



Western Australia

Electoral Act 1907

Compare between:

[01 Sep 2024, 17-f0-00] and [01 Oct 2024, 17-g0-00]

Electoral Act 1907

An Act to regulate parliamentary elections and for related purposes.

[Long title amended: No. 64 of 2006 s. 12.]

Part I — Preliminary

1. Short title

This Act may be cited as the *Electoral Act 1907*.

2. Commencement

This Act shall come into operation on 1 March 1908.

[3. Deleted: No. 10 of 1998 s. 76.]

4. Terms used

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

above-the-line square, in relation to a ballot paper for a Council election, means a square that is printed on the ballot paper under section 94D(6)(b)(ii);

absent voter means any person who votes under section 97A(2);

accountable person, for a how-to-vote card, means —

- (a) the person who is named under section 89C(4)(d) in the application for the how-to-vote card; or
- (b) the person who is the accountable person for the how-to-vote card under section 89H(2); or
- (c) if paragraphs (a) and (b) do not apply and the card is distributed on behalf of a political party — the secretary of the party; or
- (d) in any other case — the distributor of the how-to-vote card identified in the application for the how-to-vote card under section 89C(4)(b);

amalgamated roll has the meaning given in section 76AD(1);

approved form means a form that —

- (a) is approved by the Electoral Commissioner; and

- (b) has been published by the Electoral Commissioner by any means (including on the Commission website) that the Electoral Commissioner thinks fit;

Assembly means the Legislative Assembly;

assistant returning officer means an assistant returning officer appointed under section 141(5);

Australian citizen has the meaning given in the *Australian Citizenship Act 2007* (Commonwealth) section 4;

below-the-line square, in relation to a ballot paper for a Council election that has at least 1 above-the-line square printed on the ballot paper, means a square that is printed on the ballot paper under section 94D(6)(a);

business day means a day other than a Saturday, a Sunday or a public holiday;

candidate, in Parts II and VII, includes any person who, within 3 months before polling day in an election, publicly announces that they will be a candidate in the election;

close of nominations means the time a writ fixes under section 69(a) for an election;

close of the roll means the time stated in section 69A;

Commission website means a website maintained by or on behalf of the Electoral Commissioner;

conjoint election means a general election for the Council and the Assembly that both have the same polling day pursuant to writs issued on the same day;

constitution, in relation to a political party, means a written set of principles and rules (however described) under which the party is governed;

Council means the Legislative Council;

Council ballot paper means a ballot paper used in a Council election;

Council election means a general election or other election for the Council;

counting place means —

- (a) a polling place that is a counting place under section 141(1); or
- (b) a place appointed to be a counting place under section 141(2);

Deputy Electoral Commissioner means the person holding or acting in the office of Deputy Electoral Commissioner referred to in section 5A;

designated entrance, for a mobile voting place or polling place, means an entrance designated under section 93A(1) or (2);

disclose includes to give and give access to;

district means an electoral district for the election of a member of the Assembly;

early polling place means a polling place appointed under section 90(1)(c)(i) as a place at which a person may vote in an election on an early voting day for the election;

early voting days, for an election, means the early voting days for the election fixed under section 91;

elected member means a member of the Council or the Assembly;

election means a Council election or an election in a district;

election campaign worker —

- (a) means a person who works or volunteers for a candidate, group or political party at a place to vote or a counting place; and
- (b) includes a scrutineer;

election year, in relation to a periodic election, means the year in which the writ for the periodic election is issued;

elector means a person who is enrolled;

Note for this definition:

Under section 17AA(2), a person who is entitled to be enrolled under section 17AA(1) is taken not to be an elector until the person attains 18 years of age.

electoral address, in relation to an elector, means the address entered on the register of electors under section 40A(c) or (d) in relation to the elector;

Electoral Commissioner means the Electoral Commissioner appointed under this Act;

endorsed candidate means a candidate in an election who has been endorsed by a political party;

Note for this definition:

See also subsection (4C).

enrolled has the meaning given in section 40A;

Note for this definition:

See also subsection (4B) in relation to persons enrolled in the district.

enrolment information means —

- (a) a register extract; or
- (b) information on the register; or
- (c) a roll; or
- (d) other information relating to electors;

enrolment officer means an officer who the Electoral Commissioner directs to enrol persons on the register of electors and perform the other functions of an enrolment officer;

error notice has the meaning given in section 89F(2);

expiry year means a year in which an Assembly, if it is not previously dissolved, will expire by effluxion of time;

general election —

- (a) in relation to the Assembly, means the elections in the districts the writ for which is issued under section 64(1) or (2);

(b) in relation to the Council, means the election for the Council the writ for which is issued under section 64(3);

general postal voter has the meaning given in section 61(1);

group means a group constituted in accordance with section 80;

how-to-vote card has the meaning given in section 89A;

illegal practices has the meaning given in section 187(1);

issuing officer means each of the following persons —

- (a) the Electoral Commissioner;
- (b) the Deputy Electoral Commissioner;
- (c) a returning officer;
- (d) a person appointed under section 15;
- (e) a person employed in the Western Australian Electoral Commission;
- (f) a person appointed to be an issuing officer under section 92A;

lack of capacity notice has the meaning given in section 206A(3);

mental impairment means any of, or a combination of, the following —

- (a) an intellectual disability;
- (b) a mental illness as defined in *The Criminal Code* section 1(1);
- (c) an acquired brain injury;
- (d) dementia;

mobile voting officer, for a mobile voting place, means the presiding officer and other officer appointed for the mobile voting place under section 90D(1);

mobile voting place means a place appointed as a mobile voting place under section 90(1)(d) or (e);

mobile voting times, for a mobile voting place, means the times decided under section 90D(3)(b) for the mobile voting place;

non-party candidate means a candidate in an election who is not an endorsed candidate;

officer includes all persons appointed to any office under this Act or in the Western Australian Electoral Commission, or exercising any power or discharging any duty under this Act;

official agent has the meaning given in section 4AA;

official paper has the meaning given in section 94A(2);

parliamentary party means a political party of which at least 1 member is a member of the Council or the Assembly;

periodic election means —

- (a) a general election for the Assembly the writ for which is issued under section 64(2); or
- (b) any general election for the Council;

permitted purpose means —

- (a) for a member of the Council or the Assembly —
 - (i) performing the member's functions; or
 - (ii) a purpose connected with an election or referendum; or
 - (iii) monitoring the accuracy of information in the register of electors or a roll; or
 - (iv) researching in relation to electoral matters;and
- (b) for a parliamentary party —
 - (i) assisting a member of the Council or the Assembly to perform the member's functions; or
 - (ii) a purpose connected with an election or referendum; or
 - (iii) monitoring the accuracy of information in the register of electors or a roll; or
 - (iv) researching in relation to electoral matters;and

