



Australian Capital Territory

Health Professions Boards (Elections) Act 1980

1980-45

Republication No 5

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About this republication

The republished law

This is a republication of the *Health Professions Boards (Elections) Act 1980* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 9 April 2004. It also includes any amendment, repeal or expiry affecting the republished law to 9 April 2004.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Health Professions Boards (Elections) Act 1980

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
3	Definitions for Act 2
4	Returning officer 5
Part 2	Beginning of electoral process
5	Dates to be fixed for purposes of elections 6
6	List of registered practitioners 6
7	Registered practitioners to be notified of dates 7
Part 3	Nominations
8	Nominations 8
9	Correction of defective nominations 10

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09/04/04

Health Professions Boards (Elections) Act 1980
Effective: 09/04/04-06/07/05

contents 1

Contents

		Page
10	Withdrawal of nomination	10
11	Declaration of nominated candidate	11
12	Proceedings on nomination day	11
Part 4	Voting	
13	Persons eligible to vote	12
14	Number of votes	12
15	Distribution of voting papers	12
16	Voting papers and envelopes	12
17	Replacement of voting papers	13
18	Manner of voting	14
Part 5	Scrutiny	
19	Ballot box	16
20	Appointment of scrutineers	16
21	Scrutiny of votes and declarations	17
22	Counting of votes	18
23	Retention of voting papers	18
24	Informal voting papers	19
25	Publication and notification of result of election	19
26	Request for recount of votes	20
27	Conduct of recount	20
28	Destruction of papers	20
29	Intruders	21
Part 6	Disputed elections	
30	Petition to dispute election	22
31	Procedure relating to hearing of petitions	22
32	Powers of court	23
33	Effect of decision of court	24
34	Effect of illegalities or irregularities at election	24
Part 7	Miscellaneous	
36	Duty of witness	26
37	Marks on voting papers	26

	Contents
	Page
38 Offences in connection with voting	26
39 Approved forms	27
 Schedule 2 Procedure for counting votes—1 candidate only to be elected	 28
 Schedule 3 Procedure for counting votes—more than 1 candidate to be elected	 30
 Endnotes	
1 About the endnotes	35
2 Abbreviation key	35
3 Legislation history	35
4 Amendment history	38
5 Earlier republications	41



Australian Capital Territory

Health Professions Boards (Elections) Act 1980

An Act relating to the election of members of certain professional registration boards

Part 1 Preliminary

1 Name of Act

This Act is the *Health Professions Boards (Elections) Act 1980*.

3 Definitions for Act

In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

board means—

- (a) the chiropractors and osteopaths board; or
- (b) the dental board; or
- (c) the medical board; or
- (d) the nurses board; or
- (e) the optometrists board; or
- (f) the pharmacy board; or
- (g) the physiotherapists board; or
- (h) the veterinary surgeons board.

chairperson, in relation to an election held for a prescribed Act, means the chairperson of the board established under that Act or, if for any reason the chairperson is unable to act, the deputy chairperson of that board.

Chiropractors and Osteopaths Act means the *Chiropractors and Osteopaths Act 1983*.

dental board means the Dental Board established under the Dentists Act.

Dentists Act means the *Dentists Act 1931*.

election means an election held for—

- (a) the Chiropractors and Osteopaths Act; or
- (b) the Dentists Act; or
- (c) the Medical Practitioners Act; or
- (d) the Nurses Act; or
- (e) the Optometrists Act; or
- (f) the Pharmacy Act; or
- (g) the Physiotherapists Act; or
- (h) the Veterinary Surgeons Act.

medical board means the Medical Board established under the Medical Practitioners Act.

Medical Practitioners Act means the *Medical Practitioners Act 1930*.

Nurses Act means the *Nurses Act 1988*.

nurses board means the Nurses Board established under the Nurses Act.

Optometrists Act means the *Optometrists Act 1956*.

optometrists board means the Optometrists Board constituted under the Optometrists Act.

Pharmacy Act means the *Pharmacy Act 1931*.

pharmacy board means the Pharmacy Board established under the Pharmacy Act.

Physiotherapists Act means the *Physiotherapists Act 1977*.

physiotherapists board means the Physiotherapists Board constituted under the Physiotherapists Act.

prescribed Act means the Chiropractors and Osteopaths Act, the Dentists Act, the Medical Practitioners Act, the Nurses Act, the Optometrists Act, the Pharmacy Act, the Physiotherapists Act or the Veterinary Surgeons Act, as the case requires.

register means—

- (a) in relation to an election held for the Chiropractors and Osteopaths Act—the register of chiropractors or the register of osteopaths kept under that Act; and
- (b) in relation to an election held for the Dentists Act—the register of dentists kept under that Act; and
- (c) in relation to an election held for the Medical Practitioners Act—the register of medical practitioners kept under that Act; and
- (d) in relation to an election held for the Nurses Act—the register of nurses kept under that Act; and
- (e) in relation to an election held for the Optometrists Act—the register of optometrists kept under that Act; and
- (f) in relation to an election held for the Pharmacy Act—the register of pharmacists kept under that Act; and
- (g) in relation to an election held for the Physiotherapists Act—the register of physiotherapists kept under that Act; and
- (h) in relation to an election held for the Veterinary Surgeons Act—the register of veterinary surgeons kept under that Act.

registered address, in relation to a person who is a registered practitioner for the purposes of an election, means—

- (a) the address of the person shown in the register applicable to that election; or
- (b) if more than 1 address in relation to the person is shown in the register—any of those addresses.

registered practitioner means—

- (a) in relation to an election held for the Chiropractors and Osteopaths Act—a person registered as a chiropractor or osteopath under that Act; and
- (b) in relation to an election held for the Dentists Act—a person registered as a dentist under that Act; and
- (c) in relation to an election held for the Medical Practitioners Act—a person registered under that Act; and
- (d) in relation to an election held for the Nurses Act—a person registered under that Act; and
- (e) in relation to an election held for the Optometrists Act—a person registered under that Act; and
- (f) in relation to an election held for the Pharmacy Act—a person registered under that Act; and
- (g) in relation to an election held for the Physiotherapists Act—a person registered under that Act; and
- (h) in relation to an election held for the Veterinary Surgeons Act—a person registered under that Act.

