

# Electoral Act 2017 No 66

[2017-66]



New South Wales

## Status Information

### Currency of version

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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**  
[Criminal Legislation Amendment \(Child Sexual Abuse\) Act 2018 No 33](#) (not commenced)
- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2018](#)

### Authorisation

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# Electoral Act 2017 No 66



New South Wales

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# Electoral Act 2017 No 66



New South Wales

An Act to make provision with respect to the election of members of Parliament; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Electoral Act 2017*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

The objects of this Act are as follows:

- (a) to constitute an independent Electoral Commission for New South Wales and to provide for the appointment of an independent Electoral Commissioner for New South Wales,
- (b) to promote and maintain an electoral system characterised by accessibility, integrity and fairness that provides for the election of members of Parliament of New South Wales in accordance with the *Constitution Act 1902*,
- (c) to provide for a fair and transparent process for the distribution of New South Wales into electoral districts for elections for the Legislative Assembly,
- (d) to facilitate and protect the integrity of representative government in New South Wales,
- (e) to enable the citizens of New South Wales to participate freely in fair and transparent electoral processes,
- (f) to facilitate the fair and transparent conduct of elections in New South Wales,
- (g) to provide guidance to members of Parliament, parties, groups and candidates in relation to their rights, responsibilities and obligations in relation to the conduct of

elections under this Act.

#### 4 Definitions

(1) In this Act:

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

**address**, of an individual—see subsection (3).

**approved** means approved by the Electoral Commissioner.

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

**Assembly general election** means the election held for members of the Assembly next following the dissolution or expiry of the Assembly.

**authorised roll**, for an election, means the roll prepared for the election under Division 6 of Part 5.

**ballot counting place** means a place appointed by the Electoral Commissioner for the counting of ballot papers under section 163.

**by-election** means an election held for the return of a member of the Assembly other than in connection with an Assembly general election.

**child protection declaration** means a child protection declaration made under Division 4 of Part 7.

**close of voting** means 6 pm on election day (or on any day to which the conduct of an election has been adjourned).

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

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

**declaration vote** means a vote cast in accordance with Division 9 of Part 7.

**declared facility**—see section 117.

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

**driver licence** means a driver licence issued under the [Road Transport Act 2013](#).

**early voting centre** means a voting centre designated by the Electoral Commissioner under section 108 (4) (a) to be an early voting centre for the purpose of



an election.

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

**election day**, in relation to an election, means the day specified in the writ for the election as the day for the taking of the poll for the election.

**election manager** means a person appointed as an election manager under section 81 (3).

**election official** means a person appointed as an election official under section 81 (1).

**elector** means any person entitled to vote at an election under Part 4.

**Electoral Commission** means the New South Wales Electoral Commission constituted by section 8.

**Electoral Commissioner** means the Electoral Commissioner appointed under section 11.

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

**Electoral Information Register** means the register kept and maintained by the Electoral Commissioner under Division 4 of Part 5.

**electoral material** means any thing, including without limitation a how-to-vote card, poster or advertisement, containing electoral matter (whether in a tangible or an electronic form).

**electoral matter** means:

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

**electoral paper** includes any written claim or application, any approved form and any prescribed form under this Act.

**eligible overseas elector** means an elector under this Act who is also enrolled under section 94, 94A or 95 of the Commonwealth Act.

**enrolled** means enrolled by the Electoral Commissioner under Part 5.

**Note—**

Under this Act there is no permanent roll of electors. However:

- (a) the person's name and enrolment details will be recorded in the Electoral Information Register maintained under this Act—see Division 4 (Electoral Information Register) of Part 5 (Enrolment procedures and information), and
- (b) the person's name will appear on an authorised roll prepared for a particular election and on other lists of electors prepared under this Act—see Division 6 (Authorised rolls) of Part 5 (Enrolment procedures and information).

**enrolled address** means the address for which an elector is enrolled.

**enrolment details**, in relation to an elector, means the particulars included in the Electoral Information Register in relation to the elector.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**general election** means an Assembly general election and a periodic Council election held or to be held concurrently.

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

**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 requested under section 86 (2) a group voting square for the purposes of the election.

**hospital** includes a convalescent home and any facility similar to a hospital or convalescent home.

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

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

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

**joint owner** of premises or property means one of 2 or more persons who own the

premises or property jointly, whether as joint tenants or tenants in common or otherwise.

**legislature** means the Parliament of the Commonwealth or a State or the Legislative Assembly of a Territory.

**local government election** means an election under the [Local Government Act 1993](#) for the office of councillor or mayor under that Act (other than an election of mayor by councillors).

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

**nomination day**, in relation to an election, means the day specified in the writ for the election as the nomination day.

**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 same meaning as it has in section 3 of the [Constitution Act 1902](#).

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

**poster** means any electoral matter printed, drawn or depicted on any material and if any electoral matter is printed, drawn or depicted in sections, those sections, severally and collectively, are taken to be a poster.

**premises** includes any structure, building, vehicle or vessel or any place, whether built on or not, and any part of it.

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

**Redistribution Panel** means the Electoral Districts Redistribution Panel established under Division 1 of Part 3.

**Register of Parties**—see section 58.

**registered early voter** means an elector who:

- (a) has been granted registered early voter status under section 37, or
- (b) is taken to be a registered early voter under that section.

**registered early voter (postal)** means a registered early voter belonging to the registered early voter (postal) class under section 37.

**registered early voter (technology assisted voting)** means a registered early voter belonging to the registered early voter (technology assisted voting) class under section 37.

**registered officer** of a registered party means the person shown in the Register of Parties under Part 6 as the registered officer of the party, and (except in Part 6) 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 6.

**regulated period** for an election:

- (a) means the period starting on the date of the issue of the writ for the election and ending at 6 pm on election day, and
- (b) in the case where an election is adjourned, includes the period starting on the original election day and ending at 6 pm on the day to which voting for the election is adjourned.

**residence**—see section 5.

**silent elector** means an elector:

- (a) whose address is required by operation of section 36 to be omitted from any authorised roll or list of electors, or
- (b) is taken to be a silent elector under that section.

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

**State election** means an Assembly general election, a periodic Council election or a by-election for the Assembly.

**Surveyor-General** means the person employed in the Public Service as the Surveyor-General.

**voting centre** means a place appointed by the Electoral Commissioner under section 108 to be a voting centre for the purpose of taking the poll at an election (and includes an early voting centre).

**voting centre manager** means a person appointed as a voting centre manager under section 81 (4).

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

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) **Meaning of “enrolled for the district”** For the purposes of this Act, an elector is **enrolled for the district** that contains the enrolled address of the elector. However, if the elector is an eligible overseas elector or itinerant elector, an elector is **enrolled for the district** that contains the Subdivision for which the elector is enrolled under the Commonwealth Act.
- (3) **Address of an individual** The **address** of an individual means:
- (a) for the purposes of sections 186–188 and 200, an address, including a full street address and suburb or locality, that is located in Australia and at which the individual can usually be contacted during the day, but does not include a post office box, and
  - (b) in any other case, the residential address of the individual.

## 5 Determination of a person’s residence

- (1) In determining the **residence** of a person for the purposes of this Act, the Electoral Commissioner may have regard to the purpose and other circumstances, as well as to the fact, of the person’s presence at, or absence from, the place concerned.
- (2) Without limiting subsection (1), if at a particular time a person is staying at any place otherwise than on a permanent basis, the person may be taken to be at that time:
- (a) residing at the place if the person has no residence elsewhere, or
  - (b) not residing at the place if the person does have a residence elsewhere.
- (3) A person’s residence includes the place to which a person, when temporarily residing elsewhere, has a fixed intention of returning for the purpose of continuing to reside at that place.

## 6 Circumstances in which elector deemed to be “unable to attend at a voting centre on election day”

For the purposes of this Act, and without limitation, an elector is **unable to attend at a voting centre on election day** if the person:

- (a) is not throughout the hours of voting on election day within New South Wales, or
- (b) is not throughout the hours of voting on election day within 8 kilometres by the nearest practicable route of any voting centre open for the purposes of an election, or
- (c) is throughout the hours of voting on election day travelling under conditions that will preclude the person from voting at any voting centre, or
- (d) is seriously ill or infirm, and by reason of such illness or infirmity will be precluded from attending at any voting centre to vote, or

- (e) in the case of a woman, will, by approaching maternity, be precluded from attending at any voting centre to vote, or
- (f) 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 voting centre to vote, or
- (g) is, by reason of the person's membership of a religious order or his or her religious beliefs:
  - (i) precluded from attending at a voting centre, or
  - (ii) precluded from voting throughout the hours of voting on election day or throughout the greater part of those hours, or
- (h) 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 voting centre to vote, or
- (i) will, by reason of being engaged for fee, gain or reward in any work throughout the hours of voting on election day, be precluded from attending at any voting centre to vote, or
- (j) is a silent elector, or
- (k) is a person with a disability (within the meaning of the *Anti-Discrimination Act 1977*), or
- (l) believes that attending a voting centre on election day will place the personal safety of the person or of members of the person's family at risk.

## 7 Notes

Notes included in this Act do not form part of this Act.

## Part 2 Electoral administration

### Division 1 New South Wales Electoral Commission

#### 8 Constitution of Electoral Commission

- (1) There is constituted by this Act a corporation with the corporate name of the New South Wales Electoral Commission.
- (2) The Electoral Commission is a statutory body representing the Crown.

**Note—**

Section 13A of the *Interpretation Act 1987* provides that a statutory body representing the Crown has the status, privileges and immunities of the Crown.

## 9 Members of Electoral Commission

- (1) The Electoral Commission consists of the following members:
  - (a) a former Judge appointed by the Governor as the Chairperson of the Commission,
  - (b) the Electoral Commissioner,
  - (c) a person appointed by the Governor who has financial or audit skills and qualifications relevant to the functions of the Commission.
- (2) In this section, **former Judge** means:
  - (a) a former Judge of the Supreme Court of New South Wales or of any other State or Territory, or
  - (b) a former Judge of the Federal Court of Australia, or
  - (c) a former Justice of the High Court of Australia.
- (3) Schedule 1 contains provisions relating to the Electoral Commission.

## 10 Functions of Electoral Commission

- (1) The Electoral Commission has the functions conferred or imposed on it by or under the following:
  - (a) this Act,
  - (b) the *Electoral Funding Act 2018*,
  - (c) the *Lobbying of Government Officials Act 2011*,
  - (d) the *Local Government Act 1993*,
  - (e) any other Act.

### Note—

Under the *Electoral Funding Act 2018*, the Electoral Commission has the function of administering the election funding, expenditure and disclosure scheme under that Act and registering electoral participants for the purposes of that scheme. Under the *Lobbying of Government Officials Act 2011*, the Electoral Commission has the function of maintaining the Register of Third-Party Lobbyists and Lobbyists Watch List, and of the enforcement of obligations relating to lobbying.

- (2) The Electoral Commission may:
  - (a) provide assistance for the conduct of elections by the Electoral Commissioner under this or any other Act, and
  - (b) institute proceedings for offences under the following Acts:
    - (i) this Act,

- (ii) the *Electoral Funding Act 2018*,
  - (iii) the *Lobbying of Government Officials Act 2011*,
  - (iv) the *Local Government Act 1993* (but only in connection with the conduct of a local government election), and
- (c) make applications to the Supreme Court for injunctions, declarations or other orders within the jurisdiction of the Court for the purpose of ensuring compliance with the following:
- (i) this Act,
  - (ii) the *Electoral Funding Act 2018*,
  - (iii) the *Lobbying of Government Officials Act 2011*,
  - (iv) the *Local Government Act 1993* (but only in connection with the conduct of a local government election), and
- (d) conduct and promote research into electoral matters and other matters that relate to its functions, and publish the results of any such research, and
- (e) promote public awareness of electoral matters that are in the general public interest by means of education and information programs.
- (3) It is the duty of the Electoral Commission to exercise its functions under this or any other Act in a manner that is not unfairly biased against or in favour of any particular parties, groups, candidates or other persons, bodies or organisations.
- (4) The Electoral Commission is not subject to the control or direction of the Minister in the exercise of its functions.

## **Division 2 Electoral Commissioner**

### **11 Electoral Commissioner**

- (1) The Governor may appoint an Electoral Commissioner for New South Wales.
- (2) Schedule 2 contains provisions relating to the Electoral Commissioner.

### **12 Functions of Electoral Commissioner**

- (1) The Electoral Commissioner has the following functions:
  - (a) the general administration of the provisions of this Act relating to the conduct of elections,
  - (b) any other functions conferred or imposed on the Commissioner by or under this or any other Act.



- (2) Without limiting subsection (1), the Electoral Commissioner has the function of dealing with the following matters:
  - (a) the enrolment of electors,
  - (b) the maintenance of the Electoral Information Register,
  - (c) the preparation of authorised rolls for elections and other lists of electors under this Act.
- (3) It is the duty of the Electoral Commissioner to exercise his or her functions under this or any other Act in a manner that is not unfairly biased against or in favour of any particular parties, groups, candidates or other persons, bodies or organisations.
- (4) The Electoral Commissioner is not subject to the control or direction of the Minister or the Electoral Commission in the exercise of his or her functions under this or any other Act (other than functions of the Electoral Commission that are delegated to the Electoral Commissioner).

### **13 Conducting elections for other organisations**

- (1) The Electoral Commissioner may conduct an election for a person, body or an organisation, whether inside New South Wales or otherwise, on the payment of a fee or charge to be determined by the Electoral Commissioner.
- (2) Without limiting subsection (1), goods and services may be provided in the course of conducting such an election.
- (3) A summary of the elections conducted and any such goods or services provided under this section during a year must be included in the annual report of the Electoral Commission relating to that year.

**Note—**

Under the [Local Government Act 1993](#), a local council can enter into an arrangement with the Electoral Commissioner for the Electoral Commissioner to administer the local council's elections.

### **14 Electoral Commissioner not required to vote**

The Electoral Commissioner is not required to vote at any State election or at any local government election.

## **Division 3 Staff of Electoral Commission and delegations**

### **15 Staff of Electoral Commission**

- (1) Persons may be employed in the Public Service to enable the Electoral Commission and the Electoral Commissioner to exercise their functions. The persons so employed are to be employed in a separate Public Service agency and may be referred to as

members of staff of the Electoral Commission.

- (2) Any conditions of employment (within the meaning of the *Industrial Relations Act 1996*) determined by the Electoral Commissioner under the *Government Sector Employment Act 2013* with respect to any such persons who are employed in casual employment in connection with an election have effect despite any State industrial instrument that applies to Public Service casual employees generally, unless the instrument expressly applies to those casual employees.

## **16 Delegation**

- (1) The Electoral Commission may delegate any of the Electoral Commission's functions (other than this power of delegation) to:
  - (a) the Electoral Commissioner, or
  - (b) a member of staff of the Electoral 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, or
  - (d) any person, or any class of persons, authorised for the purposes of this subsection by the regulations.
- (2) The Electoral Commissioner may delegate any of the Electoral Commissioner's functions (other than this power of delegation) to:
  - (a) a member of staff of the Electoral Commission, or
  - (b) an officer or member of staff of an electoral commission or electoral office of the Commonwealth or of a State or Territory, or
  - (c) any person, or any class of persons, authorised for the purposes of this subsection by the regulations.
- (3) Without limiting subsection (2), the Electoral Commissioner may delegate any of the Electoral Commissioner's functions as a returning officer for an Assembly election or a periodic Council election (other than this power of delegation) to an election official.
- (4) A delegation under this section may be to a particular person, the holder of a particular position or a class of persons or holders of positions.

## **Part 3 Redistribution of electoral districts**

### **Division 1 Electoral Districts Redistribution Panel**

#### **17 Establishment of Electoral Districts Redistribution Panel**

- (1) There is established by this Act an Electoral Districts Redistribution Panel (the

**Redistribution Panel**) consisting of the following 3 members:

- (a) a current or former Judge appointed by the Governor as the Chairperson of the Redistribution Panel,
- (b) the Electoral Commissioner,
- (c) the Surveyor-General.

(2) In this section, **Judge** means:

- (a) a Judge of the Supreme Court of New South Wales or of any other State or Territory, or
- (b) a Judge of the Federal Court of Australia, or
- (c) a Justice of the High Court of Australia.

## **18 Provisions relating to Redistribution Panel**

- (1) Schedule 3 contains provisions relating to the Redistribution Panel.
- (2) For the purposes of carrying out its functions, the Redistribution Panel may make use of the services of any of the members of staff of the Electoral Commission.

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

- (1) In relation to the exercise of their functions under this Part, the members of the Redistribution Panel have the powers and immunities of a commissioner, and the Chairperson of the Panel has the powers of a chairperson, within the meaning of Division 1 of Part 2 of the [Royal Commissions Act 1923](#).
- (2) The provisions of that Act (other than section 13 and Division 2 of Part 2) apply, with all necessary changes, to any witness or person summoned by or appearing before the Panel.

## **Division 2 Redistribution of electoral districts**

### **20 Governor to advise Redistribution Panel that redistribution is required**

If a distribution of electoral districts is required by the [Constitution Act 1902](#), the Governor is to advise the Redistribution Panel of that fact.

### **21 Criteria for distributions**

- (1) In carrying out its functions, the Redistribution Panel, subject to complying with sections 28 and 28A of the [Constitution Act 1902](#), is:
  - (a) to have regard to demographic trends within New South Wales 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 10 per cent more or less of the average enrolment in electoral districts at that future time), and

- (b) subject to paragraph (a), to give due consideration, in relation to each electoral district, to:
  - (i) community of interests within the electoral district, including economic, social and regional interests, and
  - (ii) means of communication and travel within the electoral district, and
  - (iii) the physical features and area of the electoral district, and
  - (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 Assembly that exists at the time the distribution is carried out.

## 22 Public notice of redistribution

- (1) As soon as practicable after the Redistribution Panel has been advised that a distribution is required, the Panel is to give public notice of the redistribution:
  - (a) in the Gazette, and
  - (b) on the Electoral Commission's website, and
  - (c) in a newspaper published or circulating in New South Wales.
- (2) The public notice must:
  - (a) invite suggestions in writing, to be lodged with the Redistribution Panel within 30 days after the date the public notice was given (the **suggestion period**), relating to the distribution of New South Wales into electoral districts, and
  - (b) invite comments in writing, to be lodged with the Panel within 14 days after the expiry of the suggestion period (the **comments period**), relating to any suggestions received by the Panel under this section, and
  - (c) notify the public that any suggestions and comments lodged with the Panel will be made available for public inspection on the Electoral Commission's website as soon as is reasonably practicable after the expiry of the suggestion period or comments period, as the case requires.
- (3) The Redistribution Panel is to make a copy of any suggestion or comment lodged with

the Panel under this section available for public inspection on the Electoral Commission's website as soon as is reasonably practicable after the expiry of the suggestion period or comments period, as the case requires.

### **23 Preparation of draft redistribution determination**

- (1) The Redistribution Panel is to prepare a draft determination of the names and boundaries of electoral districts.
- (2) Before preparing the draft determination under this section, the Redistribution Panel is:
  - (a) to obtain, and consider, the advice of a recognised demographer, and
  - (b) to consider any suggestions or comments lodged with it under section 22.

### **24 Manner of identifying boundaries of electoral districts**

- (1) The Redistribution Panel may determine the boundaries of electoral districts by reference to such matters (including cadastral, topographical, administrative and other spatial information) as the Panel thinks fit.
- (2) The Redistribution Panel is required to cause its determinations of the boundaries of electoral districts to be recorded in such a way as is readily accessible by members of the public.

### **25 Public notice of draft redistribution determination**

- (1) The Redistribution Panel is to give public notice of its draft determination of the names and boundaries of electoral districts:
  - (a) in the Gazette, and
  - (b) on the Electoral Commission's website, and
  - (c) in a newspaper published or circulating in New South Wales.
- (2) The public notice must:
  - (a) include a written statement that the following are available for inspection on the Electoral Commission's website:
    - (i) a map setting out the Redistribution Panel's proposed names and boundaries of electoral districts,
    - (ii) the Panel's reasons for making the draft determination, and
  - (b) invite submissions in writing, to be lodged with the Panel within 30 days after the date the public notice was given (the **submission period**), relating to the draft determination, and

- (c) invite comments in writing, to be lodged with the Panel within 14 days after the expiry of the submission period (the **comments period**), relating to any submissions received by the Panel under this section, and
  - (d) notify the public that any submissions and comments lodged with the Panel will be made available for public inspection on the Electoral Commission's website as soon as is reasonably practicable after the expiry of the submission period or comments period, as the case requires.
- (3) The Redistribution Panel is to make a copy of any submission or comment lodged with the Panel under this section available for public inspection on the Electoral Commission's website as soon as is reasonably practicable after the expiry of the submission period or comments period, as the case requires.
- (4) The Redistribution Panel is to consider any submission and comment lodged with the Panel under this section before making a final determination of the names and boundaries of electoral districts.

## **26 Public hearing**

- (1) The Redistribution Panel must hold a public hearing into any submission or comment made under section 25 unless the Redistribution Panel is of the opinion that:
- (a) the matters raised in the submission or comment were raised, or are substantially the same as matters that were raised, in suggestions or comments lodged under section 22, or
  - (b) the submission or comment is frivolous or vexatious.
- (2) Without limiting subsection (1), the Redistribution Panel may hold one public hearing into a number of submissions and comments.
- (3) At the public hearing, oral and further written submissions may be made to the Redistribution Panel by or on behalf of any person who, or organisation that, lodged a submission or comment under section 25.
- (4) The Redistribution Panel is not bound by the rules of evidence and may regulate the conduct of proceedings at the hearing as it considers fit.
- (5) Without limiting subsection (4), the Redistribution Panel may determine the following:
- (a) the times and places for holding sessions of the public hearing,
  - (b) the manner in which oral or written submissions may be made to the Panel at the public hearing,
  - (c) the time within which written submissions may be made to the Panel,
  - (d) the extent to which the Panel may be orally addressed, and the persons by whom

they may be orally addressed, on any submission.

(6) The Redistribution Panel must consider all submissions made to it at a public hearing.

## **27 Revised redistribution determination**

- (1) As soon as practicable after the Redistribution Panel has concluded its consideration of any submissions made to it (including any submissions and comments made under section 25), the Panel must consider its draft determination and prepare a revised determination of the names and boundaries of electoral districts.
- (2) If the Redistribution Panel is of the opinion that the Panel's revised determination will not be significantly different from the draft determination, the Panel is to finally determine the names and boundaries of electoral districts.
- (3) If the Redistribution Panel is of the opinion that the Panel's revised determination will be significantly different from the draft determination, the Panel must give public notice of its revised determination of the names and boundaries of electoral districts:
  - (a) in the Gazette, and
  - (b) on the Electoral Commission's website, and
  - (c) in a newspaper published or circulating in New South Wales.
- (4) The public notice must:
  - (a) include a written statement that the following is available for inspection on the Electoral Commission's website:
    - (i) a map setting out the Redistribution Panel's proposed names and boundaries of electoral districts,
    - (ii) the Panel's reasons for making the revised determination, and
  - (b) invite objections in writing, to be lodged with the Panel within 30 days after the date the public notice was given (the **objection period**), relating to the revised determination, and
  - (c) invite comments in writing, to be lodged with the Panel within 14 days after the expiry of the objection period (the **comments period**), relating to any objection received by the Panel under this section, and
  - (d) notify the public that any objections and comments lodged with the Panel will be made available for public inspection on the Electoral Commission's website as soon as is reasonably practicable after the expiry of the objection period or comments period, as the case requires, and
  - (e) state that a further public hearing may be held relating to any such objections or

comments.

- (5) The Redistribution Panel is to make a copy of any objection or comment lodged with the Panel under this section available for public inspection on the Electoral Commission's website as soon as is reasonably practicable after the expiry of the objection period or comments period, as the case requires.
- (6) If public notice is given under subsection (3):
  - (a) a person who, or an organisation that, was entitled to make submissions to the public hearing may lodge with the Panel a written objection or comment relating to an objection, and
  - (b) the Redistribution Panel must hold a public hearing into any such objection or comment, and
  - (c) section 26 applies to a public hearing into any such objection or comment under this section as if the objection or comment were a submission or comment lodged with the Redistribution Panel in relation to a draft determination.

**Note—**

Section 26 (1), as applied, provides that the Redistribution Panel must hold a public hearing into an objection or comment made under this subsection unless the Redistribution Panel is of the opinion that:

- (a) the matters raised in the objection or comment were already raised, or are substantially the same as matters that were already raised, in suggestions, objections or comments lodged under this Division, or
  - (b) the objection or comment is frivolous or vexatious.
- (7) The Redistribution Panel must, as soon as practicable, complete:
    - (a) the Panel's consideration of any objections and comments lodged with it under this section, and
    - (b) any public hearings into those objections.
  - (8) As soon as practicable after the Redistribution Panel has completed the public hearing under subsection (6) into any objections or comments, the Panel is to finally determine the names and boundaries of electoral districts.
  - (9) The Redistribution Panel is not required to invite further suggestions, submissions, objections or comments or to hold any hearings into any such further suggestions, submissions, objections or comments that are received.

**28 Final determination of redistribution to be given to Governor**

As soon as practicable after the Redistribution Panel has finally determined the names and boundaries of electoral districts, the Panel must give that final determination to the Governor.



## 29 Proclamation by Governor of names and maps of electoral districts

- (1) The Governor is to cause a proclamation to be published in the Gazette, setting out:
  - (a) the name of each electoral district, and
  - (b) a map of each electoral district.
- (2) On publication of a proclamation under this section, the electoral districts specified in the proclamation are, until altered by a further distribution required under the *Constitution Act 1902*, the electoral districts of New South Wales.
- (3) The Electoral Commission must ensure, as far as is reasonably practicable, that maps indicating the names and boundaries of those electoral districts are available for inspection on the Electoral Commission's website.
- (4) Despite subsection (2), the electoral districts existing immediately before the publication of a proclamation under this section remain, for the purposes of any by-election to be held before the dissolution or expiry of the Assembly following that publication, the electoral districts of New South Wales.
- (5) The Redistribution Panel is to ensure that a copy of the maps of the electoral districts is lodged with the Surveyor-General, who is required to keep that copy at least until the next distribution of electoral districts.
- (6) The copy lodged with the Surveyor-General is evidence of the boundaries 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.

## Part 4 Entitlement to enrol and vote

### 30 Entitlement to enrol

**Note—**

Under this Act there is no permanent roll of electors. However:

- (a) the person's name and enrolment details will be recorded in the Electoral Information Register maintained under this Act—see Division 4 (Electoral Information Register) of Part 5 (Enrolment procedures and information), and
  - (b) the person's name will appear on an authorised roll prepared for a particular election and on other lists of electors prepared under this Act—see Division 6 (Authorised rolls) of Part 5 (Enrolment procedures and information).
- (1) A person is entitled to be enrolled in respect of an address in New South Wales if the person:

(a) has attained 16 years of age, and

**Note—**

A person is not entitled to vote until the person is 18 years of age—see section 31.