- (c) for a person to whom enrolment information is disclosed under section 62AC — the purpose for which the Electoral Commissioner agreed to disclose the enrolment information; and
- (d) for a person employed in a department or an organisation referred to in section 62AD to whom enrolment information is disclosed under that section — performing functions of that department or organisation;

place to vote means a polling place or mobile voting place;

political party means —

- (a) a body corporate or other body or organisation (not being a body corporate or other body or organisation described in paragraph (b)) having as one of the objects or activities of the body or organisation the promotion of the election to the Parliament of this State of an endorsed candidate; or
- (b) the branch or division for this State of a body corporate or other body or organisation which —
 - (i) is organised on a basis that includes this State and another State or Territory or other States or Territories; and
 - (ii) has a branch or division for this State; and
 - (iii) has as one of the objects or activities of the body or organisation the promotion of the election to the Parliament of this State of an endorsed candidate;

Note for this definition:

See also subsection (4D).

polling day has the meaning given in section 69(b);

polling place means any building or structure in which the polling at elections is appointed to take place under section 90(1)(a) or (b);

postal ballot paper has the meaning given in section 100D(2)(a);

postal voting means voting by means of a postal ballot paper;

President means the President of the Legislative Council;

presiding officer —

- (a) for a polling place — means the person appointed as the presiding officer for the polling place under section 92C(1)(a); or
- (b) for a mobile voting place — means the person appointed as the presiding officer for the mobile voting place under section 90D(1)(a);

primary residential address, of a person, means the address of the person's sole or principal place of residence;

Note for this definition:

See also subsections (4) and (4A).

prison means a prison within the meaning of that expression as defined by section 3 of the *Prisons Act 1981*;

referendum means the submission of a question to the electors pursuant to an Act but does not include an election under this Act, and a reference to an election being held on the same day as a referendum is a reference to the polling at an election being conducted on the day on which the votes of the electors are taken for the purposes of a referendum;

register extract has the meaning given in section 62A(1);

registered how-to-vote card means a how-to-vote card that is registered under Part IV Division 2A;

registered officer, of a political party, means —

- (a) the secretary of the party; or
- (b) another person registered as a registered officer in the register of political parties;

registered political party means a political party that is registered in the register of political parties;

register of electors has the meaning given in section 19(1);

register of political parties means the register kept under section 62D;

Registrar of Births, Deaths and Marriages means the Registrar of Births, Deaths and Marriages referred to in the *Births, Deaths and Marriages Registration Act 1998* section 5;

relevant citizenship law means the *Australian Citizenship Act 1948*¹ of the Commonwealth, as amended and in force immediately before the day fixed by proclamation for the purposes of section 2(2) of the *Australian Citizenship Amendment Act 1984*, of the Commonwealth, and the regulations in force immediately before that day under the *Australian Citizenship Act 1948* of the Commonwealth¹, as so amended and in force;

relevant number, in relation to a Council election, means the number of members of the Council that are to be returned at the election;

returning officer means a returning officer appointed under section 6(1);

Note for this definition:

See also subsection (7).

roll means a roll prepared for an election under section 76AA(1);

scrutineer means a person appointed as a scrutineer under section 92F, 101D(1), 137(1), 146C or 156D(11);

secretary, in relation to a political party, means —

- (a) the person who holds the office of secretary or chief administrative officer (however described) of the party; or
- (b) a person acting on behalf of the person mentioned in paragraph (a);

silent elector means an elector —

- (a) whose application to be a silent elector is granted under section 51B(3); and
- (b) whose status as a silent elector is not revoked under section 51C(3);

Note for this definition:

A person who is enrolled under section 17AA(1) is taken, under section 17AA(2)(c), to be a silent elector until the person attains 18 years of age.

single member election means —

- (a) an election in a district; or
- (b) a Council election where the relevant number is one;

Speaker means the Speaker of the Legislative Assembly;

suitable to be registered, in relation to a how-to-vote card, has the meaning given in section 89B;

supplementary roll means a supplementary roll made under section 76AC(1);

vote record has the meaning given in section 101B(1);

voting area, in relation to a place to vote, means the voting area fixed under section 90(1)(f) for the place;

whole of State electorate has the meaning given in section 16C(1);

writ means a writ directing the Electoral Commissioner to proceed with an election in a district, elections in all the districts or a Council election.

- (2) A reference in this Act to a poll for a district or an election in or for a district is a reference to a poll or an election for the return by a district of a member of the Assembly.
- (3) A reference in this Act to a poll or election for the Council is a reference to a poll or election for the return by the whole of State electorate of a member or members, as the case may

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require, of the Council but does not include the election of a member of the Council under sections 156C and 156D.

