



Australian Capital Territory

# **Electoral Act 1992**

**A1992-71**

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## About this republication

### The republished law

This is a republication of the *Electoral Act 1992* effective from 11 December 1998 to 27 September 2000.

### 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.

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The *Legislation (Republication) Act 1996*, part 3, division 2 authorised 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 (Republication) Act 1996*, s 14 and s 16). 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.



Australian Capital Territory  
**ELECTORAL ACT 1992**

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Reprinted as at 31 March 1999

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Australian Capital Territory

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## **ELECTORAL ACT 1992**

An Act to provide for elections of members of the Legislative Assembly and related matters

### **PREAMBLE**

1. On 15 February 1992 a referendum was held to enable the electors of the Territory to choose which of 2 voting systems is to be used at future elections for the Legislative Assembly.

2. The electors chose the proportional representation (Hare-Clark) system as outlined in the Referendum Options Description Sheet set out in Schedule 3 to the *Australian Capital Territory (Electoral) Act 1988* of the Commonwealth.

3. The electoral system chosen by the electors includes the system of rotation of the positions of candidates' names on ballot papers known as the Robson Rotation.

4. The Legislative Assembly wishes to enact legislation to implement the electoral system chosen by the electors as soon as it is convenient to do so.

The Legislative Assembly for the Australian Capital Territory therefore enacts as follows:

## **PART 1—PRELIMINARY**

### **1. Short title**

This Act may be cited as the *Electoral Act 1992*.<sup>1</sup>

### **2.<sup>1</sup> Commencement**

**(1)** Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

**(2)** The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

**(3)** If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

### **3. Interpretation**

In this Act, unless the contrary intention appears—

“AAT” means the Administrative Appeals Tribunal;

“abbreviation”, in relation to the name of a political party, includes an alternative name of the party;

“address”, in relation to a person, means the address of the person’s principal place of residence (including a residence from which the elector is temporarily absent and to which the elector intends to return for the purpose of residing there);

“Antarctic elector” means an elector who is an Antarctic elector by virtue of section 171;

“approved” means approved by the commissioner by notice in the *Gazette*;

“Assembly” means the Legislative Assembly;

“augmented commission” in relation to a redistribution, means the augmented electoral commission established by section 47 for the purposes of the redistribution;

“authorised officer” means an officer authorised by the commissioner for the purpose of the provision in which the expression occurs;

“broadcast” includes televise;

“candidate” means a person declared to be a candidate under section 109;



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- “candidate square”, in relation to a ballot paper, means a square that is printed on a ballot paper adjacent to a candidate’s name by virtue of paragraph 116 (1) (h);
- “certified list of electors” means a certified list of electors prepared under section 121;
- “commissioner” means the Electoral Commissioner appointed under section 22;
- “Commonwealth Electoral Act” means the *Commonwealth Electoral Act 1918* of the Commonwealth;
- “Commonwealth roll” means the roll of electors for the Territory required by section 81 of the Commonwealth Electoral Act;
- “closed”, in relation to a roll, means closed in accordance with section 80;
- “Court of Disputed Elections” means the Supreme Court exercising jurisdiction under Part 16;
- “declaration vote” means a vote cast in accordance with section 135 or 136A, subsection 136B (12) or section 136C;
- “declaration voting papers”, in relation to an election, means—
- (a) a declaration in the approved form to be completed by an elector;
  - (b) a ballot paper suitable for declaration voting at the election;
  - (c) a certificate in the approved form to be completed by a witness to the declaration; and
  - (d) an envelope in the approved form addressed to the commissioner, on which appears a declaration referred to in paragraph (a);
- “determined fee” mean the fee determined under section 8 for the purposes of the provision in which the expression occurs;
- “election” means—
- (a) an election of an MLA or MLAs; and
  - (b) in relation to an electorate—such an election for the electorate;
- “election period”, in relation to an election, means the period—
- (a) beginning on the first day of the pre-election period; and
  - (b) ending when the result of the election is declared under section 189;

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“elector” means a person who is enrolled, or is to be taken under this Act to be enrolled, for an electorate;

“electoral commission” means the Australian Capital Territory Electoral Commission established by section 5;

“electoral matter” has the meaning given by section 4;

“electoral paper” means a document, form or notice provided for, or required, by or under this Act;

“electorate” means an electorate, the name and boundaries of which are specified in a determination in force under section 35;

“eligible overseas elector” means a person who is an eligible overseas elector by virtue of section 74;

“extract”, in relation to a roll, has the meaning given by section 59;

“extraordinary election” has the meaning given by section 101;

“general election” means a general election of MLAs;

“group”, in relation to candidates in an election, has the meaning given by section 115;

“hospital” includes a convalescent home and an institution similar to a hospital or convalescent home;

“hour of nomination” has the meaning given by section 108;

“judge” means—

- (a) a judge of the Supreme Court;
- (b) a judge of the Supreme Court of a State or another Territory; or
- (c) a judge of the Federal Court or Family Court;

“MLA” means a member of the Assembly;

“officer” means—

- (a) a person appointed under section 33 to be an officer; or
- (b) a person exercising a power or performing a duty of an officer by virtue of an arrangement under section 70 or 336;

and, in relation to a particular matter, means an officer exercising a power or performing a duty in relation to that matter;

“official error”, in relation to a person voting or seeking to vote at an election, means the removal of the person’s name under this Act from the roll for an electorate in which the person is otherwise entitled to vote unless the

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name was so removed before the roll closed for the purpose of the previous election;

“OIC”—

- (a) in relation to a scrutiny centre—means the officer in charge of the centre; and
- (b) in relation to a polling place—means the officer in charge of the place;

“ordinary election” means a general election required by section 100;

“ordinary vote” means a vote other than a declaration vote;

“party candidate” means—

- (a) a candidate at an election nominated by the registered officer of a registered party; and
- (b) in relation to a registered party—a candidate nominated by the registered officer of the party;

“place of nomination” has the meaning given by section 108;

“political party” means an organisation, incorporated or unincorporated, an object or activity of which is the promotion of the election to the Assembly of a candidate or candidates endorsed by it;

“polling day” has the meaning given by section 102;

“polling place” means a place appointed as a polling place under section 119;

“postal vote” means a declaration vote in respect of which the declaration voting papers are given to the elector concerned by virtue of—

- (a) an application under subsection 136A (2); or
- (b) section 141;

“pre-election period” means the period of 37 days ending on the expiration of polling day for an election;

“redistribution” includes distribution;

“registered officer”, in relation to a registered party, means the person whose name is entered in the register of political parties as the registered officer of the party;

“registered party” means a political party registered under section 92;

“register of political parties” means the register kept under section 88;

“review statement”, in relation to a decision by the commissioner, means a statement referred to in section 246 about that decision;

“roll” means a roll of electors kept under this Act;

“scrutineer” means a person appointed under section 122 to be a scrutineer;

“scrutiny centre” means a place appointed as a scrutiny centre under section 119;

“secretary”, in relation to a political party, means the secretary or chief administrative officer (however described) of the party;

“Self-Government Act” means the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth;

“Speaker” means the Presiding Officer of the Assembly elected under section 11 of the Self-Government Act;

“staff”, in relation to the electoral commission, means—

- (a) the staff assisting the commissioner referred to in section 31; and
- (b) persons employed or engaged under section 32;

“suppressed address” means an address particulars of which are required to be suppressed from a roll extract by virtue of section 77;

“this Act” includes the regulations.

#### **4. Electoral matter**

**(1)** In this Act—

“electoral matter” means matter that is intended or likely to affect voting in an election.

**(2)** Without limiting the generality of subsection (1), matter shall be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on—

- (a) the election;
- (b) the Government, the Opposition, a previous Government or a previous Opposition;
- (c) an MLA or a former MLA;
- (d) a political party or a candidate or group of candidates in the election; or
- (e) an issue submitted to, or otherwise before, the electors in connection with an election.

**(3)** Without otherwise limiting the generality of subsection (1), during a pre-election period only, matter shall be taken to be intended or likely to affect voting in the election if it contains an express or implicit reference to, or comment on—

- (a) the Government or Opposition, or a previous Government or Opposition, of the Commonwealth, a State or another Territory; or
- (b) a member or former member of the legislature of the Commonwealth, a State or another Territory.

## **PART 2—AUSTRALIAN CAPITAL TERRITORY ELECTORAL COMMISSION**

### ***Division 1—Establishment, functions and powers***

#### **5. Establishment**

The Australian Capital Territory Electoral Commission is established.

#### **6. Constitution**

(1) The electoral commission shall consist of—

- (a) the chairperson;
- (b) the commissioner; and
- (c) 1 other member.

(2) The performance or exercise of the functions or powers of the electoral commission is not affected because there is a vacancy in the membership of the electoral commission.

#### **7. Functions of electoral commission**

(1) The electoral commission has the following functions:

- (a) to advise the Minister on matters relating to elections;
- (b) to consider, and report to the Minister on, matters relating to elections referred to it by the Minister;
- (c) to promote public awareness of matters relating to elections and the Assembly by conducting education and information programs and by such other means as it chooses;
- (d) to provide information and advice on matters relating to elections to the Assembly, the Executive, the head of any administrative unit of the Public Service, Territory authorities, political parties, MLAs and candidates at elections;
- (e) to conduct and promote research into matters relating to elections or other matters relating to its functions;

- (f) to publish material on matters relating to its functions;
  - (g) to provide, on payment of the determined fee (if any), goods and services to persons or organisations, to the extent that it is able to do so by using information or material in its possession or expertise acquired in the performance of its functions;
  - (h) to conduct ballots for prescribed persons and organisations;
  - (j) to perform such other functions as are conferred on it by or under this Act or any other law of the Territory.
- (2) The commission may perform any of its functions under paragraphs (1) (a) to (f) (inclusive) in conjunction with the Australian Electoral Commission.
- (3) A reference in subsection (1) to an election shall be read as including a reference to a referendum and any other ballot.

## **8. Determination of fees**

- (1) The electoral commission may, by notice in the *Gazette*, determine fees for the purposes of the Act.
- (2) A determination may provide for any of the following matters:
- (a) the rate at which a determined fee is to be calculated;
  - (b) the time at which, and the manner in which, the fee is payable to the Territory;
  - (c) the exemption of persons from liability to pay all or part of a determined fee;
  - (d) the deferral of liability by the commissioner for the payment of all or part of a determined fee;
  - (e) the remission or refund by the commissioner of all or part of a determined fee, in particular circumstances.
- (3) A determined fee—
- (a) is payable to the Territory in accordance with the determination; and
  - (b) may be remitted, deferred or refunded in accordance with the determination.
- (4) A reference in subsection (3) to a determined fee shall be read as including a reference to a part of a determined fee.
- (5) A determination is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**9. Powers**

The electoral commission may do all things necessary or convenient to be done in connection with the performance of its functions.

**10. Annual reports**

The electoral commission shall be taken, for the purposes of the *Annual Reports (Government Agencies) Act 1995*, to be a public authority that has been given a direction under paragraph 8 (5) (a) of that Act.

**10A. Special reports**

(1) The electoral commission may present to the Minister a report on any matter relating to elections, referendums or other ballots.

(2) Where the Minister receives a report that is expressed to be presented under subsection (1), the Minister shall cause a copy of the report to be laid before the Legislative Assembly within 6 sitting days after the day on which he or she receives the report.

***Division 2—Members***

**11. Interpretation**

In this Division—

“member” means a member referred to in paragraph 6 (1) (a) or (c).

**12. Appointment**

(1) A member shall be appointed in writing by the Executive.

(2) A person shall not be appointed as the chairperson unless the person—

- (a) is or has been a judge;
- (b) has been a justice of the High Court;
- (c) has been a chief executive;
- (d) has held an office of Secretary within the meaning of the *Public Service Act 1922* of the Commonwealth; or
- (e) has been a member of the electoral commission or of an authority of the Commonwealth, a State or another Territory equivalent to the electoral commission.

(3) Before a person is appointed as a member, the Minister shall consult—

- (a) the leader of each political party represented in the Legislative Assembly; and
- (b) all members of the Legislative Assembly who are not also members of such a party;

about the proposed appointment.

(4) The appointment of a member is not invalid because of any defect or irregularity in connection with the member's appointment.

(5) An instrument of appointment is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

### **13. Tenure and conditions**

(1) A member holds office for the period (not exceeding 5 years) specified in the instrument of appointment.

(2) A member holds office on such terms and conditions in respect of matters not provided for by this Act as are determined in writing by the Minister.

(3) A member is eligible for reappointment.

### **15. Leave of absence**

The Minister may grant a member leave of absence on such terms and conditions as to remuneration and otherwise as the Minister determines.

### **16. Resignation**

(1) A member may resign office by writing signed by the member and delivered to the Minister.

(2) The resignation of a member takes effect on the day on which it is delivered to the Minister or, if a later day is specified in the resignation, on that later day.

### **17. Appointment—suspension or termination**

(1) The Executive may suspend a member from duty for misbehaviour or physical or mental incapacity.

(2) On the first sitting day after the day on which a member is suspended, the Minister shall present a statement of the reasons for the suspension to the Legislative Assembly.



(3) If, within 7 sitting days after a statement is presented in accordance with subsection (2), the Legislative Assembly passes a resolution requiring the Executive to terminate the appointment of the member to whom the statement relates, the Executive shall terminate the appointment of that member.

(4) If—

- (a) the Minister does not present a statement in accordance with subsection (2); or
- (b) the Legislative Assembly does not pass a resolution in accordance with subsection (3);

the member who is suspended shall resume his or her duties.

(5) A member who is suspended from duty is entitled to be paid remuneration and allowances as a member during the suspension.

(6) The Executive shall terminate the appointment of a member if the member—

- (a) is absent without leave granted under section 15 from 3 consecutive meetings of the electoral commission;
- (b) contravenes section 21 without reasonable excuse; or
- (c) is convicted of an offence in Australia or elsewhere punishable by imprisonment for 12 months or longer.

## **18. Acting members**

(1) The Executive may, by instrument, appoint a person to act as a member.

(2) A person shall not be appointed to act as the chairperson unless the person is eligible for appointment as the chairperson.

(3) Anything done by or in relation to a person purporting to act under this section is not invalid on the ground that—

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment has ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

***Division 3—Meetings***

**19. Procedure**

- (1) The chairperson may convene a meeting of the electoral commission.
- (2) The chairperson shall convene such meetings of the electoral commission as are necessary for the efficient conduct of its functions.
- (3) At a meeting, 2 members constitute a quorum.
- (4) The chairperson shall preside at all meetings at which he or she is present.
- (5) If the chairperson is not present at a meeting, the commissioner shall preside.
- (6) Questions arising at a meeting shall be determined by a majority of the votes of the members present and voting.
- (7) The member presiding at a meeting has a deliberative vote, and in the event of an equality of votes, has a casting vote.
- (8) If—
  - (a) only 2 members are present at a meeting; and
  - (b) those members differ in opinion on a matter, other than a matter by reason of which the third member is absent by virtue of section 21;the determination of the matter shall be postponed until the next meeting.
- (9) The electoral commission may regulate the conduct of proceedings at its meetings as it thinks fit.
- (10) The electoral commission may inform itself on any matter in such manner as it thinks fit.

**20. Delegation**

The electoral commission may, by resolution, delegate to the commissioner, an officer or a member of the staff of the electoral commission all or any of its powers under this Act or any other law of the Territory, other than those under Part 4 or 15.

**21. Disclosure of interests**

- (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the electoral commission shall, 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) The disclosure shall be recorded in the minutes of the meeting and, unless the electoral commission determines otherwise, the member shall not—

- (a) be present during any deliberation of the electoral commission in relation to the matter; or
- (b) take part in any decision of the electoral commission in relation to the matter.

(3) The member shall not—

- (a) be present during any deliberation of the electoral commission for the purpose of considering whether to make a determination under subsection (2) in relation to that member; or
- (b) take part in the making by the electoral commission of such a determination.

(4) A member is not to be taken to have an interest in a matter only because the member is entitled to vote in a general election of members of the Legislative Assembly.

### **PART 3—ELECTORAL COMMISSIONER AND STAFF OF ELECTORAL COMMISSION**

#### ***Division 1—Electoral Commissioner***

#### **22. Appointment**

(1) The Executive may, by instrument, appoint a person to be the Electoral Commissioner.

(2) Before a person is appointed as the commissioner, the Minister shall consult—

- (a) the leader of each political party represented in the Legislative Assembly; and
- (b) all members of the Legislative Assembly who are not also members of such a party;

about the proposed appointment.

(3) An instrument of appointment is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**23. Functions and powers**

- (1) The commissioner shall be the chief executive officer of the electoral commission.
- (2) In addition to the powers and functions conferred by or under this Act, the commissioner has such other powers and functions as are conferred on the commissioner by or under any other law of the Territory.
- (3) The commissioner may give written directions to officers and members of the staff of the electoral commission with respect to the exercise of their powers or the performance of their functions under this Act.

**24. Delegation**

The commissioner may, in writing, delegate to an officer or a member of the staff of the electoral commission all or any of the commissioner's powers under this Act or any other law of the Territory, other than those under Part 4.

**25. Tenure and conditions**

- (1) The commissioner holds office for the period (not exceeding 5 years) specified in the instrument of appointment.
- (2) The commissioner holds office on such terms and conditions in respect of matters not provided for by this Act as are determined in writing by the Minister.
- (3) The commissioner is eligible for reappointment.
- (4) The commissioner may hold any other office that is compatible with the performance of his or her functions as commissioner.

**27. Leave of absence**

The Minister may grant the commissioner leave of absence on such terms and conditions as to remuneration and otherwise as the Minister determines.

**28. Resignation**

- (1) The commissioner may resign office by writing signed by the commissioner and delivered to the Minister.
- (2) The resignation takes effect on the day on which it is delivered to the Minister or, if a later day is specified in the resignation, on that later day.

**29. Suspension or termination**

(1) The Executive may suspend the commissioner from duty for misbehaviour or physical or mental incapacity.

(2) On the first sitting day after the day on which the commissioner is suspended, the Minister shall present a statement of the reasons for the suspension to the Legislative Assembly.

(3) If, within 7 sitting days after a statement is presented in accordance with subsection (2), the Legislative Assembly passes a resolution requiring the Executive to terminate the appointment of the commissioner, the Executive shall terminate the appointment of the commissioner.

(4) If—

- (a) the Minister does not present a statement in accordance with subsection (2); or
- (b) the Legislative Assembly does not pass a resolution in accordance with subsection (3);

the commissioner shall resume his or her duties.

(5) The commissioner is entitled to be paid remuneration and allowances during any suspension.

(6) The Executive shall terminate the appointment of the commissioner if he or she—

- (a) is absent without leave granted under section 27 from 3 consecutive meetings of the commission;
- (b) contravenes section 21 without reasonable excuse; or
- (c) is convicted of an offence in Australia or elsewhere punishable by imprisonment for 12 months or longer.

**30. Acting commissioner**

(1) The Executive may, by instrument, appoint a person to act as the commissioner.

(2) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that—

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;

- (c) the person's appointment has ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

***Division 2—Staff of the electoral commission***

**31. Staff**

- (1) The staff assisting the commissioner shall be employed under the *Public Sector Management Act 1994*.
- (2) The *Public Sector Management Act 1994* applies in relation to the management of the staff assisting the commissioner.

**32. Temporary staff and consultants**

- (1) The commissioner may, on behalf of the Territory—
  - (a) employ temporary staff; or
  - (b) engage consultants;

for the purposes of this Act.

- (2) Temporary staff shall be employed on terms and conditions determined from time to time by the electoral commission after consultation with the Executive.
- (3) Consultants shall be engaged on terms and conditions determined from time to time by the electoral commission.
- (4) Nothing in this section in relation to the engagement of consultants shall be read as conferring on the commissioner or the commission a power to enter into a contract of employment.

**33. Officers**

- (1) The commissioner may, in writing, appoint a person who is at least 18 years of age to be an officer for the purposes of this Act.
- (2) The officers so appointed include, but are not limited to, the following officers:
  - (a) the officer in charge of a polling place;
  - (b) the officer in charge of a scrutiny centre;
  - (c) an officer for the purposes of a poll or the scrutiny at an election.

- (3) A candidate is not entitled to be appointed as an officer, and an officer vacates office if he or she becomes a candidate.
- (4) The commissioner has all the powers of an officer and, in the exercise of such a power, is subject to the same obligations as an officer and, for the purposes of this Act, shall be taken to be an officer.
- (5) Subject to the directions of the OIC, an officer at a polling place or scrutiny centre may exercise any of the powers or perform any of the functions of the OIC and in so doing shall, for the purposes of this Act, be taken to be the OIC.

## **PART 4—ELECTORATES**

### **34. Multimember electorates**

- (1) The Territory shall be divided into 3 separate electorates.
- (2) Seven members of the Legislative Assembly shall be elected from 1 electorate.
- (3) Five members of the Legislative Assembly shall be elected from each of the other 2 electorates.

### **35. Redistribution of electorates**

- (1) Subject to this Part, the augmented commission shall redistribute electorates by determining—
  - (a) the name and boundaries of each electorate; and
  - (b) the number of members of the Legislative Assembly to be elected from each electorate.
- (2) A determination shall be made by notice in the *Gazette* after the completion of any investigation required by section 52.

### **36. Factors relevant to redistribution**

In making a redistribution of electorates, the augmented commission shall—

- (a) ensure that the number of electors in an electorate immediately after the redistribution is within the range permitted by subsection 67D (2) of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth;

- (b) endeavour to ensure, as far as practicable, that the number of electors in an electorate at the time of the next general election of members of the Legislative Assembly will not be greater than 105%, or less than 95%, of the expected quota for the electorate at that time ascertained in accordance with the formula set out in subsection 67D (1) of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth; and
- (c) duly consider—
  - (i) the community of interests within each proposed electorate, including economic, social and regional interests;
  - (ii) the means of communication and travel within each proposed electorate;
  - (iii) the physical features and area of each proposed electorate;
  - (iv) the boundaries of existing electorates; and
  - (v) the boundaries of divisions and sections fixed under the *Districts Act 1966*.

### **37. Timing of redistributions**

- (1) The first redistribution of electorates shall be made as soon as practicable after this Part commences.
- (2) After each ordinary election, a redistribution process shall, subject to section 38—
  - (a) begin as soon as practicable after the commencement of the period of 2 years ending on the expiration of the 3rd Saturday in October in the year in which the next ordinary election is due to be held; and
  - (b) be completed as soon as practicable.
- (3) For the purposes of subsection (2), a redistribution process—
  - (a) begins when a redistribution committee is formed for the purposes of a redistribution; and
  - (b) ends when the redistribution of electorates is determined under section 35.

### **38. Suspension of redistribution process—extraordinary elections**

- (1) In this section—

“redistribution process” has the same meaning as in section 37.



(2) Where the election period for an extraordinary election commences during a redistribution process, no further action shall be taken under this Act in relation to the redistribution until after the election period.

(3) Where, in relation to a proposed redistribution, a notice under this Part invited a response (however described) to be made within a particular period and that period had not expired when the election period for an extraordinary election commences—

- (a) a further such notice shall be given as soon as practicable after the election period; and
- (b) this Act applies in relation to any response made in accordance with the firstmentioned notice as if it had been made in accordance with the further notice.

### **39. Redistribution committees**

(1) The electoral commission shall cause redistribution committees to be formed for the purposes of this Part.

(2) The electoral commission shall cause notice of the formation of a redistribution committee to be published in the *Gazette*.

(3) A redistribution committee shall consist of—

- (a) the commissioner;
- (b) the Australian Capital Territory Planning Authority;
- (c) the Chief Surveyor; and
- (d) a person appointed by the electoral commission whose qualifications or experience would, in the opinion of the electoral commission, enable the person to assist the committee, particularly in relation to the factors set out in section 36.

(4) The member referred to in paragraph (3) (d) holds office on such terms and conditions as are determined by the electoral commission in consultation with the Minister and specified in the instrument of appointment.

(5) The appointment of the member referred to in paragraph (3) (d) is not invalid because of any defect or irregularity in connection with the appointment.

(6) The performance or exercise of the committee's functions or powers is not affected because of any vacancy in the membership of the committee.

**40. Meetings of redistribution committee**

- (1) The commissioner may convene a meeting of a redistribution committee.
- (2) The commissioner shall preside at all meetings at which he or she is present.
- (3) If the commissioner is absent from a meeting, the members present shall elect 1 of their number to preside.
- (4) At a meeting, 3 members constitute a quorum.
- (5) Questions shall be determined by a majority of the votes of the members present and voting.
- (6) The member presiding at a meeting has a deliberative vote and, in the event of an equality of votes, has a casting vote.
- (7) A redistribution committee may regulate the conduct of proceedings at its meetings as it thinks fit.
- (8) A redistribution committee may inform itself in such manner as it thinks fit, including the opening of its meetings to members of the public.
- (9) The electoral commission shall, on request by a redistribution committee, give the committee such information and assistance as it requires for the purposes of this Part.

**41. Suggestions regarding redistribution**

- (1) A redistribution committee shall cause a notice to be published in the *Gazette*—
  - (a) inviting written suggestions relating to the redistribution of electorates to be lodged with it within 28 days after the date of the invitation; and
  - (b) inviting written comments relating to such suggestions to be lodged with it within 14 days after the closing date for making suggestions.
- (2) The committee shall cause notice of the invitations to be published in a newspaper circulating throughout the Territory.
- (3) A notice referred to in subsection (1) or (2) shall specify each place at which the suggestions may be perused by members of the public.
- (4) The committee shall cause copies of any suggestions lodged with it in accordance with the invitation under paragraph (1) (a) to be made available for

perusal by members of the public at each place specified in the notices referred to in subsections (1) and (2).

**42. Outline of proposal**

Before making a proposed redistribution of electorates, a redistribution committee may cause an outline of its proposal to be made available to members of the public.

**43. Proposed redistribution**

(1) A redistribution committee shall make a proposed redistribution of electorates after considering any suggestions and comments lodged with it in accordance with an invitation under subsection 41 (1).

(2) Section 36 applies in relation to the making of the proposed redistribution as if it were a redistribution by the augmented commission.

(3) The committee shall state the reasons for its proposal in writing.

(4) A member of the committee who disagrees with its proposal may state the reasons for the disagreement in writing.

**44. Publication of proposal**

(1) A redistribution committee shall—

- (a) cause a map or maps showing the name and boundaries of each proposed electorate to be exhibited at the office of the electoral commission;
- (b) cause copies of—
  - (i) the suggestions and comments lodged with the committee in accordance with the invitation under subsection 41 (1);
  - (ii) a description (whether by reference to a map or plan or otherwise) of the boundaries of each proposed electorate;
  - (iii) a statement as to the number of members of the Legislative Assembly that it proposes should be elected from each proposed electorate;
  - (iv) its statement of reasons for the proposed redistribution; and
  - (v) if a member of the committee has provided a written statement of reasons for any disagreement with the proposal—that statement;

to be made available for perusal by members of the public at the office of the electoral commission;

- (c) cause a notice to be published in the *Gazette* inviting public attention to the exhibition referred to in paragraph (a) and to the availability for perusal of copies of the documents referred to in paragraph (b); and
- (d) cause—
  - (i) a map or maps of each proposed electorate; and
  - (ii) a notice inviting public attention to the availability for perusal of copies of the documents referred to in paragraph (b);

to be published in a newspaper circulating throughout the Territory.

(2) A notice published in accordance with paragraph (1) (c) or (d) shall include a statement to the effect that written objections against the proposal may be lodged with the electoral commission within 28 days after the date of publication of the notice in the *Gazette*.

#### **45. Dissolution of redistribution committee**

A redistribution committee is dissolved immediately after the notices referred to in paragraphs 44 (1) (c) and (d) have been published in relation to the committee's proposal.

#### **46. Objections**

An objection against a proposal by a redistribution committee shall be—

- (a) in writing; and
- (b) lodged with the electoral commission within 28 days after the date on which the notice referred to in paragraph 44 (1) (c) is published in the *Gazette* in relation to the committee's proposal.

#### **47. Augmented electoral commission**

(1) For the purposes of each redistribution, an augmented electoral commission is established.

(2) An augmented commission shall consist of—

- (a) the members of the electoral commission; and
- (b) the members (other than the commissioner) of the redistribution committee formed for the purposes of the redistribution.

(3) The performance or exercise of an augmented commission's functions or powers is not affected because of any vacancy in its membership.

**48. Meetings of augmented electoral commission**

(1) The chairperson of the electoral commission may convene a meeting of an augmented commission.

(2) The chairperson of the electoral commission shall preside at all meetings of an augmented commission at which he or she is present.

(3) If the chairperson of the electoral commission is absent from a meeting of an augmented commission—

- (a) the commissioner shall preside; or
- (b) if the commissioner is absent from the meeting—the members present shall appoint 1 of their number to preside.

(4) At a meeting, 4 members constitute a quorum.

(5) Subject to subsection (6), questions shall be determined by a majority of the votes of the members present and voting.

(6) An augmented commission shall not redistribute electorates under section 35 unless not less than 4 members of the augmented commission, of whom not less than 2 are members of the electoral commission, vote in favour of the redistribution.

(7) Subject to subsection (8), the member presiding at a meeting has a deliberative vote and, in the event of an equality of votes, has a casting vote.

(8) The casting vote of the member presiding at a meeting shall not be used to vote in favour of the making of a redistribution under section 35.

(9) An augmented commission may regulate the conduct of proceedings at its meetings as it thinks fit.

(10) Subject to section 49, an augmented commission may inform itself in such manner as it thinks fit.

(11) The electoral commission shall, on request by an augmented commission, give the augmented commission such information and assistance as it requires for the purposes of this Part.

**49. Investigation of objections**

- (1) The augmented commission shall investigate each objection made in accordance with section 46.
- (2) For the purpose of investigating an objection, the augmented commission shall hold a public hearing, unless it is of the opinion that—
- (a) the matters raised in the objection (or substantially the same matters) were raised in suggestions or comments lodged with the redistribution committee in accordance with the invitation under subsection 41 (1); or
  - (b) the objection is frivolous or vexatious.
- (3) The augmented commission may hold 1 public hearing in relation to several objections.
- (4) At a public hearing, submissions to the augmented commission may only be made—
- (a) by or on behalf of a person who made—
    - (i) an objection in accordance with section 46; or
    - (ii) a suggestion or comment concerning the proposed redistribution in accordance with the invitation under subsection 41 (1); or
  - (b) by a person making a submission in relation to an objection.
- (5) The augmented commission shall consider all such submissions.
- (6) At a public hearing, the augmented commission is not bound by the rules of evidence and, subject to this section, may regulate the conduct of proceedings as it thinks fit.
- (7) Without limiting the generality of subsection (6), the following matters are within the discretion of the augmented commission:
- (a) the manner in which, and the time within which, submissions may be made;
  - (b) the extent to which the augmented commission may be addressed, and the persons by whom it may be addressed.

**50. Redistribution—proposal by augmented electoral commission**

The augmented commission shall make a proposed redistribution of electorates after completing any investigation required by section 49.

**51. Publication of augmented electoral commission's proposal**

(1) After making a proposed redistribution of electorates, the augmented commission shall cause a public announcement to be made concerning the proposal.

(2) The public announcement shall include a statement—

- (a) setting out the substance of the augmented commission's findings or conclusions concerning the redistribution committee's proposal and any objection to it;
- (b) setting out particulars of the augmented commission's proposal; and
- (c) whether, in the opinion of the augmented commission, its proposal is significantly different from the redistribution committee's proposal and, if so, a further statement to the effect that written objections against the proposal may be lodged with the electoral commission in accordance with the notice published under subsection (3).

(3) Where the augmented commission is of the opinion that its proposal is significantly different from the redistribution committee's proposal, the augmented commission shall cause to be published in the *Gazette* a notice to the effect that written objections against the proposal may be lodged with the electoral commission within 28 days after the date of publication of the notice.

**52. Objections to augmented electoral commission's proposal**

(1) An objection against a redistribution proposed by the augmented commission shall be—

- (a) in writing; and
- (b) lodged with the electoral commission within 28 days after the date on which the notice referred to in subsection 51 (3) is published in the *Gazette* in relation to the augmented commission's proposal.

(2) Where an objection is lodged with the electoral commission in accordance with subsection (1)—

- (a) the augmented commission shall investigate the objection; and
- (b) section 49 applies as if the investigation were an investigation under that section.

**53. Report by augmented electoral commission and public announcement**

**(1)** After redistributing electorates under section 35, the augmented commission shall cause—

- (a) a report concerning the redistribution to be submitted to the Minister;
- (b) copies of the report to be made available for perusal by members of the public at the office of the electoral commission; and
- (c) a public announcement to be made to the effect that the redistribution has been made and that copies of the report are available for perusal by members of the public at the office of the electoral commission.