(b) is an Australian citizen, and

(c) resides at that address and has resided at that address for at least 1 month before the enrolment.

**Note—**

Section 4 (2) of this Act provides that an elector is **enrolled for the district** that contains the enrolled address of the elector.

(2) A person who is not entitled to be enrolled under subsection (1) is entitled to be enrolled if the person is enrolled under any of the following provisions of the Commonwealth Act in respect of an address in New South Wales:

(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.

(3) Subject to subsection (2), a person is not entitled to be enrolled in respect of any address other than the address at which the person is residing at the date:

(a) that the person lodged his or her application for enrolment (or application for a change of address), or

(b) that the Electoral Commissioner enrolled the person (or changed the person's enrolment details to record a change of address).

(4) A person is not entitled to be enrolled if the person has been convicted of an offence, whether in New South Wales or elsewhere, and has been sentenced in respect of that offence to imprisonment for 12 months or more and is in prison serving that sentence.

### **31 Entitlement to vote**

(1) Subject to this Act, a person 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 Council

election.

- (2) Despite subsection (1), a person who has been enrolled, but who has not attained 18 years of age on the date appointed as the election day for an election, is taken for the purposes of that election to not be enrolled or entitled to be enrolled.

**Note—**

Accordingly, a person is not entitled to vote or be appointed as a scrutineer if he or she has not attained 18 years of age.

## **Part 5 Enrolment procedures and information**

### **Division 1 Enrolment**

#### **32 Compulsory enrolment: obligation to enrol and keep enrolment details updated**

- (1) Every person who:

- (a) has attained the age of 18 years, and
- (b) is not enrolled, and
- (c) is entitled to be enrolled (other than under section 30 (2)),

must, within 21 days of becoming entitled to be enrolled, complete and lodge an application for enrolment in the approved manner and form, unless the person has been notified by the Electoral Commissioner that the person has been enrolled by the Electoral Commissioner.

Maximum penalty: 1 penalty unit.

**Note—**

In many circumstances, a person will be automatically enrolled by the Electoral Commissioner under section 34.

- (2) If a person (including a silent elector):

- (a) is enrolled, and
- (b) changes residence from the person's enrolled address to another address in New South Wales,

the person must, within 21 days of becoming entitled to be enrolled in respect of the other address, complete and lodge an application for a change of address in the approved manner and form, unless the person has been notified by the Electoral Commissioner that the elector's enrolment details have been changed.

Maximum penalty: 1 penalty unit.

**Note—**

In many circumstances, an elector's enrolment details will be automatically updated by the Electoral Commissioner under section 34.

(3) Every person who:

- (a) has not attained the age of 18 years, and
- (b) is entitled to be enrolled, and
- (c) is not enrolled,

may complete and lodge an application for enrolment in the approved manner and form.

**Note—**

A person who has attained 16 years of age, is an Australian citizen and resides at an address in New South Wales is entitled to be enrolled in respect of that address—see section 30. However, the person is not entitled to vote until the person is 18 years of age—see section 31.

(4) An application for enrolment under subsection (1) or (3) or for a change of address under subsection (2) must be supported by the evidence of the applicant's identity that is required by the regulations (if any).

(5) If a person:

- (a) lodges an application for enrolment, or an application for a change of address, to the Electoral Commissioner, or
- (b) forwards a claim for enrolment, or a claim for a transfer of enrolment, to the Australian Electoral Commission,

proceedings are not to be commenced against that person for any alleged offence against this section committed before the person lodged the application or forwarded the claim.

(6) If a person wishes to make an application for enrolment, or an application for a change of address, and a registered medical practitioner has certified, in writing, that the person cannot physically sign the application, another person may, on behalf of the person, complete and lodge the application in accordance with the directions of the person.

(7) A registered medical practitioner's certificate referred to in subsection (6) is to be lodged with the application to which it relates.

### **33 Means of enrolment**

(1) The Electoral Commissioner may enrol a person:

- (a) on the Electoral Commissioner's own initiative under section 34, or

(b) in response to an application for enrolment under section 35.

(2) The Electoral Commissioner may change an elector's enrolment details to record a change of address:

(a) on the Electoral Commissioner's own initiative under section 34, or

(b) in response to an application for a change of address under section 35.

### **34 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 is entitled to be enrolled, 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, and

(b) the Electoral Commissioner will enrol the person 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, the Electoral Commissioner is to:

(a) enrol the person, and

(b) notify the person in writing (including by email, SMS text message or other electronic means) that he or she has been enrolled.

(3) If the Electoral Commissioner, at any time, believes that a person is incorrectly enrolled in respect of an address (the **first address**), but that the person is entitled to be enrolled in respect of another address (the **second address**), 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 in respect of the first address, but should be enrolled in respect of the second address, and

(b) the Electoral Commissioner will change the person's enrolment details 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 in respect of the first address, but is entitled to be enrolled in respect of the second address, the Electoral Commissioner is to:

- (a) change the person's enrolment details to record the second address as the person's enrolled address, and
  - (b) notify the person in writing (including by email, SMS text message or other electronic means) that the person's enrolment details have been so changed.
- (5) If the Electoral Commissioner, at any time, believes that a person who is enrolled is not entitled to be enrolled, 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, and
  - (b) the Electoral Commissioner will terminate the person's enrolment 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, the Electoral Commissioner is to:
- (a) terminate the person's enrolment, and
  - (b) notify the person in writing (including by email, SMS text message or other electronic means) that his or her enrolment has been terminated.
- (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 5.

**Note—**

The Electoral Commissioner may use information collected under Division 5, from bodies such as Roads and Maritime Services 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 during

the period of any election, including after the issue of the writ for the election.

**Note—**

If a person has been enrolled by the Electoral Commissioner under this section and the person believes that the person is not entitled to be so enrolled or is enrolled in relation to an incorrect address, the person may complain to the Electoral Commissioner regarding the person's own enrolment under section 38.

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

**35 Enrolment by Electoral Commissioner in response to application**

- (1) The Electoral Commissioner, on receiving an application for enrolment, subject to subsection (6), must:
  - (a) if the application is in order and the Electoral Commissioner is satisfied that the applicant is entitled to be enrolled:
    - (i) enrol the person, and
    - (ii) notify the person in writing that he or she has been enrolled, and
  - (b) in a case where the person is already correctly enrolled—notify the person in writing that, in the Electoral Commissioner's opinion, the person's existing enrolment is correct, and
  - (c) if the application is not in order or the Electoral Commissioner is not satisfied that the person is entitled to be enrolled—notify the person in writing that his or her application has been rejected.
- (2) The Electoral Commissioner, on receiving an application for a change of address, subject to subsection (6), must:
  - (a) if the application is in order and the Electoral Commissioner is satisfied that the applicant is entitled to be enrolled in respect of the new address specified in the application:
    - (i) change the person's enrolment details to record the person's new address as the person's enrolled address, and
    - (ii) notify the person in writing that the person's enrolment details have been so changed, and
  - (b) in a case where the person is already correctly enrolled—notify the person in writing that, in the Electoral Commissioner's opinion, the person's existing enrolment details are correct, and
  - (c) if the application is not in order or the Electoral Commissioner is not satisfied that the person is entitled to be enrolled—notify the person in writing that his or her

application has been rejected.

- (3) A notification in writing by the Electoral Commissioner under this section may be made by email, SMS text message or other electronic means if the applicant has consented in the application to communication by that means.
- (4) A notice of a decision given to a person by the Electoral Commissioner under subsection (1) (b) or (c) or (2) (b) or (c) is to include:
  - (a) a statement of the reasons for the decision, and
  - (b) a statement advising the person that:
    - (i) the person is entitled to make a complaint to the Electoral Commissioner regarding the enrolment of the person or the failure to enrol the person, and
    - (ii) if the person is dissatisfied by the handling of that complaint, the person may apply to the Civil and Administrative Tribunal for an administrative review of the decision of the Electoral Commissioner regarding the complaint.
- (5) Nothing in this section prevents the Electoral Commissioner enrolling a person during the period of any election, including after the issue of the writ for the election.
- (6) The regulations may make provision for or with respect to the giving of notice by the Electoral Commissioner to an elector of his or her enrolment.

**36 Silent electors: request for address to be omitted from authorised rolls or any other list of electors**

- (1) A person may lodge a request in the approved form that the person's residential address be omitted from any authorised roll or list of electors if the person considers that having that address on a roll or list of electors 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 on an authorised roll or a list of electors places or would place 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 omitted from any such roll or list.
- (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 omitted from any authorised roll or list of electors prepared under this Act, and
  - (b) the person is taken to be a silent elector under this Act.

### **37 Registered early voters**

- (1) An elector may apply to the Electoral Commissioner to be a registered early voter if:
- (a) the elector's residence is not within 20 kilometres, by the nearest practicable route, of a voting centre, or
  - (b) by reason of being seriously ill or infirm, the elector is unable to travel from the place where he or she resides (other than a hospital that is a voting centre), or
  - (c) because he or she will be at a place (other than a hospital that is a voting centre) caring for a person who is seriously ill or infirm, the elector is unable to travel from that place to a voting centre, or
  - (d) the elector is enrolled pursuant to an application made under section 32 (6) (which contemplates the provision of a registered medical practitioner's certificate), or
  - (e) a registered medical practitioner has certified that the elector cannot physically sign the elector's name, or
  - (f) the elector is a silent elector, or
  - (g) the elector is a person with a disability (within the meaning of the [Anti-Discrimination Act 1977](#)), or
  - (h) because of his or her religious beliefs or membership of a religious order, the elector:
    - (i) is precluded from attending a voting centre, or
    - (ii) for the greater part of the hours of voting on an election day, is precluded from attending a voting centre.
- (2) An application is to be made in the manner and form approved by the Electoral Commissioner and is to specify which of the 2 classes of registered early voter the elector is applying to belong to:
- (a) the registered early voter (postal) class—being the class of registered early voters

who may early vote at elections by post, or

(b) the registered early voter (technology assisted voting) class—being the class of registered early voters who may early vote at elections by means of technology assisted voting.

(3) The Electoral Commissioner:

(a) may accept or reject an application under this section to grant the elector registered early voter status, and

(b) if the application is accepted, must specify the class of registered early voter that the elector has been granted, and

(c) must advise the person in writing of the Electoral Commissioner's decision under this subsection.

(4) An application may be made under subsection (1) (d) or (e) by another person acting on behalf of the elector if a registered medical practitioner has certified, in writing, that the elector cannot physically sign the elector's name.

(5) A certificate referred to in subsection (1) (d) or (e) or (4) is to be lodged with the application to which it relates.

(6) The Electoral Commissioner may withdraw registered early voter status from an elector if the Electoral Commissioner is satisfied that the elector is no longer an elector of a kind described in subsection (1).

(7) An elector who is a registered general postal voter under the Commonwealth Act is, unless the elector is a registered early voter (technology assisted voting), taken to be a registered early voter (postal).

## **Division 2 Complaints regarding enrolment**

### **38 Complaints to be made to Electoral Commissioner**

(1) A person may complain to the Electoral Commissioner regarding:

(a) the enrolment of a person (including the person's own enrolment), or

(b) the enrolment details recorded about a person, or

(c) the failure to enrol a person.

(2) A complaint made by a person must:

(a) be in writing and in the approved form, and

(b) be signed by the person, and

(c) set out the ground of the complaint.

### **39 Electoral Commissioner to investigate and deal with complaints**

- (1) The Electoral Commissioner is to investigate a complaint made under this Division.
- (2) After investigating the complaint, the Electoral Commissioner may:
  - (a) enrol, or terminate the enrolment of, the person concerned, or
  - (b) correct any information relating to the person kept on the Electoral Information Register, or
  - (c) refuse to take any of the actions referred to in paragraphs (a) and (b).
- (3) The Electoral Commissioner is to give the complainant and the person whose enrolment is the subject of the complaint written notice of the Electoral Commissioner's decision under this section and the reasons for the decision.

## **Division 3 Civil and Administrative Tribunal review of decisions regarding enrolment**

### **40 Review by Civil and Administrative Tribunal**

A person who has made a complaint under Division 2 may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of the decision of the Electoral Commissioner regarding the complaint.

## **Division 4 Electoral Information Register**

### **41 Register of information relating to electors**

- (1) The Electoral Commissioner is to keep and maintain records of all persons enrolled under this Act in a register (the **Electoral Information Register**).
- (2) The register is to include:
  - (a) the surname, given name or names, date of birth and sex of each enrolled person, and
  - (b) the residence of the person (except in relation to an eligible overseas elector or an itinerant elector), and
  - (c) the electoral district for which the person is enrolled, and
  - (d) whether the person is a silent elector, and
  - (e) whether the person is a registered early voter, and, if so, whether the person is a registered early voter (postal) or a registered early voter (technology assisted voting), and

(f) such other particulars as the Electoral Commissioner considers necessary to carry out his or her functions under this Act, and

(g) such other particulars as are prescribed by the regulations.

(3) The register is to be kept in an electronic form.

#### **42 Maintenance of Electoral Information Register**

(1) The Electoral Commissioner must use the Electoral Commissioner's best endeavours to revise and update the Electoral Information Register to ensure that it is accurate.

(2) Without limiting any other function of the Electoral Commissioner in relation to the Electoral Information Register, the Electoral Commissioner may alter the register by doing any of the following:

(a) correcting any mistake or omission in the particulars of the enrolment of an enrolled person,

(b) altering the particulars of the enrolment of an enrolled person (including the inclusion of particulars in compliance with a requirement under section 41 (2) (f) or (g)),

(c) removing the name of any deceased person,

(d) removing the name of a person who has been convicted and sentenced to a term of imprisonment of 12 months or longer and is in prison pursuant to that sentence,

(e) removing any superfluous entry where the name of the same person appears more than once,

(f) reinstating any name removed by mistake as the name of a deceased person,

(g) reinstating any name removed as the result of a complaint, where satisfied that the complaint was based on a mistake as to fact and that the person whose enrolment was the subject of the complaint is still entitled, and has continuously been entitled, to the enrolment in respect of which the complaint was made,

(h) reinstating any other name removed by mistake or which has been accidentally omitted,

(i) altering any particulars of the enrolment of a person necessitated:

(i) by a redistribution under Part 3, or

(ii) by the numbering or re-numbering or naming or re-naming of the person's place of residence, or

(iii) by the naming or re-naming of a street, public place or locality, or

(iv) for any other similar reason.

#### **43 Electoral Information Register not available for public inspection**

The Electoral Commissioner must ensure that the Electoral Information Register is not available for public inspection and is not disclosed.

**Note—**

Division 7 of this Part deals with the public inspection of authorised rolls and other lists of electors.

It is an offence for any person to disclose any information obtained in connection with the administration or execution of this Act (or any other Act conferring or imposing functions on the Electoral Commission or Electoral Commissioner) except in certain specified circumstances—see section 268 (Disclosure of information).

### **Division 5 Collection of electoral information**

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

(1) The Electoral Commissioner is:

(a) to collect such information (***electoral information***) as the Electoral Commissioner considers necessary for the maintenance and revision of the Electoral Information Register, and

(b) to maintain and regularly revise that electoral 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 residence,

(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 it has in the *Privacy and Personal Information Protection Act 1998*.

#### **45 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 maintenance and revision of the Electoral Information Register:

- (a) a person employed in the government sector (within the meaning of section 3 of the *Government Sector Employment Act 2013*),
  - (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) Hunter Water Corporation,
  - (f) a distributor within the meaning of the *Electricity Supply Act 1995*,
  - (g) a university established or constituted by an Act of New South Wales,
  - (h) an enrolled person 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 enrolment of electors, or
  - (b) such 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 16 years but not 18 years of age, may be entitled to make applications to be enrolled, 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 Roads and Maritime Services in its application forms is to collect information such as mobile phone numbers and email addresses for the purposes of notifying electors under

section 34.

- (5) The *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002* do not apply in relation to the disclosure of personal information or health information to the extent that the 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* and the *Health Records and Information Privacy Act 2002* relating to the collection, use or disclosure of personal information or health information to the extent that the information is provided under this section.

## **Division 6 Authorised rolls**

### **46 Authorised roll of electors to be prepared for each election**

- (1) The Electoral Commissioner is to prepare an authorised roll of electors for a district for use at voting centres at an election.
  - (2) An authorised roll:
    - (a) must be prepared by the Electoral Commissioner as soon as practicable after the issue of the writ for an election, and
    - (b) must be prepared by the Electoral Commissioner when so required under any other Act, and
    - (c) may contain only the following information:
      - (i) the surname, given name or names, date of birth and sex of each elector,
      - (ii) the residence of the elector (except in relation to an eligible overseas elector or an itinerant elector), and
- Note—**
- Section 36 (Silent electors: request for address to be omitted from authorised rolls or any other list of electors) provides for the exclusion of the address of an elector from an authorised roll in certain circumstances.
- (d) may be in a form determined by the Electoral Commissioner.
  - (3) A person who will not attain 18 years of age on or by the election day for an election is not entitled to be included on an authorised roll prepared by the Electoral Commissioner in relation to the election.

### **47 Public inspection of authorised roll during election period**

- (1) As soon as practicable after an authorised roll for a district has been prepared by the Electoral Commissioner after the issue of the writ for an election, the Commissioner is

to make a copy of the roll available for public inspection.

- (2) The copy of the authorised roll is:
  - (a) to be made available, during ordinary office hours, for public inspection without fee at the office of the Electoral Commission and such other place or places as the Electoral Commissioner determines, and
  - (b) to remain available for public inspection until 40 days after the return of the writ.
- (3) The Electoral Commissioner may make a copy of an authorised roll available for public inspection without fee in any other way that the Commissioner considers appropriate.
- (4) A person inspecting a copy of an authorised roll under this section is not entitled to use a device (such as a camera, mobile phone, video recorder or other electronic device) 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 an authorised roll made available under this section must not contain any particulars relating to a person's date of birth.

**Note—**

The authorised roll used at a voting centre will specify a person's date of birth. It is only the special copy prepared for the purposes of this section that will have the date of birth removed.

An authorised roll is a public register for the purposes of the [Privacy and Personal Information Protection Act 1998](#) and is subject to the provisions of that Act relating to such public registers.

## **Division 7 Inspection of authorised rolls and lists of enrolled persons and provision of enrolment information**

**Note—**

Section 222 (Election information) provides that, after an election, the Electoral Commissioner may provide registered parties and members of Parliament (who are not members of a registered party) with certain election information setting out the names and addresses of electors who voted and the methods of voting used and the places at which electors voted.

### **48 Electoral Commissioner to determine manner and form of access to list of electors 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 in a written or an electronic form.
- (3) Information provided under this Division must not contain:
  - (a) particulars of a silent elector's residence, or



- (b) any particulars relating to an enrolled person as may be prescribed by the regulations.

**Note—**

Section 36 (Silent electors: request for address to be omitted from authorised rolls or any other list of electors) provides for the omission of the address of an elector from an authorised roll or list of electors in certain circumstances.

- (4) Despite any other provision of this Division, the Electoral Commissioner may, before providing a person or body with information under this Division, require that the person or body provide the Electoral Commissioner with an undertaking that the person or body's systems and procedures are adequate to preserve the security of that information.
- (5) A reference in this section to information being provided includes a reference to:
  - (a) a copy of an authorised roll being made available for public inspection, and
  - (b) a copy of an authorised roll or a list of electors being given to a person or body.

**49 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 enrolled persons and their particulars:
  - (a) once every 4 years, and
  - (b) as soon as practicable after the redistribution of New South Wales into districts, and
  - (c) on receiving a request from the registered officer of the party, and
  - (d) at such other times as the Electoral Commissioner considers appropriate.
- (2) **Members of Council** The Electoral Commissioner must provide to each member of the Council, free of charge, a list specifying enrolled persons and their particulars:
  - (a) once every 4 years, and
  - (b) as soon as practicable after the redistribution of New South Wales into districts, and
  - (c) on receiving a request from the member but not more than once each year, and
  - (d) at such other times as the Electoral Commissioner considers appropriate.
- (3) **Members of Assembly** The Electoral Commissioner must provide to each member of the Assembly, free of charge, a list specifying enrolled persons and their particulars for the district for which the member was elected:

- (a) once every 4 years, and
  - (b) as soon as practicable after the redistribution of New South Wales into districts, and
  - (c) on receiving a request from the member but not more than once each year, and
  - (d) at such other times as the Electoral Commissioner considers appropriate.
- (4) On a redistribution of New South Wales into districts, the Electoral Commissioner must provide to each member of the Assembly, free of charge:
- (a) a list specifying enrolled persons for the district for which the member was elected, and
  - (b) a list specifying enrolled persons for the district whose name and area are published under section 29 and that, in the opinion of the Commissioner, most resembles 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 persons whose enrolled addresses 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 persons whose enrolled addresses 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.
- (8) The Electoral Commissioner is taken to have provided a member or candidate who is a member of a registered party with the list of electors and particulars required by this

section if the Electoral Commissioner has provided the required list and particulars to the member or candidate's registered party in accordance with subsection (1) (a) or (b).

- (9) Nothing in subsection (8) prevents a member or candidate who is a member of a registered party requesting a list of electors and particulars be provided directly to the member or candidate under subsection (2) (c), (3) (c), (6) or (7).
- (10) A member or candidate who is a member of a registered party, when making a request for a list of electors and particulars under this section, may request that the list and particulars be provided to that registered party for forwarding to the member or candidate.

#### **50 Provision of enrolment information to other persons**

- (1) After receiving a request from any person not referred to in section 49 for a list of enrolled persons and their particulars, the Electoral Commissioner must:
  - (a) identify the public interest in providing the requested information, and
  - (b) make a finding on 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 enrolled persons and particulars that, in the opinion of the Electoral Commissioner, are relevant to the person's request, and
  - (b) charge a fee that covers the cost to the Electoral 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 Electoral 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 Electoral Commissioner or destroy the information after using it for the purpose for which the Electoral Commissioner agreed to provide the information.
- (4) A person must not, without reasonable excuse, refuse or fail to comply with such an

undertaking.

Maximum penalty: 1,000 penalty units.

(5) 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 Electoral Commissioner may include in the enrolment information the age ranges and sex of enrolled persons in a form determined by the Electoral Commissioner.

- (6) The Electoral Commissioner must publish any finding made under subsection (1) and the reasons for that finding on the Electoral Commission's website.
- (7) 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 Electoral Commission relating to that year.

#### **51 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 49 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 enrolment information kept and maintained by the Electoral Commissioner, and
- (c) any purpose prescribed by the regulations,

but do not include any purpose prescribed by the regulations as an excluded purpose.

(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 enrolment information kept and maintained by the Electoral Commissioner, 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 enrolment information kept and maintained by the Electoral Commissioner, and
- (c) exercising the functions of a member in relation to the member's constituents.

**52 Prohibition of disclosure or commercial use of enrolment information**

- (1) A person must not disclose protected information unless the disclosure would be a use of the information for a permitted purpose under section 51.
- (2) A person must not use protected information for a commercial purpose.
- (3) Without limiting subsection (2), protected information is used for a commercial purpose if it is sold or provided or offered for sale (whether for cash or any other valuable consideration).
- (4) Subsection (2) does not apply to the use of protected information provided under section 50 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.
- (5) For the purposes of this section, enrolment information is protected information if the person knows, or ought reasonably to know, that the information has been provided under section 49 or 50.

Maximum penalty: 1,000 penalty units.

**53 Access by an individual to information about the individual**

- (1) The Electoral Commissioner may provide access (including in person, online or by telephone) to the enrolment information kept and maintained by the Electoral Commissioner for the purpose of allowing an individual to ascertain whether or not he or she is correctly enrolled.
- (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 take such reasonable steps 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.

#### **54 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 56.

### **Division 8 Miscellaneous**

#### **55 Privacy—non-disclosure of information**

(1) A person who acquires information in the exercise of functions under Division 5 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 Part.

Maximum penalty: 1,000 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 Division 5, 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 Division 5.

(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 Division 5 and had acquired the information in the exercise of those functions.

- (6) The annual report of the Electoral 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.

- (7) 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—**

Divisions 6 and 7 deal with public inspection of authorised rolls and lists of electors and the provision of enrolment information to parties, members of Parliament, candidates and other persons.

## 56 Arrangement with Commonwealth

- (1) The Governor may arrange with the Governor-General of the Commonwealth for any one or more of the following:

- (a) a joint enrolment process,
- (b) the exchange of information necessary for, or the carrying out of any procedure relating to, the preparation and maintenance of rolls or electoral information registers,

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* and the *Health Records and Information Privacy Act 2002* relating to the collection, use or disclosure of personal information or health information to the extent that the personal information or health information is furnished to the Australian Electoral Commission:

- (a) for the purposes of or in connection with any arrangement referred to in this section, or
- (b) for any other purpose relating to the Electoral Information Register under this Act or rolls under the Commonwealth Act.

## Part 6 Registration of political parties

### 57 Interpretation

(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).

**member** of a party means a member of the party who is enrolled under this Act.

**Note—**

A 16 or 17 year old person who is enrolled under this Act may be counted as a member of the party for the purposes of this Part.

**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.

### 58 Register of Parties

The Electoral Commissioner is to keep a register, called the Register of Parties, containing:

- (a) the names of the parties registered under this Part, and
- (b) the written constitutions of those registered parties, and
- (c) other particulars or documents required by this Part.



## 59 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 individual 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 the individual who is to be the deputy registered officer of the party for the purposes of this Act, and
  - (e) set out the name and address of the individual who is to be the secretary of the party for the purposes of this Act, and
  - (f) set out the address of the party headquarters in New South Wales, and
  - (g) include a copy of the written constitution of the party, and
  - (h) set out the following information (unless the information is already in the written constitution of the party):
    - (i) the party's objects,
    - (ii) the procedure for amending the party's written constitution,
    - (iii) the rules for membership of the party, including the procedure for accepting a person as a member and ending a person's membership,
    - (iv) a description of the party structure and of how the party manages its internal affairs,
    - (v) the procedure for selecting a person to hold an office in the party and for removing a person from office,
    - (vi) the names of the officers or members of the party responsible for ensuring the party complies with this Act and the [Electoral Funding Act 2018](#), and
  - (i) set out the names and enrolled addresses of 750 members of the party on whom the party relies for the purpose of qualifying as an eligible party, and
  - (j) include declarations of membership of the party (in the form approved by the Electoral Commissioner) completed and signed by the members on whom the

party relies for the purpose of qualifying as an eligible party, and

(k) state whether or not the party wishes to be registered for the purposes of the *Electoral Funding Act 2018*, and

(l) set out such other particulars (or include such other documents) as are required by the regulations or the approved form of application.