- (4) A reference in this Act to a person living within a district is a reference to the person's primary residential address being in the district, even if the person is not always living in the district.
- (4A) A reference in this Act to a person's primary residential address in relation to a person who is serving a sentence of imprisonment for an offence or is otherwise in lawful custody or detention in relation to an offence —
 - (a) is a reference to the person's primary residential address before the person's imprisonment, custody or detention; and
 - (b) is not a reference to the place of imprisonment, custody or detention.
- (4B) For the purposes of this Act, a person is enrolled for a district if the person's electoral address is in the district.
- (4C) In this Act —
 - (a) a reference to an endorsed candidate of a political party includes a reference to a candidate endorsed by a body or organisation of which the party forms part or by a division of the party; and
 - (b) a reference to the endorsement by a political party of a candidate or group in an election includes a reference to the endorsement of that candidate or group by a body or organisation of which the party forms part or by a division of the party.
- (4D) A reference in this Act to a political party, other than a reference to an endorsed candidate of the party or the endorsement by the party of a candidate or group in an election, does not include a reference to a part of the party.

- (5) A reference in this Act to the functions of the Electoral Commissioner or the Deputy Electoral Commissioner is a reference to the person's functions under this Act and other written laws.
- (6) A reference in this Act to the functions of a returning officer is a reference to the returning officer's functions under this Act.
- (7) A reference in this Act to the returning officer, without reference to the returning officer being for the whole of State electorate or a district, is a reference to —
 - (a) in relation to an election in a district — the returning officer for the district; or
 - (b) in relation to a Council election — the returning officer for the whole of State electorate.
- (8) A reference in this Act to a Commonwealth subdivision is —
 - (a) a reference to a Subdivision as defined in the *Commonwealth Electoral Act 1918* section 4(1); or
 - (b) a reference to a Division as defined in the *Commonwealth Electoral Act 1918* section 4(1) that is not divided into Subdivisions under that Act.

[Section 4 amended: No. 44 of 1911 s. 2; No. 63 of 1948 s. 3; No. 34 of 1953 s. 2; No. 51 of 1962 s. 2; No. 33 of 1964 s. 4; No. 68 of 1964 s. 3; No. 28 of 1970 s. 3; No. 39 of 1979 s. 4 and 5; No. 9 of 1983 s. 3 and 29; No. 54 of 1983 s. 2; No. 66 of 1983 s. 3; No. 104 of 1985 s. 3; No. 40 of 1987 s. 17 and 84; No. 14 of 1996 s. 4; No. 43 of 1996 s. 4; No. 36 of 2000 s. 4, 28(1), 43, 62, 67 and 82; No. 64 of 2006 s. 13; No. 7 of 2009 s. 4; No. 49 of 2011 s. 4; No. 35 of 2012 s. 4; No. 14 of 2016 s. 4; No. 20 of 2021 s. 10 and 94; No. 30 of 2023 s. 4.]

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4AA. Official agents for the appointment of scrutineers

- (1) The following people are official agents for the purpose of the appointment of scrutineers under sections 92F, 101D(1), 137, 146C and 156D(11) —
 - (a) in the case of an endorsed candidate of a registered political party not included in a group — a registered officer of the registered political party;
 - (b) in the case of a candidate not included in a group other than a candidate referred to in paragraph (a) — a person nominated by the candidate;
 - (c) in the case of a candidate included in a group in which each of the candidates is an endorsed candidate of the same registered political party — a registered officer of the registered political party;
 - (d) in the case of a candidate included in a group other than a group referred to in paragraph (c) — a person nominated by all of the candidates;
 - (e) in the case of a group in which all of the candidates are endorsed candidates of the same registered political party — a registered officer of the registered political party;
 - (f) in the case of a group other than a group referred to in paragraph (e) — a person nominated by all the candidates.
- (2) A nomination for the purposes of subsection (1)(b), (d) or (f) must be made by notice in an approved form given to the Electoral Commissioner.
- (3) A nomination for the purposes of subsection (1)(b), (d) or (f) may be withdrawn by a candidate by notice in an approved form given to the Electoral Commissioner.

[Section 4AA inserted: No. 14 of 2016 s. 5; amended: No. 30 of 2023 s. 5.]

Part II — Administration

4A. Western Australian Electoral Commission, nature of

The department of the Public Service of the State through which this Act is administered shall be known as the Western Australian Electoral Commission.

[Section 4A inserted: No. 40 of 1987 s. 18.]

5. Electoral Commissioner, office of established

There shall be an Electoral Commissioner.

[Section 5 inserted: No. 40 of 1987 s. 19.]

5A. Deputy Electoral Commissioner, office of established

There shall be a Deputy Electoral Commissioner.

[Section 5A inserted: No. 40 of 1987 s. 19.]

5B. Appointment of Electoral Commissioner and Deputy Electoral Commissioner

- (1) In this section and sections 5C and 5E *Electoral Commissioner* includes Deputy Electoral Commissioner.
- (2) The Electoral Commissioner must be appointed by the Governor on the recommendation of the Premier, and holds office in accordance with this Act.
- (3) Before making a recommendation under subsection (2) the Premier must consult with the parliamentary leader of each parliamentary party.
- (4) A person appointed as the Electoral Commissioner holds office for such term not exceeding 9 years as is specified in the instrument of appointment, and is eligible for reappointment.

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- (5) The Electoral Commissioner may resign from office by written notice signed by the Electoral Commissioner and given to the Governor.
- (6) The resignation takes effect and the office is vacated —
 - (a) if a day for the resignation to take effect is specified in the written notice and that day is after the day on which the Governor receives the written notice — on the specified day; or
 - (b) otherwise — when the Governor receives the written notice.
- (7) Subject to the *Salaries and Allowances Act 1975*, the Electoral Commissioner shall be paid a salary at such rate as the Governor may determine; and the rate of that salary shall not, without the consent of the Electoral Commissioner, be reduced during the term of office of the Electoral Commissioner.
- (8) The salary payable to the holder of the office of Electoral Commissioner under this section shall be charged to the Consolidated Account which, to the necessary extent, is hereby appropriated accordingly.
- (9) The Electoral Commissioner is entitled to such leave of absence and such travelling and other allowances as the Governor determines.
- (10) A person who is or has been a member of the Parliament of the Commonwealth or any State or Territory cannot be appointed as Electoral Commissioner, and if the Electoral Commissioner is nominated for election for the Parliament of the Commonwealth, or any other State, or a Territory the office of Electoral Commissioner becomes vacant.