**(2)** The report shall contain particulars of—

- (a) any suggestions or comments lodged with the redistribution committee;
- (b) the redistribution proposed by the redistribution committee and its reasons for the proposal;
- (c) if a member of the redistribution committee has provided a written statement of reasons for any disagreement with the committee's proposal—that statement;
- (d) any objections lodged with the electoral commission against the redistribution committee's proposal;
- (e) the result of the investigation of any objections against the redistribution committee's proposal (including particulars of the proceedings at any public hearings in the course of an investigation);
- (f) the redistribution proposed by the augmented commission and its reasons for the proposal;
- (g) any objections lodged with the electoral commission against the augmented commission's proposal;
- (h) the result of the investigation of any objections against the augmented commission's proposal (including particulars of the proceedings at any public hearings in the course of an investigation);
- (i) the redistribution made by the augmented commission and its reasons for the redistribution; and
- (j) if a member of the augmented commission has provided a written statement of reasons for any disagreement with the augmented commission's proposal—that statement.



**54. Report to Legislative Assembly**

The Minister shall cause a copy of the augmented commission's report to be presented to the Legislative Assembly on the first sitting day after the day on which the Minister receives the report from the augmented commission.

**55. Decisions are final**

(1) A decision of an augmented commission or a redistribution committee made, or purporting to be made, under this Part—

- (a) is final and conclusive;
- (b) shall not be challenged, appealed against, reviewed, quashed, set aside or called into question in any court or tribunal on any ground; and
- (c) is not subject to any proceedings for a writ of mandamus, prohibition or certiorari or for an injunction, declaration or other order in any court on any ground.

(2) A reference in subsection (1) to a decision shall be read as including a reference to a refusal or failure to make a decision.

**56. Validity not affected**

A failure to comply with the provisions of this Part (except section 34, 35 or 36) is not to be taken to affect the validity of a decision of an augmented commission or a redistribution committee.

**PART 5—ELECTORAL ROLLS**

**57. Electorate and Territory rolls**

(1) The commissioner shall keep a roll of the electors of the Territory consisting of separate rolls of the electors of each electorate.

(2) A roll may be kept electronically.

**58. Contents of roll**

(1) A roll shall contain the following particulars in relation to each elector:

- (a) surname or family name;
- (b) each Christian or given name;
- (c) address;
- (d) sex;
- (e) date of birth.

- (2) A roll may contain the following particulars in relation to each elector:
- (a) occupation;
  - (b) any former surname;
  - (c) any previous address;
  - (d) postal address, if not the same as the address of the principal place of residence;
  - (e) such further particulars (if any) as are prescribed.

**59. Roll extracts**

(1) A reference in this Act to an extract from a roll shall be read as a reference to that part of the roll that contains, in relation to each elector enrolled at the time the extract is prepared—

- (a) the surname or family name;
  - (b) each Christian or given name; and
  - (c) except in relation to—
    - (i) an elector whose address is suppressed;
    - (ii) an eligible overseas elector;
    - (iii) an Antarctic elector; or
    - (iv) an elector who is enrolled by virtue of his or her enrolment on the Commonwealth roll as an itinerant elector;
- the address.

(2) A reference in this Act to a roll extract in electronic form shall be read as a reference to a disk, tape or other device from which the information in the extract may be reproduced by mechanical, electronic or other means.

**60. Inspection of printed roll extracts**

(1) The commissioner—

- (a) shall, at the office of the commissioner; and
- (b) may, at such other places as the commissioner determines;

make a printed extract from each roll available for public inspection during ordinary office hours.

(2) A right of inspection under subsection (1) shall not be taken to confer any right to copy, take an extract from, or scan electronically, an extract from a roll.

(3) For the purposes of subsection (1), the commissioner shall prepare an extract of each roll at least once each calendar year.

**61. Supply of printed roll extracts to MLAs etc**

(1) At least once each calendar year, the commissioner shall, on request—

- (a) give 2 printed extracts from the roll for an electorate to each MLA for the electorate; and
- (b) give 2 printed extracts from the roll for each electorate to the registered officer of each registered party.

(2) The commissioner shall, on request and on payment of the determined fee, supply a printed extract from a roll to a person who the commissioner is satisfied requires the extract for an approved purpose within the meaning of section 63.

**62. Supply of roll extracts in electronic form to MLAs etc**

(1) The commissioner shall, on request, so far as practicable, give a roll extract in electronic form to—

- (a) an MLA; or
- (b) the registered officer of a registered party.

(2) The commissioner shall, on request and on payment of the determined fee, supply a roll extract in electronic form, or on microfiche, to a person who the commissioner is satisfied requires the extract for an approved purpose within the meaning of section 63.

**63. Approved use of roll extracts**

(1) A person shall not, without reasonable excuse, use information obtained by means of a roll extract provided under section 61 or 62, except for an approved purpose.

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

(2) For the purposes of subsection (1), each of the following is an approved purpose:

- (a) in relation to an MLA—the performance of his or her functions;
- (b) in relation to the registered officer of a registered party—the performance by an MLA who is a member of the party of his or her functions;
- (c) in relation to an MLA or the registered officer of a registered party—

- (i) a purpose connected with an election; or
- (ii) monitoring the accuracy of information contained in the roll;
- (d) in relation to any person—a prescribed purpose.

**64. Prohibited use of roll extracts**

Except in accordance with section 63, a person shall not, without reasonable excuse—

- (a) use for a commercial purpose; or
- (b) disclose to another person;

information that the person knows, or has reasonable grounds for believing, has been obtained from or by means of a roll extract provided under section 61 or 62.

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

**65. Provision of roll information to prescribed authorities**

(1) The commissioner may give a copy of a roll or information contained on a roll to a prescribed authority if the commissioner is satisfied that the authority requires the copy or information for a prescribed purpose.

(2) A person shall not use information obtained by virtue of subsection (1) except in accordance with the regulations.

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

(3) For the purposes of the *Juries Act 1967*, the commissioner shall, on request by the sheriff of the Territory, give the sheriff a copy of the roll of electors of the Territory.

(4) A copy of a roll, or information, may be given to a person under subsection (1) or (3) in printed or electronic form or on microfiche.

(5) A copy of a roll, or information, provided under subsection (1) or (3) shall not include—

- (a) in relation to a person whose address is a suppressed address—any particulars other than the name of the person;
- (b) the address of an eligible overseas elector; or
- (c) the address of an Antarctic elector.

(6) The regulations may provide for the manner in which a prescribed authority may deal with information, or information obtained from a copy of a roll, provided under subsection (1).

**66. Maintenance of rolls**

(1) The commissioner shall, so far as practicable, keep the rolls up to date.

(2) The commissioner may alter a roll at any time as follows:

- (a) to register any change of name;
- (b) to bring up to date any particulars appearing on the roll;
- (c) to correct any mistake or omission;
- (d) to remove the name of a deceased elector;
- (e) in respect of a person who is enrolled on the Commonwealth roll—to reflect any alteration under section 105 of the Commonwealth Electoral Act in respect of that enrolment.

**67. Power to require information**

(1) The commissioner may, by written notice, require—

- (a) the administrative head of a unit of the Public Service;
- (b) the chief executive officer (however described) of a Territory authority;  
or
- (c) the occupier of any residence;

to give to the commissioner or a specified officer specified information required in connection with the preparation, maintenance or revision of a roll.

(2) A notice shall specify the time within which the information is to be so given.

(3) A person who, without reasonable excuse, contravenes such a requirement is guilty of an offence punishable, on conviction, by a fine not exceeding 5 penalty units.

(4) Subsection (3) does not apply where compliance with the requirement would involve the disclosure of information in contravention of any other law.

**68. Notice of registered deaths**

The registrar-general shall give to the commissioner, on request, particulars entered in the register of deaths during the period to which the request relates in respect of the death of each person aged 17 years or older.

**69. Disclosure of roll information**

(1) A person to whom this section applies shall not, without reasonable excuse, give a copy of a roll, an extract from a roll, or information contained on a roll, to another person except for the purposes of this Act.

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

(2) This section applies to a person who is, or has been—

- (a) the commissioner;
- (b) an officer; or
- (c) a member of the staff of the electoral commission.

**70. Joint roll arrangements with the Commonwealth**

(1) The Chief Minister may arrange with the Governor-General for—

- (a) the preparation, alteration or revision of the rolls; or
- (b) the carrying out of any procedure relating to the preparation, alteration or revision of the rolls;

jointly by the Commonwealth and the Territory.

(2) Where such an arrangement is in force, a roll may contain—

- (a) the names and particulars of persons who are enrolled as electors of the Commonwealth but not as electors of the Territory, provided that it is clearly indicated that they are not enrolled as electors of the Territory;
- (b) distinguishing marks against the names of persons enrolled as electors of the Territory but not as electors of the Commonwealth, to show that they are not electors of the Commonwealth; and
- (c) other particulars in addition to those required by or under this Act to be included in the roll;

and, for the purposes of this Act, the names of electors of the Commonwealth who are not enrolled as electors of the Territory and those marks and particulars shall not be taken to be part of the roll.

**PART 6—ENROLMENT**

**71. Interpretation**

(1) For the purposes of this Part, the following persons enrolled on the Commonwealth roll shall be taken not to be so enrolled:

- (a) a person whose address recorded on that roll is not in the Territory;
  - (b) a person who is an eligible overseas elector for the purposes of the Commonwealth Electoral Act but not an eligible overseas elector for the purposes of this Act.
- (2) For the purposes of this Part, the address of a person who is serving a sentence of imprisonment is—
- (a) if the person is enrolled on the Commonwealth roll—the address recorded on that roll in respect of the person; or
  - (b) where paragraph (a) does not apply—
    - (i) the person's address immediately before the person began serving the sentence; or
    - (ii) if the person did not have an address immediately before beginning to serve the sentence—the address of the place at which the person is serving the sentence.

## **72. Entitlement**

- (1) A person is entitled to be enrolled for an electorate if—
- (a) the person is entitled to be enrolled on the Commonwealth roll otherwise than by virtue of section 100 of the Commonwealth Electoral Act; and
  - (b) the person's address is in the electorate.
- (2) A person is not entitled to be enrolled for more than 1 electorate.

## **73. Compulsory enrolment etc—residents**

- (1) A person who—
- (a) is entitled to be enrolled for an electorate; and
  - (b) is not enrolled on any roll;

shall, subject to subsection (5), make a claim for enrolment within 21 days after the day on which the person became so entitled.

- (2) An elector who—
- (a) is enrolled for an electorate; and
  - (b) is entitled, following a change of address, to be enrolled for another electorate;

shall, subject to subsections (4) and (5), make a claim for a transfer of enrolment within 52 days after the date of the change of address.

**(3)** An elector who changes address within an electorate shall, subject to subsections (4) and (5), give the commissioner written notice setting out the particulars of the new address within 52 days after the date of the change of address.

**(4)** Subsections (2) and (3) do not apply to an eligible overseas elector, an Antarctic elector or a person who is not at least 18 years of age.

**(5)** Where a person is enrolled on the Commonwealth roll otherwise than by virtue of section 100 of the Commonwealth Electoral Act and the address recorded on that roll in respect of the person is an address in an electorate —

(a) the person shall be taken—

(i) to have made a claim under subsection (1) or (2), or given notice under subsection (3), whichever is appropriate; and

(ii) to be enrolled for the electorate; and

(b) the particulars recorded on the Commonwealth roll in respect of the person shall, so far as practicable, be taken to be the particulars recorded on the roll for the electorate.

**(6)** A person who, without reasonable excuse, contravenes subsection (1), (2) or (3) is guilty of an offence punishable, on conviction, by a fine not exceeding 0.5 penalty units.

#### **74. Eligible overseas electors**

**(1)** An elector—

(a) who is, for the purposes of the Commonwealth Electoral Act, an eligible overseas elector;

(b) whose address, recorded on the Commonwealth roll when the elector became a person referred to in paragraph (a), was an address in an electorate; and

(c) who has, for the purposes of this Act, indicated an intention to reside, or resume residing, in the Territory after ceasing to be a person referred to in paragraph (a);

is, subject to subsection (4), an eligible overseas elector for the purposes of this Act in relation to the electorate in which that address is located.



(2) The commissioner shall annotate the roll for an electorate so as to indicate the name of each person who is an eligible overseas elector in relation to the electorate.

(3) The commissioner shall cancel an annotation in respect of a person if—

- (a) the person ceases to be an eligible overseas elector for the purposes of the Commonwealth Electoral Act; or
- (b) the person notifies the commissioner that he or she does not intend to reside, or to resume residing, in the Territory after ceasing to be an eligible overseas elector for the purposes of the Commonwealth Electoral Act.

(4) A person ceases to be an eligible overseas elector for the purposes of this Act on the day on which the annotation in respect of the person is cancelled.

#### **75. Age 17 enrolment**

(1) The commissioner shall enrol a person on the roll for an electorate if the person—

- (a) is at least 17 years of age;
- (b) would, had the person attained the age of 18 years, be entitled to be enrolled for the electorate; and
- (c) makes a claim for enrolment.

(2) Where a person is enrolled on the Commonwealth roll by virtue of section 100 of the Commonwealth Electoral Act and the address recorded on that roll is an address in an electorate—

- (a) the person shall be taken—
  - (i) to have made a claim for enrolment under this section; and
  - (ii) to be enrolled under this section on the roll for the electorate; and
- (b) the particulars recorded on the Commonwealth roll in respect of the person shall, so far as practicable, be taken to be the particulars recorded on the roll for the electorate.

#### **76. Enrolment etc**

(1) In this section—

“claim” means a claim for enrolment or transfer of enrolment.

(2) Except as otherwise provided by this Act, the name of a person shall not be added to a roll except pursuant to a claim.

- (3) A claim shall be—
- (a) in the approved form;
  - (b) signed by the claimant and the signature witnessed by an elector or a person entitled to be an elector; and
  - (c) given to the commissioner.
- (4) On a claim under subsection (2), the commissioner shall, subject to section 80—
- (a) enrol the claimant, if satisfied that he or she is entitled to be enrolled pursuant to the claim; or
  - (b) reject the claim.
- (5) After making a decision about a claim under subsection (2), the commissioner shall give the claimant—
- (a) if the claim is accepted—written notice of the decision specifying the electorate in which the claimant is enrolled; or
  - (b) if the claim is rejected—a review statement about the decision.

**77. Suppression of elector's address**

- (1) Where—
- (a) an elector is enrolled on the Commonwealth roll; and
  - (b) by virtue of section 104 of the Commonwealth Electoral Act, the particulars of the elector's address have not been included on, or have been deleted from, the Commonwealth roll;

the commissioner shall suppress the particulars of the elector's address from any extract from the roll on which the elector is enrolled under this Act.

- (2) Where an elector is not enrolled on the Commonwealth roll, on the elector's request for the suppression of particulars of his or her address from an extract from any roll, the commissioner shall—
- (a) grant the request; or
  - (b) refuse the request.
- (3) A request shall—
- (a) be in the approved form;
  - (b) set out the reasons for the request; and
  - (c) be verified by statutory declaration.

(4) The commissioner shall grant a request under subsection (2) if he or she is satisfied on reasonable grounds that the inclusion of the particulars of the elector's address on an extract from the roll would place at risk the personal safety of the elector or any member of the elector's family.

(5) After making a decision about a request under subsection (2), the commissioner shall give the person who made the request—

- (a) if the request is granted—written notice of the decision; or
- (b) if the request is refused—a review statement about the decision.

**78. Inclusion of particulars on roll following suppression**

(1) This section applies where the address of an elector has been suppressed under subsection 77 (2).

(2) The commissioner shall include the particulars of the elector's address on an extract from the roll if the commissioner is satisfied on reasonable grounds that the inclusion of the particulars would not place at risk the personal safety of the elector or any member of the elector's family.

(3) After making a decision under subsection (2), the commissioner shall give the elector a review statement about the decision.

**79. Suppression of elector's address pending review**

(1) This section applies where the commissioner makes either of the following decisions:

- (a) a decision under paragraph 77 (2) (b) to refuse to suppress an elector's address from an extract from a roll;
- (b) a decision under subsection 78 (2) to include particulars of an elector's address on an extract from a roll.

(2) The commissioner shall suppress the particulars of the relevant elector's address from any extract from a roll from the defined date until—

- (a) if no application for a review of the relevant decision has been made to the electoral commission within a period of 28 days after the elector is given a review statement about the decision—the expiration of that period;
- (b) if, on a review, the electoral commission affirms the relevant decision, and no application for a review of the commission's decision has been made to the AAT—the expiration of the period of 28 days after the elector is given a notice under section 248;

- (c) if, on a review, the AAT affirms the decision of the electoral commission, and no appeal to the Supreme Court is instituted—the expiration of the period of 28 days after the elector is given notice of the decision of the AAT; or
  - (d) if an appeal to the Supreme Court is so instituted within that period—proceedings on the appeal are completed.
- (3) Subsection (2) has effect subject to—
- (a) an order of the electoral commission under section 247;
  - (b) any order of the AAT; and
  - (c) any order of the Supreme Court.
- (4) In this section—
- “defined date” means—
- (a) in relation to a decision under paragraph 77 (2) (b) to refuse to suppress an elector’s address from an extract from a roll—the date of the request for suppression; or
  - (b) in relation to a decision under subsection 78 (2) to include particulars of an elector’s address on an extract from a roll—the date of the decision.

## **80. Closed rolls**

- (1) For the purposes of this Act, the roll for an electorate shall be taken to be closed during the period—
- (a) commencing at 8 pm on the 29th day before polling day for an election in the electorate; and
  - (b) ending at the close of polling at the election.
- (2) While a roll is closed, subject to subsections (3), (4) and (4A) and section 66—
- (a) a person shall not be enrolled;
  - (b) a person shall not be taken to be enrolled under subsection 73 (5) or 75 (2) if the person’s enrolment on the Commonwealth roll is effected during the closure;
  - (c) a name shall not be removed;
  - (d) an annotation in relation to the roll shall not be made or cancelled under section 74; and

(e) a change of address shall not be recorded.

(3) Paragraph (2) (c) shall not be taken to prevent the removal, while a roll is closed, of the name of a person who the commissioner believes on reasonable grounds made a statement in a claim for enrolment or transfer of enrolment that was false or misleading in a material particular.

(4) Where the Australian Postal Corporation notifies the commissioner in writing that the delivery of a posted claim for enrolment or transfer of enrolment has been delayed by an industrial dispute and, but for the dispute, would have been delivered to the commissioner before the close of the roll for an election—

- (a) paragraphs (2) (a) and (c) shall not be taken to prevent the enrolment of an elector or the removal of an elector's name from another roll as a consequence of such an enrolment; and
- (b) where the claimant is enrolled in accordance with the claim—the enrolment shall be taken, in relation to any vote cast by the claimant in the election, to have been effected before the roll closed.

(4A) This section does not prevent the enrolment, during a period when a roll is closed, of an elector whose claim for enrolment or transfer of enrolment was received before the commencement of that period.

(5) In subsection (2)—

- (a) a reference to enrolment shall be read as including a reference to the enrolment of a person who is to be taken to have been enrolled under this Part; and
- (b) a reference (expressed or implied) to particulars relating to a person shall be read as including a reference to particulars that are to be taken to be recorded on the roll under this Part.

## **81. Objections to enrolment**

(1) This section applies in relation to the enrolment of a person who is enrolled under this Act but is not enrolled under the Commonwealth Act.

(2) An elector may object to the enrolment of a person on the ground that the person is not entitled to enrolment by virtue of section 72.

(3) An objection shall—

- (a) be in the approved form;
- (b) set out the grounds on which it is made; and

- (c) subject to subsection (3A), be accompanied by a deposit of \$2 or any higher amount prescribed by the regulations.
- (3A)** Where an elector objects to the enrolment of a person on the ground that the person is of unsound mind a deposit is not payable.
- (4)** The commissioner shall reject an objection without notifying the person whose enrolment it concerns if—
  - (a) the objection is made on the ground that the person enrolled is of unsound mind and is not accompanied by a supporting medical certificate; or
  - (b) the commissioner believes on reasonable grounds that the objection is frivolous or vexatious.
- (5)** After the commissioner rejects an objection by virtue of subsection (4), he or she shall—
  - (a) where paragraph (4) (a) applies—give the objector written notice of the rejection; and
  - (b) where paragraph (4) (b) applies—give the objector a review statement about the decision to reject the objection.
- (6)** If—
  - (a) an objection is made to the enrolment of a person; or
  - (b) the commissioner believes on reasonable grounds (other than on the grounds that the elector is of unsound mind) that a person enrolled is not entitled to be enrolled;the commissioner shall, subject to subsection (4), give the person written notice of the objection or belief inviting the person to respond within 21 days after the date of the notice.
- (7)** After considering any such response, the commissioner shall determine the person's entitlement to enrolment and—
  - (a) confirm the enrolment; or
  - (b) remove the person's name from the roll.
- (8)** After making a decision under subsection (7) about the enrolment of a person, the commissioner shall—
  - (a) in the case of a decision to confirm the enrolment—give the person, and any objector, written notice of the decision; or

- (b) in the case of a decision to remove the person's name from the roll—
  - (i) give the person a review statement about the decision; and
  - (ii) if an objection has been duly made to the enrolment—give the objector written notice of the decision.

(9) Where a person's name is removed from a roll as a result of an objection, the commissioner shall return the deposit lodged with the objection to the objector.

## **82. Record of claims for enrolment**

(1) If the commissioner is satisfied that a record of the particulars of a claim for enrolment or transfer of enrolment is kept on microfiche, microfilm or in any other appropriate permanent form, the claim may be destroyed.

(2) A record of particulars of a claim that is kept in accordance with subsection (1) is evidence of the particulars of that claim.

## **83. Processing enrolment claims**

An officer who receives a claim for enrolment or transfer of enrolment shall do everything practicable to process the claim.

## **84. Transmission of enrolment claims**

A person who accepts for transmission to the commissioner a claim for enrolment or transfer of enrolment shall transmit the claim to the commissioner as soon as is practicable.

Penalty: 10 penalty units.

## **85. Production of claims for enrolment before a court**

(1) This section applies to a person who is, or has been—

- (a) a member of the electoral commission;
- (b) the commissioner;
- (c) an officer; or
- (d) a member of the staff of the electoral commission.

(2) A person to whom this section applies shall not, except for the purposes of this Act, be required—

- (a) to produce in a court a claim for enrolment; or

- (b) to divulge or communicate to a court any matter or thing in relation to a claim for enrolment that has come to the person's notice in the performance of duties or functions under this Act.
- (3) In this section—
- “court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

**86. Claims for enrolment not subject to warrants**

A warrant issued under a law of the Territory authorising the seizure of a document related to an offence does not authorise the seizure of a claim for enrolment or transfer of enrolment.



## **PART 7—REGISTRATION OF POLITICAL PARTIES**

### **87. Interpretation**

**(1)** In this Part, unless the contrary intention appears—

“eligible political party” means—

- (a) a parliamentary party; or
- (b) a political party (other than a parliamentary party) that has at least 100 members;

“member”, in relation to a political party, means a member of the party who is an elector or entitled to be an elector;

“parliamentary party” means a political party at least 1 member of which is a member of—

- (a) the Assembly;
- (b) the Parliament of the Commonwealth; or
- (c) the legislature of a State or another Territory;

“registered” means registered under this Part.

**(2)** For the purposes of this Part, 2 political parties shall be taken to be related if—

- (a) 1 is a part of the other; or
- (b) both are parts of the same political party.

### **88. Register**

**(1)** The commissioner shall keep a register, called the Register of Political Parties, of the political parties registered under this Part.

**(2)** The register may be kept electronically.

**(3)** The register shall contain the following particulars in respect of each registered party:

- (a) the name of the party;
- (b) any abbreviation of the name of the party, as set out in the application for registration, that the party intends to use for the purposes of this Act;
- (c) the name and address of the registered officer of the party.

**(4)** The commissioner shall make the register available for public inspection at the office of the commissioner during ordinary office hours.

**89. Application for registration**

An application for the registration of an eligible political party shall—

- (a) be in the approved form, signed by the secretary of the party;
- (b) contain a specimen signature of the person who is to be the registered officer; and
- (c) be accompanied by a copy of the constitution of the party.

**90. Further information**

(1) For the purposes of this Part, the commissioner may, by written notice given to an applicant for registration, require the applicant to give specified information, or a specified document, relating to the application to the commissioner within a specified period.

(2) If the applicant fails to comply with the requirement, the commissioner may refuse the application.

(3) If the commissioner refuses an application under subsection (2), he or she shall give the applicant a review statement about the decision to refuse the application.

**91. Publication of notice of applications**

(1) On receipt of an application for the registration of a political party, the commissioner shall, subject to sections 90, 93 and 94, publish a notice of the application in the *Gazette* and a daily newspaper circulating in the Territory.

(2) The notice shall—

- (a) set out the particulars referred to in subsection 88 (3) in respect of the application;
- (b) indicate that copies of the application and the constitution of the party are available for public inspection at the office of the commissioner during ordinary office hours; and
- (c) invite any person who objects to the registration to lodge a written notice of objection with the commissioner within 14 days after the date of the publication of the notice in the *Gazette*.

(3) A notice of objection shall—

- (a) set out the grounds of the objection;
- (b) specify the name and address of the objector; and
- (c) be signed by the objector.

(4) The commissioner shall make available for public inspection at the office of the commissioner during ordinary office hours—

- (a) copies of the application and the constitution of the party; and
- (b) copies of any duly made notice of objection.

(5) The commissioner shall give to the person nominated in the application to be the registered officer of the party—

- (a) a copy of any duly made notice of objection; and
- (b) a notice inviting the person to give any response to the objection to the commissioner within 14 days after the date of the notice.

(6) The commissioner shall make any response submitted in accordance with subsection (5) available for public inspection at the office of the commissioner during ordinary office hours.

(7) The commissioner shall consider any duly made objection in determining whether to register the party.

## **92. Registration**

(1) Subject to this Part, the commissioner shall register an eligible political party in respect of which an application for registration has been made.

(2) After the commissioner registers an eligible political party, he or she shall—

- (a) publish notice of the registration in the *Gazette*;
- (b) give the secretary of the party written notice of the registration; and
- (c) if an objection has been duly made to the application for registration—give the objector a review statement about the decision to register the party.

## **93. Refusal of applications**

(1) The commissioner shall refuse an application for the registration of a political party if—

- (a) the commissioner believes on reasonable grounds that the party is not an eligible political party;
- (b) the person nominated to be the registered officer of the party is not qualified to be an elector or is the registered officer of a registered party; or
- (c) the party is ineligible for registration by virtue of section 99.

(2) The commissioner shall refuse an application for the registration of an eligible political party if the commissioner believes on reasonable grounds that the name of the party or any abbreviation of that name set out in the application for registration that the party intends to use for the purposes of this Act—

- (a) comprises more than 6 words;
- (b) is obscene;
- (c) is the name, or an abbreviation or acronym of the name, of another party;
- (d) so nearly resembles the name, or an abbreviation or acronym of the name, of another party that it is likely to be confused with or mistaken for that name, abbreviation or acronym;
- (e) comprises the word ‘Independent’;
- (f) comprises the words ‘Independent Party’; or
- (g) comprises or contains the word ‘Independent’ and—
  - (i) the name, or an abbreviation or acronym of the name, of another party; or
  - (ii) matter that so nearly resembles the name, or an abbreviation or acronym of the name, of another party, that the matter is likely to be confused with or mistaken for that name, abbreviation or acronym.

(3) After the commissioner refuses an application for the registration of a political party, he or she shall—

- (a) give the secretary of the party a review statement about the decision to refuse the application; and
- (b) if an objection has been duly made to the application—give the objector written notice of the refusal.

(4) In subsection (2)—

“another party”, in relation to a political party, means—

- (a) a parliamentary party; or
- (b) a registered party;

other than the firstmentioned party or a political party related to the firstmentioned party.

**94. Variation of applications**

(1) Where it appears to the commissioner that an application for the registration of an eligible political party should be refused but that the application might be varied so as to avoid the refusal, the commissioner shall give the applicant written notice to that effect, including a statement—

- (a) setting out the reasons for that view; and
- (b) describing the effect of subsections (2) and (3).

(2) Where such a notice is given, the commissioner is not required to give further consideration to the application to which it relates unless and until a request is made in accordance with subsection (3).

(3) Where, within 28 days after the date of such a notice, the applicant gives the commissioner a written request, signed by the applicant—

- (a) to vary the application in a specified manner; or
- (b) to proceed with the application in the form in which it was made;

the commissioner shall comply with the request.

(4) An application varied in accordance with such a request shall be treated as if it were a new application for the registration of a political party.

**95. Changes to register**

(1) The secretary of a registered political party may apply to the commissioner to change, or add to, the particulars registered in relation to the party.

(2) Subject to subsection (3), this Part, other than section 94 and this section apply, so far as practicable, in relation to an application for a change or addition to the registered particulars as if it were an application for registration and any objection to the application were an objection to registration.

(3) Section 91 does not apply in relation to an application to change the particulars relating to the address of the registered agent of a political party.

**96. No action in pre-election period**

During a pre-election period, no action shall be taken under this Part in relation to the registration of a political party.

**96A. Registered officer—entitlement to office**

A person is not entitled to become, or to continue to be, the registered officer of a party unless the person is or continues to be, as the case may be, qualified to be an elector.

**97. Deputy registered officer**

(1) For the purposes of Part 9 or 10, a deputy registered officer of a party may be appointed—

- (a) except where paragraph (b) applies—by the registered officer of the party; or
- (b) where the office of registered officer of the party becomes vacant or the registered officer is otherwise unable to carry out his or her duties—by the secretary of the party;

by giving the commissioner written notice, signed by the person making the appointment and the proposed deputy, specifying the name and address of the deputy.

(1A) A person is not entitled to become, or to continue to be, a deputy registered officer of a party unless the person is or continues to be, as the case may be, qualified to be an elector.

(2) For the purposes of those Parts, a deputy registered officer has all the powers, and may perform any of the functions, of the registered officer and, in that exercise or performance, is subject to the same obligations as the officer and shall be taken to be the officer.

**98. Cancellation of registration**

(1) The commissioner shall cancel the registration of a political party on request by the secretary of the party.

(2) A request shall be in writing, signed by the applicant, setting out the name and address of the applicant.

(3) Subject to subsection (3A), the commissioner shall cancel the registration of a political party if it has not endorsed a candidate at the last 2 consecutive general elections.

(3A) Subsection (3) does not apply to a political party unless it was registered at the time of each of those general elections.

(4) The commissioner shall cancel the registration of a political party if the commissioner believes on reasonable grounds that—

- (a) the party has ceased to exist (whether by amalgamation with another political party or otherwise);
- (b) the party has ceased to be an eligible political party; or
- (c) the registration of the party was obtained by fraud or misrepresentation.

(5) The commissioner shall not cancel the registration of a political party under subsection (4) unless the commissioner has—

- (a) given the secretary, or the last secretary, of the party, written notice of the proposed cancellation—
  - (i) setting out the reasons for the proposed cancellation; and
  - (ii) inviting him or her to give to the commissioner a written notice of any objection to the cancellation within 14 days after the date of the firstmentioned notice;
- (b) published a notice of the proposed cancellation in the *Gazette* inviting any person who objects to the proposal to lodge a written notice of objection with the commissioner within 14 days after the date of publication; and
- (c) considered any such objection.

(6) After the commissioner cancels the registration of a political party, he or she shall—

- (a) publish notice of the cancellation in the *Gazette*;
- (b) in the case of a cancellation under subsection (3)—give written notice of the cancellation to the last registered officer of the party; and
- (c) in the case of a cancellation under subsection (4)—give a review statement about the decision to cancel the registration to the last registered officer of the party.

(7) After an objection has been duly made to the proposed cancellation of a political party, if the commissioner decides not to cancel the party's registration, he or she shall give written notice of the decision to—

- (a) the registered officer of the party; and
- (b) in the case of an objection not made by or on behalf of the party—the objector.

**99. Use of party name after cancellation of registration**

(1) Where the registration of a political party is cancelled, that party, or a party that has a name that so nearly resembles the name of the firstmentioned party that it is likely to be confused with or mistaken for that name, is ineligible for registration until after the general election next following the cancellation.

(2) A reference in subsection (1) to the name of a political party shall be taken to include a reference to an abbreviation of the name.

**PART 8—TIMING OF ELECTIONS**

**100. Ordinary elections**

(1) Subject to subsections (2) and (3)—

- (a) the first general election under this Act as amended by the *Electoral (Amendment) Act 1997* shall be held on 20 October 2001; and
- (b) each subsequent general election under this Act shall be held on the 3rd Saturday in October in the 3rd year after the year in which the last ordinary election was held.

(2) Where, but for this subsection, an election in accordance with subsection (1) would be held on the day on which an election of Senators, or a general election of members of the House of Representatives, would be held, the election shall be held on the 1st Saturday in December in the year in which it would, but for this subsection, be held.

(3) Where an extraordinary general election has been held in the 6 months before the day on which an election in accordance with subsection (1) or (2) would, but for this subsection, have been held—

- (a) the election shall not be held; and
- (b) this section applies in relation to subsequent ordinary elections as if the election had been held.

**101. Extraordinary elections**

(1) For the purposes of this Act, an extraordinary election is—

- (a) a general election required by section 16 of the Self-Government Act;
- (b) a general election required by section 48 of the Self-Government Act;
- (c) an election of an MLA or MLAs required by section 126; or
- (d) an election of an MLA or MLAs required by section 275.