(3) An application for the registration of a party may include an additional list of names and enrolled addresses of members of the party (and the corresponding declarations) to supplement the required list of 750 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.

(4) An application for the registration of a party must be accompanied by a fee of \$2,000 or such other amount as may be prescribed by the regulations.

(5) 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 64) to determine whether the party is an eligible party and the application is duly made.

#### **60 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:

(a) in one or more newspapers circulating throughout New South Wales, and

(b) on the Electoral Commission's website.

(2) The notice must:

(a) state that the application has been received, and

(b) 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 59 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:

(a) the copy of the party's written constitution,

- (b) the following information:
  - (i) the party's objects,
  - (ii) the procedure for amending the party's written constitution,
  - (iii) the rules for membership of the party, including the procedure for accepting a person as a member and ending a person's membership,
  - (iv) a description of the party structure and of how the party manages its internal affairs,
  - (v) the procedure for selecting a person to hold an office in the party and for removing a person from office,
  - (vi) the names of the officers or members of the party responsible for ensuring the party complies with this Act and the *Electoral Funding Act 2018*,
- (c) the names and enrolled addresses of 750 members of the party,
- (d) the declarations of membership of those members,
- (e) other particulars prescribed by the regulations for the purposes of this subsection.
- (5) The Electoral Commissioner must consider all objections received during the 14 day period, 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 14 day period 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 64 (6), 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.

## **61 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 and documents with respect to a registered party that were set out or included in the application for the registration of the party are to be included in or form part of the Register of Parties.

## **62 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 for an election and ending on and including the election day for the election.
- (2) No action is to be taken during that period in relation to an application for registration.

## **63 Entitlements resulting from party registration not available until 12 months after registration**

- (1) A party that becomes registered under this Part is not a registered party until 12 months after the date of its registration for the following purposes:
  - (a) Division 3 of Part 7 (Nominations),
  - (b) Subdivision 2 of Division 5 of Part 7 (Party or independent identification on ballot papers),
  - (c) Subdivision 6 of Division 14 of Part 7 (Registration of electoral material).
- (2) A party that becomes registered under this Part is not, until 12 months after the date of its registration:
  - (a) a registered party for the purposes of the *Electoral Funding Act 2018*, or
  - (b) a party for the purposes of Division 2 of Part 4 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 62.
- (5) The Register of Parties cannot be amended to backdate the registration of a party, except as authorised by an order under subsection (4).
- (6) For the purpose of calculating the 12 month period referred to in subsection (1), any period of time after the issue of writs for a general election and before the return of those writs is to be disregarded.

#### **64 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 included in, the application are incomplete or not correct, but may, if the Electoral Commissioner thinks fit, register the party despite any such defect.
- (3) The Electoral Commissioner:
  - (a) may, before registering a party, require a written response from a number of the members relied on for registration of the party that the Electoral Commissioner considers appropriate 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 inspect the Electoral Information Register for the purpose of determining whether the persons relied on as members for registration of the party are enrolled under this Act, and
  - (d) 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.

- (4) 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, an abbreviation or acronym of the name, or a derivative of the name, of a registered party or a party currently represented in Parliament, or
  - (d) is likely to be confused with or mistaken for the name, or an abbreviation or acronym of the name, of a registered party or a party currently represented in Parliament, 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.
- (5) The Electoral Commissioner may 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) is the name, an abbreviation or acronym of the name, or a derivative of the name, of a party that was registered under this Part (or Part 4A of the *Parliamentary Electorates and Elections Act 1912*) at any time during the previous 2 years (**a recently deregistered party**), or
  - (b) is likely to be confused with or mistaken for the name, or an abbreviation or acronym of the name, of a recently deregistered party, or
  - (c) comprises or contains the word “Independent” and:
    - (i) the name, or an abbreviation or acronym of the name, of a recently deregistered party, or
    - (ii) matter that so nearly resembles the name, or an abbreviation or acronym of the name, of a recently deregistered party that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym.
- (6) If the Electoral Commissioner refuses to register a party:
  - (a) the Electoral Commissioner must, as soon as is reasonably practicable, 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.
- (7) Despite subsection (4), if a party is registered under the Commonwealth Act (a **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 (4) (b),
- (d) subsection (4) (c) or (d), unless the registered party or party currently represented in Parliament referred to in subsection (4) (c) or (d) is not registered under the Commonwealth Act.

#### **65 Electoral Commissioner may request statement of current structure be provided**

- (1) The Electoral Commissioner may, at any time, by notice in writing served on a registered officer or any other officer of a registered party, require the registered officer or other officer to prepare and produce a statement of the following (unless the information is already in the written constitution of the party):
  - (a) the party's objects,
  - (b) the procedure for amending the party's written constitution,
  - (c) the rules for membership of the party, including the procedure for accepting a person as a member and ending a person's membership,
  - (d) a description of the party structure and of how the party manages its internal affairs,
  - (e) the procedure for selecting a person to hold an office in the party and for removing a person from office,
  - (f) the names of the officers or members of the party responsible for ensuring the party complies with this Act and the *Electoral Funding Act 2018*.
- (2) A person must not, without reasonable excuse, fail to comply with a notice served on the person under this section.

Maximum penalty: 10 penalty units.

- (3) The Electoral Commissioner may make changes to the Register of Parties in response to information furnished in compliance with a notice served under this section.

#### **66 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 and the registered officer is dead or is otherwise unavailable—by the deputy registered officer (or, if there is no deputy registered officer, the secretary of the party).
- (3) The registered officer of a registered party must make an application under this section to amend the particulars in the Register of Parties within 21 days after:
- (a) an amendment to the party's written constitution, or
  - (b) a decision by the party to change its registered officer, or
  - (c) a change in any of the following (unless the change comprises an amendment to the party's written constitution):
    - (i) the party's objects,
    - (ii) the procedure for amending the party's written constitution,
    - (iii) the rules for membership of the party, including the procedure for accepting a person as a member and ending a person's membership,
    - (iv) a description of the party structure and of how the party manages its internal affairs,
    - (v) the procedure for selecting a person to hold an office in the party and for removing a person from office,
    - (vi) the names of the officers or members of the party responsible for ensuring the party complies with this Act and the *Electoral Funding Act 2018*.

Maximum penalty: 10 penalty units.

- (4) If a registered officer of a registered party is dead or is otherwise unavailable, the deputy registered officer of the party (or, if there is no deputy registered officer, the secretary of the party) must make an application under this section to amend the particulars in the Register of Parties as soon as is reasonably practicable after a decision by the party to change its registered officer.

Maximum penalty: 10 penalty units.

- (5) A registered officer of a registered party is not guilty of an offence under subsection (3) if a deputy registered officer or secretary of the party makes the application under this section to amend the particulars in the Register of Parties concerned.
- (6) The provisions of this Part, other than the following provisions, 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:
- (a) section 59 (2) (g), except in relation to an application that relates to an



amendment to the party's written constitution,

- (b) section 59 (2) (i) and (j),
- (c) section 59 (4),
- (d) section 60, but only if the Electoral Commissioner is of the opinion that the amendment is of a minor nature and does not warrant publication of a notice under that section,
- (e) section 63.

For that purpose, a reference in those applied provisions to an application for registration is taken to be a reference to an application for an amendment of the Register of Parties.

- (7) The regulations may prescribe a fee to accompany any such application.
- (8) If the application is approved, the Electoral Commissioner is to make the necessary changes in the Register of Parties.
- (9) Despite subsection (8), the Electoral Commissioner may refuse to change the Register of Parties during the period commencing on the day of the issue of the writ for an election and ending on and including the election day for the election.
- (10) 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.

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

- (1) The registered officer of a party must, between 1 June and 30 June each year, furnish to the Electoral Commissioner a return as to its continued eligibility for registration under this Part in the approved form. The approved form 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.

### **68 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 nominated by the registered officer of 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.
- (3) 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 64 (3), and
  - (b) require any such test to be satisfied within a reasonable period determined by the Electoral Commissioner.
- (4) If the registration of a party is cancelled under this or any other section, 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:
    - (i) in the Gazette, and
    - (ii) on the Electoral Commission's website, and
  - (b) remove from the Register of Parties the name and other particulars or documents relating to the party.

## **69 Form of Register**

The Register of Parties is to be kept in such form and manner as the Electoral Commissioner considers appropriate.

## **70 Public access to Register**

- (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.
- (3) Without limiting subsection (4), the following information and documents in relation to each registered party that is kept on the Register of Parties must be published on the Electoral Commission's website:
  - (a) the name of the party,
  - (b) the registered abbreviation of the name of the party (if any),
  - (c) the name of the registered officer of the party,
  - (d) the name of the deputy registered officer of the party,
  - (e) the name of the secretary of the party,
  - (f) the address of the party headquarters in New South Wales,
  - (g) a copy of the registered party's written constitution.
- (4) The regulations may make provision for or with respect to other forms of public inspection of the Register of Parties and applications for registration or for the amendment of the particulars in the Register of Parties (for example, by publication on the Electoral Commission's website).

## **71 Statutory declarations**

- (1) A form that is prescribed or approved under, or for the purposes of, 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.

## 72 False statements

- (1) A person must not, in any application made under this Part, make a statement that the person knows to be false or misleading in a material particular.

Maximum penalty: 200 penalty units or imprisonment for 2 years, or both.

- (2) A person must not, in purported compliance with a notice served on the person or some other person under section 65 or 67, furnish information knowing it to be false or misleading in a material particular.

Maximum penalty: 200 penalty units or imprisonment for 2 years, or both.

## 73 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.

# Part 7 Conduct of Parliamentary elections

## Division 1 Writs for elections

### Note—

Section 11A of the [Constitution Act 1902](#) requires every general election of members of the Legislative Assembly and every periodic Council election to be held pursuant to writs issued by the Governor.

## 74 Date of issue of general election writs

- (1) The writs for an Assembly general election are to be issued:
  - (a) if the Assembly has expired—on the Monday following the day on which the Assembly expired, or
  - (b) if the Assembly was dissolved—within 4 clear days after the day the proclamation dissolving the Assembly was published in the Gazette.
- (2) A writ for a periodic Council election is to be issued on the same day as the writs for the concurrent Assembly general election are issued.

### Note—

Section 22A (3) of the [Constitution Act 1902](#) provides that a writ for a periodic Council election is not be issued until after the issue of the writs for the relevant Assembly general election and, when issued, is to name as the election day for the periodic Council election the same day as was named as the election day for the Assembly general election.

## 75 Content of writs

- (1) A writ for the election of a member to serve in the Assembly or for a periodic Council election must:
  - (a) be directed to the Electoral Commissioner, and
  - (b) specify the following:
    - (i) the date of the writ,
    - (ii) the nomination day for the election,
    - (iii) the day for the taking of the poll for the election, if required (the **election day**),
    - (iv) the day by which the writ is to be returned to the Governor or Speaker, as the case requires (the **return day**).
- (2) The writs for an Assembly general election that follows the expiry of an Assembly must specify the Wednesday following the day of that expiry as the nomination day for that election.

### Note—

Section 24 (1) of the *Constitution Act 1902* provides that a Legislative Assembly, unless sooner dissolved, expires on the Friday before the first Saturday in March in the fourth calendar year after the calendar year in which the return of the writs for choosing that Assembly occurred.

The Legislative Assembly elected at the 2015 general election will, unless sooner dissolved, expire on Friday 1 March 2019.

Section 74 (1) (a) provides that the writs for the next Assembly general election are to be issued on Monday 4 March 2019.

This subsection provides that the nomination day for that Assembly general election (and the concurrent periodic Council election) will be Wednesday 6 March 2019.

- (3) The writs for an Assembly general election and the writ for the concurrent periodic Council election are to specify:
  - (a) the same day as the nomination day for each of those elections, and
  - (b) the same day as the return day for each of those elections, being:
    - (i) a day that is not later than the 60th clear day after the date of the issue of the writ, or
    - (ii) a later day that the Governor may, by proclamation in the Gazette, direct.
- (4) The writ for a by-election for the Assembly is to specify as the return day:
  - (a) a day that is not later than the 60th clear day after the date of the issue of the

writ, or

(b) a later day that the Governor may, by proclamation in the Gazette, direct.

- (5) Subsection (3) does not apply in relation to a writ for a periodic Council election issued by reason of the failure of an election, including a failure of an election by reason of its being declared void in accordance with law.

## **76 Issue of writs in special circumstances**

- (1) **General—Speaker to issue writs to fill Assembly vacancies** If a vacancy occurs in the Assembly, the Speaker, after the Assembly by resolution has declared that the vacancy exists and the reason for the vacancy, is to issue a writ for an election of a member to fill the vacancy.
- (2) If a member of the Assembly dies or resigns during an adjournment of the Assembly for a period greater than 7 days, the Speaker may issue a writ for an election of a member to fill the vacancy without a resolution by the Assembly declaring the vacancy.
- (3) **Governor to issue writ in special circumstances** The Governor may issue a writ for the election of a member to fill a vacancy in the Assembly if:
- (a) the vacancy was caused by a death or resignation and, at the time of the death or resignation, there is no Speaker (and no Deputy Speaker authorised to act under section 31A of the [Constitution Act 1902](#)) and the Assembly is not in session, or
  - (b) the vacancy occurred after an Assembly general election and before the first meeting of the Assembly after that general election.

### **Note—**

Section 31A of the [Constitution Act 1902](#) provides that, when the Speaker is unavailable, 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.

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

The Electoral Commissioner must, on receiving a writ for an election, 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 date of the writ, and
- (b) the contents of the writ, and
- (c) the nomination day, and
- (d) the election day, and

(e) the return day.

### **78 Meeting of Assembly and Council after return of writs**

The day to be fixed for the meeting of the Assembly or the Council after the return of writs for an Assembly general election and the concurrent periodic Council election must not be later than the 7th clear day after the date for the return of the writs for those elections.

### **79 Issue of writ to be delayed where member seeks election to Commonwealth Parliament**

If:

- (a) a vacancy occurs in the Assembly by reason of a member resigning his or her seat for the purpose of seeking election to the Parliament of the Commonwealth, and
- (b) the member resigns before the date of the issue of the writ for the Commonwealth election, and
- (c) the member notifies the Speaker in writing of his or her intention to seek election to the Parliament of the Commonwealth and, in the event of failing to secure such election, to become again a candidate for that vacancy,

the issue of the writ for the election of a member to fill that vacancy is to be delayed until the result of the Commonwealth election has been first officially declared by the returning officer for that election.

## **Division 2 Election administration**

### **80 General conduct of Assembly and Council elections**

- (1) The Electoral Commissioner is, subject to this Act and the [Constitution Act 1902](#), by this Act appointed to conduct and administer the following elections as returning officer:
  - (a) Assembly general elections and by-elections,
  - (b) periodic Council elections.
- (2) The Electoral Commissioner may use the services of election officials, and computer and other electronic resources, to assist the Electoral Commissioner in the conduct and administration of elections under this Act.

### **81 Election officials, election managers and voting centre managers**

- (1) The Electoral Commissioner may appoint any of the following persons as an election official:
  - (a) a member of staff of the Electoral Commission,
  - (b) a person, or class of persons, prescribed by the regulations.

- (2) A person is not eligible 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.

A person is not ineligible for appointment as an election official for a district merely because the person is not enrolled for that district.

- (3) The Electoral Commissioner is to appoint an election official as the election manager for each electoral district for which a poll is required to be conducted. A single election official may be appointed as the election manager for more than one electoral district.
- (4) The Electoral Commissioner is to appoint an election official as a voting centre manager for a voting centre.
- (5) A person ceases to be an election manager or voting centre manager if he or she ceases to be an election official.

## **82 Person ceases to be election official on becoming a candidate**

If a person who is an election official becomes a candidate for an election, he or she ceases to be an election official.

## **Division 3 Nominations**

### **83 Requirements for nomination**

- (1) A person is qualified to be nominated as a candidate for an election, unless disqualified under the *Constitution Act 1902* or this Act, if the person is enrolled as at 6 pm on the date of issue of the writ for the election.
- (2) To be a candidate at any election, a person must be nominated by:
  - (a) the registered officer of a registered party, or
  - (b) in relation to an election for a district—at least 25 persons, each of whom is enrolled for the district as at 6 pm on the date of issue of the writ for the election, or
  - (c) in relation to a periodic Council election—at least 25 persons, each of whom is enrolled as at 6 pm on the date of issue of the writ for the election.
- (3) An elector must not nominate more than one candidate for an electoral district or more than one candidate for a periodic Council election.

### **84 Method of nomination**

- (1) A nomination is to be made by lodging a nomination paper in the approved form with



the Electoral Commissioner.

- (2) A nomination paper lodged at the following places is taken to have been lodged with the Electoral Commissioner:
  - (a) the office of the Electoral Commissioner,
  - (b) in relation to an election for a district, at the office of the election manager for the district.
- (3) A nomination paper must be lodged:
  - (a) in relation to a general election that follows an expiry of an Assembly under section 24 (1) of the *Constitution Act 1902*—during the period beginning on the Monday before the expiry of the Assembly and ending at 12 noon on the nomination day, or
  - (b) in any other case—during the period beginning on the issue of the writs and ending at 12 noon on the nomination day.

**Note—**

Section 24 (1) of the *Constitution Act 1902* provides that Legislative Assembly, unless sooner dissolved, expires on the Friday before the first Saturday in March in the fourth calendar year after the calendar year in which the return of the writs for choosing that Assembly occurred.

The Legislative Assembly elected at the 2015 general election will, unless sooner dissolved, expire on Friday 1 March 2019.

Sections 74 and 75 provide that the writs for the next general election are to be issued on Monday 4 March 2019 and that the nomination day for that general election will be Wednesday 6 March 2019.

Subsection (3) (a) provides that the Electoral Commissioner may accept nomination papers for that election only during the period beginning on Monday 25 February 2019 and ending at 12 noon on Wednesday 6 March 2019.

- (4) A nomination paper is to specify the form of given name that the candidate wishes to be printed on the ballot papers for the election.
- (5) A given name of a candidate specified in a nomination paper under this section as the form in which that name should be printed on the ballot papers for the election may differ from the name under which the candidate is enrolled 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).

- (6) For the avoidance of doubt, the Electoral Commissioner may approve a form of nomination paper under this section that enables the registered officer of a registered party to nominate candidates for more than one electoral district and candidates for a periodic Council election in a single document.
- (7) The regulations may make further provision for the electronic lodgment of nomination papers with the Electoral Commissioner.

#### **85 Nomination must be accompanied by child protection declaration**

The nomination of a candidate is not valid unless it is accompanied by a child protection declaration (being a declaration that complies with Division 4).

#### **86 Grouping of periodic Council election candidates**

- (1) Two or more candidates nominated for a periodic Council election may, in the approved form and before 12 noon on the nomination day for that election, make a 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.
- (2) A claim 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.
- (3) A group voting square is to be printed on the ballot papers above the names of the candidates in each group that has duly requested a group voting square under subsection (2), but only if more than one group has duly requested a group voting square.
- (4) Subject to this section, candidates nominated for a periodic Council election who have made a claim under subsection (1) are, for the purposes of that election, to be included in a group in the order specified in the claim.
- (5) The number of candidates in a group must not exceed the number of candidates required to be elected at the particular election.
- (6) Two or more candidates who have made a claim under subsection (1) may, in the approved form and before 12 noon on the nomination day, withdraw that claim.
- (7) A claim is not valid if:
  - (a) the name of any candidate included in the claim is included in any other claim

under this section, or

(b) the nomination of any candidate whose name is included in the claim is withdrawn.

(8) If a claim is made 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, or

(b) is a person whose nomination is void under section 90 (Dual nominations),

then:

(c) if there are 2 or more other persons who made that claim, the group is to consist of the remainder of those persons only, or

(d) if there is only 1 other person who made that claim, the claim is not valid.

#### **87 If group falls below 15 members**

(1) The candidates who are included in a group for a periodic Council election (the **primary group**) and who have duly requested a group voting square for the election, are required to nominate, for the purposes of section 168, 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 primary group if that group ceases to have 15 candidates because of the operation of section 86 (8).

(2) The following provisions apply to nominations under subsection (1):

(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 election day.

(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 nominated 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 on the Electoral Commission's website as soon as is reasonably practicable.

(e) After a nomination has been lodged with the Electoral Commissioner in respect of

the election:

- (i) the nomination may not be changed, and
- (ii) a further nomination may not be made for the election by or on behalf of any of the candidates concerned.

### **88 Nomination deposit**

- (1) The nomination of a candidate is not valid unless, by 12 noon on the nomination day, the person nominated or some person on his or her behalf deposits with the Electoral Commissioner, in the approved manner, the sum of:
  - (a) in relation to an election for a district—\$250, or
  - (b) in relation to a periodic Council election—\$500.
- (2) However, the amount of the deposit for a candidate for a periodic Council election included in a group comprising more than 10 candidates is \$5,000 divided by the number of candidates in that group.
- (3) The deposit of a candidate for an election for a district is to be returned if:
  - (a) the candidate is elected, or
  - (b) the total number of first preference votes cast in the candidate's favour is at least 4% of the total number of first preference votes cast in the election, or
  - (c) the candidate dies before the election day concerned, or
  - (d) the candidate withdraws his or her name from nomination under this Division.
- (4) The deposit of a candidate for a periodic Council election 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 first preference votes cast in the candidate's favour or in favour of the members of the group in which the candidate is included is at least 4% of the total number of first preference votes cast 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 this Division.
- (5) The deposit of a candidate that is to be returned is to be returned to the person that lodged the deposit.

(6) In any other case the deposit is forfeited to the State.

### **89 Withdrawal of nomination**

- (1) A candidate for an election for an electoral district may withdraw his or her name from nomination by giving notice in writing to the Electoral Commissioner before 12 noon on the nomination day for that election.
- (2) Subject to subsection (3), a candidate for a periodic Council election may withdraw his or her name from nomination by giving notice in writing to the Electoral Commissioner before 12 noon on the nomination day for that election.
- (3) If 2 or more candidates for a periodic Council election are included in a group, any of those candidates may not, under subsection (2), withdraw his or her name from nomination except with the consent of the others.

#### **Note—**

See section 220 regarding the death of candidates before and after nominations.

### **90 Dual nominations**

If, at the close of nominations for a general election, a person is nominated for election for more than one district or for a periodic Council election and for an election for a district, each of those nominations is void.

### **91 Member of Commonwealth Parliament ineligible for Assembly or Council**

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

### **92 Proceedings after nomination day—no election is required**

- (1) If at 12 noon on the nomination day there is only one candidate for election for a district, the Electoral Commissioner must:
  - (a) on the day after nomination day, publicly declare that candidate to be duly elected, and
  - (b) as soon as is reasonably practicable after that declaration:
    - (i) publicly advertise the declaration in the district, and
    - (ii) return the writ endorsed according to that declaration.
- (2) If at 12 noon on the nomination day there are not more than 21 candidates for election at a periodic Council election, the Electoral Commissioner must:
  - (a) on the day after nomination day, publicly declare those candidates to be duly elected, and

- (b) as soon as is reasonably practicable after that declaration:
  - (i) publicly advertise the declaration, and
  - (ii) return the writ endorsed according to that declaration.

### **93 Proceedings after nomination day—election is required**

- (1) If at 12 noon on the nomination day:
  - (a) there are 2 or more candidates for election for a district, or
  - (b) there are more than 21 candidates for election at a periodic Council election, a poll is required to take place for that election.
- (2) If a poll is required to take place for an election, the Electoral Commissioner must, on the day after nomination day (or as soon as is reasonably practicable after that day), announce:
  - (a) that the poll is to be taken on the day named in the writ for that election, and
  - (b) the names of the candidates, and
  - (c) in relation to a periodic Council election—the names of any candidates who are included in a group, and
  - (d) the suburb, town or other locality of the enrolled address of each candidate (as stated on the nomination paper).
- (3) The Electoral Commissioner must, as soon as is reasonably practicable after that announcement, give public notice in the manner determined by the Electoral Commissioner of the following matters:
  - (a) matters referred to in subsection (2),
  - (b) the date of the election day,
  - (c) a list of voting centres for the election.

## **Division 4 Child protection declarations by candidates**

### **94 Definitions**

- (1) In this Division:

**child** means a person under the age of 18 years.

**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.

**current application**, in relation to a working with children check clearance, has the same meaning as it has in the *Child Protection (Working with Children) Act 2012*.

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

**relevant apprehended violence order** means (subject to subsection (2)) a final apprehended violence order made under the *Crimes (Domestic and Personal Violence) Act 2007*, or a final order made under Part 15A of the *Crimes Act 1900* before its repeal, being an order made on the application of a police officer or other public official for the protection of a child from sexual activity or acts of indecency.

**working with children check clearance** has the same meaning as it has in the *Child Protection (Working with Children) Act 2012*.

(2) The following are not relevant apprehended violence orders:

- (a) an apprehended violence order made by a court before 3 July 1995 under Part 15A of the *Crimes Act 1900*,
- (b) an external protection order (within the meaning of section 562RA of the *Crimes Act 1900*) made before 3 July 1995,
- (c) an external protection order (within the meaning of Part 13 of the *Crimes (Domestic and Personal Violence) Act 2007*) that is not registered under that Part.

## 95 Child protection declarations

(1) A child protection declaration is to state:

- (a) whether or not the candidate holds a working with children check clearance, and
- (b) if the candidate does not hold a working with children check clearance:
  - (i) whether or not the candidate has made a current application for a working with children check clearance (and if so, details of that application), and

**Note—**

A **current application** for a working with children check clearance is an application that has not been finally determined or withdrawn or terminated—see section 5 (1) of the *Child Protection (Working with Children) Act 2012*.

- (ii) whether the candidate has been refused a working with children check clearance, and
  - (iii) whether the candidate has ever been convicted of any of the offences, or been the subject of any of the proceedings, listed in Schedules 1 and 2 to the *Child Protection (Working with Children) Act 2012*, and
- (c) whether or not any relevant apprehended violence order has ever been made

against the candidate.

- (2) The child protection declaration is to identify any such conviction, proceedings or order.
- (3) A child protection declaration is to be in the approved form (if any).
- (4) A candidate who makes a child protection 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.

#### **96 Duties of Electoral Commissioner with respect to child protection declarations**

- (1) The Electoral Commissioner must cause a copy of a child protection declaration received by the Electoral Commissioner to be made public in such manner as the Electoral Commissioner thinks fit.
- (2) The Electoral Commissioner must provide a copy of the child protection declaration of those candidates elected at an election to the Children's Guardian.