- (11) The Electoral Commissioner is guilty of misconduct for the purposes of section 5C(2)(d) if —
- (a) the Electoral Commissioner does any of the following actions (each a *relevant action*) —
 - (i) hold any office of profit or trust (other than the office as Electoral Commissioner);
 - (ii) engage in any occupation for reward outside the duties of the office;
 - and
 - (b) the relevant action is not authorised by resolutions of both Houses of Parliament.
- (12) Section 52 of the *Interpretation Act 1984* does not apply to the office of Electoral Commissioner.

[Section 5B inserted: No. 40 of 1987 s. 20; amended: No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 42 of 1997 s. 8; No. 77 of 2006 s. 4; No. 30 of 2023 s. 6.]

5C. Electoral Commissioner or Deputy Electoral Commissioner, suspension or removal of

- (1) The Electoral Commissioner may, at any time, be suspended or removed from the office by the Governor on addresses from both Houses of Parliament.
- (2) Where the Governor is satisfied that the Electoral Commissioner —
 - (a) is incapable of properly performing the duties of the office; or
 - (b) is incompetent to properly perform, or has neglected, those duties; or
 - (c) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or

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(d) has been guilty of misconduct,

the Governor may suspend the Electoral Commissioner from the office.

(3) When the Electoral Commissioner has been suspended from the office under subsection (2) the Electoral Commissioner must be restored to office unless —

(a) a statement of the grounds of the suspension is laid before each House of Parliament during the first 7 sitting days of that House following the suspension; and

(b) each House of Parliament, during the session in which the statement is so laid, and within 30 sitting days of that statement being so laid, passes an address praying for the Electoral Commissioner's removal from the office.

[Section 5C inserted: No. 40 of 1987 s. 20; amended: No. 18 of 2009 s. 34; No. 30 of 2023 s. 182.]

5D. Appointment of Acting Commissioners

(1) The Governor, on the recommendation of the Premier, may appoint an Acting Electoral Commissioner to act in the office of the Electoral Commissioner —

(a) when the Electoral Commissioner is absent from duty for any reason or is absent from the State; or

(b) when the Electoral Commissioner has been suspended; or

(c) when the office of Electoral Commissioner is vacant.

(2) Before making a recommendation under subsection (1) the Premier must consult with the parliamentary leader of each parliamentary party.

(3) While the Acting Electoral Commissioner is so acting —

(a) the Acting Electoral Commissioner may perform the functions of the Electoral Commissioner, and anything done by the Acting Electoral Commissioner in so

- performing those functions has the like effect as if it were done by the Electoral Commissioner;
- (b) any act or thing that is required under a written law to be done to, by reference to or in relation to the Electoral Commissioner must be regarded as effectually done if done to, by reference to or in relation to the Acting Electoral Commissioner.
- (4) The Governor, on the recommendation of the Premier, may appoint an Acting Deputy Electoral Commissioner to act in the office of the Deputy Electoral Commissioner —
- (a) when the Deputy Electoral Commissioner is absent from duty for any reason or is absent from the State; or
- (b) when the Deputy Electoral Commissioner is acting in the office of Electoral Commissioner under section 5H(2); or
- (c) when the Deputy Electoral Commissioner has been suspended; or
- (d) when the office of Deputy Electoral Commissioner is vacant.
- (5) Before making a recommendation under subsection (4) the Premier must consult with the parliamentary leader of each parliamentary party.
- (6) While the Acting Deputy Electoral Commissioner is so acting —
- (a) the Acting Deputy Electoral Commissioner may perform the functions of the Deputy Electoral Commissioner, and anything done by the Acting Deputy Electoral Commissioner in so performing those functions has the like effect as if it were done by the Deputy Electoral Commissioner;
- (b) any act or thing that is required under a written law to be done to, by reference to or in relation to the Deputy Electoral Commissioner must be regarded as effectually

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done if done to, by reference to or in relation to the
Acting Deputy Electoral Commissioner.

*[Section 5D inserted: No. 40 of 1987 s. 20; amended: No. 64 of
2006 s. 14; No. 30 of 2023 s. 7.]*

5E. Electoral Commissioner etc., other provisions as to

- (1) The *Public Sector Management Act 1994* does not apply to or in relation to the appointment of the Electoral Commissioner and the Electoral Commissioner is not, except as provided in section 4 of that Act, subject to the provisions of that Act.
- (2) The Electoral Commissioner shall, for the purposes of the *Superannuation and Family Benefits Act 1938*², be deemed to be an employee within the meaning of that Act.
- (3) When an officer of the Public Service is appointed to the office of Electoral Commissioner the Electoral Commissioner is entitled to retain all their existing and accruing rights as if their service in the office of Electoral Commissioner were a continuation of their service as an officer of the Public Service.
- (4) When a person ceases to hold the office of Electoral Commissioner and becomes an officer of the Public Service the Electoral Commissioner's service in the office of Electoral Commissioner must be regarded as service in the Public Service for the purposes of determining their rights as an officer of the Public Service.
- (5) Where the Electoral Commissioner immediately before appointment to such an office occupied an office under the *Public Sector Management Act 1994* Part 3, the Electoral Commissioner must, if their term of office expires by effluxion of time and they are not reappointed, be entitled to be appointed to an office under Part 3 of that Act, not lower in status than the office which they occupied immediately prior to appointment as Electoral Commissioner.

- (6) Part 3 of the *Public Sector Management Act 1994* does not apply to an Acting Electoral Commissioner unless, immediately before appointment to that office, they occupied an office under that Act.

[Section 5E inserted: No. 40 of 1987 s. 20; amended: No. 32 of 1994 s. 11; No. 42 of 1997 s. 8; No. 30 of 2023 s. 182.]

