

156. Compulsory voting

- (1) It shall be the duty of every elector to record his vote at any election for the region or district for which he is enrolled unless he is prevented from doing so by absence from the State, or by illness or infirmity, or any physical incapacity on the day of the election.
- (2) As soon as practicable after the election the Electoral Commissioner shall prepare, or cause the Returning Officer to prepare and furnish to the Electoral Commissioner, a list of the names and descriptions of the electors enrolled for the region or district who did not vote at the election.
- (2a) A list prepared under subsection (2) shall be certified by statutory declaration of the person by whom it was prepared.
- (3) A list prepared and certified under subsections (2) and (2a) shall in all proceedings be *prima facie* evidence of the contents thereof and of the fact that the electors whose names appear therein did not vote at the election.
- (4) Subject to subsection (5), within the prescribed period after the close of each election, the Electoral Commissioner shall send a penalty notice to each elector whose name appears on the list prepared under subsection (2).
- (5) The Electoral Commissioner does not have to send a penalty notice to an elector if the Electoral Commissioner is satisfied that the elector —
 - (a) is dead;
 - (b) was outside the State on polling day;
 - (c) was ineligible to vote at the election; or
 - (d) had a valid and sufficient reason for failing to vote.
- (6) A penalty notice is a notice in a prescribed form notifying the elector —
 - (a) that the elector appears to have failed to vote at the election;
 - (b) that it is an offence to fail to vote at an election without a valid and sufficient reason for the failure; and
 - (c) that if the elector does not wish to have the apparent failure to vote dealt with by a court, the elector may on or before the date set out in the notice (the “**response date**”) —
 - (i) if the elector did vote as required by this Act — give the Electoral Commissioner particulars of the circumstances of the elector’s voting;
 - (ii) if the elector failed to vote — give the Electoral Commissioner a valid and sufficient reason for the failure; or
 - (iii) pay to the Electoral Commissioner the penalty set out in the notice (the “**modified penalty**”).
- (7) The response date set out in a penalty notice shall not be less than 21 days after the day on which the notice is sent.
- (8) The modified penalty set out in a penalty notice shall be an amount not exceeding \$20, unless the elector has previously paid a modified penalty under this section or been convicted of an offence against this section, in which case it shall be an amount not exceeding \$50.

- (9) If an elector does not respond to a penalty notice in the manner indicated in subsection (6) (c) (i), (ii) or (iii), on or before the response date, the Electoral Commissioner shall send to the elector a second penalty notice in a prescribed form.
- (10) Subsections (5) to (8) and (11), (12), (14a), (14b) and (16) (b) apply, with any necessary modifications, to a second penalty notice.
- (11) If, on or before the response date —
- (a) an elector responds to a penalty notice in the manner indicated in subsection (6) (c) (i) or (ii) and the Electoral Commissioner is satisfied —
 - (i) in the case of a response under subsection (6) (c) (i) — that the elector did vote as required by this Act; or
 - (ii) in the case of a response under subsection (6) (c) (ii) — that the reason for the failure to vote is a valid and sufficient reason;
 - or
 - (b) an elector responds to a penalty notice by paying the modified penalty,
- proceedings are not to be taken against the elector for a contravention of subsection (16) (a).
- (12) If, on or before the response date, an elector responds to a penalty notice in the manner indicated in subsection (6) (c) (i) or (ii) but the Electoral Commissioner is not satisfied —
- (a) in the case of a response under subsection (6) (c) (i) — that the elector voted as required by this Act; or
 - (b) in the case of a response under subsection (6) (c) (ii) — that the reason for the failure to vote is a valid and sufficient reason,
- the Electoral Commissioner shall send to the elector a notice in a prescribed form notifying the elector —
- (c) that the Electoral Commissioner is not so satisfied; and
 - (d) that if the elector does not wish to have the apparent failure to vote without a valid and sufficient reason for such failure dealt with by a court, the elector may, on or before the date set out in the notice (the “**response date**”) pay to the Electoral Commissioner the penalty set out in the notice (the “**modified penalty**”).
- (13) Subsections (7) and (8) apply, with any necessary modifications, to a notice under subsection (12).
- (14) If in response to a notice under subsection (12) the modified penalty is paid to the Electoral Commissioner on or before the response date, proceedings are not to be taken against the elector for a contravention of subsection (16) (a).
- (14a) If an elector is unable, by reason of absence from his place of living or physical incapacity, to respond to a penalty notice or to a notice under subsection (12) on or before the response date, any other elector who has a personal knowledge of the facts may, subject to the regulations, respond to

the notice within that time, and that response is to be treated as compliance by the first-mentioned elector with the notice.

(14b) In proceedings for an offence against this section a statement in a certificate signed by the Electoral Commissioner that a person named in the certificate —

- (a) did not vote at an election;
- (b) was sent a penalty notice or a notice under subsection (12);
- (c) did or did not (as the case may be) respond to a penalty notice or a notice under subsection (12) on or before the response date; or
- (d) responded to a penalty notice or a notice under subsection (12) in a particular manner,

is evidence of the facts stated.

(15) At the conclusion of an election, the Electoral Commissioner shall —

- (a) cause to be ascertained whether any person who failed or neglected to respond to a penalty notice is living at the address shown in the roll; and
- (b) if he is satisfied that the person is no longer living at that address, remove, or direct the Registrar to remove, the name of that person from the roll,

and any person whose name has been removed from the roll pursuant to this subsection shall be required to furnish a new claim for enrolment before his name is reinstated on the roll.

(16) Every elector who —

- (a) fails to vote at an election without a valid and sufficient reason for such failure (in this section the words “**valid and sufficient reason**” shall include an honest belief on the part of an elector that abstention from voting is part of his religious duty); or
- (b) makes a statement in response to a penalty notice or to a notice under subsection (12) that is, to the person’s knowledge, false or misleading in a material particular,

shall be guilty of an offence.

Penalty — \$50.

(17) Proceedings for an offence against this section shall not be instituted except by the Electoral Commissioner or an officer thereto authorized in writing by the Electoral Commissioner.

[Section 156⁷ inserted by No. 10 of 1936 s.3; amended by No. 63 of 1948 s.23; No. 58 of 1951 s.20; No. 33 of 1964 s.38; No. 68 of 1964 s.30; No. 28 of 1970 s.16; No. 70 of 1973 s.8; No. 123 of 1982 s.2; No. 9 of 1983 s.22; No. 40 of 1987 s.84; No. 79 of 1987 ss.71 and 77; No. 43 of 1996 s.23.]