

# Parliamentary Electorates and Elections Act 1912 No 41

[1912-41]



New South Wales

## Status Information

### Currency of version

Historical version for 24 September 2010 to 6 December 2010 (accessed 8 December 2024 at 15:15)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### 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 (amended by [Parliamentary Electorates and Elections Amendment \(Automatic Enrolment\) Act 2009 No 102](#)) (not commenced)
- **See also**  
[Parliamentary Electorates and Elections Further Amendment Bill 2010](#)

### Authorisation

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File last modified 24 November 2010

# 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- (1) The Acts mentioned in Schedule 1, to the extent therein expressed, are hereby repealed.
- (2), (3) (Repealed)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 on the polling day for an election:

- (a) in the Australian Antarctic Territory, including Macquarie Island and the Territory of Heard Island and McDonald Islands, or
- (b) on a ship in transit to or from a place mentioned in paragraph (a) that has been declared by the Electoral Commissioner to be an Antarctic ship.

**Approved form** means a form approved by the Electoral Commissioner for the purposes of the provision in which the expression occurs.

**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 copy of a roll**, in relation to an election, means an authorised copy of a roll referred to in section 89 (3).

**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.

**Driver licence** means a driver licence issued under the [Road Transport \(Driver Licensing\) Act 1998](#).

**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 under this Act who is also enrolled under section 94, 94A or 95 of the Commonwealth Act.

**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.

**General postal voter** means an elector who:

- (a) has been granted general postal voter status under section 114AA, or
- (b) is taken to be a general postal voter under that section.

**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.

**Interstate or overseas pre-poll voting officer** means a person appointed as an interstate or overseas pre-poll voting officer under Division 5 of Part 3A.

**Itinerant elector** means an elector under this Act who is also enrolled under section 96 of the Commonwealth Act.

**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.

**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](#).

**Photo Card** means a New South Wales Photo Card issued by the Roads and Traffic Authority under the [Photo Card Act 2005](#).

**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.

**Pre-poll voting officer** means:

(a) in relation to a pre-poll voting place within a district:

- (i) the returning officer for the district, or
- (ii) an election official assigned by the returning officer for the district to conduct pre-poll voting, and

(b) in relation to a pre-poll voting place not within a district—an interstate or overseas pre-poll voting officer.

**Pre-poll voting place** means a place referred to in section 114P (2) (d).

**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.

**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 address is not recorded on a roll by operation of section 31.

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

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

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

- (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 31.

## 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 and Spatial Information 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**

**20-20B (Repealed)**

**21** (Renumbered as section 25)

## **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:
  - (a) if the person resides in the State—the person is enrolled for a district, or
  - (b) in any other case—the person is enrolled in any other State or Territory of the Commonwealth as an elector for the House of Representatives.
- (4) 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 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 Interstate or overseas pre-poll voting officers**

**21AJ Interstate or overseas pre-poll voting officers**

- (1) The Electoral Commissioner may, by instrument in writing, appoint appropriate persons to be:
  - (a) interstate or overseas pre-poll voting officers, or
  - (b) deputy interstate or overseas pre-poll voting officers,at a pre-poll voting place outside New South Wales (whether overseas or in Australia) for the purposes of all elections.
- (2) A deputy interstate or overseas pre-poll voting officer may act as, and is taken to be, the interstate or overseas pre-poll voting officer during the illness or absence of the interstate or overseas pre-poll voting officer or during a vacancy in the office of the interstate or overseas pre-poll voting officer.
- (3) This section does not prevent the appointment of a person as an interstate or overseas pre-poll voting officer to fill a vacancy in that office.

**21AK Appointment of assistants for interstate or overseas pre-poll voting officer**

An interstate or overseas pre-poll 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) an interstate or overseas pre-poll voting officer or deputy interstate or overseas pre-poll voting officer, or
- (c) an assistant to the Electoral Commissioner under section 21AI, or
- (d) an assistant to an interstate or overseas pre-poll 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, or
  - (d) an officer or member of staff of an electoral commission or electoral office of the Commonwealth or of a State or Territory.
- (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, or
  - (c) an officer or member of staff of an electoral commission or electoral office of the Commonwealth or of a State or Territory.
- (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.

**21BAA-21D (Repealed)**

**Part 3B Entitlement to enrol and vote**

**22 Who is entitled to be enrolled?**

- (1) A person is entitled to be enrolled for a district if:
  - (a) the person:
    - (i) has attained 18 years of age, and
    - (ii) is an Australian citizen, and
  - (b) the person lives at an address in that district and the person has lived at that address for at least one month before the enrolment.
- (2) A person, who is not entitled to be enrolled for any district under subsection (1), is entitled to be enrolled for a district if the person is enrolled under any of the following provisions of the Commonwealth Act for a Commonwealth subdivision which is included in that district:
  - (a) section 93 (1) (b) (ii)—being British subjects enrolled in relation to a Commonwealth division before 26 January 1984,
  - (b) section 94—enrolled voters leaving Australia,
  - (c) section 94A—voters enrolled outside Australia,
  - (d) section 95—spouse, de facto partner or child of eligible overseas elector,
  - (e) section 96—itinerant electors,
  - (f) section 100—age 17 enrolment.
- (3) A person who has attained 17 years of age is entitled to be enrolled for a district if the person would be entitled to enrol under subsection (1) had the person attained 18 years of age.
- (4) Subject to subsection (2), a person is not entitled to be enrolled:

- (a) on more than one district roll, or
- (b) in respect of any address other than the address at which the person is living at the date:
  - (i) that the person forwarded his or her claim for enrolment or transfer of enrolment, or
  - (ii) that the Electoral Commissioner enrolled the person.

### **23 Entitlement to vote**

Subject to this Act, an elector who is enrolled for a district is entitled to vote at any election for the Assembly for the district.

**Note—**

Section 22 of the *Constitution Act 1902* provides that persons entitled to vote at a general election of Members of the Legislative Assembly, and only those persons, are entitled to vote at a periodic election for the Legislative Council.

### **24 Restrictions on entitlement to vote**

- (1) Despite section 23, an elector is not entitled to vote at an election for a district if the elector:
  - (a) has been enrolled under section 22 (3), and
  - (b) has not attained 18 years of age on the date appointed for the taking of the poll for an election.
- (2) 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 is taken not to be:
  - (a) entitled to be enrolled on a roll, and
  - (b) enrolled on a roll.
- (3) 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.
- (4) An elector, other than a relevant elector, is not entitled to vote at an election as an elector 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 3 months immediately preceding polling day for that election, within that district.
- (5) Despite anything in this Act:
  - (a) an elector who has changed address to another place within the same district is

not, by reason only of that change, to be dispossessed of his or her entitlement to be enrolled for that district and to vote at an election in respect of that enrolment, 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 is enrolled as provided by this Act for the purposes of that election.

**Note—**

A person who is living at an address in a district and has lived at that address for at least one month may enrol and vote at an election for that district: see sections 22 (1) and 106.

- (6) In this section, **relevant elector** means:

- (a) an Antarctic elector, or
- (b) an eligible overseas elector, or
- (c) an itinerant elector.

## **25 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 4 Enrolment and rolls**

### **Division 1 Rolls**

#### **26 Rolls for districts**

- (1) The Electoral Commissioner is to keep and maintain a roll for each district.
- (2) The roll for a district is:
  - (a) to be kept in a form determined by the Electoral Commissioner, and
  - (b) to include the surname, given name or names, date of birth, occupation (or other



- prescribed particulars) and sex of each elector, and
- (c) to include the residence of the elector (except in relation to a silent elector, an eligible overseas elector or an itinerant elector), and
  - (d) to contain such other particulars as are prescribed.
- (3) In addition to any other function conferred by this Act on the Electoral Commissioner in relation to the keeping and maintenance of rolls, the Electoral Commissioner may alter any district roll by doing any of the following:
- (a) correcting any mistake or omission in the particulars of the enrolment of an elector,
  - (b) altering the particulars of the elector on a district 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 that sentence,
  - (e) striking out the superfluous entry where the name of the same elector appears more than once on the same district roll,
  - (f) reinstating any name removed by mistake as the name of a deceased elector,
  - (g) reinstating any name removed as the result of an objection, where satisfied that the objection was based on a mistake as to fact and that the person whose enrolment was the subject of the objection is still entitled, and has continuously been entitled, to the enrolment in respect of which the objection was made,
  - (h) reinstating any other name removed by mistake or which has been accidentally omitted,
  - (i) 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, or
    - (ii) by the naming or re-naming of a street, public place or locality, or
    - (iii) for any other similar reason.
- (4) For the avoidance of doubt, the Electoral Commissioner may keep rolls in an electronic form.

## **Division 2 Enrolment**

## **27 Compulsory enrolment: obligation to enrol and keep enrolment updated**

(1) Every person who:

- (a) is not enrolled for any district, and
- (b) is entitled to be enrolled on a roll for a district (other than under section 22 (2) or (3)),

must, within 21 days of becoming entitled to be enrolled, unless the person has been notified by the Electoral Commissioner that the person has been enrolled by the Electoral Commissioner:

- (c) complete and sign a claim for enrolment in the approved form in accordance with the directions on the form, and
- (d) forward the claim for enrolment to the Electoral Commissioner or to the Australian Electoral Commission.

Maximum penalty: 1 penalty unit.

### **Note—**

In many circumstances, a person will be automatically enrolled by the Electoral Commissioner under section 29.

(2) If an elector (including a silent elector) changes residence from one address to another address in New South Wales, the person must, within 21 days of becoming entitled to be enrolled on a roll for a district in respect of the person's new residence, unless the person has been notified by the Electoral Commissioner that the elector's enrolment has been updated:

- (a) complete and sign a claim for a transfer of enrolment in the approved form in accordance with the directions on the form, and
- (b) forward the claim for a transfer of enrolment to the Electoral Commissioner or to the Australian Electoral Commission.