5F. Functions of Electoral Commissioner

- (1) The Electoral Commissioner —
- (a) subject to section 5E(1) is the chief executive officer of the Western Australian Electoral Commission; and
 - (b) is responsible for the proper maintenance of rolls and the proper conduct of elections under this Act; and
 - (c) shall consider, and report to the Minister on, electoral matters referred to the Electoral Commissioner by the Minister and such other electoral matters as the Electoral Commissioner thinks fit; and
 - (d) shall promote public awareness of electoral and parliamentary matters by means of the conduct of education and information programmes and by other means; and
 - (e) shall provide information and advice on electoral matters to the Parliament, Members of Parliament, the Government, departments and authorities of the State; and
 - (ea) may conduct other elections, referendums or polls —
 - (i) if authorised to do so under another written law; or
 - (ii) if they are provided for under another written law and the regulations authorise the Electoral Commissioner to conduct them;
- and

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- (eb) may make arrangements with any person for the conduct by the Electoral Commissioner of elections or polls not provided for under a written law on such terms and conditions as are agreed between the Electoral Commissioner and that person; and
 - (ec) may perform a function of a returning officer conferred under this Act if —
 - (i) the returning officer cannot exercise the function; or
 - (ii) it is necessary or convenient for conducting an election;and
 - (f) may conduct and promote research into electoral matters and other matters that relate to their functions; and
 - (g) may publish material on matters that relate to their functions; and
 - (h) shall perform such other functions as are conferred on the Electoral Commissioner by or under this Act or any other written law.
- (2) The Electoral Commissioner may do all things necessary or convenient to be done for or in connection with the performance of their functions.

[Section 5F inserted: No. 40 of 1987 s. 20; amended: No. 36 of 2000 s. 72; No. 64 of 2006 s. 15; No. 30 of 2023 s. 8.]

5G. Delegation by Electoral Commissioner

- (1) The Electoral Commissioner may, by written notice, delegate a function of the Electoral Commissioner under this Act, other than the power to delegate a function, to an officer.
- (1A) The Electoral Commissioner may, by written notice, delegate a function of the Electoral Commissioner under another written law to the Deputy Electoral Commissioner.

- (1B) A delegation under subsection (1) or (1A) may be general or limited in accordance with the written notice.
- (2) Nothing in this section is to be read as limiting the ability of the Electoral Commissioner to act through officers in the normal course of operations.

[Section 5G inserted: No. 40 of 1987 s. 20; amended: No. 36 of 2000 s. 73; No. 30 of 2023 s. 9.]

5H. Deputy Electoral Commissioner, functions of

- (1) The Deputy Electoral Commissioner shall assist the Electoral Commissioner as directed by the Electoral Commissioner and must perform any function delegated to the Deputy Electoral Commissioner under section 5G.
- (2) Subject to section 5D, when —
 - (a) the Electoral Commissioner is absent from duty for any reason or is absent from the State; or
 - (b) the Electoral Commissioner has been suspended; or
 - (c) the office of Electoral Commissioner is vacant,

the Deputy Electoral Commissioner shall act in the office of the Electoral Commissioner during the absence, suspension or vacancy and, while the Deputy Electoral Commissioner is so acting —

- (d) the Deputy Electoral Commissioner may perform all the functions of the Electoral Commissioner and anything done by the Deputy Electoral Commissioner in so performing those functions has the like effect as if it were done by the Electoral Commissioner; and
- (e) any act or thing that is required under a written law to be done to, by reference to or in relation to the Electoral Commissioner shall be regarded as effectually done if

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done to, by reference to or in relation to the Deputy Electoral Commissioner.

[Section 5H inserted: No. 40 of 1987 s. 20; amended: No. 30 of 2023 s. 182.]

5I. Commissioners to have regard to particular groups when performing functions

(1) In this section —

inclusivity principle means the principle that the following persons should be given a reasonable opportunity to enrol and vote —

- (a) Aboriginal persons;
- (b) persons who are from culturally or linguistically diverse communities;
- (c) persons with disability;
- (d) persons who are homeless.

(2) The Electoral Commissioner and Deputy Electoral Commissioner must have regard to the inclusivity principle when performing a function under this Act.

[Section 5I inserted: No. 30 of 2023 s. 10.]

6. Appointing returning officers

(1) The Electoral Commissioner must appoint, in writing —

- (a) a returning officer for the whole of State electorate; and
- (b) a returning officer for each district.

(2) A returning officer appointed under subsection (1) is taken to have been appointed on the day of the appointing instrument unless another day is specified in the appointing instrument as the day of appointment.

[Section 6 inserted: No. 30 of 2023 s. 11.]

7. Appointment of substitute for returning officer

- (1) The Electoral Commissioner may, during the absence or temporary incapacity of any returning officer appoint a substitute to perform the functions of that returning officer.
- (2) However, if the returning officer is prevented from acting by illness or other sufficient cause, and time does not permit a substitute being appointed under subsection (1), the returning officer may appoint a substitute in writing to perform the functions of the returning officer.

[Section 7 inserted: No. 40 of 1987 s. 22; amended: No. 36 of 2000 s. 28(1); No. 30 of 2023 s. 12.]

[8. Deleted: No. 36 of 2000 s. 28(1).]

[9-10. Deleted: No. 30 of 2023 s. 13.]

[11. Deleted: No. 36 of 2000 s. 28(1).]

[12. Deleted: No. 43 of 1996 s. 5.]

13. Restriction on resignation of returning officer after issue of writ

- (1) After the issue of a writ for a Council election —
 - (a) the returning officer for the whole of State electorate must not, without the consent of the Electoral Commissioner, resign from office before complying with section 147(1)(b); and
 - (b) the returning officer for any district must not, without the consent of the Electoral Commissioner, resign from office before the returning officer's functions in relation to the election have been completed.
- (2) After the issue of a writ for an election for a district, the returning officer for that district must not, without the consent

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of the Electoral Commissioner, resign from office before complying with section 147(1)(b).