#### **97 Duties of Children's Guardian with respect to child protection declaration**

- (1) The Children's Guardian must, as soon as practicable after receiving a copy of a child protection declaration under section 96 (2), investigate the accuracy of the declaration.
- (2) For the purpose of carrying out an investigation, the Children's Guardian may access:
  - (a) the working with children register (established and maintained under section 25 of the *Child Protection (Working with Children) Act 2012*), and
  - (b) the records of a person who is under a duty under section 98 to assist the Children's Guardian.
- (3) The Children's Guardian must prepare a report on the results of those investigations.
- (4) The report is to be presented to the Presiding Officer of the House of Parliament to which the persons 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.
- (5) The Children's Guardian may, if the Children's Guardian thinks it appropriate to do so, report on the results of any such investigations over more than one report.

#### **98 Duty of persons to assist the Children's Guardian**

- (1) It is the duty of a prescribed person to provide the Children's Guardian 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 Children's Guardian reasonably requires access for the purpose of exercising 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 Children's Guardian 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 in the Public Service and assigned to a role, or holding 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.

## **99 Reports presented to Presiding Officer of House of Parliament**

- (1) If a House of Parliament is not sitting when the Children's Guardian presents a report under this Division 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 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 5 Ballot papers**

### **Subdivision 1 General**

#### **100 Ballot papers to be prepared and printed by Electoral Commissioner**

- (1) The Electoral Commissioner is to cause ballot papers for elections to be prepared and printed in accordance with this Division.
- (2) The ballot papers for an election for a district are to be in or to the effect of the form set out in Schedule 4.
- (3) The ballot papers for a periodic Council election are to be in or to the effect of the form set out in Schedule 5.

#### **101 Assembly election ballot papers**

- (1) The Electoral Commissioner is to determine the order in which the candidates' names are to appear on the ballot papers for an election for a district.
- (2) The Electoral Commissioner may use any method of random selection as seems appropriate to the Electoral Commissioner to determine that order.
- (3) In printing the ballot papers:
  - (a) the names of all candidates duly nominated are to appear on the ballot papers in the order determined under subsection (1), and
  - (b) the surname of each candidate is to be in a more conspicuous type than that used for the candidate's given name or names, and
  - (c) the given name of each candidate:
    - (i) is to be in the form specified in the candidate's nomination paper, and
    - (ii) is to be in a 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, and

- (d) if a similarity in the names of 2 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, and
- (e) a square is to be printed opposite the name of each candidate, and
- (f) if required by Subdivision 2, the names of registered parties or the word “Independent” is to be printed in accordance with that Subdivision.

## **102 Periodic Council election ballot papers**

- (1) If, for a periodic Council election, there are:
  - (a) 2 or more groups of candidates for that election, the Electoral Commissioner is to determine the order in which those groups are to appear on the ballot papers, or
  - (b) 2 or more candidates, not included in a group, for that election, the Electoral Commissioner is to determine the order in which those candidates’ names are to appear on the ballot papers.
- (2) The Electoral Commissioner may use any method of random selection as seems appropriate to the Electoral Commissioner to determine the order in which names of groups and candidates are to appear on ballot papers.
- (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 are to be printed in a group before the names of candidates (if any) not included in that group, and
  - (b) for which there are 2 or more groups, but not more than 33 groups, the names of candidates included in the groups are to 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, and
  - (c) for which there are more than 33 groups, the names of candidates included in the groups are to be printed in groups across the ballot papers in 2 rows in the order determined under subsection (1) (a), before the names of candidates (if any) not included in any such group, and
  - (d) the order, within a group, in which the names of candidates in that group are to be printed in the ballot papers is to be the order specified in the claim made by them in accordance with Division 3, and
  - (e) the names of candidates (if any) not included in any group are to 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 are to 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) is to 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 is to be identified by such symbol as may be determined by the Electoral Commissioner, and
  - (b) the surname of each candidate is to be in a more conspicuous type than that used for the candidate’s given name or names, and
  - (c) the given name of each candidate:
    - (i) is to be in the form specified in the candidate’s nomination paper, 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, and
  - (d) if a similarity in the names of 2 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, and
  - (e) a square is to be printed opposite the name of each candidate, and
  - (f) if required by Subdivision 2, the names of registered parties or the word “Independent” is to be printed in accordance with that Subdivision.
- (6) If the candidates in a group have duly requested under Division 3 a group voting square for a periodic Council election, an additional square is to be printed on the ballot papers for the election above the names of the candidates included in the group.
- (7) If, before the election day for any periodic Council election, any candidate has died, the Electoral Commissioner is to 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 determinations of the kind referred to in subsections (1) and (2)) as in the Electoral Commissioner’s opinion is necessary.

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

- (1) If a voting centre does not have, or runs out of, ballot papers printed in accordance with this Division, the Electoral Commissioner, voting centre manager or other election official in charge at the time may have the ballot paper reproduced (including by photocopying, handwriting or by printing copies obtained by use of 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 5, as the case requires, and is to be in the same general format as the ballot paper printed in accordance with this Division.
- (3) A ballot paper so reproduced and complying with subsection (2) is as valid as a ballot paper printed in accordance with this Division.

## **Subdivision 2 Party or independent identification on ballot papers**

### **104 Notification of party nomination**

- (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 nominated by that registered officer.
- (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 12 noon on the nomination day to the Electoral Commissioner.
- (4) If:
  - (a) the registered officer of a registered party has made a request in respect of candidates in a periodic Council election, and
  - (b) the candidates have duly requested under Division 3 a group voting square for the purposes of the election,

the request may include a further request that the name of that registered party (or a composite name formed from names of the registered parties of the registered officers that nominated 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 6.

### **105 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 12 noon on the nomination day to the Electoral Commissioner.
- (4) A candidate may not make both a request under this section and a claim under Division 3 to have the candidate's name included in a group on the ballot paper.

#### **106 Printing of party name etc on ballot papers**

- (1) If a person:
  - (a) has been nominated by the registered officer of a registered party as a candidate in an election, and
  - (b) a request has been made in respect of the candidate under this Subdivision, the name of that party or the registered abbreviation of the name of that party (as requested) is to be printed adjacent to the name of the candidate on the ballot papers.
- (2) If 2 or more persons have been nominated by the registered officer of 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 that party or the registered abbreviation of the name of that party (as requested) 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 or the registered abbreviation of the name of that party (as requested) is to be printed on the ballot papers adjacent to that square,
  - (c) if the request under this Subdivision 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 105, the word "Independent" is to be printed adjacent to the name of the candidate on the ballot papers.

#### **107 Form of party name on ballot papers**

The names of registered parties, or the abbreviations of such names, printed adjacent to the names of candidates or group voting squares on ballot papers are to be printed in

capital letters in a type that is uniform in size and style for all those names or abbreviations.

## **Division 6 Voting centres**

### **Subdivision 1 General**

#### **108 Appointment of voting centres**

- (1) The Electoral Commissioner is to:
  - (a) appoint for each district as many voting centres for each election as the Electoral Commissioner considers necessary, and
  - (b) publish the appointment of voting centres on the Electoral Commission's website at a time determined by the Electoral Commissioner.
- (2) A voting centre for a district may be:
  - (a) within the district, or
  - (b) if the Electoral Commissioner is satisfied it would enhance the convenience of a large number of electors of any district—outside the district concerned (including outside New South Wales and outside Australia).
- (3) A single voting centre may be appointed for 2 or more districts.
- (4) The Electoral Commissioner may:
  - (a) designate any voting centre as an early voting centre, and
  - (b) determine the days and hours of operation of the early voting centre (including whether the voting will occur at the early voting centre on election day).
- (5) The Electoral Commissioner may abolish any voting centre appointed under this section. The Electoral Commissioner is to cause notice of any such abolition of a voting centre to be published on the Electoral Commission's website at a time determined by the Electoral Commissioner.

#### **109 Hours of operation of voting centres**

- (1) Each voting centre, other than a mobile voting centre, that is to operate on election day must:
  - (a) be open for voting from 8 am on election day, and
  - (b) unless adjourned, close at 6 pm on that day.
- (2) However, if any elector entitled to vote is in a voting centre at 6 pm on election day and desires to vote, the elector must be permitted to vote.

(3) Subsection (2) is subject to sections 203 (2) (c) and (d) and 211 (d).

#### **110 Voting centres at licensed premises**

Premises licensed for the sale of intoxicating liquor may be used for the purpose of a voting centre if, and only if, the Electoral Commissioner is satisfied that, during the hours of voting on election 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 voting centre, and
- (b) the part of the premises proposed for use for the purpose of a voting centre 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 voting centre will not involve passing through the part of the premises where intoxicating liquor will be available for sale or consumption.

#### **111 Use of prescribed premises as voting centres**

- (1) The Electoral Commissioner may, with the approval of the Secretary of the Department of Premier and Cabinet, use a room or hall in a prescribed premises in a district as a voting centre (other than a room or hall used exclusively for religious services or residential purposes) for no cost (other than those payable under this section) if the Electoral Commissioner:
  - (a) is of the opinion that the room or hall is necessary to enable the Electoral Commissioner to properly conduct the election in the district because of the room or hall's features (eg wheelchair accessibility) or one or more voting centres in the district have become unavailable due to fire, flood or other emergency, and
  - (b) has, after reasonable endeavours, been unable to obtain the use of an alternative room or hall in the district for voting centres.
- (2) The Electoral Commissioner must give the following notice of the Electoral Commissioner's intention to use the room or hall to the managers, trustees or owners of the prescribed premises:
  - (a) in the case of a by-election—1 month's notice,
  - (b) in the case of a general election—3 months notice.
- (3) However, if:
  - (a) due to an emergency, a voting centre for an election cannot be used, and
  - (b) the room or hall sought to be used by the Electoral Commissioner is not being used for any other purpose on the day or days concerned,



the Electoral Commissioner may give notice under subsection (2) of a period that is reasonable in the circumstances.

- (4) The Electoral Commissioner must pay:
  - (a) reasonable costs for lighting, heating, air conditioning and cleaning of the prescribed premises, and
  - (b) if, as a result of using the premises as a voting centre, the premises or any furniture in the premises is damaged, the full costs of repairing the damage.
- (5) If there is a dispute between the Electoral Commissioner and the managers, trustees or owners of the prescribed premises about the amount payable under subsection (4), the matter is to be determined by the Local Court.
- (6) Despite section 8 of the *Land Acquisition (Just Terms Compensation) Act 1991*, the use of premises under this section is not an acquisition to which that Act applies.
- (7) In this section, **prescribed premises** means the following premises:
  - (a) schools, kindergartens, colleges, TAFE or other educational establishments,
  - (b) community centres or church halls,
  - (c) local council or Rural Fire Service building or facilities,
  - (d) hospitals, nursing homes, retirement villages or similar facilities,
  - (e) club buildings (including registered club and surf club buildings),
  - (f) Scout or Girl Guide buildings,
  - (g) premises of a kind prescribed by the regulations.

### **112 Voting centre managers to be provided materials and equipment**

The Electoral Commissioner is to ensure that each voting centre is provided with sufficient materials and equipment to enable electors to vote.

## **Subdivision 2 Special provisions for early voting centres**

### **113 Voting before election day**

- (1) A person who will be unable to attend at a voting centre on election day may apply in person to an election official at an early voting centre (whether for the district for which he or she is enrolled or for some other district) to vote before election day.

**Note—**

Section 6 sets out, without limitation, a list of reasons why a person may be unable to attend at a voting centre on election day.

- (2) The person making an application must inform the election official of:
  - (a) the enrolled address of the person (or the address for which the person claims to be entitled to enrol), and
  - (b) the grounds on which the person is making the application, and
  - (c) any matters prescribed by the regulations.

#### **114 Hours of operation of early voting centres**

- (1) The Electoral Commissioner may approve the days and hours of operation of early voting centres for an election.
- (2) However, the Electoral Commissioner must not approve the operation of any early voting centre for an election on:
  - (a) any day before the Monday after the close of nominations, and
  - (b) after 6 pm on the day preceding the election day.
- (3) Despite subsection (1), if any elector entitled to vote is in an early voting centre at the time designated for it to close its operations and desires to vote, the elector must be permitted to vote.

#### **115 Security of early voting ballot boxes**

- (1) The voting centre manager at an early voting centre is to ensure the security of any ballot boxes used for the purpose of this Subdivision.
- (2) Unless the Electoral Commissioner has specified another earlier time, as soon as practicable after 6 pm on the day preceding election day the voting centre manager for the early voting centre must, in the presence of any other election officials at the voting centre and any scrutineers who are present:
  - (a) publicly secure any ballot box used for the purposes of this Subdivision, and
  - (b) with the least possible delay, forward it to the Electoral Commissioner for the purposes of scrutiny.

#### **116 Electoral Commissioner may determine that enrolment voting provisions do not apply at early voting centres outside New South Wales**

- (1) The Electoral Commissioner may determine that section 137 (3)–(5) does not extend to the casting of votes at one or more specified early voting centres (being early voting centres located outside New South Wales).
- (2) A determination under this section must be:
  - (a) in writing, and

(b) published on the Electoral Commission's website.

### **Subdivision 3 Special provisions for mobile voting centres**

#### **117 Declared facility**

- (1) The Electoral Commissioner may, in an approval, declare that a hospital, nursing home, retirement village or similar facility is to be provided with a mobile voting centre (a **declared facility**).
- (2) A declared facility is, for the purposes of this Part, taken to be an early voting centre while voting is occurring at the facility.

#### **118 Procedure for voting in mobile voting centres**

- (1) An election official at a declared facility may, on any day appointed by the Electoral Commissioner for the operation of the mobile voting centre at the declared facility, enter into and remain in the declared facility for the purpose of enabling electors to vote in accordance with this section.
- (2) A mobile voting centre is to be used to give an opportunity to vote to every elector who:
  - (a) is for the time being resident in the declared facility in which the voting centre is situated, and
  - (b) by reason of illness or infirmity, or, (without limitation) in the case of a woman, by reason of approaching maternity, is unable to attend at the voting centre to record the elector's vote, and
  - (c) has, by message to the voting centre manager, requested an opportunity to vote at the mobile voting centre (a **voting request message**).
- (3) A member of staff of a declared facility given a voting request message must deliver the message to the voting centre manager, unless otherwise ordered by a registered medical practitioner, or a manager or other person in charge of the declared facility, on medical grounds.

Maximum penalty: 5 penalty units.

- (4) If a voting request message is received by the voting centre manager, the voting centre manager is to direct the election official in charge of a mobile voting centre to give the elector an opportunity to vote by visiting the elector at some time before the close of voting.
- (5) On any such visit:
  - (a) the election official must take with him or her the ballot box provided for the voting centre, and

- (b) the election official is to be accompanied by another election official and such of the scrutineers appointed in respect of the voting centre as choose to accompany him or her, and
  - (c) the elector's vote is, so far as is reasonably practicable, to be taken in all respects as if the vote were recorded in a voting centre under usual conditions.
- (6) A visit must not be made under this section if such a visit is forbidden, on medical grounds, by a registered medical practitioner or a manager or other person in charge of the declared facility.
- (7) The following provisions have effect for the purpose of enabling electors voting at a declared facility to peruse registered how-to-vote cards:
- (a) When or immediately after handing a ballot paper for an election to an elector under this section, the election official must:
    - (i) ask the elector if the elector wishes to view any registered how-to-vote cards applicable to the election, and
    - (ii) if the elector gives a positive response, permit the elector to peruse any relevant registered how-to-vote cards relating to the election for the district concerned in the possession of the election official (including on any electronic device), and
    - (iii) provide the elector with assistance, as far as practicable, in locating a particular how-to-vote card, if the elector requests assistance for that purpose.
  - (b) The election official must allow any such registered how-to-vote card in the possession of the election official (including on any electronic device) to be inspected by any scrutineer at the declared facility.
- (8) Subsection (7) does not have effect in relation to a declared facility if no relevant registered how-to-vote cards are available for perusal at the facility.
- (9) In this section, **registered how-to-vote card** means a how-to-vote card that:
- (a) is registered as electoral material under Subdivision 6 of Division 14 (the application for which indicated that the how-to-vote card should be available for perusal by voters at declared facilities), and
- Note—**
- See section 199 (8).
  - (b) complies with the approved requirements (if any), and
  - (c) complies with any additional requirements prescribed by the regulations.

## **Division 7 Scrutineers**

### **119 Appointment of scrutineers**

- (1) The following persons or bodies are entitled to appoint one or more scrutineers on the person or body's behalf at a voting centre or a ballot counting place:
  - (a) a candidate,
  - (b) a registered party.
- (2) A person (other than a candidate) is qualified for appointment as a scrutineer if the person is enrolled for the district or any other district.
- (3) The Electoral Commissioner may approve a form for the purposes of this section that provides for both:
  - (a) the appointment of a scrutineer by a candidate or a registered party, and
  - (b) a declaration to be made and signed by the scrutineer.
- (4) The appointment by a candidate of a scrutineer is to be made in the form approved under subsection (3).
- (5) A person appointed as a scrutineer is to make and sign a declaration in the form approved under subsection (3).
- (6) 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 voting centre manager or to the election official, as the case requires.
- (7) The declaration is to be made and signed on each day referred to in subsection (6) before the Electoral Commissioner or voting centre manager or the election official, as the case requires, at the place at which the scrutineer intends to act as scrutineer.
- (8) A reference in this section to a completed form includes a reference to a copy of a completed form, but the copy is to be duly signed on each day as required by subsection (7).
- (9) Part 4 of the *Oaths Act 1900* applies to a declaration made under this section as if it were made under that Act.
- (10) A reference in this section to a candidate, in relation to a candidate who is included in a group for the purpose of a periodic Council election, is taken to be a reference only to the candidate first in the order, referred to in section 86 (4), in that group.

### **120 Entitlements of scrutineers to be present during voting and counting**

- (1) A scrutineer is entitled to be present in the following places:

- (a) the part of the voting centre in which the ballot papers are received,
  - (b) the part of the voting centre where ballot papers are counted,
  - (c) the part of any ballot counting place where ballot papers are counted.
- (2) Only one scrutineer for each candidate or registered party is entitled to be present in a voting centre or ballot counting place at any one time. However, the Electoral Commissioner may permit additional scrutineers for candidates and registered parties at such centres and places and in such circumstances and on such conditions as the Commissioner sees fit.
- (3) Subject to subsection (2), a scrutineer is not to be prevented from:
- (a) entering or leaving a voting centre during voting, or
  - (b) entering or leaving a ballot counting place during counting.

### **121 Offences relating to scrutineers**

- (1) A scrutineer must not:
- (a) interfere with or attempt to influence any elector within the voting centre or any election official in a voting centre or ballot counting place, or
  - (b) communicate with any person in the voting centre or ballot counting place, except so far as is necessary in the discharge of his or her functions.
- (2) 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 voting centre manager or election official in charge of a ballot counting place is guilty of an offence.
- Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.
- (3) A scrutineer does not breach subsection (1) (a) only because the scrutineer wears or displays any logo, badge or emblem of a candidate or political party.
- (4) Without limiting the generality of section 203, a scrutineer who, within a voting centre or ballot counting place:
- (a) commits any breach of this section, or
  - (b) misconducts himself or herself, or
  - (c) fails to obey the lawful directions of the voting centre manager or person in charge of a ballot counting place,
- may, on the request of the voting centre manager at the voting centre or person in charge of the ballot counting place, be removed from the place by a police officer.

## **Division 8 Ordinary voting at district voting centres**

### **122 Application of Division**

This Division applies to voting by an elector at a voting centre appointed for the district for which the elector is enrolled.

### **123 Who may be present at voting centre**

- (1) The following persons may, at any time while a voting centre is open for voting, be present at the voting centre:
  - (a) the Electoral Commissioner,
  - (b) election officials,
  - (c) scrutineers,
  - (d) any approved person, or person of an approved class,
  - (e) any police officer,
  - (f) voters actually engaged in voting, such voters to be designated, if thought necessary, by the voting centre manager.
- (2) A person must not, without lawful authority (proof of which lies on the person):
  - (a) enter or remain at a voting centre, or
  - (b) refuse to leave the voting centre on being required by the voting centre manager (or by any police officer acting under the direction or authority of the voting centre manager).

Maximum penalty: 10 penalty units.

- (3) Any person who enters or refuses to leave a voting centre contrary to subsection (2) may be removed from the voting centre by a police officer.

### **124 Ballot box to be exhibited before voting commences**

- (1) Before opening any voting centre for voting, the voting centre manager is to exhibit the open and empty ballot box for the inspection of the scrutineers and other election officials present.
- (2) The voting centre manager must then:
  - (a) close and seal the ballot box, and
  - (b) place the sealed ballot box in a position in full view of all persons present in the voting centre.

### **125 Permission to be granted to employees to go to voting centre**

- (1) An employer must, at the request of any elector employed by the employer, allow the elector to go, at a reasonable time, to a voting centre and record his or her vote at any election.

Maximum penalty:

- (a) in the case of a corporation—25 penalty units, or
  - (b) in any other case—5 penalty units.
- (2) Subsection (1) does not apply where the elector has a half-holiday on the election day.

### **126 Where elector may vote**

Any elector may vote at any voting centre which has been appointed as a voting centre for the district for which he or she is enrolled.

### **127 Questions to be put to voter**

- (1) An election official must ask each person claiming to vote in an election the following questions:
  - (a) What is your full name?
  - (b) What is your date of birth?
  - (c) Where do you live?
  - (d) Have you voted before in this election?
- (2) If a person's answers to the questions specified in subsection (1) (a)-(c) are not sufficient to distinguish that person from another person on the authorised roll for the election, the election official may, for the purpose of distinguishing the 2 persons, ask the person another question or other questions relating to matters shown on the authorised roll in relation to those persons.
- (3) The election official must reject the person's claim to vote if the person:
  - (a) refuses to answer fully any question asked, or
  - (b) answers the question specified in subsection (1) (c) in a manner as to indicate that the person is not entitled to vote at the election in that district, or
  - (c) answers a question specified in subsection (1) (d) in the affirmative.

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

- (1) An election official may, and at the request of any scrutineer must, 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 [*here state the name of the district in respect of which the person claims to vote*]?
  - (b) Are you of or above the age of 18 years?
  - (c) Have you already voted, either here or elsewhere, at this election?
  - (d) Are you disqualified from voting?
  - (e) Do you live 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 must be rejected.
- (3) The voter's answer to the question is conclusive and the matter is not to be further inquired into during the voting.
- (4) A person must not give an answer to a question under this section that the person knows is false or misleading in a material particular.
- Maximum penalty: 200 penalty units or imprisonment for 3 years, or both.
- (5) An offence under this section is an indictable offence.

### **129 Silent electors**

- (1) An elector at a voting centre in a district whose name appears, but whose residence does not appear, on the authorised roll for the district may apply to an election official to vote as a silent elector at the voting centre.
- (2) The elector must give the following information to the election official at the voting centre:
  - (a) the elector's name,
  - (b) the elector's date of birth,
  - (c) the electoral district for which the elector claims to be enrolled.
- (3) The election official may, if he or she thinks fit, and at the request of any scrutineer must, put to the elector any of the questions set out in section 128 that are applicable to the case.
- (4) If the elector answers the questions satisfactorily, or if no questions are put to him or her, the elector is to be permitted to vote.

### **130 Errors not to forfeit vote**

The omission of any given name or names, or entry of a wrong given name or names, or address, or date of birth, and any mistake in the spelling of any surname, does not permit the rejection of any claim to vote if the voter is sufficiently identified in the opinion of the election official.

### **131 Elector to receive ballot paper**

If a person is entitled to vote, the election official must:

- (a) give the person a ballot paper that is initialled by the election official, and
- (b) record a mark, in the approved manner, against the person's name on the printed or electronic authorised roll to show that the person has received a ballot paper.

### **132 Method of recording votes**

(1) The voter, after receiving a ballot paper, must:

- (a) proceed alone into an unoccupied compartment in the voting centre, and
- (b) record his or her vote on the ballot paper, and
- (c) fold the ballot paper so that the vote cannot be seen, and
- (d) without unfolding the ballot paper, deposit it in the ballot box, and
- (e) leave the voting centre.

(2) In the case of the election of a member of the Assembly, a voter:

- (a) must 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
- (b) 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:

- (a) must 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
- (b) 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 2 or more group voting squares, the voter:
- (a) 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
  - (b) 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.

### **133 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 must immediately cancel the spoilt ballot paper and preserve it.

### **134 Assistance to certain electors**

- (1) If:
- (a) an election official is satisfied that an elector is unable to vote without assistance, or
  - (b) an elector makes an oral declaration to an election official in the approved form that the elector objects on religious grounds to vote in the manner provided by this Act,

the election official is to permit a person appointed by the elector to assist the elector to vote.

**Note—**

For example, an orthodox Jewish elector may, for religious reasons, be unable to cast a vote in a written form on a Saturday or other Jewish festival day.

- (2) If the elector fails to appoint a person under subsection (1), the election official must assist the elector to vote:
- (a) in the presence of such scrutineers as are present, or
  - (b) if there are no scrutineers present, then in the presence of:
    - (i) another election official, or
    - (ii) if the elector so desires, in the presence of a person appointed by the elector.

## **Division 9 Declaration voting at voting centres**

### **Subdivision 1 Types of declaration voting**

#### **135 Absent voters**

- (1) An elector at a voting centre that is not designated for the electoral district for which the elector claims to be enrolled may apply to an election official to vote as an absent voter at the voting centre.
- (2) The elector must give to the election official at the voting centre the following information:
  - (a) the elector's name and date of birth,
  - (b) the address in the electoral district for which the elector claims to be enrolled.
- (3) The election official may, if he or she thinks fit, and at the request of any scrutineer must, put to the elector any of the questions set out in section 128 that are applicable to the case.
- (4) If the elector answers the questions satisfactorily, or if no questions are put to him or her, the elector is to be permitted to vote as an absent voter after making a declaration in the approved form before an election official at the voting centre.

#### **136 Absent silent electors**

- (1) If:
  - (a) an elector is at a voting centre that is not designated for the electoral district for which the elector claims to be enrolled, and
  - (b) the elector's name appears, but the elector's address does not appear, on the authorised roll for the district for which the elector is enrolled,the elector may apply to an election official to vote as an absent silent elector at the voting centre.
- (2) The elector must give the following information to the election official at the voting centre:
  - (a) the elector's name,
  - (b) the elector's date of birth.
- (3) The election official may, if he or she thinks fit, and at the request of any scrutineer must, put to the elector any of the questions set out by section 128 that are applicable to the case.

- (4) If the elector answers the questions satisfactorily, or if no questions are put to him or her, the elector is to be permitted to vote as an absent silent elector after making a declaration in the approved form before an election official at the voting centre.
- (5) A single declaration may be approved for both this section and section 135 (Absent voters).