Maximum penalty: 1 penalty unit.

### **Note—**

In many circumstances, an elector's enrolment will be automatically updated by the Electoral Commissioner under section 29.

(3) Every person who is entitled to be enrolled on a district roll under section 22 (3) and is not enrolled on that roll may:

- (a) complete and sign a claim for enrolment in the approved form in accordance with the directions on the form, and

- (b) forward the claim for enrolment to the Electoral Commissioner or to the Australian Electoral Commission.
- (4) A claim for enrolment under subsection (1) or (3) or for a transfer of enrolment under subsection (2) must:
- (a) unless paragraph (b) applies—be witnessed by an elector or a person entitled to be enrolled (who must sign the claim in the witness’s own hand writing), or
  - (b) be supported by the evidence of the claimant’s identity that is required by the regulations (if any).
- (5) If a person forwards a claim for enrolment, or a claim for a transfer of enrolment, to the Electoral Commissioner or the Australian Electoral Commission, proceedings are not to be commenced against that person for any alleged offence against this section committed before the person forwarded the claim.
- (6) If a person wishes to make a claim for enrolment, or a claim for transfer of 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 person.
- (7) A medical practitioner’s certificate referred to in subsection (6) is to be lodged with the claim to which it relates.
- (8) The regulations may:
- (a) require a claim to be supported by evidence of the claimant’s identity for the purposes of subsection (4) (b), and
  - (b) impose additional requirements in relation to identification for enrolment, including requirements as to:
    - (i) the witnessing of a claim, or
    - (ii) the inclusion in a claim, or the attachment to a claim, of particulars or material regarding identification.

## **28 Means of enrolment**

The Electoral Commissioner may enrol a person on a roll for a district:

- (a) on the Electoral Commissioner’s own initiative under section 29, or
- (b) in response to a claim for enrolment or a claim for a transfer of enrolment under section 30.

## 29 Enrolment by Electoral Commissioner on Electoral Commissioner's initiative

- (1) If the Electoral Commissioner, at any time, believes that a person who is not enrolled for any district is entitled to be enrolled for a district, the Electoral Commissioner may notify the person concerned in writing (including by email, SMS text message or other electronic means) that:
  - (a) the Electoral Commissioner believes that the person should be enrolled for that district, and
  - (b) the Electoral Commissioner will enrol the person for that district unless the person, within the period specified in the notice (being not less than 7 days), notifies the Electoral Commissioner that the Electoral Commissioner's belief is incorrect (and gives the reasons why that is so).
- (2) If no notification is made by the person under subsection (1) (b) within the specified period or, despite any such notification made within that period, the Electoral Commissioner still believes that the person is entitled to be enrolled for the district, the Electoral Commissioner is to:
  - (a) enrol the person for the district, and
  - (b) notify the person in writing (including by email, SMS text message or other electronic means) that he or she has been enrolled for that district.
- (3) If the Electoral Commissioner, at any time, believes that a person is incorrectly enrolled for a district (the **first district**), but that the person is entitled to be enrolled for another district (the **second district**), the Electoral Commissioner may notify the person concerned in writing (including by email, SMS text message or other electronic means) that:
  - (a) the Electoral Commissioner believes that the person should not be enrolled for the first district, but should be enrolled for the second district, and
  - (b) the Electoral Commissioner will:
    - (i) remove the person's name from the roll of the first district, and
    - (ii) enrol the person for the second district,unless the person, within the period specified in the notice (being not less than 7 days), notifies the Electoral Commissioner that the Electoral Commissioner's belief is incorrect (and gives the reasons why that is so).
- (4) If no notification is made by the person under subsection (3) (b) within the specified period or, despite any such notification made within that period, the Electoral Commissioner still believes that the person is incorrectly enrolled for the first district, but is entitled to be enrolled for the second district, the Electoral Commissioner is to:

- (a) remove the person's name from the roll for the first district, and
  - (b) enrol the person for the second district, and
  - (c) notify the person in writing (including by email, SMS text message or other electronic means) of that transfer of enrolment.
- (5) If the Electoral Commissioner, at any time, believes that a person who is enrolled for a district is not entitled to be enrolled for that district, the Electoral Commissioner may notify the person concerned in writing (including by email, SMS text message or other electronic means) that:
- (a) the Electoral Commissioner believes that the person should not be enrolled for that district, and
  - (b) the Electoral Commissioner will remove the person's name from the roll for the district unless the person, within the period specified in the notice (being not less than 7 days), notifies the Electoral Commissioner that the Electoral Commissioner's belief is incorrect (and gives the reasons why that is so).
- (6) If no notification is made by the person under subsection (5) (b) within the specified period or, despite any such notification made within that period, the Electoral Commissioner still believes that the person is not entitled to be enrolled for the district, the Electoral Commissioner is to:
- (a) remove the person's name from the roll for the district, and
  - (b) notify the person in writing (including by email, SMS text message or other electronic means) that his or her name has been removed from the roll for that district.
- (7) The Electoral Commissioner may exercise the functions under subsections (1)–(6) on the Electoral Commissioner's own initiative.
- (8) Without limiting subsections (1)–(6), the Electoral Commissioner may form a belief by:
- (a) consulting electoral enrolment details on any roll kept under the Commonwealth Act, and
  - (b) consulting and using information collected under Division 6.

**Note—**

The Electoral Commissioner may use information collected under Division 6, from bodies such as the Roads and Traffic Authority and the Registry of Births, Deaths and Marriages, to enrol persons or update their enrolment details.

- (9) Nothing in this section prevents the Electoral Commissioner enrolling a person for a district during the period of any election, including after the issue of the writ for the election.

**Note—**

If a person has been enrolled for a district by the Electoral Commissioner under this section and the person believes that the person is not entitled to be enrolled for that district or is enrolled in relation to an incorrect address, the person may object to the person's own enrolment under section 32.

Alternatively, if the person is entitled to be enrolled for another district or in relation to another address, the person could simply complete and lodge a claim for enrolment or a claim for transfer of enrolment.

**30 Enrolment by Electoral Commissioner in response to a claim**

- (1) The Electoral Commissioner, on receiving a claim for enrolment, or a claim for transfer of enrolment, on a roll for a district, subject to subsection (4), must:
  - (a) if the claim is in order and the Electoral Commissioner is satisfied that the claimant is entitled to be enrolled for the district:
    - (i) enrol the person for the district, and
    - (ii) notify the person in writing (including by email, SMS text message or other electronic means) that he or she has been enrolled for that district, and
    - (iii) in the case of a claim for a transfer of enrolment from the roll for another district—delete the name of the person from that other roll, and
  - (b) in a case where the person is already correctly enrolled for the district for which the person claimed enrolment—notify the person in writing (including by email, SMS text message or other electronic means) that, in the Electoral Commissioner's opinion, the person's existing enrolment is correct, and
  - (c) if the claim is not in order or the Electoral Commissioner is not satisfied that the person is entitled to be enrolled for that district—notify the person in writing that his or her claim has been rejected.
- (2) A notice of a decision given to a person by the Electoral Commissioner under subsection (1) (b) or (c) is to include:
  - (a) a statement of the reasons for the decision, and
  - (b) a statement advising the person that the person is entitled at any time within one calendar month after the issue of the notice to apply to the Local Court for an order directing that the person's name be enrolled for the district.
- (3) Nothing in this section prevents the Electoral Commissioner enrolling a person for a district during the period of any election, including after the issue of the writ for the election.
- (4) 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.

### **31 Silent electors: request for address not to be shown on roll**

- (1) A person may lodge a request in the approved form that the person's residential address not be shown on any roll if the person considers that having that address on a roll places or would place the personal safety of the person or of members of the person's family at risk.
- (2) A request must:
  - (a) give particulars of the relevant risk, and
  - (b) be verified by statutory declaration by the person making the request.
- (3) If the Electoral Commissioner is satisfied that having the residential address of the person making the request shown on a roll would place or places the personal safety of the person or of members of the person's family at risk, the Electoral Commissioner must ensure that the address of the person is not entered on any roll.
- (4) The Electoral Commissioner must notify the person in writing (including by email, SMS text message or other electronic means if the person has requested or consented to notification by that method) of a decision to grant or refuse a request made by a person under subsection (1).
- (5) If a person's address has been excluded or omitted from a roll kept under the Commonwealth Act by operation of section 104 of that Act:
  - (a) the Electoral Commissioner must ensure that the address of the person is not entered on any roll kept under this Act, and
  - (b) the person is taken to be a silent elector under this Act.

## **Division 3 Objections**

### **32 Objection**

- (1) An elector may object to the enrolment of a person (including the elector's own enrolment) on the ground that:
  - (a) the person is not entitled to be enrolled, or
  - (b) except in relation to a person who is entitled to enrol under section 22 (2) (b), (c), (d) or (e)—the address for which a person is enrolled is not the person's real place of living.
- (2) An elector's objection under subsection (1) must:
  - (a) be in writing and in the approved form, and
  - (b) be signed by the elector, and

(c) set out the ground for the objection, and

(d) be lodged with the Electoral Commissioner.

(3) An objection on the ground that the address for which a person is enrolled is not the person's real place of living is not a sufficient ground of objection unless the objection alleges that the person objected to does not live at the address and has not lived at the address for at least one month immediately before the date of the objection.

### **33 Notice of objection**

(1) If an objection is made under this Division, the Electoral Commissioner must notify the person whose enrolment is the subject of the objection (unless that person is the objector).