(2) An extraordinary election required by section 126 shall be held on a Saturday specified by the Executive by notice in the *Gazette*, being not earlier than 36 days, nor later than 90 days, after the day on which the election failed.

(3) Where the Court of Disputed Elections declares an election void, an extraordinary election required by section 275 shall be held on a Saturday, specified by the Executive by notice in the *Gazette*, being not earlier than 36 days, nor later than 90 days, after the day on which the declaration is made.

(4) For the purposes of subsection (2) or (3), the Executive shall not specify a day that is the polling day for an election of Senators or a general election of the House of Representatives.

#### **102. Polling day**

(1) Subject to section 111, a poll shall be held for an election on the day on which the election is required to be held under this Part.

(2) A reference in this Act to the polling day for an election shall, unless the contrary intention appears, be read as a reference to the day on which, but for section 111, a poll for the election would be required.

### **PART 9—ARRANGEMENTS FOR ELECTIONS**

#### ***Division 1—Nominations***

#### **103. Eligibility—MLAs**

(1) Subject to subsections (2) and (4), a person who is—

- (a) an Australian citizen;
- (b) at least 18 years of age; and
- (c) an elector or entitled to be an elector;

is eligible to be an MLA.

(2) A person is not eligible to be an MLA if—

- (a) the person is a member of—
  - (i) the Parliament of the Commonwealth; or
  - (ii) the legislature of a State or another Territory; or

(b) the person—

- (i) holds an office or appointment (other than a prescribed office) under a law of the Territory, the Commonwealth, a State or another Territory; or
- (ii) is employed by the Territory, the Commonwealth, a State or another Territory, or by a Territory authority or a body (whether corporate or not) established by a law of the Commonwealth, a State or another Territory;

and is entitled to any remuneration or allowance (other than reimbursement of expenses reasonably incurred) in respect of the office, appointment or employment.

(3) In subparagraph (2) (b) (i)—

“prescribed office” means an office of Speaker, Deputy Speaker, Chief Minister, Deputy Chief Minister, Minister or MLA.

(4) A person who—

(a) is convicted of an offence against—

- (i) section 285 or 288;
- (ii) section 347 of the *Crimes Act 1900* in relation to an offence referred to in subparagraph (i);
- (iii) section 28 of the *Crimes Act 1914* of the Commonwealth; or
- (iv) section 7 of the *Crimes Act 1914* of the Commonwealth in relation to an offence referred to in subparagraph (iii); or

(b) is found by the Court of Disputed Elections to have contravened a section referred to in paragraph (a) while a candidate;

is not eligible to be an MLA during the period of 2 years commencing on the date of the conviction or finding.

#### **104. Qualifications for nomination**

A person is not eligible to be nominated for election as an MLA unless, at the hour of nomination—

- (a) the person is eligible to be an MLA; or
- (b) in the case of a person referred to in paragraph 103 (2) (b)—the person would, but for that paragraph, be eligible to be an MLA.

**105. Candidates to be nominated**

- (1) A person is not eligible for election as an MLA unless the person is nominated in accordance with this section.
- (2) A person may be nominated to be a candidate for election only by—
- (a) the registered officer of a registered party that endorses the person as a party candidate in the election; or
  - (b) 2 electors entitled to vote at the election.
- (3) A nomination shall be made by giving to the commissioner, during the pre-election period but not later than 24 hours before the hour of nomination—
- (a) a duly completed nomination form; and
  - (b) a deposit of the prescribed amount in legal tender or a banker's cheque.
- (4) A nomination form shall—
- (a) be in the approved form;
  - (b) subject to subsection (7), set out the particulars of the name, address and occupation of the nominee;
  - (c) contain a statement, signed by the nominee, to the effect that he or she consents to the nomination, and to be an MLA if elected;
  - (d) contain a declaration, signed by the nominee, to the effect that he or she is eligible to be nominated;
  - (e) specify the form in which the nominee's name is to be printed on the ballot papers for the election;
  - (f) if the nomination is made by the registered officer of a registered party—specify any registered abbreviation of the name of the party that is to be printed on the ballot papers for the election;
  - (g) if the nomination is made by 2 electors entitled to vote at the election—specify whether the word 'Independent' is to be printed on the ballot paper adjacent to the candidate square for the nominee; and
  - (h) be signed by the nominator or each nominator.
- (5) A nomination form shall name a nominee only by specifying—
- (a) the surname or family name, and the given name under which the nominee is enrolled; or
  - (b) if the nominee is not an elector—the surname or family name, and the given name under which the nominee is entitled to be enrolled.

(6) A given name shall be taken to be specified for the purposes of subsection (5), if the nomination form specifies—

- (a) a commonly accepted variation of that name (including an abbreviation or truncation of that name or an alternative form of that name); or
- (b) an initial standing for that name.

(7) Where the address of a nominee is a suppressed address, the nomination form need not specify the address but, in that case, the nominee shall notify the commissioner in writing of his or her address for correspondence.

(8) A nomination is not invalid by reason only of a formal defect or error if this section has been substantially complied with.

(8A) Where the time by which a nomination under subsection (3) is to be made falls on a day that is a public holiday in the Territory—

- (a) the nomination shall be made by that time on that day; and
- (b) subsection 36 (2) of the *Interpretation Act 1967* does not apply.

(9) In paragraph (3) (b)—

“prescribed amount” means \$250 or any other amount prescribed by the regulations.

#### **106. Multiple nominations invalid**

If, at the hour of nomination in relation to an election—

- (a) a person is nominated more than once to be a candidate for election in a particular electorate; or
- (b) a person is nominated to be a candidate for election in more than 1 electorate;

each such nomination is invalid.

#### **107. Withdrawal etc of consent to nomination**

(1) A person nominated to be a candidate may withdraw his or her consent to the nomination by giving the commissioner a written notice of withdrawal not later than 24 hours before the hour of nomination.

(2) The registered officer may cancel a nomination made by the officer by giving the commissioner a written notice of cancellation not later than 24 hours before the hour of nomination.

(3) On receipt of a notice referred to in subsection (1) or (2), the commissioner shall cancel the nomination and pay the amount of the deposit lodged to the nominee.

**108. Place and hour of nomination**

(1) The place of nomination in relation to an election is—

- (a) the office of the commissioner; or
- (b) any other place approved as the place of nomination.

(2) The hour of nomination in relation to an election is 12 o'clock noon on the 22nd day before polling day for the election.

(3) Where the hour referred to in subsection (2) falls on a day that is a public holiday in the Territory—

- (a) anything that, under this Act, is to be done by the hour of nomination is to be done by that time on that day; and
- (b) subsection 36 (2) of the *Interpretation Act 1967* does not apply.

**109. Declaration of candidates**

(1) As soon as practicable after the hour of nomination, the commissioner shall, at the place of nomination, publicly produce all nomination forms and declare each person duly nominated to be a candidate.

(2) A declaration in respect of a candidate shall specify—

- (a) the name of the candidate; and
- (b) the name of any registered party by which the candidate is endorsed.

(3) As soon as practicable after the declaration, the commissioner—

- (a) shall, at the office of the commissioner; and
- (b) may, at such other places as the commissioner determines;

arrange for a notice containing particulars relating to each candidate to be displayed.

(4) A notice shall not specify the address of a candidate if it is a suppressed address.

**110. Rejection of nominations**

- (1) The commissioner shall reject a nomination if, and only if, the nomination form in respect of a person is not substantially in accordance with section 105.
- (2) The commissioner shall give a person whose nomination is rejected written notice of the rejection, setting out the reasons for the rejection.

**111. Need for a poll**

- (1) If the number of candidates for an election is not greater than the number required to be elected, the commissioner shall, in accordance with section 189, declare the candidate or candidates elected.
- (2) If the number of candidates for election is greater than the number required to be elected, a poll shall be held in accordance with this Act.

**112. Death of candidate before polling day**

Where a candidate dies before polling day and the number of candidates remaining is not greater than the number required to be elected, the commissioner shall, in accordance with section 189, declare the remaining candidates elected.

**113. Deposit—return or forfeiture**

- (1) A deposit paid in respect of the nomination of a candidate shall be returned to the candidate, after the result of an election is declared, if—
- (a) the candidate is elected;
  - (b) at the time at which the candidate is excluded from a poll pursuant to a scrutiny in accordance with Schedule 4, his or her total votes equal or exceed 20% of the quota for the election; or
  - (c) the candidate is neither elected nor excluded and his or her total votes, at any stage of the counting, equal or exceed 20% of the quota for the election.
- (2) Where—
- (a) a nominee dies before the candidates are declared for an election; or
  - (b) a candidate dies before polling day;

the commissioner shall pay the amount of the deposit lodged to the deceased's personal representative.

(3) Subject to subsections (1) and (2), a deposit made in respect of the nomination of a candidate shall be forfeited to the Territory when the result of an election is declared.

***Division 2—Ballot papers***

**114. Ballot papers**

(1) Subject to this Division, the ballot papers to be used in an election shall be in accordance with the form in Schedule 1.

(2) The commissioner may determine the colour of the paper on which ballot papers for each electorate are to be printed.

(3) A ballot paper shall bear an official mark in the approved form.

(4) The regulations may—

(a) specify the headings or directions to be printed or endorsed on ballot papers to be used for declaration voting; and

(b) provide for—

(i) the form of a ballot paper to be altered as specified in the regulations; or

(ii) a form set out in the regulations to be used in place of the form of a ballot paper.

(5) Where such regulations are in force, a reference in this Act to a ballot paper shall be read as a reference to a ballot paper in the form ascertained in accordance with the regulations.

**115. Grouping of candidates' names**

(1) Where the registered officer of a registered party nominates 2 or more candidates for an election, their names shall be grouped in a separate column on the ballot papers for the relevant electorate.

(2) Where 2 or more non-party candidates request that their names be grouped on the ballot papers for an election, their names shall be grouped in a separate column on the ballot papers for the relevant electorate.

(3) A request referred to in subsection (2) shall be—

(a) in writing signed by each of the candidates to be included in the group; and

(b) given to the commissioner before the hour of nomination.

(4) A reference in this Act to a group of candidates in relation to an election shall be read as a reference to candidates whose names are grouped on the ballot papers in accordance with subsection (1) or (2), whichever is applicable.

#### **116. Printing of ballot papers**

(1) Subject to subsections (2) to (7) (inclusive), on each ballot paper for an election—

- (a) the names of the candidates in a group of candidates shall be printed in a single column;
- (b) if there are 2 or more groups of candidates—separate columns of the names of the candidates in each group shall be printed from left to right in an order determined by the commissioner by lot;
- (c) a distinguishing letter shall be printed above the column of names of the candidates in a particular group, the letter being—
  - (i) if there is only 1 group— ‘A’; or
  - (ii) if there are 2 or more groups—the appropriate letter in a consecutive, alphabetical order commencing with ‘A’ corresponding to the order in which the columns of names in each group are printed from left to right on the ballot paper;
- (d) if there are grouped and ungrouped candidates—the names of all ungrouped candidates shall, subject to subsection (6), be printed in a single column to the right of the last column of names of grouped candidates;
- (e) if there are no groups of candidates—the names of all candidates shall be printed in a single column;
- (f) the names of candidates in the columns shall be printed in an order determined in accordance with Schedule 2;
- (g) the name of each candidate shall be printed once only; and
- (h) a square (in this Act called a “candidate square”) shall be printed adjacent to the name of each candidate.

(2) The names of more than 12 candidates shall not be printed in a single column.

(3) Where there are more than 12 candidates in a group—

- (a) their names shall, so far as practicable, be printed in 2 or more adjacent columns of equal length; and



- (b) the names to be printed in each column shall be determined by the commissioner by lot.
- (4) Where the names of the candidates in a particular group are printed in 2 or more adjacent columns, the distinguishing letter referred to in paragraph (1) (c) shall be printed once only above those columns.
- (5) Where there are no grouped candidates and more than 12 ungrouped candidates—
  - (a) their names shall, so far as practicable, be printed in 2 or more adjacent columns of equal length; and
  - (b) the names to be printed in each column shall be determined by the commissioner by lot.
- (6) Where a single column of the names of ungrouped candidates would be longer than the longest column of names of grouped candidates—
  - (a) the names of the ungrouped candidates shall be printed in 2 or more columns none of which is longer than the longest column of names of grouped candidates; and
  - (b) the names of the ungrouped candidates to be included in each column shall be determined by the commissioner by lot.
- (7) Where similarity in the names of 2 or more candidates is likely to cause confusion, their names may be arranged on the ballot papers with such description or addition as will distinguish each from the other.

#### **117. Names on ballot papers**

- (1) In this section—
  - “party name”, in relation to a registered party, means—
    - (a) the name under which the party is registered; or
    - (b) if a registered abbreviation of the name of the party is indicated on the nomination form of each party candidate—that abbreviation.
- (2) On the ballot papers for an election—
  - (a) the party name of the registered party by which a group of party candidates is endorsed shall be printed at the top of the column of their names;

- (b) the party name of the registered party by which an ungrouped party candidate is endorsed shall be printed adjacent to the candidate square for the candidate; and
- (c) if the nomination form for a candidate other than a party candidate or a grouped candidate so indicated—the word ‘Independent’ shall be printed adjacent to the candidate square for the candidate.

**118. Draw for positions on ballot papers**

The commissioner shall make the determinations required by section 116 in public at the place of nomination, as soon as practicable after the candidates have been declared.

***Division 3—Miscellaneous***

**119. Polling places and scrutiny centres**

- (1) The commissioner may, by notice in the *Gazette*—
- (a) appoint a specified place to be a polling place on polling day for an election; and
  - (b) appoint a specified place to be a scrutiny centre during the election period for the purpose of the scrutiny at an election.
- (2) During a pre-election period, the commissioner—
- (a) shall publish in a daily newspaper circulating in the Territory; and
  - (b) may publish by such other means as the commissioner determines;

a notice setting out particulars of each polling place for the election.

**120. Administrative arrangements**

The commissioner shall make appropriate administrative arrangements for the conduct of each election and, in particular, shall ensure that each polling place is properly equipped with—

- (a) separate voting compartments constructed so as to screen voters from observation while marking ballot papers;
- (b) ballot boxes capable of being securely fastened; and
- (c) ballot papers and other documents and stationery.

**121. Certified lists of electors**

(1) As soon as practicable after the roll for an electorate closes, the commissioner shall—

- (a) prepare a certified list of the electors;
- (b) give a copy to the OIC for each polling place; and
- (c) on request by a candidate for the electorate—give a copy to the candidate.

(2) For the purposes of this Act, the certified list of electors, in relation to an election in an electorate, is an extract from the roll for the electorate, certified by the commissioner, in respect of each person enrolled who will be at least 18 years of age on polling day.

**122. Scrutineers—appointment**

(1) A candidate for election may appoint a scrutineer to represent the candidate during the polling for the election, or during the scrutiny for an election, or both.

(2) An appointment shall be made by giving to the commissioner—

- (a) written notice, signed by the candidate, specifying the name and address of the scrutineer; and
- (b) an undertaking in the approved form signed by the scrutineer.

**123. Scrutineers—conduct**

(1) Subject to subsection (2), a scrutineer representing a candidate during the polling for an election is entitled to be present in a polling place, and to enter or leave a polling place, when voters are allowed to vote at that place.

(2) At any time while voters are allowed to vote at a particular polling place, the number of scrutineers representing a particular candidate who are present at that place shall not exceed the number of officers responsible for issuing ballot papers at that place.

(3) Subject to subsection (4), a scrutineer representing a candidate during the scrutiny for an election is entitled to be present in a scrutiny centre, and to enter or leave a scrutiny centre, during the conduct of the scrutiny at the centre.

(4) At any time during the conduct of the scrutiny at a particular scrutiny centre, the number of scrutineers representing a particular candidate who are present at the centre shall not exceed the number of officers at the centre.

(5) A scrutineer at a polling place or scrutiny centre shall wear a badge, supplied by the commissioner, that identifies the person as a scrutineer.

(6) A scrutineer shall not, without reasonable excuse, communicate with any person in a polling place except so far as is necessary in the performance of the scrutineer's functions.

Penalty: 10 penalty units.

(7) A scrutineer shall not, without reasonable excuse, interfere with or attempt to influence an elector at a polling place.

Penalty: 50 penalty units.

(8) For the purposes of paragraph 320 (4) (b), a scrutineer who contravenes this section is no longer entitled to be on the premises.

#### **124. Participation by candidates in conduct of election**

A candidate shall not take any part in the conduct of an election.

#### **125. Determining matters by lot**

(1) Where the commissioner is required by this act to determine a matter by lot, the matter shall be so determined in a manner approved by the electoral commission in writing.

(2) An instrument of approval under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

#### **126. Supplementary elections**

If, in relation to an election—

- (a) there are no candidates; or
- (b) the number of candidates declared elected by virtue of section 111 or 112 is less than the number of vacancies;

a supplementary election shall be held, as necessary, in accordance with section 101.

## **PART 10—VOTING**

### ***Division 1—General***

#### **127. Interpretation**

In this Part—

“authorised witness” means—

- (a) in Australia or an external Territory—an officer, an elector or a person who is enrolled on any roll kept under the Commonwealth Electoral Act; or
- (b) in any other place—a person who is at least 18 years of age; but does not include a candidate at an election.

#### **128. Entitlement to vote**

(1) Subject to subsection (2), an elector enrolled for an electorate is entitled to vote at an election for the electorate.

(2) A person who is enrolled is not entitled to vote at an election unless he or she will be at least 18 years of age on the day on which the poll for the election is required to be held.

(3) The inclusion of the name of a person on a certified list of electors for an election is conclusive evidence of the person’s right to vote at the election.

(3A) The omission of the name of a person from a roll because of official error does not disqualify the person from voting.

(4) In a roll or a certified list of electors, an omission of a given name, or an error in a name, does not disqualify an elector from voting.

(5) An elector whose surname has changed is not disqualified from voting under a former name entered for the person on a roll or certified list of electors.

#### **129. Compulsory voting**

(1) An elector who is entitled to vote at an election shall not, without a valid and sufficient reason, fail to vote at the election.

Penalty: 0.5 penalty units.

(2) Subsection (1) does not apply to—

- (a) an eligible overseas elector;

- (b) an Antarctic elector;
  - (c) an elector who is serving a sentence of imprisonment outside the Territory; or
  - (d) an elector who is enrolled by virtue of his or her enrolment on the Commonwealth roll as an itinerant elector.
- (3) Without limiting the generality of subsection (1), an elector shall be taken to have a valid and sufficient reason for failing to vote at an election if the elector believes it to be part of his or her religious duty to abstain from voting.

**130. Multiple votes prohibited**

An elector shall not vote—

- (a) more than once at the same election for an electorate; or
- (b) at 2 or more elections for electorates the polls for which are required to be held on the same day.

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

**131. Procedures for voting**

- (1) At an election, an elector may—
- (a) cast a vote in accordance with Division 2, 3 or 3A; or
  - (c) if the elector is a patient in a hospital or special hospital, or detained in a remand centre—cast an ordinary vote or a declaration vote in accordance with Division 4.
- (2) An elector who is entitled to vote at an election may cast a vote on polling day at any polling place in the Territory, whether or not the polling place is in the electorate for which the elector is enrolled.

**132. Manner of recording vote**

- (1) An elector shall record his or her vote on a ballot paper by marking the ballot paper in accordance with subsection (2).
- (2) The elector—
- (a) shall place consecutive whole numbers starting at ‘1’ in the number of candidate squares equal to the number of candidates to be elected so as to indicate preferences; and
  - (b) may place further consecutive whole numbers in additional candidate squares so as to indicate additional preferences.

***Division 2—Ordinary voting at a polling place***

**133. Claims to vote**

(1) Where a person attends before an officer at a polling place on polling day and claims to vote at an election, the officer shall issue a ballot paper to the claimant for the relevant electorate if satisfied that the certified list of electors for the electorate—

- (a) specifies the claimant's name;
- (aa) specifies an address for the claimant or indicates that the claimant's address is suppressed; and
- (b) has not been marked so as to indicate that a ballot paper has already been issued to the claimant.

(2) Despite subsection (1), an officer shall not issue a ballot paper to a person who indicates that he or she has already voted at the election.

(3) Immediately after issuing a ballot paper to a claimant, the officer shall record the issue on the certified list of electors.

**134. Voting in private**

Subject to section 156, a person shall, on receipt of a ballot paper under section 133, without delay—

- (a) go to an unoccupied voting compartment at the polling place;
- (b) there, in private, mark his or her vote on the ballot paper in accordance with section 132;
- (c) fold the ballot paper so as to conceal the vote and put it in a ballot box at the polling place; and
- (d) leave the polling place.

***Division 3—Declaration voting at a polling place***

**135. Declaration voting at polling places**

(1) Where a person attends before an officer at a polling place on polling day and claims to vote at an election, the officer shall issue declaration voting papers to the person for the relevant electorate if satisfied that—

- (a) the certified list of electors for the electorate does not specify the person's name; or

- (b) the certified list of electors for the electorate has been marked so as to indicate that a ballot paper has already been issued to the person but the person claims not to have voted already at the election.
- (2) Despite subsection (1), an officer shall not issue declaration voting papers to a person who indicates that he or she has already voted at the election.
- (3) The officer shall—
  - (a) give the claimant a statement in writing in the approved form indicating the consequences of casting a declaration vote under this section; and
  - (b) record the name of the claimant.
- (4) Subject to section 156, the following requirements apply to the casting of a declaration vote under this section:
  - (a) the person shall complete and sign the declaration in the presence of the officer;
  - (b) the officer shall complete and sign the certificate as witness;
  - (c) the person shall go to an unoccupied voting compartment at the polling place and there, in private—
    - (i) mark his or her vote on the ballot paper in accordance with section 132; and
    - (ii) fold the ballot paper so as to conceal the vote;
  - (d) the person shall return the folded ballot paper to the officer;
  - (e) the officer shall, in the presence of the person, without unfolding the ballot paper, place it in the envelope on which the declaration referred to in paragraph (a) appears, fasten the envelope and place it in a ballot box at the polling place;
  - (f) the person shall then leave the polling place.

***Division 3A—Voting otherwise than at a polling place***

**136. Interpretation**

In this Division, unless the contrary intention appears—

“eligible elector” means an elector who is entitled to vote at an election and—

- (a) who expects to be unable to attend at a polling place on polling day; or
- (b) whose address is a suppressed address.



**136A. Postal voting before polling day**

(1) In this section—

“post” means dispatch by means of Australia Post or a postal service specified under subsection (9);

“postal voting papers” means declaration voting papers for postal voting.

(2) An application for postal voting papers shall be—

- (a) in the approved form;
- (b) signed and dated by the applicant in the presence of an authorised witness;
- (c) signed and dated by the witness; and
- (d) received by an authorised officer before 8 pm on the day before polling day.

(3) Subject to subsections (4) and (5), an authorised officer shall, on application by an eligible elector, post to the elector postal voting papers for the electorate for which the person claims to vote.

(4) Postal voting papers shall not be posted or otherwise made available to an elector earlier than the 19th day before polling day.

(5) An officer shall not post postal voting papers to an applicant—

- (a) if the application is received by the officer after the last mail clearance at the nearest post office on the last Thursday before polling day; or
- (b) if the officer has reason to believe that the applicant is located in a place where the normal transmission of mail has been significantly disrupted or curtailed or is otherwise unreliable.

(6) Where an authorised officer has received an application for postal voting papers for an eligible elector and the officer has reason to believe—

- (a) that the applicant is a person to whom paragraph (5) (a) or (b) applies; and
- (b) that dispatch of the papers to the elector by means of a courier or other agent (not being Australia Post or a postal service specified under subsection (9)) is likely to enable the papers to reach the elector in sufficient time for the elector’s ballot paper to be completed and lodged in accordance with subsection (8);

the officer shall dispatch the papers accordingly.

(7) Where voting papers are dispatched to the elector in accordance with this section, neither the officer nor the commissioner is responsible for ensuring that the papers reach the elector.

(8) Subject to section 156, the following requirements apply in relation to the casting of a postal vote under this section:

- (a) the elector shall show the unsigned declaration and certificate, and the unmarked ballot paper to an authorised witness;
- (b) the elector shall complete and sign the declaration in the presence of the witness;
- (c) the witness shall complete and sign the certificate as witness;
- (d) the elector shall, in the presence of the witness but so that the witness cannot see the vote, mark his or her vote on the ballot paper, fold the ballot paper, place it in the envelope addressed to the commissioner and fasten the envelope;
- (e) the elector shall—
  - (i) before polling day—post the envelope and contents to the commissioner; or
  - (ii) on or before polling day—lodge the envelope and contents with the commissioner or another officer.

(9) The commissioner, by writing, may specify a postal service instead of or in addition to Australia Post for the purposes of the definition of “post” in subsection (1).

### **136B. Ordinary or declaration voting in the Territory before polling day**

(1) In this section—

“relevant period” means the period beginning no later than the 19th day before polling day and ending no later than 8 pm on the day before polling day.

(2) This section applies where a person attends before an authorised officer during the relevant period and makes a declaration to the effect that he or she is an eligible elector.

(3) Where this section applies, the officer shall issue a ballot paper to the elector for the relevant electorate if satisfied that the certified list of electors for the electorate—

- (a) specifies the claimant’s name;

- (b) specifies an address for the claimant or indicates that the claimant's address is suppressed; and
  - (c) has not been marked so as to indicate that a ballot paper has already been issued to the claimant.
- (4) Despite subsection (3), an officer shall not issue a ballot paper to a person who indicates that he or she has already voted at the election.
- (5) Immediately after issuing a ballot paper to a claimant, the officer shall record the issue on the certified list of electors.
- (6) Section 134 applies to the casting of an ordinary vote under this section as if—
  - (a) it were a vote under section 133; and
  - (b) a reference in that section to an unoccupied voting compartment were a reference to an unoccupied part of the place at which the elector attends before the officer concerned.
- (7) Sections 120 to 123 (inclusive) apply in relation to polling under this section as if the place where that polling is conducted were a polling place.
- (8) Before any vote is taken under this section the OIC shall exhibit each ballot box empty and shall then securely fasten its cover.
- (9) At the conclusion of each day's polling under this section and in the presence of any scrutineers the ballot boxes shall be closed and sealed.
- (10) At the beginning of the second and each subsequent day's polling under this section and in the presence of any scrutineers the seals on the ballot boxes shall be examined and opened.
- (11) At the close of polling under this section, the OIC shall, in the presence of any scrutineers—
  - (a) close and seal the ballot boxes containing ballot papers for ordinary voting or declaration voting;
  - (b) parcel and enclose in sealed wrapping all unused ballot papers; and
  - (c) parcel and enclose in sealed wrapping all other electoral papers used at the polling place.
- (12) The OIC shall give the articles referred to in subsection (11) to the commissioner.

(13) the commissioner shall keep the articles referred to in subsection (11) in safe custody for the purposes of scrutiny under Part 12.

(14) Ballot papers cast as ordinary votes under this section may only be removed from ballot boxes and counted after the close of polling on polling day.

(15) Where this section applies and the authorised officer is satisfied that—

- (a) the certified list of electors for the electorate does not specify the person's name; or
- (b) the certified list of electors for the electorate has been marked so as to indicate that a ballot paper has already been issued to the person but the person claims not to have voted already at the election;

the authorised officer shall issue declaration voting papers to the elector.

(16) Despite subsection (15), an officer shall not issue declaration voting papers to a person who indicates that he or she has already voted at the election.

(17) Where an authorised officer issues declaration voting papers to the elector the officer shall—

- (a) give the claimant a statement in writing in the approved form indicating the consequences of casting a declaration vote under this section; and
- (b) record the name of the claimant.

(18) Subsection 135 (4) applies to the casting of a declaration vote under this section as if—

- (a) it were a declaration vote under section 135; and
- (b) a reference in that subsection to an unoccupied voting compartment were a reference to an unoccupied part of the place at which the elector attends before the officer concerned.

### **136C. Declaration voting outside the Territory on or before polling day**

(1) In this section—

“relevant period” means the period beginning no later than the 19th day before polling day and ending no later than the time that is 6 pm in the Territory on polling day.

(2) This section applies where a person attends before an authorised officer outside the Territory during the relevant period and makes a declaration to the effect that he or she is an eligible elector.

(3) Where this section applies, the authorised officer shall issue declaration voting papers to the elector.

(4) Despite subsection (3), an officer shall not issue declaration voting papers to a person who indicates that he or she has already voted at the election.

(5) Where an authorised officer issues declaration voting papers to the elector the officer shall—

- (a) give the claimant a statement in writing in the approved form indicating the consequences of casting a declaration vote under this section; and
- (b) record the name of the claimant.

(6) Subsection 135 (4) applies to the casting of a declaration vote under this section as if—

- (a) it were a declaration vote under section 135; and
- (b) a reference in that subsection to an unoccupied voting compartment were a reference to an unoccupied part of the place at which the elector attends before the officer concerned.

### **137. Record of issue of declaration voting papers**

(1) An officer who issues voting papers under section 136A, subsection 136B (12) or section 136C shall—

- (a) make a record of the time and date of issue; and
- (b) if the officer is not the commissioner—give the record to the commissioner.

(2) Where an application is made for a postal vote, the record shall be endorsed on the application.

### **138. Inspection of records**

(1) Subject to subsection (2), the commissioner shall make each record referred to in section 137, or a copy, available for public inspection at the office of the commissioner within ordinary office hours during the period of 40 days commencing on the 3rd day after polling day.

(2) A document referred to in subsection (1) that is made available for public inspection shall not specify a suppressed address.

**139. Receipt of declaration voting papers**

(1) An officer who receives completed voting papers in respect of a vote cast under section 136A shall—

- (a) endorse the time and date of receipt on the envelope; and
- (b) if the officer is not the commissioner—give the papers to the commissioner or an authorised officer.

(2) The commissioner shall keep the papers in safe custody for the purposes of scrutiny under Part 12.

**140. Registered declaration voters**

(1) The commissioner shall keep a register, called the Register of Declaration Voters.

(2) The register may be kept electronically.

(3) Where an elector is registered as a general postal voter under the Commonwealth Electoral Act—

- (a) the elector shall be taken to be a registered declaration voter for the purposes of this Act; and
- (b) the particulars so registered under the Commonwealth Electoral Act in respect of the elector shall, so far as practicable, be taken to be entered on the register kept under this Act.

(4) The register shall contain the following particulars in respect of each elector to whom subsection (3) applies:

- (a) surname or family name;
- (b) each Christian or given name;
- (c) address, other than—
  - (i) that of an eligible overseas elector; or
  - (ii) a suppressed address.

**141. Issue of voting papers to registered declaration voters**

As soon as practicable after the commencement of the pre-election period for an election, the commissioner shall post to each elector enrolled for the electorate in which the election is to be held who is a registered declaration voter declaration voting papers for the election.

**142. Correcting formal errors**

If an officer is satisfied that—

- (a) an application for declaration voting papers for postal voting; or
- (b) the declaration or certificate in completed declaration voting papers;

contains a formal error, the officer may amend the application, declaration or certificate to correct the error.

**143. Soliciting applications for postal declaration votes**

(1) A person shall not, without reasonable excuse, do anything for the purpose of inducing a person—

- (a) to complete an application for declaration voting papers for postal voting; and
- (b) to return the completed application to an address other than an address authorised for the purpose by the commissioner.

(2) A person shall not, without reasonable excuse, do anything to induce a person to complete an application for declaration voting papers for postal voting, being an application in a form not approved for the purposes of paragraph 136A (2) (a).

Penalty: 30 penalty units.

**144. Transmission of applications for postal declaration votes**

A person who accepts for transmission to the commissioner a completed application for declaration voting papers for postal voting shall transmit the application to the commissioner as soon as practicable.

Penalty: 10 penalty units.

**145. Interference with declaration voting**

Except for the purpose of section 156, or at the request of the elector, a person shall not, without reasonable excuse—

- (a) communicate with an elector while he or she is casting a declaration vote;
- (b) interfere with an elector's casting of a declaration vote;
- (c) do anything to find out how an elector voted by declaration vote; or
- (d) enable any other person to find out how an elector voted by declaration vote.

Penalty: 30 penalty units.

**146. Soliciting completed declaration votes**

A person shall not, without reasonable excuse, do anything for the purpose of inducing an elector to give to the person completed declaration voting papers.

Penalty: 30 penalty units.

**147. Transmission of completed declaration votes**

A person who accepts for transmission to the commissioner completed declaration voting papers shall transmit them to the commissioner as soon as practicable.

Penalty: 10 penalty units.

**148. Opening envelopes containing declaration votes**

Unless authorised by or under this Act, a person shall not, without reasonable excuse, open an envelope which appears to contain a completed declaration vote.

Penalty: 5 penalty units.

***Division 4—Mobile polling***

**149. Interpretation**

In this Division—

“registered medical practitioner” has the meaning given by the *Medical Practitioners Act 1930*;

“remand centre” includes a police station or other place in which a person is held in lawful custody in respect of an offence;

“special hospital” means a hospital that—

- (a) is not a polling place; and
- (b) is declared by the commissioner, by notice in the *Gazette*, to be a special hospital for the purposes of this Division;

“visiting officer” means an officer who makes a visit referred to in subsection 150 (1), (2) or (3).



