member or a former member of Parliament or the Parliament of the Commonwealth, any other State or a Territory, or
- (v) a political party, a branch or division of a political party or a candidate in the election, or
- (vi) an issue submitted to, or otherwise before, the electors in connection with the election or referendum.

**151G Registration of electoral material**

- (1) For the purposes of section 151F, an application may be made, in accordance with the regulations, to the Electoral Commissioner for the registration of electoral material for a particular election and for a particular district or districts.
- (2) An application must be made during the period commencing on the day of nomination for the election and ending at 5 pm on the day that is 8 days before the polling day for the election, or during such other period as is fixed by the writ for the election.
- (2A) However, an application may be made to the Electoral Commissioner (after the issue of the writ and before the day of nomination) for preliminary advice on whether electoral material may be registered, even though the material is incomplete.
- (3) An application must contain a draft or sample of the electoral material.
- (3A) The form of application must make provision for the applicant to indicate whether or not the electoral material to which it relates should be available for perusal under section 114ZR (6A).
- (4) The Electoral Commissioner may allow the draft or sample to be altered or replaced before agreeing to registration.
- (5) Registration of the electoral material is effected by the issue of a certificate of registration (in a form approved by the Electoral Commissioner) in respect of a draft or sample of the electoral material.
- (6) The Electoral Commissioner shall register the electoral material if satisfied that registration is not prohibited by this section.
- (7) The Electoral Commissioner may however refuse to register the electoral material if

the application for registration was not made in accordance with this section.

- (7A) The Electoral Commissioner must not register the electoral material if it appears to the Commissioner:
- (a) that 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 address at which it was printed, or
  - (b) that the material could result in an elector casting an informal vote, or
  - (c) that the material contains words that are obscene or offensive.
- (8) Without affecting the generality of subsection (7A), the Electoral Commissioner must not register electoral material referred to in subsection (8A) if it appears to the Commissioner:
- (a) in the case of material that contains directions or suggestions (whether express or implied) as to how to vote in accordance with the ticket of a political party, group of candidates or candidate, that:
    - (i) the party is not registered under Part 4A or the group or candidate is not registered under the *Election Funding Act 1981*, or
    - (ii) the application was not made by the registered officer, by the candidates in the group or their official agent or by the candidate or the candidate's official agent (respectively),
  - (b) in the case of material that contains any representation or indication (whether express or implied) that any candidate is a member of, or pursues or supports any or all of the objects or platform (whether with or without modification) of, a particular political party or group of candidates, that:
    - (i) the party is not registered under Part 4A or the group is not registered under the *Election Funding Act 1981*,
    - (ii) the candidate's affiliation with the party or group is not included in the Register of Candidates under that Act, or
    - (iii) the application was not endorsed in writing by the registered officer or by the other candidates in the group or their official agent,
  - (c) in the case of material that contains directions or suggestions (whether express or implied) as to how to vote in accordance with the ticket of a political party or group of candidates in respect of an electoral district, that:

- (i) the party or group has not endorsed a candidate for the district, or
  - (ii) the material directs or suggests that a candidate not endorsed by it should be given the first preference vote,
- (d) in the case of material that contains directions or suggestions (whether express or implied) as to how to vote in accordance with the ticket of a political party or group of candidates in respect of a periodic Council election, that:
- (i) the party or group has not endorsed a candidate for the election, or
  - (ii) the material directs or suggests that a candidate or candidates not endorsed by it should be given the first or highest preference or preferences,
- (e) in the case of material that contains directions or suggestions (whether express or implied) as to how to vote in accordance with the ticket of a candidate in respect of an electoral district or periodic Council election, that:
- (i) the candidate is not a candidate for that district, or
  - (ii) the candidate is not a candidate in that election, or
- (f) that the material is intended or likely to mislead or improperly interfere with any elector in or in relation to the casting of his or her vote, because of the use, in the material, of any matter suggesting or indicating party or group affiliation (whether or not that matter is the same as or similar to matter included in a register under the *Election Funding Act 1981*).
- (g) (Repealed)
- (8A) Subsection (8) applies only to electoral material consisting of a “how to vote” card, handbill, pamphlet or notice:
- (a) containing any representation of a ballot paper or portion of a ballot paper, or
  - (b) containing any representation apparently intended to represent a ballot paper or portion of a ballot paper, or
  - (c) having on it any directions or suggestions (whether express or implied) in relation to the casting of votes.
- (8B) The certificate of registration must specify the election and the district or districts for which the electoral material is registered.
- (9) Registration may be unconditional or subject to conditions specified in the certificate of registration.
- (10) A certificate signed by the Electoral Commissioner 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, or
- (c) for a particular district or particular districts,

is admissible in proceedings for an offence under section 151F and is prima facie evidence of the matters certified.

(11) Electoral material shall be taken to be registered in accordance with this section 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.

(12) Registration of electoral material is not a defence to a prosecution for an offence under section 151A.

(12A) A copy of:

- (a) electoral material registered under this section for a district, and
- (b) the relevant certificate of registration,

must be available for inspection at the office of the returning officer for the district during the hours of polling on polling day, and on all days to which the polling is adjourned, at the request of any person enrolled for the district or of any scrutineer.

(13) In this section:

**electoral material** has the same meaning as in section 151F.

**official agent** has the same meaning as in the [Election Funding Act 1981](#).

#### **151GA Registration of electoral matter involving joint tickets**

(1) **Assembly elections** Nothing in section 151G prevents the Electoral Commissioner from registering under that section electoral material to which section 151G (8) applies that contains directions or suggestions (express or implied) as to how to vote in accordance with the joint ticket of two or more participants in respect of one or more electoral districts, so long as:

- (a) one or other of the participants has nominated a candidate for each one of the districts, and
- (b) the material does not direct or suggest that a candidate nominated by none of the participants should be given the first preference vote, and
- (c) the application for registration of the material was made jointly by the registered officer or official agent (as the case may be) of each participant, and

(d) the application for registration of the material otherwise complies with the relevant requirements of section 151G (apart from subsection (8) (c)).

(2) **Council elections** Nothing in section 151G prevents the Electoral Commissioner from registering under that section electoral material to which section 151G (8) applies that contains directions or suggestions (express or implied) as to how to vote in accordance with the joint ticket of two or more participants in respect of a periodic Council election, so long as:

(a) each of the participants has nominated at least one candidate for the election, and

(b) the material does not direct or suggest that a candidate or candidates nominated by none of the participants should be given the first or highest preference or preferences, and

(c) the application for registration of the material was made jointly by the registered officer or official agent (as the case may be) of each participant, and

(d) the application for registration of the material otherwise complies with the relevant requirements of section 151G (apart from subsection (8) (d)).

(3) **Concurrent elections** Nothing in section 151G or this section prevents the registration of one set of electoral material that contains material of the kind referred to in both subsections (1) and (2) involving the same participants and relating to elections being held concurrently.

(4) **Definition of “participant”** In this section:

**participant** means a political party registered under Part 4A or a group of candidates registered under the [Election Funding Act 1981](#).