(2) Notice under subsection (1):

(a) must be in the approved form, and

(b) may be given to the person by:

(i) delivering it to the person personally, or

(ii) sending it by post to the address specified by the person for the giving of notices or, if no such address is specified, the residential or business address of the person last known to the Electoral Commissioner, or

(iii) sending it by facsimile transmission to the facsimile number of the person or by email to the email address of the person.

(3) If the Electoral Commissioner is satisfied that an objection is frivolous or vexatious, the Electoral Commissioner may dismiss the objection without giving notice of objection under subsection (1) to the person whose enrolment is the subject of the objection.

### **34 Answer to objection**

The person whose enrolment is the subject of the objection may (unless that person is the objector), orally or in writing, in the prescribed manner, answer the objection.

### **35 Determination of objection**

(1) The Electoral Commissioner must determine the objection:

(a) if notice is required to be given to the person whose enrolment is the subject of the objection:

(i) as soon as practicable after:

(A) receiving the answer of the person whose enrolment is the subject of the



objection (if any), and

- (B) making any further enquiries that appear necessary to the Electoral Commissioner in relation to matters contained in the answer, or
    - (ii) if no answer is received within a period of 21 days after the giving of the notice, then immediately after the expiration of that period, or
  - (b) if no such notice is required to be given, as soon as practicable after making any further enquiries that appear necessary to the Electoral Commissioner.
- (2) If it appears to the Electoral Commissioner that the person whose enrolment is the subject of the objection is not entitled to be enrolled or is not entitled to be enrolled at the address in respect of which the objection has been made, the Electoral Commissioner must remove the person's name from the roll.
  - (3) The Electoral Commissioner must notify the objector and the person whose enrolment is the subject of the objection of the Electoral Commissioner's determination.
  - (4) Notice under subsection (3) may be posted to the person or persons concerned.

## **Division 4 Review of determination**

### **36 Review by Local Court**

- (1) A person:
  - (a) who has forwarded a claim for enrolment, or a claim for transfer of enrolment, to the Electoral Commissioner and has not been enrolled in accordance with that claim, or
  - (b) whose name has been removed from a roll after an objection,may apply to the Local Court for an order directing that the person be enrolled or reinstated on the roll, as the case requires.
- (2) If an objection has been rejected by the Electoral Commissioner, the person who made the objection may apply to the Local Court for an order sustaining the objection.
- (3) An application must be made within one calendar month after the issue of:
  - (a) in relation to an application under subsection (1) (a)—the notice of the rejection of the claim, or
  - (b) in relation to an application under subsection (1) (b) or (2)—the notice of the determination of the objection,as the case requires.

- (4) In relation to an application under subsection (1) (b), the person whose name has been removed from a roll must serve the objector with notice of the application, and the objector so served may appear or may in writing authorise another person to appear on his or her behalf in the determination of the application.
- (5) The regulations may make provision for or with respect to applications under this section.

### **37 Power of Local Court to hear and determine applications for review**

- (1) The Local Court may hear and determine any application under this Division, and may make such order as it thinks fit as to costs, and any such costs may be recovered in the same manner as costs awarded in any other proceedings in the Local Court.
- (2) The relevant registrar of the Local Court is to send by post to the Electoral Commissioner a certified copy of the order of the Local Court, and the Electoral Commissioner is to correct the roll (if required) to give effect to the order.

## **Division 5 Inspection of rolls and provision of enrolment information**

### **38 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 39 (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 31 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.

### **39 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.

### **40 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.

#### **41 Provision of enrolment information to others**

(1) After receiving a request from any person not referred to in section 40 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.

#### **42 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 40 or 41 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.

#### **43 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 40 or 41.
- (2) A person must not disclose protected information unless the disclosure would be a use of the information for a permitted purpose under section 42.
- (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 41 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.

#### **44 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.

#### **45 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 49.

### **Division 6 Collection of electoral information**

#### **46 Collection and maintenance of electoral information**

- (1) The Electoral Commissioner is to collect such information (***electoral information***) as the Electoral Commissioner considers necessary for the preparation, maintenance and revision of rolls and is to maintain and regularly update that information.
- (2) Without limiting subsection (1), the Electoral Commissioner may collect personal information (including a person's telephone and email contact details and any other information or code used to identify a person) relating to a person for the purposes of determining the following:
  - (a) whether the address for which the person is enrolled is the person's real place of living,
  - (b) if the person is not enrolled—whether the person is entitled to be enrolled for any district.
- (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 collected, used or disclosed for the purposes of or in connection with this section.

- (4) In this section, **personal information** has the same meaning as in the *Privacy and Personal Information Protection Act 1998*.

#### **47 Persons who are to provide information**

- (1) The Electoral Commissioner may, by notice in writing, require any of the following persons, within the time and in the manner and form specified in the notice, to provide the information requested in the notice, being information that in the opinion of the Electoral Commissioner is required in connection with the preparation, maintenance or revision of rolls:
- (a) a person employed in a public sector service (within the meaning of the *Public Sector Employment and Management Act 2002*),
  - (b) a police officer,
  - (c) a member of staff of a council within the meaning of the *Local Government Act 1993*,
  - (d) Sydney Water Corporation,
  - (e) a distribution network service provider within the meaning of the *Electricity Supply Act 1995*,
  - (f) a university established or constituted by an Act of New South Wales,
  - (g) an elector or person entitled to be enrolled.
- (2) It is the duty of a person referred to in subsection (1) to comply with a notice under this section.
- (3) Without limiting subsection (1), the Electoral Commissioner may request:
- (a) information of a kind required by the Electoral Commissioner for any purpose relating to the rolls, or
  - (b) information as is required to enable the Electoral Commissioner 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
    - (iii) persons who, being 17 years but not 18 years of age, may be entitled to make claims under section 22 (2) (f) or (3) to have their names placed on a roll, or
    - (iv) other persons or classes of persons who may be affected by this Part or



regulations made for the purposes of this Part.

- (4) The regulations may make provision for or with respect to the collection of information by persons referred to in subsection (1) (a)–(c) on behalf of the Electoral Commissioner.

**Note—**

For example, a regulation may provide that the Roads and Traffic Authority in its application forms is to collect information such as mobile phone numbers and email addresses for the purposes of notifying electors under section 29.

- (5) The *Privacy and Personal Information Protection Act 1998* does not apply in relation to the disclosure of personal information to the extent that the personal information is provided under this section to the Electoral Commissioner.
- (6) 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 the personal information is provided under this section.

**48 Privacy—non-disclosure of information**

- (1) A person who acquires information in the exercise of functions under this Division must not, directly or indirectly:

- (a) make a record of the information, or  
(b) divulge the information to another person,

except in the exercise of functions under this Division.

Maximum penalty: 50 penalty units.

- (2) Despite subsection (1), information may be divulged:

- (a) to a particular person or persons, if the Electoral Commissioner certifies that it is necessary in the public interest that the information be divulged to the person or persons, or  
(b) to a person who is expressly or impliedly authorised to obtain it by the person to whom the information relates.

- (3) A person cannot be required:

- (a) to produce in any court any document or other thing that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's functions under this Division, or  
(b) to divulge to any court any information that has come to the person's notice in the exercise of the person's functions under this Division.

- (4) Despite subsection (3), a person may be required to produce a document or other thing in a court or to divulge information to a court if:
- (a) the Electoral Commissioner certifies that it is necessary in the public interest to do so, or
  - (b) a person to whom the information relates (or to whom the information contained in the document or thing relates) has expressly authorised it to be divulged to or produced in the court.
- (5) A person or body to whom or which information is divulged under subsection (2), and a person or employee under the control of that person or body, are, in respect of that information, subject to the same rights, privileges and duties under this section as they would be if that person, body or employee were a person exercising functions under this Division and had acquired the information in the exercise of those functions.
- (6) (Repealed)
- (7) The annual report of the Commission is to include a report on any disclosure of information under subsection (2) (a) or (4) (a) during the reporting year.

**Note—**

Subsections (2) (a) and (4) (a) allow information to be divulged or documents or other things produced in a court if the Electoral Commissioner certifies that it is necessary in the public interest to do so.

- (8) In this section:

**court** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

**produce** includes permit access to.

**Note—**

Division 5 deals with public inspection of rolls and the provision of enrolment information to parties, members of parliament, candidates and members of the public.

## **Division 7 Miscellaneous**

### **49 Arrangement with Commonwealth**

- (1) The Governor may arrange with the Governor-General of the Commonwealth for either or both of the following:
- (a) a joint enrolment process,
  - (b) the exchange of information necessary for the preparation, maintenance and revision of rolls,

under this Act and the Commonwealth Act.

- (2) 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 rolls under this Act or the Commonwealth Act.

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

A person must not witness any claim for enrolment or transfer of enrolment unless the person:

- (a) is satisfied as to the identity of the claimant, and
- (b) has seen the claimant sign the claim, and
- (c) is satisfied that the statements contained in the claim are true.

Maximum penalty: 10 penalty units.

#### **51 Failure to transmit claim**

A person who accepts the custody of a claim for enrolment or transfer of enrolment for transmission on behalf of any other person to the Electoral Commissioner must immediately transmit the claim to the Electoral Commissioner.

Maximum penalty: 10 penalty units.

#### **52 Correction of errors**

- (1) If 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 the impediment or rectifying such misfeasance or omission, or
  - (b) declare any such roll to be valid despite the impediment, misfeasance or omission.
- (2) Every such order must state specifically the nature of the impediment, misfeasance or omission and must be published in the Gazette.
- (3) Nothing in this section prevents the Electoral Commissioner exercising any of the

Electoral Commissioner's functions under any other provision of this Act in relation to the preparation and maintenance of rolls.

## **Division 8**

### **53-66 (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 and Disclosures 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.