**150. Mobile polling—institutions**

(1) The OIC of a polling place that is a hospital shall arrange for an officer to visit patients at the hospital (other than outpatients) between 8 am and 6 pm on polling day for the purpose of taking their votes.

(2) The commissioner shall arrange for an officer to visit patients at a special hospital (other than outpatients) between 8 am and 6 pm—

- (a) on a day that is not more than 5 days before polling day; or
- (b) on polling day;

for the purpose of taking their votes.

(3) The commissioner shall arrange for an officer to visit persons detained in a remand centre for the purpose of taking their votes.

(4) A visit referred to in subsection (3) shall be made at a time, and in accordance with any conditions, arranged by the commissioner and the person in charge of the centre.

**151. Functions of visiting officers**

(1) When visiting under section 150, the visiting officer—

- (a) shall take a ballot box, ballot papers, the certified list of electors and anything else necessary to enable a person to vote; and
- (c) shall be accompanied by at least 1 other officer and any scrutineer who wishes to attend.

(2) While a visiting officer is with a person in a room or other place for the purpose of taking the person's vote, this Act has effect, so far as practicable, as if—

- (a) the room or place were a polling place; and
- (b) the visiting officer were the OIC of the polling place.

(3) A visit under section 150 to a patient in a hospital or special hospital shall not be made if the visiting officer is informed by a registered medical practitioner, or a member of the staff at the hospital, that the visit is forbidden on medical grounds.

(4) A visit under section 150 to a person detained in a remand centre shall not be made if the visiting officer is informed by the person in charge of the centre that the visit is forbidden on security grounds.

**152. Failure to visit institution**

A failure to make a visit under section 150 or to take votes in accordance with section 151, does not invalidate the result of an election.

**153. Custody of ballot boxes and electoral papers**

**(1)** After a visiting officer has completed all his or her visits under section 150, the officer shall, in the presence of any scrutineers—

- (a) close and seal the ballot boxes containing ballot papers for ordinary voting or declaration voting;
- (b) parcel and enclose in sealed wrapping all unused ballot papers; and
- (c) parcel and enclose in sealed wrapping all other electoral papers used for the purposes of the visits.

**(2)** The visiting officer shall give the articles referred to in subsection (1) to the commissioner.

**(3)** The commissioner shall keep the articles referred to in subsection (1) in safe custody for the purposes of scrutiny under Part 12.

***Division 5—Miscellaneous***

**154. Arrangements at polling places**

At each polling place the polling shall be conducted as follows:

- (a) before any vote is taken the OIC shall exhibit each ballot box empty, and shall then securely fasten its cover;
- (b) the poll shall open at 8 am and shall not close until all electors present in the polling place at 6 pm and desiring to vote, have voted;
- (c) the polling place shall be closed at 6 pm and no person shall be admitted after that hour for the purpose of voting.

**155. Particulars on ballot papers before issue**

An officer shall not issue a ballot paper for the purposes of an election unless the particulars required by Division 2 of Part 9 are printed or endorsed on the ballot paper.

**156. Assistance to voters**

**(1)** An elector who is unable to vote may be assisted in voting if the elector would otherwise be unable to vote.

- (2) An assistant shall be—
- (a) if the elector is a postal voter—a nominee of the elector or, if there is no such nominee, an authorised witness; or
  - (b) in any other case—a nominee of the elector or, if there is no such nominee, an officer.
- (3) An assistant may enter a voting compartment for the purpose of assisting an elector to vote, but an officer shall not do so except in the presence of—
- (a) a scrutineer; or
  - (b) if no scrutineer is present—another officer.
- (4) Subject to subsection (3), an assistant may assist an elector in any of the following ways:
- (a) by acting as an interpreter;
  - (b) in the case of a declaration vote—by completing, or assisting the elector to complete, the declaration;
  - (c) by explaining the ballot paper and the requirements of this Act relating to its marking;
  - (d) by marking, or assisting the elector to mark, the ballot paper at the elector's direction;
  - (e) by folding the ballot paper and depositing it in a ballot box or declaration envelope, or with an officer, as required by this Act.

**157. Spoilt ballot papers**

- (1) An officer shall issue another unused ballot paper to an elector who—
- (a) satisfies the officer that a ballot paper previously issued to the elector has been inadvertently spoiled; and
  - (b) gives the spoilt ballot paper to the officer.
- (2) An officer who receives a spoilt ballot paper shall—
- (a) write 'spoilt' on the back of it;
  - (b) place it in an envelope, seal the envelope and endorse it so as to indicate the type of spoilt ballot paper enclosed; and
  - (c) sign the endorsement.
- (3) At the close of polling, the OIC shall enclose the envelope in a sealed parcel and give it to the commissioner.

**158. Custody of ballot boxes and electoral papers**

(1) At the close of polling, the OIC of a polling place shall, in the presence of any scrutineers—

- (a) close and seal the ballot boxes containing ballot papers for ordinary voting or declaration voting;
- (b) parcel and enclose in sealed wrapping all unused ballot papers; and
- (c) parcel and enclose in sealed wrapping all other electoral papers used at the polling place.

(2) The commissioner shall keep the articles referred to in subsection (1) in safe custody for the purposes of scrutiny under Part 12.

(3) Paragraph (1) (a) does not apply to ballot boxes containing ballot papers for ordinary voting where the polling place is also a scrutiny centre and the procedures set out in section 182 are to be carried out in respect of those ballot boxes and ballot papers at that centre.

**159. Extension of time for conducting elections**

(1) Despite any other provision of this Act, before or after the day on which an election is required to be held, the Executive may, by notice published in the *Gazette*, make provision for—

- (a) extending the time for holding the election; or
- (b) meeting any difficulty that might otherwise interfere with the due conduct of the election;

and any provision so made shall be valid and sufficient for that purpose.

(2) The commissioner shall, on publication of a notice under subsection (1), cause a copy of the notice to be published in a daily newspaper circulating in the Territory.

(3) Where, by virtue of an extension under paragraph (1) (a), polling for an election is conducted on more than 1 day, a reference in this Act (other than in Part 8 or 9) to polling day shall be taken to include each of those days.

**160. Suspension and adjournment of polling**

(1) The commissioner may suspend the polling at a polling place on polling day if for any reason it is not practicable to proceed with it.

(2) Where—

- (a) the polling is suspended; and

- (b) the commissioner believes on reasonable grounds that it is not reasonably practicable for an elector affected by the suspension to cast a vote at another polling place;

the commissioner shall arrange for the polling to resume as soon as practicable, but no later than 21 days after the day of the suspension, on a day specified by the commissioner by notice in the *Gazette*.

(3) If it is impracticable to resume the polling at the same polling place, the notice shall specify the polling place at which polling may be resumed.

(4) On the resumption of polling, only an elector who was entitled to vote on the day on which the poll for the election was required to be held and who has not already voted is entitled to vote.

(5) In this Act (other than in Part 8 or 9), a reference to polling day for an election shall be taken to include a day on which polling is resumed.

#### ***Division 6—Failure to vote***

##### **161. Default notice**

(1) For the purposes of this Division, a default notice, in relation to an elector, is a notice in the approved form containing a statement to the effect that—

- (a) it is an offence to fail to vote at an election without a valid and sufficient reason;
- (b) the elector appears to have failed to vote at an election; and
- (c) if the elector does not wish to have the matter dealt with by a court, the elector may, within the time specified in the notice—
  - (i) if the elector voted at the election—give the commissioner particulars in writing of the voting; or
  - (ii) if the elector failed to vote at the election—give the commissioner particulars in writing of any valid and sufficient reason for the failure, or pay the amount of the prescribed penalty.

(2) For the purposes of subparagraph (1) (c) (ii), the prescribed penalty is \$20 or any higher penalty prescribed by the regulations.

**162. First notice**

(1) As soon as practicable after polling day for an election, the commissioner shall send a default notice to each elector who was required to vote at the election and appears to the commissioner to have failed to do so.

(2) Subsection (1) does not apply to an elector who the commissioner is satisfied—

- (a) is dead; or
- (b) had a valid and sufficient reason for failing to vote at the election.

**163. Second notice**

Where an elector to whom a default notice has been sent under section 162 fails to respond to the notice within the time specified, the commissioner shall send a second default notice to the elector, endorsed to the effect that the elector has failed to respond to the first notice.

**164. Final notice**

(1) The commissioner shall send a final default notice to an elector if—

- (a) a default notice under section 162 or 163 has been sent to the elector;
- (b) the time for responding to the notice has expired;
- (c) the elector has not paid the prescribed penalty; and
- (d) the commissioner is not satisfied that the elector—
  - (i) voted at the election; or
  - (ii) had a valid and sufficient reason for failing to vote at the election.

(2) A final default notice shall contain a statement to the effect that—

- (a) the commissioner is not so satisfied; and
- (b) if the elector does not wish to have the matter dealt with by a court—  
the elector may, within the time specified in the notice, pay the amount of the prescribed penalty.

**165. Discharge of liability**

Where an elector who failed to vote at an election pays the amount of the prescribed penalty in accordance with a default notice—

- (a) any liability of the elector under section 129 in respect of the failure is discharged; and

- (b) proceedings for an offence against that section shall not be instituted against the elector in respect of the failure.

**166. Response on behalf of elector**

Where a person responds to a default notice on behalf of an elector who is unable to do so, the response shall be taken to be that of the elector.

**PART 11—POLLING IN ANTARCTICA**

**167. Interpretation**

**(1) In this Part—**

“Antarctica” means—

- (a) the Australian Antarctic Territory;
- (b) the Territory of Heard Island and McDonald Islands; or
- (c) Macquarie Island;

“assistant returning officer”, in relation to a station, means the assistant returning officer appointed under section 168 in relation to the station;

“research personnel” means personnel who are to be, or have been, engaged in work at a station;

“returning officer”, in relation to a station, means the returning officer appointed under section 168 in relation to the station;

“station” means—

- (a) a research station in Antarctica that is operated by the Commonwealth and is declared by the commissioner, in writing, to be a permanent research station; or
- (b) in relation to a particular election, a ship that is declared by the commissioner, in writing, to be a station for the purposes of this Part in relation to the election;

“transmit” means transmit by fax, telex or other approved means.

**(2)** The commissioner shall not declare a ship to be a station unless the commissioner is satisfied that, on polling day for an election, the ship is likely to be at sea transporting research personnel to or from Antarctica.

**168. Returning officer and assistant**

- (1) The commissioner shall appoint, in writing, a returning officer, and an assistant returning officer, for each station.
- (2) The person in charge of a station shall not be appointed to be the returning officer, or assistant returning officer, for the station.

**169. Acting returning officer or assistant**

- (1) The person in charge of a station may appoint a person to act in the office of the returning officer or assistant returning officer for a station—
- (a) during a vacancy in the office, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the occupant of the office is absent from duty or from Antarctica or is, for any other reason, unable to perform the functions of the office.
- (2) Anything done by or in relation to a person purporting to act under this section is not invalid on the ground that—
- (a) the occasion for the person's appointment had not arisen;
  - (b) there is a defect or irregularity in connection with the person's appointment;
  - (c) the person's appointment had ceased to have effect; or
  - (d) the occasion for the person to act had not arisen or had ceased.

**170. Application of Act to polling in Antarctica**

Subject to this Part, this Act applies, so far as practicable, to the taking of a poll in Antarctica as if—

- (a) a reference in the Act to a polling place were a reference to the relevant station;
- (b) a reference in the Act to the OIC of a polling place were a reference to the returning officer; and
- (c) a reference in the Act to an officer were a reference to the assistant returning officer.

**171. Antarctic electors**

- (1) Subject to subsection (2), an elector—



- (a) who is, for the purposes of the Commonwealth Electoral Act, an Antarctic elector; and
- (b) whose address, recorded on the Commonwealth roll when the elector became a person referred to in paragraph (a), was an address in an electorate;

is an Antarctic elector for the purposes of this Act in relation to the electorate in which that address is located.

(2) A person does not become an Antarctic elector for the purposes of an election under this Act where the person became an Antarctic elector for the purposes of the Commonwealth Electoral Act after the hour of nomination for the election.

## **172. Arrangements for the polling in Antarctica**

(1) As soon as practicable after the close of nominations for an election in respect of an electorate for which an Antarctic elector is enrolled—

- (a) the commissioner shall transmit to the returning officer at whose station the elector is based—
  - (i) an extract from the certified list of electors for the electorate containing the particulars relating to the elector; and
  - (ii) directions for the preparation by the officer of ballot papers for the election; and
- (b) the returning officer shall prepare ballot papers in accordance with the directions.

(2) The directions shall ensure, so far as practicable, that the ballot papers are the same as ballot papers prepared under Division 2 of Part 9 for the election.

## **173. Conduct of the polling**

(1) The polling at a station shall be conducted as follows:

- (a) before any vote is taken, the returning officer shall exhibit a ballot box empty, and shall then securely fasten its cover;
- (b) subject to subsection (2), the poll shall be conducted during such hours on such days as the returning officer directs;
- (c) the returning officer or the assistant returning officer shall, at all times at which the poll is open, be present in that part of the station at which the polling is taking place.

**(2)** The polling at a station shall not continue beyond the time that is 6 pm in the Australian Capital Territory on polling day for the election.

**174. Claims to vote**

The returning officer or assistant returning officer for a station shall—

- (a) hand a ballot paper to each Antarctic elector who attends before the officer during the hours of polling and claims to vote at the election; and
- (b) record the issue of the ballot paper to the elector.

**175. Proceedings at close of poll**

At the close of the poll, the returning officer shall, in the presence of the assistant returning officer—

- (a) open the ballot box;
- (b) transmit to the authorised officer—
  - (i) particulars of each elector who has voted at the station in the election;
  - (ii) unless subparagraph (iii) applies—particulars of the marking of each ballot paper; and
  - (iii) if the returning officer is unable to read or understand clearly the particulars referred to in subparagraph (ii)—a statement to explain that inability; and
- (c) prepare a statement in writing of the information transmitted.

**176. Result of polling in Antarctica**

**(1)** On receipt of the transmission under section 175, the authorised officer shall—

- (a) in respect of each ballot paper marked by an Antarctic elector—transcribe the particulars of the elector's marks onto a ballot paper for the relevant electorate;
- (b) seal in an envelope the ballot paper onto which the particulars are transcribed;
- (c) sign the envelope and endorse it to the effect that it contains a ballot paper recording a vote by an Antarctic elector that is to be admitted to the scrutiny for the election; and
- (d) send the envelope to the commissioner.

(2) An authorised officer shall not mark a ballot paper under this section in a manner that is likely to enable it to be identified as representing the vote of an Antarctic elector.

**177. Preservation of documents**

(1) As soon as practicable after the close of the poll for an election, the returning officer for each station shall forward to the commissioner—

- (a) a copy of the record of the issue of each ballot paper;
- (b) a copy of the statement referred to in paragraph 175 (c); and
- (c) the ballot papers used for voting at the station.

(2) The commissioner shall keep the documents referred to in subsection (1) in safe custody for the purposes of scrutiny under Part 12.

## **PART 12—THE SCRUTINY**

### **178. Scrutiny**

- (1) The result of the polling at an election shall be ascertained by scrutiny in accordance with this Part.
- (2) All the proceedings at the scrutiny shall be open to the inspection of the scrutineers.
- (3) The commissioner shall arrange for the following articles and documents to be dealt with at scrutiny centres for the purposes of this Part:
- (a) applications for postal votes in the election;
  - (b) records of issued declaration voting papers;
  - (c) completed declaration voting papers received by the commissioner, the OIC of a polling place or another officer;
  - (d) ballot boxes containing ballot papers for ordinary voting or declaration voting;
  - (e) envelopes containing ballot papers recording votes by Antarctic electors.
- (4) The OIC for a scrutiny centre may adjourn the scrutiny at the centre from time to time.

### **179. Preliminary scrutiny of declaration voting papers etc**

- (1) The commissioner shall arrange for the conduct of such preliminary scrutinies as are necessary in relation to a poll until the following documents have been dealt with in accordance with this section:
- (a) all completed declaration voting papers (including those used for postal voting) received by the commissioner or another officer on or before polling day;
  - (b) all completed declaration voting papers used for postal voting received by the commissioner before the end of the 6th day after the close of the poll;
  - (c) any envelope referred to in paragraph 176 (1) (d) containing a ballot paper recording the vote of an Antarctic elector.
- (2) A preliminary scrutiny shall not be conducted earlier than the 5th day before polling day.

- (3) The commissioner shall display a notice in a prominent place at the office of the commissioner specifying the date, time and place at which a preliminary scrutiny is to commence.
- (4) The notice shall be so displayed no later than 4 pm on the day before the commencement of the preliminary scrutiny.
- (5) A preliminary scrutiny shall be conducted in accordance with Schedule 3.
- (6) Schedule 3 applies, so far as practicable, in relation to a vote cast by an Antarctic elector as if—
  - (a) the vote were a declaration vote other than a postal vote;
  - (b) a declaration signed by the elector specifying the electorate in relation to which the elector is an Antarctic elector appeared on the envelope referred to in paragraph 176 (1) (d); and
  - (c) a reference in that Schedule to a set of declaration voting papers were a reference to that envelope.
- (7) At a preliminary scrutiny, declaration voting papers shall not be rejected for further scrutiny because of a formal error.
- (8) A preliminary scrutiny shall be taken to be part of the scrutiny in relation to an election.

#### **180. Formality of ballot papers**

- (1) Except as provided by this section, a ballot paper is formal and effect shall be given to the elector's intention as far as that intention is clear.
- (2) A ballot paper is informal if—
  - (a) in the opinion of the OIC of a scrutiny centre—
    - (i) it is not authentic; or
    - (ii) it has writing on it by which the elector can be identified;
  - (b) no first preference is marked in a candidate square;
  - (c) a first preference is marked in 2 or more candidate squares; or
  - (d) in the case of a completed declaration vote ballot paper that has not been dealt with at a preliminary scrutiny under section 179—it is not enclosed in the appropriate envelope on which appears a declaration made by an elector.

- (3) In determining whether a ballot paper is formal—
- (a) a preference marked outside a candidate square shall be taken to be marked in the square if the voter's intention to indicate that preference for that candidate is clear; and
  - (b) subject to paragraph (2) (a), any other writing outside a candidate square shall be disregarded.
- (4) A ballot paper on which the particulars are endorsed by an officer under section 155 is not informal—
- (a) if no other candidate has the same surname—only because the surname of a candidate has been written on the ballot paper; or
  - (b) only because of a spelling mistake in the particulars endorsed on the ballot paper.
- (5) Where it is necessary for the purposes of this Part, the commissioner may determine the formality of a ballot paper and, for that purpose, may reverse any decision made by another officer.

**181. Death of candidate**

Where a candidate dies before the end of polling day, and the number of candidates remaining is greater than the number of candidates to be elected, a ballot paper is not informal only because of—

- (a) the inclusion on the ballot paper of the name of the deceased candidate;
- (b) the marking of any consecutive number in a candidate square adjacent to that name; or
- (c) the omission to place any number in a candidate square adjacent to that name, or any resultant failure to indicate in consecutive order the elector's preferences.

**182. First count—ordinary ballot papers**

- (1) As soon as practicable after the close of the poll for an election, the OIC for a scrutiny centre shall arrange for the procedures set out in this section to be carried out.
- (2) First, the OIC shall—
- (a) exhibit for inspection by any scrutineer each ballot box containing ballot papers recording ordinary votes; and
  - (b) record the condition of the ballot box before opening it.

- (3) Second, the OIC shall arrange for an officer to—
- (a) open each ballot box;
  - (b) sort the ballot papers from each ballot box into separate parcels for each electorate; and
  - (c) in respect of the ballot papers for each electorate—
    - (i) count all informal ballot papers, reject them from further scrutiny under this section, and place them in a separate parcel; and
    - (ii) sort the unrejected ballot papers into separate parcels according to the first preferences marked on them and count the ballot papers in each parcel.
- (4) Third, the OIC shall, in respect of the ballot papers for each electorate—
- (a) make out and sign a statement (countersigned by an officer and each scrutineer who wishes to do so) setting out—
    - (i) the number of unrejected ballot papers on which a first preference is recorded for each candidate; and
    - (ii) the number of informal ballot papers;
  - (b) transmit particulars of the numbers so recorded to the commissioner, by telephone or other expeditious manner;
  - (c) seal up the parcels, endorse on each a description of the contents and permit each scrutineer who wishes to do so to countersign the endorsement; and
  - (d) send the parcels to the commissioner without delay, together with the statement referred to in paragraph (a).
- (5) Despite paragraph (3) (b), the total number of ballot papers for a particular electorate that are to be dealt with at a particular scrutiny under this section shall not be fewer than 20.
- (6) Where subsection (5) applies, the OIC shall—
- (a) count the number of those ballot papers;
  - (b) seal them in a separate parcel;
  - (c) endorse the parcel with a description of the contents (including the number of ballot papers); and
  - (d) send the parcel to another scrutiny centre, as directed by the commissioner, for the purposes of this Part.

**183. First count—declaration ballot papers**

As soon as practicable after declaration vote ballot papers have been admitted to a scrutiny under this section by virtue of Schedule 3 but not before the close of the poll for the election, the OIC for the relevant scrutiny centre shall arrange for the ballot papers to be dealt with in accordance with section 182 as if they were ordinary vote ballot papers.

**184. Second count—first preferences**

(1) The commissioner shall—

- (a) arrange for an officer at a scrutiny centre to open the parcels referred to in paragraph 182 (4) (d) (including those to which that paragraph applies by virtue of section 183) and, so far as practicable, conduct a second scrutiny of the ballot papers in accordance with subsections 182 (3) and (4); and
- (b) from the result of the second scrutiny, ascertain—
  - (i) the number of unrejected ballot papers on which a first preference is recorded for each candidate; and
  - (ii) the number of informal ballot papers for each electorate.

(2) For the purposes of subsection (1), the officer conducting the second scrutiny may reverse a decision made at the scrutiny under section 182.

**185. Ascertaining result of poll**

(1) The commissioner shall arrange for—

- (a) the further scrutiny of the ballot papers referred to in subparagraph 184 (1) (b) (i); and
- (b) the ascertainment of the successful candidates;

in accordance with Schedule 4.

(2) Where it is necessary to do so for the purposes of Schedule 4, the commissioner shall—

- (a) determine the numbers of ballot papers or votes;
- (b) calculate a quota or transfer value; or
- (c) identify a candidate.



**186. Objections by scrutineers**

(1) If a scrutineer objects to a ballot paper as being informal, the officer conducting the scrutiny shall mark the ballot paper ‘admitted’ or ‘rejected’ according to the officer’s decision to admit or reject the ballot paper.

(2) Subsection (1) shall not be taken to prevent the officer from rejecting a ballot paper as being informal where there is no objection by a scrutineer.

**187. Recount of ballot papers**

(1) The commissioner—

- (a) may, if the commissioner thinks fit; and
- (b) shall, if directed by the electoral commission;

direct an officer to recount some or all of the ballot papers for an election at any time before the declaration of the result of the election.

(2) A request by a candidate for the exercise of a power under subsection (1) shall be in writing setting out the reasons for the request.

(3) The electoral commission shall not accede to a request by a candidate to direct the commissioner to exercise a power under subsection (1) unless the commissioner has already refused to exercise that power.

(4) The officer conducting a recount—

- (a) shall not deal with the ballot papers in a manner that is inconsistent with this Part; and
- (b) may reverse a decision made earlier in the scrutiny.

(5) Before a recount is conducted, the commissioner shall notify each candidate, in writing, of the date, time and place fixed for the recount.

**188. Reservation of disputed ballot papers**

(1) The officer conducting a recount—

- (a) may, if the officer thinks fit; and
- (b) shall, at the request of any scrutineer;

reserve any ballot paper for the decision of the commissioner.

(2) The commissioner shall decide whether any ballot paper so reserved is to be admitted or rejected.

**189. Declaration of result of election**

- (1) As soon as practicable after the result of the poll in an election has been ascertained, the commissioner shall—
- (a) declare elected each successful candidate ascertained in accordance with Schedule 4;
  - (b) declare the result of the election; and
  - (c) notify the Clerk of the Assembly of the names of the candidates elected.
- (2) The declaration shall be made in public at the place of nomination during ordinary office hours.
- (3) Where a day is polling day for 2 or more elections, the results of all the elections shall be declared, so far as practicable, on the same day.
- (4) Where a poll is not required for an election, a declaration under subsection 111 (1) or section 112 shall not be made before the day that would have been polling day for the election.

**PART 13—CASUAL VACANCIES**

**190. Interpretation**

- (1) In this Part, unless the contrary intention appears—
- “candidate” means a person declared to be a candidate under section 193;
  - “former MLA”, in relation to a casual vacancy, means the person who was elected to the seat in which the vacancy has occurred at the last election before the vacancy occurred;
  - “newspaper” means a daily newspaper circulating in the Territory.
- (2) In this Part, a reference to the Speaker shall—
- (a) if there is a vacancy in the office of the Speaker—be read as a reference to the Deputy Speaker; and
  - (b) if there are vacancies in the offices of Speaker and Deputy Speaker—be read as a reference to the Clerk of the Assembly.

**191. Notice of casual vacancy**

- (1) Where—
- (a) the Speaker notifies the commissioner in writing that the seat of an MLA has become vacant otherwise than because of—

- (i) the dissolution of the Assembly;
- (ii) the expiry of the term for which MLAs were elected at an election; or
- (iii) the failure or partial failure of an election; and
- (b) the commissioner is satisfied that it is practicable to fill the vacancy in accordance with section 194;

the commissioner shall publish a notice in a newspaper.

- (2) A notice published by the commissioner under subsection (1) shall—
  - (a) contain a statement to the effect that—
    - (i) there is a casual vacancy in the Assembly; and
    - (ii) a person may apply to be a candidate in accordance with section 192; and
  - (b) specify when, in accordance with section 192, applications close.
- (3) The commissioner shall, so far as practicable, give a copy of the notice to any person who, in the opinion of the commissioner, may be entitled to make an application under section 192 in respect of the vacancy.
- (4) Where the commissioner is not satisfied that it is practicable to fill the vacancy in accordance with section 194, he or she shall inform the Speaker accordingly.

## **192. Candidates for casual vacancy**

- (1) A person may apply to be a candidate for a seat in relation to which a casual vacancy has occurred if—
  - (a) the person was a candidate in the last election for the electorate in which the vacancy has occurred;
  - (b) the person was not elected; and
  - (c) he or she is an eligible person.
- (2) An application under subsection (1) shall—
  - (a) be in the approved form;
  - (b) contain—
    - (i) a statement by the applicant that he or she consents to be an MLA if elected;

- (ii) a declaration by the applicant, made in the presence of an elector, that he or she is an eligible person; and
    - (iii) the signature of the applicant and of the elector who witnessed the applicant's declaration; and
  - (c) reach the commissioner before noon on the 10th day after the day on which notice of the vacancy was published in a newspaper in accordance with subsection 191 (1).
- (3) An applicant may withdraw his or her application by giving the commissioner written notice of withdrawal before applications close.
- (4) The commissioner shall reject a purported application that is not substantially in accordance with subsection (2) and give the person in respect of whom it was made written notice setting out the reasons for the rejection.
- (5) In this section—
- “eligible person” means a person who—
- (a) is eligible to be an MLA; or
  - (b) would, but for paragraph 103 (2) (b), be eligible to be an MLA.

### **193. Publication of candidates' details**

- (1) Where 1 or more persons have applied to be a candidate in accordance with section 192, the commissioner shall, as soon as practicable after the close of applications—
- (a) publicly produce all the applications and declare each person who has duly applied to be a candidate; and
  - (b) arrange for a notice containing particulars relating to each candidate (other than any suppressed address) to be displayed at the office of the commissioner.
- (2) Where there are no candidates in relation to a casual vacancy, the commissioner shall declare that there are no candidates and inform the Speaker accordingly.

### **194. Determination of candidate to fill vacancy**

- (1) If there is only 1 candidate in relation to a casual vacancy, the commissioner shall declare the candidate elected.

(2) If there is more than 1 candidate in relation to a casual vacancy, the commissioner shall, as soon as practicable after making a declaration under paragraph 193 (1) (a)—

- (a) fix a time and place for a recount of the ballot papers counted for the former MLA at the last election at which he or she was elected;
- (b) give each candidate written notice of the time and place so fixed; and
- (c) conduct the recount in accordance with Part 3 of Schedule 4.

(3) The commissioner shall declare elected the successful candidate ascertained in accordance with Part 3 of Schedule 4.

(4) This Act applies, so far as practicable, to a recount under subsection (2) as if it were a scrutiny under Part 12.

#### **195. Assembly nominees**

(1) Where—

- (a) the commissioner informs the Speaker that a casual vacancy has not been filled for a reason specified in subsection 191 (4) or 193 (2); and
- (b) the Speaker notifies the commissioner that the Assembly has chosen a person to hold the vacant office as an MLA for the rest of the term of the former MLA;

the commissioner shall declare elected the person chosen.

(2) If the name of the former MLA appeared on the ballot paper for the last election as a party candidate, the person chosen to hold the vacant office shall be a member of the party who is nominated by the party.

(3) If a person chosen in accordance with subsection (2) ceases to be a member of the party before the Assembly next meets after the declaration under subsection (1), the person shall be taken not to have been chosen.

(4) If—

- (a) the name of the former MLA appeared on the ballot paper for the last election as an independent candidate; or
- (b) where subsection (2) would otherwise apply—there is no member of the relevant party available to be chosen;

the person chosen shall be a person who has not been a member of a registered party at any time during the period of 12 months immediately preceding the time at which the choice is made.

(5) If a person chosen in accordance with subsection (4) becomes a member of a registered party before the Assembly next meets after the declaration under subsection (1), the person shall be taken not to have been chosen.

(6) For the purposes of subsection (3), a person shall not be taken to have ceased to be a member of a registered party merely because the party has ceased to exist or has been removed from the register of political parties.

**196. Term of office of MLA declared elected under this Part**

The term of office of an MLA declared elected under—

- (a) subsection 194 (1) or (3); or
- (b) subsection 195 (1);

begins at the end of the day on which the election of the MLA is declared and, unless sooner ended by resignation or disqualification, or by dissolution of the Assembly, ends on the polling day for the next election.

**197. Dissolution or pre-election period**

The commissioner shall not take any action, or any further action, under this Part in relation to a casual vacancy after the Assembly is dissolved or a pre-election period commences in relation to the electorate in which the casual vacancy has occurred.

**PART 14—ELECTION FUNDING AND FINANCIAL DISCLOSURE**

***Division 1—Preliminary***

**198. Interpretation**

(1) In this Part, unless the contrary intention appears—

“amount” includes value;

“associated entity” means an entity that—

- (a) is controlled by 1 or more registered parties or an independent MLA; or
- (b) operates wholly or mainly for the benefit of 1 or more registered political parties or an independent MLA;

“disclosure period” has the meaning given by section 201;

“disposition of property” means any conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, and includes—

- (a) the allotment of shares in a company;
- (b) the creation of a trust in property;
- (c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, partnership or interest in property;
- (d) the release, discharge, surrender, forfeiture or abandonment (at law or in equity) of any debt, contract or chose in action or of any interest in property;
- (e) the exercise by a person of a general power of appointment of property in favour of any other person; and
- (f) a transaction entered into by a person with intent to diminish (directly or indirectly) the value of the person’s own property and to increase the value of the property of any other person;

“eligible vote”, in relation to an election, means a first preference recorded on a formal ballot paper in the election;

“entity” means—

- (a) an incorporated or unincorporated body; or
- (b) a trustee of a trust;

“financial controller”, in relation to an associated entity, means—

- (a) if the entity is a company—the secretary of the company;
- (b) if the entity is the trustee of a trust—the trustee; or
- (c) in any other case—the person responsible for maintaining the financial records of the entity;

“gift” means a disposition of property made by a person to another person, being a disposition made without consideration in money or money’s worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration, but does not include—

- (a) a disposition of property under a will;
- (b) a payment under Division 3; or
- (c) an annual subscription paid to a party by a person in respect of the person’s membership of the party;

“independent MLA” means an MLA who is not a member of a party;

“non-party group” means a group of non-party candidates whose names are grouped on a ballot paper by virtue of subsection 115 (2);

“party” means a registered party;

“property” includes money;

“register” means—

- (a) in relation to a reporting agent appointed by a party or an independent MLA—the Register of Party and Independent Reporting Agents kept under subsection 205 (1); or
- (b) in relation to a reporting agent appointed by a candidate—the Register of Candidate Reporting Agents kept under subsection 205 (2);

“registered industrial organisation” means an organisation registered under the *Workplace Relations Act 1996* of the Commonwealth or under a law of a State or another Territory providing for the registration of industrial organisations;

“reporting agent”, in relation to a party, independent MLA or candidate, means—

- (a) a person appointed by the party, MLA or candidate in accordance with section 203 and registered under section 205; or
- (b) the person to be taken to be the reporting agent for the party, MLA or candidate under section 204.

(2) A reference in this Part to things done by or with the authority of a party shall, if the party is not a body corporate, be read as a reference to things done by or with the authority of members or officers of the party on behalf of the party.