### **137 Provisional voting**

- (1) **Person already marked off authorised roll** If, at a voting centre at any election, any elector:
  - (a) is recorded (on an authorised roll used at the voting centre) as having received a ballot paper, and
  - (b) claims not to have received a ballot paper,the elector is to be permitted to vote after making a declaration in the approved form before an election official at the voting centre.
- (2) **Person omitted from authorised roll** If, at a voting centre for a district at any election, a person, who was at any time in the past enrolled for the district, but whose name is not on the authorised roll (for any reason), claims to be entitled to enrol for the district, the person is to be permitted to vote if the person makes a declaration in the approved form before an election official at the voting centre.
- (3) **Person enrolling for first time etc** If, at a voting centre in a district at any election, a person, who is not enrolled for any district, claims to be entitled to enrol for a district, the person is to be permitted to vote if:
  - (a) the person:
    - (i) completes an application for enrolment in the approved form in accordance with the directions on the form and submits it to an election official at the voting centre, 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 application 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 application for enrolment as the person's residence.

**Note—**

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

(4) **Person updating enrolment to record change of address** If, at a voting centre in a district at any election, a person is enrolled for a 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 an application for a change of address in the approved form in accordance with the directions on the form and submits it to an election official at the voting centre, 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 application for a change of address 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 application for a change of address 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.

(5) **Persons enrolled after issue of writ etc** If, at a voting centre in a district at any election, a person, who is enrolled for the district, but whose name does not appear on the authorised roll at the voting centre, 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 roll at a voting centre only contains the names of persons who were enrolled as at the date of the issue of the writ (see section 46).

## **Subdivision 2 Procedures relating to declaration voting**

### **138 Manner and form of declaration**

(1) A declaration under this Division:

- (a) is to be printed or written on an envelope addressed to the Electoral Commissioner, and
  - (b) is to be signed by the person making the declaration, and
  - (c) is to be witnessed by the election official before whom the declaration is made.
- (2) Despite subsection (1), if the elector objects on religious grounds to signing a written declaration, the declaration may be made orally and the signature of the elector may be made by an election official on the elector's behalf.

**Note—**

For example, an orthodox Jewish elector may, for religious reasons, be unable to cast a vote in a written form or sign a written declaration on a Saturday or other Jewish festival day.

- (3) The regulations may make further provision regarding the manner and form of declarations under this Division.

### **139 Applications for enrolment to be forwarded to Electoral Commissioner**

Each voting centre manager must, as soon as practicable after election day, send to the Electoral Commissioner any application for enrolment and application for change of address submitted to an election official under this Division.

### **140 Casting a declaration vote**

- (1) After the voter has made the required declaration under this Division, the election official is to initial the appropriate ballot paper and give it to the voter.
- (2) The voter, after receiving the ballot paper, must:
- (a) proceed alone into an unoccupied compartment in the voting centre, and
  - (b) record his or her vote on the ballot paper, and
  - (c) fold the ballot paper so that the vote cannot be seen, and
  - (d) return the folded ballot paper to the election official.
- (3) The election official, in the presence of the voter, must:
- (a) place the ballot paper into the envelope bearing the declaration of the voter, and
  - (b) seal the envelope, and
  - (c) deposit the envelope in the ballot box at the voting centre for declaration vote envelopes.

### **141 Forwarding of declaration envelopes to Electoral Commissioner**

Each voting centre manager must, as soon as practicable after the close of voting, send

each sealed envelope containing a declaration vote to the Electoral Commissioner.

### **Subdivision 3 Preliminary scrutiny of declaration votes**

#### **142 Acceptance of ballot paper for further scrutiny**

- (1) The Electoral Commissioner is, in the presence of the scrutineers, to examine the declaration on each envelope containing a declaration vote, and if it appears to the Electoral Commissioner that:
  - (a) in relation to a provisional vote—the person who signed the declaration was, on the election day:
    - (i) enrolled for the district for which the person claimed to be enrolled, or
    - (ii) if the person submitted an application for enrolment (or a change of address) at the time of making the declaration—entitled to be enrolled for the district concerned, and
  - (b) in any other case—the person who signed the declaration was, on the election day, enrolled for the district concerned, and
  - (c) the declaration is duly witnessed,the Electoral Commissioner is to accept the ballot paper for further scrutiny, but otherwise is to reject the ballot paper without opening the envelope.
- (2) If the Electoral Commissioner accepts the ballot paper for further scrutiny, the Electoral Commissioner is to open the envelope without destroying the declaration and extract the ballot paper, and without, as far as practicable, inspecting it, place the ballot paper in a ballot box for the election for the district.
- (3) A voter's ballot paper is not to be rejected for further scrutiny only because the voter's declaration is not witnessed if, before the declaration of the election results, the Electoral Commissioner is satisfied that the voter cast a declaration vote at a voting centre and the envelope containing the declaration vote was forwarded by a voting centre manager.
- (4) **Saving of certain periodic Council election ballot papers** Despite subsection (1), if it appears to the Electoral Commissioner that the person who signed the declaration on an envelope containing a ballot paper for an election for a district is enrolled for some other district, the Electoral Commissioner must arrange for the envelope to be included in the scrutiny for that other district in the manner set out in subsection (5).
- (5) The Electoral Commissioner, if the declaration is duly witnessed, is to open the envelope, withdraw any ballot paper contained in the envelope and without, as far as practicable, inspecting 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 a ballot box for the periodic Council election, and
- (b) in the case of any ballot paper for an Assembly election, is to disallow the ballot paper.

## **Division 10 Postal voting**

### **143 Application for a postal vote**

- (1) An elector who will be unable to attend at a voting centre on election day may apply to the Electoral Commissioner to vote by post.

**Note—**

Section 6 sets out a number of reasons that a person may be unable to attend at a voting centre on election day.

- (2) An application under this section must be made in the approved manner and form and specify the ground on which the elector is making the application.
- (3) An elector who has made an application under this section is not entitled to vote by post unless the application is received by the Electoral Commissioner before 6 pm on the fifth day preceding election day.
- (4) An application under this section may be made to the Electoral Commissioner through the Electoral Commission's website in accordance with the directions of the Commissioner.

### **144 Issue of ballot papers to registered early voters**

The Electoral Commissioner must, within 1 business day after the ballot papers for an election have been prepared and printed, deliver or post to each elector entitled to vote at the election who is, at the close of nominations, a registered early voter (postal):

- (a) a postal vote certificate printed on an envelope addressed to the Electoral Commissioner, and
- (b) a ballot paper for the election.

### **145 Issue of ballot papers to postal vote applicants**

- (1) If the Electoral Commissioner receives an application to vote by post in an election under this Division, the Electoral Commissioner must determine whether the applicant is entitled to vote by post:
  - (a) in relation to an application received before the issue of the writ for the election—within 1 business day of the issue of the writ, or

- (b) in any other case—within 1 business day of receiving the application.
- (2) If the Electoral Commissioner is satisfied that the applicant is entitled to vote by post, the Electoral Commissioner must, as soon as possible, deliver or post to the applicant:
  - (a) a postal vote certificate, in the approved form, printed on an envelope addressed to the Electoral Commissioner, and
  - (b) a ballot paper for the election.
- (3) If the Electoral Commissioner:
  - (a) is not satisfied that the elector is entitled to vote by post, or
  - (b) received the application after 6 pm on the 5th day preceding election day,the Electoral Commissioner must take reasonable steps to inform the applicant that the application is defective or was received after the specified time.

#### **146 Retention of applications**

- (1) The Electoral Commissioner must ensure that all applications under this Division (and, in relation to applications made through the Electoral Commission's website, records of such applications) are kept securely until the latest of the following:
  - (a) the period of 6 months after the election day 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 233—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 packages for research or analysis—the conclusion of that research or analysis.
- (2) On the expiry of the Electoral Commissioner's obligations under subsection (1), the Electoral Commissioner may cause those applications and records to be destroyed.

#### **147 Postal ballot papers to be initialled**

A postal ballot paper must not be delivered or posted to any elector unless it is first initialled by an election official (by hand or by electronic or mechanical means) on the front of the ballot paper.

#### **148 Directions for postal voting**

- (1) The following directions for voting by post are to be substantially observed:

- (a) the elector is to sign and date the postal vote certificate in the presence of a witness,
  - (b) the witness is also to sign and date the certificate in the place provided,
  - (c) the elector must then (in the presence of the witness, but in a manner so that the witness cannot see the vote):
    - (i) record his or her vote on the ballot paper, and
    - (ii) fold the ballot paper so that the vote cannot be seen, and
    - (iii) place the ballot paper in the envelope addressed to the Electoral Commissioner, and
    - (iv) seal the envelope,
  - (d) the elector must then:
    - (i) post the envelope to the Electoral Commissioner, or
    - (ii) deliver the envelope to an election official before 6 pm on election day.
- (2) An election official who receives an envelope in accordance with subsection (1) (d) (ii) is, as soon as is reasonably practicable, to forward the envelope to the Electoral Commissioner.
- (3) A witness to a postal vote must:
- (a) comply with subsection (1) in so far as it is to be complied with on his or her part, and
  - (b) see that the directions in subsection (1) are complied with by the elector, and by every person present when the elector votes, and
  - (c) refrain from disclosing any knowledge of the vote of the elector.
- (4) The witness must not influence or attempt to influence, in any way, the vote of an elector voting by post before him or her.
- (5) The witness must not persuade or induce the elector to hand to him or her for posting or delivery the envelope containing the postal ballot paper, but is not prohibited from posting or delivering any such envelope at the request of the elector.

Maximum penalty (subsections (3)–(5)): 20 penalty units.

#### **149 Preliminary scrutiny of postal ballot papers**

- (1) The Electoral Commissioner:

- (a) may, on any day not more than 5 days before election day, at an approved time and place, and in the presence of such scrutineers as choose to be present, produce such unopened envelopes containing postal votes as have been received by the Electoral Commissioner, and
  - (b) must, at the scrutiny, produce unopened all remaining envelopes containing postal votes:
    - (i) received by the Electoral Commissioner up to 6 pm on the fourth day immediately following the close of voting, or
    - (ii) received by any election official before 6 pm on election day.
- (2) The Electoral Commissioner must then, if satisfied that:
- (a) the postal vote certificate has been properly signed and witnessed, and
  - (b) 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.
- (3) If the Electoral Commissioner has accepted a ballot paper for further scrutiny, the Commissioner must:
- (a) open the envelope without destroying it, and
  - (b) withdraw the postal ballot paper, and
  - (c) without inspecting the ballot paper or allowing any other person to do so, place the ballot paper in a ballot box for further scrutiny.
- (4) Despite subsection (2), if it appears to the Electoral Commissioner that an elector who signed a postal vote certificate on an envelope containing a ballot paper for an election for a district is enrolled for some other district, the Electoral Commissioner must arrange for the envelope to be included in the scrutiny for that other district in the manner set out in subsection (5).
- (5) The Electoral Commissioner is to open the envelope without destroying it, withdraw any ballot paper contained in the envelope and without, as far as practicable, inspecting 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 a ballot box for the periodic Council election, and
  - (b) in the case of any ballot paper for an Assembly election, is to disallow the ballot paper.

- (6) For the avoidance of doubt, a ballot box into which any ballot paper has been placed under this section must not be opened before the close of voting.

### **150 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 must cancel and preserve the spoilt ballot paper.

## **Division 11 Technology assisted voting**

### **151 Definitions**

In this Division:

**approved procedures** means the procedures approved under section 155.

**eligible elector**—see section 152.

**technology assisted voting** means a method of voting where an eligible elector votes by means of an electronic device (whether networked or not), such as by a telephone or by a computer.

### **152 Meaning of “eligible elector”**

- (1) For the purposes of this Division, an **eligible elector** means an elector who meets any of the following eligibility requirements for technology assisted voting (and any additional requirements imposed on those eligibility requirements under subsection (2)):
- (a) the elector has a disability (within the meaning of the [Anti-Discrimination Act 1977](#)) and because of that disability he or she has difficulty voting at a voting centre or is unable to vote without assistance,
  - (b) the elector is illiterate and because of that he or she is unable to vote without assistance,
  - (c) the elector’s residence is not within 20 kilometres, by the nearest practicable route, of a voting centre,
  - (d) the elector is a silent elector,
  - (e) the elector will not throughout the hours of voting on election day be within New South Wales,
  - (f) the elector is a registered early voter (technology assisted voting),
  - (g) in relation to a by-election—the elector will not throughout the hours of voting on

election day be within the electoral district concerned,

(h) the elector meets such other eligibility requirements as may be prescribed by the regulations.

(2) The Electoral Commissioner may, by order published on the NSW legislation website, impose additional requirements on any of the eligibility requirements for technology assisted voting.

(3) The regulations can limit the classes of electors who may be eligible for technology assisted voting.

### **153 Application to vote by means of technology assisted voting**

(1) An elector may apply to vote at an election by means of technology assisted voting.

(2) An application under this section must be made in the manner and form specified in the approved procedures and must specify the ground on which the elector is making the application.

### **154 Electoral Commissioner to determine applications**

If the Electoral Commissioner is satisfied that an applicant is an eligible elector, the applicant is to be permitted to vote at the election by means of technology assisted voting in accordance with this Division.

### **155 Electoral Commissioner to approve procedures for technology assisted voting**

(1) The Electoral Commissioner may approve procedures to facilitate voting by eligible electors at an election by means of technology assisted voting.

(2) The approved procedures must provide:

(a) for an eligible elector to register before voting by means of technology assisted voting, and

(b) for the automatic registration of electors who are registered early voters (technology assisted voting) and the notification of those electors of that registration, and

(c) for the making of a record of each eligible elector who has voted by means of technology assisted voting, and

(d) for the authentication of the eligible elector's vote, and

(e) for the secrecy of the eligible elector's vote, and

(f) that any vote cast in accordance with the approved procedures be securely transmitted to the Electoral Commissioner and securely stored by the Electoral

Commissioner until printed, and

- (g) that the method of technology assisted voting creates an image file in the form of a ballot paper (for example a PDF) for each vote cast that is capable of being viewed or printed if required for the purposes of the scrutiny.
- (3) An image file of a ballot paper created in accordance with the approved procedures does not need to be in or to the effect of the form prescribed in Schedule 4 or 5, as the case requires, or print a ballot paper of the same size or format as the ballot papers printed in accordance with Division 5, so long as the vote cast by the eligible elector can be accurately determined.
  - (4) The Electoral Commissioner may approve procedures under this section only if the Electoral Commissioner is satisfied that:
    - (a) a class of electors, who in other circumstances would be unable to vote or would have difficulty voting, would benefit from the approval of the procedures, or
    - (b) in relation to a trial of voting machines at one or more voting centres—the trial would assist in determining whether the use of voting machines would improve the conduct of elections and benefit the electors using them.
  - (5) The only limit on the power of the Electoral Commissioner to approve procedures under this section is that the pre-condition for approval set out in subsection (4) is met.
  - (6) The approval of procedures under this section cannot be challenged, reviewed or called into question in proceedings before any court or tribunal except on the grounds that the approval exceeds the jurisdictional limit specified by subsection (5) for the approval of such procedures.

#### **156 Independent auditing of technology assisted voting**

- (1) The Electoral Commissioner is to engage an independent person (the ***independent auditor***) to conduct audits of the information technology used under the approved procedures.
- (2) Audits under this section are to be conducted and the results of those audits are to be provided to the Electoral Commissioner:
  - (a) at least 7 days before voting commences in each Assembly general election at which technology assisted voting is to be available, and
  - (b) within 60 days after the return of the writs for each Assembly general election at which technology assisted voting was available.
- (3) Without limiting the content of the audit, the independent auditor is to determine whether test votes cast in accordance with the approved procedures were accurately

reflected in the corresponding test ballot papers produced under those procedures.

- (4) The independent auditor may make recommendations to the Electoral Commissioner to reduce or eliminate any risks that could affect the security, accuracy or secrecy of voting in accordance with the approved procedures.

#### **157 Independent monitoring of technology assisted voting**

- (1) The Electoral Commissioner may appoint one or more independent persons (an ***independent monitor***) to monitor and observe the technology assisted voting process at an election, including the counting of votes cast by means of technology assisted voting and the general operation of the technology assisted voting process.
- (2) An independent monitor is to report and may make recommendations to the Electoral Commissioner regarding the technology assisted voting process.

#### **158 Scrutineers**

A candidate or registered party may appoint a scrutineer to observe:

- (a) any production of the printed ballot papers and bundling and sealing of those ballot papers in accordance with the approved procedures, and
- (b) any other element of the technology assisted voting process that is approved for the purposes of this section.

#### **159 Secrecy relating to technology assisted voting**

- (1) Any person who becomes aware of how an eligible elector, voting in accordance with the approved procedures, voted is not to disclose that information to any other person except in accordance with the approved procedures.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

- (2) A person must not disclose to any other person any source code or other computer software that relates to technology assisted voting under the approved procedures, except in accordance with the approved procedures or in accordance with any arrangement entered into by the person with the Electoral Commissioner.

Maximum penalty: 200 penalty units or imprisonment for 2 years, or both.

#### **160 Protection of computer hardware and software**

- (1) A person must not, without reasonable excuse, destroy or interfere with any computer program, data file or electronic device used, or intended to be used, by the Electoral Commissioner for or in connection with technology assisted voting.

Maximum penalty: 200 penalty units or imprisonment for 3 years, or both.

- (2) An offence under this section is an indictable offence.



### **161 Regulations relating to technology assisted voting**

- (1) The regulations may make provision for or with respect to voting by eligible electors by means of technology assisted voting.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
  - (a) the technology assisted voting method or methods that may be authorised under approved procedures,
  - (b) the period during which voting by eligible electors using technology assisted voting is permitted (including a period before election day),
  - (c) the appointment by the Electoral Commissioner of officers to facilitate voting by means of technology assisted voting,
  - (d) the independent auditing of the secrecy and authenticity of voting by means of technology assisted voting at any election,
  - (e) the provision of registered how-to-vote cards (being how-to-vote cards that are registered as electoral material under Subdivision 6 of Division 14) in an electronic form to eligible electors voting at an election by means of technology assisted voting.
- (3) The regulations may provide that technology assisted voting is not to be used at a specified election.

### **162 Electoral Commissioner may determine that technology assisted voting is not to be used**

- (1) The Electoral Commissioner may determine that technology assisted voting is not to be used at a specified election.
- (2) A determination under this section must be in writing and published on the Electoral Commission's website.

## **Division 12 Determination of election results**

### **163 Appointment of ballot counting place**

- (1) The Electoral Commissioner is to:
  - (a) appoint for each district one or more places for the counting of ballot papers for the election (**ballot counting places**), and
  - (b) publish the appointment of such ballot counting places on the Electoral Commission's website at a time determined by the Electoral Commissioner.

- (2) A ballot counting place for a district may be within or outside the district concerned (including outside New South Wales and outside Australia).
- (3) A single ballot counting place may be appointed for 2 or more districts.
- (4) The Electoral Commissioner may abolish any ballot counting place appointed under this section. The Electoral Commissioner is to cause notice of any such abolition of a ballot counting place to be published on the Electoral Commission's website at a time determined by the Electoral Commissioner.

#### **164 Counting of votes**

As soon as practicable after the close of voting:

- (a) the voting centre manager for each voting centre and the other election officials at the voting centre, and
- (b) election officials at any ballot counting place at which ballot boxes containing ballot papers are located,

are, in the presence of any scrutineers present, but of no other persons, to open the ballot boxes and proceed to count the ballot papers in the manner determined by the Electoral Commissioner.

#### **165 Informal ballot papers**

- (1) Informal ballot papers must be rejected at the scrutiny.
- (2) A ballot paper is informal only if:
  - (a) it is not duly initialled by an election official, or
  - (b) the voter has failed to record his or her vote in the manner directed on the ballot paper (subject to clause 2 (2) of the Sixth Schedule, and clause 2 (3) of the Seventh Schedule, to the *Constitution Act 1902*), or
  - (c) it has on it any mark or writing which, in the opinion of the Electoral Commissioner, will enable any person to identify the voter.
- (3) However, a ballot paper is not informal in the following circumstances:
  - (a) by reason of having any mark or writing on it that is not authorised by this Act if, in the opinion of the Electoral Commissioner, the voter's intention is clearly indicated on the ballot paper,
  - (b) in relation to a ballot paper on which the voter has recorded a vote by placing in one square the number "1":
    - (i) the same preference (other than the voter's first preference) has been recorded on the ballot paper for more than 1 candidate, but the ballot paper is

- to be treated as if those preferences and any subsequent preferences had not been recorded on the ballot paper, or
- (ii) there is a break in the order of preferences recorded on the ballot paper, but the ballot paper is to be treated as if any subsequent preference had not been recorded on the ballot paper,
- (c) by reason only that it is not duly initialled by an election official if it bears the mark that is prescribed by the regulations as an official mark,
  - (d) 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 is to be treated as if the cross or tick were the number “1”,
  - (e) 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 is to 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”,
  - (f) 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, but in such a case, each such number, tick or cross is taken to have been placed within the relevant square,
  - (g) in relation to any ballot paper written by hand—by reason of the inclusion only of a candidate’s surname (if no other candidate with the same surname is on the ballot paper) or by reason of any mistake in spelling, if the elector has made clear his or her intention.
- (4) Without limiting subsection (3), a ballot paper for a periodic Council election is also not informal in the following circumstances:
- (a) if a voter records a vote on the ballot paper by placing a mark in a group voting square but also indicates preferences for individual candidates, the following provisions apply:
    - (i) if the indication of preferences for individual candidates would, if it stood alone, constitute a formal vote, that indication of preferences is to be taken to be the vote of the voter and the mark in the group voting square is to be disregarded,
    - (ii) if the indication of preferences for individual candidates would not, if it stood alone, constitute a formal vote, it is to be disregarded and the vote of the voter is to be taken to have been expressed by the mark in the group voting square,

- (b) by reason only that it contains the name of any candidate who has died, 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 is to be disregarded and the numbers indicating any subsequent preference is to be reduced by the number of any such candidates.

**166 Decision of Electoral Commissioner re validity of ballot paper**

In relation to any election, the decision of the Electoral Commissioner as to the allowance or disallowance or the acceptance or rejection of any ballot paper, including any of the following ballot papers:

- (a) a ballot paper of an absent voter,
- (b) a ballot paper of an elector who has voted by post,
- (c) a ballot paper of an elector who has voted before election day,
- (d) a ballot paper to which Division 9 (Declaration voting at voting centres) applies,

is, subject to section 172 (Recount) and a review by the Court of Disputed Returns when hearing a petition in accordance with Part 8, final.

**167 Periodic Council elections—votes recorded in group voting squares**

- (1) This section applies only to periodic Council elections.
- (2) 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) a first preference vote for the first candidate included in the group, and
  - (b) subsequent preferences for all other candidates included in the 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 a subsequent number or 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 subsection (2)) for the candidates included in those other groups:
  - (a) in the order in which those groups are numbered by the voter, and
  - (b) within each group, in the order in which the names of the candidates in that group appear on the ballot paper.

**168 Periodic Council elections—special provision where minimum size of group reduced by death of candidate etc**

- (1) This section applies to ballot papers in a periodic Council election 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 86 (8).

- (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 87.

#### **169 Security of packages of ballot papers etc**

- (1) As soon as is reasonably practicable after counting the total number of first preference votes recorded for each candidate (and, if relevant each group), each voting centre manager is, in the approved manner, to package and secure all the ballot papers and other materials used and provided for use at the voting centre.
- (2) The voting centre manager must then:
  - (a) seal those packages, and
  - (b) endorse each of those packages with a description of its contents, with the name of the district and voting centre and the date of the election day, and
  - (c) sign with his or her name that endorsement, and
  - (d) permit any of the scrutineers who desires to do so to also sign the endorsement, and
  - (e) send those packages to the Electoral Commissioner.

#### **170 Packages of declaration votes, ballot papers etc**

- (1) The Electoral Commissioner must, for each electoral district, as soon as practicable after the close of voting, cause packages of the following items used in connection with the election to be made up and sealed in such manner as the Electoral Commissioner approves:
  - (a) envelopes from which any ballot papers were removed,
  - (b) unopened envelopes containing ballot papers,
  - (c) ballot papers allowed as formal or rejected as informal.
- (2) Section 175 applies to packages referred to in subsection (1) as if they were packages of marked and unmarked ballot papers referred to in that section.

#### **171 Ascertaining result of election by Electoral Commissioner**

- (1) The Electoral Commissioner is, as soon as practicable after the close of voting, at such place or places as the Electoral Commissioner approves and in the presence of such scrutineers as choose to be present, to ascertain the result of the election in accordance with the Sixth or Seventh Schedule to the [Constitution Act 1902](#), as the

case requires.

- (2) If the Electoral Commissioner is satisfied that the votes:
  - (a) on any ballot papers issued at a voting centre in connection with the election which have not been received by the Electoral Commissioner, or
  - (b) on ballot papers used for casting declaration votes and not dealt with under section 142,

cannot, having regard to the number of those ballot papers, possibly affect the result of the election, the Electoral Commissioner may proceed with the scrutiny without awaiting the receipt of the ballot papers, or completing the action, as the case requires.

### **172 Recount**

- (1) At any time before the declaration of an election result, the Electoral Commissioner may, if he or she thinks fit, on the request of any candidate in the election which sets out the reasons for the request, or on the Electoral Commissioner's own motion, recount the ballot papers.
- (2) A person conducting a recount as the delegate of the Electoral Commissioner:
  - (a) may reserve any ballot paper for the decision of the Electoral Commissioner, or
  - (b) at the request of any scrutineer, must reserve any ballot paper for the decision of the Electoral Commissioner.
- (3) The Electoral Commissioner must:
  - (a) decide whether any ballot paper reserved under subsection (2) is to be allowed and admitted or disallowed and rejected, and
  - (b) endorse the decision on the ballot paper.
- (4) A decision of the Electoral Commissioner under subsection (3) is, subject to review by the Court of Disputed Returns when hearing a petition in accordance with Part 8, final.

### **173 Declaration of election result**

- (1) As soon as practicable after the count has been completed, the Electoral Commissioner must declare the result of the election by announcing the name or names of the persons elected.
- (2) The Electoral Commissioner must give public notice of the declaration of the result of the election:
  - (a) in a newspaper circulating in New South Wales, or

(b) on the Electoral Commission's website.

- (3) The Electoral Commissioner is to endorse the name or names of the persons elected on the writ concerned and return the writ to the Governor, or Speaker, as the case may require, within the specified time.

#### **174 Scrutiny for statistical information**

After the declaration that a candidate has been duly elected at an Assembly election, the Electoral Commissioner may, for the purpose of obtaining statistical information, make arrangements for the examination of the second and later preferences of candidates and for the distribution of those preferences in the manner specified by the Electoral Commissioner.