(5) Despite subsection (3), if a party is registered under the Commonwealth Act (the **Commonwealth registered party**), the Electoral Commissioner must not refuse to register under this Act:

- (a) the Commonwealth registered party, or
- (b) another party (if the Commonwealth registered party has given its consent in writing to the registration),

under the same name or same abbreviation (or both) as the Commonwealth registered party is registered under the Commonwealth Act by reason only of a ground set out in the following:

- (c) subsection (3) (b),
- (d) subsection (3) (c) or (d), unless the registered party or party currently represented in Parliament referred to in subsection (3) (c) or (d) is not registered under the Commonwealth Act.

## **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, a reference in those provisions to an application for registration is taken to be a reference to an application for an amendment of the Register of Parties.
- (3AA) Section 66D (2) (g) and (g1) do not apply to an application for the amendment of the particulars in the Register of Parties.
- (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.
- (3C) Section 66FA does not apply to an application for the amendment of the particulars in the Register of Parties.
- (3D) An amendment of the particulars in the Register of Parties under this Part must not be made in the period commencing on the day of the issue of the writ for an election and ending on and including the day fixed for the return of the writ.
- (3E) No action is to be taken during that period in relation to an application for an amendment of the particulars in the Register of Parties.
- (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.

(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, 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 as soon as is reasonably practicable publicly advertise (in such manner as the Electoral Commissioner thinks fit):
  - (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 (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
  - (c1) a facsimile number and an email address (to be appointed by the Commissioner) at which the Commissioner 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) (Repealed)

- (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 as soon as is reasonably practicable publicly advertise (in such manner as the Electoral Commissioner thinks fit):
  - (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

- (b1) a facsimile number and an email address (to be appointed by the Electoral Commissioner) at which the Electoral Commissioner will receive nomination papers for the election to which the writ relates, and the time by which they must be received, 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) (Repealed)

- (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 as at 6 pm on the date of issue of the writ for an election for a 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 as at 6 pm on the date of issue of the writ for the election.
- (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.

(3AA) A nomination paper may be delivered under this section by transmitting it by facsimile or email.

(3AB) A nomination paper is not validly transmitted by email unless:

- (a) an image of the completed nomination paper signed by the candidate and the registered officer or nominators concerned is included in or attached to the email, and
- (b) that image includes an image of the actual signatures as appearing on the nomination paper.

(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.

I specify that my given name should be printed on the ballot papers for the election in the following form:

**Note—**

An alternative form of a candidate's given name may only be:

(a)

an initial standing for that name, or

(b)

a commonly accepted variation of the name (including an abbreviation or truncation of that name or an alternative form of that name), or

(c)

a commonly used other name specific to the candidate by which the candidate is usually identified (if the Electoral Commissioner is satisfied that the proposed name is a commonly used other name specific to the candidate by which the candidate is usually identified).

(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 .

**Signatures of  
nominators**

**Place of residence  
as enrolled**

**Date of birth**

**District**

I, the abovenamed \_\_\_\_\_ hereby consent to such nomination and certify that the place of residence stated above is my place of residence as enrolled.

I specify that my given name should be printed on the ballot papers for the election in

the following form:

**Note—**

An alternative form of a candidate's given name may only be:

- (a)  
an initial standing for that name, or
- (b)  
a commonly accepted variation of the name (including an abbreviation or truncation of that name or an alternative form of that name), or
- (c)  
a commonly used other name specific to the candidate by which the candidate is usually identified (if the Electoral Commissioner is satisfied that the proposed name is a commonly used other name specific to the candidate by which the candidate is usually identified).

(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.
- (4B) A given name of a candidate specified in a nomination paper under subsection (3A) or (4) as the form in which that name should be printed on the ballot papers for the election may differ from the candidate's given name as it appears on the roll only to the extent that the given name is specified by:
  - (a) an initial standing for that name, or
  - (b) a commonly accepted variation of the name (including an abbreviation or truncation of that name or an alternative form of that name), or
  - (c) a commonly used other name specific to the candidate by which the candidate is usually identified (if the Electoral Commissioner is satisfied that the proposed name is a commonly used other name specific to the candidate by which the candidate is usually identified).
- (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, by 12 noon on the day of nomination, 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**

- (1) 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.
- (2) A notice may be delivered to the Electoral Commissioner under this section by transmitting it by facsimile or email to the facsimile number or email address referred to in section 74 (1) (c1).
- (3) A notice is not validly transmitted by email unless:
- (a) an image of the completed notice signed by the candidate is included in or attached to the email, and
  - (b) that image includes an image of the actual signature as appearing on the notice.

#### **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 as soon as is reasonably practicable publicly advertise the declaration 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 as soon as is reasonably practicable publicly advertise 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 as at 6 pm on the date of issue of the writ for a periodic Council election 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 as at 6 pm on the date of issue of the writ for the election.
- (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.
- (3AA) A nomination paper may be delivered under this section by transmitting it by facsimile or email.
- (3AB) A nomination paper is not validly transmitted by email unless:
- (a) an image of the completed nomination paper signed by the candidate and the registered officer or nominators concerned is included in or attached to the email, and
  - (b) that image includes an image of the actual signatures as appearing on the nomination paper.
- (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:

<b>*Name in full of person nominated</b>	<b>Date of birth</b>	<b>Place of residence as enrolled</b>	<b>**Signature of person nominated</b>	<b>***Form of given name of person nominated to appear on ballot papers</b>
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\* 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.

\*\*\*An alternative form of a candidate's given name may only be:

- (a) an initial standing for that name, or
- (b) a commonly accepted variation of the name (including an abbreviation or truncation of that name or an alternative form of that name), or
- (c) a commonly used other name specific to the candidate by which the candidate is usually identified (if the Electoral Commissioner is satisfied that the proposed name is a commonly used other name specific to the candidate by which the candidate is usually identified).

Dated this                      day of                      20 .

<b>Name in full of registered officer</b>	<b>Name of party</b>	<b>Signature of Registered officer</b>
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- (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:

<b>*Name in full of person nominated</b>	<b>Date of birth</b>	<b>Place of residence as enrolled</b>	<b>**Signature of person nominated</b>	<b>***Form of given name of person nominated to appear on ballot papers</b>
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\* 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.

\*\*\*An alternative form of a candidate's given name may only be:

- (a) an initial standing for that name, or
- (b) a commonly accepted variation of the name (including an abbreviation or truncation of that name or an alternative form of that name), or
- (c) a commonly used other name specific to the candidate by which the candidate is usually identified (if the Electoral Commissioner is satisfied that the proposed name is a commonly used other name specific to the candidate by which the candidate is usually identified).

Dated this                      day of                      20 .

<b>Name in full of each nominator (Not fewer than 15)</b>	<b>Place of residence as enrolled</b>	<b>Occupation</b>	<b>Electoral district</b>	<b>Signature of each nominator</b>
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- (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.
- (4B) A given name of a candidate specified in a nomination paper under subsection (3A) or (4) as the form in which that name is to be printed on the ballot papers for the election may differ from the candidate's given name as it appears on the roll only to the extent that the given name is specified by:
- (a) an initial standing for that name, or
  - (b) a commonly accepted variation of the name (including an abbreviation or truncation of that name or an alternative form of that name), or
  - (c) a commonly used other name specific to the candidate by which the candidate is usually identified (if the Electoral Commissioner is satisfied that the proposed name is a commonly used other name specific to the candidate by which the candidate is usually identified).
- (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 publicly advertised at least one week before the day for the taking of the poll in the election.
  - (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, by 12 noon on the day of nomination, 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.
- (3) A notice may be delivered to the Electoral Commissioner under this section by transmitting it by facsimile or email to the facsimile number or email address referred to in section 74D (1) (b1).
- (4) A notice is not validly transmitted by email unless:
  - (a) an image of the completed notice signed by the candidate is included in or attached to the email, and
  - (b) that image includes an image of the actual signature as appearing on the notice.

#### **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 publicly advertise the declaration 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 publicly advertise the declaration 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 publicly advertise 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 or an offence involving child abuse material (within the meaning of Division 15A of Part 3 of the *Crimes Act 1900*) 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 or an offence involving child abuse material (within the meaning of Division 15A of Part 3 of the *Crimes Act 1900*) 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 appear on ballot paper**

If after noon on the day of nomination there are 2 or more candidates for election for a district, the returning officer is to determine the order in which the candidates' names are to appear on the ballot papers by randomly selecting the names of candidates in a manner specified by the Electoral Commissioner (including by electronic means).

**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,
- (b1) the given name of each candidate is to be in the form specified in the candidate's nomination paper (as provided by section 79 (4B)),
- (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) the given name of each candidate:

(i) is to be in the form specified in the candidate's nomination paper (as provided by section 81B (4B)), and

(ii) is to be in less conspicuous type than the type in which the candidate's

surname is printed, and

(iii) may be printed on a line after the line on which the candidate's surname is printed,

(d), (e) (Repealed)

(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.