Veterinary Surgeons Act means the *Veterinary Surgeons Act 1965*.

veterinary surgeons board means the Veterinary Surgeons Board constituted under the Veterinary Surgeons Act.

4 Returning officer

The electoral commissioner shall appoint a person to be the returning officer for the purposes of an election.

Part 2 Beginning of electoral process

5 Dates to be fixed for purposes of elections

- (1) For the purposes of an election, the chairperson for that election shall, in writing, fix—
 - (a) the date that is to be the date after which candidates may be nominated for election; and
 - (b) the date that is to be the last date when candidates for election may be nominated, being a date not earlier than 21 days after the date referred to in paragraph (a); and
 - (c) the date that is to be the last date when voting papers may be issued, being a date not later than 21 days before the date referred to in paragraph (d); and
 - (d) the date that is to be the date for the close of the poll, being a date not earlier than 70 days and not later than 90 days after the date referred to in paragraph (a).
- (2) The poll closes at 12 o'clock noon on the date fixed for subsection (1) (d).
- (3) Forthwith after the instrument referred to in subsection (1) has been prepared for the purposes of an election, the chairperson for that election shall forward a copy of the instrument to the returning officer.

6 List of registered practitioners

- (1) Forthwith after the date fixed for section 5 (1) (a) in relation to an election, the chairperson for that election shall prepare and give the returning officer a list, certified by the chairperson to be correct, showing the names and registered addresses of persons who, on that date, were registered practitioners for the purposes of the election.

- (2) A copy of the list given to the returning officer under subsection (1) in connection with an election shall be open for public inspection at the office of the returning officer without fee during his or her ordinary business hours until the voting papers and envelopes relating to the election have been destroyed under section 28.

7 Registered practitioners to be notified of dates

On receipt of the list given to him or her under section 6, the returning officer shall either—

- (a) send by post to each person whose name appears on the list, at the address shown in the list, a written notice informing that person of the dates fixed for section 5 (1) (b), (c) and (d); or
- (b) publish in a newspaper circulating in the ACT a notification specifying the dates fixed for section 5 (1) (b), (c) and (d).

Part 3 Nominations

8 Nominations

(1) A nomination of a candidate for election shall be signed by—

- (a) the candidate; and
- (b) not less than 2 other persons.

Note If a form is approved under s 39 (Approved forms) for a nomination, the form must be used.

(2) A nomination of a candidate for election is not valid unless it—

- (a) contains a statement by the persons referred to in subsection (1) (b) that they were, on the date fixed for section 5 (1) (a) in relation to the election to which the nomination relates, registered practitioners for the purposes of that election; and
- (b) contains a declaration by the candidate that he or she is eligible to be nominated as a candidate at the election to which the nomination relates; and
- (c) is given to the returning officer after the date fixed for section 5 (1) (a) and before 12 o'clock noon on the date fixed for section 5 (1) (b).

(3) A person is eligible to be nominated as a candidate at an election—

- (a) if the election is an election being held for the Chiropractors and Osteopaths Act—if that person was, at all times during the 3 years immediately before the date fixed for section 5 (1) (a) in relation to that election, entitled, under the law of a State or Territory, to practise as a chiropractor or osteopath in that State or Territory; and
- (b) if the election is an election being held for the Dentists Act—if that person was, at all times during the 3 years immediately

before the date fixed for section 5 (1) (a) in relation to that election, entitled, under the law of a State or Territory, to practise as a dentist in that State or Territory; and

- (c) if the election is an election being held for the Medical Practitioners Act—if that person was, at all times during the 3 years immediately before the date fixed for section 5 (1) (a) in relation to that election, entitled, under the law of a State or Territory, to practise as a medical practitioner in that State or Territory; and
- (d) if the election is an election being held for the Nurses Act—if he or she is a registered nurse and was, at all times during the 3 years immediately before the date fixed for section 5 (1) (a) in relation to that election, entitled, under the law of a State or Territory, to practise as a general nurse, a midwife or a mental health nurse in that State or Territory; and
- (e) if the election is an election being held for the Optometrists Act—if that person was, at all times during the 3 years immediately before the date fixed for section 5 (1) (a) in relation to that election, entitled, under the law of a State or Territory, to practise as an optometrist in that State or Territory; and
- (f) if the election is an election being held for the Pharmacy Act—if that person was, at all times during the 3 years immediately before the date fixed for section 5 (1) (a) in relation to that election, entitled, under the law of a State or Territory, to practise as a pharmacist in that State or Territory; and
- (g) if the election is an election being held for the Physiotherapists Act—if that person was, at all times during the 3 years immediately before the date fixed for section 5 (1) (a) in relation to that election, entitled, under the law of a State or Territory, to practise as a physiotherapist in that State or Territory; and

- (h) if the election is an election being held for the Veterinary Surgeons Act—if that person was, at all times during the 3 years immediately before the date fixed for section 5 (1) (a) in relation to that election, entitled, under the law of a State or Territory, to practise as a veterinary surgeon in that State or Territory.