#### **175 Security of election materials and electronic resources**

- (1) The Electoral Commissioner must have the sealed packages containing marked and unmarked ballot papers, declaration voting envelopes, authorised rolls and other election materials used in the election kept securely until the conclusion of the election's preservation period.
- (2) The Electoral Commissioner must have any electronic resources (including files, programs, applications and spreadsheets) used in the election kept securely until the conclusion of the election's preservation period.
- (3) On the expiry of the preservation period, the Electoral Commissioner may cause those papers, materials and electronic resources to be destroyed.
- (4) In this section, **preservation period**, in relation to an election, means the period commencing on the election day and ending on the latest of the following:
- (a) 6 months after the election day,
  - (b) the expiry of the period during which the validity of the election may be disputed under this Act,
  - (c) if a petition has, or petitions have, been filed under section 233—the date that the Court of Disputed Returns determines the matters referred to in the petition or petitions,
  - (d) if the Electoral Commissioner has authorised the use of the papers and materials for research or analysis by members of staff of the Electoral Commission—the conclusion of that research or analysis.

## **Division 13 Adjournment of voting**

### **176 Adjournment of voting**

- (1) If for any cause a voting centre does not open or the conduct of an election is interrupted or obstructed at a voting centre, the Electoral Commissioner may adjourn the conduct of the election at the voting centre to a later day specified by the Electoral Commissioner.
- (2) The holding of an election must not be adjourned to a day later than the day before the day named as the return day in the writ for the election.
- (3) The Electoral Commissioner must give public notice of any such adjournment.
- (4) If the conduct of the election at a voting centre has been adjourned, only those electors who are enrolled for the district within which the voting centre is situated are entitled to vote at the adjourned voting at the voting centre.
- (5) The provisions of this Act with respect to absent voting do not apply in the case of an adjournment.

### **177 Temporary suspension of voting**

- (1) Without limiting section 176, a voting centre manager may temporarily suspend voting for a period not exceeding 4 hours at a voting centre on election day if the voting centre manager considers that it is necessary to do so because of:
  - (a) a riot or open violence, or
  - (b) a serious threat of a riot or open violence occurring, or
  - (c) a storm, tempest, flood or other similar event, or
  - (d) a health hazard, or
  - (e) a fire or the activation of a fire alarm or fire safety equipment, or
  - (f) any other reason which the voting centre manager considers:
    - (i) may affect the safety of electors, or
    - (ii) may interrupt or obstruct the proper conduct of voting.
- (2) The voting centre manager must ensure that any person who attends the voting centre during the period that voting is temporarily suspended is provided with information to assist the person to vote, including the following:
  - (a) the time at which the voting centre is expected to re-open,
  - (b) the location of other voting centres.



(3) If:

- (a) for any reason the voting centre cannot be re-opened for voting on election day, or
- (b) the Electoral Commissioner is of the opinion that any person who would have voted at the voting centre could not reasonably have voted at another voting centre,

the Electoral Commissioner must adjourn the conduct of the election at the voting centre in accordance with section 176.

## **Division 14 Provisions relating to activities during regulated periods**

### **Subdivision 1 Preliminary**

#### **178 Application of provisions to grounds of voting centre enclosure**

(1) If:

- (a) a building used as a voting centre is situated in grounds within an enclosure, and
- (b) the appointment under section 108 of the voting centre does not indicate whether or not the grounds are part of the voting centre,

the grounds are not, but the building is, taken to be part of the voting centre for the purposes of sections 191 (Display of posters on early voting days at early voting centres), 192 (Canvassing on early voting days at early voting centres), 196 (Display of posters on election days) and 198 (Canvassing on election days).

- (2) However, those grounds are taken to be part of the voting centre for the purposes of those sections if the election manager for the district concerned, with the concurrence of the Electoral Commissioner, causes to be displayed throughout the hours of voting at each entrance to those grounds a notice signed by the election manager stating that those grounds are treated as part of the voting centre.

#### **179 Certain lessees of premises taken to be owners**

If premises or other property referred to in a provision of Subdivision 3 are subject to a lease for a term of 6 months or more, a reference in that provision to the owner or a joint owner of the premises or property is to be read as a reference to the lessee or a joint lessee of the premises or property.

### **Subdivision 2 Non-complying electoral material**

#### **180 Non-complying electoral material**

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

- (a) the material contains voting directions intended or likely to mislead or improperly interfere with an elector in or in relation to the casting of his or her vote, or
- (b) the material contains an untrue or incorrect statement intended or likely to mislead or improperly interfere with an elector in or in relation to the casting of his or her vote, or
- (c) without limiting paragraph (b), the material contains information that is incorrect or misleading about whether a person is or is not:
  - (i) a candidate for the election, or
  - (ii) a candidate for a particular electoral district, or
  - (iii) a member of a registered party or a group, or
  - (iv) nominated or endorsed by a registered party, or
- (d) the material uses:
  - (i) the name, an abbreviation or acronym of the name or a derivative of the name of a registered party (or a name or abbreviation resembling such a name, abbreviation, acronym or derivative) in a way that is intended or likely to mislead any elector, or
  - (ii) the word “Independent” and the name or an abbreviation or acronym of the name or a derivative of the name of a registered party in a way that suggests or indicates an affiliation with that party, or
- (e) in the case of material that contains voting directions—any of the directions are contrary to the requirements of this Act or the regulations or are contrary to the directions or instructions contained in the relevant ballot papers, including (for example) a direction:
  - (i) to leave the ballot paper blank, or
  - (ii) to write or draw unauthorised matter on the ballot paper, or
  - (iii) to repeat or leave out a number when indicating preferences, or
- (f) the material could result in an elector casting an informal vote, or
- (g) the material contains a statement (express or implied) to the effect that voting is not compulsory, or
- (h) the material contains a statement intended or likely to mislead an elector that the material is an official communication from the Electoral Commissioner or the Electoral Commission.

**181 Non-complying electoral material—additional provisions regarding how-to-vote cards**

- (1) **Application of section** Without limiting section 180, electoral material consisting of or

containing a how-to-vote card contravenes this Subdivision if the card does not comply with this section.

- (2) **Non-complying how-to-vote cards for registered parties** A how-to-vote card containing voting directions as to how to vote for or in accordance with the recommendations of a registered party does not comply with this section if:
- (a) the party has nominated no candidate for the election, or
  - (b) the voting directions give a preference to a candidate not nominated by it without first giving higher preferences to all candidates nominated by it.
- (3) **Non-complying how-to-vote cards for groups** A how-to-vote card containing voting directions as to how to vote for or in accordance with the recommendations of a group does not comply with this section if the voting directions give a preference to a candidate who is not a member of the group without first giving higher preferences to all candidates who are members of the group.
- (4) **Non-complying how-to-vote cards for individual candidates** A how-to-vote card containing voting directions as to how to vote for or in accordance with the recommendations of a particular candidate does not comply with this section if:
- (a) whether or not the candidate is a member of a group—the voting directions do not contain a voting direction for the candidate to receive the first preference, or
  - (b) where the candidate is a member of a group—the voting directions give a preference to a candidate who is not a member of the group without first giving higher preferences to all candidates who are members of the group.
- (5) **Non-complying how-to-vote cards using group voting squares—voting above and below the line** A how-to-vote card containing voting directions as to how to vote for or in accordance with the recommendations of a group of candidates by using a group voting square does not comply with this section if the voting directions also give preferences (“below the line”) for:
- (a) only some of the individual members of the group, or
  - (b) individual members of the group in a different order from that appearing in the list of candidates in the group on the ballot paper.

**Note—**

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

- (6) **Non-complying how-to-vote cards without group voting squares—no indication of requirement to vote for at least 15 candidates** A how-to-vote card containing voting directions as to how to vote without using group voting squares and that do not give

preferences for at least 15 candidates to be elected does not comply with this section if the voting directions do not contain a statement as to how many other preferences must be marked on the ballot paper.

## **182 Electoral matter involving joint voting directions**

- (1) **Application of section** Despite sections 180 and 181, electoral material consisting of or containing a how-to-vote card does not contravene this Subdivision merely because the card contains matter described in this section.
- (2) **Assembly elections** The electoral material consists of or contains a how-to-vote card which contains the joint voting directions of 2 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 of the participant or candidate, as the case may be, and
  - (d) the application for registration of the material otherwise complies with the relevant requirements of this Subdivision.
- (3) **Council elections** The electoral material contains directions or suggestions (express or implied) as to how to vote in accordance with the joint voting directions of 2 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 this Subdivision (apart from section 181 (2) and (3)).
- (4) **Definition of “participant”** In this section:

**participant** means a registered party or a group of candidates registered under the [Electoral Funding Act 2018](#).

### **Subdivision 3 Offences applicable during regulated period**

#### **183 Printing, publishing and distributing non-complying electoral material**

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

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
- (b) in any other case—20 penalty units or imprisonment for 6 months, or both.

#### **184 Display of posters**

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

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
- (b) in any other case—20 penalty units or imprisonment for 6 months, or both.

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

(a) on or within any premises occupied or used by, or under the control or management of:

- (i) the Crown or a NSW Government agency, or
- (ii) any council or county council, or

(b) on or within any other premises, unless the person:

- (i) was the owner or a joint owner of the premises, or
- (ii) performed the act concerned with the permission in writing of the owner or a joint owner of the premises.

Maximum penalty:

- (a) in the case of a corporation—12.5 penalty units, or
- (b) in any other case—2.5 penalty units.

(3) Subsection (2) (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 voting is situated, or

- (b) within the grounds of an enclosure in which a building used for voting is situated, or
- (c) on a vehicle on a road or road related area (within the meaning of section 4 (1) of the *Road Transport Act 2013*), or
- (d) fixed or attached to a table or stall on a footpath or other public place at any time on the day of voting for an election.

**Note—**

The display of election posters also constitutes development for the purposes of the *Environmental Planning and Assessment Act 1979*. Subdivision 13 (Election signs) of Division 2 of Part 2 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* provides that the display of election posters is exempt development, subject to conditions, during the period commencing 5 weeks before and ending 1 week after the election day concerned.

**185 Writing, drawing or depicting electoral matter**

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

Maximum penalty:

- (a) in the case of a corporation—15 penalty units, or
  - (b) in any other case—3 penalty units.
- (2) A person is not guilty of an offence under this section if the person:
    - (a) was the owner or joint owner of the property, or
    - (b) performed the act concerned with the permission in writing of the owner or a joint owner of the property.
  - (3) Without limiting subsection (2), a person is not guilty of an offence under this section involving a vehicle, vessel or hoarding if the person:
    - (a) was the owner or joint owner of the premises on which the vehicle, vessel or hoarding was situated, or
    - (b) performed the act concerned with the permission in writing of the owner or a joint owner of the premises.
  - (4) Subsections (2) and (3) do not apply to any premises or property occupied or used by, or under the control or management of:
    - (a) the Crown or a NSW Government agency, or
    - (b) any council or county council.

**186 Name and address on electoral material**

- (1) A person must not, during the regulated period, print, publish, distribute or publicly display electoral material (other than the announcement in a newspaper of the holding of a meeting), without legibly showing on the material:
- (a) the name and address of an individual on whose instructions the material was printed, published or distributed, and
  - (b) if the material has been printed, the name of the printer and address at which it was printed.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
  - (b) in any other case—20 penalty units or imprisonment for 6 months, or both.
- (2) 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.

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

A person must not, during the regulated period, display any electoral matter on an electronic billboard, digital road sign or other similar device, unless the matter contains, in visible, legible characters, the name and address of an individual on whose instructions the matter was displayed.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
- (b) in any other case—20 penalty units or imprisonment for 6 months, or both.

**188 Publication of paid electoral advertisements on the internet**

- (1) A person must not, during the regulated period, publish an advertisement containing

electoral matter on the internet, or cause, permit or authorise such an advertisement to be published, if:

- (a) the advertisement is paid for by the person or another person, and
- (b) the name and address of an individual who authorised the advertisement do not appear within the advertisement.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
  - (b) in any other case—20 penalty units or imprisonment for 6 months, or both.
- (2) A person does not commit the offence in subsection (1) if the person establishes that the matter published on the internet forms part of a general commentary on a website.

### **189 Encouraging ticks or crosses on ballot papers**

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

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
- (b) in any other case—20 penalty units or imprisonment for 6 months, or both.

### **190 Defences and exceptions**

- (1) **Defences** A person is not guilty of an offence for a breach of a provision of this Subdivision if it is established that:
- (a) the breach was not of a material nature, or
  - (b) the breach was not intended, or was not likely, to mislead an elector in or in relation to the casting of his or her vote, or
  - (c) the person was not aware that the act or omission concerned was a breach of the provision when it occurred and took all reasonable steps to remedy the breach when the person became aware that it was or may have been such a breach.
- (2) **Exceptions** Nothing in this Subdivision prohibits:
- (a) the display, writing, drawing or depicting of a sign on or at the office or committee room of a candidate or political party indicating only that the office or room is the office or committee room of the candidate or party, and specifying the name of the candidate, or the names of the candidates, or the name of the party



concerned, or

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

#### **Subdivision 4 Additional offences applicable on early voting days**

##### **191 Display of posters on early voting days at early voting centres**

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

- (a) within an early voting centre, or
  - (b) within 6 metres of an entrance to an early voting centre, or
  - (c) on the exterior of a building used as an early voting centre,
- on any day on which early voting is conducted at the early voting centre.

Maximum penalty:

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

##### **192 Canvassing on early voting days at early voting centres**

(1) **Canvassing in early voting centre** A person must not:

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

within an early voting centre or within 6 metres of an entrance to an early voting centre on any day on which early voting is conducted at the early voting centre.

Maximum penalty: 20 penalty units.

(2) **Amplified canvassing audible in early voting centre** A person must not contravene this subsection. This subsection is contravened if, on any day on which early voting is conducted at an early voting centre, each of the following paragraphs apply:

- (a) the person engages in:
  - (i) canvassing for votes, or
  - (ii) soliciting the vote of an elector, or
  - (iii) inducing an elector not to vote for a particular candidate or group of candidates, or
  - (iv) inducing an elector not to vote at the election,
- (b) the person engages, in any public or private place, in that activity any distance away from the early voting centre,
- (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,
- (d) that activity is audible within the early voting centre.

Maximum penalty: 20 penalty units.

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

### **193 Interference with posters**

The owner or occupier of premises that are being used as an early voting centre must not, without reasonable excuse, interfere with or remove or cause to be removed any poster that is exhibited or posted at those premises in compliance with the provisions of this Division.

Maximum penalty: 10 penalty units.

## **Subdivision 5 Additional offences applicable on election days**

### **194 Extended operation of this Subdivision**

- (1) In the application of this Subdivision to electoral material, **electoral matter** is, without limiting the definition of that term in section 4, taken to include any matter consisting of an express or implicit reference to or comment on:
  - (a) an election, or
  - (b) any council or any previous council, or
  - (c) any councillor or previous councillor, or
  - (d) the Government, the Opposition, a previous Government or a previous Opposition, of this or any other State or Territory or of the Commonwealth, or
  - (e) a member or former member of the Parliament of this or any other State or Territory or of the Commonwealth, or
  - (f) a political party, a branch or division of a political party or a candidate in an election, or
  - (g) an issue submitted to, or otherwise before, the electors in connection with an election.
- (2) References in this Subdivision to election day include references to all days to which voting is adjourned.

### **195 Distribution of electoral material on election days**

- (1) A person must not, in a public place, distribute any electoral material on election day unless the material has been registered under Subdivision 6 for the election.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
  - (b) in any other case—20 penalty units or imprisonment for 6 months, or both.
- (2) For the purposes of this section and without limiting its operation, material is taken to be distributed if it is left in such a position and in such circumstances as to indicate that it is intended to be available for collection by members of the public who are in a public place.
- (3) This section 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.

### **196 Display of posters on election days**

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

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

Maximum penalty:

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

### **197 Interference with posters**

The owner or occupier of premises that are being used as a voting centre must not interfere with or remove or cause to be removed any poster that is exhibited or posted at those premises in compliance with the provisions of this Division.

Maximum penalty: 10 penalty units.

### **198 Canvassing on election days**

(1) **Canvassing in or near voting centre** A person must not:

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

on election day:

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

Maximum penalty: 20 penalty units.

(2) **Amplified canvassing audible in or near voting centre** A person must not contravene this subsection. This subsection is contravened if on election day each of the following paragraphs apply:

- (a) the person engages in:
  - (i) canvassing for votes, or
  - (ii) soliciting the vote of an elector, or
  - (iii) inducing an elector not to vote for a particular candidate or group of candidates, or
  - (iv) inducing an elector not to vote at the election,
- (b) the person engages, in any public or private place, in that activity 6 metres or more from an entrance to a voting centre,
- (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,
- (d) that activity is audible:
  - (i) within the voting centre, or
  - (ii) within 6 metres of an entrance to the voting centre.

Maximum penalty: 20 penalty units.

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

## **Subdivision 6 Registration of electoral material**

### **199 Application for registration of electoral material**

- (1) **Application for registration may be made** An application may be made to the Electoral Commissioner for the registration of electoral material for a particular election or a particular district or districts.

- (2) **Applications by or on behalf of parties, groups or candidates** An application may be made:
- (a) by the registered officer of a registered party—on behalf of the party, or
  - (b) by the first candidate listed in a group of candidates—on behalf of the group, or
  - (c) by a candidate—on his or her own behalf.
- (3) **Applications by or on behalf of others** An application may be made:
- (a) by an officer or representative of an incorporated or unincorporated body (other than a registered party or a group) who is not a candidate—on behalf of the body, or
  - (b) by an individual who is not a candidate—on his or her own behalf.
- (4) **Timing of application** An application may be made only during the period starting with the nomination day and ending at 5 pm on the Friday that is 8 days before election day (the **application period**).
- (5) **Draft or sample to be provided** An application must contain a draft or sample of the electoral material.
- (6) **Alteration or replacement of draft or sample** The Electoral Commissioner may allow the draft or sample to be altered or replaced during the application period before agreeing to registration.
- (7) **Manner and form of application** An application under this section:
- (a) is to be in the approved form, and
  - (b) is to be verified by the applicant in the approved manner (if any), and
- Note—**
- For example, a written application may be verified by the signature of the applicant.
- (c) may be lodged with the Electoral Commissioner in a written or an electronic form.
- (8) **Application form to indicate if electoral material to be supplied to declared facility voters** The approved form of application under this section must, if the electoral material to which it relates consists of or contains a how-to-vote card, allow the applicant to indicate whether or not that electoral material should be available for perusal by electors voting at a mobile voting centre at a declared facility.

## 200 Consideration of application for registration

- (1) **Complying material must be registered** The Electoral Commissioner must register the electoral material if satisfied that registration is not prohibited by this Subdivision.

- (2) **Refusal for non-complying application** However, the Electoral Commissioner may refuse to register the electoral material if the application for registration was not made in accordance with this Subdivision.
- (3) **When material must be refused registration** The Electoral Commissioner must not register the electoral material if it appears to the Electoral Commissioner that:
- (a) the material contravenes Subdivision 2, or
  - (b) the material is, or contains a section, in a language other than English and the application for registration was not accompanied by:
    - (i) an accurate translation into English of the material or section, and
    - (ii) a declaration that the translation is accurate, or
  - (c) the material does not include in visible, legible characters:
    - (i) the name of an individual on whose instructions the material was produced, and
    - (ii) the address of that individual or, if the material was produced on behalf of a registered party, the name and address of the registered party as it appears on the Register of Parties, and
    - (iii) if the material is printed material, the name of the printer and address at which it is printed, or
  - (d) the material does not clearly identify the person, political party, organisation or group on whose behalf the material is to be distributed, or
  - (e) in the case of an application for registration purporting to be made on behalf of an entity referred to in section 199 (2) or (3)—the application was not made by a person authorised by the relevant subsection to make the application, or
  - (f) in the case of an application not purporting to be made on behalf of an entity referred to in section 199 (2) or (3) for the registration of material that contains voting directions as to how to vote for or in accordance with the recommendations of such an entity—the application was not made by a person authorised by the relevant subsection to make an application on behalf of the entity, or
  - (g) in the case of an application for the registration of material that contains any representation or indication (whether express or implied) that any candidate:
    - (i) is a member of, or
    - (ii) pursues or supports any or all of the objects or platform (whether with or without modification) of, or

(iii) is affiliated in some way (whether officially or unofficially) with,

a particular registered party or a group—the application was not made by or with the consent of the registered officer of the party or the first candidate listed in the group, or

(h) the material contains words that are, or other matter that is, obscene or offensive.

(4) **Inquiries as to authenticity of application or consent** The Electoral Commissioner may make such inquiries as the Electoral Commissioner thinks fit to confirm the authenticity of:

(a) an application, or

(b) any consent referred to in subsection (3) (g).

## 201 Registration of electoral material

(1) **Certificate of registration** Registration of the electoral material is effected by the issue of a certificate of registration in respect of a draft or sample of the electoral material.

(2) **Details to be included in certificate** The certificate of registration must specify the election and the district or districts for which the electoral material is registered.

(3) **Form of certificate** A certificate of registration issued under this section is to be in the approved form.

(4) **Registration may be conditional or unconditional** Registration may be unconditional or subject to conditions specified in the certificate of registration.

(5) **Evidence of registration** 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 districts,

is admissible in proceedings for an offence under this Division and is prima facie evidence of the matters certified.

(6) **Immaterial differences not to affect registration** Electoral material is to 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.

(7) **Registration not a defence for certain offences** Registration of electoral material is not a defence to a prosecution for an offence under Subdivision 3 or 4.



- (8) **Copy of material and certificate to be available for public inspection** The Electoral Commissioner is to ensure that the following are made available for public inspection on the Electoral Commission's website from the Monday preceding the election day until 6 pm on election day:
- (a) the registered electoral material,
  - (b) the relevant certificate of registration.
- (9) The Electoral Commissioner is not required to make copies of such electoral material or certificates of registration. However, a person inspecting any such material or certificates is entitled to use the person's own device (such as a camera, mobile phone, video recorder or any other electronic device) to copy or record that material or those certificates and take away or transmit those copies.

## **202 Revocation of registration or imposition of condition on registration**

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

## **Subdivision 7 Miscellaneous**

### **203 Maintenance of order at and near voting centres**

- (1) A police officer may remove a person from a voting centre or the immediate vicinity of a voting centre if the police officer has reasonable grounds to believe the person is committing, has committed or is attempting to commit an offence under this Act at that voting centre or in the immediate vicinity of that voting centre.
- (2) A police officer may remove or cause to be removed from a voting centre and from the immediate vicinity of the voting centre, any person:
- (a) who, having been given a lawful direction by or under the authority of the Electoral Commissioner or voting centre manager, fails to comply with that

direction, or

- (b) who is obstructing the access or approaches to the voting centre, or
- (c) who is obstructing or unnecessarily delaying the proceedings at the voting centre, or
- (d) who is behaving in a disorderly manner or is causing a disturbance.

(3) The Electoral Commissioner and every voting centre manager may give such directions as are necessary to maintain order at any election or any place where voting is occurring under this Act.

(4) A person must not, without lawful authority, contravene any such direction.

Maximum penalty (subsection (4)): 20 penalty units.

#### **204 Removal and confiscation of posters and other electoral material**

(1) **Directions to remove posters and other electoral material** The Electoral Commissioner or any voting centre manager, or any other election official authorised by the Electoral Commissioner or a voting centre manager may direct a person representing a party, group or candidate at a voting centre to remove, or cause to be removed:

- (a) any poster displayed at the voting centre by the party, group or candidate in contravention of Subdivision 3, 4 or 5, or
- (b) any electoral material that is apparently available for distribution at the voting centre by the party, group or candidate in contravention of Subdivision 5.

(2) A person must not, without reasonable excuse, contravene any such direction.

Maximum penalty (subsection (2)): 20 penalty units.

(3) **Confiscation by election officials** The Electoral Commissioner or any voting centre manager, or any other election official authorised by the Electoral Commissioner or a voting centre manager, may remove and confiscate, or cause to be removed and confiscated:

- (a) any poster displayed in contravention of Subdivision 4 or 5, or
- (b) any electoral material that is apparently available for distribution in contravention of Subdivision 5.

(4) **Confiscation by Electoral Commissioner and police** The Electoral Commissioner or any police officer may remove and confiscate, or cause to be removed and confiscated:

- (a) any poster displayed in contravention of Subdivision 3, 4 or 5, or
- (b) any electoral material that is apparently available for distribution in contravention

of Subdivision 5.

- (5) **Use of force** A police officer may use reasonable force for the purposes of this section. This section does not authorise any other person to use force.
- (6) **Confiscated material to be destroyed** Confiscated electoral material must be destroyed without undue delay, but destruction may be delayed if the material is or may reasonably be required for evidentiary purposes.

## 205 Official notices

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

## 206 Double jeopardy

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

# Division 15 Offences

## 207 Offence of failing to vote

### Note—

Section 11B of the [Constitution Act 1902](#) provides that every person who is entitled to vote at a periodic Council election or the election of a Member of the Legislative Assembly must vote at the election and if the person does not do so, the person is liable to such penalty as may be provided by law.

- (1) An elector who fails to vote at an election is guilty of an offence.

Maximum penalty: 1 penalty unit.

- (2) For the purposes of any proceedings for an offence against subsection (1), a person is taken to have voted if the person has:
  - (a) been given a ballot paper by an election official and has placed that ballot paper in a ballot box (whether inside an envelope or not), or
  - (b) posted or delivered a ballot paper in a postal voting envelope to the Electoral Commissioner (or caused it to be so posted or delivered), or
  - (c) voted in any other manner permitted by this Act.

### Note—

This provision is a machinery provision to make it clear that a prosecution under this section is subject to the principle of the secret ballot. A prosecutor should not and cannot prove in court that a person has marked their ballot paper in any particular manner.

- (3) In this section, **elector** does not include:

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

### **208 Obstructing access to voting centre**

A person must not obstruct the access or approaches to a voting centre.

Maximum penalty: 10 penalty units.

### **209 Electoral bribery, treating and selling of votes**

- (1) A person must not, in order to influence or affect any person's election conduct, give or confer, or promise or offer to give or confer, any property or any other benefit of any kind to the person or any other person.

Maximum penalty: 200 penalty units or imprisonment for 3 years, or both.

- (2) A person must not:

- (a) ask for, receive or obtain, or
- (b) offer to ask for, receive or obtain, or
- (c) agree to ask for, receive or obtain,

any property or any other benefit of any kind, whether for the person or any other person, on an understanding that the person's election conduct will be in any manner influenced or affected.

Maximum penalty: 200 penalty units or imprisonment for 3 years, or both.

- (3) In this section, ***person's election conduct*** means:

- (a) the way in which the person votes at an election, or
- (b) the person's nomination as a candidate for an election, or
- (c) the person's support of, or opposition to, a candidate or a political party at an election, or
- (d) the doing of any act or thing by the person the purpose of which is, or the effect of which is likely to be, to influence the preferences set out in the vote of an elector.

- (4) This section does not apply in relation to a declaration of public policy or a promise of public action.

- (5) An offence under this section is an indictable offence.

### **210 Interference with right to vote**

- (1) A person must not hinder or interfere with the free exercise, by any other person, of the person's right to vote in an election under this Act.