#### **151H Prohibition of canvassing near polling places**

(1) The following acts are, on polling day, and on all days to which the polling is adjourned, prohibited at an entrance of or within a polling place or in any public or private place within 6 metres of an entrance to a polling place, namely:

(a) canvassing for votes,

(b) soliciting the vote of any elector,

(c) inducing any elector not to vote for any particular candidate,

(d) inducing any elector not to vote at the election,

(e) exhibiting any notice or sign (other than an official notice) relating to the election.

Maximum penalty: 5 penalty units.

- (2) A person commits an offence against this subsection if:
- (a) on polling day, or on a day to which the polling is adjourned, the person engages in any of the following activities:
    - (i) canvassing for votes,
    - (ii) soliciting the vote of an elector,
    - (iii) inducing an elector not to vote for a particular candidate,
    - (iv) inducing an elector not to vote at the election, and
  - (b) the person engages in that activity 6 metres or more from an entrance to a polling place, 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:
    - (i) within the polling place, or
    - (ii) at an entrance to the polling place, or
    - (iii) within 6 metres of an entrance to the polling place.

Maximum penalty: 5 penalty units.

- (3) Subsection (2) applies whether the person engages in the activity in a public place or a private place.
- (4) Without limiting the generality of subsection (1), a reference to canvassing for votes includes a reference to distributing electoral material as defined for the purposes of section 151F, whether or not the material is registered in accordance with section 151G.

**Note—**

Section 151J contains provisions concerning what forms part of a polling place for the purposes of this section where the polling place is a building within an enclosure.

**151I Confiscation of electoral material**

- (1) The returning officer, any polling place manager or any election official assigned by the returning officer or polling place manager for the purpose may:
  - (a) within a polling place, or
  - (b) in or on a public place within 6 metres of an entrance to a polling place, or
  - (c) in or on a public place in the vicinity of, but beyond 6 metres of an entrance to, a polling place,confiscate or cause to be confiscated any electoral material that is apparently available to be distributed in contravention of section 151F.
- (2) The returning officer, any polling place manager or any election official assigned by the returning officer or polling place manager for the purpose may:
  - (a) within a polling place, or
  - (b) in or on a public place within 6 metres of an entrance to a polling place,confiscate or cause to be confiscated any electoral material that is apparently available for distribution in contravention of section 151H.
- (3) Any police officer may confiscate or cause to be confiscated any electoral material that is apparently available for distribution in contravention of section 151F or 151H.
- (4) This section does not authorise a returning officer, polling place manager or other election official to use force.
- (5) Without limiting subsection (1), a place is, for the purposes of that subsection, taken to be in the vicinity of a polling place if the returning officer, polling place manager or other election official concerned is satisfied on reasonable grounds that the electoral material is being offered to, or is available to, persons intending to vote at the election at that polling place.
- (6) A police officer may use reasonable force for the purposes of this section.
- (7) Electoral material confiscated must be destroyed without undue delay, but destruction may be delayed if the material is or may reasonably be required for evidentiary purposes.

**Note—**

Section 151J contains provisions concerning what forms part of a polling place for the purposes of this section where the polling place is a building within an enclosure.

### **151J Application of provisions to grounds of polling place**

(1) If:

- (a) a building used as a polling place is situated in grounds within an enclosure, and
- (b) the appointment under section 84 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 sections 151D, 151H and 151I.

- (2) However, those grounds are taken to be part of the polling place for the purposes of those sections if the returning officer, with the concurrence of the Electoral Commissioner, causes to be displayed throughout the hours of polling at each entrance to those grounds a notice signed by the returning officer stating that those grounds are treated as part of the polling place.

### **152 Persons incurring electoral expense without authority**

Any person incurring or authorising any electoral expense on behalf of a candidate without the written authority of the candidate shall be guilty of a contravention of this Act and shall be liable to a penalty not exceeding 1 penalty unit.

### **153 (Repealed)**

### **154 Wagers etc on result of elections prohibited**

Any person who makes or is concerned in any wager, bet, or other risk of any nature whatsoever upon the result of any election, shall, for every such offence, be liable to a penalty not exceeding 3 penalty units; and every such wager, bet, or other risk shall be and is hereby declared an illegal act.

## **Division 18 Special provisions relating to the polling in Antarctica**

### **154AA Definitions**

In this Division:

**Antarctic elector** means an elector who:

- (a) is, in the course of his or her employment, in Antarctica on the polling day for an election, and
- (b) has made a request under section 154AD that he or she be treated, while he or she is in Antarctica, as an Antarctic elector.

**Antarctica** means the Australian Antarctic Territory and includes:

- (a) the Territory of Heard Island and McDonald Islands, and

(b) Macquarie Island.

**station** means a research station in Antarctica that is operated by the Commonwealth.

**transmit** includes transmit by radio-telephone or telex.

#### **154AB Antarctic Returning Officers and Assistant Returning Officers**

- (1) There shall be an Antarctic Returning Officer, and an Assistant Antarctic Returning Officer, for each station.
- (2) Antarctic Returning Officers and Assistant Antarctic Returning Officers shall be appointed by the Electoral Commissioner by instrument in writing.
- (3) The person in charge of a station shall not be appointed to be the Antarctic Returning Officer, or Assistant Antarctic Returning Officer, for that station.
- (4) The person in charge of a station may, by instrument in writing, appoint a person (including the Assistant Antarctic Returning Officer) to act as the Antarctic Returning Officer for the station during any period, or during all periods, when the Antarctic Returning Officer for the station is absent from duty at the station, is absent from Antarctica, or is for any other reason unable to perform the functions of his or her office.
- (5) The person in charge of a station may, by instrument in writing, appoint a person to act as the Assistant Antarctic Returning Officer for the station during any period, or during all periods, when the Assistant Antarctic Returning Officer for the station is acting as Antarctic Returning Officer for the station, is absent from duty at the station, is absent from Antarctica, or is for any other reason unable to perform the functions of his or her office.
- (6) While a person is acting as the Antarctic Returning Officer, or as the Assistant Antarctic Returning Officer, for a station, he or she has and may exercise all the powers and shall perform all the functions, of the Antarctic Returning Officer, or the Assistant Antarctic Returning Officer, for the station, as the case requires.

#### **154AC Application of this Part to polling in Antarctica**

- (1) Except as provided by this Division, the provisions of Divisions 2, 3, 7, 8 (other than sections 103 (2) and (3), 108, 109 and 110) and 10–12 do not apply to the taking of a poll in Antarctica.
- (2) In the application, by virtue of this Division, of a provision of this Part to the taking of a poll in Antarctica:
  - (a) a reference in that provision to the returning officer in relation to a polling place shall be read as a reference to the Antarctic Returning Officer in relation to a station, and

- (b) a reference in that provision to another election official in relation to a polling place shall be read as a reference to the Assistant Antarctic Returning Officer in relation to a station.