(3) For the purposes of this Part, a candidate shall be taken to remain a candidate for 30 days after the election in which he or she was a candidate.

### **199. Related bodies corporate**

(1) For the purposes of this Part, bodies corporate that are related shall be taken to be the same person.

(2) In subsection (1)—

“related”, in relation to 2 bodies corporate, means that 1 body corporate is—

- (a) a holding company;



- (b) a subsidiary; or
- (c) a subsidiary of a holding company;  
of the other body corporate.

**200. Activities of campaign committees**

(1) For the purposes of Divisions 4, 5 and 6, gifts received, expenditure incurred and amounts received, paid or owed, by or on behalf of the campaign committee of a party candidate shall be taken to be received, incurred, paid or owed by the party.

(2) In subsection (1)—

“campaign committee” means a body of persons appointed, or engaged, to form a committee to assist the campaign of a candidate.

**201. Disclosure periods**

(1) For the purposes of this Part, the disclosure period in relation to an election is the period commencing on the disclosure day and ending at the expiration of the 30th day after polling day.

(2) In subsection (1)—

“disclosure day”, in relation to an election, means—

- (a) for a candidate who was a candidate in an election (including the 15 February 1992 election) the polling day for which was within 4 years before polling day for the firstmentioned election—the 31st day after polling day for the last election before the firstmentioned election;
- (b) for a candidate to whom paragraph (a) does not apply—
  - (i) if the candidate won party preselection, or endorsement, for the election—the day on which preselection, or endorsement, was won; or
  - (ii) in any other case—the earlier of the following days:
    - (A) the day on which the person publicly announced that he or she would be a candidate in the election;
    - (B) the day on which the person was nominated in accordance with section 105;

- (c) for a person to whom, or body to which, section 220 or 221 applies—the 31st day after polling day for the last previous election;
- (d) for a non-party group which contested the previous general election—the 31st day after polling day for that election; or
- (e) for a non-party group to which paragraph (d) does not apply—the earlier of the following days:
  - (i) the day on which the group publicly announced that it would contest the election;
  - (ii) the day on which the candidates comprising the group requested that their names be grouped on the ballot paper in accordance with section 115.

## **202. Gifts—determination of amounts**

For the purposes of this Part, the regulations may prescribe principles for determining the amount of a gift that consists of, or includes, a disposition of property other than money.

### ***Division 2—Reporting agents***

## **203. Appointed agents**

**(1)** A party, non-party group, an independent MLA or a candidate may appoint a reporting agent.

**(2)** The appointment of a reporting agent under subsection (1) has no effect unless—

- (a) the person appointed is a natural person who is at least 18 years of age;
- (b) written notice of the appointment is given to the commissioner—
  - (i) where the appointment is made by a party—by the secretary of the party;
  - (ii) where the appointment is made by a non-party group—by a member of the group; or
  - (iii) in any other case—by the MLA or candidate making the appointment;
- (c) the name, address and date of birth of the person appointed are set out in the notice; and
- (d) the person appointed has consented in writing to the appointment.

(3) Where a political party ceases to be registered under Part 7 and immediately before ceasing to be registered a person held office under subsection (1), the person shall be taken to continue in that office for the purposes of this Part as if the party continued to be registered.

(4) A person taken to be a reporting agent in accordance with subsection (3) or 204 (1A) shall be taken to continue in that office until the person, with the consent of the commissioner, resigns from that office.

#### **204. Non-appointed agents**

(1) Where there is no appointment under section 203 in force in relation to a party, the registered officer of the party shall be taken to be its reporting agent.

(1A) Where a political party ceases to be registered under Part 7 and there is no person taken to be the reporting agent in accordance with subsection 203 (3), the person who was the registered officer immediately before the party ceased to be registered shall be taken to be the reporting agent in relation to the political party for the purposes of this Part as if the party continued to be registered.

(2) Where there is no appointment in force under section 203 in relation to a non-party group, each member of the group shall be taken to be a reporting agent for the group.

(3) Where there is no appointment under section 203 in force in relation to an independent MLA, the MLA shall be taken to be his or her own reporting agent.

(4) Where there is no appointment under section 203 in force in relation to a candidate, the candidate shall be taken to be his or her own reporting agent.

#### **205. Registers of reporting agents**

(1) The commissioner shall keep a register called the Register of Party and Independent Reporting Agents.

(2) The commissioner shall keep a register called the Register of Non-party Group and Candidate Reporting Agents.

(3) The commissioner shall register the name and address of each reporting agent appointed in accordance with section 203 in the appropriate register.

(4) The commissioner shall cancel the registration of a reporting agent if—  
(a) the person gives the commissioner written notice that he or she has resigned the appointment;

- (b) the MLA, candidate or secretary of the party that appointed the person gives the commissioner written notice that the person has ceased to be the reporting agent; or
  - (c) it comes to the notice of the commissioner that the person is no longer able to undertake the duties of a reporting agent.
- (5) If a registered reporting agent dies, the MLA, candidate or secretary of the party that appointed the agent shall give the commissioner written notice within 28 days after the death.

### ***Division 3—Election funding***

#### **206. Interpretation**

- (2) For the purposes of this Division, an eligible vote cast for a party candidate shall be taken to be cast not for the candidate but for the party.
- (4) For the purposes of this Division, an eligible vote cast for a member of a non-party group shall be taken to be cast not for the member but for the group.

#### **207. Entitlement to funds**

- (1) In this section—

“index number”, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter;

“relevant period” means the period of 6 months commencing on 1 January 1994 and each subsequent period of 6 months.

- (2) The prescribed amount is payable in respect of each eligible vote cast for a candidate, party or non-party group in an election.

- (3) The prescribed amount is—

- (a) where polling day occurred during the relevant period commencing 1 January 1994—100 cents;
- (b) where polling day occurred during a subsequent relevant period commencing on 1 January—an amount calculated as follows:

$$\frac{INS}{INM} \times P$$

where—

**INS** is the index number for the last preceding September quarter;

**INM** is the index number for the last preceding March quarter; and

**P** is the prescribed amount in relation to the last preceding relevant period; or

- (c) in relation to a subsequent relevant period commencing on 1 July—an amount calculated as follows:

$$\frac{\text{INM}}{\text{INS}} \times \text{P}$$

where—

**INM** is the index number for the last preceding March quarter;

**INS** is the index number for the last preceding September quarter; and

**P** is the prescribed amount in relation to the last preceding relevant period.

- (4) An amount prescribed, or fraction used to calculate the amount, under paragraph (3) (b) or (c)—

- (a) where the amount or fraction, if calculated to 4 decimal points, would end with a number greater than 4—shall be calculated to 3 decimal places and increased by 0.001; or
- (b) in any other case—shall be calculated to 3 decimal places.

- (5) Subject to subsection (6), if the Australian Statistician publishes an index number in respect of a quarter in substitution for an index number previously published in respect of that quarter, the publication of the later index number shall be disregarded for the purposes of this section.

- (6) If the Australian Statistician changes the reference base for the Consumer Price Index, then, in applying this section after the change, regard shall be had only to index numbers published in terms of the new reference base.

## **208. Threshold**

- (1) A payment under this Division shall not be made in respect of votes cast for a candidate in an election unless the number of eligible votes cast in the candidate's favour is at least 2% of the number of eligible votes cast in the

election by the electors of the electorate in respect of which the candidate was nominated.

(2) A payment under this Division shall not be made in respect of the votes cast for a party in an election by the electors of an electorate unless the number of eligible votes cast in the party's favour is at least 2% of the number of eligible votes cast by those electors in that election.

(3) A payment under this Division shall not be made in respect of votes cast for a non-party group in an election by the electors of an electorate unless the number of eligible votes cast in the group's favour is at least 2% of the number of eligible votes cast by those electors in that election.

## **212. Making of payments**

(1) Where an amount is payable under this Division in respect of votes cast in an election for 1 or more candidates endorsed by a party, the commissioner shall make the payment to the registered officer of the party.

(2) Where an amount is payable under this Division in respect of votes cast for 1 or more candidates who are members of a non-party group, the commissioner shall—

- (a) if the members of the group have, by notice in writing given to the commissioner, appointed a person to receive payments under this Division on behalf of the group—pay the amount to the person so appointed; or
- (b) in any other case—pay the amount to the members of the group proportionately according to the number of eligible votes cast for each member.

(2A) Where an amount is payable under this Division in respect of votes cast in an election for a candidate—

- (a) who was not endorsed by a party for the election; and
- (b) who is not a member of a non-party group;

the commissioner shall make the payment to the candidate.

(3) Where a payment is made under this section and the recipient is not entitled to receive the whole or a part of the amount paid, the amount or the part of the amount may be recovered by the Territory as a debt due.

**214. Death of candidate**

(1) Where a candidate for whom eligible votes were cast in an election dies, a payment under this Division in respect of the eligible votes cast for the candidate may be made despite the death of the candidate.

(2) If a candidate referred to in subsection (1) was not—

- (a) endorsed by a party for the election; or
- (b) a member of a non-party group in respect of which an appointment under paragraph 212 (2) (a) was in effect at the time of his or her death;

the payment may be made to the legal personal representative of the deceased candidate.

**215. Application voluntary**

Nothing in this Division shall be taken to require a person to accept payment of an amount payable under section 207.

***Division 4—Disclosure of donations***

**216. Interpretation**

In this Division—

“defined details”, in relation to a gift, means—

- (a) in the case of a gift made on behalf of the members of an unincorporated association, other than a registered industrial organisation—
  - (i) the name of the association; and
  - (ii) the names and addresses of the members of the executive committee (however described) of the association;
- (b) in the case of a gift from a trust fund or the funds of a foundation—
  - (i) the names and addresses of the trustees of the fund or foundation; and
  - (ii) the name, title or description of the trust fund or foundation; or
- (c) in any other case—the name and address of the person or organisation that made the gift;

“gift”, in relation to a candidate, does not include a gift made to or received by the candidate for the benefit of a party or non-party group of which he or she is a member.

**217. Disclosure of gifts**

(1) The reporting agent of a candidate shall, within 15 weeks after the polling day in the election, give the commissioner a return in the approved form.

(2) A return shall specify the following matters in relation to the disclosure period for the election:

- (a) the total amount of any gifts received by the candidate;
- (b) the number of persons who made gifts to the candidate;
- (c) the date on which each gift was received;
- (d) the amount of each gift received;
- (e) the defined details of each gift received.

(3) Notwithstanding subsection (2), a reporting agent is not required to specify the defined details of a gift in a return under subsection (1) if the sum of the amount of the gift and of all other gifts made to the candidate by the person who gave the firstmentioned gift is less than \$200.

(4) A reference in this section to a gift shall be read as a reference to a gift other than a gift made in a private capacity to a candidate for his or her personal use that the candidate has not used, and will not use, solely or substantially for a purpose related to an election.

**218. Disclosure of gifts—non-party groups**

(1) A reporting agent of a non-party group shall, within 15 weeks after the polling day in the election, give the commissioner a return in the approved form.

(2) A return shall specify the following matters in relation to the disclosure period for the election:

- (a) the total amount of any gifts received by the group;
- (b) the number of persons who made gifts to the group;
- (c) the date on which each gift was received;
- (d) the amount of each gift received;
- (e) the defined details of each gift received.



(3) Notwithstanding subsection (2), a reporting agent is not required to specify the defined details of a gift in a return under subsection (1) if the sum of the amount of the gift and of all other gifts made to the group by the person who gave the firstmentioned gift is less than \$200.

**219. Nil returns**

Where no details are required to be included in a return under section 217 or 218, the return shall be given to the commissioner and shall include a statement to the effect that no gifts of a kind required to be disclosed were received.

**220. Disclosure of gifts by persons incurring political expenditure**

(1) Where a person (other than a party, a candidate or an associated entity)—

- (a) incurs expenditure for a political purpose during the disclosure period in relation to an election; and
- (b) receives 1 or more gifts during that period—
  - (i) the whole or a part of each of which was used by the person to enable him or her to incur expenditure for a political purpose or to reimburse him or her for incurring expenditure for a political purpose; and
  - (ii) the amount of each of which is equal to or exceeds \$1,000;

the person shall, before the expiration of 15 weeks after polling day in the election, give the commissioner a return in the approved form in relation to that gift or gifts.

(2) A return shall, in relation to each gift referred to in subsection (1), specify—

- (a) the amount of the gift;
- (b) the date on which it was received; and
- (c) the defined details.

(3) Subsection (1) does not apply to a person if the amount of expenditure incurred by the person for political purposes during the disclosure period is less than \$1,000.

(4) For the purposes of this section, a person shall be taken to have incurred expenditure for a political purpose if, during the disclosure period in relation to an election, the person incurs expenditure in relation to that or any other election.

**(5)** In this section, a reference to incurring of expenditure for a political purpose shall be read as a reference to incurring of expenditure in relation to—

- (a) publishing electoral matter (including publishing by radio or television);
- (b) otherwise publishing a view on an issue in an election;
- (c) making a gift to a party;
- (d) making a gift to a candidate; or
- (e) making a gift to a person on the understanding that the person or another person will apply, either directly or indirectly, the whole or a part of the gift in a manner referred to in paragraph (a), (b), (c) or (d).

**(6)** For the purposes of subsection (2), 2 or more gifts made by the same person to or for the benefit of a person to whom subsection (1) applies shall be taken to be a single gift.

## **221. Donations to non-party groups and candidates**

**(1)** If, during the disclosure period for an election, a person (other than a party, a candidate or an associated entity)—

- (a) makes gifts totalling \$1,500 or more to the same non-party group;
- (b) makes gifts totalling \$200 or more to the same candidate in the election; or
- (c) makes gifts totalling \$1,500 or more to the same specified body;

the person shall, within 15 weeks after the polling day in the election, give the commissioner a return in the approved form.

**(2)** A return shall specify in relation to each gift referred to in subsection (1) made by the person during the disclosure period—

- (a) the amount of the gift;
- (b) the date on which it was made; and
- (c) the defined details.

**(3)** A reference in this section to a gift shall be read as a reference to a gift other than a gift made in a private capacity to a candidate or a specified body that is a natural person, for his or her personal use, being a gift that the receiver has not used, and will not use, solely or substantially for a purpose related to an election.

(4) The commissioner may, by notice in the *Gazette*, specify a person or body (whether incorporated or not) for the purposes of this section if the commissioner believes on reasonable grounds, that it is a function of the person or body to incur electoral expenditure or to give gifts (directly or indirectly) to non-party groups or candidates.

(5) In this section—

“specified body” means a person or body specified in accordance with subsection (4).

#### **221A. Annual returns of donations**

(1) If, in a financial year, a person—

- (a) makes gifts totalling \$1,500 or more to the same party; or
- (b) makes gifts totalling \$200 or more to the same independent MLA;

the person shall, within 20 weeks after the end of the financial year, give the commissioner a return in the approved form covering all the gifts that the person made to that party or independent MLA during the financial year.

(2) If a person makes a gift to any person or body with the intention of benefiting a particular party or independent MLA, the person shall be taken, for the purposes of subsection (1), to have made that gift directly to that party or independent MLA.

(3) For each gift the return shall set out—

- (a) the amount of the gift;
- (b) the date on which it was made; and
- (c) the name of the party or independent MLA.

(4) This section does not apply to gifts made by—

- (a) a party;
- (b) a member of a non-party group;
- (c) an independent MLA;
- (d) a candidate in an election; or
- (e) an associated entity.

(5) A reference in this section to a gift shall be read as a reference to a gift other than a gift made in a private capacity to an independent MLA for his or her

personal use, being a gift that the receiver has not used, and will not use, solely or substantially for a purpose related to an election.

**221B. Advice of obligation to lodge return**

(1) If, in a financial year—

- (a) a party receives gifts totalling \$1,500 or more from the same person; or
- (b) an independent MLA receives gifts totalling \$200 or more from the same person;

the party or independent MLA shall, before 1 August next following the end of the financial year, by notice in writing given to the person who made the gifts, advise the person of the requirements of section 221A.

Penalty: 50 penalty units.

(2) In this section—

“gifts” has the same meaning as in section 221A.

**222. Anonymous gifts**

(1) A party, non-party group, independent MLA or candidate shall not accept a gift made to or for the benefit of the party, non-party group, independent MLA or candidate by another person, being a gift the amount of which equals or exceeds the prescribed amount, unless—

- (a) the defined details in relation to the gift are known to the person accepting the gift; or
- (b) the person making the gift informs the person accepting the gift of the defined details and, at the time when the gift is made, the person accepting it has no grounds for believing that the information provided is not true.

(2) Subsection (1) applies—

- (a) in relation to a party or independent MLA—to gifts received at any time; or
- (b) in relation to a non-party group or a candidate—to gifts received during the disclosure period.

(3) The reference in subsection (1) to a gift made by a person includes a reference to a gift made on behalf of the members of an unincorporated association.

- (4) For the purposes of this section, 2 or more gifts made by the same person to or for the benefit of a party, non-party group, an MLA or a candidate shall be deemed to be a single gift.
- (5) Where a person receives a gift in contravention of subsection (1), an amount equal to the amount of the gift is payable by that person to the Territory and may be recovered by the Territory as a debt due to the Territory by—
- (a) in the case of a gift to or for the benefit of a party—
    - (i) if the party is a body corporate—the party; or
    - (ii) in any other case—the reporting agent of the party;
  - (b) in the case of a gift to or for the benefit of a non-party group—a reporting agent of the group;
  - (c) in the case of a gift to or for the benefit of an independent MLA—the MLA; or
  - (d) in any other case—the candidate.
- (6) For the purposes of subsection (1), the prescribed amount is—
- (a) in the case of a gift made to, or for the benefit of, a party—\$1,000; or
  - (b) in the case of a gift made to, or for the benefit of, a non-party group, a candidate or independent MLA—\$200.

***Division 5—Disclosure of electoral expenditure***

**223. Interpretation**

- (1) In this Division—  
“broadcaster” means—

- (a) the Australian Broadcasting Corporation continued in existence under section 5 of the *Australian Broadcasting Corporation Act 1983* of the Commonwealth;
- (b) the Special Broadcasting Service Corporation continued in existence under section 5 of the *Special Broadcasting Service Act 1991* of the Commonwealth;
- (c) the holder of a licence under the *Broadcasting Services Act 1992* of the Commonwealth; or
- (d) the provider of a broadcasting service under a class licence under that Act;

“electoral advertisement” means an advertisement containing electoral matter, whether or not consideration was given for its publication or broadcast;

“electoral expenditure”, in relation to an election, means expenditure incurred (whether or not incurred during the pre-election period) on—

- (a) broadcasting an electoral advertisement during the pre-election period;
- (b) publishing an electoral advertisement in a newspaper or periodical during the pre-election period;
- (c) displaying an electoral advertisement at a theatre or other place of entertainment during the pre-election period;
- (d) producing an electoral advertisement referred to in paragraph (a), (b) or (c);
- (e) producing any printed electoral matter to which section 292 applies (other than material referred to in paragraph (a), (b) or (c)) that is published during the pre-election period;
- (ea) producing and distributing electoral matter that is addressed to particular persons or organisations and is distributed during the pre-election period;
- (f) consultant’s or advertising agent’s fees in respect of—
  - (i) services provided during the pre-election period, being services relating to the election; or
  - (ii) material relating to the election that is used during the pre-election period; or
- (g) carrying out an opinion poll or other research about the election during the pre-election period.

**(2)** A reference in this Division to a participant in an election shall be read as a reference to—

- (a) a party, non-party group or candidate; or
- (b) a person (not being a party or candidate) by whom, or with the authority of whom, electoral expenditure in relation to an election is incurred.

**(3)** For the purposes of this Division, an advertisement relates to an election if it contains electoral matter, whether or not consideration is given for the publication or broadcasting of the advertisements.

**224. Returns of electoral expenditure**

(1) The reporting agent of each person who was a candidate in an election shall, before the expiration of 15 weeks after polling day for the election, give the commissioner a return, in writing, in an approved form, specifying details of the electoral expenditure in relation to the election incurred by or with the authority of the candidate.

(2) A reporting agent of a non-party group in an election shall, before the expiration of 15 weeks after polling day for the election, give the commissioner a return, in writing, in an approved form, specifying details of the electoral expenditure in relation to the election incurred by or with the authority of the group.

(2A) Where electoral expenditure in relation to an election is incurred by or with the authority of a party, the reporting agent of the party shall, before the expiration of 15 weeks after polling day for the election, give the commissioner a return, in writing, in an approved form, setting out details of the expenditure.

(3) Where electoral expenditure in relation to an election was incurred by or with the authority of a person and the expenditure was not incurred with the written authority of a party, a non-party group, a candidate or an associated entity in the election the person shall, before the expiration of 15 weeks after polling day for the election, give the commissioner a return, in writing, in an approved form, specifying details of the electoral expenditure.

(4) A person is not required to give the commissioner a return under subsection (3) in respect of an election if the amount of the electoral expenditure incurred in relation to the election by or with the authority of the person does not exceed \$200.

**225. Nil returns**

(1) Where no electoral expenditure in relation to an election is incurred by or with the authority of a candidate in the election, a return under section 224 in respect of the candidate shall be given to the commissioner and shall include a statement to the effect that no expenditure of a kind required to be disclosed has been incurred by or with the authority of the candidate.

(2) Where no electoral expenditure in relation to an election is incurred by or with the authority of a non-party group in the election, a return under section 224 in respect of the group shall be given to the commissioner and shall include a statement to the effect that no expenditure of a kind required to be disclosed has been incurred by or with the authority of the group.

(3) Where no electoral expenditure in relation to an election is incurred by or with the authority of a party that endorsed a candidate in the election, a return under section 224 in respect of the party shall be given to the commissioner and shall include a statement to the effect that no expenditure of a kind required to be disclosed has been incurred by or with the authority of the party.

## **226. Returns by broadcasters and publishers**

(1) Where an election has taken place—

- (a) each broadcaster who broadcast an electoral advertisement during the pre-election period with the authority of a participant in the election; and
- (b) each publisher who published an electoral advertisement in a newspaper or periodical during the pre-election period with the authority of a participant in the election;

shall give the commissioner a return in the approved form before the expiration of 8 weeks after polling day in the election.

(2) A return shall specify the following particulars in relation to the advertisement:

- (a) the broadcasting service as part of which the advertisement was broadcast or the newspaper or periodical in which the advertisement was published;
- (b) the person at whose request the advertisement was broadcast or published;
- (c) the participant in the election with whose authority the advertisement was broadcast or published;
- (d) the date or dates on which, and, in the case of an advertisement that was broadcast, the times between which, the advertisement was broadcast or published;
- (e) in the case of a published advertisement—the page on which the advertisement was published and the space occupied by it;
- (f) whether or not, on each occasion when the advertisement was broadcast or published, a charge was made by the broadcaster or publisher for the broadcasting or publication of the advertisement;
- (g) where a charge referred to in paragraph (f) was made—the amount of the charge.



(3) Where a broadcaster or publisher specifies in a return the amount of a charge in accordance with paragraph (2) (g), the broadcaster or publisher shall state in the return whether or not the charge is at less than normal commercial rates having regard to—

- (a) in the case of a broadcast advertisement—the length of the advertisement and the day or days on which, and the times between which, it was broadcast; or
- (b) in the case of a published advertisement—the space occupied by the advertisement and the nature of the newspaper or periodical.

(4) A publisher is not required to give the commissioner a return under subsection (1) in respect of an election if the amount of the charges made by the publisher in respect of the publication of any advertisements to which that subsection applies, in relation to that election and any other election that took place on the same day as the firstmentioned election, does not exceed \$1,000.

(5) A return under subsection (1) may refer to more than 1 advertisement.

## **227. Multiple elections on same day**

(1) Where—

- (a) the voting at 2 or more elections took place on the same day; and
- (b) a person would, but for this subsection, be required to give the commissioner 2 or more returns under this Division relating to those elections;

the person may give the commissioner a single return, in an approved form, setting out the particulars that the person would have been required to set out in those separate returns.

(2) It is sufficient compliance with this Division if the return sets out details of the expenditure without showing the extent to which it relates to any election.

## ***Division 6—Annual returns***

## **228. Interpretation**

In this Division—

“defined particulars”, in relation to a sum, means—

- (a) if the sum was received from, paid to or owed to, an unincorporated association, other than a registered industrial organisation—

- (i) the name of the association; and
  - (ii) the names and addresses of the members of the executive committee (however described) of the association;
- (b) if the sum was paid out of or into, or incurred as a debt to, a trust fund or the funds of a foundation—
  - (i) the names and addresses of the trustees of the fund or foundation; and
  - (ii) the name, title or description of the trust fund or foundation;
- (c) the name and address of the person or organisation that paid, received or is owed the sum; and
- (d) such other particulars as are prescribed.

**230. Annual returns by parties and MLAs**

**(1)** Subject to sections 231 and 231A, the reporting agent of a party or an independent MLA shall, within 16 weeks after the end of each financial year, give the commissioner a return in the approved form.

**(2)** A return shall specify—

- (a) the amount received by, or on behalf of, the party or MLA during the financial year, together with the particulars required by subsection 232 (1);
- (b) the amount paid by, or on behalf of, the party or MLA during the financial year, together with the particulars required by subsection 233 (1); and
- (c) the outstanding amount, as at the end of the financial year, of debts incurred by, or on behalf of, the party or MLA, together with the particulars required by section 234.

**(3)** A reference in paragraph (2) (a) to an amount received by or on behalf of an independent MLA shall be read as not including gifts given to the MLA in a private capacity, for his or her personal use, that the MLA has not used, and will not use, solely or substantially for a purpose related to his or her position as an MLA.

**(4)** A reference in paragraph (2) (b) or (c) to an amount paid, or an outstanding amount of debts incurred, by or on behalf of an independent MLA,

shall be read as a reference to an amount paid for, or an outstanding amount of debts incurred on—

- (a) broadcasting an advertisement;
- (b) publishing an advertisement in a newspaper or periodical;
- (c) displaying an advertisement at a theatre or other place of entertainment;
- (d) producing an advertisement referred to in paragraph (a), (b) or (c);
- (e) producing any printed electoral matter to which section 292 applies (other than material referred to in paragraph (a), (b) or (c));
- (ea) producing and distributing electoral matter that is addressed to particular persons or organisations;
- (f) consultant's or advertising agent's fees in respect of services provided; or
- (g) carrying out an opinion poll or other research;

by or on behalf of the MLA for a purpose that relates solely or substantially to his or her position as MLA.

(5) A return provided in accordance with this section shall not include a list of the members of a party.

(6) Where the registration of a party is cancelled during a financial year, this section applies to the party in relation to that year as if a reference to a reporting agent were a reference to a person who was the reporting agent immediately before the cancellation.

(7) Where a person ceases to be an independent MLA during a financial year, this section applies to the person in relation to that year as if the person were the reporting agent.

### **231. Periods of less than financial year**

Where a party becomes, or ceases to be, a registered party, or a person becomes, or ceases to be, an independent MLA, part way through a financial year, a return under section 230 in relation to the year need only include particulars in relation to the part of the year during which the party was registered or the person was an independent MLA.

### **231A. Returns by parties under Commonwealth Electoral Act**

(1) If—

- (a) an organisation has corresponding registration as a political party under Part 7 of this Act and under Part XI of the Commonwealth Act, whether by the same or a different name;
- (b) the agent of the organisation gives to the Australian Electoral Commission, within the period of 16 weeks after the end of the financial year, a return under section 314AB of the Commonwealth Act in respect of that financial year; and
- (c) the agent or organisation gives to the ACT commissioner, within that period, a copy of that return;

the organisation is not required to give to the ACT commissioner a return under section 230 in respect of that financial year.

(2) For the purposes of subsection (1), an organisation has corresponding registration as a political party under Part 7 of this Act and under Part XI of the Commonwealth Act if the same person is specified as the registered officer of the party in the register of political parties kept under section 88 of this Act and in the Register of Political Parties kept under section 125 of the Commonwealth Act.

(3) In this section—

“agent”, in relation to an organisation, means the person appointed under section 288 of the Commonwealth Act to be the agent of the organisation in respect of the Territory;

“Commonwealth Act” means the *Commonwealth Electoral Act 1918* of the Commonwealth;

“party” includes a Territory branch of a political party registered under Part XI of the Commonwealth Act.

### **231B. Annual returns by associated entities**

(1) If an entity is an associated entity at any time during a financial year, the entity’s financial controller shall, within 16 weeks after the end of the financial year, give the commissioner a return in the approved form.

(2) A return shall set out—

- (a) the amount received by, or on behalf of, the entity during the financial year together with the particulars required by subsection 232 (1);
- (b) the amount paid by, or on behalf of, the entity during the financial year together with the particulars required by subsection 233 (1); and

- (c) if the entity is an associated entity at the end of the financial year—the outstanding amount, as at the end of the financial year, of debts incurred by, or on behalf of, the entity together with the particulars required by subsection 234 (2).
- (3) Amounts received or paid at a time when the entity was not an associated entity are not to be counted for the purposes of paragraphs (2) (a) and (b).
- (4) If any amount required to be set out under paragraph (1) (b) was—
  - (a) paid to or for the benefit of 1 or more political parties or independent MLAs; and
  - (b) paid out of funds generated from capital of the associated entity;

the return shall set out the following details of each person who contributed to that capital after the commencement of this section:

- (c) the name and address of the person;
  - (d) the amount of the person's contributions to that capital up to the end of the financial year.
- (5) Subsection (4) does not apply to contributions that have been set out in a previous return under this section.

**231C. Returns by associated entities under Commonwealth Electoral Act**

- (1) This section applies in respect of an associated entity that—
  - (a) is controlled by 1 or more parties; or
  - (b) operates wholly or mainly for the benefit of 1 or more parties.
- (2) If an entity was, during a financial year, an associated entity in respect of which this section applies and the financial controller of the entity—
  - (a) gives to the Australian Electoral Commission, within the period of 16 weeks after the end of the financial year, a return under section 314AEA of the *Commonwealth Electoral Act 1918* of the Commonwealth in respect of that financial year; and
  - (b) gives to the commissioner, within that period, a copy of that return;

the financial controller is not required to give to the commissioner a return under section 231B in respect of the entity for that financial year.

**232. Amounts received**

(1) If the sum of all amounts received by, or on behalf of, a party, an MLA or an associated entity from a person or organisation during a financial year is \$1,500 or more, the return by the party, MLA or associated entity under section 230 or 231B in respect of the financial year shall specify the amount of the sum and set out the defined particulars in relation to it.

(2) In calculating the sum, an amount of less than \$500 need not be counted.

**233. Amounts paid**

(1) If the sum of all amounts paid by, or on behalf of, a party, MLA or associated entity to a person or organisation during a financial year is \$1,500 or more, the return by the party, MLA or associated entity under section 230 or 231B in respect of the financial year shall specify the amount of the sum and set out the defined particulars in relation to it.

(2) In calculating the sum the following amounts need not be counted:

- (a) an amount of less than \$500;
- (b) an amount paid under a contract of employment or an award specifying terms and conditions of employment.

**234. Outstanding amounts**

(1) If, at the end of a financial year, the sum of all debts within the meaning of paragraph 230 (2) (c) that are owed by a party or MLA to a particular person or organisation is \$1,500 or more, the return by the party or MLA under section 230 shall specify the sum and include the defined particulars.

(2) If an entity is an associated entity at the end of a financial year and, at the end of that year, the sum of all debts within the meaning of paragraph 231B (2) (c) that are owed by the entity to a particular person or organisation is \$1,500 or more, the return by the entity under section 231B in respect of the financial year shall set out the sum and include the defined particulars.

**234A. Regulations**

(1) The regulations may require greater detail to be provided in returns under section 230 or 231B than is required by this Division.

(2) Without limiting the generality of subsection (1), the regulations may require that the total amounts referred to in subsection 230 (2) or 231B (2) be broken down in the way specified in the regulations.

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- (3)** The regulations may reduce the amount of information to be provided in returns under section 231B.

***Division 7—Compliance***

**235. Interpretation**

In this Division—

“return” includes a notice under paragraph 240 (1) (c) or subsection 240 (4).

**236. Offences**

**(1)** A person shall not, without reasonable excuse, fail to give the commissioner a return under this Part within the time required.

Penalty:

- (a) in the case of a return required to be given by the reporting agent of a party—50 penalty units;
  - (b) in any other case—20 penalty units.
- (2)** A person shall not, without reasonable excuse—
- (a) give the commissioner an incomplete return under Division 4, 5 or 6; or
  - (b) fail to retain records in accordance with section 239;

Penalty: 20 penalty units.

**(3)** For the purposes of subsection (1) or paragraph (2) (b), it is a reasonable excuse for a reporting agent of a non-party group to fail to give a return or retain records if another reporting agent of the group has given the return within the time required or retained records in accordance with section 239, as the case requires.

**(4)** A person shall not give a return under Division 4, 5 or 6, containing particulars that are, to the knowledge of the person, false or misleading in a material particular.

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

**(5)** A person shall not give to another person who is required to give a return under Division 4, 5 or 6 information relevant to the return that is, to the knowledge of the firstmentioned person, false or misleading in a material particular.

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

**(8)** A prosecution in respect of an offence against this section may be commenced at any time within 3 years after the offence was committed.