Maximum penalty: 200 penalty units or imprisonment for 3 years, or both.

- (2) A person must not, by violence or intimidation, influence the vote of a person at an election.

Maximum penalty: 200 penalty units or imprisonment for 3 years, or both.

- (3) An offence under this section is an indictable offence.

### **211 Ballot papers not to be removed from voting centre etc**

A person must not, without lawful authority:

- (a) remove a ballot paper from any voting centre, or
- (b) enter into a compartment of a voting centre while any person is in the compartment, or
- (c) remain in the compartment of a voting centre 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 voting centre.

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

### **212 Impersonation and multiple voting**

- (1) A person must not:

- (a) impersonate any elector for the purpose of voting at any election, or
- (b) vote more than once at any election.

Maximum penalty: 200 penalty units or imprisonment for 3 years, or both.

- (2) An offence under this section is an indictable offence.

### **213 Disorderly conduct at public political meetings**

- (1) A person must not, at any public meeting to which this section applies, act in a disorderly manner for the purpose of disrupting the meeting.

- (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.

#### **214 Opening sealed packages**

A person must not intentionally break open a sealed package of ballot papers or other electoral material unless authorised to do so by the Electoral Commissioner or an election manager or required or authorised to do so by or under any legislation or direction of a court.

Maximum penalty: 10 penalty units.

#### **215 Display, publish or distribute material falsely appearing to be made by Electoral Commission**

A person is guilty of an offence if:

- (a) the person displays, publishes or distributes material (or causes or permits material to be displayed, published or distributed), and
- (b) the person does so knowing that, or being reckless as to whether, the material falsely appears to have been authorised by the Electoral Commission or Electoral Commissioner.

Maximum penalty: 200 penalty units or imprisonment for 2 years, or both.

#### **216 False or misleading declaration and statements**

- (1) A person must not make a declaration under this Part that the person knows is false or misleading in a material particular.

Maximum penalty: 200 penalty units or imprisonment for 2 years, or both.

- (2) An elector must not in or in connection with an application under this Part, or for the purpose of or in connection with the casting of a vote by means of technology assisted voting, make any statement to an election official that the person knows is false or misleading in a material particular.

Maximum penalty: 200 penalty units or imprisonment for 2 years, or both.

- (3) A person must not persuade or induce a person to make a declaration or statement of the kind referred to in subsection (1) or (2).

Maximum penalty: 200 penalty units or imprisonment for 2 years, or both.

- (4) In this section, a reference to a statement to an election official includes a statement made by means of electronic communication sent to the Electoral Commissioner or the Electoral Commission's website.

### **217 Improperly signing or witnessing electoral papers**

A person must not do any of the following:

- (a) sign as witness a blank electoral paper,
- (b) sign as witness an electoral paper that has been wholly or partly filled up unless it has been signed by the signatory,
- (c) sign as witness an electoral paper unless the person has seen the signatory sign it,
- (d) write a name that is not his or her own name on an electoral paper as his or her own name,
- (e) sign an electoral paper with a signature that purports to be that of another person.

Maximum penalty: 20 penalty units.

### **218 Forging or uttering electoral papers**

A person must not:

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

Maximum penalty: 200 penalty units or imprisonment for 2 years, or both.

### **219 Offence of stuffing ballot box**

A person must not knowingly place in a ballot box:

- (a) any ballot paper that has not been lawfully issued to an elector, or
- (b) any other paper purporting to be a ballot paper other than a ballot paper lawfully issued to the elector.

Maximum penalty: 200 penalty units or imprisonment for 2 years, or both.

## **Division 16 Miscellaneous provisions relating to elections**

### **220 Death of candidate during election period**

- (1) **Death of candidate before close of nominations** If a candidate for an election dies, after being nominated and before 12 noon on the nomination day for the election, the day named as the nomination day for that election is taken to be the day following the named nomination day.
- (2) **Death of candidate after close of nominations but before 6 pm on election day** If after 12 noon on the nomination day and before 6 pm on the election day for an election for any district, any candidate dies:

- (a) the election is taken to have failed, and
  - (b) a new writ is to be issued for an election for the district.
- (3) If, after 12 noon on the nomination day and before the election day of a periodic Council election, any candidate dies and there are not more than 21 candidates remaining, the Electoral Commissioner is to publicly declare the remaining candidates to be duly elected and publicly advertise the declaration and return the writ endorsed according to that declaration.
- (4) If, after 12 noon on the nomination day and before the election day of a periodic Council election, any candidate dies and there are more than 21 candidates remaining:
- (a) the election is not taken to have failed, and
  - (b) if the deceased candidate is elected, a vacancy is taken to occur.
- (5) **Death of candidate after 6 pm on election day** If after 6 pm on election day for any election, but before the election has been declared, a candidate in the election dies:
- (a) the election is not taken to have failed, and
  - (b) if the deceased candidate is elected, a vacancy is taken to occur.

## **221 Election not to be questioned for omission etc of a formal nature**

- (1) An election for a district is not void because of any delay in the return of the writ.
- (2) An election for a district or a periodic Council election is not void because of a vacancy in the office of Electoral Commissioner at the time of the issue of the writ or any delay in the return of the writ.
- (3) Where any accidental or unavoidable impediment, misfeasance or omission has happened, the Governor:
  - (a) may take all such measures as may be necessary for removing the impediment or rectifying the misfeasance or omission, or
  - (b) may by proclamation declare any or all of the proceedings at or for any election valid as to and notwithstanding the impediment, misfeasance, or omission.

Every such proclamation must state specifically the nature of the impediment, misfeasance or omission concerned and must be published in the Gazette.

## **222 Election information**

- (1) After an election, the Electoral Commissioner 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 Electoral Commissioner 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 election information containing the names and the addresses of electors who voted (other than silent electors and itinerant electors), whether they voted personally, by post or by another method authorised under this Act and, if they voted at a voting centre for the district for which the electors were enrolled, the location of that voting centre.
- (3) Election 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, election information provided under this section for any purpose other than in connection with an election.

Maximum penalty: 1,000 penalty units.

**Note—**

Division 7 of Part 5 (Inspection of authorised rolls and lists of enrolled persons and provision of enrolment information) contains provisions regarding access to certain enrolment information.

### **223 Signatures and marks on electoral papers and ballot papers**

- (1) An electoral paper that is required to be signed by a person is to be signed by that person with his or her personal signature.
- (2) If a person who is unable to sign his or her name in writing makes his or her mark as his or her signature on an electoral paper, the mark is taken to be his or her personal signature, if it is identifiable as the person's mark and is made in the presence of a witness who signs the electoral paper as a witness.
- (3) If a person is unable to mark a ballot paper or sign and complete an electoral paper without assistance or is under a religious obligation not to mark a ballot paper or sign and complete an electoral paper with his or her own hand, the person may appoint another person to mark the ballot paper or sign and complete the electoral paper on that person's behalf.

## **Part 8 Court of Disputed Returns**

### **Division 1 Constitution and powers**

#### **224 Court of Disputed Returns**

- (1) The Supreme Court is the Court of Disputed Returns for the purposes of this Act.
- (2) The jurisdiction of the Supreme Court, sitting as the Court of Disputed Returns, may be exercised by a single Judge.

#### **225 Powers of Court**

- (1) The Court of Disputed Returns has the following powers in relation to a petition:
  - (a) the power to adjourn,
  - (b) the power to compel the attendance of witnesses and the production of documents,
  - (c) the power to grant to any party to a petition leave to inspect, in the presence of a member of staff of the Electoral Commission, the authorised rolls and other documents (except ballot papers) used at or in connection with any election and to take, in the presence of the staff member, copies or extracts of those rolls and documents,
  - (d) the power to order the staff of the Electoral Commission to print any technology assisted voting image files of ballot papers of votes cast in an election to enable a further count to be made,
  - (e) the power to examine witnesses on oath,
  - (f) the power to declare that any person who was returned as elected was not duly elected,
  - (g) the power to declare any candidate duly elected who was not returned as elected,
  - (h) the power to declare any election absolutely void,
  - (i) the power to dismiss or uphold the petition in whole or in part,
  - (j) the power to award costs,
  - (k) the power to punish any contempt of its authority by fine or imprisonment,
  - (l) such other powers as are conferred or imposed on the Court.
- (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, the following powers of the Court may be exercised on the ground that illegal practices were committed in connection with the election:

- (a) to declare that any person who was returned as elected was not duly elected,
- (b) to declare an election absolutely void.

#### **226 Court to sit as open court**

The Court of Disputed Returns is to sit as an open court.

#### **227 Real justice to be observed**

The Court of Disputed Returns is to 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.

#### **228 Decisions to be final**

- (1) All decisions of the Court of Disputed Returns are final and conclusive and without appeal and are not to be questioned in any way.
- (2) No appeal lies to the Court of Appeal from any decision of the Court.
- (3) Subsection (2) does not limit the generality of subsection (1).

#### **229 Effect of decisions**

- (1) If the Court of Disputed Returns declares that a person declared elected was not elected, the person ceases to be a member of the Assembly or Council, as the case requires, from the date determined by the Court.
- (2) If the Court declares that a person not declared elected was elected, the person may take his or her seat in the Assembly or Council, as the case requires, from the date determined by the Court.
- (3) If the Court declares that an election is void, a new election must be held.
- (4) If a new election is to be held under subsection (3) to return a member of the Assembly, the Speaker must issue the writ for the election or, if there is no Speaker by reason of illness or due to some other cause the Speaker is unable to issue the writ, the Governor may issue the writ.

#### **Note—**

Section 31A of the [Constitution Act 1902](#) provides that, when the Speaker is unavailable, 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.

- (5) If a new periodic Council election is to be held under subsection (3), the Governor may issue the writ for that election.

### **230 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 of Disputed Returns and the forms to be used.
- (2) Subsection (1) does not limit the rule-making powers conferred by the *Supreme Court Act 1970*.
- (3) Despite 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 is, to the extent of such inconsistency and while such inconsistency continues to exist, not to apply to or in respect of any proceedings under this Part.

### **231 Regulations regarding 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 of Disputed Returns.

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

### **232 Application of Division**

This Division does not apply to or in respect of an election referred to in section 22D of the *Constitution Act 1902* (Filling of casual vacancies in seats of Members of Legislative Council by joint sitting of both Houses).

#### **Note—**

See Division 4 of this Part in relation to elections to fill casual vacancies in seats of members of Legislative Council.

### **233 Method of disputing elections or returns**

The validity of any election or return may be disputed only by a petition to the Court of Disputed Returns.

### **234 Requirements of petition**

- (1) A petition disputing an election or return in this Part (a ***petition***) must:
- (a) set out:
    - (i) the facts relied on to invalidate the election or return, and
    - (ii) the relief claimed by the petitioner and the order sought from the Court, and
  - (b) be signed by:

- (i) a candidate at the election in dispute, or
  - (ii) a person who was qualified to vote at the election, or
  - (iii) the Electoral Commissioner, and
- (c) be attested by 2 witnesses whose occupations and addresses are stated, and
- (d) be filed with the Prothonotary of the Supreme Court within 40 days of the return of the writ.
- (2) At the time of filing the petition the petitioner must deposit with the Prothonotary the sum of \$250 as security for costs.
- (3) The Court of Disputed Returns must not deal with any proceedings on the petition unless the requirements of this section are complied with.

### **235 Right of Electoral Commissioner to be represented**

- (1) The Electoral Commissioner may, by leave of the Court of Disputed Returns:
- (a) enter an appearance in any proceedings in which the validity of any election or return is disputed, and
  - (b) be represented and heard in those proceedings.
- (2) If leave to appear is granted by the Court, the Electoral Commissioner is taken to be a party respondent to the petition.

### **236 Inquiries by Court**

The Court of Disputed Returns:

- (a) is to inquire whether or not the petition has been properly filed, and
- (b) may inquire into the identity of persons who voted, whether they were entitled to do so and whether their votes were improperly admitted or rejected, and
- (c) must not inquire into the correctness of any authorised roll.

### **237 Voiding election for illegal practices**

- (1) If the Court of Disputed Returns finds that a successful candidate has committed or has attempted to commit an offence under section 209 (Electoral bribery, treating and selling of votes) or 210 (Interference with right to vote), his or her election is to be declared void.
- (2) A finding by the Court of Disputed Returns does not bar or prejudice any prosecution for any illegal practice.

(3) The Court of Disputed Returns is not to 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 the candidate's knowledge or authority, or
- (b) on the ground of any illegal practice other than a contravention or attempted contravention of section 209 (Electoral bribery, treating and selling of votes) or 210 (Interference with right to vote),

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.

### **238 Court to report cases of illegal practices**

If the Court of Disputed Returns finds that any person has committed an illegal practice, the Prothonotary is, as soon as is reasonably practicable, to report the finding to the Governor.

### **239 Immaterial errors not to void election**

- (1) An election is not to be voided on account of any delay in the declaration of nominations, voting 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.
- (2) However, if any elector was, on account of the absence or error of, or omission by, any officer, prevented from voting in any election, the Court of Disputed Returns is 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, to admit any evidence of the way in which the elector intended to vote at the election.

### **240 Evidence that person not permitted to vote**

On the trial of any petition the Court of Disputed Returns is not to admit the evidence of any witness that he or she was not permitted to vote at any election unless the witness satisfies the Court:

- (a) that he or she claimed to vote at 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 relating to voting by electors in so far as he or she was permitted so to do.

### **241 Copies of petition and order of court to be sent to Clerk of Assembly or Council**

- (1) The Prothonotary is, as soon as is reasonably practicable after the filing of a petition disputing an election for or the return of a member of the Assembly, to forward to the Clerk of the Assembly a copy of the petition and, after the trial of the petition, is, as

soon as is reasonably practicable, to forward to that Clerk a copy of the order of the Court.

- (2) The Prothonotary is, as soon as is reasonably practicable after the filing of a petition disputing a periodic Council election or the return of a member of the Council, to forward to the Clerk of the Council a copy of the petition and, after the trial of the petition, is, as soon as is reasonably practicable, to forward to that Clerk a copy of the order of the Court.

#### **242 Australian legal practitioner**

- (1) A party to the petition is not, except by consent of all parties or by leave of the Court of Disputed Returns, to be represented by an Australian legal practitioner.
- (2) No more than one Australian legal practitioner is to appear on behalf of any party.

#### **243 Costs**

- (1) The Court of Disputed Returns may:
  - (a) award costs against an unsuccessful party to the petition, and
  - (b) recommend, in its discretion, that costs be paid by the Crown.
- (2) The Court must not recommend that the costs of an unsuccessful party to a petition be paid by the Crown except in exceptional circumstances.

#### **244 Deposits applicable for costs**

If costs are awarded to any party against the petitioner, the deposit is to be applied in payment of the sum ordered, but otherwise the deposit is to be repaid to the petitioner.

#### **245 Other costs**

All other costs awarded by the Court of Disputed Returns, including any balance above the deposit payable by the petitioner, are 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.

### **Division 3 Qualifications and vacancies**

#### **246 Reference of question as to qualification or vacancy**

- (1) The Assembly may by resolution refer to the Court of Disputed Returns any question respecting:
  - (a) the qualification of a member to be or continue as a member of the Assembly, or
  - (b) a vacancy in the Assembly.

- (2) The Council may by resolution refer to the Court of Disputed Returns any question respecting:
  - (a) the qualification of a member to be or continue as a member of the Council, or
  - (b) a vacancy in the Council.
- (3) The Court of Disputed Returns has jurisdiction to hear and determine such a question.

#### **247 Speaker or President to state case**

If any question is referred to the Court of Disputed Returns under this Division, the Speaker or President is to provide to the Court:

- (a) a statement of the question that the Court is to hear and determine, and
- (b) any proceedings, papers, reports or documents relating to the question in the possession of the Assembly or Council.

#### **248 Parties to the reference**

The Court of Disputed Returns may:

- (a) 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
- (b) 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 is taken to be a party to the reference.

#### **249 Powers of Court**

- (1) The powers of the Court of Disputed Returns, on the hearing of any reference under this Division, include the following:
  - (a) the powers conferred on the Court by section 225 so far as they are applicable,
  - (b) the power to declare that any person was not qualified to be a member of the Assembly or the Council,
  - (c) the power to declare that any person was not capable of sitting as a member of the Assembly or the Council,
  - (d) the power to declare that there is a vacancy in the Assembly or the Council.
- (2) Despite subsection (1) (a), the Court does not, in relation to a reference of a question regarding the qualification of a member to be or continue as a member of the Council or a vacancy in the Council, have the following powers:



- (a) the power to declare any candidate duly elected who was not returned as elected,
- (b) the power to declare any election absolutely void.

#### **250 Order to be sent to House affected**

After the hearing and determination of any reference under this Division the Prothonotary is, as soon as is reasonably practicable, to forward to the Clerk of the Assembly or the Clerk of the Council, as the case requires, a copy of the order or declaration of the Court of Disputed Returns.

#### **251 Application of certain sections**

The provisions of sections 242 (Australian legal practitioner), 243 (Costs) and 245 (Other costs) apply, so far as applicable, to proceedings on a reference to the Court of Disputed Returns under this Division.

### **Division 4 Disputed election to fill casual vacancies in Legislative Council**

#### **252 Application of Division**

This Division applies only to and in respect of an election referred to in section 22D of the [Constitution Act 1902](#).

#### **253 Application of Divisions 1 and 2 to elections to fill casual vacancies in Legislative Council**

- (1) Divisions 1 and 2 (other than sections 232, 235–238, 240 and 241) 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 those Divisions apply.
- (2) However, the application of Divisions 1 and 2 is subject to the following modifications:
  - (a) the Court of Disputed Returns does not, in relation to any such election, have the following powers:
    - (i) the power to declare any candidate duly elected who was not returned as elected,
    - (ii) the power to declare any election absolutely void,
  - (b) section 229 is taken to read as follows:

#### **229 Effect of decisions**

If a person is declared not to be elected, the person ceases to be a member of the Council.

(c) section 234 (1) (b) is taken to read as follows:

(b) be signed by an enrolled person of or above the age of 18 years, and

(d) section 239 is taken to read as follows:

### **239 Immaterial errors do not void election**

An election is not to 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.

## **Part 9 Enforcement**

### **Division 1 General**

#### **254 Proceedings for offences**

- (1) Proceedings for an offence under 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 are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 200 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.
- (3) Proceedings in respect of an offence against this Act or the regulations may be commenced only within 3 years after the offence was committed.
- (4) Section 10 (2) (b) of this Act (which confers a function of instituting proceedings for certain offences on the Electoral Commission) operates to extend and not limit the persons who may institute proceedings for those offences.
- (5) Subsection (1) does not apply to proceedings for an offence that is declared by this Act to be an indictable offence.

#### **255 Proof of certain matters not required**

In any legal proceedings, proof is not required (until prima facie evidence is given to the contrary) of the following:

- (a) the constitution of the Electoral Commission,
- (b) any resolution of the Electoral Commission,
- (c) the appointment of or holding of office by the Electoral Commissioner or any other

member of the Electoral Commission,

(d) the presence or nature of a quorum at any meeting of the Electoral Commission.

### **256 Certificate evidence relating to enrolment**

A certificate signed by the Electoral Commissioner certifying that a specified person was or was not enrolled in respect of a specified address at a specified time or during a specified period is admissible in any proceedings and is prima facie evidence of the matter certified.

### **257 Prosecution of parties that are unincorporated associations**

- (1) Proceedings for an offence under this Act alleged to have been committed by a party that is an unincorporated association (whether the subject of the offence provision is described as a party or a person) may be brought against the party in its own name (and not in the name of any of its members), and, for the purposes of those proceedings, any rules of court relating to the service of documents, are taken to have effect as if the party were a corporation.
- (2) A fine imposed on a party that is an unincorporated association for an offence under this Act is payable out of the property of the party and is not payable out of the property of the members or officers of the party unless the property is held for or on behalf of the party.
- (3) The [Criminal Procedure Act 1986](#) has effect in a case in which a party that is an unincorporated association is charged with an offence under this Act in the same manner as it has effect in the case of a corporation charged with such an offence.

### **258 Enforcement powers of Electoral Commission**

- (1) For the purpose of enforcing compliance with this Act, the Electoral Commission may exercise any investigative or other functions the Electoral Commission has under the [Electoral Funding Act 2018](#) for the purpose of enforcing compliance with that Act.
- (2) Accordingly, a reference in Part 9 of that Act to “this Act” is taken to be a reference to this Act.

## **Division 2 Penalty notices**

### **Subdivision 1 Penalty notice for offence of failing to vote**

#### **259 Penalty notices for offence of failing to vote**

- (1) 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.
- (2) If an elector is indicated on a list as not having voted at the election, the Electoral

Commissioner, within 3 months after the election day concerned, must issue a penalty notice to the elector.

- (3) A penalty notice is a notice to the effect that, if the elector does not wish to have the failure to vote dealt with by a court, the person may, within the time specified in the notice:
- (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.
- (4) An elector must not, in response to a penalty notice issued under this section, make a statement that gives a reason for the failure of an elector to vote that the elector knows to be false or misleading in a material particular.

Maximum penalty: 1 penalty unit.

- (5) The *Fines Act 1996* applies to a penalty notice issued under this section.

**Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (6) The Electoral Commissioner is not required to issue a penalty notice on an elector if it appears to the Commissioner that the elector has a sufficient reason for the failure to vote.
- (7) If, in response to a penalty notice and within the time specified 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,
- no person is liable to any further proceedings for the alleged offence.
- (8) 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 is to include a statement to that effect in any penalty reminder notice issued under the *Fines Act 1996*.
- (9) 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 the elector:
- (a) was absent from New South Wales on election day, or
  - (b) was ineligible to vote at the election, or
  - (c) had an honest belief that abstention from voting was part of his or her religious

duty, or

- (d) had a lack of mental capacity (as certified by a registered medical practitioner), or
- (e) was unable, for any reason acceptable to the Electoral Commissioner, to vote at the election.

For the avoidance of doubt, it is not a sufficient reason for the failure of an elector to vote at an election that the elector did not know that an election was being conducted.

(10) In this section, a reference to the ***time specified***, in relation to 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.

#### **260 Notation on list of non-voters of response to penalty notice**

The Electoral Commissioner is to note on the list prepared under section 259, in relation to each elector to whom a penalty notice is issued:

- (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.

#### **261 List to be evidence**

- (1) An entry on the list prepared under section 259 to the effect:
  - (a) that a penalty notice was issued to an elector—is evidence of the issue of the notice, or
  - (b) that there was no response to a penalty notice issued to an elector—is evidence that there was no such response within the time specified under section 259, 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 259.
- (2) A list prepared under section 259 containing the name of an elector is evidence that the elector did not vote at the election.
- (3) Subsections (1) and (2) apply in relation to a copy of, or an extract from, the list prepared under section 259, certified by the Electoral Commissioner to be a true copy or extract, in the same way as those provisions apply in relation to the list prepared

under section 259.

## **262 Opening sealed packages containing rolls used at election**

For the purposes of this Act, the Electoral Commissioner at any election:

- (a) may open and if necessary break the seal of any package containing the authorised rolls used at the election, and examine those rolls for the purpose of preparing the list under section 259, and
- (b) at the conclusion of the examination must replace those rolls in the packages from which they were taken, and re-seal them, and comply with the provisions of section 175, as the case requires.

## **Subdivision 2 Penalty notice for other offences**

### **263 Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act (other than an offence against section 207 (Offence of failing to vote)) or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

**Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section, **authorised officer** means an inspector within the meaning of the *Electoral Funding Act 2018*.

## **Part 10 Miscellaneous**

### **Division 1 Matters relating to conduct of elections**

#### **264 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*.

### **265 Payment of expenses**

The Governor may, by order 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 those expenses are accordingly appropriated to the extent necessary.

### **266 Provision as to Sunday and public holidays**

If the last day of a period of time prescribed or allowed by this Act for the doing of any thing falls:

- (a) on a Sunday, or
- (b) on a day that is a public holiday or bank holiday in the place in which the thing is to be or may be done,

the thing may be done on the first day following that is not a Sunday, or a public holiday or bank holiday in that place, as the case requires.

## **Division 2 General**

### **267 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.

(2) If:

- (a) alteration of a form in the Schedules to this Act is necessary, or
- (b) the time allowed to do any act is insufficient, and that extension of time (and any alteration of dates consequent on that extension) is necessary,

the regulations or the Governor, by notification in the Gazette, may make that alteration or declare the extension of time concerned.

(3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

### **268 Disclosure of information**

A person must not disclose any information obtained in connection with the administration or execution of this Act (or any other Act conferring or imposing functions on the Electoral Commission or Electoral Commissioner) unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or

- (b) in connection with the administration or execution of this Act (or any such other Act), or
- (c) for the purposes of any legal proceedings arising out of this Act (or any such other Act) or of any report of any such proceedings, or
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

Maximum penalty: 1,000 penalty units.

### **269 Status of approvals**

- (1) For the avoidance of doubt, the existence of a provision of a regulation dealing with a matter does not prevent an approval dealing with the same matter.
- (2) However, if a provision of a regulation is inconsistent with an approval, the provision of the regulation prevails to the extent of the inconsistency.

### **270 Publication of approvals**

An approval by the Electoral Commissioner or the Electoral Commission under this Act (including the approval of a form or of the manner and form of making an application, claim or request) must be:

- (a) in writing, and
- (b) published on the Electoral Commission's website.

### **271 Review of general elections and by-elections**

- (1) The Electoral Commissioner is to conduct a review of the administration of each general election and by-election under this Act and provide a report on the outcome of the review to the Minister.
- (2) The review is to be undertaken as soon as possible after the conduct of the election.
- (3) The Minister is, within one month after the report on the outcome of the review is provided to the Minister, to cause it to be tabled in each House of Parliament.

### **272 (Repealed)**

## **Schedule 1 Provisions relating to Electoral Commission**

(Section 9 (3))

### **1 Definitions**

In this Schedule:



**appointed member** means a member of the Electoral Commission (other than the Electoral Commissioner).

**Chairperson** means the Chairperson of the Electoral Commission.

**deputy** means a deputy of an appointed member appointed under this Schedule.

**member** means a member of the Electoral Commission.

## **2 Persons not eligible for appointment**

- (1) A person is not eligible for appointment as an appointed member if the person is (or was at any time during the period of 5 years immediately preceding the proposed appointment) any of the following:
  - (a) a member or officer of a party,
  - (b) a member of any legislature (in Australia or in any other country) or a candidate for election as such a member,
  - (c) a councillor or mayor of a council, or the chairperson or a member of a county council, under the [Local Government Act 1993](#) or a candidate for election to such an office,
  - (d) a party agent or official agent under the [Electoral Funding Act 2018](#).
- (2) A person who is a member of a public authority constituted by an Act or of the governing body of any such public authority is also not eligible for appointment as an appointed member.