### **87B Mobile booths for pre-poll voting in remote districts**

- (1) **Electoral Commissioner's functions** The Electoral Commissioner:
- (a) may declare a district to be a remote district for the purposes of this section, and
  - (b) may determine the places in that district that a team will visit for the purposes of this section, and
  - (c) may determine the days and times when a team will visit those places (such a day must be after the day of nomination and before polling day or a day to which the polling is adjourned), and
  - (d) must take such steps as the Electoral Commissioner thinks fit to give public notice of:
    - (i) the places determined under paragraph (b), and
    - (ii) the days and times determined under paragraph (c) when a team will visit those places for the purposes of this section.
- (2) **Teams** A team consists of 2 or more election officials, one of whom must be a pre-poll voting officer who is designated by the Electoral Commissioner as team leader. The team leader is to exercise the functions of the pre-poll voting officer under the following provisions of this section.
- (3) **Visits and variation of places, days or times** A team must make a visit or visits as notified under subsection (1) (d), but, if the team is unable for reasonable cause, or the pre-poll voting officer considers it inappropriate, to make such a visit, the officer may substitute another place, day or time for the visit and, in that event, must:
- (a) take such steps as he or she thinks fit to give public notice of the substituted place, day or time, and
  - (b) inform the Electoral Commissioner.
- (4) **Failure to visit does not invalidate election result** Any failure by a team to make a visit in accordance with this section does not invalidate the result of the election.
- (5) **Voting** At any time when a team is at a place for the purposes of taking votes under this section in an election:
- (a) the pre-poll voting officer must have a pre-poll ballot box, ballot papers and such other things as are necessary for the votes of electors to be taken at the place, and
  - (b) every person at the place who is entitled to vote in the election for the remote

district concerned is entitled to have his or her vote taken under this section, and

(c) for the purposes of, and in connection with, the taking of votes under this section:

(i) the place is taken to be a pre-poll voting place, and

(ii) the pre-poll voting officer is taken to be the pre-poll voting officer at that pre-poll voting place, and

(d) an elector's vote is, so far as is reasonably practicable, to be taken and dealt with in all respects as if the vote were recorded at a pre-poll voting place under usual conditions, but section 114P is to be disregarded in relation to:

(i) the qualifications to vote before election day, and

(ii) pre-poll voting times.

(6) **Ballot box to be secured and forwarded to returning officer** At the end of the last visit made by a team for the purposes of this section, the pre-poll voting officer must, in the presence of any other election official assisting the officer and any scrutineers who are present:

(a) publicly close, fasten, seal and take charge of the ballot box used by the officer for the purposes of this section, and

(b) with the least possible delay, forward it for the purposes of scrutiny to the returning officer for the district concerned.

(7) **Relationship of this section to other provisions** In relation to a district declared by the Electoral Commissioner to be a remote district, and without affecting subsection (5) (d), the provisions of this section apply in addition to, and without derogation from, the application of any other provision of this Act. However, any such other provision applies with any necessary modifications.

## **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 authorised copies of the roll 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 printed authorised copy of the roll 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) (Repealed)
- (3) An **authorised copy of the roll** referred to in subsections (1) and (1A) is a printed or electronic copy of the roll of the electors for the district as at the date of the issue of the writ for the election for which the polling place has been declared to be a polling place, but does not include the names of any elector who will not have attained the age of 18 years on polling day.
- (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 24, or
  - (c) answers a question specified in subsection (1) (c) in the affirmative,
- the person's claim to vote in the election for the district 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 the district claims to vote at an election and to be a silent elector, 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.

### **102A Marking of roll**

Immediately on delivering a ballot paper to a voter, an election official must, in a manner specified by the Electoral Commissioner, record that delivery on the printed or electronic authorised copy of the roll.

### **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 31 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 31 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.

#### **104A Ballot papers may be photocopied, written or otherwise reproduced**

- (1) If a polling place does not have or runs out of ballot papers printed in accordance with section 83 or 83B, the returning officer, polling place manager or other election official in charge at the time may have the ballot paper reproduced (including by photocopying or by copies being obtained by use of facsimile or email).
- (2) A ballot paper so reproduced is still required to be in or to the effect of the form prescribed in Schedule 4 or 4A, as the case requires, and is to be in the same general format as the ballot paper printed in accordance with section 83 or 83B.
- (3) A ballot paper so reproduced and complying with subsection (2) is as valid as a ballot paper printed in accordance with section 83 or 83B.

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

#### **106 Provisional voting**

- (1) **Person already marked off roll** If, at a polling place at any election, any elector:
  - (a) is recorded (on the authorised copy of the roll used at the polling place) as having received a ballot paper, and
  - (b) claims not to have received a ballot paper,

the elector is to be permitted to vote if the elector makes a declaration in the approved form before an election official at the polling place.

#### (1A) (Repealed)

- (2) **Person omitted from roll** If, at a polling place in a district at any election, a person, who was enrolled for the district, but whose name was omitted from the roll for the district (for any reason), claims to be entitled to enrol for the district, the person is to be permitted to vote if:
  - (a) where the person has a driver licence or a Photo Card in the person's possession:

(i) the person:

(A) completes and signs a claim for enrolment in the approved form in accordance with the directions on the form and submits it to an election official at the polling place, and

(B) provides to that election official as proof of identity a driver licence or a Photo Card, and

(C) makes a declaration in the approved form before that election official, and

(ii) the election official is satisfied that:

(A) the claim for enrolment has been properly completed, and

(B) the person is who the person claims to be, and

(C) the proof of identity provided shows that person's residence is the same as the place named in the claim for enrolment as the person's residence, or

(b) where the person does not have a driver licence or a Photo Card in the person's possession, the person makes a declaration in the approved form before an election official at the polling place.

**(2A) Person enrolling for first time etc** If, at a polling place in a district at any election, a person, who is not enrolled for any district, claims to be entitled to enrol for the district, the person is to be permitted to vote if:

(a) the person:

(i) completes and signs a claim for enrolment in the approved form in accordance with the directions on the form and submits it to an election official at the polling place, and

(ii) provides to that election official as proof of identity a driver licence or a Photo Card, and

(iii) makes a declaration in the approved form before that election official, and

(b) the election official is satisfied that:

(i) the claim for enrolment has been properly completed, and

(ii) the person is who the person claims to be, and

(iii) the proof of identity provided shows that the person's residence is the same as the place named in the claim for enrolment as the person's residence.

**Note—**



If a person cannot produce a driver licence or a Photo Card the person will not be permitted to vote under this subsection.

**(2B) Person transferring enrolment** If, at a polling place in a district at any election, a person is enrolled for another district, but claims to be entitled to enrol for the district, the person is to be permitted to vote if:

(a) the person:

- (i) completes and signs a claim for a transfer of enrolment in the approved form in accordance with the directions on the form and submits it to an election official at the polling place, and
- (ii) provides to that election official as proof of identity a driver licence or a Photo Card, and
- (iii) makes a declaration in the approved form before that election official, and

(b) the election official is satisfied that:

- (i) the claim for a transfer of enrolment has been properly completed, and
- (ii) the person is who the person claims to be, and
- (iii) the proof of identity provided shows that the person's residence is the same as the place named in the claim for a transfer of enrolment as the person's residence.

**Note—**

If a person cannot produce a driver licence or a Photo Card the person will not be permitted to vote under this subsection.

**(2C) Persons enrolled after issue of writ etc** If, at a polling place in a district at any election, a person, who is enrolled for the district, but who's name does not appear on the authorised copy of the roll at the polling place, is to be permitted to vote if the person makes a declaration in the approved form before an election official.

**Note—**

The Electoral Commissioner may enrol a person at any time, including after the issue of a writ for an election. However, the authorised copy of a roll at a polling place only contains the names of persons who were enrolled as at the date of the issue of the writ (see section 89).

**(2D)** A claim for enrolment or for a transfer of enrolment under this section must:

- (a) unless paragraph (b) applies—be witnessed by an elector or a person entitled to be enrolled (who must sign the claim in the witness's own hand writing), or
- (b) be supported by the evidence of the claimant's identity that is required by the regulations made under section 27 (4) (b) and (8) (if any).

(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:

(a) the person who signed to the declaration:

(i) in relation to a declaration made under subsection (2) (b) or (2C)—is entitled to vote, or

(ii) in any other case—was, on the day of polling, entitled to be enrolled for

the district, and

(b) the declaration is duly attested,

he or she is to accept the ballot paper for further scrutiny, but otherwise he or she must 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) The polling place manager must, immediately after the close of the poll, send to the Electoral Commissioner any claim for enrolment and claim for transfer of enrolment submitted to an election official under this section.

(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 multiple 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 more than once 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,
- (h) is a silent elector,
- (i) is a person with a disability (within the meaning of the *Anti-Discrimination Act 1977*), or
- (j) believes that attending a polling place on polling day will place the personal safety of the person or of members of the person's family at risk,

may make an application for a postal vote certificate and a postal ballot paper to the Electoral Commissioner.

(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)-(d) (Repealed)

(2AA) (Repealed)

(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:

(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.

(4) An application under subsection (1) may be made to the Electoral Commissioner through the Commission's website in accordance with the directions of the Commission.

#### **114AA 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), 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 27 (6),
- (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,
- (g1) an elector who is a person with a disability (within the meaning of the *Anti-Discrimination Act 1977*), 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.
- (2) A prescribed elector may apply in the approved form to the Electoral Commissioner to be a general postal voter for the district for which the elector is enrolled.
- (3) The Electoral Commissioner, in response to an application under this section:
- (a) may:
    - (i) accept the application and grant the elector general postal voter status, or
    - (ii) reject the application, and
  - (b) must advise the person in writing of that decision.
- (4) An application under subsection (2) in relation to an elector to whom paragraph (e) or

(f) of the definition of **prescribed elector** in subsection (1) applies may be made by another person acting on behalf of the elector.