**237. Investigation—notices**

**(1)** In this section—

“article” includes a document;

“investigation notice” means a notice under subsection (3);

“prescribed person” means a person who, in the opinion of the commissioner, is or may be required to furnish a return under subsection 220 (1), 221 (1) or 224 (1) in relation to an election.

**(2)** The commissioner may conduct an investigation into compliance with this Part.

**(3)** In an investigation, the commissioner may give an investigation notice in relation to a reporting agent or a prescribed person to—

- (a) the agent or prescribed person;
- (b) in the case of a reporting agent of a party—any officer of the party;
- (c) in the case of a prescribed person that is a body corporate—any of its officers; or
- (d) any other person the commissioner has reasonable grounds for believing is capable of producing any article, or giving evidence, relating to any person’s compliance with this Part.

**(4)** An investigation notice shall require the person on whom it is served—

- (a) to produce, within the period and in the manner specified in the notice, any articles referred to in the notice; or
- (b) to appear, at a time and place specified in the notice, before the commissioner to give evidence, either orally or in writing, and to produce at that time any articles referred to in the notice.

**(4A)** If an investigation notice requires an officer of a party other than its reporting agent to appear before the commissioner, the reporting agent of the party is entitled—

- (a) to attend the investigation; or
- (b) to nominate another person to attend on behalf of the reporting agent.

**(4B)** If an investigation notice relates to an investigation into—

- (a) a return given to the commissioner under this Part by the reporting agent of an independent MLA; or

- (b) a failure of a reporting agent of an independent MLA to give the commissioner a return under this Part within the time required;

and the notice requires a person other than the reporting agent of the MLA to appear before the commissioner, the reporting agent of the MLA is entitled—

- (c) to attend the investigation; or
- (d) to nominate another person to attend on behalf of the reporting agent.

**(4C)** Failure of a reporting agent or nominee to attend an investigation under subsection (4A) or (4B) does not affect the power of the commissioner to conduct the investigation.

**(5)** The commissioner may require a person to whom an investigation notice has been given under paragraph (4) (b) to give evidence on oath, and for that purpose may administer an oath.

**(6)** A person shall not, without reasonable excuse, contravene an investigation notice.

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

**(7)** A person shall not give evidence in response to an investigation notice that is, to the knowledge of the person, false or misleading in a material particular.

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

### **238. Investigation—search warrants**

**(1)** The commissioner may make an application to a magistrate for the issue of a warrant where—

- (a) the commissioner has reasonable grounds for suspecting that there may be, at that time or within the next 24 hours, in or on any premises, an article that may afford evidence relating to a contravention of section 236 (in this section called a “relevant article”); and
- (b) the commissioner has reasonable grounds for believing that, if an investigation notice under section 237 were issued for the production of the relevant article, it might be concealed, lost, mutilated, destroyed or disposed of.

**(2)** A magistrate may, on application in accordance with subsection (1), issue a warrant authorising the commissioner or any other person named in the warrant, with such assistance as the commissioner or person thinks necessary, and if necessary by force—

- (a) to enter the premises;
  - (b) to search the premises for relevant articles; and
  - (c) to seize any relevant article found in or on the premises.
- (3) A magistrate shall not issue a warrant unless—
  - (a) an affidavit has been lodged with the magistrate setting out the grounds on which the issue of the warrant is being sought;
  - (b) the commissioner or another person has given the magistrate, either orally or by affidavit, any further information the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
  - (c) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (4) Where a magistrate issues a warrant, he or she shall endorse on the affidavit lodged in accordance with subsection (3) the grounds relied on to justify the issue of the warrant.
- (5) A warrant shall—
  - (a) state the purpose for which it is issued, including a reference to the alleged offence in relation to which it is issued;
  - (b) specify the hours during which the entry is authorised or state that the entry is authorised at any time of the day or night;
  - (c) include a description of the kind of articles to which it relates; and
  - (d) specify the date, being a date not later than 1 month after the date of issue of the warrant, on which the warrant ceases to have effect.
- (6) Where an article is seized by a person pursuant to a warrant—
  - (a) the person may retain the article for as long as is necessary and reasonable for the purposes of the investigation to which it is relevant; and
  - (b) when retention of the article ceases to be necessary and reasonable for those purposes, he or she shall cause it to be delivered to the person who appears to be entitled to possession of the article.
- (7) Where a document is retained under paragraph (6) (a)—
  - (a) the person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the

commissioner to be a true copy and the certified copy shall be received in all courts as evidence as if it were the original; and

- (b) until the certified copy is supplied, the commissioner shall, at such times and places as the commissioner thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

### **239. Records**

(1) Where a person makes or obtains an article that is or includes a record relating to a matter particulars of which are, or could be, required to be set out in a return under this Part relating to an election, he or she shall retain the record for a period of not less than 3 years commencing on polling day for that election.

(2) Where a party, independent MLA or associated entity makes or obtains an article that is or includes a record relating to a matter particulars of which are, or could be, required to be set out in a return under Division 6, the party, MLA or associated entity shall retain the record for a period of not less than 3 years commencing on the day after the last day on which the return is required to be given to the commissioner.

(3) Where a person, party, independent MLA or associated entity would, in the normal course of business or administration, transfer to another person a record referred to in subsection (1) or (2)—

- (a) the person, party, MLA or associated entity shall be taken not to have contravened the subsection by so transferring the record; and
- (b) the person to whom the record is transferred shall retain the record for the period for which the person, party, MLA or associated entity who transferred the record would have had to retain the record had the record not been transferred.

### ***Division 8—Miscellaneous***

### **240. Inability to complete returns**

(1) Where a person who is required to give the commissioner a return under Division 4, 5 or 6 considers that it is impossible to complete the return because he or she is unable to obtain particulars that are required for the preparation of the return, the person may—

- (a) prepare the return to the extent that it is possible to do so without those particulars;

- (b) give the commissioner the return so prepared; and
  - (c) give the commissioner written notice—
    - (i) identifying the return;
    - (ii) stating that the return is incomplete by reason that he or she is unable to obtain certain particulars;
    - (iii) identifying those particulars;
    - (iv) setting out the reasons why he or she is unable to obtain those particulars; and
    - (v) if the person believes, on reasonable grounds, that another person whose name and address he or she knows can give those particulars—stating that belief, the reasons for it and the name and address of the other person.
- (2) A person who complies with subsection (1) shall not, by reason of the omission of the particulars referred to in subparagraph (1) (c) (iii), be taken, for the purposes of paragraph 236 (2) (a), to have given a return that is incomplete.
- (3) Where the commissioner has been informed under paragraph (1) (c) or (4) (e) that a person can supply particulars that have not been included in a return, the commissioner may, by written notice served on that person, require the person to give the commissioner written notice of the particulars within the period specified in the notice.
- (4) If a person who is required to give the commissioner particulars under subsection (3) considers that he or she is unable to obtain some or all of the particulars, the person shall give to the commissioner a written notice—
- (a) specifying the particulars (if any) that the person is able to give;
  - (b) stating that the person is unable to obtain certain particulars;
  - (c) identifying those particulars;
  - (d) specifying the reasons why the person considers he or she is unable to obtain those particulars; and
  - (e) if the person believes, on reasonable grounds, that another person whose name and address he or she knows can give those particulars—specifying the name and address of that other person and the reasons why he or she believes that the other person is able to give those particulars.
- (5) If—

- (a) a notice is given to a person under subsection (3); and
- (b) the person complies with that notice or gives the commissioner a notice under subsection (4);

he or she shall not, by reason only of the omission of the required particulars, be taken to have given an incomplete return.

**241. Noncompliance with Part**

(1) The failure of a person to comply with a provision of this Part in relation to an election does not invalidate that election.

(2) Without limiting the generality of subsection (1)—

- (a) where—
  - (i) a party endorsed a candidate in an election; and
  - (ii) the candidate was elected at the election;a failure by the reporting agent of the party to comply with this Part in relation to that election does not invalidate the candidate's election;
- (b) where a member of a non-party group was elected at the election—a failure by a reporting agent of the group to comply with this Part in relation to the election does not invalidate the election of the member; and
- (c) a failure by the reporting agent of a candidate who is elected at an election to comply with his or her Part in relation to the election does not invalidate the candidate's election.

**242. Amendment of returns**

(1) Where the commissioner is satisfied that a return under this Part contains a formal error or is subject to a formal defect, the commissioner may amend the return to the extent necessary to correct the error or remove the defect.

(2) A person authorised by subsection (3) may, by written notice signed by the person and given to the commissioner, request the permission of the commissioner to make a specified amendment of a return for the purpose of correcting an error or omission.

(3) A request may be made by—

- (a) the person who gave the return;
- (b) if the return was given in respect of a party, independent MLA or candidate—the reporting agent of the party, MLA or candidate; or

- (c) if the return was given in respect of an associated entity—the financial controller of the entity.
- (4) On a request under subsection (2), the commissioner shall permit the person making the request to amend the return accordingly if the commissioner is satisfied that the request is justified.
- (5) Where the commissioner decides to refuse a request under subsection (2), the commissioner shall give the person making the request a review statement about the decision.
- (6) The amendment of a return under this section does not affect the liability of a person to be convicted of an offence against subsection 236 (2) or (4) arising out of the giving of the return.

**243. Inspection and supply of copies of returns**

- (1) The commissioner shall keep, at the office of the commissioner, a copy of—
  - (b) each return under Division 4 or 5; and
  - (c) each return under Division 6.
- (2) Subject to subsections (4) and (5), a person is entitled to examine, at the office of the commissioner, a copy of a return referred to in subsection (1).
- (3) Subject to subsections (4) and (5), a person is entitled, on payment of a fee determined by the commissioner, to obtain a copy of a return referred to in subsection (1).
- (4) A person may examine, or obtain a copy of, a claim or return referred to in paragraph (1) (a) or (b) from the 25th week after polling day in the election to which the claim or return relates.
- (5) A person may examine, or obtain a copy of, a return referred to in paragraph (1) (c) from 1 February in the year following the year in which the return is given to the commissioner.

## **PART 15—REVIEW OF DECISIONS**

### **244. Interpretation**

In this Part—

“person” includes a political party;

“reviewable decision” means a decision referred to in section 245.

### **245. Reviewable decisions**

For the purposes of this Part, the following decisions of the commissioner are reviewable:

- (a) a decision to enrol a person under paragraph 76 (4) (a);
- (b) a decision to reject a claim for enrolment under paragraph 76 (4) (b);
- (c) a decision to refuse a request for the suppression of the particulars of an elector’s address from an extract from any roll under paragraph 77 (2) (b);
- (d) a decision to include the particulars of an elector’s address which had been suppressed on an extract from a roll under subsection 78 (2);
- (e) a decision to reject an objection to the enrolment of a person under subsection 81 (4);
- (f) a decision to remove a person’s name from a roll under paragraph 81 (7) (b);
- (g) a decision to refuse an application for the registration of an eligible political party under subsection 90 (2);
- (h) a decision to register a political party under subsection 92 (1);
- (i) a decision to refuse an application for the registration of a political party under subsection 93 (1) or (2);
- (j) a decision to refuse to change the registered particulars of a political party under subsection 93 (1) or (2) as applied by subsection 95 (2);
- (k) a decision to cancel the registration of a political party under subsection 98 (4);
- (p) a decision to refuse a request to make a specified amendment of a return under subsection 242 (4).



**246. Review statements**

(1) For the purposes of this Act, a review statement about a reviewable decision shall be in writing containing—

- (a) a statement of the decision;
- (b) a statement of the reasons for the decision; and
- (c) a statement to the effect that the person to whom the notice is given may, within 28 days after the review statement is given, apply to the electoral commission for a review of the decision.

(2) The validity of a reviewable decision is not to be taken to be affected by a failure—

- (a) to give a review statement to a person affected by the decision; or
- (b) to comply with this section.

**247. Review by electoral commission**

(1) On application in accordance with subsection (2) by a person affected by a reviewable decision, the electoral commission shall review the decision.

(2) An application shall—

- (a) be in writing, setting out the applicant's reasons for applying and an address of the applicant; and
- (b) be lodged with the electoral commission at the office of the commission within 28 days after the day on which the relevant review statement was given to the applicant, or within such further period as the commission allows before or after the expiration of that period.

(3) Before making a decision on the review of a reviewable decision, the electoral commission may, on the application of a person affected by the decision, make a written order staying or otherwise affecting the operation or implementation of the decision or a part of the decision.

(4) The electoral commission may make an order under subsection (3) whether or not an application for the review of the relevant decision has been made to the commission.

(5) In considering an application for an order under subsection (3), the electoral commission shall have regard to—

- (a) the interests of all persons affected by the relevant decision; and

- (b) the necessity of securing, as far as practicable, the effectiveness of the review process and of the commission's decision on the review.
- (6) On the review of a reviewable decision, the electoral commission shall—
  - (a) affirm the decision;
  - (b) vary the decision; or
  - (c) set aside the decision and substitute its own decision.
- (7) Except in the case of a reviewable decision made by a delegate of the commissioner, the commissioner shall not—
  - (a) be present during any deliberation of the electoral commission in relation to a review under this section; or
  - (b) take part in any decision of the electoral commission in relation to a review under this section.

**248. Notice of decision of the electoral commission**

- (1) The electoral commission shall give written notice of its decision on a review under section 247 to—
  - (a) each person to whom a review statement about the relevant decision was given under this Act; and
  - (b) the applicant for the review.
- (2) A notice under subsection (1) shall—
  - (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the AAT for a review of the decision of the electoral commission; and
  - (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision of the electoral commission may request a statement under section 26 of that Act.
- (3) The validity of a decision of the electoral commission under subsection 247 (6) is not to be taken to be affected by a failure to comply with this section.

**249. Review by Administrative Appeals Tribunal**

Application may be made to the AAT for a review of a decision of the electoral commission under subsection 247 (6).

## **PART 16—DISPUTED ELECTIONS, ELIGIBILITY AND VACANCIES**

### ***Division 1—Preliminary***

#### **250. Interpretation**

**(1)** In this Part—

“application” means an application disputing the validity of an election made in accordance with section 258;

“bribery” means a contravention of section 285;

“court” means the Court of Disputed Elections;

“election” includes—

(a) a recount of votes under section 194; and

(b) the choice of a person to fill a casual vacancy under section 195;

“file” means to file in the registrar’s office;

“illegal practice” means a contravention of this Act and includes undue influence;

“proceeding” means a proceeding before the court;

“registrar” means the registrar of the Supreme Court;

“undue influence” means a contravention of section 288 of this Act or section 28 of the *Crimes Act 1914* of the Commonwealth.

**(2)** In this Part, a reference to a contravention of a section of this Act or of the *Crimes Act 1914* of the Commonwealth is to be taken to include a reference to—

(a) attempting or conspiring to contravene that section; or

(b) aiding, abetting, counselling or procuring the contravention of that section.

#### **251. Speaker**

**(1)** In this Part, a reference to the Speaker shall—

(a) if the Speaker is unavailable—be read as a reference to the Deputy Speaker;

(b) if both the Speaker and Deputy Speaker are unavailable—be read as a reference to another MLA who is not the subject of a proceeding and is appointed by the Assembly to act as the Speaker for the purposes of this Part; or

- (c) if both the Speaker and Deputy Speaker are unavailable and no MLA is appointed for the purposes of paragraph (b)—be read as a reference to the Clerk of the Assembly.
- (2) For the purposes of subsection (1), the Speaker or Deputy Speaker is unavailable if—
- (a) he or she is absent from duty;
  - (b) there is a vacancy in the office; or
  - (c) he or she is the subject of a proceeding.

***Division 2—Jurisdiction and powers of Supreme Court***

**252. Court of Disputed Elections**

- (1) The Supreme Court has jurisdiction to hear and determine—
- (a) applications disputing the validity of elections; and
  - (b) questions referred to the court by resolution of the Legislative Assembly relating to—
    - (i) the eligibility of persons who have been declared elected to be members of the Assembly; or
    - (ii) vacancies in the membership of the Assembly.
- (2) When exercising jurisdiction under subsection (1), the Supreme Court shall be known as the Court of Disputed Elections.

**253. Powers of the court**

Subject to this Part, the Supreme Court has the same powers (so far as they are applicable) when exercising jurisdiction under this Part as it has when exercising its original jurisdiction.

**254. Rules of court**

Without limiting the generality of section 36 of the *Supreme Court Act 1933*, the judges of the Supreme Court appointed under subsection 4 (1) of that Act or any 2 of them, may make rules of court not inconsistent with this Act or the *Supreme Court Act 1933* for giving effect to this Part and in particular—

- (a) regulating the practice and procedure to be followed in the court and the registrar's office;
- (b) prescribing the forms to be used; and

- (c) prescribing matters required or permitted by this Part to be prescribed by rules of court.

**255. Decisions are final**

A decision of the court is final and conclusive, is not subject to appeal and shall not be called into question.

***Division 3—Disputed elections***

**256. Validity may be disputed after election**

(1) The validity of an election shall not be disputed except by application to the Court of Disputed Elections after the result of the election is declared.

(2) Without limiting the generality of subsection (1), if any of the following matters in relation to an election is called into question, the validity of the election is to be taken to be in dispute:

- (a) the acceptance or rejection of a nomination of a candidate by the commissioner;
- (b) the eligibility of a person to be nominated as a candidate, to be elected or to be an MLA;
- (c) any matter connected with the printing or endorsement of ballot papers;
- (d) any matter connected with the issue, or scrutiny, of ballot papers by an officer;
- (e) any matter connected with the admission or rejection of declaration votes by an officer at the preliminary scrutiny.

**257. Persons entitled to dispute elections**

The following persons are entitled to dispute the validity of an election:

- (a) a candidate in the election;
- (b) an elector entitled to vote at the election;
- (c) the commissioner.

**258. Form of application**

(1) An application disputing the validity of an election shall—

- (a) specify the declarations sought;

- (b) set out the facts relied on to invalidate the election with sufficient particularity to identify the matters on which the applicant relies as justifying those declarations;
  - (c) set out the applicant's full name and address and the capacity in which he or she is making the application; and
  - (d) be signed by the applicant.
- (2) The signature of an applicant other than the commissioner shall be witnessed by another person whose signature, full name, address and occupation shall be set out in the application.

**259. Time for filing application**

An application shall be filed within 40 days after the result of the election is declared.

**260. Deposit as security for costs**

- (1) At the time of filing an application, the applicant shall deposit with the registrar as security for costs the amount prescribed by the *Supreme Court Rules*.
- (2) The amount deposited shall be set off against any costs ordered to be paid by the applicant.

**261. Registrar to serve copies of application on certain persons**

The registrar shall, after an application is filed under section 259, serve a sealed copy of the application on—

- (a) the Speaker;
- (b) the person whose election is being disputed; and
- (c) if the commissioner is not the applicant—the commissioner.

**262. Parties to an application**

- (1) The following persons are entitled to appear in a proceeding under this Division:
- (a) the applicant;
  - (b) the commissioner;
  - (c) if a person whose election is being disputed files a notice of appearance within 7 days after the day on which he or she is served with a copy of the application under section 261—that person;
  - (d) any other person with the leave of the court.

(2) A person other than the applicant who appears pursuant to subsection (1) is to be taken to be a respondent to the application.

**263. Withdrawal and abatement of application**

(1) In this section—

“election application” means an application disputing the validity of an election made in accordance with section 258;

“leave application” means an application for leave to withdraw an election application.

(2) An applicant may withdraw an election application only with the leave of the Supreme Court.

(3) An applicant is not entitled to make a leave application unless notice of the applicant’s intention to do so has been—

- (a) published in a daily newspaper circulating in the electorate to which the relevant election application relates; and
- (b) given to the commissioner and to each of the respondents to the relevant election application.

(4) A leave application shall not be made without the consent of all the applicants to the relevant election application.

(5) The following persons are entitled to appear as respondents to a leave application:

- (a) the commissioner;
- (b) a respondent to the relevant election application;
- (c) any other person with the leave of the court.

(6) Unless the court orders otherwise, if an election application is withdrawn, the applicant is liable to pay the costs of the respondent in relation to that application and the leave application.

(7) In determining a leave application, the court shall inquire into the reasons for it and determine whether it was—

- (a) the result of an agreement, arrangement or understanding; or
- (b) in consideration of—
  - (i) the seat in the Assembly that is in issue being vacated at any time in the future;

- (ii) the withdrawal of any other election application; or
- (iii) any other matter.

(8) The court shall publish its reasons for a determination as if it were a judgment and furnish a copy of them to the commissioner.

(9) If, before the hearing of an election application, a respondent other than the commissioner—

- (a) dies or gives the prescribed notice that he or she does not intend to oppose the application; or
- (b) resigns from, or otherwise ceases to hold, the seat in the Assembly that is in issue;

then—

- (c) the person ceases to be a respondent;
- (d) the person, or his or her personal representative, shall—
  - (i) publish notice of that fact in a daily newspaper circulating in the electorate to which the election application relates; and
  - (ii) give a copy of the notice to the registrar; and
- (e) if a person who might have been an applicant in respect of the election files a notice of appearance within the prescribed period, that person is entitled to appear as a respondent to the application.

(10) A person who has ceased to be a respondent to an election application is not entitled to appear as a party in proceedings in relation to that application.

(11) The registrar shall notify the commissioner of the receipt of a notice mentioned in subparagraph (9) (d) (ii).

(12) An election application shall be abated by the death of a sole applicant or the last survivor of several applicants.

(13) The abatement of an election application does not affect the liability of the applicant or any other person for costs awarded against the applicant or other person.

#### **264. Hearing of applications**

(1) The registrar shall, as soon as practicable after the time for filing applications in respect of an election under section 259 has passed, prepare a list of the applications pending in the order of filing and shall make a copy of the list



available for inspection at the registrar's office in the manner prescribed by rules of court.

(2) Subject to subsection (3), an application shall, as far as practicable, be heard in the order in which it appears in the list.

(3) All applications in respect of an election for an electorate shall be heard together.

#### **265. Declarations and orders**

The court shall hear and determine an application and may—

- (a) declare the election void;
- (b) declare that a person who has been declared elected was not duly elected;
- (c) declare that a person who has not been declared elected was duly elected; or
- (d) dismiss the application in whole or in part;

and may make such orders in relation to the application as the court thinks appropriate.

#### **266. Illegal practices**

(1) Without limiting the grounds on which the court may make a declaration under paragraph 265 (a) or (b), the court may make such a declaration on the ground of any illegal practice in connection with the election.

(2) The court shall not make a declaration under paragraph 265 (a) or (b)—

- (a) on the ground of any illegal practice (other than bribery or undue influence); or
- (b) on the ground of bribery or undue influence by a person who was not a candidate for the election without the knowledge or consent of a candidate in the election;

unless satisfied that—

- (c) the result of the election was, or was likely to have been, affected by the illegal practice; and
- (d) it is just to make the declaration.

**(3)** If the court finds any illegal practice in connection with an election (whether the court makes a declaration under paragraph 265 (a) or (b) on that ground or not), the registrar shall report the finding to—

- (a) the Speaker;
- (b) the Minister;
- (c) the commissioner; and
- (d) the Director of Public Prosecutions.

**(4)** Any finding by the court in relation to any illegal practice in connection with an election is not to be taken to be a bar to, or to prejudice in any way, any prosecution in respect of the act alleged before the court to have constituted the illegal practice.

**267. Bribery or undue influence by person elected**

If the court finds that a person who was declared elected committed, or attempted to commit, bribery or undue influence in connection with any election, the court shall declare the election of that person void.

**268. Immaterial delays and errors**

**(1)** The court shall not make a declaration under paragraph 265 (a), (b) or (c) on the ground that there was a delay in—

- (a) declaring the nominations for the election;
- (b) providing certified lists of electors to candidates for the election;
- (c) polling for the election; or
- (d) declaring the result of the election.

**(2)** The court shall not make a declaration under paragraph 265 (a), (b) or (c) on the ground of any absence of, or any error or omission by, an officer unless the absence, error or omission affected, or was likely to have affected, the result of the election.

**(3)** In determining whether an absence, error or omission that prevented an elector from voting affected the result of an election or not, the court shall not have regard to any evidence of the way in which the elector intended to vote.

**269. Inquiries by court**

**(1)** In determining an application, the court may make such inquiries as it considers appropriate, including but not limited to—

- (a) an inquiry as to the identity of persons who voted; and
  - (b) an inquiry as to whether ballot papers were improperly admitted or rejected, or not.
- (2) The court shall not inquire into the correctness of any roll.
- (3) Where the court makes an inquiry in relation to ballot papers marked pursuant to Part 11, a statement of particulars of the marking of ballot papers prepared by an officer under paragraph 175 (c) is conclusive evidence of the particulars contained in the statement unless the court orders otherwise.

**270. Rejected ballot papers**

In determining an application, the court may have regard to any declaration vote ballot papers rejected at the preliminary scrutiny if the court is of the opinion that the ballot papers should not have been rejected.

**271. Evidence that persons were not permitted to vote**

In determining an application, the court shall not have regard to any evidence that a person was not permitted to cast a vote in an election unless the court is satisfied that the person—

- (a) claimed to vote in accordance with this Act; and
- (b) complied with the requirements of this Act in relation to voting to the extent that he or she was permitted to do so.

**272. Inspection of electoral papers**

A party to an application may—

- (a) with the leave of the court; and
- (b) in the presence of the commissioner or a member of staff of the electoral commission;

inspect, and make copies of or take extracts from, the electoral papers (except ballot papers) in the possession of the commissioner that were used in connection with the election being disputed.

**273. Commissioner not prevented from accessing documents**

Unless the court otherwise orders, the filing of an application is not to be taken to prevent the commissioner, another member of the electoral commission or a member of the staff of the commission from having access to any document to which that person would otherwise be entitled to have access for the purpose of performing a function under this Act.

**274. Registrar to serve copies of declarations on certain persons**

The registrar shall, after an application is determined, serve a sealed copy of the declarations and orders (if any) made by the court on—

- (a) the Speaker; and
- (b) each party to the application.

**275. Effect of declarations**

(1) Where the court declares an election void, another election shall be held in accordance with section 101.

(2) Where the court declares that a person who has been declared elected was not duly elected, that person is to be taken not to have been duly elected.

(3) Where the court declares that a person who has not been declared elected was duly elected, that person is to be taken to have been duly elected.

(4) A declaration by the court referred to in subsection (1), (2) or (3) takes effect on the expiration of the day on which the declaration by the court is made.

***Division 4—Eligibility and vacancies***

**276. Speaker to state case**

If the Assembly passes a resolution referring to the court a question relating to—

- (a) the eligibility of a person who has been declared elected to be an MLA;  
or
- (b) a vacancy in the membership of the Assembly;

the Speaker shall give to the registrar a statement setting out the question referred, together with any documents in the possession of the Assembly that relate to that question.

**277. Parties to a referral**

The following persons are entitled to appear in a proceeding under this Division:

- (a) any person who, in the opinion of the court, has a sufficient interest in the determination of the question referred;
- (b) any person on whom notice of that question is ordered to be served by the court.

**278. Declarations and orders**

The court shall hear and determine a question referred to it and may—

- (a) declare that a person who has been declared elected is not eligible to be an MLA;
- (b) declare a vacancy in the membership of the Assembly; or
- (c) refuse to make a declaration;

and may make such orders in relation to the referral as the court thinks appropriate.

**279. Registrar to serve copy of declarations on Speaker**

The registrar shall, after a question referred to the court is determined, serve a sealed copy of the declarations and orders (if any) made by the court on—

- (a) the Speaker; and
- (b) each party to the referral.

**280. Effect of declarations**

(1) Where the court—

- (a) declares that a person who has been declared elected is not eligible to be an MLA; or
- (b) declares a vacancy in the membership of the Assembly;

on the expiration of the day on which the declaration is made a vacancy in the membership of the Assembly arises.

(2) A vacancy under subsection (1) shall be filled in accordance with Part 13.

***Division 5—Proceedings***

**281. Procedure**

In a proceeding, the court—

- (a) shall be guided by the substantial merits and good conscience of the case; and
- (b) is not bound by technicalities, legal forms or the rules of evidence, but may inform itself in such manner as it thinks appropriate.

**282. Legal representation limited**

In a proceeding, a party is entitled to be represented by only 1 legal practitioner appearing as counsel.

**283. Admissibility of evidence**

(1) A person who appears as a witness in a proceeding is not excused from answering a question or producing a document or other thing that the person is required by the court to answer or produce on the ground that the answering of the question or the producing of the document or thing may tend to incriminate the person or on the ground of privilege.

(2) A statement or disclosure made, or a document or other thing produced, by a person in the course of a proceeding, or any information, document or other thing obtained as a direct or indirect consequence of the making of the statement or disclosure, or of the production of the firstmentioned document or thing, is not admissible in evidence in any civil or criminal proceeding except—

- (a) a proceeding before the court; or
- (b) a proceeding for an offence relating to the giving of false evidence.

**284. Costs may be awarded against the Territory**

Notwithstanding that the Territory is not a party to a proceeding, the court may order the payment of all or any of the costs of the proceeding by the Territory.

**PART 17—ELECTORAL OFFENCES**

***Division 1—Bribery and improper influence***

**285. Bribery**

(1) A person shall not offer, solicit or accept an electoral bribe.

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

(2) In this section—

“bribe” does not include a declaration of public policy or a promise of public action;

“electoral bribe” means a bribe for the purpose of—

- (a) influencing the vote of an elector;
- (b) influencing the candidature of a person in an election;

- (c) otherwise influencing the course or result of an election;
- (d) inducing a person not to apply, or to withdraw an application, under section 192 to be a candidate for a seat in relation to which a casual vacancy has occurred, where that person is an eligible person within the meaning of that section; or
- (e) inducing a person not to apply, or to withdraw an application, to the Court of Disputed Elections under Division 3 of Part 16 to dispute the validity of an election, where that person is entitled to dispute the validity of the election under section 257.

**286. Influencing of votes by officers**

In the performance of a function under this Act, an officer shall not, without reasonable excuse, do anything for the purpose of influencing the vote of another person.

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

**287. Influencing votes of hospital and nursing home patients**

The proprietor of a hospital or nursing home, or an employee or agent of such a proprietor, shall not, without reasonable excuse, do anything for the purpose of influencing the vote of a patient or resident of the hospital or nursing home.

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

***Division 2—Protection of rights***

**288. Violence and intimidation**

A person shall not, by violence or intimidation, hinder or interfere with—

- (a) the free exercise of a right under this Act; or
- (b) the free performance of a duty under this Act.

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

**289. Discrimination on grounds of political donations**

(1) A person shall not discriminate against another person on the ground of the making by the other person of a donation to—

- (a) a political party; or
- (b) a candidate in an election.

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

**(2)** In this section—

“discriminate against”, in relation to a person, means—

- (a) deny the person access to membership of any trade union, club or other body, whether incorporated or not;
- (b) not allow the person to work or to continue to work;
- (c) subject the person to any form of intimidation or coercion; or
- (d) subject the person to any other detriment.

**290. Employees’ right to leave of absence for voting**

**(1)** Upon notification from an employee before a polling day, the employer shall allow the employee, without penalty or any disproportionate deduction of pay, to take any necessary leave (not exceeding 2 hours) for the purpose of voting.

Penalty: 10 penalty units.

**(2)** Subsection (1) does not apply if the absence of the employee from employment could—

- (a) endanger any person, animal or thing; or
- (b) cause substantial loss to any person.

**(3)** An employee shall not notify an employer under subsection (1) if he or she does not have a genuine intention of voting during the period of the leave to be granted for the purpose of voting.

Penalty: 5 penalty units.

***Division 3—Campaigning offences***

**291. Interpretation**

In this Division—

“address”, in relation to a person, means—

- (a) if the person is acting for or on behalf of a political party—an address of the party, not being a post office box; or
- (b) in any case—
  - (i) the address of the person’s principal place of residence; or
  - (ii) an address of the person’s place of business;



“disseminate”, in relation to electoral matter, means—

- (a) in the case of printed matter—print, publish or distribute; or
- (b) in the case of electoral matter in an electronic medium—produce, broadcast or distribute;

“polling place” means—

- (a) a place appointed as a polling place under section 119;
- (b) a place where a vote may be made before an officer under section 136B or 136C; or
- (c) a place where mobile polling is taking place as authorised under Division 4 of Part 10;

“reportage or commentary”, in relation to a newspaper or periodical, means everything in the newspaper or periodical except—

- (a) advertisements; and
- (b) letters to the editor.

## **292. Dissemination of electoral matter—authorisers and authors**

(1) A person shall not disseminate printed electoral matter unless the name and address of the person who authorised the electoral matter, or its author, appear—

- (a) at the end; and
- (b) in the case of an item containing electoral matter taking up the whole or part of each of 2 opposing pages of a newspaper or periodical—at the foot of the item on the first page.

Penalty: 10 penalty units.

(2) Paragraph (1) (b) does not apply to an item containing electoral matter if it is apparent from the text or layout of the item that it extends across the 2 pages of the newspaper or periodical.