[Section 13 inserted: No. 20 of 2021 s. 13.]

14. Replacement of returning officer after issue of writ

- (1) If the returning officer for the whole of State electorate dies, resigns, leaves, or is removed, after the issue of a writ for a Council election, the Electoral Commissioner may appoint another person to replace the returning officer and perform the returning officer's functions in relation to the writ and the election so far as they have yet to be completed.
- (2) If the returning officer for a district dies, resigns, leaves, or is removed, after the issue of a writ for a Council election, the Electoral Commissioner may appoint another person to replace the returning officer and perform the returning officer's functions in relation to the election so far as they have yet to be completed.
- (3) If the returning officer for a district dies, resigns, leaves, or is removed, after the issue of a writ for an election for that district, the Electoral Commissioner may appoint another person to replace the returning officer and perform the returning officer's functions in relation to the writ and the election so far as they have yet to be completed.

[Section 14 inserted: No. 20 of 2021 s. 13.]

15. Temporary assistants, appointment of

- (1) The Electoral Commissioner may appoint such temporary assistants as the Electoral Commissioner considers requisite for the due administration of this Act.
- (2) Part 3 of the *Public Sector Management Act 1994* shall not apply to temporary assistants appointed under this section.

[Section 15 amended: No. 40 of 1987 s. 25; No. 32 of 1994 s. 11; No. 30 of 2023 s. 182.]

15A. Officers to make declaration before acting etc.

- (1) A person appointed as an officer under this Act shall make a declaration in the prescribed form before acting in the office and on such other occasions as the Electoral Commissioner may require.
- (2) Subject to subsection (3) a declaration under this section shall be made before an officer authorised by section 207 to witness signatures.
- (3) A declaration by the Electoral Commissioner, the Deputy Electoral Commissioner, an Acting Electoral Commissioner or a returning officer shall be made before a justice of the peace.
- (4) A declaration under this section (other than one made by the Electoral Commissioner) shall be lodged with the Electoral Commissioner or a returning officer.
- (5) If a declaration is lodged with a returning officer the returning officer shall forward it to the Electoral Commissioner.
- (6) All declarations under this section are to be filed at the office of the Electoral Commissioner.

[Section 15A inserted: No. 43 of 1996 s. 6.]

16. People not eligible to be officer etc.

- (1) No candidate, and no person holding any official position in connection with any political organisation or election committee, shall be appointed an officer under this Act.
- (2) If any such officer knowingly becomes a candidate, or is elected, appointed, or otherwise becomes an official of any political organisation or election committee, the officer is taken to have vacated the office held by the officer under this Act, and another person must be appointed in their place.

[Section 16 amended: No. 30 of 2023 s. 182.]

Part IIA — Representation in Parliament

[Heading inserted: No. 1 of 2005 s. 4.]

Division 1 — Preliminary

[Heading inserted: No. 1 of 2005 s. 4.]

16A. Terms used

In this Part —

average district enrolment has the meaning given to that term in section 16G(1);

Commissioners means the Electoral Distribution Commissioners appointed under section 16B including any person appointed under section 16B(2), (3) or (4) to act in the office of an Electoral Distribution Commissioner;

Government Statistician means the Government Statistician appointed under the *Statistics Act 1907*;

Land Information Authority means the Western Australian Land Information Authority established by the *Land Information Authority Act 2006* section 5;

person with judicial experience means a person who is or has been a judge of the Supreme Court of Western Australia;

relevant day, in relation to a division of the State into districts in accordance with this Part, means the day specified in section 16E as the day as soon as practicable after which the division is to be carried out.

[Section 16A inserted: No. 1 of 2005 s. 4; amended: No. 38 of 2008 s. 4; No. 14 of 2014 s. 4; No. 20 of 2021 s. 14 and 93.]

16B. Electoral Distribution Commissioners, appointment of etc.

- (1) For the purposes of this Part there shall be 3 Electoral Distribution Commissioners of whom —
 - (a) one shall be a person with judicial experience, appointed by the Governor on the recommendation of the Premier, who shall be chairman; and
 - (b) one shall be the Electoral Commissioner; and
 - (c) one shall be the Government Statistician.
- (2) If the person appointed an Electoral Distribution Commissioner under subsection (1)(a) is absent or is for any other reason unable to act as an Electoral Distribution Commissioner, the Governor, on the recommendation of the Premier, may appoint another person with judicial experience to act in the office of Electoral Distribution Commissioner and as chairman during the absence or inability.
- (3) A person acting in the office of the Electoral Commissioner under section 5D or 5H(2) shall, while so acting, act in the office of Electoral Distribution Commissioner under subsection (1)(b).
- (4) If the office of the Government Statistician is vacant, or the holder of that office is absent or is for any other reason unable to act as an Electoral Distribution Commissioner, the Governor, on the recommendation of the Premier, may appoint a suitable person to act in the office of Electoral Distribution Commissioner under subsection (1)(c) during the vacancy, absence or inability.
- (4A) Before making a recommendation under subsection (1)(a) or (2) that a judge of the Supreme Court of Western Australia be appointed, the Premier shall consult the Chief Justice of Western Australia.