9 Correction of defective nominations

- (1) If the returning officer finds a nomination of a candidate given to him or her in accordance with section 8 (2) to be defective, the returning officer shall, before rejecting the nomination, return it to the candidate at the candidate's registered address together with a notice—
 - (a) indicating the nature of the defect; and
 - (b) informing the candidate that the defect may be remedied and the nomination returned to the returning officer so as to reach him or her not later than—
 - (i) the date fixed for section 5 (1) (b); or
 - (ii) if that date occurs earlier than 7 days after the receipt by the candidate of the notice—7 days after the date of receipt of the notice.
- (2) If a nomination is duly remedied and returned to the returning officer in accordance with subsection (1), the nomination shall, notwithstanding section 8 (2), be valid.

10 Withdrawal of nomination

- (1) A candidate may withdraw his or her consent to his or her nomination, at any time before the date fixed for section 5 (1) (b), by lodging with the returning officer a notice of withdrawal signed by the candidate and witnessed by a justice of the peace or a commissioner for declarations.

- (2) If a candidate withdraws his or her consent to his or her nomination, the candidate shall, before the date fixed for section 5 (1) (b), notify each nominator, in writing, of his or her withdrawal.

11 Declaration of nominated candidate

- (1) As soon as practicable after the date fixed under section 5 (1) (b) in relation to an election, the returning officer must, in writing, declare the name and registered address of each candidate nominated for the election.
- (2) An declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

12 Proceedings on nomination day

- (1) If the number of candidates nominated in relation to an election does not exceed the number of candidates required to be elected, the returning officer must, in writing —
- (a) declare the candidate or candidates nominated duty required to be elected; and
 - (b) inform the chairperson for that election of the person or persons so elected.
- (2) If the number of candidates nominated in relation to an election exceeds the number of candidates required to be elected, the returning officer shall proceed to take a poll to decide the election.
- (3) If no candidate is nominated in relation to an election or returned as elected, the election shall be deemed to have wholly failed and another election shall be held.
- (4) An instrument under subsection (1) (a) is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

Part 4 Voting

13 Persons eligible to vote

A person who was, on the date fixed for section 5 (1) (a) in relation to an election, a registered practitioner for the purposes of that election is eligible to vote at the election.

14 Number of votes

Each person eligible to vote at an election is entitled to 1 vote only at the election.

15 Distribution of voting papers

- (1) If, in relation to an election, a poll is, in accordance with section 12 (2), required to be taken, the returning officer shall, on or before the date fixed for section 5 (1) (c), send to each registered practitioner whose name appears on the list prepared under section 6 in connection with that election, at the address of the registered practitioner shown in the list—
 - (a) a voting paper; and
 - (b) a voting paper envelope; and
 - (c) an envelope addressed to the returning officer.
- (2) The returning officer shall ensure that the voting paper and envelopes to be sent to a registered practitioner under subsection (1) are enclosed in a covering envelope that is fastened and addressed to the registered practitioner.

16 Voting papers and envelopes

- (1) A voting paper shall—
 - (a) be in accordance with the appropriate form approved under section 39 (Approved forms); and

- (b) contain the names of the candidates which shall be set out on the voting paper in an order determined by the returning officer by lot.
- (2) The returning officer shall initial each voting paper before despatching it under section 15.
- (3) A voting paper envelope must have printed on it a declaration in accordance with the appropriate form approved under section 39 (Approved forms).
- (4) An envelope referred to in section 15 (1) (c) shall bear on its exterior surface endorsements to indicate to the returning officer—
 - (a) the election to which the envelope relates; and
 - (b) the purpose for which the envelope is intended to be used.

17 Replacement of voting papers

- (1) If, before the date fixed for section 5 (1) (d) in relation to an election, a person eligible to vote at the election makes and gives the returning officer a written statement—
 - (a) setting out his or her full name and registered address; and
 - (b) stating that he or she has not received a voting paper or voting paper envelope or that a voting paper or voting paper envelope received by him or her has been lost or destroyed; and
 - (c) stating that he or she has not already voted at the election;the returning officer shall give the person a voting paper or voting paper envelope, or a further voting paper or voting paper envelope, as the case may be.
- (2) If, before the date fixed for section 5 (1) (d) in relation to an election, a person eligible to vote at the election—
 - (a) makes and gives to the returning officer a written statement—

- (i) setting out his or her full name and registered address; and
 - (ii) stating that a voting paper or voting paper envelope received by him or her has, by mistake or accident, been spoilt; and
- (b) remits to the returning officer the spoilt voting paper or voting paper envelope;

the returning officer shall give the person a further voting paper or voting paper envelope, as the case may be, and cancel the spoilt voting paper or voting paper envelope.

18 Manner of voting

- (1) A voter shall indicate his or her preference, or the order of his or her preference, on the voting paper—
- (a) if 1 candidate only is required to be elected—by placing the number 1 in the square opposite the name of the candidate for whom he or she wishes to vote as his or her first preference or, if he or she so desires, by placing a series of consecutive numbers, beginning with the number 1, in the squares opposite the names of all, or some only, of the candidates so as to indicate the order of his or her preference for them, 1 number being placed in the square opposite the name of each such candidate; and
 - (b) in any other case—by placing a series of consecutive numbers, beginning with the number 1, in the squares opposite the names of all, or some only, of the candidates, being not less in number than the number of candidates required to be elected, so as to indicate the order of his or her preference for them, 1 number being placed in the square opposite the name of each such candidate.
- (2) After marking the voting paper, the voter shall—

- (a) fold the voting paper so as to conceal the way in which he or she has marked the voting-paper, place it in the voting paper envelope and seal that envelope; and
- (b) complete and sign the declaration printed on the voting paper envelope, place that envelope in the envelope addressed to the returning officer and seal that lastmentioned envelope; and
- (c) send or deliver to the returning officer the envelope addressed to the returning officer so as to reach him or her not later than 12 o'clock noon on the date fixed for the close of the poll.