- (5) The certificate referred to in paragraph (f) of the definition of **prescribed elector** in subsection (1) is to be lodged with the application under subsection (2) to which it relates.
- (6) The Electoral Commissioner may determine that an elector to whom paragraph (a1) of the definition of **prescribed elector** in subsection (1) applies is granted general postal voter status only during the period that the elector has specified as the period during which the elector will not be within the State.
- (6A) (Repealed)
- (7) The Electoral Commissioner may withdraw general postal voter status from an elector in such circumstances as are prescribed.
- (8) A person must not make, and a person must 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 an application.
- Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.
- (9) An elector who is a registered general postal voter under the Commonwealth Act is taken to be a general postal voter under this Act.
- (10)-(18) (Repealed)

#### **114AB Dispatch of ballot papers to 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 general postal voter for 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 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 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) (Repealed)

#### **114E Retention of applications**

- (1) The Electoral Commissioner must ensure that all applications for postal vote certificates and postal ballot papers for an election (and, in relation to applications made through the Commission's website, records of such applications) are kept securely until the latest of the following:
  - (a) the period of 6 months after the day of polling has expired,
  - (b) the period during which the validity of the election may be disputed under this Act has expired,
  - (c) if 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,
  - (d) if the Electoral Commissioner has consented to the use of the papers and materials in the parcels for research or analysis—the conclusion of that research or analysis.
- (2) On the expiry of the Electoral Commissioner's obligation under subsection (1), he or she may cause those applications and records to be destroyed.

#### **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 (by hand or by electronic or mechanical means) on the front of the ballot paper, and an exact count must be kept of all initialled postal ballot papers.

**114G, 114GA (Repealed)**

**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 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 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) (Repealed)
- (b) if he or she is satisfied that:
  - (i) the postal vote certificate has been properly signed by the elector who made the application for the certificate,
  - (ii) the signature on the certificate 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 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, who shall cancel and preserve the spoilt ballot paper.

**114NA (Repealed)**

**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 inside and outside NSW)**

**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,
- (g) is a silent elector,
- (h) is a person with a disability (within the meaning of the *Anti-Discrimination Act 1977*), or
- (i) believes that attending a polling place on polling day will place the personal safety of the person or of members of the person's family at risk,

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 (whether within or outside the State and whether in Australia or overseas) 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)

**114PA Procedure for voting before polling day—voting in elector’s district**

- (1) This section applies to voting under this Division where:

- (a) a person makes an application under section 114P at a pre-poll voting place in the State, and
- (b) the person is enrolled for the district in which the pre-poll voting place is situated.

- (2) Division 8 (other than sections 95–98, 106 (2), (2A) and (2B), 108 and 109) extends to voting to which this section applies subject to the following modifications:

- (a) references to polling places are taken to be references to pre-poll voting places,

- (b) references to polling place managers and election officials are taken to be references to pre-poll voting officers at the pre-poll voting places.
- (3) The Electoral Commissioner is to ensure that each pre-poll voting place in the State is provided with sufficient authorised copies of the roll for the district in which the place is situated for the purposes of this section.
- (4) The pre-poll voting officer is to ensure the security of any ballot boxes used for the purpose of this section.
- (5) Unless the Electoral Commissioner has specified another earlier time, as soon as practicable after 6 pm on the day preceding polling day the pre-poll voting officer for the pre-poll voting place (if not the returning officer) must, in the presence of any other election official assisting the officer and any scrutineers who are present:
  - (a) publicly close, fasten, seal and take charge of any ballot box used by the officer for the purposes of this section, and
  - (b) with the least possible delay, forward it for the purposes of scrutiny to the returning officer for the district concerned.
- (6) At the scrutiny the returning officer is to:
  - (a) produce any ballot boxes that have been delivered to him or her in accordance with subsection (5), and
  - (b) remove the ballot papers from the ballot boxes, and
  - (c) open those ballot papers and count those that are formal.
- (7) Without affecting subsection (2), the provisions of this section apply in addition to, and without derogation from, the application of any other provision of this Act. However, any such other provision applies with any necessary modifications.

**114Q Procedure for voting before polling day—voting other than in elector’s district (including outside NSW)**

- (1A) This section applies to voting under this Division where:
  - (a) an elector makes an application under section 114P at a pre-poll voting place in the State and the elector is not enrolled for the district in which the pre-poll voting place is situated, or
  - (b) an elector makes an application under section 114P at a pre-poll voting place not in the State.
- (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**

- (1) 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.
- (2) If a ballot paper is returned to a pre-poll voting officer at a pre-poll voting place outside the State, the pre-poll voting officer must deal with the ballot paper in the same manner as that in which a returning officer is required by section 116 to deal with an absent voter's ballot paper.

**114R Provisional pre-poll voting**

- (1) **Entitlement to provisional pre-poll vote** The following persons may apply to any pre-poll voting officer at a pre-poll voting place for permission to vote before polling day under this section:
  - (a) a person who is not enrolled for any district, but claims to be entitled to enrol for a district, and to whom section 114P would apply if that person were so enrolled,
  - (b) a person who is enrolled for a district, but claims to be entitled to enrol for another district, and to whom section 114P applies.
- (2) **Information to be given to pre-poll voting officer** A person making an application under this section must give the following information to the pre-poll voting officer to whom the application is made:
  - (a) the district for which the person claims to be entitled to enrol (and, if relevant, the district for which the person is enrolled),
  - (b) the ground on which the person is making the application,
  - (c) any matters prescribed by the regulations.

- (3) **Questions may be put to voter** After such an application is made to a pre-poll voting officer, he or she may, and, if requested to do so by any scrutineer, must, put to the person who made the application any of the questions prescribed by section 100 (1) which are applicable to the case, and, if the person answers the questions satisfactorily or if no questions are put to the person, the person is to be permitted to vote in accordance with this section.
- (4) **Provisional pre-poll vote within district** If the person makes an application to a pre-poll voting officer at a pre-poll voting place that is in the district for which the person claims to be entitled to be enrolled, section 106 (2), (2A) and (2B) extend to the casting and scrutiny of the person's vote, subject to the following modifications:
- (a) references to polling places are taken to be references to pre-poll voting places,
  - (b) references to polling place managers and election officials are taken to be references to pre-poll voting officers at the pre-poll voting places.
- (5) **Provisional pre-poll vote outside district** If the person makes an application to a pre-poll voting officer at a pre-poll voting place that is not in the district for which the person claims to be entitled to be enrolled, sections 115A and 117A-119 extend to the casting and scrutiny of the person's vote, subject to the following modifications:
- (a) references to polling places are taken to be references to pre-poll voting places,
  - (b) references to polling place managers and election officials are taken to be references to pre-poll voting officers at the pre-poll voting places.
- (6) Section 114P (2) and (3)-(5) apply in relation to an application made under this section as if it were an application made under section 114P (1).

**114S (Repealed)**

**114T Assistance to certain electors**

- (1) If an elector permitted to vote under this Division 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 this Division.
- (2) Subject to subsection (3), a scrutineer so appointed is entitled to be present at any part of a place in which voting under this Division 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 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 at a place when voting under this Division 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 this Division**

A person who is present when an elector is attending at a pre-poll voting place 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 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:
  - (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 properly attested—must 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, 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—must 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 (3), or
  - (c) that the person whose name is signed to the declaration is not enrolled for any district—must disallow the ballot paper without opening the envelope.
- (2A) The returning officer for a district to whom an envelope is forwarded under subsection (2) (b) or an election official assisting the returning officer must:
  - (a) if the person whose name is signed to the declaration on the envelope is enrolled for the district and the declaration is properly 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:

- (i) in the case of any ballot paper for a periodic Council election, accept the ballot paper for further scrutiny and place it in the ballot box, or
- (ii) in the case of any ballot paper for an Assembly election, disallow the ballot paper, or

(b) in any other case—reject 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**

#### **114ZA-114ZL (Repealed)**

#### **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 day during the 7 days before polling day appointed by the Electoral Commissioner, 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, a temporary or permanent resident or an inpatient 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 a temporary or permanent resident or an inpatient, 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 a temporary or permanent resident or an inpatient.

Maximum penalty: 0.5 penalty unit.

**114ZQA Procedure for voting at declared institutions—general**

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

**114ZQB Procedure for voting at declared institutions—voting in elector's district**

- (1) This section applies to voting by an elector under this Division where the elector is enrolled for the district in which the declared institution is situated.
- (2) Division 8 (other than sections 95–98, 106 (2), (2A) and (2B) and 109) extends to voting to which this section applies subject to the following modifications:
  - (a) references to polling places are taken to be references to declared institutions,
  - (b) references to polling place managers and election officials are taken to be references to pre-poll voting officers at the declared institution.
- (3) Section 114ZR (6A) and (6B) extend to voting under this section.
- (4) The Electoral Commissioner is to ensure that each returning officer is provided with sufficient authorised copies of the roll for the district in which a declared institution is situated for the purposes of this section.
- (5) The pre-poll voting officers assigned under section 114ZO to take the poll at a declared institution must ensure the security of any ballot boxes used for the purposes

of this section.

- (6) As soon as practicable after the completion of voting at a declared institution, the pre-poll voting officers assigned under section 114ZO to take the poll at the institution must, in the presence of any other election official assisting the officers and any scrutineers who are present:
  - (a) publicly close, fasten, seal and take charge of the ballot box used by the officers for the purposes of this section, and
  - (b) with the least possible delay, forward it for the purposes of scrutiny to the returning officer for the district in which the declared institution is situated.
- (7) At the scrutiny the returning officer is to:
  - (a) produce any ballot boxes that have been delivered to him or her in accordance with subsection (6), and
  - (b) remove the ballot papers from the ballot boxes, and
  - (c) open those ballot papers and count those that are formal.
- (8) Without affecting subsection (2), the provisions of this section apply in addition to, and without derogation from, the application of any other provision of this Act. However, any such other provision applies with any necessary modifications.