**154AD Antarctic electors**

- (1) An elector who is, or expects to be, in the course of the elector's employment, in Antarctica may, by notice given to the registrar for the subdivision of the district for which the elector is enrolled, request to be treated, while the elector is in Antarctica, as an Antarctic elector in relation to any election the polling day of which occurs while the elector is in Antarctica.
- (2) A notice shall be given to the registrar by lodging it with or sending it by post to the registrar.
- (3) A notice is not effective, in relation to an election, unless it is received by a registrar before noon on the day of nomination for the election.
- (4) Upon the receipt of a request to be treated as an Antarctic elector made by an elector, the registrar shall:
  - (a) annotate the roll for the subdivision for which the elector is enrolled so as to indicate that the elector is an Antarctic elector, and
  - (b) notify the Electoral Commissioner that the roll has been so annotated.
- (5) Notwithstanding anything in section 33 (1) or (2), while a person is entitled to be treated as an Antarctic elector by virtue of an annotation to the roll for a subdivision, the person is entitled to:
  - (a) have his or her name retained on the roll for the subdivision, and
  - (b) vote as an elector of the subdivision.
- (6) A registrar shall delete an annotation made under subsection (4) in relation to an elector immediately after becoming aware that the elector has ceased to be in Antarctica and shall notify the Electoral Commissioner accordingly.

**154AE Arrangements for polling in Antarctica**

- (1) If, in the case of a periodic election for the Council, the proceedings stand adjourned to polling day, the Electoral Commissioner shall immediately cause to be transmitted to the Antarctic Returning Officer at whose station the elector is based:
  - (a) directions for the preparation by the Antarctic Returning Officer of ballot papers for use in relation to the election, and
  - (b) the name of the elector and the particulars relating to the elector that are entered on the roll.

- (2) If, in the case of an election for the Assembly, the proceedings on the day of nomination stand adjourned to polling day, a returning officer on the roll for whose subdivision there is an Antarctic elector in relation to the election shall immediately cause to be transmitted to the Antarctic Returning Officer at whose station the elector is based:
  - (a) directions for the preparation by the Antarctic Returning Officer of ballot papers for use in relation to the election, and
  - (b) the name of the elector and the particulars relating to the elector that are entered on the roll for the subdivision.
- (3) If information is transmitted by the Electoral Commissioner or a returning officer to an Antarctic Returning Officer in pursuance of this section, both the Electoral Commissioner or the returning officer, as the case may be, and the Antarctic Returning Officer shall, immediately after the transmission, cause a statement in writing of the information transmitted to be prepared.
- (4) Sections 82–83B and 83H apply in relation to ballot papers prepared under this section as if a reference in sections 83 and 83B and 83H to the printing of ballot papers were a reference to such preparation.

**154AF Ballot papers to be initialled**

Section 102 applies to the polling at a station in Antarctica as if the reference in that section to an election official were a reference to the Antarctic Returning Officer for that station.

**154AG Candidates not to take part in polling**

A candidate shall not take part in any way in the conduct of the polling in Antarctica.

**154AH The polling in Antarctica**

- (1) The polling at a station in Antarctica shall be conducted as follows:
  - (a) before any vote is taken, the Antarctic Returning Officer for the station shall exhibit the ballot box empty, and shall then securely fasten its cover,
  - (b) the poll shall be open during such hours on such days as the Antarctic Returning Officer, subject to subsection (2), directs, and
  - (c) the Antarctic Returning Officer or the Assistant Antarctic Returning Officer shall, at all times at which the poll is open, be present in that part of the station at which the polling is taking place.
- (2) The polling at a station in relation to an election shall not continue beyond 6 pm by standard time in New South Wales (other than in the County of Yancowinna and Lord



Howe Island) on the day of polling in the election.

**154AI Entitlement of Antarctic electors to vote**

An Antarctic elector whose name has been transmitted to the Antarctic Returning Officer for a station in pursuance of section 154AE (1) (b) or (2) (b), as the case may be, is entitled to vote at the station during the period when the poll is open at that station.

**154AJ Questions to be put to voter**

(1) The Antarctic Returning Officer for a station shall put the following questions to each person claiming to vote at the station in an election or elections:

(a) What is your full name?

(b) Have you voted before in this election? *or* Have you voted in these elections? (as the case requires)

(2) If a person who claims to vote at a station and to whom questions are put under this section:

(a) refuses to answer fully any question so put to the person, or

(b) does not answer the question referred to in subsection (1) (b) absolutely in the negative, when put to the person,

the person's claim to vote at the station shall be rejected.

**154AK Right of Antarctic elector to receive ballot paper**

The Antarctic Returning Officer or the Assistant Antarctic Returning Officer for a station shall, at the polling, give to each person claiming to vote at the station a ballot paper for the district for which the person is enrolled, duly initialled by the Antarctic Returning Officer, if the name under which the person claims to vote has been transmitted to the Antarctic Returning Officer in pursuance of section 154AE (1) (b) or (2) (b), as the case may be, and the person's claim to vote is not rejected.

**154AL List of Antarctic electors to be marked**

Immediately upon giving a ballot paper to a person claiming to vote, the Antarctic Returning Officer or the Assistant Antarctic Returning Officer shall record on the statement prepared by him or her under section 154AE (3) the fact that the ballot paper has been given to that person.

**154AM Application of sections 103 (1) and 108**

Sections 103 (1) and 108 (1) apply to the polling at a station as if:

(a) each reference in those subsections to an unoccupied compartment of the booth were a reference to an unoccupied part of the station, and

(b) section 103 (1) (c) were omitted.

**154AN Proceedings by Antarctic Returning Officer on close of poll**

At the close of the poll, the Antarctic Returning Officer shall, in the presence of the Assistant Antarctic Returning Officer:

- (a) open the ballot box,
- (b) transmit, or cause to be transmitted, to the Electoral Commissioner:
  - (i) particulars of each elector who has voted,
  - (ii) unless subparagraph (iii) applies—particulars of the marking of each ballot paper, and
  - (iii) if the Antarctic Returning Officer is unable clearly to read or understand the particulars referred to in subparagraph (ii)—a statement to that effect together with such information relating to those particulars as the Antarctic Returning Officer thinks sufficient to explain that inability, and
- (c) cause a statement in writing of the information transmitted to be prepared.

**154AO Result of the polling in Antarctica**

- (1) Upon receipt of the particulars referred to in section 154AN (b) (ii), the Electoral Commissioner shall forthwith:
  - (a) initial the front of a postal ballot paper appropriate for the district for which the vote was cast,
  - (b) cause those particulars to be transcribed onto the postal ballot paper,
  - (c) seal the postal ballot paper in an envelope,
  - (d) indorse the envelope with his or her signature, and
  - (e) cause to be sent to the returning officer for the district to which the ballot paper relates the envelope containing the postal ballot paper.
- (2) A returning officer or polling place manager shall not mark a postal ballot paper referred to in this section in a manner that is likely to enable the ballot paper to be identified as representing the vote of an Antarctic elector.
- (3) Upon receipt of information under subsection (1), the Electoral Commissioner shall forthwith:
  - (a) cause a statement in writing of that information to be prepared, and
  - (b) cause to be sent to each returning officer for the district to which a ballot paper

referred to in paragraph (1) (b) relates particulars of the Antarctic electors who have voted in the election in relation to the district.