Part 5 Scrutiny

19 Ballot box

- (1) The returning officer shall, in relation to each election—
 - (a) keep in his or her custody a locked and sealed ballot box on which shall be endorsed the words necessary to indicate the election for which the ballot box is to be used; and
 - (b) place, unopened, and keep in the ballot box until the scrutiny all envelopes bearing the endorsements referred to in section 16 (4) that are received by him or her before the close of the poll.
- (2) The returning officer shall not admit to the scrutiny any envelopes bearing the endorsements referred to in section 16 (4) that are received by him or her after the close of the poll but shall place those envelopes unopened in a parcel, seal the parcel, endorse on it the words necessary to indicate the contents of the parcel and the election to which the parcel relates and add his or her signature and the date.

20 Appointment of scrutineers

- (1) A candidate at an election may appoint 1 scrutineer to represent him or her at the scrutiny.
- (2) The appointment of a scrutineer under subsection (1)—
 - (a) shall be made by written notice signed by the candidate or by telegram;
 - (b) shall be addressed to the returning officer and given to him or her, or sent so as to reach him or her, not later than 12 o'clock noon on the date fixed for the close of the poll; and
 - (c) shall set out the name and address of the scrutineer.

- (3) All the proceedings at the scrutiny, and at any recount of voting papers conducted under section 26, shall be open to the inspection of the scrutineers.

21 Scrutiny of votes and declarations

Forthwith after the close of a poll the returning officer shall, in the presence of the scrutineers that attend—

- (a) open the ballot box referred to in section 19 (1) and take out the envelopes contained in it; and
- (b) open the envelopes bearing the endorsements referred to in section 16 (4) and take out the voting paper envelopes; and
- (c) place the envelopes opened under paragraph (b) in a parcel, seal the parcel, endorse on it the words necessary to indicate the contents of the parcel and the election to which the parcel relates and add his or her signature and the date; and
- (d) without opening the voting paper envelopes, examine each envelope and—
 - (i) if he or she is satisfied that the declaration on the envelope has been effectively completed and signed by a person whose name appears on the list given to the returning officer under section 6, being a person who has not already voted in the poll—place a mark against the person's name on the list and accept the voting paper contained in that envelope for further scrutiny; and
 - (ii) if he or she is not so satisfied—reject the voting paper without opening the envelope; and
- (e) place the envelopes containing voting papers rejected under paragraph (d) in a parcel, seal the parcel, endorse on it the words necessary to indicate the contents of the parcel and the election to which the parcel relates and add his or her signature and the date; and

- (f) place the envelopes containing voting papers accepted for further scrutiny on a table before him or her with the declaration on each envelope facing downwards, and then, without further examining the declaration or permitting any other person to do so, withdraw from each envelope the voting paper contained in it and, without unfolding or inspecting the voting paper or permitting any other person to do so, forthwith place the voting paper in a locked and sealed ballot box; and
- (g) place the envelopes from which voting papers have been withdrawn in a parcel, seal the parcel, endorse on it the words necessary to indicate the contents of the parcel and the election to which the parcel relates and add his or her signature and the date.

22 Counting of votes

- (1) In an election at which 1 candidate only is to be elected, the result of the election shall be determined in accordance with the procedure set out in schedule 2.
- (2) In an election at which more than 1 candidate is to be elected, the result of the election shall be determined in accordance with the procedure set out in schedule 3.

23 Retention of voting papers

After the scrutiny conducted in relation to an election has been completed, the returning officer shall—

- (a) place in separate parcels voting papers rejected as informal and voting papers not rejected as informal; and
- (b) endorse on each parcel the words necessary to indicate the contents of the parcel and the election to which the parcel relates and add his or her signature and the date.

24 Informal voting papers

A voting paper is informal if—

- (a) it is not initialled by the returning officer; or
- (b) it has no vote marked on it; or
- (c) it does not indicate, in accordance with the directions on the voting paper—
 - (i) if 1 candidate only is to be elected—the voter's first preference for a candidate; or
 - (ii) if more than 1 candidate is to be elected—the order of the voter's preference for at least the number of the candidates that is equal to the number of candidates to be elected; or
- (d) it is so imperfectly marked that the intention of the voter is not clear; or
- (e) it has on it any mark or writing by which the voter can be identified.

25 Publication and notification of result of election

- (1) Forthwith after the completion of the scrutiny conducted in relation to an election, the returning officer must, in writing —
 - (a) declare the successful candidate or candidates, as the case may be, duly elected; and
 - (b) inform the chairperson for that election of the candidate or candidates, as the case may be, so elected.
- (2) A declaration under subsection (1) (a) is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.
- (3) A declaration notified under the *Legislation Act 2001* in relation to an election is, subject to this Act, conclusive evidence of the result of the election.

26 Request for recount of votes

- (1) At any time before the result of an election is notified under the *Legislation Act 2001* the returning officer may, if he or she considers appropriate, either on the written request of a candidate stating the reasons for the request or on the returning officer's own initiative, recount the voting papers received in connection with the election.
- (2) If the returning officer, on a request being made to him or her by a candidate, refuses to conduct a recount of the voting papers, the candidate may, by written notice, appeal to the electoral commissioner against the refusal and the electoral commissioner may, as he or she considers appropriate, either direct the returning officer to conduct a recount of the voting papers or refuse to direct a recount.
- (3) If the electoral commissioner, on a request being made to him or her by a candidate, refuses to direct a recount of the voting papers, the candidate may apply to the administrative appeals tribunal for a review of the decision of the electoral commissioner.