**114ZR Procedure for voting at declared institutions—voting other than in elector’s district**

- (1) This section applies to voting by an elector under this Division where the elector is not enrolled for the district in which the declared institution is situated.
- (2) (Repealed)
- (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 is to 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) (Repealed)

**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 a temporary or permanent resident or an inpatient 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 114ZQB, 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), or
- (c) is a person appointed by that elector under section 108 (1) or is a pre-poll voting

officer acting in accordance with section 108 (2) (as extended by section 114ZQB (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 108 (as extended by section 114ZQB (2)) or 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 district for which he or she is the returning officer.
- (2) The returning officer is to examine the declaration on the envelope containing the elector's ballot paper, and if the returning officer is satisfied that:
  - (a) the elector is enrolled for the district for which the returning officer is appointed—he or she is to accept the ballot paper for further scrutiny, or
  - (b) the elector is enrolled for some other district—he or she is to 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 (2A), or
  - (c) the person whose signed the declaration is not enrolled for any district—he or she is to disallow the ballot paper without opening the envelope.
- (2A) The returning officer for a district to whom an envelope is forwarded under subsection (2) (b), or an election official assisting the returning officer, must:
  - (a) if the person who signed the declaration on the envelope is enrolled for the district and the declaration is properly 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:

- (i) in the case of any ballot paper for a periodic Council election, accept the ballot paper for further scrutiny and place it in the ballot box, or
- (ii) in the case of any ballot paper for an Assembly election, disallow the ballot paper, and

(b) in any other case—reject 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.

### **115A Provisional absent voting**

(1) **Person enrolling for first time etc** If, at a polling place in a district at any election, a person, who is not enrolled for any district, claims to be entitled to enrol for another district, the person is to be permitted to vote if:

- (a) the person:

- (i) completes and signs a claim for enrolment in the approved form in accordance with the directions on the form and submits it to an election official at the polling place, and
  - (ii) provides to that election official as proof of identity a driver licence or a Photo Card, and
  - (iii) makes a declaration in the approved form before that election official, and
- (b) the election official is satisfied that:
- (i) the claim for enrolment has been properly completed, and
  - (ii) the person is who the person claims to be, and
  - (iii) the proof of identity provided shows that the person's residence is the same as the place named in the claim for enrolment as the person's residence.

**Note—**

If a person cannot produce a driver licence or a Photo Card the person will not be permitted to vote under this subsection.

- (2) **Person transferring enrolment** If, at a polling place in a district at any election, a person is enrolled for the district, but claims to be entitled to enrol for another district, the person is to be permitted to vote if:

- (a) the person:
- (i) completes and signs a claim for a transfer of enrolment in the approved form in accordance with the directions on the form and submits it to an election official at the polling place, and
  - (ii) provides to that election official as proof of identity a driver licence or a Photo Card, and
  - (iii) makes a declaration in the approved form before that election official, and
- (b) the election official is satisfied that:
- (i) the claim for a transfer of enrolment has been properly completed, and
  - (ii) the person is who the person claims to be, and
  - (iii) the proof of identity provided shows that the person's residence is the same as the place named in the claim for a transfer of enrolment as the person's residence.

**Note—**

If a person cannot produce a driver licence or a Photo Card the person will not be permitted to vote under

this subsection.

- (3) The polling place manager must, immediately after the close of the poll, send to the Electoral Commissioner any claim for enrolment and claim for transfer of enrolment submitted to an election official under this section.
- (4) Section 115 (1) (d)–(h), (2), (2A), (2B) and (3) extend to the casting of the person's vote under this section as if the person were an elector.
- (5) The returning officer (or a person authorised by the returning officer) must send each ballot paper containing a vote under this section to the returning officer for the district for which the voter declares that he or she is entitled to be enrolled.
- (6) Immediately after the close of the poll, the returning officer or another election official is, in writing (including by facsimile transmission, email or other electronic means), to send to each returning officer to whom envelopes containing ballot papers have been forwarded under subsection (5), advice of the number of envelopes so forwarded.

#### **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.

**117A Preliminary scrutiny of provisional absent voters' ballot papers**

- (1) The returning officer for the district sent an envelope containing a ballot paper of a person voting under section 115A (or the election official assisting the returning officer) is, in the presence of the scrutineers, to examine the declaration on the envelope, and if the returning officer (after making such enquiries as he or she may deem necessary) is satisfied that the declaration is in order and the person who made the declaration:
  - (a) was, on the day of polling, entitled to enrol for the district—is to accept the ballot paper for further scrutiny, or
  - (b) was, on the day of polling, not entitled to enrol for the district, but was enrolled for some other district—is to arrange for the envelope to be promptly delivered to the returning officer for the district for which the person was enrolled to be dealt with in the manner set out in subsection (4),



but otherwise must reject the ballot paper without opening the envelope.

- (2) Despite subsections (1) and (4), a ballot paper is not to be rejected for further scrutiny by a returning officer (the **scrutinising returning officer**) only because the relevant 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 scrutinising returning officer that an envelope containing the ballot paper has been forwarded in accordance with section 116 (1).
- (3) If the returning officer (or the election official assisting him or her) accepts a ballot paper for further scrutiny, he or she is to 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 the election official assisting him or her) is, if the person whose name is signed to the declaration on the envelope is enrolled for the district and the declaration is duly attested, to 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, is to accept the ballot paper for further scrutiny and place it in the ballot box, or
  - (b) in the case of any ballot paper for an Assembly election, is to disallow the ballot paper,

but otherwise must reject the ballot paper without opening the envelope.

### **118 Further scrutiny**

- (1) When the absent voters' ballot papers and the ballot papers of persons voting under section 115A 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 and the ballot papers of persons voting under section 115A which have been accepted for further scrutiny by removing them from the ballot box in which they were placed in accordance with section 117 or 117A 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,
- (a1) any ballot paper to which section 115A applies,
- (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.
  - (1A) A penalty notice may be served personally or by post.
- (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 \$55.

- (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 1 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 1 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 authorised copies of the rolls 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 or pre-poll 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 or pre-poll 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, and
- (b) in a second separate parcel, the ballot papers which have remained unused thereat, and
- (c) in a third separate parcel, any printed authorised copies of the 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
- (d) if, in accordance with section 102A, a recording has been made on an electronic authorised copy of the roll, or on another file, on a computer at the polling place to show the delivery of a ballot paper to a voter—in a fourth separate parcel, a copy of the electronic authorised copy of the roll, or other file, so marked by that recording (such as on a memory stick or a disc as directed by the Electoral Commissioner),

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, if relevant, copies of the electronic authorised copy of the roll, or other files, showing the delivery of ballot papers to voters 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, 11A or 12.
- (3) Section 127 applies to parcels referred to in subsection (1) as if they were parcels of

marked and unmarked ballot papers referred to in that section.

### **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 announce the result of the election by notice:
    - (a) published in a newspaper circulating in the State, or
    - (b) displayed on the Commission's Internet website.
- (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 Security of election materials**

- (1) The returning officer, after a declaration that a candidate has been duly elected, is to:
  - (a) parcel the marked and unmarked ballot papers, authorised copies of the roll and other papers and materials used in the election in the manner specified by the Electoral Commissioner, and
  - (b) forward the parcels to the Electoral Commissioner.
- (2) The Electoral Commissioner must have the parcels kept securely until the latest of the following:
  - (a) the period of 6 months after the day of polling has expired,
  - (b) the period during which the validity of the election may be disputed under this Act has expired,
  - (c) if 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,
  - (d) if the Electoral Commissioner has consented to the use of the papers and materials in the parcels for research or analysis—the conclusion of that research or analysis.
- (3) On the expiry of the Electoral Commissioner's obligation under subsection (2), he or she may cause the parcels and their contents to be destroyed.

### **128, 129 (Repealed)**

## **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, and
  - (b) in a second separate parcel, the ballot papers which have remained unused thereat, and
  - (c) in a third separate parcel, any printed authorised 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
  - (c1) if, in accordance with section 102A, a recording has been made on an electronic authorised copy of the roll, or on another file, on a computer at the polling place to show the delivery of a ballot paper to a voter—in a fourth separate parcel, a copy of the electronic authorised copy of the roll, or other file, so marked by that recording (such as on a memory stick or a disc as directed by the Electoral Commissioner),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) and (c1) do 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, 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 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 must announce the result of the election by notice:
  - (a) published in a newspaper circulating in the State, or
  - (b) displayed on the Commission's Internet website.
- (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 Security of election materials**

- (1) The Electoral Commissioner, after a declaration that candidates have been duly elected, must have the marked and unmarked ballot papers, authorised copies of the roll and other papers and materials used in the election kept securely until the latest of the following:
  - (a) the period of 6 months after the day of polling has expired,
  - (b) the period during which the validity of the election may be disputed under this Act has expired,

- (c) if 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,
  - (d) if the Electoral Commissioner has consented to the use of the papers and materials in the parcels for research or analysis—the conclusion of that research or analysis.
- (2) On the expiry of the Electoral Commissioner’s obligation under subsection (1), he or she may cause those papers and materials to be destroyed.

**129I, 129J (Repealed)**

**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 an electoral district, only those electors who are enrolled for the district 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 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 pre-poll voting officer 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 Electoral information**

(1) After an election, the Commission must ensure that the following information is publicly available:

- (a) the number of first preference votes given for each candidate,
- (b) in relation to a periodic Council election—the number of first preference votes given for each group,

(c) the details of distribution of preference votes.

(2) After an election, the Commission must ensure that:

(a) each registered party that so requests, and

(b) each member of Parliament who is not a member of a registered party and who makes a request in respect of the member's district,

is provided with electoral information containing the names and the addresses of electors who voted (other than silent electors and itinerant electors), whether they voted personally or by post and, if they voted at a polling place for the district for which the electors were enrolled, the location of that polling place.

(2A) In subsection (2), a reference to a polling place includes a reference to a pre-poll voting place.

(3) Electoral information provided under subsection (2) must only be used in connection with an election.

(4) A person must not use, or cause or permit the use of, electoral information provided under this section for any purpose other than in connection with an election.

Maximum penalty: 1,000 penalty units.