(4) A reference in this Part to scrutiny:

(a) includes a reference to scrutiny of any act or thing done in pursuance of subsection (1) (a) to (d), and

(b) does not include a reference to scrutiny of:

(i) any act or thing done in Antarctica, or

(ii) the transmission of any information to or from Antarctica.

(5) For the purposes of section 114L, a ballot paper marked in accordance with subsection (1) (b) shall be deemed to have been used for voting in pursuance of this Part.

#### **154AP Preservation of ballot papers etc**

(1) As soon as practicable after the close of the poll for an election, the Antarctic Returning Officer for each station shall forward to the Electoral Commissioner a copy of the statements prepared by him or her under sections 154AE (3) and 154AN (c) and the ballot papers prepared by him or her and used for voting in Antarctica.

(2) The documents to which this subsection applies that are used at or in connection with an election shall be preserved in accordance with directions of the Electoral Commissioner for the purposes of this subsection until:

(a) the election can no longer be questioned, or

(b) the expiration of the period of 6 months commencing on the date of the declaration of the poll,

whichever later occurs, after which the Electoral Commissioner must cause the documents to be destroyed.

(3) Subsection (2) applies to the following documents:

(a) the statements referred to in sections 154AE (3), 154AN (c) and 154AO (3) (a),

(b) the postal ballot papers referred to in section 154AO (1) (b),

(c) the ballot papers prepared by an Antarctic Returning Officer and used for voting in Antarctica.

#### **154AQ Appointment of assistants for Antarctic Returning Officer**

(1) An Antarctic Returning Officer may appoint persons to act as his or her assistants in the exercise of the Officer's functions.

- (2) An Antarctic Returning Officer may be assisted by assistants so appointed in the exercise of his or her functions under this Division, and a reference in this Division to an Antarctic Returning Officer includes a reference to assistants so assisting him or her.
- (3) Section 21AN applies to an assistant appointed under this section in the same way as it applies to an appointed official referred to in that section.

## **Part 6 Court of Disputed Returns**

### **Division 1 Disputed elections and returns**

#### **154A Application of Division**

This Division does not, except as provided in Division 4, apply to or in respect of an election referred to in section 22C or 22D of the *Constitution Act 1902* or in clause 4 or 5 of Schedule 4 to the *Constitution and Parliamentary Electorates and Elections (Amendment) Act 1978*.

#### **155 Method of disputing elections or returns**

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

#### **156 The Court of Disputed Returns**

- (1) The Supreme Court shall be the Court of Disputed Returns, and shall have jurisdiction to try the petition.
- (2) The jurisdiction of the Supreme Court sitting as a Court of Disputed Returns may be exercised by a single judge.

#### **157 Requisites of petition**

Every petition disputing an election or return in this Part called “the petition” shall:

- (a) set out the facts relied on to invalidate the election or return,
- (b) contain a prayer asking for the relief the petitioner claims to be entitled to,
- (c) be signed by a candidate at the election in dispute or by a person who was qualified to vote thereat,
- (d) be attested by two witnesses whose occupations and addresses are stated,
- (e) be filed with the Prothonotary of the Supreme Court within forty days of the return of the writ.

**158 Deposits as security for costs**

At the time of filing the petition the petitioner shall deposit with the Prothonotary the sum of two hundred and fifty dollars as security for costs.

**159 No proceedings unless requisites complied with**

No proceedings shall be had on the petition unless the requirements of sections 157 and 158 are complied with.

**160 Right of Electoral Commissioner to be represented**

The Electoral Commissioner shall be entitled by leave of the Court of Disputed Returns to enter an appearance in any proceedings in which the validity of any election or return is disputed, and to be represented and heard thereon, and in such case shall be deemed to be a party respondent to the petition.

**161 Powers of Court**

- (1) The Court of Disputed Returns shall sit as an open court and its powers shall include the following:
  - (i) To adjourn,
  - (ii) To compel the attendance of witnesses and the production of documents,
  - (iii) To grant to any party to a petition leave to inspect in the presence of a prescribed officer the rolls and other documents (except ballot papers) used at or in connection with any election and to take, in the presence of the prescribed officer, extracts from those rolls and documents,
  - (iv) To examine witnesses on oath,
  - (v) To declare that any person who was returned as elected was not duly elected,
  - (vi) To declare any candidate duly elected who was not returned as elected,
  - (vii) To declare any election absolutely void,
  - (viii) To dismiss or uphold the petition in whole or in part,
  - (ix) To award costs,
  - (x) To punish any contempt of its authority by fine or imprisonment.
- (2) The court may exercise all or any of its powers under this section on such grounds as the court in its discretion thinks just and sufficient.
- (3) Without limiting the powers conferred by this section, it is hereby declared that the power of the court to declare that any person who was returned as elected was not

duly elected, or to declare an election absolutely void, may be exercised on the ground that illegal practices were committed in connection with the election.

**162 (Repealed)**

**163 Inquiries by Court**

- (1) The court shall inquire whether or not the petition is duly signed, and so far as rolls and voting are concerned may inquire into the identity of persons, and whether their votes were improperly admitted or rejected, assuming the roll to be correct, but the court shall not inquire into the correctness of any roll.
- (2) Where the court makes inquiries in relation to ballot papers marked in Antarctica pursuant to the provisions of Division 18 of Part 5, a statement of the particulars of the marking of the ballot papers prepared by the Electoral Commissioner under section 154AO is, unless the court otherwise orders, conclusive evidence of the particulars stated.

**164 Voiding election for illegal practices**

- (1) If the Court of Disputed Returns finds that a candidate has committed or has attempted to commit the offence of bribery or treating or undue influence, his or her election, if he or she is a successful candidate, shall be declared void.
- (2) No finding by the Court of Disputed Returns shall bar or prejudice any prosecution for any illegal practice.
- (3) The Court of Disputed Returns shall not declare that any person returned as elected was not duly elected or declare any election void:
  - (a) on the ground of any illegal practice committed by any person other than the candidate and without his or her knowledge or authority, or
  - (b) on the ground of any illegal practice other than bribery, treating, or corruption or attempted bribery, treating, or corruption,

unless the court is satisfied that the result of the election was likely to be affected, and that it is just that the candidate should be declared not to be duly elected or that the election should be declared void.

**165 Court to report cases of illegal practices**

When the Court of Disputed Returns finds that any person has committed an illegal practice, the Prothonotary shall forthwith report the finding to the Governor.

**166 Real justice to be observed**

The court shall be guided by the substantial merits and good conscience of each case without regard to legal forms or technicalities, or whether the evidence before it is in

accordance with the law of evidence or not.

**167 Immaterial errors not to vitiate election**

No election shall be voided on account of any delay in the declaration of nominations, the polling, or the return of the writ, or on account of the absence or error of or omission by any officer which did not affect the result of the election:

Provided that where any elector was, on account of the absence or error of, or omission by, any officer, prevented from voting in any election, the court shall not, for the purpose of determining whether the absence or error of, or omission by, the officer did or did not affect the result of the election, admit any evidence of the way in which the elector intended to vote in the election.