27 Conduct of recount

- (1) The returning officer, in conducting a recount, shall have the same powers as if the recount were the scrutiny and may reverse any decision in relation to the scrutiny about the allowance and admission or disallowance and rejection of a voting paper.
- (2) The returning officer, in conducting a recount, may, and at the request of a scrutineer shall, reserve a voting paper for the decision of the electoral commissioner.
- (3) The electoral commissioner shall decide whether a voting paper reserved for his or her decision under subsection (2) shall be allowed and admitted or disallowed and rejected.

28 Destruction of papers

At the end of 6 months after—

- (a) publication of the result of an election; or
 - (b) if an election is disputed—the determination of the petition;
- the returning officer shall authorise the destruction of—
- (c) the voting papers and envelopes contained in the parcels referred to in sections 19 (2) and 21 (e); and
 - (d) the envelopes contained in the parcels referred to in section 21 (c) and (g); and
 - (e) the voting papers contained in the parcels referred to in section 23.

29 Intruders

A person shall not, without reasonable excuse—

- (a) wilfully intrude into a room where an examination of papers relating to an election is being conducted; or
- (b) refuse or fail to leave the room when requested to do so by the returning officer.

Maximum penalty: 10 penalty units.

Part 6 Disputed elections

30 Petition to dispute election

- (1) A candidate at an election may, by petition addressed to the Supreme Court, dispute the validity of the election.
- (2) A candidate is not entitled to dispute an election—
 - (a) because of a defect in the title, or a lack of title, of the person who acted as the returning officer; or
 - (b) because of an error or defect in form in an instrument, declaration, statement or other document made under this Act, or purporting to have been so made; or
 - (c) because any act or thing done in connection with the election was not done at or within the prescribed time.
- (3) A petition disputing an election shall—
 - (a) set out clearly and fully the facts relied on to invalidate the election; and
 - (b) be signed by the petitioner; and
 - (c) be filed in the registry of the Supreme Court within 21 days after the declaration under section 12 (1) (a) or 25 (1) (a) is notified under the *Legislation Act 2001*.
- (4) A petitioner shall, within 7 days after filing the petition, serve a copy of the petition on the person, or each of the persons, as the case may be, elected as a result of the disputed election.
- (5) Jurisdiction to hear and determine petitions under this section is vested in the Supreme Court.

31 Procedure relating to hearing of petitions

In hearing a petition, the Supreme Court—

- (a) is not bound by the laws of evidence; and
- (b) shall afford the petitioner, a person elected at the election, the returning officer and the other persons the court considers should be given opportunity to do so, opportunity to give evidence and make submissions at the hearing; and
- (c) shall not admit the evidence of any witness that he or she was not permitted to vote in the election unless the witness satisfies the court—
 - (i) that he or she claimed to vote in the election under this Act; and
 - (ii) that he or she complied with the requirements of this Act relating to voting so far as he or she was permitted so to do.

32 Powers of court

- (1) For the purpose of determining a petition, the powers of the Supreme Court shall include the following:
 - (a) to inquire into the identity of voters at the election and whether their votes were improperly admitted or rejected;
 - (b) to grant to any party to a petition leave to inspect the list referred to in section 6 and other documents used at or in connection with the election, and to take extracts from that list or those documents;
 - (c) to declare that a candidate who was returned as elected was not duly elected;
 - (d) to declare as duly elected a candidate who was not returned as elected;
 - (e) to declare the election absolutely void;
 - (f) to dismiss or uphold the petition in whole or in part.

- (2) In inquiring into the identity of voters at an election and whether their votes were improperly admitted or rejected, the court shall not inquire into the correctness of the list prepared under section 6 in connection with that election.

33 Effect of decision of court

- (1) A decision of the Supreme Court under section 32 has effect as provided by this section.
- (2) If a candidate who was returned as elected is declared not to have been duly elected, he or she ceases to hold office as a member of the relevant board.
- (3) If a candidate who was not returned as elected is declared to have been duly elected, he or she shall become a member of the relevant board.
- (4) If the election is declared absolutely void, a new election shall be held in accordance with this Act.

34 Effect of illegalities or irregularities at election

- (1) On the hearing of a petition the Supreme Court shall not declare an election void or declare that a person returned as elected was not duly elected—
- (a) on the ground of any illegal practice committed by any person other than a candidate and without the knowledge or authority of the candidate; or
- (b) on the ground of any illegal practice other than bribery or corruption or attempted bribery or corruption;
- unless the Court is satisfied that the result of the election was likely to be affected and that it is just that the election should be declared void or that the candidate returned as elected should be declared not to be duly elected.
- (2) On the hearing of a petition, the Supreme Court shall not declare an election void—

(a) on account of a delay in taking votes, giving a notice or notifying a declaration; or

(b) on account of the absence, error or omission of any person;

if the court is satisfied that the delay, absence, error or omission did not affect the result of the election.

Part 7 Miscellaneous

36 Duty of witness

A person shall not witness the signature of another person to a declaration made for this Act unless the person acting as witness—

- (a) is at least 18 years old; and
- (b) has satisfied himself or herself about the identity of the person making the declaration; and
- (c) has seen the person sign the declaration in the person's own handwriting; and
- (d) knows, or has satisfied himself or herself by inquiry from the person making the declaration or otherwise, that the statements contained in the declaration are true.