- (5) Before making a recommendation under subsection (1)(a), (2) or (4) the Premier shall consult with, and seek the written views of, the parliamentary leader or representative of each party and Independent members in the Parliament.
- (5A) A person appointed under subsection (1)(a) shall hold office for such term, not exceeding 5 years, as is specified in his or her instrument of appointment, and is eligible for reappointment once.
- (5B) The appointment of a person who is a judge of the Supreme Court of Western Australia under subsection (1)(a) or (2) does not affect the person's tenure of office as, or status as, a judge of the Supreme Court of Western Australia nor the payment of the person's salary or allowances as a judge nor any other rights or privileges of the person as a judge.
- (5C) If a person appointed under subsection (1)(a) or (2) is not a judge of the Supreme Court of Western Australia, the person's conditions of service as an Electoral Distribution Commissioner, including remuneration and allowances, are to be determined by the Governor from time to time.
- (5D) Any remuneration and allowances paid to a person under subsection (5C) do not affect any entitlements the person may have under the *Judges' Salaries and Pensions Act 1950*.
- (6) The Commissioners shall meet as often as may be necessary for carrying out their duties under this Part.
- (7) For the purposes of this Part —
- (a) the Commissioners have the powers, protections and immunities of a Royal Commission and the Chairman of a Royal Commission under the *Royal Commissions Act 1968*; and

- (b) the provisions of the *Royal Commissions Act 1968* have effect in relation to the Commissioners as if they were enacted in this Act and in terms made applicable to the Commissioners and the performance of the functions of the Commissioners under this Part.
- (8) The moneys reasonably required for the purposes of the Commissioners shall be charged, on the certificate of the Auditor General, to the Consolidated Account, which this subsection appropriates to the necessary extent.

[Section 16B inserted: No. 1 of 2005 s. 4; amended: No. 77 of 2006 s. 4; No. 38 of 2008 s. 5; No. 14 of 2014 s. 5.]

Division 2 — Whole of State electorate and electoral districts

[Heading inserted: No. 20 of 2021 s. 15.]

16C. Whole of State electorate and representation

- (1) The State is a single electorate (the *whole of State electorate*) for the purposes of the election of members of the Council.
- (2) The whole of State electorate will return the number of members of the Council prescribed by the *Constitution Acts Amendment Act 1899* section 5(1) to serve in the Council.

[Section 16C inserted: No. 20 of 2021 s. 15.]

16D. Electoral districts and representation

- (1) The State must be divided into the same number of electoral districts as the number of members of the Assembly prescribed by the *Constitution Acts Amendment Act 1899* section 18(1).
- (2) Each district will return 1 member to serve in the Assembly.

[Section 16D inserted: No. 20 of 2021 s. 15.]

Division 3 — Division of State into districts

[Heading inserted: No. 1 of 2005 s. 4; amended: No. 20 of 2021 s. 16.]

16E. Division of State into districts required after each general election for Assembly

The State must be divided into districts in accordance with this Part as soon as practicable after the day that is 2 years after polling day for each general election for the Assembly.

[Section 16E inserted: No. 20 of 2021 s. 17.]

16F. Commissioners, functions of

- (1) The Commissioners shall divide the State into districts in accordance with this Part whenever a division of the State is required under this Part.
- (2) For the purposes of carrying out their duty under subsection (1) the Commissioners shall —
 - (a) by notice published in the *Gazette* and in a newspaper circulating throughout the State —
 - (i) invite written suggestions relating to the division of the State as required by subsection (1) to be lodged with the Commissioners within 30 days from the day of the publication of the notice in the *Gazette*; and
 - (ii) invite written comments being comments on the suggestions lodged under subparagraph (i) to be lodged with the Commissioners within 14 days from the expiration of the period of 30 days referred to in that subparagraph;

and

- (b) forthwith after the expiration of the period of 30 days referred to in paragraph (a)(i), cause copies of the suggestions lodged with the Commissioners under paragraph (a)(i) to be made available for perusal at the office of the Electoral Commissioner; and
 - (c) consider all of the suggestions and comments lodged with the Commissioners under paragraph (a); and
 - (d) as soon as practicable after the expiration of the period of 14 days referred to in paragraph (a)(ii), formulate proposals for the division of the State in the manner required under subsection (1) and the names proposed to be assigned to the districts and publish in the *Gazette* and in a newspaper circulating throughout the State —
 - (i) a map or maps setting out those proposals; and
 - (ii) a statement of the Commissioners' reasons for making those proposals;and
 - (e) consider any objections in writing that may be lodged with the Commissioners within 30 days from the day of the publication of the map or maps and statement in the *Gazette* under paragraph (d); and
 - (f) as soon as practicable after the expiration of the period of 30 days referred to in paragraph (e), by notice published in the *Gazette*, divide the State in the manner required under subsection (1).
- (3) Any additional details and explanatory information that the Commissioners think appropriate may be included on or published with the map or maps mentioned in subsection (2)(d).
- (4) The notice mentioned in subsection (2)(f) shall set out —
- (a) the average district enrolment at the relevant day; and
 - (b) in respect of each of the districts —
 - (i) the name assigned to the district; and

- (ii) a description of the boundaries fixed for the district; and
- (iii) the number of electors within the boundaries as so fixed,

[(c) deleted]

and shall include a map or maps showing the boundaries of the districts.

(5A) For the purposes of subsection (4)(b)(ii), the boundaries may be described —

- (a) by setting out in the notice a description of the boundaries by reference to any of the following —
 - (i) local government or other administrative boundaries;
 - (ii) cadastral, topographical or other spatial information;
 - (iii) such other matters as the Commissioners think appropriate;

or

- (b) by referring in the notice to a version of a map or maps showing those boundaries that has been lodged with the Land Information Authority under section 16MA(1).

- (5) Suggestions under subsection (2)(a)(i), comments under subsection (2)(a)(ii) and objections under subsection (2)(e) may be made by any person.
- (6) In performing functions under this section, the Commissioners must ensure that the period beginning on the day on which the notice under subsection (2)(a) is published and ending on the day on which the notice under subsection (2)(f) is published does not exceed 8 months.
- (7) The Commissioners may at any time publish in any manner the Commissioners think appropriate a consultation paper

formulated by the Commissioners about any division of the State required under this Part.

[Section 16F inserted: No. 1 of 2005 s. 4; amended: No. 2 of 2005 s. 4(3); No. 14 of 2014 s. 6; No. 20 of 2021 s. 18 and 93.]