**168 Evidence that person not permitted to vote**

On the trial of any petition the court shall not admit the evidence of any witness that he or she was not permitted to vote in any election unless the witness satisfies the court:

- (a) that he or she claimed to vote, in the election, pursuant to that provision of this Act under which he or she was entitled or might be permitted to vote, and
- (b) that he or she complied with the requirements of this Act and the regulations made thereunder relative to voting by electors in so far as he or she was permitted so to do.

**169 Decisions to be final**

- (1) All decisions of the court shall be final and conclusive and without appeal, and shall not be questioned in any way.
- (2) No appeal shall lie to the Court of Appeal from any decisions of the court.
- (3) Subsection (2) does not limit the generality of subsection (1).

**170 Copies of petition and order of court to be sent to Clerk of Assembly**

- (1) The Prothonotary shall forthwith after the filing of a petition disputing an election for or the return of a member of the Legislative Assembly forward to the Clerk of the Legislative Assembly a copy of the petition, and after the trial of the petition shall forthwith forward to such clerk a copy of the order of the court.
- (2) The Prothonotary shall forthwith after the filing of a petition disputing a periodic Council election or the return of a member of the Legislative Council forward to the Clerk of the Legislative Council a copy of the petition and, after the trial of the petition, shall forthwith forward to that clerk a copy of the order of the court.

**171 Australian legal practitioner**

- (1) No party to the petition shall, except by consent of all parties, or by leave of the court,

be represented by an Australian legal practitioner.

- (2) In no case shall more than one Australian legal practitioner appear on behalf of any party.

### **172 Costs**

The court may award costs against an unsuccessful party to the petition and may in its discretion recommend that costs be paid by the Crown.

### **173 Deposits applicable for costs**

If costs are awarded to any party against the petitioner, the deposit shall be applicable in payment of the sum ordered, but otherwise the deposit shall be repaid to the petitioner.

### **174 Other costs**

All other costs awarded by the court, including any balance above the deposit payable by the petitioner, shall be recoverable as if the order of the court were a judgment of the Supreme Court, and such order may be entered as a judgment of the Supreme Court, and enforced accordingly.

### **175 Effect of decisions**

Effect shall be given to any decision of the court as follows:

- (i) If any person returned is declared not to have been duly elected, he or she shall cease to be a member of the Legislative Assembly or Legislative Council, as the case may be,
- (ii) If any person not returned is declared to have been duly elected, he or she may take his or her seat accordingly,
- (iii) If any election is declared absolutely void a new election shall be held.

Whenever a new election is to be held pursuant to paragraph (iii) to return a member of the Legislative Assembly the Speaker shall issue the writ for such election or if there is no Speaker or if the Speaker is absent from New South Wales or by reason of illness or other cause is unable to do so the Governor may issue the writ.

Whenever a new periodic Council election is to be held pursuant to paragraph (iii) the Governor may issue the writ for that election.

### **175A Power to make Rules of Court**

- (1) Rules not inconsistent with this Act may be made under the [Supreme Court Act 1970](#) for carrying this Part into effect, and in particular for regulating the practice and procedure of the court, and the forms to be used.



- (2) Subsection (1) does not limit the rule-making powers conferred by the *Supreme Court Act 1970*.
- (3) Notwithstanding the *Supreme Court Act 1970*, any provision of that Act and any provision of any rule made by or pursuant to that Act which is inconsistent with this Act shall, to the extent of such inconsistency and while such inconsistency continues to exist, not apply to or in respect of any proceedings under this Part.

#### **175AA Regulations re court fees**

The Governor may make regulations fixing or otherwise relating to fees to be paid by parties in respect of the business of the court.

### **Division 2 Qualifications and vacancies**

#### **175B Reference of question as to qualification or vacancy**

Any question respecting the qualification of a member of the Legislative Assembly, or respecting a vacancy in the Legislative Assembly, may be referred by resolution of the Legislative Assembly to the Court of Disputed Returns, and the Court of Disputed Returns shall thereupon have jurisdiction to hear and determine the question.

#### **175C President or Speaker to state case**

When any question is referred to the Court of Disputed Returns under this Division, the Speaker shall transmit to the Court of Disputed Returns a statement of the question upon which the determination of the court is desired, together with any proceedings, papers, reports or documents relating to the question in the possession of the Legislative Assembly.

#### **175D Parties to the reference**

The Court of Disputed Returns may allow any person who in the opinion of the court is interested in the determination of any question referred to it under this Division to be heard on the hearing of the reference, or may direct notice of the reference to be served on any person, and any person so allowed to be heard or so directed to be served shall be deemed to be a party to the reference.

#### **175E Powers of Court**

On the hearing of any reference under this Division the Court of Disputed Returns shall sit as an open court and shall have the powers conferred by section 161 so far as they are applicable, and in addition thereto shall have power:

- (a) to declare that any person was not qualified to be a member of the Legislative Assembly,
- (b) to declare that any person was not capable of sitting as a member of the Legislative

Assembly, and

(c) to declare that there is a vacancy in the Legislative Assembly.

**175F Order to be sent to House affected**

After the hearing and determination of any reference under this Division the Prothonotary shall forthwith forward to the Clerk of the Legislative Assembly a copy of the order or declaration of the Court of Disputed Returns.

**175G Application of certain sections**

The provisions of sections 166, 169, 171, 172, 174, 175, and 175A, shall apply so far as applicable to proceedings on a reference to the Court of Disputed Returns under this Division.

**Division 3 Application of Division 2 to Council**

**175H Application of Division 2 to Legislative Council**

(1) The provisions of Division 2 apply to the reference of any question (other than a matter referred to in section 175I) respecting:

- (a) the qualification of a member of the Legislative Council or respecting a vacancy in the Legislative Council, or
- (b) the eligibility of a person, as referred to in section 22C (2) of the *Constitution Act 1902* or in clause 4 (5) of Schedule 4 to the *Constitution and Parliamentary Electorates and Elections (Amendment) Act 1978*,

to the Court of Disputed Returns in the same way as they apply to the reference of any question respecting the qualification of a member of the Legislative Assembly or respecting a vacancy in the Legislative Assembly to the Court of Disputed Returns.

(2) For the purposes of subsection (1):

- (a) a reference in Division 2 to the Speaker shall:
  - (i) in relation to a question referred to in subsection (1) (a), be construed as a reference to the President, and
  - (ii) in relation to a question referred to in subsection (1) (b), be construed as a reference to the Minister,
- (b) a reference in Division 2 to the Legislative Assembly shall be construed as a reference to the Legislative Council,
- (c) a reference in Division 2 to the Clerk of the Legislative Assembly shall be construed as a reference to the Clerk of the Legislative Council,

(d) a reference in Division 2 to Division 2 shall be construed as a reference to Division 2 as applied by subsection (1), and

(e) section 161 (1) (vi) and (vii) shall be deemed to be omitted.

## **Division 4 Casual vacancies in Council**

### **175I Application of Division**

This Division applies only to and in respect of an election referred to in section 22C or 22D of the *Constitution Act 1902* or in clause 4 or 5 of Schedule 4 to the *Constitution and Parliamentary Electorates and Elections (Amendment) Act 1978*.