Maximum penalty: 10 penalty units.

37 Marks on voting papers

- (1) Subject to subsection (2), a person shall not mark or write on a voting paper.

Maximum penalty: 50 penalty units.

- (2) This section does not apply in relation to—
 - (a) the initialling of a voting paper by the returning officer under section 16 (2); or
 - (b) the marking, by a registered practitioner, of a voting paper sent to him or her under section 15 (1).

38 Offences in connection with voting

A person shall not—

- (a) impersonate another person for the purpose of securing a voting paper or of voting at an election; or
- (b) intentionally destroy or deface a voting paper; or
- (c) vote more than once at an election; or
- (d) vote at an election unless he or she is eligible to vote at the election.

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

39 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the form must be used for that purpose.

Note For other provisions about forms, see *Legislation Act 2001*, s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

Schedule 2 Procedure for counting votes— 1 candidate only to be elected

(see s 22 (1))

- 1 In this schedule:

absolute majority of votes means a number of votes greater than $\frac{1}{2}$ of the total number of voting papers other than informal voting papers.

- 2 The returning officer shall open the ballot box containing the voting papers and, in the presence of the scrutineers that attend, count the first preference votes given for each candidate on the voting papers that are not rejected as informal.
- 3 The candidate who has received the greatest number of first preference votes shall, if that number constitutes an absolute majority of votes, be elected.
- 4 If no candidate has received an absolute majority of first preference votes, the returning officer shall proceed with the counting of votes as follows:
- (a) the candidate who has received the least number of first preference votes shall be excluded and each voting paper counted to that candidate on which is recorded a second preference vote for another candidate shall be counted to that other candidate;
 - (b) if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the least number of votes, and counting each of that candidate's voting papers on which is recorded a second, or next consecutive, preference vote for an unexcluded candidate, shall be repeated until—
 - (i) one candidate has received an absolute majority of votes;
 - or

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- (ii) all of the candidates, except one, have been excluded from the count;
 - (c) the candidate who has received an absolute majority of votes, or who has not been excluded from the count, as the case may be, shall be elected.
 - 5 If, on any count, 2 or more candidates have the same number of votes and it is necessary to exclude 1 of them—
 - (a) the candidate who was lowest on the poll at the last count at which they had an unequal number of votes shall be excluded; or
 - (b) if the candidates had an equal number of votes at all previous counts or if there was no previous count—the returning officer shall decide by lot which candidate is to be excluded.
 - 6 If, on any count, a voting paper does not show a number indicating the voter's next preference opposite the name of a candidate who has not already been excluded, the voting paper shall be set aside as exhausted.

Schedule 3 Procedure for counting votes— more than 1 candidate to be elected

(see s 22 (2))

- 1 The returning officer shall open the ballot box containing the voting papers and, in the presence of the scrutineers that attend, count the first preference votes given for each candidate on such of the voting papers as are not rejected as informal.
- 2 The Returning Officer shall then determine a quota by dividing the total number of first preference votes by a number that is equal to 1 more than the number of candidates required to be elected and by increasing the quotient so obtained, disregarding any remainder, by 1.
- 3 A candidate who has received a number of first preference votes equal to or greater than the quota shall be elected.
- 4 If the number of first preference votes received by a candidate is equal to the quota, the voting papers on which those votes are recorded shall be set aside as finally dealt with.
- 5 If the number of first preference votes received by a candidate is in excess of the quota, that candidate's surplus votes shall, unless all vacancies have been filled, be transferred to the unelected candidates next in the order of the voters' preferences as follows:
 - (a) the voting papers on which a first preference vote is recorded for the elected candidate shall be re-examined and the number of second preference votes, or next consecutive preferences, as the case may be, recorded on those voting papers for each unelected candidate shall be counted;
 - (b) the number of surplus votes of the elected candidate shall be divided by the total number of first preference votes received

by the elected candidate and the resulting fraction shall be the transfer value;

- (c) the number of second or other preference votes determined under paragraph (a) for each unelected candidate shall be multiplied by the transfer value determined under paragraph (b);
 - (d) the resulting number, disregarding any fractional remainder, shall be transferred to each unelected candidate and added to the number of first preference votes received by the unelected candidate.
- 6 (1) If, because of a transfer effected under clause 5, the number of votes received by a candidate is raised up to or above the quota, the candidate shall be elected.
- (2) Notwithstanding that the number of votes received by a candidate is, because of a transfer effected under clause 5, raised up to the quota, the transfer shall be completed by transferring to the candidate all the votes to which the candidate is entitled from that transfer but no votes of any other candidate shall be transferred to him or her.
- (3) If, because of a transfer effected under clause 5, the number of votes received by a candidate is raised up to, but not above, the quota, the voting papers on which those votes are recorded shall be set aside as finally dealt with.
- (4) If, because of a transfer effected under clause 5, the number of votes received by a candidate is raised above the quota, the candidate's surplus votes shall be transferred to the unelected candidates next in the order of the voters' preferences as follows:
- (a) the voting papers on which are recorded the votes received by the elected candidate in the last transfer shall be re-examined and the number of third preference votes, or next consecutive preferences, as the case may be, recorded on those voting papers for each unelected candidate shall be counted;