## **293. Dissemination of electoral matter—letters to the editor**

(1) Section 292 does not apply to the dissemination of a letter to the editor of a newspaper or periodical if—

- (a) the name of the author and the locality of the author’s residence appears at the end; and

- (b) the editor of the newspaper or periodical keeps a written record of the address of the author, as stated in the original of the letter sent to the editor or as otherwise ascertained by the editor.
- (2) For the purposes of paragraph (1) (a), it is sufficient to identify the locality of an author's residence by reference to—
- (a) the suburb or town of, or nearest to, that residence; and
  - (b) in the case of a locality outside the Territory—the State, other Territory or other country of that residence.

**294. Dissemination of electoral matter—newspaper and periodical reportage and commentary**

Section 292 does not apply to electoral matter contained in reportage or commentary in an issue of a newspaper or periodical if the issue contains a statement to the effect that a person whose name and address appears in the statement has authorised the publication of all electoral matter contained in reportage or commentary in that issue.

**295. Dissemination of electoral matter—campaign stationery**

Section 292 does not apply to electoral matter on any of the following items, unless the item includes a representation of a ballot paper:

- (a) a T-shirt, lapel button, lapel badge, pen, pencil or balloon;
- (b) a business or visiting card that promotes the candidacy of a person in an election;
- (c) a letter or card on which the name and address of the sender appears;
- (d) an item included in a class of items prescribed by the regulations.

**296. Advertorials**

(1) This section applies to an advertisement in a newspaper or periodical which—

- (a) appears to be reportage or commentary; and
- (b) includes electoral matter.

(2) If this section applies to an advertisement, the proprietor of the newspaper or periodical shall cause the word 'advertisement' to be printed as a headline to the advertisement, in letters not smaller than 10 point, on each page on which the advertisement appears.

Penalty: 10 penalty units.

**297. Misleading or deceptive electoral matter**

(1) A person shall not disseminate, or authorise to be disseminated, electoral matter that is likely to mislead or deceive an elector about the casting of a vote.

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

(2) It is a defence to a prosecution under subsection (1) if it is established that the defendant did not know, and could not reasonably be expected to have known, that the electoral matter was likely to mislead or deceive an elector about the casting of a vote.

**298. Inducement to illegal voting—representations of ballot papers**

A person shall not disseminate, or authorise to be disseminated, electoral matter including a representation of a ballot paper, or part of a ballot paper, likely to induce an elector to mark his or her vote otherwise than in accordance with the directions on the ballot paper.

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

**299. Graffiti**

(1) A person shall not, without reasonable excuse, mark any electoral matter directly on any defined place or object without the consent of—

- (a) in the case of a place—the lessee or lawful occupier of the place; or
- (b) in the case of an object—the owner or lawful possessor of the object.

Penalty: 10 penalty units.

(2) The Territory or a Territory authority shall not give consent for the purposes of subsection (1).

(3) In a prosecution for an offence under subsection (1) in relation to a defined place or object leased, occupied, owned or possessed by the Territory or a Territory authority, it is to be conclusively presumed that the Territory or the Territory authority, as the case requires, did not consent to any marking of electoral matter on the place or object.

(4) In this section—

“defined place or object” means a building, footpath, hoarding, roadway, vehicle, vessel or any public or private place (whether on land or water or in the air);

“lessee” has the same meaning as in Part 5 of the *Land (Planning and Environment) Act 1991*;

“mark” means write, draw or depict.

**300. Defamation of candidates**

(1) A person shall not make or publish, or authorise to be made or published, a false and defamatory statement about the personal character or conduct of a candidate.

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

(2) It is a defence to a prosecution for an offence under subsection (1) if it is established that the defendant believed on reasonable grounds that the relevant statement was true.

(3) A person who makes a false and defamatory statement in relation to the personal character or conduct of a candidate in contravention of this section may, at the suit of the candidate, be restrained by injunction from repeating the statement or any similar false and defamatory statement.

**301. Publication of statements about candidates**

(1) A person shall not publish, or authorise to be published, on behalf of a body (whether incorporated or unincorporated) a statement—

- (a) expressly or impliedly claiming that a candidate in an election is associated with, or supports the policy or activities of, that body; or
- (b) expressly or impliedly advocating that a candidate should be given the first preference vote in an election;

without the written authority of the candidate.

Penalty: 30 penalty units.

(2) In proceedings for an offence against subsection (1), it shall be presumed, unless the contrary is proved, that a statement purported to be made on behalf of a body was made on behalf of the body.

(3) This section does not apply in relation to a statement—

- (a) published on behalf of a political party; and
- (b) relating to a candidate who has been nominated by that party, or who has publicly declared his or her candidature to be on behalf of, or in the interests of, that party.

**302. Disruption of election meetings**

(1) A person shall not, without reasonable excuse, disrupt an election meeting.

Penalty: 5 penalty units.

(2) The chairperson of an election meeting may request a police officer to remove from the meeting any person who, in the opinion of the chairperson, is disrupting the meeting.

(3) Upon a request from the chairperson under subsection (2), a police officer may take reasonable action to remove from the meeting the person disrupting the meeting.

(4) A person who is the subject of a request referred to in subsection (2) shall not, without reasonable excuse, return to the meeting without the authority of the chairperson after leaving it or being removed from it.

Penalty: 10 penalty units.

(5) In this section—

“election meeting” means a lawful public meeting held during a pre-election period in association with the relevant election.

**303. Canvassing within 100 metres of polling places**

(1) A person shall not, during polling hours within the defined polling area in relation to a polling place—

- (a) do anything for the purpose of influencing the vote of an elector as the elector is approaching, or while the elector is at, the polling place;
- (b) do anything for the purpose of inducing an elector not to vote as the elector is approaching, or while the elector is at, the polling place; or
- (c) exhibit a notice containing electoral matter which is able to be clearly seen by electors approaching, or at, the polling place, other than a notice authorised by the commissioner for display there.

Penalty: 5 penalty units.

(2) If the building in which a polling place is located is situated on grounds within an enclosure, the commissioner may, by notice published in the *Gazette*, specify the boundary of that enclosure for the purposes of paragraph (b) of the definition of ‘defined polling area’ in subsection (6).

(3) An officer may, if directed by the commissioner, remove or obliterate a notice which the commissioner or the officer believes on reasonable grounds to be exhibited in contravention of this section.

(4) Subsection (3) does not authorise an officer to enter land which is subject to a lease within the meaning of Part 5 of the *Land (Planning and Environment) Act 1991*.

(5) A person shall not obstruct an officer in the exercise or attempted exercise of the officer's functions under subsection (3).

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

(6) In this section—

“defined polling area”, in relation to a polling place, means the area—

- (a) within the building in which the polling place is located, and within 100 metres of the building; or
- (b) if the commissioner issues a notice under subsection (2) in relation to the polling place—within the boundary of the enclosure specified in the notice, and within 100 metres outside that boundary;

“polling hours”, in relation to a polling place, means—

- (a) in the case of a polling place appointed under section 119—between the hours of 8 am and 6 pm on polling day;
- (b) in the case of a polling place where a vote may be made before an officer—any time during which the place is open for the acceptance of votes; or
- (c) in the case of a polling place where polling is authorised under Division 4 of Part 10—the period during which a mobile polling visit is being made to the building in which that place is located.

### **304. Badges and emblems in polling places**

Subject to subsection 123 (5), an officer or scrutineer shall not wear or display in a polling place a badge or emblem associated with a candidate or political party.

Penalty: 10 penalty units.

**305. How-to-vote material in polling places**

(1) A person shall not, except for the purposes of assisting another person to vote under section 156, exhibit or leave in a polling place any printed electoral matter.

Penalty: 5 penalty units.

(2) This section does not apply in relation to a notice authorised by the commissioner for display in the polling place.

**306. Evidence of authorisation of electoral matter**

In proceedings for an offence against this Division—

- (a) electoral matter including a statement to the effect that it was authorised by a specified person is admissible as evidence of that fact;
- (b) an issue of a newspaper or periodical including a statement to the effect that a specified person authorised the publication of all electoral matter contained in reportage or commentary in that issue is admissible as evidence of that fact;
- (c) electoral matter including a statement to the effect that it was disseminated by a specified person is admissible as evidence of that fact; and
- (d) electoral matter which includes a name purporting to be the author's name is admissible as evidence of that fact.

***Division 4—Voting fraud***

**307. Voting fraud**

(1) A person shall not supply a ballot paper unless authorised to do so for the purposes of this Act.

Penalty: 50 penalty units.

(2) A person shall not obtain a ballot paper by fraudulent means.

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

(3) A person other than an elector shall not mark a ballot paper, unless expressly authorised by this Act.

Penalty: 50 penalty units.

**(4)** A person shall not fraudulently put a ballot paper, or any other paper, in a ballot box.

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

**(5)** A person shall not fraudulently take a ballot paper out of—

- (a) a place where a vote may be made before an officer under section 136B or 136C;
- (b) a polling place; or
- (c) a scrutiny centre.

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

**(6)** A person shall not, without reasonable excuse, interfere with a ballot box, or a ballot paper, unless authorised to do so for the purposes of this Act.

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

### ***Division 5—Electoral papers***

#### **308. Interpretation—electoral papers**

In this Division—

“electoral paper” means any document or form provided for by or under this Act.

#### **309. Electoral papers—forgery**

**(1)** A person shall not forge an electoral paper.

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

**(2)** A person shall not, without reasonable excuse, possess an instrument designed or adapted particularly for forging an electoral paper.

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

**(3)** A person shall not, without reasonable excuse, possess a forged electoral paper, knowing it to be forged.

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

**(4)** A person shall not, without reasonable excuse, publish an electoral paper, knowing it to be forged.

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



(5) In this section—

“forgery”, in relation to an electoral paper, includes—

- (a) the forgery of a signature on the electoral paper; and
- (b) the marking of an electoral paper with a false signature;

“publication”, in relation to an electoral paper which is a ballot paper, includes the placing of the ballot paper in a ballot box.

**310. Electoral papers—forfeiture**

(1) Upon conviction of a person for an offence against section 309, any document or instrument in relation to which the offence was committed is forfeited to the Territory.

(2) A forfeited document or instrument may be destroyed or dealt with as prescribed.

**311. Electoral papers—unauthorised possession**

(1) A person shall not, without reasonable excuse, except for the purposes of this Act—

- (a) possess an electoral paper; or
- (b) possess an instrument designed or adapted particularly for producing an electoral paper, or an official mark on an electoral paper.

Penalty: 30 penalty units.

**312. Electoral papers—false or misleading statements**

(1) A person shall not, in an electoral paper, make a statement that is false or misleading in a material particular.

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

(2) It is a defence to a prosecution for an offence under subsection (1) if it is established that the defendant did not know, and could not reasonably be expected to have known, that the relevant statement was false or misleading in a material particular.

**313. Electoral papers—defacement etc**

Unless authorised by or under this Act, a person shall not fraudulently deface, remove, mutilate or destroy an electoral paper.

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

**314. Electoral papers—signatures**

(1) Subject to subsection (2), if a person is required by this Act to sign an electoral paper, he or she shall sign it with his or her personal signature.

Penalty: 10 penalty units.

(2) Where a person is unable to sign his or her name in writing, the person is to be taken to have signed an electoral paper if—

- (a) the person makes a mark on the paper by way of signature; or
- (b) another person signs the document in the presence of and at the direction of the person.

**315. Electoral papers—witnesses**

(1) A person shall not witness the signature of an electoral paper unless—

- (a) the paper is signed by the signatory;
- (b) he or she has seen the signatory sign the paper;
- (c) he or she is satisfied as to—
  - (i) the identity of the signatory; and
  - (ii) the truth of any statements made in the paper by the signatory;and
- (d) he or she is able to sign his or her own name.

Penalty: 10 penalty units.

(2) For the purposes of paragraph (1) (c), a witness may satisfy himself or herself on the basis of—

- (a) personal knowledge of the signatory;
- (b) inquiries made of the signatory; or
- (c) any other reasonable means.

(3) In this section—

“signatory”, in relation to a person witnessing the signature of an electoral paper, means the person whose signature is purported to be witnessed.

***Division 6—Official functions***

**316. Improper influence—members of electoral commission etc**

A person shall not do anything improper for the purpose of influencing a member of—

- (a) the electoral commission;
- (b) an augmented commission; or
- (c) a redistribution committee.

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

**317. Unauthorised actions by officers**

An officer shall not, without reasonable excuse, contravene—

- (a) a provision of this Act for which no other penalty is provided; or
- (b) a direction given to him or her under this Act.

Penalty: 10 penalty units.

**318. Identification of voters and votes**

(1) Except as authorised under this Act, an officer shall not make any mark on a ballot paper which would be likely to enable the identification, directly or indirectly, of the person who votes on the ballot paper.

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

(2) Except as authorised under this Act, an officer or a scrutineer shall not, directly or indirectly, disclose any information acquired in the performance of his or her functions under this Act which would be likely to enable it to be known how an identified voter has voted.

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

(3) In subsection (2)—

“officer” includes a person who has been, but is no longer, an officer;

“scrutineer” includes a person who has been, but is no longer, a scrutineer.

**319. Responses to official questions**

(1) A person shall not, in answer to an official question, make a statement that is false or misleading in a material particular.

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

(2) It is a defence to a prosecution for an offence under subsection (1) if it is established that the defendant did not know, and could not reasonably be expected to have known, that the relevant statement was false or misleading in a material particular.

(3) In this section—

“official question” means a question asked by an officer in the performance of his or her functions under this Act.

### **320. Control of behaviour at voting centres**

(1) A person shall not, without reasonable excuse, disrupt an activity being carried out under this Act at a voting centre.

Penalty: 10 penalty units.

(2) A person at a voting centre shall not, without reasonable excuse, disobey a direction given by the OIC by or under this Act.

Penalty: 10 penalty units.

(3) A person shall not, without reasonable excuse, enter or remain at a voting centre without the permission, express or implied, of the OIC.

Penalty: 10 penalty units.

(4) Subsection (3) does not apply—

- (a) to an officer;
- (b) to a scrutineer who is entitled to be on the premises under section 123; or
- (c) if the voting centre is a polling place—to a voter who enters the place for the purpose of voting and remains no longer than is necessary and reasonable for that purpose.

(5) A person who contravenes this section may be removed from the premises by a police officer or by an authorised officer.

(6) In this section—

“OIC”, in relation to a voting centre, means the officer in charge of the centre;

“voting centre” means—

- (a) a place where a vote may be made before an officer under section 136B or 136C;
- (b) a polling place; or
- (c) a scrutiny centre.

## **PART 18—ENFORCEMENT PROCEEDINGS**

### ***Division 1—Injunctions***

#### **321. Restraining conduct**

(1) Where a person has engaged, is engaging, or proposes to engage, in conduct that constituted, constitutes, or would constitute, a contravention of this Act or another law of the Territory in its application to elections, the Supreme Court may—

- (a) where the conduct relates to an election—on the application of a candidate in the election; or
- (b) in any case—on the application of the commissioner;

and not otherwise, grant an injunction—

- (c) restraining the firstmentioned person from engaging in that conduct; and
- (d) if, in the opinion of the court, it is desirable to do so—requiring that person to do any act or thing.

(2) The court may grant an injunction restraining a person from engaging in conduct of a particular kind—

- (a) if the court is satisfied that the person has engaged in conduct of that kind, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) if it appears to the court that, in the event an injunction is not granted, it is likely the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to another person if the firstmentioned person engages in conduct of that kind.

**322. Requiring acts or things to be done**

(1) Where a person has refused or failed, is refusing or failing, or proposes to refuse or fail, to do an act or thing in contravention of this Act or another law of the Territory in its application to elections, the Supreme Court may—

- (a) where the refusal or failure relates to an election—on the application of a candidate in the election; or
- (b) in any case—on the application of the commissioner;

and not otherwise, grant an injunction requiring the firstmentioned person to do the act or thing.

(2) The court may grant an injunction requiring a person to do a particular act or thing—

- (a) if the court is satisfied that the person has refused or failed to do that act or thing, whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
- (b) if it appears to the court that, in the event an injunction is not granted, it is likely the person will refuse or fail to do that act or thing, whether or not the person has previously refused or failed to do the act or thing and whether or not there is an imminent danger of substantial damage to another person if the firstmentioned person refuses or fails to do that act or thing.

**323. Commissioner not required to give undertakings as to damages**

Where the commissioner makes an application for an injunction to which this Division applies, the court shall not require that, as a condition of granting the injunction, the commissioner give any undertakings as to damages on his or her own behalf or on behalf of any other person.

**324. Powers of the court**

Subject to this Division, the Supreme Court has the same powers (so far as they are applicable) in relation to injunctions under this Division as it has in relation to injunctions under its original jurisdiction.

***Division 2—Prosecutions***

**325. Investigation of complaints**

The commissioner shall—

- (a) investigate; or
- (b) refer to the appropriate authority for investigation;

any complaint alleging a contravention of this Act, unless the commissioner believes on reasonable grounds that the complaint is frivolous or vexatious.

**326. Commissioner may prosecute enrolment and voting offences**

The commissioner may institute and conduct any prosecution in relation to an offence against subsection 73 (6) or 129 (1).

**327. Service of certain process by mail**

In addition to any other method by which a document may be served, process relating to a proceeding for an offence against subsection 129 (1) may be served on a person by sending it by prepaid post to the address of the person recorded on the roll.

**PART 19—MISCELLANEOUS**

**328. Extension of time for acts by officers**

Where—

- (a) an officer is required by this Act to do an act at a specified time or within a specified period; and
- (b) an officer other than the commissioner refuses or fails to do the act at that time or within that period;

the commissioner may grant an extension of time (not exceeding 48 hours) within which the act may be done.

**329. Service of documents by fax**

**(1)** In addition to any other method by which a document may be given to a person, a document to which this section applies may be given to the person by fax.

(2) A reference in this Act to a document to which this section applies shall, unless the contrary intention appears, be read as including a copy of the document obtained by a fax transmission.

(3) This section applies to any electoral paper other than the following:

- (a) a completed ballot paper other than a ballot paper completed by an Antarctic elector;
- (b) completed declaration voting papers.

**330. Forms—provision and assistance**

(1) The commissioner shall ensure that any forms provided for, or required by or under, this act are kept at the office of the commissioner and are provided, on request, to members of the public.

(2) It is the duty of the staff of the electoral commission to assist, on request, members of the public in completing any of those forms.

**331. Compliance with approved forms**

Unless the contrary intention appears, strict compliance with an approved form is not necessary and substantial compliance, or such compliance as the circumstances of a particular case allow, is sufficient.

**332. Correcting delays, errors and omissions**

The commissioner may remedy, remove or supply any delay, error or omission in the preparation, printing, issue or transmission of any roll, certified list of electors or ballot papers by instrument published in the *Gazette* specifying the matter to be dealt with and the course of action to be followed, and that course (if followed) is to be taken to be valid and sufficient for the purpose of remedying, removing or supplying the defect, error or omission.

**333. Voting statistics to be published**

The electoral commission shall, as soon as practicable after an election is held, publish statistics in relation to voting at the election.

**334. Collecting further statistical information**

When—

- (a) the time for filing an application disputing the validity of an election has expired; and



- (b) the Court of Disputed Elections has determined any such applications in respect of the election;

the commissioner may use ballot papers, certified lists of electors, declaration voting papers and other electoral papers used in the election to collect statistical information.

**335. Electoral papers to be securely stored**

The commissioner shall ensure that the electoral papers in his or her possession that were used in connection with an election are securely stored until—

- (a) the commencement of the pre-election period for the next general election; or
- (b) the documents are no longer required by the commissioner, another member of the electoral commission or a member of the staff of the commission for the purpose of performing a function under this Act;

whichever occurs last, after which time the commissioner may direct that the documents be destroyed.

**336. Administrative arrangements with the States etc**

The Minister may arrange with the appropriate Minister of the Crown of the Commonwealth, a State or another Territory—

- (a) for officers or employees of the public service of the Commonwealth or a State or Territory, or an authority thereof, to exercise the powers or perform the duties of an officer under this Act; or
- (b) to make a member of the electoral commission, the commissioner or a member of the staff of the commission available for the exercise of powers or the performance of duties on behalf of the corresponding electoral authority of the Commonwealth or that State or Territory.

**337. Evidentiary certificates**

**(1)** In a proceeding under this Act, a certificate signed by the commissioner stating any of the following matters is evidence of the matters so stated:

- (a) that on a specified day a person was, or was not, enrolled for an electorate;
- (b) that, in relation to an election, a person was or was not—
  - (i) an eligible overseas elector;

- (ii) an Antarctic elector; or
- (iii) an elector serving a sentence of imprisonment outside the Territory;
- (c) that a person was, or was not, declared as a candidate for an election;
- (d) that a nomination of a person to be a candidate in an election was rejected;
- (e) that an election was duly held;
- (f) that a person was, or was not, given a ballot paper for an election;
- (g) that a person voted, or failed to vote, in an election;
- (h) that on a specified day a person was, or was not, registered as the reporting agent of a party, independent MLA or candidate;
- (j) that on a specified day no reporting agent was registered in respect of a specified party, independent MLA or candidate;
- (k) that on a specified day a person was, or was not, an officer;
- (m) that on a specified day a person was, or was not, the delegate of the electoral commission or the commissioner.

(2) In subsection (1), a reference to a person or thing shall be read as a reference to a person or thing specified in the certificate.

### **338. Conduct of directors, servants and agents**

(1) Where, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and
- (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

(2) A reference in subsection (1) to the state of mind of a body or person shall be read as including a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
- (b) the body's or person's reasons for the knowledge, intention, opinion, belief or purpose.

(3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of this Act, to have been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

(4) Where—

- (a) a natural person is convicted of an offence against this Act; and
- (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(5) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

(6) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

### **339. Corporations—penalties**

Where a body corporate is convicted of an offence against this Act, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a pecuniary penalty for the offence.

### **340. Commissioner for Public Administration to provide assistance etc**

The Head of Administration shall comply with any request by the electoral commission, the commissioner or an augmented commission for information or assistance reasonably required for the purposes of this Act.

### **341. Regulations**

(1) The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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**(2)** Without limiting the generality of subsection (1), the regulations may prescribe penalties not exceeding—

- (a) if the offender is a natural person—10 penalty units; or
- (b) if the offender is a body corporate—50 penalty units;

for offences against the regulations.

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**SCHEDULE 1**

Section 114

**FORM OF BALLOT PAPER****Legislative Assembly for the Australian Capital Territory****Ballot paper****Election of [1] Member(s)****Electorate of [1]****Number [1] boxes from 1 to [1] in the order of your choice**

Then you may show as many further preferences as you wish by writing numbers from [3] onwards in other boxes.

<b>A</b> [4] <input type="text"/> [6]	<b>B</b> [4] <input type="text"/> [6]	<b>C</b> [4] <input type="text"/> [6]	[5] <input type="text"/> [6] [7]
<input type="text"/> [6]	<input type="text"/> [6]	<input type="text"/> [6]	<input type="text"/> [6] [7]
<input type="text"/> [6]	<input type="text"/> [6]	<input type="text"/> [6]	<input type="text"/> [6] [7]

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**Remember, number at least [1] boxes from 1 to [1] in the order of your choice.**

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. Insert number of vacancies</li> <li>2. Insert name of electorate</li> <li>3. Insert the number that is 1 more than the number of vacancies</li> <li>4. Insert name, or abbreviation of name, of registered political party, as required</li> </ol> | <ol style="list-style-type: none"> <li>5. Insert 'UNGROUPED' if there are ungrouped candidates</li> <li>6. Insert name of candidate</li> <li>7. Insert name, or abbreviation of name, of registered political party, or 'INDEPENDENT', as required</li> </ol> |
|--|---|

**SCHEDULE 2**

Section 116

**BALLOT PAPERS—PRINTING OF NAMES AND COLLATION**

**1.** In this Schedule—

“column”, in relation to a ballot paper, means a column of candidates’ names printed on the ballot paper in accordance with section 116.

**2. (1)** The ballot papers for an election shall be printed so that, for each column—

- (a) separate batches are printed equal in number to the number of names in the column;
- (b) in the first batch, the names in the column are printed in an order determined by the commissioner by lot;
- (c) in each batch after the first, the names in the column are printed in the order specified in the table at the end of this Schedule; and
- (d) so far as practicable, the number of ballot papers in each batch for the column is equal to the number of ballot papers in each other batch for the column.

**(2)** In the table at the end of this Schedule—

- (a) the number ‘1’ appearing in a column shall be taken to represent the name determined in accordance with paragraph 1 (b) to be in the first position in the corresponding column on the ballot paper; and
- (b) the number ‘2’ appearing in a column shall be taken to represent the name determined in accordance with paragraph 1 (b) to be in the second position in the corresponding column on the ballot paper;

and so on.

**3.** The commissioner shall ensure that ballot papers distributed to a polling place for the purposes of an election are so collated that the ballot paper immediately following another ballot paper in the issue is in a form different from that of the other ballot paper.

**4.** The OIC of a polling place shall ensure, so far as practicable, that the form of a ballot paper issued by an officer to a person claiming to vote at that place is different from that of the previous ballot paper so issued by the officer.

**TABLE**

*Where there are 2 names in the column—*

2nd  
batch

2

1

**SCHEDULE 2**—continued

*Where there are 3 names in the column—*

2nd batch	3rd batch
2	3
3	1
1	2

*Where there are 4 names in the column—*

2nd batch	3rd batch	4th batch
4	2	3
3	1	4
1	4	2
2	3	1

*Where there are 5 names in the column—*

2nd batch	3rd batch	4th batch	5th batch
3	5	4	2
1	3	5	4
5	4	2	1
2	1	3	5
4	2	1	3

*Where there are 6 names in the column—*

2nd batch	3rd batch	4th batch	5th batch	6th batch
2	5	4	6	3
5	4	6	3	1
1	2	5	4	6
6	3	1	2	5
4	6	3	1	2
3	1	2	5	4

**SCHEDULE 2**—continued

*Where there are 7 names in the column—*

2nd batch	3rd batch	4th batch	5th batch	6th batch	7th batch
2	6	5	7	3	4
6	5	7	3	4	1
4	1	2	6	5	7
1	2	6	5	7	3
7	3	4	1	2	6
5	7	3	4	1	2
3	4	1	2	6	5

*Where there are 8 names in the column—*

2nd batch	3rd batch	4th batch	5th batch	6th batch	7th batch	8th batch
2	7	4	8	3	5	6
7	4	8	3	5	6	1
1	2	5	6	8	4	7
5	6	7	2	1	3	8
6	1	2	4	7	8	3
8	3	1	7	4	2	5
4	8	3	5	6	1	2
3	5	6	1	2	7	4



**SCHEDULE 2**—continued

*Where there are 9 names in the column—*

2nd batch	3rd batch	4th batch	5th batch	6th batch	7th batch	8th batch	9th batch
2	8	7	9	3	4	5	6
8	7	9	3	4	5	6	1
4	5	6	1	2	8	7	9
5	6	1	2	8	7	9	3
6	1	2	8	7	9	3	4
1	2	8	7	9	3	4	5
9	3	4	5	6	1	2	8
7	9	3	4	5	6	1	2
3	4	5	6	1	2	8	7

*Where there are 10 names in the column—*

2nd batch	3rd batch	4th batch	5th batch	6th batch	7th batch	8th batch	9th batch	10th batch
2	8	3	5	9	7	6	4	10
8	3	5	9	7	6	4	10	1
5	9	7	6	4	10	1	2	8
10	1	6	2	3	5	9	7	9
9	7	1	4	10	8	2	8	3
4	10	2	1	8	3	5	9	7
6	4	10	8	2	1	3	5	6
3	5	9	7	6	4	10	1	2
7	6	4	10	1	2	8	3	5
1	2	8	3	5	9	7	6	4

**SCHEDULE 2**—continued

*Where there are 11 names in the column—*

2nd batch	3rd batch	4th batch	5th batch	6th batch	7th batch	8th batch	9th batch	10th batch	11th batch
2	9	3	4	10	7	6	5	11	8
9	3	4	10	7	6	5	11	8	1
4	10	7	6	5	11	8	1	2	9
10	2	11	3	1	8	9	6	5	7
1	7	6	8	11	9	3	2	4	10
11	8	1	5	2	3	7	4	10	11
6	5	8	1	9	2	4	10	9	3
5	11	9	2	4	10	1	3	7	6
3	4	10	7	6	5	11	8	1	2
7	6	5	11	8	1	2	9	3	4
8	1	2	9	3	4	10	7	6	5

*Where there are 12 names in the column—*

2nd batch	3rd batch	4th batch	5th batch	6th batch	7th batch	8th batch	9th batch	10th batch	11th batch	12th batch
2	10	3	5	11	7	8	4	12	6	9
10	3	5	11	7	8	4	12	6	9	1
5	11	7	8	4	12	6	9	1	2	10
1	2	8	6	12	10	9	7	5	11	3
4	6	9	1	3	11	10	8	2	12	7
8	1	2	4	9	5	3	10	3	7	11
9	4	12	10	1	6	2	5	11	10	8
11	12	10	9	2	1	7	3	4	5	6
12	7	6	3	5	2	11	1	8	4	12
3	5	11	7	8	4	12	6	9	1	2
7	8	4	12	6	9	1	2	10	3	5
6	9	1	2	10	3	5	11	7	8	4

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**SCHEDULE 2**—continued

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**SCHEDULE 3**

Section 179

**PRELIMINARY SCRUTINY OF DECLARATION VOTING PAPERS**

1. In this Schedule—

“envelope” means an envelope on which appears a declaration in the approved form made by an elector for the purpose of casting a declaration vote.

2. The OIC of a scrutiny centre shall arrange for a preliminary scrutiny at the centre to be conducted in accordance with this Schedule.

3. An officer shall record the condition of each ballot box containing completed declaration voting papers at the centre and remove the papers from the box.

4. An officer shall produce—

- (a) each set of declaration voting papers at the centre; and
- (b) each written application for a postal vote to which any of those papers relate;

that has not been dealt with at an earlier preliminary scrutiny.

5. An officer shall sort the declaration voting papers to which the preliminary scrutiny relates into the following groups:

- (a) 1 group containing papers to which clause 6 applies;
- (b) 1 group containing the remainder.

6. (1) In this clause—

“relevant provision” means—

- (a) in the case of a vote under section 135—subsection 135 (4);
- (b) in the case of a vote under section 136A—subsection 136A (8);
- (c) in the case of a vote under section 136B—subsection 135 (4) as applied by subsection 136B (18); or
- (d) in the case of a vote under section 136C—subsection 135 (4) as applied by subsection 136C (6).

(2) This clause applies to a set of declaration voting papers if the officer is satisfied that—

- (a) the signature on the declaration is that of the elector;
- (b) the certificate by the witness is in accordance with the relevant provision;
- (c) in the case of a postal vote where the papers were posted to the commissioner—the papers were so posted before the close of the poll; and

**SCHEDULE 3—continued**

- (d) in the case of the vote of an Antarctic elector—the envelope referred to in paragraph 176 (1) (c) is endorsed and signed by an authorised officer in accordance with that paragraph.

(3) For the purposes of paragraph (2) (b), where an officer referred to in subsection 135 (4) omits to sign the certificate, the certificate shall nevertheless be taken to be in accordance with the relevant provision, if—

- (a) the issue of the relevant declaration voting papers was recorded under Division 3 or 3A of Part 10; and
- (b) the OIC is satisfied the papers were properly issued to the elector.

7. An officer shall sort the declaration voting papers to which clause 6 applies into the following groups:

- (a) 1 group containing envelopes on which appear declarations by electors enrolled for the electorate indicated in the declaration;
- (b) 1 group containing the remainder.

8. An officer shall sort the remaining declaration voting papers referred to in paragraph 7 (b) into the following groups:

- (a) 1 group containing papers to which clause 9 applies;
- (b) 1 group containing the remainder.

9. (1) This clause applies to a set of declaration voting papers if the OIC is satisfied that—

- (a) the elector who signed the declaration was, when the roll closed for the election, entitled to be enrolled; and
- (b) the omission of the elector's name from the roll resulted from an official error.

10. (1) An officer shall withdraw the ballot papers from the envelopes in the groups of declaration voting papers to which paragraph 7 (a) or clause 9 applies and, without unfolding or inspecting the ballot papers or allowing any other person to do so, admit them to scrutiny under section 183.

(2) Where 2 or more sets of papers to which paragraph 7 (a) or clause 9 applies are in the name of a particular elector—

- (a) the OIC shall determine which set shall be dealt with in accordance with subclause (1); and
- (b) the remaining set shall be set aside.

(3) The OIC shall ensure that ballot papers referred to in subclause (1) are kept in a separate sealed ballot box until they are dealt with under section 183.

11. The OIC shall, in accordance with clauses 4 to 10 (inclusive), conduct a further scrutiny of the groups of remaining declaration voting papers to which paragraph 5 (b) or 8 (b) apply and, if there are any papers to which either paragraph applies after the further scrutiny, the OIC shall—

**SCHEDULE 3—continued**

- (a) reject them from further scrutiny; and
- (b) seal them, together with any papers to which paragraph 10 (2) (b) applies, in a parcel endorsed with a description of the contents, the name of the electorate and the date.

12. The commissioner shall give to each elector whose declaration voting papers are rejected under this Schedule written notice of the rejection setting out the reasons for the rejection.