### **175J Application of certain sections**

The provisions of sections 155, 156, 157, 158, 159, 161, 166, 167, 169, 171, 172, 173, 174, 175, 175A and 175AA apply to and in respect of an election to which this Division applies in the same way as they apply to and in respect of an election to which Division 1 applies but subject to the following modifications:

(a) section 157 (c) shall be deemed to be amended by inserting after the word “thereat” the words “or by any person whose name is on a roll”,

(b) section 161 (1) (vi) and (vii) shall be deemed to be omitted,

(c) section 167 shall be deemed to be omitted and the following section inserted in its stead:

**167** No election shall be voided on account of any failure to comply with any provision of any Act relating to the conduct of the election if the failure did not affect the result of the election.

(d) section 175 shall be deemed to be omitted and the following section inserted in its stead:

**175** If any person returned is declared not to be duly elected, he or she shall cease to be a member of the Legislative Council.

## **Part 7 Miscellaneous provisions, penalties etc**

### **176 Regulations**

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(1A) (Repealed)

- (2) The Governor may, in such regulations, provide for any proceeding, matter, or thing for which express provision has not been herein made in order to give due effect to the intent and meaning of the provisions of this Act.
- (3) Where any alteration of a form in the Schedules is found necessary, or where it is found that the time allowed to do any act is clearly insufficient, and an alteration or extension of such time and any alteration of dates consequent thereon is shown to be necessary, the Governor may, by regulation or notification in the Gazette, declare that such alteration shall be made, and thereupon the same shall be made and take effect accordingly.
- (4) A provision of a regulation may:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,or may do any combination of those things.
- (5) A provision of a regulation may (without limiting any power conferred by this section or the *Interpretation Act 1987*) adopt a form approved under the *Commonwealth Electoral Act 1918* of the Commonwealth for the purposes of a provision of that Act as the prescribed form for the purposes of a corresponding provision of this Act.
- (6) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

#### **176A Destruction of ballot papers and other documents**

Any provision of this Act that provides for the destruction of ballot papers or other documents has effect despite section 21 of the *State Records Act 1998*.

#### **176B Disorderly conduct at public political meetings**

- (1) Any person who, at any public meeting to which this section applies, acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting is held shall be guilty of an offence against this Act.
- (2) This section applies to any lawful public political meeting held in relation to any election between the date of the issue of the writ for the election and the date of the return of the writ.

Maximum penalty: 5 penalty units.

**176C Signature to electoral paper**

- (1) Every electoral paper which by this Act or any regulations made thereunder has to be signed by any person shall be signed by that person with his or her personal signature.
- (2) Where a person who is unable to sign his or her name in writing makes his or her mark as his or her signature to an electoral paper, the mark shall be deemed to be his or her personal signature, if it is identifiable as such, and is made in the presence of a witness who signs the electoral paper as such witness.
- (3) Nothing in this section shall authorise any person to sign any electoral paper by a mark or otherwise than in his or her own handwriting in cases where this Act or the regulations require him or her to sign the electoral paper in his or her own handwriting.
- (4) A person shall not make the signature of any other person on an electoral paper.
- (5) Any person who contravenes any of the provisions of this section shall be liable to a penalty not exceeding 10 penalty units.
- (6) Nothing in this section shall affect the liability of any person to be proceeded against for forgery, but so that he or she shall not be liable to be punished more than once in respect of the same offence.

**176D Untrue statements in forms**

- (1) Any person who knowingly makes any untrue statement in any electoral paper, or in any information supplied to any officer for the purposes of the preparation, maintenance, or revision of rolls, shall be liable to a penalty not exceeding 10 penalty units or to imprisonment for a period not exceeding 6 months, or both.
- (2) Nothing in this section shall affect the liability of any person to be proceeded against in respect of any other offence, whether against this Act or otherwise, but so that he or she shall not be liable to be punished more than once in respect of the same offence.

**176E Witnessing electoral papers**

Any person who:

- (a) signs his or her name as witness on any blank electoral paper, or
- (b) signs his or her name as witness on any electoral paper which has been wholly or partly filled up unless it has been signed by the person intended to sign it, or
- (c) signs his or her name as witness on any electoral paper unless he or she has seen the person whose signature he or she purports to witness, sign it, or

(d) writes on any electoral paper as his or her own name:

- (i) the name of another person, or
- (ii) any name not being his or her own name,

shall be liable to a penalty not exceeding 10 penalty units.

#### **176F Forging or uttering electoral papers**

Any person who:

- (a) forges any electoral paper, or
- (b) utters any forged electoral paper, knowing it to be forged,

shall be guilty of an offence and shall be liable to a penalty not exceeding 10 penalty units or to imprisonment for a period not exceeding 6 months, or both.

#### **177 Offence of stuffing ballot box**

Every person who knowingly places, or is privy to the placing, in a ballot box any ballot paper which has not been lawfully issued to an elector, and been marked, filled up, or otherwise dealt with by him or her as by this Act required, and any elector who places in the ballot box any paper other than the ballot paper issued to him or her for that purpose, shall be guilty of an offence, and be liable to a penalty not exceeding 10 penalty units or to imprisonment for a period not exceeding 6 months, or both.

#### **178 Penalty on police officers influencing voters etc**

- (1) If any person, being at the time a police officer takes any part in any election (except by recording his or her vote) or seeks to influence in any manner any elector in giving his or her vote for any candidate or candidates, such person shall incur a penalty not exceeding 5 penalty units.
- (2) This section does not apply (and is taken never to have applied) so as to prevent a police officer from being a candidate for election to the Legislative Assembly or Legislative Council or from doing anything done by a police officer as such a candidate.

#### **179 Payment of expenses**

The Governor may, from time to time by warrant under his or her hand addressed to the Treasurer, authorise and direct that all such moneys as are from time to time required for paying any expenses lawfully incurred under and in the execution of the provisions of this Act be paid out of the Consolidated Fund, and the same shall be so paid accordingly.

#### **180 Summary penalties for neglect**

If in the opinion of the Electoral Commissioner any registrar, or deputy registrar, or other

officer, has been guilty of any negligent act of commission or omission, contrary to the provisions of this Act, the Electoral Commissioner may, by writing under his or her hand, after calling upon any such officer to furnish any explanation he or she may think fit, personally or in writing, and after considering such explanation, recommend that the whole or any portion of the remuneration payable to such officer under the authority of this Act during the year then current shall be forfeited.

### **181 Penalty for disobedience**

If any registrar, or other officer or person, or any police officer, is guilty of any wilful misfeasance, or wilful or grossly negligent act of commission or omission in contravention of the provisions of this Act, he or she shall be liable to a penalty not exceeding 3 penalty units, or, at the discretion of the court, to be imprisoned for any period not exceeding three months.

### **182 Rolls—business hours for registrars and correction of errors etc**

- (1) The Electoral Commissioner may make rules and regulations as to the days, hours, and places on and at which any registrar or deputy registrar shall attend at his or her office or offices for the purposes of this Act, and as to what shall be deemed a reasonable price or payment for any rolls or other matters regarding which it is hereinbefore provided that a reasonable price be paid for the same.
- (2) Where any accidental or unavoidable impediment, misfeasance, or omission has happened in the preparation or transmission or printing of any roll, of what kind soever, the Governor may take all such measures as may be necessary for removing such impediment or rectifying such misfeasance or omission.