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- (b) the number of surplus votes of the elected candidate shall be divided by the total number of voting papers referred to in paragraph (a) and the resulting fraction shall be the transfer value;
 - (c) the number of third or other preference votes determined under paragraph (a) for each unelected candidate shall be multiplied by the transfer value determined under paragraph (b);
 - (d) the resulting number, disregarding any fractional remainder, shall be transferred to each unelected candidate and added to the number of votes previously received by him or her.
- 7 (1) If, after the first preference votes have been counted and all surplus votes (if any) have been transferred in accordance with clauses 5 and 6—
- (a) no candidate has received a number of votes equal to the quota; or
 - (b) the number of candidates elected is less than the number of candidates required to be elected;
- the candidate who is lowest on the poll shall be excluded and all the votes received by that candidate shall be transferred, in the way referred to in clause 5, to the remaining unelected candidates next in the order of the voters' preferences.
- (2) For the purpose of effecting a transfer under subclause (1)—
- (a) the first preference votes received by a candidate excluded under that subclause shall be transferred first, the transfer value of each such vote being 1; and
 - (b) the other votes of the candidate shall then be dealt with in the order of the transfers in which, and at the transfer value at which, the candidate received them; and
 - (c) each of the transfers referred to in paragraphs (a) and (b) shall, for all purposes, be taken to be a separate transfer.
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- 8 (1) If, because of a transfer effected under clause 7, the number of votes received by a candidate is raised up to or above the quota, the candidate shall be elected.
- (2) Notwithstanding that the number of votes received by a candidate is, because of a transfer effected under clause 7, raised up to the quota, the transfer shall be completed by transferring to the candidate all the votes to which the candidate is entitled from that transfer but no other votes shall be transferred to him or her.
- (3) If, because of a transfer effected under clause 7, the number of votes received by a candidate is raised up to, but not above, the quota, the voting papers on which those votes are recorded shall be set aside as finally dealt with.
- (4) If, because of a transfer effected under clause 7, the number of votes received by a candidate is raised above the quota, the surplus votes—
- (a) shall be transferred to the candidates next in the order of the voters' preferences in the manner referred to in subclause 6 (4); and
 - (b) shall not be dealt with until all the votes of the excluded candidate have been transferred; and
 - (c) shall be dealt with before any other candidate is excluded.
- 9 The same process of excluding the candidate lowest on the poll and transferring his or her votes to other candidates shall be repeated until all the candidates, except the number required to be elected, have been excluded and the candidates then remaining who have not already been elected, shall then be elected.
- 10 (1) If, on the counting of first preference votes or on any transfer, more than 1 candidate has a surplus, the largest surplus shall be dealt with first, followed by the next largest surplus, and so on.
- (2) Notwithstanding subclause (1), if a candidate receives a surplus at a count or transfer previous to that at which another candidate

receives a surplus, the surplus of the firstmentioned candidate shall be dealt with first.

- (3) If the surplus votes of 2 or more candidates are equal, the surplus votes shall be dealt with as follows:
- (a) the surplus of the candidate who was highest on the poll at the count or transfer at which the candidates last had an unequal number of votes shall be dealt with first;
 - (b) if the candidates had an equal number of votes at all previous counts or transfers or if there was no previous count or transfer—the returning officer shall decide by lot which surplus shall be dealt with first.
- 11 If 2 or more candidates have the same number of votes and it is necessary to exclude 1 of them—
- (a) the candidate who was lowest on the poll at the last count or transfer at which they had an unequal number of votes shall be excluded; or
 - (b) if the candidates had an equal number of votes at all previous counts or transfers or if there was no previous count or transfer—the returning officer shall decide by lot which candidate is to be excluded.
- 12 For the purpose of determining which candidate is next in the order of the voter's preference, a candidate who has been elected or excluded shall not be considered and the order of the voter's preference shall be determined as if the name of the lastmentioned candidate were not on the voting paper.
- 13 If, on a transfer, a voting paper does not show a number indicating the voter's next preference opposite the name of a candidate who has not already been elected or excluded, the voting paper shall be set aside as exhausted.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

This Act was originally a Commonwealth ordinance—the *Health Professions Boards (Elections) Ordinance 1980* No 45 (Cwlth).

Endnotes

3 Legislation history

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 25).

Legislation before becoming Territory enactment

Health Professions Boards (Elections) Act 1980 No 45

notified 23 December 1980

commenced 23 December 1980

as amended by

Health Professions Boards (Elections) (Amendment) Ordinance 1981 No 54

notified 9 December 1981

commenced 9 December 1981

Health Professions Boards (Elections) (Amendment) Ordinance 1986 No 67

notified 24 October 1986

commenced 27 October 1986 (Cwlth Gaz 1986 No S537)

Health Professions Boards (Elections) (Amendment) Ordinance 1988 No 60

notified 7 September 1988

commenced 5 December 1988 (Cwlth Gaz 1988 No S369)

**Self-Government (Consequential Amendments) Ordinance 1989
No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)
s 1, s 2 commenced 10 May 1989 (s 2 (1))
sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989
No S164)

Legislation after becoming Territory enactment**Self-Government (Consequential Amendments) Act 1991 No 53 s 5**

notified 2 October 1991 (Gaz 1991 No S98)
commenced 2 October 1991

**Administrative Appeals (Consequential Amendments) Act 1994 No 60
sch 1**

notified 11 October 1994 (Gaz 1994 No S197)
s 1, s 2 commenced 11 October 1994 (s 2 (1))
sch 1 commenced 14 November 1994 (s 2 (2) and see Gaz 1994
No S250)

**Health Legislation (Consequential Amendments) Act 1994 No 88
sch 2**

notified 15 Dec 1994 (Gaz 1994 No S280)
ss 1-3 commenced 15 December 1994 (s 2 (1))
sch 2 commenced 15 June 1995 (s 2 (3))

Health Professions Boards (Elections) (Amendment) Act 1997 No 106

notified 24 December 1997 (Gaz 1997 No S420)
commenced 24 December 1997 (s 2)