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**SCHEDULE 4**

Section 185

**ASCERTAINING RESULT OF POLL**

**PART 1—PRELIMINARY**

**Interpretation**

1. (1) In this Schedule, unless the contrary intention appears—

“ballot paper” means a ballot paper that is formal by virtue of Part 12;

“continuing candidate” means a candidate, other than a successful candidate, an excluded candidate or a candidate who died before polling day;

“count” means an allotment of votes under subclause 3 (1) or 6 (3), paragraph 9 (2) (c) or subclause 14 (2);

“count votes”, in relation to a candidate, is the number of votes calculated as follows:

$$\mathbf{BP \times TV}$$

where—

**BP** is the number of ballot papers to be dealt with at a count that record the next available preference for the candidate; and

**TV** is the transfer value of those ballot papers;

any fraction being disregarded;

“excluded candidate” means a candidate excluded under clause 8;

“next available preference” means the next highest preference recorded for a continuing candidate on a ballot paper;

“quota” means the quota of an electorate for an election and is calculated as follows:

$$\frac{\mathbf{BP}}{\mathbf{N+1}} + 1$$

where—

**SCHEDULE 4—continued**

**BP** is the number of ballot papers for the election; and

**N** is the number of positions to be filled at the election;

any fraction being disregarded;

“successful candidate” means a candidate who is successful by virtue of clause 3, 4, 6, 9 or 14;

“surplus”, in relation to a successful candidate, means the candidate’s total votes less the quota, where the resulting number of votes is 1 or greater;

“total votes”, in relation to a candidate, means the sum of all votes allotted to the candidate;

“transfer value”, in relation to a ballot paper, is—

- (a) in relation to the allotment of votes from the surplus of a successful candidate—in the case of ballot papers that specify a next available preference, subject to subclause (2), the value calculated as follows:

$$\frac{S}{CP}$$

where—

**S** is the surplus; and

**CP** is the number of ballot papers counted for the candidate at the count at which he or she became successful and which specify a next available preference; or

- (b) in relation to the allotment of votes under paragraph 9 (2) (c)—
  - (i) in the case of ballot papers in respect of which votes were allotted to the excluded candidate under clause 3—1; or
  - (ii) in the case of ballot papers in respect of which count votes were allotted to the excluded candidate under subclause 6 (3) or paragraph 9 (2) (c)—the transfer value of the ballot papers when counted for the purpose of that allotment.

(2) Where, but for this subclause, the transfer value of a ballot paper calculated in accordance with paragraph (a) of the definition of “transfer value” would be greater than the transfer value of the ballot paper when counted for the successful candidate, the transfer value of that ballot paper is the lastmentioned transfer value.

**Disregarding preferences**

2. (1) This clause applies where effect is to be given to preferences indicated in candidate squares on a ballot paper by virtue of section 180.

**SCHEDULE 4—continued**

(2) Where the same number is marked in 2 or more candidate squares on a ballot paper, those numbers and any greater number shall be disregarded in determining the elector's preferences.

(3) Where a number is missing from the series of consecutive whole numbers marked in the candidate squares on a ballot paper, the missing number and any greater number shall be disregarded in determining the elector's preferences.

**PART 2—GENERAL**

**First preferences**

3. (1) For each ballot paper recording a first preference for a continuing candidate, 1 vote shall be allotted to the candidate.

(2) For the purposes of subclause (1), a ballot paper on which a first preference for a candidate who died before polling day is recorded shall be taken to record a first preference for the candidate for whom the next available preference is recorded.

(3) After the allotment of votes under subclause (1), each continuing candidate's total votes shall be calculated and, if the votes equal or exceed the quota, the candidate is successful.

**Scrutiny to cease**

4. (1) If, after a calculation under subclause 3 (3), 6 (4) or paragraph 9 (2) (d), the number of successful candidates is equal to the number of positions to be filled, the scrutiny shall cease.

(2) If, after a calculation under subclause 3 (3) or 6 (4) or after all the ballot papers counted for an excluded candidate have been dealt with under clause 9—

- (a) the number of continuing candidates is equal to the number of positions remaining to be filled; and
- (b) no successful candidate has a surplus not already dealt with under clause 6;

each of those continuing candidates is successful and the scrutiny shall cease.

**Scrutiny to continue**

5. If the scrutiny has not ceased in accordance with clause 4 and—

- (a) 1 or more successful candidates have a surplus not already dealt with under clause 6—subject to clause 4, each surplus shall be dealt with in accordance with clause 6; or
- (b) there are no successful candidates with such a surplus—1 continuing candidate shall be excluded in accordance with clause 8 and the ballot papers counted for him or her shall be dealt with in accordance with clause 9.

**Surplus votes**

6. (1) Subject to clause 7, this clause applies in relation to the surplus of a successful candidate.



**SCHEDULE 4—continued**

(2) Each ballot paper counted for the purpose of allotting votes to the successful candidate at the count at which the candidate became successful shall be dealt with as follows:

- (a) if it does not specify a next available preference—it shall be set aside as finally dealt with for the purposes of this Part;
- (b) if it specifies a next available preference—it shall be grouped according to the candidate for whom that preference is recorded.

(3) The count votes for each continuing candidate shall be determined and allotted to him or her.

(4) After the allotment under subclause (3), the continuing candidates' total votes shall be calculated and, if the total votes of a candidate equal or exceed the quota, the candidate is successful.

**More than 1 surplus**

7. (1) In this clause—

- (a) a reference to a successful candidate shall be read as a reference to a successful candidate with a surplus not already dealt with under clause 6; and
- (b) a reference to the earliest count shall be read as a reference to the earliest count at which a successful candidate obtained a quota.

(2) Where there are 2 or more successful candidates, the surplus of the relevant candidate shall be dealt with in accordance with clause 6.

(3) For the purposes of subclause (2)—

- (a) if only 1 successful candidate obtained a quota at the earliest count—that candidate is the relevant candidate;
- (b) if 2 or more successful candidates obtained a quota at the earliest count—the candidate who, of those candidates, has the largest surplus is the relevant candidate; or
- (c) if 2 or more successful candidates (in this paragraph called “contemporary candidates”) who obtained a quota at the earliest count have the same surplus, being a surplus larger than that of any other candidate who obtained a quota at that count and—
  - (i) 1 of the contemporary candidates had more total votes than any other contemporary candidate at the last count at which all the contemporary candidates had unequal total votes—that candidate; or
  - (ii) there is no count at which all the contemporary candidates had unequal total votes—the contemporary candidate who is determined by the commissioner by lot to be the relevant candidate;

is the relevant candidate.

(4) Where—

- (a) a person becomes the relevant candidate by virtue of subparagraph (3) (c) (ii);
- (b) the ballot papers are recounted in accordance with section 187; and

**SCHEDULE 4—continued**

- (c) the same candidates would, but for this subclause, become the contemporary candidates once again by virtue of that subparagraph;

the person shall be taken to be the relevant candidate for the purposes of subclause (2) in the recounting of those ballot papers.

**Exclusion of candidates**

**8. (1)** Where clause 5 or 15 requires a candidate to be excluded, the candidate with the least total votes shall be excluded.

**(2)** Where 2 or more candidates each have the same total votes, being fewer total votes than any other candidate and—

- (a) 1 of those candidates had fewer total votes than any other of those candidates at the last count at which all those candidates had unequal votes—that candidate; or
- (b) there is no count at which all those candidates had unequal total votes—the candidate who, of those candidates, is determined by the commissioner by lot to be the candidate to be excluded;

shall be excluded.

**(3)** Where—

- (a) a person is excluded by virtue of paragraph (2) (b);
- (b) the ballot papers are recounted in accordance with section 187; and
- (c) that paragraph would, but for this subclause, be applicable once again to the same candidates;

the person shall be taken to be excluded in the recounting of those ballot papers.

**Votes of excluded candidates**

**9. (1)** Where a candidate is excluded in accordance with clause 8, the ballot papers counted for the candidate shall be sorted into groups according to their transfer values when counted for him or her.

**(2)** Subject to subclause (3), each group under subclause (1) shall be dealt with as follows:

- (a) if a ballot paper in the group does not specify a next available preference—it shall be set aside as finally dealt with for the purposes of this Part;
- (b) if a ballot paper in the group specifies a next available preference—it shall be grouped according to the candidate for whom that preference is recorded;
- (c) each continuing candidate's count votes shall be determined and allotted to him or her;
- (d) continuing candidates' total votes shall be calculated and, if the votes of any of those candidates equal or exceed the quota, the candidate is successful.

**(3)** The groups referred to in subclause (1) shall be dealt with under subclause (2) starting with the group with the highest transfer value and, subject to subclause 4 (1) or 15 (2), continuing in descending order until all the groups have been dealt with.

**SCHEDULE 4—continued**

**Setting aside ballot papers**

**10.** Where, after a calculation under subclause 3 (3) or 6 (4) or paragraph 9 (2) (d), the total votes of a candidate who became successful on that calculation equal the quota, the ballot papers counted for that candidate shall be set aside for the purposes of this Part.

**PART 3—CASUAL VACANCIES**

**Application**

**11. (1)** This Part applies in relation to the vacancy in the seat of a former MLA that is to be filled by recount under section 194.

**(2)** For the purposes of this Part—

- (a) “continuing candidate” means a candidate within the meaning of Part 13 of this Act, but does not include a candidate who died before the recount for the purposes of this Part commenced;
- (b) the quota is calculated under clause 12; and
- (c) the transfer value is determined under clause 13.

**Quota**

**12.** For the purposes of this Part, the quota, in relation to a count, is calculated as follows:

$$\frac{\text{TVA}}{2} + 1$$

where **TVA** is the sum of the total votes allotted to the continuing candidates at the count, any fraction being disregarded.

**Transfer value**

**13. (1)** For the purposes of this Part, the transfer value of ballot papers counted for the former MLA—

- (a) in relation to a ballot paper dealt with at the count at which the former MLA became successful—is the value ascertained in accordance with subclause (2) or (3), as the case requires;
- (b) in relation to a ballot paper dealt with at the count under clause 3—is 1; and
- (c) in relation to a ballot paper dealt with at any other count—is the transfer value of the ballot paper when counted for the purpose of allotting count votes to the former MLA.

**(2)** Where, at the count at which the former MLA became successful,  $\text{NCP} \times \text{TV}$  was greater than or equal to  $\text{Q} - \text{N}$ —

- (a) in relation to a ballot paper that did not specify a next available preference—the value is calculated as follows:

$$\frac{\text{Q} - \text{N}}{\text{NCP}} ; \text{ and}$$

**SCHEDULE 4—continued**

- (b) in relation to a ballot paper that specified a next available preference—the value is zero.
- (3) Where, at the count at which the former MLA became successful, **NCP x TV** was less than **Q—N—**
- (a) in relation to a ballot paper that did not specify a next available preference—the value is the transfer value of the ballot paper when counted for the purpose of allotting count votes to the former MLA; and
- (b) in relation to a ballot paper that specified a next available preference—the value is calculated as follows:

$$\frac{Q - N - (\text{NCP} \times \text{TV})}{\text{CP}} .$$

- (4) For the purposes of subsections (2) and (3)—

**NCP** is the number of ballot papers counted for the former MLA at the count at which he or she became successful that did not specify a next available preference;

**TV** is the transfer value of a ballot paper when counted at that count for the purpose of allotting count votes to the former MLA;

**Q** is the quota for the election at which the former MLA was last elected;

**N** is the former MLA's total votes after the last calculation before that count; and

**CP** is the number of ballot papers counted for the former MLA at that count that specified a next available preference.

**Recount—first count**

14. (1) If a ballot paper counted for the former MLA—

- (a) does not specify a next available preference—it shall be set aside as finally dealt with for the purposes of this Part; or
- (b) specifies a next available preference—it shall be grouped according to the candidate for whom that preference is recorded.

(2) The count votes for each continuing candidate shall be determined and allotted to him or her, and each continuing candidate's total votes shall be calculated.

(3) If, after the calculation under subclause (2), the total votes of a continuing candidate equal or exceed the quota, the candidate is successful and the scrutiny shall cease.

**Recount—continuation**

15. (1) If the scrutiny has not ceased in accordance with subclause 14 (3) or subclause (2) of this clause—

- (a) 1 continuing candidate shall be excluded in accordance with clause 8; and

**SCHEDULE 4—continued**

- (b) the ballot papers counted for that candidate shall be dealt with in accordance with clause 9.

(2) If, after a calculation under paragraph 9 (2) (d), a candidate is successful, the scrutiny shall cease.

**Successful candidate is dead**

16. (1) If the candidate who is successful on a recount is dead, the recount shall be conducted again.

(2) For the purposes of subclause (1), a ballot paper on which a preference for that candidate is recorded shall be taken to record a preference for the candidate for whom the next available preference is recorded.

**Multiple vacancies**

17. (1) If there are 2 or more vacancies in the seats of former MLAs that are required to be filled by recount under section 194, the recounts shall be conducted in the order in which the vacancies occurred.

(2) If 2 or more of those vacancies occurred at the same time, the commissioner shall determine by lot the order in which the recounts are to be conducted.

(3) Where—

- (a) a person is a candidate in relation to more than 1 casual vacancy;
- (b) the person becomes a candidate in relation to those casual vacancies before the commissioner declares elected the successful candidate in relation to any of those casual vacancies; and
- (c) the person is successful in relation to 1 of those casual vacancies;

for the purpose of conducting the recount in relation to the casual vacancies other than the one in relation to which the person was successful, the person shall be taken not to be a continuing candidate.

**PART 4—DECEASED SUCCESSFUL CANDIDATES**

**Application of Part 3**

18. (1) Where a successful candidate dies on or after polling day but before the declaration of the result of the election, the ballot papers counted for the deceased candidate shall be dealt with in accordance with Part 3 of this Schedule as if they had been counted for a former MLA.

(2) For the purposes of this Part—

“continuing candidate” means a candidate other than a successful candidate, a candidate who died before the recount for the purposes of this Part commenced or a candidate who is excluded for the purposes of clause 15.

**SCHEDULE 4**—continued

**Multiple deaths**

**19. (1)** If 2 or more successful candidates die on or after polling day but before the declaration of the result of the election, the ballot papers counted for each deceased candidate shall be dealt in the order in which the candidates died.

**(2)** If 2 or more of those successful candidates died at the same time, the commissioner shall determine by lot the order in which the ballot papers for the deceased candidates are to be dealt with.

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## *Electoral Act 1992*

### NOTES

1. The *Electoral Act 1992* in this reprint is Act No. 71, 1992 amended as indicated in the Tables below.

The *Electoral Act 1992* was modified by the *Electoral (Application) Act 1996* (No. 53, 1996).

2. The *Legislation (Republication) Act 1996* authorises the Parliamentary Counsel, in preparing a law for republication, to make certain editorial and other formal amendments in accordance with current legislative drafting practice. The amendments do not change the law. Amendments made under the Act do not appear in the Table of Amendments but details may be obtained on request from the Parliamentary Counsel's Office.

### Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Electoral Act 1992</i>	71, 1992	8 Dec 1992	Ss. 1 and 2: 8 Dec 1992 Remainder: 21 Dec 1992 (see <i>Gazette</i> 1992, No. S243, p. 19)	
<i>Acts Revision (Position of Crown) Act 1993</i>	44, 1993	27 Aug 1993	27 Aug 1993 (see s. 2)	—
<i>Electoral (Amendment) Act 1994</i>	14, 1994	17 May 1994	Ss. 1, 2, 22 (in part) and 23 (in part): 17 May 1994 Ss. 3-21: 6 June 1994 (see <i>Gazette</i> 1994, No. S105) S. 22 (new Part XIII): 3 Mar 1995 (see s. 2 (5)) S. 22 (new Part XVI (ss. 244-278)): 25 Aug 1994 (see s. 2 (6) and <i>Gazette</i> 1994, No. S172)) S. 24: 1 Sept 1994 (see <i>Gazette</i> 1994, No. S172) Remainder (ss. 22 and 23 (new provisions)): 25 Aug 1994 (see <i>Gazette</i> 1994, No. S172)	—

*Electoral Act 1992*

**NOTES—continued**

**Table of Acts—continued**

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Public Sector Management (Consequential and Transitional Provisions) Act 1994</i>	38, 1994	30 June 1994	Ss. 1 and 2: 30 June 1994 Remainder: 1 July 1994 (see <i>Gazette</i> 1994, No. S142, p. 2)	Ss. 3, 5-12, 15 and 19
<i>Electoral (Amendment) Act (No. 2) 1994</i>	78, 1994	17 Nov 1994	17 Nov 1994	—
<i>Annual Reports (Government Agencies) (Consequential Provisions) Act 1995</i>	25, 1995	5 Sept 1995	5 Sept 1995	—
<i>Electoral (Amendment) Act 1995</i>	33, 1995	31 Oct 1995	31 Oct 1995	—
<i>Statute Law Revision Act 1995</i>	46, 1995	18 Dec 1995	18 Dec 1995	—
<i>Remuneration Tribunal (Consequential and Transitional Provisions) Act 1995</i>	56, 1995	20 Dec 1995	21 Dec 1995 (see s. 2 and <i>Gazette</i> 1995, No. S315, p. 2)	S. 3
<b>(Reprinted as at 31 January 1996)</b>				
<i>Electoral (Amendment) Act 1996</i>	56, 1996	29 Nov 1996	29 Nov 1996	Ss. 32-34
<i>Land (Planning and Environment) (Amendment) Act (No. 3) 1996</i>	85, 1996	24 Dec 1996	Part I (ss. 1 and 2): 24 Dec 1996 Remainder: 24 June 1997	—
<i>Electoral (Amendment) Act 1997</i>	38, 1997	1 Sept 1997	Ss. 1-3: 1 Sept 1997 Remainder: 1 May 1998	—
<i>Remuneration Tribunal (Consequential Amendments) Act 1997</i>	41, 1997	19 Sept 1997	Ss. 1 and 2: 19 Sept 1997 Remainder: 23 Sept 1997 (see <i>Gazette</i> 1997, No. S280)	—
<i>Electoral Amendment) Act (No. 2) 1997</i>	91, 1997	1 Dec 1997	1 Dec 1997	Ss. 10 (2), 15 (2), (3) and 24 (2)
<i>Legal Practitioners (Consequential Amendments) Act 1997</i>	96, 1997	1 Dec 1997	Ss. 1 and 2: 1 Dec 1997 Remainder: 1 June 1998 (see s. 2 (2))	—

**(Reprinted as at 1 December 1997)**



*Electoral Act 1992*

**NOTES**—continued

**Table of Acts**—continued

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Statute Law Revision (Penalties) Act 1998</i>	54, 1998	27 Nov 1998	Ss. 1 and 2: 27 Nov 1998 Remainder: 9 Dec 1998 (see <i>Gazette</i> 1998, No. 49, p. 1078)	—
<i>Electoral (Amendment) Act 1998</i>	61, 1998	11 Dec 1998	11 Dec 1998	—

*Electoral Act 1992*

**NOTES**—continued

**Table of Amendments**

The amendment history of the *Electoral Act 1992* prior to renumbering by the *Electoral (Amendment) Act 1994* (No. 14, 1994) appears in Table 1 below.

**Table 1**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
Title .....	rs. No. 14, 1994
Preamble .....	am. No. 14, 1994
S. 2 .....	am. No. 14, 1994
S. 3 .....	am. No. 14, 1994; No. 38, 1994
S. 4 .....	rep. No. 44, 1993
	ad. No. 14, 1994
S. 6 .....	am. No. 14, 1994
S. 7 .....	rs. No. 14, 1994
S. 7A .....	ad. No. 14, 1994
S. 9 .....	am. No. 14, 1994
S. 11 .....	am. No. 14, 1994; No. 38, 1994
S. 12 .....	am. No. 14, 1994
Ss. 14-16 .....	am. No. 14, 1994
S. 18 .....	am. No. 14, 1994
S. 18A .....	ad. No. 14, 1994
Heading to Part 3 .....	rs. No. 14, 1994
Heading to Div. 1 of Part 3 .....	ad. No. 14, 1994
S. 20 .....	am. No. 14, 1994
S. 21 .....	rs. No. 14, 1994
S. 21A .....	ad. No. 14, 1994
Ss. 22-27 .....	am. No. 14, 1994
Div. 2 of Part 3 (ss. 27A-27C) .....	ad. No. 14, 1994
S. 27A .....	ad. No. 14, 1994
	rs. No. 38, 1994
S. 27B .....	ad. No. 14, 1994
	am. No. 38, 1994
S. 27C .....	ad. No. 14, 1994
S. 31 .....	am. No. 14, 1994
S. 31A .....	ad. No. 14, 1994
Ss. 32, 33 .....	am. No. 14, 1994
Ss. 40, 41 .....	am. No. 14, 1994
Ss. 46, 47 .....	am. No. 14, 1994
Heading to Part V .....	rep. No. 14, 1994
S. 48 .....	rep. No. 14, 1994
Ss. 49-50 .....	am. No. 14, 1994
Ss. 51-53 .....	rep. No. 14, 1994
Part 5 (ss. 51-64) .....	ad. No. 14, 1994

*Electoral Act 1992*

**NOTES—continued**

**Table of Amendments—continued**

**Table 1—continued**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
Ss. 51-53 .....	rs. No. 14, 1994
Ss. 54-64 .....	ad. No. 14, 1994
Part 6 (ss. 65-80) .....	ad. No. 14, 1994
Ss 65-80 .....	ad. No. 14, 1994
Part 7 (ss. 81-93) .....	ad. No. 14, 1994
Ss. 81-93 .....	ad. No. 14, 1994
Part 8 (ss. 94-96) .....	ad. No. 14, 1994
Ss. 94-96 .....	ad. No. 14, 1994
Part 9 (ss. 97-120) .....	ad. No. 14, 1994
Ss. 97-120 .....	ad. No. 14, 1994
Part 10 (ss. 121-160) .....	ad. No. 14, 1994
Ss. 121-160 .....	ad. No. 14, 1994
Part 11 (ss. 161-171) .....	ad. No. 14, 1994
Ss. 161-171 .....	ad. No. 14, 1994
Part 12 (ss. 172-183) .....	ad. No. 14, 1994
Ss. 172-183 .....	ad. No. 14, 1994
Part 13 (ss. 184-191) .....	ad. No. 14, 1994
Ss. 184-191 .....	ad. No. 14, 1994
Part 14 (ss. 192-237) .....	ad. No. 14, 1994
Ss. 192-237 .....	ad. No. 14, 1994
Part 15 (ss. 238-243) .....	ad. No. 14, 1994
Ss. 238-243 .....	ad. No. 14, 1994
Part 16 (ss. 244-278) .....	ad. No. 14, 1994
Ss. 244-278 .....	ad. No. 14, 1994
Part 17 (ss. 279-314) .....	ad. No. 14, 1994
Ss. 279-314 .....	ad. No. 14, 1994
Part 18 (ss. 315-321) .....	ad. No. 14, 1994
Ss. 315-321 .....	ad. No. 14, 1994
Part 19 (ss. 322-335) .....	ad. No. 14, 1994
Ss. 322-335 .....	ad. No. 14, 1994
Schedules 1-4 .....	ad. No. 14, 1994

*Electoral Act 1992*

**NOTES—continued**

**Table of Amendments—continued**

The amendment history of the *Electoral Act 1992* after renumbering by the *Electoral (Amendment) Act 1994* appears in Table 2 below.

**Table 2**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 3 .....	am. No. 91, 1997; No. 51, 1996
S. 7 .....	am. No. 91, 1997
S. 10 .....	rep. No. 25, 1995
	ad. No. 91, 1997
S. 10A .....	ad. No. 91, 1997
S. 14 .....	rep. No. 41, 1997
S. 26 .....	rep. No. 56, 1995
S. 37 .....	am. No. 61, 1998
S. 39 .....	am. No. 85, 1996
S. 49 .....	am. No. 91, 1997
S. 62 .....	am. No. 91, 1997
Ss. 63, 64.....	am. No. 54, 1998
S. 65 .....	am. No. 91, 1997; No. 54, 1998
S. 67 .....	am. No. 54, 1998
S. 69 .....	am. No. 54, 1998
S. 70 .....	am. No. 91, 1997
S. 73 .....	am. No. 54, 1998
S. 80 .....	am. No. 78, 1994; No. 91, 1997
S. 81 .....	am. No. 91, 1997
S. 84 .....	am. No. 54, 1998
S. 93 .....	am. No. 91, 1997
S. 95 .....	am. No. 91, 1997
S. 96A .....	ad. No. 91, 1997
Ss. 97, 98.....	am. No. 91, 1997
S. 100 .....	am. No. 38, 1997
S. 105 .....	am. No. 78, 1994
S. 108 .....	am. No. 78, 1994
S. 117 .....	am. No. 78, 1994
S. 123 .....	am. No. 54, 1998
S. 128 .....	am. No. 91, 1997
Ss. 129, 130 .....	am. No. 54, 1998
S. 131 .....	am. No. 91, 1997
Heading to Div. 2 of Part 10 .....	am. No. 91, 1997
S. 133 .....	am. No. 91, 1997
Heading to Div. 3 of Part 10 .....	am. No. 91, 1997
S. 135 .....	am. No. 91, 1997
Heading to Div. 3A of	ad. No. 91, 1997

*Electoral Act 1992*

**NOTES—continued**

**Table of Amendments—continued**

**Table 2—continued**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
Part 10	
S. 136 .....	rs. No. 91, 1997
Ss. 136A-136C .....	ad. No. 91, 1997
S. 137 .....	am. No. 91, 1997
S. 139 .....	am. No. 91, 1997
S. 141 .....	am. No. 91, 1997
S. 143 .....	am. No. 91, 1997; No. 54, 1998
Ss. 144-148 .....	am. No. 54, 1998
S. 151 .....	am. No. 33, 1995
S. 171 .....	am. No. 91, 1997
S. 175 .....	am. No. 46, 1995
S. 178 .....	am. No. 91, 1997
S. 198 .....	am. No. 56, 1996
S. 201 .....	am. No. 91, 1997
Ss. 203, 204 .....	am. No. 91, 1997
Ss. 206, 207 .....	am. No. 56, 1996
S. 208 .....	rs. No., 56, 1996
Ss. 209-211 .....	rep. No. 56, 1996
S. 212 .....	am. No. 56, 1996
S. 213 .....	rep. No. 56, 1996
Ss. 214, 215 .....	am. No. 56, 1996
Ss. 220, 221 .....	am. No. 56, 1996
Ss. 221A, 221B.....	ad. No. 56, 1996
Ss. 223-225 .....	am. No. 56, 1996
S. 229 .....	rep. No. 56, 1996
S. 230 .....	am. No. 56, 1996
Ss. 231A-231C .....	ad. No. 56, 1996
S. 232 .....	rs. No. 56, 1996
S. 233 .....	am. No. 56, 1996
S. 234 .....	am. No. 78, 1994; No. 56, 1996
S. 234A.....	ad. No. 56, 1996
Ss. 236, 237 .....	am. No. 56, 1996; No. 54, 1998
S. 239 .....	am. No. 56, 1996
Ss. 242, 243 .....	am. No. 56, 1996
S. 245 .....	am. No. 56, 1996
S. 282 .....	am. No. 96, 1997
Ss. 285-290 .....	am. No. 54, 1998
S. 291 .....	am. No. 33, 1995; No. 91, 1997
S. 292 .....	am. No. 54, 1998
S. 295 .....	am. No. 91, 1997
Ss. 296-302 .....	am. No. 54, 1998

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**NOTES—continued**

**Table of Amendments—continued**

**Table 2—continued**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 303 .....	rs. No. 33, 1995 am. No. 91, 1997
Ss. 304, 305 .....	am. No. 33, 1995; No. 54, 1998
S. 307 .....	am. No. 91, 1997; No. 54, 1998
S. 309 .....	am. No. 54, 1998
Ss. 311-319 .....	am. No. 54, 1998
S. 320 .....	am. No. 91, 1997; No. 54, 1998
S. 341 .....	am. No. 54, 1998
Schedule 3.....	am. No. 91, 1997
Schedule 4.....	am. No. 78, 1994; No. 91, 1997

*Electoral Act 1992*

TABLE SHOWING NEW SECTION NUMBERS OF THE *ELECTORAL ACT 1992* AFTER  
RENUMBERING BY THE *ELECTORAL (AMENDMENT) ACT 1994* (NO. 14, 1994)

**NOTE—This Table does not form part of the *Electoral Act 1992* and is printed for  
convenience of reference only.**

Old number	New number	Old number	New number	Old number	New number
Section	Section	Section	Section	Section	Section
7A	8	27C	33	52	58
8	9	28	34	53	59
9	10	29	35	54	60
10	11	30	36	55	61
11	12	31	37	56	62
12	13	31A	38	57	63
13	14	32	39	58	64
14	15	33	40	59	65
15	16	34	41	60	66
16	17	35	42	61	67
17	18	36	43	62	68
18	19	37	44	63	69
18A	20	38	45	64	70
19	21	39	46	65	71
20	22	40	47	66	72
21	23	41	48	67	73
21A	24	42	49	68	74
22	25	43	50	69	75
23	26	44	51	70	76
24	27	45	52	71	77
25	28	46	53	72	78
26	29	47	54	73	79
27	30	49	55	74	80
27A	31	50	56	75	81
27B	32	51	57	76	82

*Electoral Act 1992*

TABLE SHOWING NEW SECTION NUMBERS OF THE *ELECTORAL ACT 1992* AFTER  
RENUMBERING BY THE *ELECTORAL (AMENDMENT) ACT 1994*  
(NO. 14, 1994)—continued

Old number	New number	Old number	New number	Old number	New number
Section	Section	Section	Section	Section	Section
77	83	105	111	133	139
78	84	106	112	134	140
79	85	107	113	135	141
80	86	108	114	136	142
81	87	109	115	137	143
82	88	110	116	138	144
83	89	111	117	139	145
84	90	112	118	140	146
85	91	113	119	141	147
86	92	114	120	142	148
87	93	115	121	143	149
88	94	116	122	144	150
89	95	117	123	145	151
90	96	118	124	146	152
91	97	119	125	147	153
92	98	120	126	148	154
93	99	121	127	149	155
94	100	122	128	150	156
95	101	123	129	151	157
96	102	124	130	152	158
97	103	125	131	153	159
98	104	126	132	154	160
99	105	127	133	155	161
100	106	128	134	156	162
101	107	129	135	157	163
102	108	130	136	158	164
103	109	131	137	159	165
104	110	132	138	160	166



*Electoral Act 1992*

TABLE SHOWING NEW SECTION NUMBERS OF THE *ELECTORAL ACT 1992* AFTER  
RENUMBERING BY THE *ELECTORAL (AMENDMENT) ACT 1994*  
(NO. 14, 1994)—continued

Old number	New number	Old number	New number	Old number	New number
Section	Section	Section	Section	Section	Section
161	167	189	195	217	223
162	168	190	196	218	224
163	169	191	197	219	225
164	170	192	198	220	226
165	171	193	199	221	227
166	172	194	200	222	228
167	173	195	201	223	229
168	174	196	202	224	230
169	175	197	203	225	231
170	176	198	204	226	232
171	177	199	205	227	233
172	178	200	206	228	234
173	179	201	207	229	235
174	180	202	208	230	236
175	181	203	209	231	237
176	182	204	210	232	238
177	183	205	211	233	239
178	184	206	212	234	240
179	185	207	213	235	241
180	186	208	214	236	242
181	187	209	215	237	243
182	188	210	216	238	244
183	189	211	217	239	245
184	190	212	218	240	246
185	191	213	219	241	247
186	192	214	220	242	248
187	193	215	221	243	249
188	194	216	222	244	250

*Electoral Act 1992*

TABLE SHOWING NEW SECTION NUMBERS OF THE *ELECTORAL ACT 1992* AFTER  
RENUMBERING BY THE *ELECTORAL (AMENDMENT) ACT 1994*  
(NO. 14, 1994)—continued

Old number	New number	Old number	New number	Old number	New number
Section	Section	Section	Section	Section	Section
245	251	273	279	301	307
246	252	274	280	302	308
247	253	275	281	303	309
248	254	276	282	304	310
249	255	277	283	305	311
250	256	278	284	306	312
251	257	279	285	307	313
252	258	280	286	308	314
253	259	281	287	309	315
254	260	282	288	310	316
255	261	283	289	311	317
256	262	284	290	312	318
257	263	285	291	313	319
258	264	286	292	314	320
259	265	287	293	315	321
260	266	288	294	316	322
261	267	289	295	317	323
262	268	290	296	318	324
263	269	291	297	319	325
264	270	292	298	320	326
265	271	293	299	321	327
266	272	294	300	322	328
267	273	295	301	323	329
268	274	296	302	324	330
269	275	297	303	325	331
270	276	298	304	326	332
271	277	299	305	327	333
272	278	300	306	328	334

*Electoral Act 1992*

TABLE SHOWING NEW SECTION NUMBERS OF THE *ELECTORAL ACT 1992* AFTER  
RENUMBERING BY THE *ELECTORAL (AMENDMENT) ACT 1994*  
(NO. 14, 1994)—continued

Old number	New number	Old number	New number	Old number	New number
Section	Section	Section	Section	Section	Section
329	335				
330	336				
331	337				
332	338				
333	339				
334	340				
335	341				

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