### **183 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be dealt with:
  - (a) summarily before a Local Court, or
  - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) If proceedings for an offence against this Act or the regulations that is punishable by a monetary penalty are brought in a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is the lesser of:
  - (a) the maximum monetary penalty provided in respect of the offence apart from this subsection, or
  - (b) 200 penalty units.
- (3) Proceedings for an offence against this Act or the regulations may be instituted by the Electoral Commissioner or any other person.

(4) Subsection (1) does not apply to proceedings for an offence that is declared by this Act to be an indictable offence.

#### **184 Limitation of time etc for recovery of penalties etc**

No person shall be liable to any penalty, forfeiture, or punishment imposed under this Act, unless the prosecution for the offence committed is commenced against such person within the space of twelve months next after such offence has been committed. Any proceedings for or in respect of any offence under this Act may be taken by any police officer, or by any person whomsoever, save where by this Act in any particular case some other person is charged with the duty of taking such proceedings.

#### **185 Appropriations of fees and penalties**

All moneys received by any officer under the provisions of this Act shall be paid to the Treasurer, and shall be deemed to be received on account of the Consolidated Fund.

#### **186 Provision as to Sunday, Good Friday and Christmas Day**

Whenever any day or date provided or appointed by or under this Act for any purpose falls on a Sunday, or Good Friday, or Christmas Day, then such provision and appointment shall take effect as for the day following; and all further changes of time rendered necessary by any such alteration may lawfully be made.

#### **186A Savings, transitional and other provisions**

Schedule 22 has effect.

### **Part 8**

#### **187, 188 (Repealed)**

#### **Schedule 1**

<b>Number of Act</b>	<b>Title of Act</b>	<b>Extent of repeal</b>
No 73, 1900	<a href="#">Federal Elections Act 1900</a>	The whole
No 33, 1902	<a href="#">Parliamentary Electorates and Elections Act 1902</a>	The whole
No 54, 1902	<a href="#">Women's Franchise Act 1902</a>	The whole
No 1, 1903	<a href="#">Parliamentary Elections (Amendment) Act 1902</a>	Repealed by No 41, 1906, sec 3
No 13, 1903	<a href="#">Reduction of Members Referendum Act 1903</a>	The whole
No 1, 1904	<a href="#">Electorates Redistribution Act 1904</a>	The whole
No 41, 1906	<a href="#">Parliamentary Elections Act 1906</a>	The whole



No 18, 1910	<a href="#">Parliamentary Elections (Second Ballot) Act 1910</a>	The whole
No 9, 1911	<a href="#">Parliamentary Elections (Amendment) Act 1911</a>	The whole

## Schedules 2, 3 (Repealed)

## Schedule 4 Ballot paper

(Sections 82, 114D, 114Q, 114ZB, 114ZR and 115)

Issuing officer's initials

### Ballot paper

Legislative Assembly Election

Electoral District of *(here insert name of district)*

Place the number "1" in the square opposite the name of the candidate for whom you desire to give your first preference vote.

\*You may, if you wish, vote for additional candidates by placing consecutive numbers beginning with the number "2" in the squares opposite the names of those additional candidates in the order of your preferences for them.

Fold the ballot paper so that the vote cannot be seen, and put it in the ballot box or in the envelope provided as appropriate.

### Candidates\*\*

- .....
- .....
- .....
- .....
- .....
- .....

\*These words may be excluded where there are only 2 candidates.

\*\*Insert after the name of each candidate, if appropriate, the name of a registered party or the word "Independent".

## Schedule 4A Ballot paper

NEW SOUTH WALES Section of 21 Members of Legislative Council

<p><b>You may vote in one of two ways either</b></p> <p>Place the number "1" in the square above the group of candidates for whom you desire to vote. You may if you wish vote for additional groups of candidates by placing consecutive numbers beginning with the number "2" in the squares above the additional groups of candidates in order of your preferences for them. Fold the ballot paper so that the vote cannot be seen, and put it in the ballot box or in the envelope provided as appropriate.</p>	<p style="text-align: center;">GROUP A x</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p style="text-align: center;">GROUP C x</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p style="text-align: center;">GROUP Q x</p> <p style="text-align: center;"><input type="checkbox"/></p>
<p><b>or</b></p> <p>Place the numbers "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14" and "15" in the squares opposite the names of 15 candidates in order of your preferences for them. You may if you wish vote for additional candidates by placing consecutive numbers beginning with the number "16" in the squares opposite the names of those additional candidates in the order of your preferences for them. Fold the ballot paper so that the vote cannot be seen, and put it in the ballot box or in the envelope provided as appropriate.</p>	<p style="text-align: center;">GROUP A x</p> <p><input type="checkbox"/> PARKER Allan xx</p> <p><input type="checkbox"/> MILLER John xx</p> <p>.....</p> <p><input type="checkbox"/> MORGAN Albert xx</p> <p><input type="checkbox"/> LUMSDAINE Elaine xx</p> <p><input type="checkbox"/> POULOS Nicholas xx</p>	<p style="text-align: center;">GROUP B x</p> <p><input type="checkbox"/> WILLIAMS Gregory xx</p> <p><input type="checkbox"/> ROGERS Ralph xx</p> <p><input type="checkbox"/> PERCIVAL Beano xx</p>	<p style="text-align: center;">GROUP C x</p> <p><input type="checkbox"/> LEVY Mark xx</p> <p><input type="checkbox"/> WOOD Henry xx</p> <p>.....</p> <p><input type="checkbox"/> FONG Phillip xx</p> <p><input type="checkbox"/> ILIC Petar xx</p> <p><input type="checkbox"/> HAYES Graham xx</p>
	<p style="text-align: center;">GROUP Q x</p> <p><input type="checkbox"/> BOOKMAN John xx</p> <p><input type="checkbox"/> CRANE June xx</p> <p>.....</p> <p><input type="checkbox"/> KING Henry xx</p> <p><input type="checkbox"/> WILSON Mary xx</p> <p><input type="checkbox"/> FRENCH Charles xx</p>	<p style="text-align: center;">GROUP Q x</p> <p><input type="checkbox"/> RODGER Jodie xx</p> <p><input type="checkbox"/> PASCALIS Sasha xx</p> <p><input type="checkbox"/> ADLER Greg xx</p> <p><input type="checkbox"/> SPICER Melanie xx</p>	

\* Here insert name of registered party or composite name. It to be printed. \*\* Here insert name of registered party or word. Independent. It to be printed.

### Schedules 5-18 (Repealed)

### Schedule 19 Procedure in relation to enforcement of provisions of

## **section 34**

(Section 34)

### **1 Notification in respect of offence**

Subject to such directions as are issued by the Electoral Commissioner, the Registrar shall, if satisfied that a person has failed to comply with the requirements of section 34, forthwith notify such person in the prescribed form of such failure, and inform the person that he or she may reply by Statutory Declaration, setting out any facts relevant to the matter, and that he or she has the option of having the matter dealt with either by the Electoral Commissioner or by a Local Court.