## **3 Terms of office of appointed members**

Subject to this Schedule, an appointed member holds office for such period (not exceeding 7 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

## **4 Part-time appointments**

Appointed members hold office as part-time members.

## **5 Deputies of appointed members**

- (1) The Governor may, from time to time, appoint a person to be the deputy of an appointed member, and may revoke any such appointment.
- (2) The deputy of an appointed member must be a person who is eligible for appointment as the appointed member.
- (3) In the absence of an appointed member, the appointed member's deputy may, if available, act in the place of the appointed member.

- (4) While acting in the place of an appointed member, a person has all the functions of the member and is taken to be a member.
- (5) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the appointed member.

## **6 Remuneration of appointed members and deputies**

An appointed member or deputy 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 member or deputy.

## **7 Vacancy in office of appointed member and deputies**

- (1) The office of an appointed member or deputy becomes vacant if the member or deputy:
  - (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 Governor, or
  - (d) is removed from office by the Governor under clause 8 (in relation to an appointed member) or clause 5 (in relation to a deputy), or
  - (e) in the case of an appointed member, is absent from 3 consecutive meetings of the Electoral Commission of which reasonable notice has been given to the member personally or by post, except on leave granted by the Governor or unless the deputy of the member was present at any or all of those meetings, 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 person who is not eligible to be appointed as the appointed member or deputy.

- (2) Section 47 (1) (b) of the *Interpretation Act 1987* does not apply to, or to the office of, an appointed member.

### **8 Suspension and removal from office of appointed members**

An appointed member 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 appointed member suspended under this clause is restored to office by force of this Act unless each House of Parliament at the expiry of the period of 21 sitting days from the day when the statement was laid before that House declares by resolution that the appointed member ought to be removed from office,
- (c) if each House of Parliament does so declare within the relevant period of 21 sitting days, the appointed member is to be removed from office by the Governor accordingly.

### **9 Filling of vacancy in office of appointed member**

If the office of any appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

### **10 Disclosure of pecuniary interests**

(1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Electoral Commission, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Electoral Commission.

(2) A disclosure by a member at a meeting of the Electoral Commission that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the

disclosure and that is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Electoral Commission in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Electoral Commission.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Electoral Commission otherwise determines:
  - (a) be present during any deliberation of the Electoral Commission with respect to the matter, or
  - (b) take part in any decision of the Electoral Commission with respect to the matter.
- (5) For the purposes of the making of a determination by the Electoral Commission under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Electoral Commission for the purpose of making the determination, or
  - (b) take part in the making by the Electoral Commission of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Electoral Commission.

## **11 Effect of certain other Acts**

- (1) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to an appointed member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **12 Personal liability**

- (1) A matter or thing done or omitted to be done by the Electoral Commission, a member of the Electoral Commission or a person acting under the direction of the Electoral Commission does not, if the matter or thing was done or omitted to be done in good

faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

(2) However, any such liability attaches instead to the Crown.

### **13 General procedure**

The procedure for the calling of meetings of the Electoral Commission and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Electoral Commission.

### **14 Quorum**

The quorum for a meeting of the Electoral Commission is 2 members (one of whom is the Chairperson or the deputy of the Chairperson).

### **15 Presiding member**

(1) The Chairperson (or, in the absence of the Chairperson, the deputy of the Chairperson) is to preside at a meeting of the Electoral Commission.

(2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **16 Voting**

A decision supported by a majority of the votes cast at a meeting of the Electoral Commission at which a quorum is present is the decision of the Electoral Commission.

### **17 Transaction of business outside meetings or by telephone etc**

(1) The Electoral Commission may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Electoral Commission for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Electoral Commission made at a meeting of the Electoral Commission.

(2) The Electoral Commission may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone or other electronic means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1), or

(b) a meeting held in accordance with subclause (2),

the Chairperson and each other member have the same voting rights as they have at

an ordinary meeting of the Electoral Commission.

- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Electoral Commission.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by electronic means.

## Schedule 2 Provisions relating to Electoral Commissioner

(Section 11 (2))

### 1 Eligibility for appointment as Electoral Commissioner

- (1) A person is not eligible for appointment as the Electoral Commissioner if the person is (or was at any time during the period of 5 years immediately preceding the proposed appointment) any of the following:
  - (a) a member or officer of a party,
  - (b) a member of any legislature (in Australia or in any other country) or a candidate for election as such a member,
  - (c) a councillor or mayor of a council, or the chairperson or a member of a county council, under the *Local Government Act 1993* or a candidate for election to such an office,
  - (d) a party agent or official agent under the *Electoral Funding Act 2018*.
- (2) A person who is a member of a public authority constituted by an Act or of the governing body of any such public authority is also not eligible for appointment as the Electoral Commissioner.

### 2 Term 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 at the end of the term referred to in paragraph (a)), not exceeding 10 years, as is specified in the instrument of re-appointment.
- (2) A person who holds or has held office as Electoral Commissioner is not entitled to appointment as Electoral Commissioner except as permitted by subclause (1) (b).
- (3) In subclause (2), **appointment** includes re-appointment.

### **3 Vacancy in office**

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 30 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 person who is not eligible under clause 1 to be appointed as the Electoral Commissioner, or
- (k) is removed from office by the Governor under clause 4.

### **4 Suspension and removal from office**

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 clause is restored to office by force of this Act unless each House of Parliament at the expiry of the period of 21 sitting 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 sitting

days, the Electoral Commissioner is to be removed from office by the Governor accordingly.

## 5 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 11.
- (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 staff of the Electoral 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 11 or under subclause (1), or
  - (b) during such an illness or absence, until a person is appointed by the Minister to act as Electoral Commissioner under subclause (2).
- (4) **Functions of person acting as Electoral Commissioner** A person, while acting as Electoral Commissioner under this clause, 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 is not eligible for appointment as Electoral Commissioner cannot be appointed to act as Electoral Commissioner under this clause.
- (6) **Notification of appointment of substitute** The Electoral Commissioner must, as soon as practicable, advise the Minister of any appointment under subclause (3) or of the termination of any such appointment.
- (7) **Termination of appointment of member of staff** The appointment of a person under subclause (3) terminates if the person ceases to be a member of staff of the Electoral Commission.
- (8) **Remuneration** A person, while acting as Electoral Commissioner under this clause, 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 clause limits the application of section 47 of the *Interpretation Act 1987* in relation to any appointment under this clause.

(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 clause.

(11) **Definition of “election period”** In this clause:

***election period*** means:

(a) in relation to a local government election—the period starting with the closing date for the election and ending 30 days after polling day (within the meaning of the *Local Government Act 1993*), and

(b) in relation to a State election—the period between the issue of the writ or writs for an election and the return of the writ or all the writs.

## **6 Electoral Commissioner not Public Service employee**

The office of Electoral Commissioner is a statutory office and the provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to that office.

## **7 Personal liability**

(1) A matter or thing done or omitted to be done by the Electoral Commissioner or a person acting under the direction of the Electoral Commissioner does not, if the matter or thing was done or omitted to be done in good faith for the purpose of exercising a function under this Act, subject the Electoral Commissioner or person so acting personally to any action, liability, claim or demand.

(2) However, any such liability attaches instead to the Crown.

## **Schedule 3 Provisions relating to Redistribution Panel**

(Section 18 (1))

### **Part 1 General**

#### **1 Definitions**

In this Schedule:

***Chairperson*** means the Chairperson of the Redistribution Panel.

***member*** means any member of the Redistribution Panel.

## **Part 2 Constitution**

### **2 Persons not eligible for appointment**

- (1) A person is not eligible for appointment as Chairperson if the person is (or was at any time during the period of 5 years immediately preceding the proposed appointment) any of the following:
  - (a) a member or officer of a party,
  - (b) a member of any legislature (in Australia or in any other country) or a candidate for election as such a member,
  - (c) a councillor or mayor of a council, or the chairperson or a member of a county council, under the *Local Government Act 1993* or a candidate for election to such an office,
  - (d) a party agent or official agent under the *Electoral Funding Act 2018*.
- (2) A person who is a member of a public authority constituted by an Act or of the governing body of any such public authority is also not eligible for appointment as Chairperson.

### **3 Terms of office of Chairperson**

Subject to this Schedule, the Chairperson holds office for such period (not exceeding 7 years) as is specified in the Chairperson's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **4 Part-time appointments**

Members hold office as part-time members.

### **5 Remuneration of Chairperson and members**

- (1) The Chairperson is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.
- (2) A member (other than the Chairperson) is not entitled to be paid remuneration in relation to that membership.
- (3) However, a member is entitled to be paid such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.

### **6 Vacancy in office of Chairperson**

- (1) The office of Chairperson becomes vacant if the Chairperson:
  - (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 Governor, or
  - (d) is removed from office by the Governor under clause 7, or
  - (e) is absent from 3 consecutive meetings of the Redistribution Panel of which reasonable notice has been given to the member personally or by post, except on leave granted by the Governor, 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 person who is not eligible to be appointed as Chairperson.
- (2) Section 47 (1) (b) of the *Interpretation Act 1987* does not apply to, or to the office of, the Chairperson.

## **7 Suspension and removal from office of Chairperson**

A Chairperson 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) a Chairperson suspended under this clause is restored to office by force of this Act unless each House of Parliament at the expiry of the period of 21 sitting days from the day when the statement was laid before that House declares by resolution that the Chairperson ought to be removed from office,
- (c) if each House of Parliament does so declare within the relevant period of 21 sitting days, the Chairperson is to be removed from office by the Governor accordingly.

## **8 Filling of vacancy in office of Chairperson**

If the office of Chairperson becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **9 Effect of certain other Acts**

(1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a member of the Redistribution Panel.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of Chairperson or from accepting and retaining any remuneration payable to the person under this Act as Chairperson.

## **10 Personal liability**

(1) A matter or thing done or omitted to be done by the Redistribution Panel, a member of the Redistribution Panel or a person acting under the direction of the Redistribution Panel does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

(2) However, any such liability attaches instead to the Crown.

## **Part 3 Procedure**

### **11 General procedure**

The procedure for the calling of meetings of the Redistribution Panel and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Redistribution Panel.

### **12 Quorum**

The quorum for a meeting of the Redistribution Panel is a majority of its members for the time being, one of whom must be the Chairperson.

### **13 Presiding member**

(1) The Chairperson is to preside at a meeting of the Redistribution Panel.

- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

#### **14 Voting**

A decision supported by a majority of the votes cast at a meeting of the Redistribution Panel at which a quorum is present is the decision of the Redistribution Panel.

#### **15 Transaction of business outside meetings or by telephone etc**

- (1) The Redistribution Panel may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Redistribution Panel for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Redistribution Panel made at a meeting of the Panel.
- (2) The Redistribution Panel may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone or other electronic means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
- (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),
- the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Redistribution Panel.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Redistribution Panel.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by electronic means.

#### **16 First meeting**

The Minister may call the first meeting of the Redistribution Panel in such manner as the Minister thinks fit.

### **Schedule 4 Legislative Assembly ballot paper**

(Sections 100 (2), 103 (2) and 155 (3))

Issuing officer's initials

#### **Ballot paper**

Legislative Assembly Election

Electoral District of *(here insert name of district)*

Write the number **1** in the square next to the candidate of your choice.

\*You can show more choices, if you want to, by writing numbers in the other squares, starting with the number **2**.  
Fold this ballot paper so your vote cannot be seen and place it in the ballot box (or in the envelope provided).

**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 5 Legislative Council ballot paper

(Sections 100 (3), 103 (2) and 155 (3))

## 1 Form of ballot paper for periodic Council election with 33 groups or fewer

NEW SOUTH WALES Election of 21 Members of Legislative Council

<p><b>You may vote either ABOVE or BELOW the line:</b></p> <div style="border: 1px solid black; padding: 2px; margin: 5px 0;"> <p><b><i>If you vote ABOVE the line:</i></b></p> </div> <p>Write the number <b>1</b> in the square for the group of your choice.                  You can show more choices, if you want to, by writing numbers in the other squares, starting with the number <b>2</b>.                  Do not write any numbers below the line.                  Fold this ballot paper so your vote cannot be seen and place it in the ballot box (or in the envelope provided).</p>	<p style="text-align: center;">GROUP A * □</p>	<p style="text-align: center;">GROUP C * □</p>	<p style="text-align: center;">GROUP Q * □</p>
<p><b>OR</b></p> <div style="border: 1px solid black; padding: 2px; margin: 5px 0;"> <p><b><i>If you vote BELOW the line:</i></b></p> </div> <p>Write the numbers <b>1 to 15</b> in the squares for candidates in the order of your choice. You must number at least <b>15</b> squares for your vote to be counted.                  You can show more choices, if you want to, by writing numbers in the other squares, starting with the number <b>16</b>.                  Do not write any numbers above the line.                  Fold this ballot paper so your vote cannot be seen and place it in the ballot box (or in the envelope provided).</p>	<p style="text-align: center;">GROUP A * □</p> <p style="text-align: center;">GROUP B * □</p> <p style="text-align: center;">GROUP C * □</p> <p style="text-align: center;">GROUP Q * □</p>	<p style="text-align: center;">GROUP B * □</p> <p style="text-align: center;">GROUP C * □</p> <p style="text-align: center;">GROUP Q * □</p>	<p style="text-align: center;">GROUP Q * □</p> <p style="text-align: center;">GROUP Q * □</p> <p style="text-align: center;">GROUP Q * □</p> <p style="text-align: center;">GROUP Q * □</p>
<p>□ PARKER Allan **</p> <p>□ MILLER John **</p> <p>.....</p> <p>□ MORGAN Albert **</p> <p>□ LUMSDAINE Elaine **</p> <p>□ POULOS Nicholas **</p>	<p>□ WILLIAMS Gregory **</p> <p>□ ROGERS Ralph **</p> <p>□ PERCIVAL Eleanor **</p>	<p>□ LEVY Mark **</p> <p>□ WOOD Henry **</p> <p>.....</p> <p>□ FONG Phillip **</p> <p>□ ILIC Petar **</p> <p>□ HAYES Graham **</p>	<p>□ RODGER Jodie ***</p> <p>□ PASCALIS Sasha ***</p> <p>□ ADLER Greg ***</p> <p>□ SPICER Melanie ***</p> <p>□ BOOKMAN John **</p> <p>□ CRANE June **</p> <p>.....</p> <p>□ KING Henry **</p> <p>□ WILSON Mary **</p> <p>□ FRENCH Charles **</p>

\* Here insert name of registered party or composite name if to be printed \*\* Here insert name of registered party if to be printed \*\*\* Here insert name of registered party or word "Independent" if to be printed

## 2 Form of ballot paper for periodic Council election with more than 33 groups

**BALLOT PAPER**

NEW SOUTH WALES Election of 21 Members of Legislative Council

<p><b>You may vote in one of two ways:</b></p> <p style="text-align: center;"><b>either</b></p> <p>Place the number "1" in the square for the group of candidates for whom you desire to vote. You <i>may</i> if you wish vote for additional groups of candidates by placing consecutive numbers beginning with the number "2" in the squares for 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><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 preference for them. You <i>may</i> 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>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; border-right: 1px solid black; padding: 5px;"> <p style="text-align: center;">GROUP A * <input type="checkbox"/></p> <p style="text-align: center;">GROUP L * <input type="checkbox"/></p> </td> <td style="width: 25%; border-right: 1px solid black; padding: 5px;"> <p style="text-align: center;">GROUP B * <input type="checkbox"/></p> <p style="text-align: center;">GROUP M * <input type="checkbox"/></p> </td> <td style="width: 25%; border-right: 1px solid black; padding: 5px;"> <p style="text-align: center;">GROUP K * <input type="checkbox"/></p> <p style="text-align: center;">GROUP V * <input type="checkbox"/></p> </td> <td style="width: 25%; padding: 5px;"> <p style="text-align: center;">GROUP V * <input type="checkbox"/></p> </td> </tr> <tr> <td style="border-right: 1px solid black; padding: 5px;"> <p style="text-align: center;">GROUP A * <input type="checkbox"/></p> <p style="text-align: center;">PARKER Alan **</p> <p style="text-align: center;">GROUP L * <input type="checkbox"/></p> <p style="text-align: center;">MILLER John **</p> <p style="text-align: center;">LUNSDAINE Elaine **</p> </td> <td style="border-right: 1px solid black; padding: 5px;"> <p style="text-align: center;">GROUP B * <input type="checkbox"/></p> <p style="text-align: center;">WILLIAMS Gregory **</p> <p style="text-align: center;">HANSON Richard **</p> <p style="text-align: center;">HAMMOND Maureen **</p> </td> <td style="border-right: 1px solid black; padding: 5px;"> <p style="text-align: center;">GROUP K * <input type="checkbox"/></p> <p style="text-align: center;">BROOKMAN John **</p> <p style="text-align: center;">CRANE June **</p> <p style="text-align: center;">ILIC Petar **</p> </td> <td style="padding: 5px;"> <p style="text-align: center;">GROUP V * <input type="checkbox"/></p> <p style="text-align: center;">O'KEEFE John **</p> <p style="text-align: center;">McAULIFFE Paul **</p> <p style="text-align: center;">WHITE Veronica **</p> <p style="text-align: center;">RODGERS Jodie ***</p> <p style="text-align: center;">PASCALIS Sasha ***</p> <p style="text-align: center;">REID Lisa ***</p> <p style="text-align: center;">ADLER Greg ***</p> </td> </tr> </table>	<p style="text-align: center;">GROUP A * <input type="checkbox"/></p> <p style="text-align: center;">GROUP L * <input type="checkbox"/></p>	<p style="text-align: center;">GROUP B * <input type="checkbox"/></p> <p style="text-align: center;">GROUP M * <input type="checkbox"/></p>	<p style="text-align: center;">GROUP K * <input type="checkbox"/></p> <p style="text-align: center;">GROUP V * <input type="checkbox"/></p>	<p style="text-align: center;">GROUP V * <input type="checkbox"/></p>	<p style="text-align: center;">GROUP A * <input type="checkbox"/></p> <p style="text-align: center;">PARKER Alan **</p> <p style="text-align: center;">GROUP L * <input type="checkbox"/></p> <p style="text-align: center;">MILLER John **</p> <p style="text-align: center;">LUNSDAINE Elaine **</p>	<p style="text-align: center;">GROUP B * <input type="checkbox"/></p> <p style="text-align: center;">WILLIAMS Gregory **</p> <p style="text-align: center;">HANSON Richard **</p> <p style="text-align: center;">HAMMOND Maureen **</p>	<p style="text-align: center;">GROUP K * <input type="checkbox"/></p> <p style="text-align: center;">BROOKMAN John **</p> <p style="text-align: center;">CRANE June **</p> <p style="text-align: center;">ILIC Petar **</p>	<p style="text-align: center;">GROUP V * <input type="checkbox"/></p> <p style="text-align: center;">O'KEEFE John **</p> <p style="text-align: center;">McAULIFFE Paul **</p> <p style="text-align: center;">WHITE Veronica **</p> <p style="text-align: center;">RODGERS Jodie ***</p> <p style="text-align: center;">PASCALIS Sasha ***</p> <p style="text-align: center;">REID Lisa ***</p> <p style="text-align: center;">ADLER Greg ***</p>
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\* Here insert name of registered party or composite name if to be printed \*\* Here insert name of registered party if to be printed \*\*\* Here insert name of registered party or word "Independent" if to be printed

## Schedule 6 Special provisions relating to multiple voters

### Part 1 Declaration of special electors

#### 1 Electoral Commissioner may declare a convicted multiple voter to be a special voter

- (1) The Electoral Commissioner may, by order, declare that an elector is a special elector



for the purposes of this Schedule (a **special elector**) if:

- (a) the elector has been convicted of an offence against section 212 (b), or
  - (b) the Electoral Commissioner has reasonable grounds to suspect that the elector has contravened section 212 (b) (whether or not the elector has been convicted of an offence for the contravention).
- (2) The Electoral Commissioner must notify the elector in writing of a declaration under subclause (1).
- (3) A declaration under subclause (1) (a) ceases to have effect if the elector's conviction is quashed on appeal.

## **Part 2 Complaints regarding declarations based on reasonable suspicion**

### **2 Complaints to be made to Electoral Commissioner**

- (1) An elector may complain to the Electoral Commissioner regarding a declaration made under clause 1 (1) (b).
- (2) A complaint made by an elector must:
- (a) be in writing and in the approved form, and
  - (b) be signed by the elector, and
  - (c) set out the ground of the complaint.

### **3 Electoral Commissioner to investigate and deal with complaints**

- (1) The Electoral Commissioner is to investigate a complaint made under this Part.
- (2) After investigating the complaint, the Electoral Commissioner may:
- (a) revoke the declaration, or
  - (b) refuse to revoke the declaration.
- (3) The Electoral Commissioner is to give the complainant written notice of the Electoral Commissioner's decision under this clause and the reasons for the decision.
- (4) The Electoral Commissioner may exclude information from a notice under subclause (3) if the Electoral Commissioner is satisfied that there is an overriding public interest against the disclosure of the information (within the meaning of the [Government Information \(Public Access\) Act 2009](#)).

#### **4 Review by Civil and Administrative Tribunal**

An elector who has made a complaint under this Part may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of the decision of the Electoral Commissioner regarding the complaint.

### **Part 3 Effect of declaration**

#### **5 Special elector's name to be marked on rolls and lists**

The Electoral Commissioner must ensure that any authorised roll or list of electors prepared under this Act is marked to show that the elector is a special elector.

#### **6 Voting by special electors at elections**

- (1) A special elector is not permitted to vote in an election except in accordance with this clause.
- (2) A special elector at a voting centre in a district, whose name appears on the authorised roll for the district, but is marked to show that the elector is a special elector, may apply to an election official to vote as a special elector at the voting centre.
- (3) If:
  - (a) a special elector is at a voting centre that is not designated for the electoral district for which the elector claims to be enrolled, and
  - (b) the special elector's name appears on the authorised roll for the district for which the elector is enrolled, but is marked to show that the elector is a special elector,the special elector may apply to an election official to vote as an absent special elector at the voting centre.
- (4) The special elector must give the following information to the election official at the voting centre:
  - (a) the special elector's name,
  - (b) the special elector's date of birth,
  - (c) the electoral district for which the special elector claims to be enrolled.
- (5) The election official may, if he or she thinks fit, and at the request of any scrutineer must, put to the special elector any of the questions set out in section 128 that are applicable to the case.
- (6) If the special elector answers the questions satisfactorily, or if no questions are put to him or her, the special elector is to be permitted to vote after making a declaration in

the approved form before an election official at the voting centre.

- (7) For an absent special elector, a single declaration may be approved for both this clause and section 135 (Absent voters).

## **Schedule 7 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (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 on the NSW legislation website, 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.
- (4) Any such provision has effect despite anything to the contrary in this Schedule.
- (5) The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

### **Part 2 Provisions consequent on enactment of this Act**

#### **2 Definition**

In this Part:

**former Act** means the *Parliamentary Electorates and Elections Act 1912* as in force immediately before its repeal by this Act.

#### **3 Continuation of Electoral Commission**

- (1) The Electoral Commission under this Act is taken to be the continuation of the Electoral Commission under the former Act immediately before the commencement of this clause.

- (2) The persons holding office as members of the Electoral Commission under section 21B (1) (a) and (c) of the former Act immediately before the commencement of this clause are taken to have been appointed under section 9 (1) (a) and (c) of this Act, respectively, for the balance of those persons' terms of office under the former Act.
- (3) A person holding office as a deputy of an appointed member of the Electoral Commission under clause 5 of Schedule 21A to the former Act immediately before the commencement of this clause is taken to have been appointed as deputy of that appointed member under clause 5 of Schedule 1 to this Act.

#### **4 Continuation in office of Electoral Commissioner**

- (1) The person holding office as the Electoral Commissioner under the former Act immediately before the commencement of this clause is taken to have been appointed as the Electoral Commissioner under this Act for the balance of the Electoral Commissioner's term of office under the former Act.
- (2) That person is eligible for re-appointment as the Electoral Commissioner 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 Schedule 2 to this Act, including clause 2 (2) of that Schedule.

#### **5 Pending requests to be silent electors**

A request made by a person under section 31 of the former Act (Silent electors: request for address not to be shown on roll) that has not been finally determined on the commencement of this clause is taken to be a request under section 36 of this Act.

#### **6 Arrangement with Commonwealth**

Any arrangement made by the Governor and the Governor-General of the Commonwealth under section 49 of the former Act that is in force immediately before the commencement of this clause is taken to be an arrangement made under section 56 of this Act.

#### **7 Existing delegations under former Act**

Any delegation of a function under the former Act and in force immediately before the repeal of the former Act is taken to be a delegation of a comparable function under this Act.

#### **8 Existing registers**

- (1) Each register under the former Act (an **existing register**) is taken to be the register for the purposes of this Act (a **corresponding register**).
- (2) An existing register that becomes a corresponding register by operation of this clause may continue to include information that was recorded for the purposes of the former Act for which the register was maintained.

- (3) Without limiting any other provision of this Act, the Electoral Commission or the Electoral Commissioner, as the case requires, may update or correct information recorded in an existing register that becomes a corresponding register to reflect changes resulting from the commencement of provisions of this Act.

## **9 Continuation of registrations of registered parties**

- (1) A party that was, immediately before the commencement of this Act, a registered party under the former Act is taken to be a registered party under this Act that was registered on its date of registration under the former Act.
- (2) A party that is taken to be a registered party under subclause (1) and that does not have a written constitution must, within 12 months of the commencement of this Act (the **transition period**), adopt a written constitution.
- (3) The Electoral Commission may, after the expiry of the transition period, cancel the registration of such a registered party if the Electoral Commission is satisfied on reasonable grounds that party does not have a written constitution.
- (4) Section 68 (4) extends to a cancellation of registration under this clause.

## **10 Entitlements resulting from party registration not available until 12 months after registration**

Section 63 (6) does not apply in relation to a party registered before the commencement of that subsection.

## **11 References to Electoral Commission and Electoral Commissioner in other Acts and instruments**

A reference in any other Act or instrument to the Electoral Commission constituted, or the Electoral Commissioner appointed, under the former Act is to be read as a reference to the Electoral Commission constituted, or the Electoral Commissioner appointed, under this Act, as the case requires.

## **12 General savings provision**

- (1) Subject to this Part and the regulations, anything done under or for the purposes of a provision of the former Act is, to the extent that the thing has effect immediately before the repeal of the provision, taken to have been done under or for the purposes of the corresponding provision (if any) of this Act.
- (2) Without limiting subclause (1), the exercise of a function by the Electoral Commissioner under or for the purposes of a provision of the former Act that is a function of the Electoral Commission under this Act is taken to have been done by the Electoral Commission under or for the purposes of the corresponding provision of this Act.

## **Schedule 8 (Repealed)**