### **139-146 (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) **Posters at polling place** A person must not, at any time on the day of polling for an election, display or cause to be displayed any poster of any size:

- (a) within a polling place, or
- (b) within 6 metres of an entrance to a polling place, or
- (c) on the exterior of a building used as a polling place.

Maximum penalty: 3 penalty units.

(2) **Posters in grounds of enclosure of polling place** Without limiting subsection (1), a person must not, at any time on the day of polling for an election, display or cause to be displayed any poster exceeding 8,000 square centimetres in area within the grounds of an enclosure in which a building used for polling is situated.

Maximum penalty: 3 penalty units.

(2AA) **Posters on boundary of enclosure of polling place** A person must not, at any time on the day of polling for an election, display or cause to be displayed any poster exceeding 8,000 square centimetres in area on the outer wall, fence or other boundary of the grounds of an enclosure in which a building used for polling is situated.

Maximum penalty: 3 penalty units.

- (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) Subsection (2A) (a) does not apply in relation to a poster:
- (a) on the outer wall, fence or other boundary of the grounds of an enclosure in which a building used for polling is situated, or
  - (b) within the grounds of an enclosure in which a building used for polling is situated,

or

(c) on a vehicle on a road or road related area (within the meaning of the [Road Transport \(General\) Act 2005](#)), or

(d) fixed or attached to a table or stall on a footpath or other public place at any time on the day of polling for an election.

(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.

(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.

(8) **Extension of poster offence provisions to pre-poll voting places** For the purposes of subsection (1):

(a) a reference to a polling place is taken to include a reference to a pre-poll voting place, and

- (b) in relation to such a pre-poll voting place, a reference to “at any time on the day of polling for an election” is taken to be a reference to “during the hours appointed for that place under section 114P”.

**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.
- (3) Subsection (1) does not apply in relation to:
- (a) a T-shirt, lapel button, lapel badge, pen, pencil or balloon, or

- (b) a business or visiting card that promotes the candidacy of any person in an election, or
- (c) a letter or other card:
  - (i) that bears the name and address of the sender, and
  - (ii) that does not contain a representation or purported representation of a ballot paper for use in an election, or
- (d) any other article prescribed (or of a class prescribed) by the regulations.

**151EA Authorisation of advertisements on electronic billboards, digital road signs etc to be displayed**

A person must not display any matter, being an advertisement or notice, containing any electoral matter (within the meaning of section 151B), on an electronic billboard, digital road sign or other similar device, unless the matter contains, in visible, legible characters, the name and address of the person on whose instructions the matter was displayed.

Maximum penalty: 5 penalty units or imprisonment for 6 months.

**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
  - (a1) that the material does not clearly identify the person, political party, organisation or group on whose behalf the material is to be distributed, 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 voting directions 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 voting directions 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 voting directions 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 voting directions 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 voting directions**

(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 voting directions 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 voting directions 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) (Repealed)

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 Polling in Antarctica**

**154AA Electoral Commissioner to approve procedures for voting in Antarctica**

The Electoral Commissioner is to approve procedures to enable:

- (a) any Antarctic elector, where practicable, to vote at an election, and
- (b) any vote cast in accordance with procedures approved under this section to be transmitted to the Electoral Commissioner.

**154AB Entitlement to vote in Antarctica**

Any elector enabled to vote under procedures approved under section 154AA is entitled to vote in accordance with those procedures.

#### **154AC Votes from Antarctica to be counted with postal votes**

Any vote cast by an elector and transmitted to the Electoral Commissioner in accordance with procedures approved under section 154AA is to be counted with the postal votes for that election.

#### **154AD Requirements for voting procedures in Antarctica**

Procedures approved under section 154AA are, as far as practicable, to provide for authentication of the vote of an elector and the preservation of the secrecy of that vote.

#### **154AE Votes from Antarctica not to be disclosed**

Any person who becomes aware of how an elector, voting in accordance with procedures approved under section 154AA, voted is not to disclose this information to any other person except in accordance with an approved procedure.

Maximum penalty: 0.5 penalty unit.

#### **154AF-154AQ (Repealed)**

### **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) (Repealed)

#### **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 (Repealed)**

### **181 Penalty for disobedience**

If any 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 (Repealed)**

### **183 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be dealt with:
  - (a) summarily before the 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 the 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.

### **187 Investigation of internet voting for vision-impaired and other disabled persons**

- (1) The Electoral Commissioner is:
  - (a) to conduct an investigation into the feasibility of providing internet voting for vision-impaired and other disabled persons for elections under this Act, and
  - (b) if such internet voting is feasible, to propose a detailed model of such internet voting for adoption.
- (2) The investigation is to be undertaken as soon as possible after the commencement of this section.
- (3) A report on the investigation, and any proposed model of internet voting for vision-impaired and other disabled persons, is to be given to the Minister within 3 months after the commencement of this section.
- (4) The Minister is, as soon as practicable, to table, or cause to be tabled, a copy of the report in each House of Parliament.
- (5) The Electoral Commissioner is not required under this Act or any other law to provide any special or alternative form of voting for vision-impaired or other disabled persons, other than that already provided for under this Act. In particular, the Electoral Commissioner is not required under this Act or any other law to provide a form of voting to vision-impaired or other disabled persons that enables such persons to vote without the assistance of another person.

## **Part 8**

### **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, 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>GROUP A x <input type="checkbox"/></p>	<p>GROUP C x <input type="checkbox"/></p>	<p>GROUP Q x <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>GROUP A x <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>GROUP B x <input type="checkbox"/> WILLIAMS Gregory xx</p> <p><input type="checkbox"/> ROGERS Ralph xx</p> <p><input type="checkbox"/> PERCIVAL Beaenor 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>GROUP Q x <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>GROUP C x <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>GROUP Q x <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. It to be printed. \*\*\* Here insert name of registered party or word. It to be printed.

### Schedules 5-18 (Repealed)

## **Schedule 19 Enforcement of compulsory obligation to enrol**

(Section 27)

### **1 Notification in respect of offence**

The Electoral Commissioner, if satisfied that a person has failed to comply with the requirements of section 27, must notify the person in the prescribed form of the 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 the Local Court.

### **2 Action when person has elected to have matter dealt with by Electoral Commissioner**

The Electoral Commissioner:

- (a) is to consider all the facts (including the statements contained in any statutory declaration submitted by the person), and
- (b) may make such further inquiry as he or she deems necessary, and
- (c) if satisfied that the person concerned is in default or has contravened the provisions of section 27, may make an order imposing on that person a penalty not exceeding \$55 for a first offence, and not exceeding \$55 for any subsequent offence, setting the time allowed for payment.

### **3 Penalty to be debt due to Crown**

Any penalty so imposed by the Electoral Commissioner is a debt due to the Crown.

### **4 Notification of imposition of penalty**

The Electoral Commissioner is to notify the person in the prescribed form that a penalty has been imposed.

### **5 Enforcement of penalties**

Any order made by the Electoral Commissioner imposing a penalty may be filed in the Local Court, and the order then has effect and is enforceable as if it were an order of that Court.

### **6 Proceedings where matter not dealt with by Electoral Commissioner**

If a person to whom notice pursuant to clause 1 has been sent fails, within the time allowed, to reply, or does not within that time consent to the matter being dealt with by the Electoral Commissioner, the Electoral Commissioner, if satisfied that the person has contravened section 27, is to cause proceedings to be instituted against the person in the Local Court.

## **7 Statutory declaration to be brought to notice of Local Court**

If, in any case in which proceedings are instituted in the Local Court, the Electoral Commissioner has received from the person concerned a statutory declaration under clause 1 the Electoral Commissioner, as far as it is practicable and necessary to do so, is to inquire into the truth of the statements set out in the declaration, and must, unless the prosecution is withdrawn, cause the declaration to be brought to the notice of the Local Court.

## **8 Local Court to consider statutory declaration**

The Local Court shall at the hearing of the case consider the statutory declaration (whether the defendant is present or not) as if the matter set out in the declaration had been given in evidence before it.

## **9 Declaration by prosecuting officer to be considered by Local Court**

- (1) In any prosecution in respect of any contravention of section 27 the prosecuting officer may lodge with the Local Court a statutory declaration in support of the charge.
- (2) If such a statutory declaration has been lodged:
  - (a) it is not necessary for the prosecuting officer to attend at the hearing, and
  - (b) the Local Court is to proceed with the hearing and determination of the case in the prosecuting officer's absence, and
  - (c) the Local Court is to consider the statutory declaration as if the matter set out in the declaration had been given in evidence before it.

## **10 Document purporting to be statutory declaration**

For the purposes of clauses 8 and 9, any document purporting to be a statutory declaration is to be accepted as such by the Local Court without proof of the signatures on the document or proof of the authority of the person before whom the document 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*

*Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009*

- (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.

### **Part 3 Provisions consequent on enactment of [Parliamentary Electorates and Elections Amendment \(Automatic Enrolment\) Act 2009](#)**

#### **9 Persons enrolled for a subdivision taken to be enrolled for a district**

A person who was enrolled for a subdivision of a district immediately before the commencement of Schedule 1 [7] to the [Parliamentary Electorates and Elections Amendment \(Automatic Enrolment\) Act 2009](#) is taken, on the commencement of that item, to be enrolled for that district.

#### **10 Commonwealth roll for purposes of election**

- (1) The Electoral Commissioner may request that the Australian Electoral Officer for New South Wales certify, sign and transmit to the Electoral Commissioner a printed copy of the roll for each Commonwealth subdivision in a district as in force on a specified date.
- (2) A copy of the roll so transmitted to the Electoral Commissioner may be used by the Electoral Commissioner to compile a roll for the electoral district which includes the Commonwealth 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 Commonwealth subdivisions within that district.
- (4) A copy of a roll referred to in this clause must not contain any particulars relating to a person's occupation.