### **2 Consent to matter being dealt with by Electoral Commissioner**

Any person so notified who desires the matter to be dealt with by the Electoral Commissioner may notify the Registrar accordingly.

### **3 Proceedings upon receipt of consent to matter being dealt with by Electoral Commissioner**

Upon the receipt from a person so notified of a notification consenting to the matter being dealt with by the Electoral Commissioner, the Registrar shall consider the statements contained in the Statutory Declaration (if any) submitted by the person, make such further inquiry as he or she deems necessary, and, unless he or she decides not to proceed further, transmit the Statutory Declaration (if any) and notification, with a report as to the facts and his or her opinion thereon, to the Electoral Commissioner.

### **4 Action by Electoral Commissioner upon receipt of report from Registrar**

The Electoral Commissioner shall consider all the facts, and if satisfied that the person concerned is in default or has contravened the provisions of section 34, may make an order imposing upon that person a penalty not exceeding 0.1 penalty unit for a first offence, and not exceeding 0.1 penalty unit for any subsequent offence, and notify the Registrar thereof and of the time allowed for payment.

### **5 Penalty to be a debt due to Crown**

Any penalty so imposed by the Electoral Commissioner shall be a debt due to the Crown.

### **6 Notification of imposition of penalty**

The Registrar, upon receipt of advice from the Electoral Commissioner that a penalty has been so imposed upon any person, shall notify the person in the prescribed form.

### **7 Enforcement of penalties**

Any order so made by the Electoral Commissioner imposing a penalty may be filed in any Local Court, and thereupon the order shall have effect and be enforceable as if it were an

order of that Court.

### **8 Proceedings where matter not dealt with by Electoral Commissioner**

Where any person to whom a notification pursuant to paragraph 1 has been sent fails, within the time allowed, to reply thereto, or does not within that time consent to the matter being dealt with by the Electoral Commissioner, the Registrar shall, subject to such directions as are issued by the Electoral Commissioner, if he or she is satisfied that such person has contravened section 34 of the Act, cause proceedings to be instituted against him or her in the Court of the district in which such person resides.

### **9 Deputy-Registrar may institute proceedings**

Where the Registrar so directs, the Deputy-Registrar for the subdivision in which the defendant resides may institute proceedings in his or her own name, and in any such proceedings the authority of the Deputy-Registrar shall not be questioned.

### **10 Statutory declaration to be brought to notice of Court**

If, in any case in which proceedings are instituted in a Local Court, the Registrar has received from the person concerned a Statutory Declaration in pursuance of paragraph 1 he or she shall, as far as it is practicable and necessary for him or her to do so, inquire into the truth of the statements therein set out, and shall, unless he or she withdraws the prosecution, cause the declaration to be brought to the notice of the Court.

### **11 Court to consider statutory declaration**

The Court shall at the hearing of the case consider the Statutory Declaration (whether the defendant is present or not) as if the matter therein set out had been given in evidence before it.

### **12 Declaration by prosecuting officer to be considered by Court**

In any prosecution in respect of any contravention of section 34 the prosecuting officer may lodge with the Court a statutory declaration in support of the charge, and it shall not then be necessary for him or her to attend at the hearing, and the Court shall proceed with the hearing and determination of the case in his or her absence, and shall consider the statutory declaration as if the matter set out therein had been given in evidence before it.

### **13 Document purporting to be a statutory declaration**

For the purpose of paragraphs 10 and 12 any document purporting to be a statutory declaration shall be accepted as such by the Court without proof of the signatures thereon or proof of the authority of the person before whom it purports to have been made to take statutory declarations.

## **Schedules 20, 21 (Repealed)**

## Schedule 22 Savings, transitional and other provisions

(Section 186A)

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts or provisions of Acts:

*Parliamentary Electorates and Elections Amendment Act 2006*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on enactment of **Parliamentary Electorates and Elections Amendment Act 2006**

#### 2 Definition

In this Part:

**amending Act** means the *Parliamentary Electorates and Elections Amendment Act 2006*.

#### 3 State Electoral Office

- (1) A reference in any Act or statutory instrument, or in any document of any kind, to the State Electoral Office is taken to be or to include a reference to the New South Wales Electoral Commission.
- (2) A reference in any Act or statutory instrument, or in any other document of any kind, to an officer or employee (however expressed) of the State Electoral Office is taken to be a reference to a person who is a member of the staff of the Commission.

#### 4 Electoral Commissioner

- (1) The person holding office as Electoral Commissioner immediately before the date of commencement of section 21AA as inserted by the amending Act is taken to have

been appointed as Electoral Commissioner under that section for a term of 10 years commencing on that date.

- (2) The person's previous appointment to that office is taken to have terminated on the person's appointment under subclause (1).
- (3) The person is eligible for re-appointment under section 21AB as if the person's appointment under subclause (1) were his or her first appointment. This subclause has effect despite anything to the contrary in section 21AB, including section 21AB (5).

## **5 Returning officers**

- (1) The appointment of a person as a returning officer that is in force immediately before the repeal of section 75 by the amending Act is terminated by force of this clause.
- (2) A person whose appointment is terminated under this clause is eligible to be appointed to any position under this Act as amended by the amending Act.

## **6 Surveys of electoral districts**

- (1) Section 14A of this Act and section 9C of the *Surveying Act 2002* as respectively inserted by the amending Act apply in relation to determinations of boundaries of electoral districts occurring after the date of assent to the amending Act.
- (2) The Surveyor-General may, at his or her discretion, include in the register of public surveys such details or maps relating to electoral districts whose boundaries were determined before the date of assent to the amending Act as he or she thinks fit.

## **7 Dates of birth on rolls**

- (1) In the case of an elector who is enrolled immediately before the insertion of references to date of birth in this Act by the amending Act:
  - (a) the elector's enrolment is valid despite the absence of particulars of the elector's date of birth, and
  - (b) the roll or supplementary roll may be altered to include particulars of the elector's date of birth if they are provided by the elector.
- (2) Nothing in this clause affects the duty of a person to include particulars of the person's date of birth when making a claim for enrolment, provisional enrolment or transfer of enrolment or otherwise as required by or under this Act.

## **8 Elections and polls under other Acts or statutory rules**

- (1) If:
  - (a) the Electoral Commissioner is satisfied that the processes involved in the conduct of a particular election or poll under another Act or statutory rule amended by

Schedule 19 to the amending Act had commenced but not concluded at the commencement of the amendment, and

- (b) the Electoral Commissioner (or a person appointed by the Electoral Commissioner) had before that commencement been authorised or appointed to conduct the election or poll,

the Electoral Commissioner may by order in writing make a declaration to that effect. The order is to be published in the Gazette as soon as practicable after it is made.

- (2) An election or poll that is the subject of an order so made is to be conducted as if the Act or statutory rule had not been amended.
- (3) A reference in this clause to the conduct of an election or poll includes a reference to the exercise of functions as returning officer for the election or poll.