Statute Law Revision (Penalties) Act 1998 No 54 sch

notified 27 November 1998 (Gaz 1998 No S207)
s 1, s 2 commenced 27 November 1998 (s 2 (1))
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

Legislation (Consequential Amendments) Act 2001 No 44 pt 178

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 178 commenced 12 September 2001 (s 2 and see Gaz 2001
No S65)

Endnotes

4 Amendment history

Criminal Code (Theft, Fraud, Bribery and Related Offences)

Amendment Act 2004 A2004-15 sch 2 pt 2.44

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

sch 2 pt 2.44 commenced 9 April 2004 (s 2 (1))

4 Amendment history

Application of provisions

s 2 om 2001 No 44 amdt 1.2039

Definitions for Act

s 3 def **board** am 1986 No 67 s 3; 1988 No 60 s 4; 1994 No 88 sch 2; pars renum R3 LA
def **chairman** am 1986 No 67 s 3; 1988 No 60 s 4
om 1994 No 88 sch 2
def **chairperson** ins 1994 No 88 sch 2
def **Chiropractors and Osteopaths Act** ins 1994 No 88 sch 2
def **Chiropractors Ordinance** ins 1986 No 67 s 3
om 1994 No 88 sch 2
def **Dentists Act** am 1994 No 88 sch 2
def **election** am 1986 No 67 s 3; 1994 No 88 sch 2; pars renum R3 LA
def **nurses board** ins 1988 No 60 s 4
def **Nurses Ordinance** am 1988 No 60 s 4
def **nurses registration board** om 1988 No 60 s 4
def **Medical Practitioners Act** am 1994 No 88 sch 2
def **Physiotherapists Act** am 1994 No 88 sch 2
def **prescribed Act** ins 1994 No 88 sch 2
def **register** am 1986 No 67 s 3; 1988 No 60 s 4; 1994 No 88 sch 2; pars renum R3 LA
def **registered practitioner** am 1986 No 67 s 3; 1994 No 88 sch 2; pars renum R3 LA
def **Veterinary Surgeons Act** am 1994 No 88 sch 2

Returning officer

s 4 am 1986 No 67 s 4

Dates to be fixed for purposes of elections

s 5 am 1994 No 88 sch 2

List of registered practitioners

s 6 am 1994 No 88 sch 2

Registered practitioners to be notified of dates

s 7 am 1994 No 88 sch 2

Nominations

s 8 am 1986 No 67 s 6; 1988 No 60 s 5; 1994 No 88 sch 2; 1997 No 106 s 4; 2001 No 44 amdt 1.2040, amdt 1.2041; pars renum R3 LA

Correction of defective nominations

s 9 am 1994 No 88 sch 2

Withdrawal of nomination

s 10 am 1994 No 88 sch 2

Declaration of nominated candidate

s 11 sub 2001 No 44 amdt 1.2042

Proceedings on nomination day

s 12 am 1994 No 88 sch 2; 2001 No 44 amdts 1.2043-1.2046

Voting-papers and envelopes

s 16 am 2001 No 44 amdt 1.2047, amdt 1.2048

Replacement of voting papers

s 17 am 1994 No 88 sch 2

Manner of voting

s 18 am 1994 No 88 sch 2

Ballot box

s 19 am 1994 No 88 sch 2

Appointment of scrutineers

s 20 am 1994 No 88 sch 2

Scrutiny of votes and declarations

s 21 am 1994 No 88 sch 2

Retention of voting papers

s 23 am 1994 No 88 sch 2

Publication and notification of result of election

s 25 am 1994 No 88 sch 2; 2001 No 44 amdts 1.2049-1.2052

Request for recount of votes

s 26 am 1986 No 67 s 7; 1989 No 38 sch 1; 1994 No 60 sch 1; 1994 No 88 sch 2; 2001 No 44 amdt 1.2053

Conduct of recount

s 27 am 1986 No 67 s 8; 1994 No 88 sch 2

Intruders

s 29 am 1998 No 54 sch

Petition to dispute election

s 30 am 2001 No 44 amdt 1.2054, amdt 1.2055

Endnotes

4 Amendment history

Procedure relating to hearing of petitions

s 31 am 1994 No 88 sch 2

Effect of decision of court

s 33 am 1994 No 88 sch 2

Effect of illegalities or irregularities at election

s 34 am 2001 No 44 amdt 1.2056

Untrue statements

s 35 am 1998 No 54 sch
om A2004-15 amdt 2.97

Duty of witness

s 36 am 1994 No 88 sch 2; 1998 No 54 sch

Marks on voting papers

s 37 am 1994 No 88 sch 2; 1998 No 54 sch

Offences in connection with voting

s 38 am 1994 No 88 sch 2; 1998 No 54 sch

Approved forms

s 39 om 1991 No 53 s 5
ins 2001 No 44 amdt 1.2057
(4)-(7) exp 12 September 2002 (s 39 (7))

Forms

sch 1 am 1986 No 67 s 9; 1988 No 60 s 6; 1994 No 88 sch 2; 1998
No 54 sch
om 2001 No 44 amdt 1.2058

Procedure for counting votes—1 candidate only to be elected

sch 2 am 1981 No 54 s 3; 1994 No 88 sch 2

Procedure for counting votes—more than 1 candidate to be elected

sch 3 am 1981 No 54 s 4; 1994 No 88 sch 2

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	ord 1989 No 38	30 June 1991
2	Act 1997 No 106	31 January 1998
3	Act 2001 No 44	18 July 2002
4	A2001-44	13 September 2002

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