16G. Districts, how State to be divided into

- (1) For the purposes of this section the Commissioners shall divide the number of electors by the number of districts, and the result of that division is referred to as the *average district enrolment*.
- (2) The Commissioners shall divide the State into districts in accordance with the principle that, for each district, the number of electors that the district would have had at the relevant day must not be more than 10% greater, or more than 10% less, than the average district enrolment at the relevant day.
- (3) If a district has an area of 100 000 square kilometres or more, subsection (2) does not apply but the sum of —
 - (a) the number of electors that the district would have had at the relevant day; and
 - (b) the large district allowance,must not be more than 10% greater, or more than 20% less, than the average district enrolment at the relevant day.
- (4) In subsection (3) —
large district allowance means 1.5% of the number of square kilometres in the area of the district.

[Section 16G inserted: No. 1 of 2005 s. 4.]

[16H. Deleted: No. 20 of 2021 s. 19.]

16I. Dividing State, matters Commissioners to consider when

In making the division of the State into districts the Commissioners shall give due consideration to —

- (a) community of interest; and

- (b) land use patterns; and
- (c) means of communication, means of travel and distance from the capital; and
- (d) physical features; and
- (e) existing boundaries of districts; and
- (f) existing local government boundaries; and
- (g) the trend of demographic changes.

[Section 16I inserted: No. 1 of 2005 s. 4; amended: No. 14 of 2014 s. 7; No. 20 of 2021 s. 20.]

16J. District boundaries etc., Commissioners may modify etc.

In the exercise of the powers conferred on the Commissioners by this Part, the boundaries of the districts may be modified by the Commissioners by excising portions from them, or by adding other portions to them and the districts may be designated and redesignated.

[Section 16J inserted: No. 1 of 2005 s. 4.]

16K. Effect of notice under s. 16F(2)(f) as to division of State

The division of the State made by the Commissioners in a notice published under section 16F(2)(f) has effect and applies in respect of —

- (a) the first general election for the Assembly held after the day on which the notice is published in the *Gazette*; and
- (b) elections in districts held after that general election and before the first general election for the Assembly held after the day on which another notice is published under section 16F(2)(f).

[Section 16K inserted: No. 20 of 2021 s. 21.]

[16L. *Deleted: No. 20 of 2021 s. 22.]*

16MA. Map or maps of districts generated from digital or electronic record

- (1) For the purposes of preparing a notice for publication under section 16F(2)(f) that will describe the boundaries of the districts into which the State is divided in accordance with section 16F(5A)(b), the Commissioners must —
 - (a) identify the boundaries of the districts by reference to any of the matters referred to in section 16F(5A)(a); and
 - (b) cause those boundaries to be recorded in digital or electronic form in such a way as to be capable of generating a digital, electronic or printed version of a map or maps showing the boundaries of each district; and
 - (c) lodge with the Land Information Authority a version of a map or maps showing the boundaries of each district that is generated from a record made under paragraph (b).
- (2) In any proceedings, the version of a map or maps lodged under subsection (1)(c) is, without proof of any appointment or signature, evidence of the boundaries of the districts fixed under a notice mentioned in section 16F(2)(f) if that notice describes those boundaries by reference to that version.

[Section 16MA inserted: No. 14 of 2014 s. 9.]

16M. One vote one value principle, absolute majorities required for Bills affecting

- (1) A Bill that repeals or alters the *Constitution Acts Amendment Act 1899* section 5(2) or 18(2) or any of the provisions of this Part, other than section 16G(3) or (4), shall not be presented for assent by or in the name of the Queen unless the second and third readings of the Bill shall have been passed with the concurrence of an absolute majority of the whole number of the members for the time being of the Council and the Assembly, respectively.

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- (2) A Bill assented to consequent upon its presentation in contravention of subsection (1) shall be of no effect as an Act.

[Section 16M inserted: No. 1 of 2005 s. 4; amended: No. 20 of 2021 s. 23.]

Part III — Enrolment

Division 1 — Entitlement to be elector

[Heading inserted: No. 30 of 2023 s. 14.]

17. Who is entitled to be enrolled and vote

- (1) Subject to the provisions of this Act, any person —
- (a) who is —
 - (i) an Australian citizen; or
 - (ii) a person (other than an Australian citizen) who would, if the relevant citizenship law had continued in force, be a British subject within the meaning of that relevant citizenship law and who was at some time within 3 months, immediately preceding 26 January 1984, an elector of the Assembly or an elector, under a Commonwealth Act, of the Commonwealth Parliament;
 - and
 - (b) who has attained 18 years of age; and
 - (c) who has lived in the same district for at least 1 month immediately before the enrolment,
- is entitled —
- (d) to be enrolled; and
 - (e) when so enrolled and while continuing to live in that district, to vote in —
 - (i) any Council election; and
 - (ii) any election in the district.
- (2) Subsection (3) applies to a person if —
- (a) the person fulfils the requirements of subsection (1)(a) and (b); and

- (b) the person has lived in a district (the *relevant district*) for a period of at least 1 month ending immediately before the day (the *relevant day*) on which the person intends to vote in an election in the relevant district or a Council election (the *election*); and
 - (c) on the relevant day —
 - (i) the person is not enrolled, or is not enrolled for the relevant district; and
 - (ii) the person presents at a place to vote.
- (3) Subject to sections 145(7) and 172(1)(c), the person is —
- (a) entitled to be enrolled for the relevant district; and
 - (b) if the person makes a claim for enrolment, or a claim for enrolment or transfer of enrolment under the *Commonwealth Electoral Act 1918* to be enrolled on a Commonwealth roll for this State, entitled to vote in the election on the relevant day as a provisional voter under section 97G; and
 - (c) once the person is enrolled for the relevant district and while continuing to live in that district, entitled to vote in —
 - (i) a Council election; and
 - (ii) an election in the district.
- (4) A member of the Assembly and the member's spouse may claim to be enrolled for the district that the member represents.

[(4a)-(5) deleted]

[Section 17 inserted: No. 33 of 1964 s. 6; amended: No. 33 of 1967 s. 3; No. 94 of 1970 s. 3; No. 39 of 1979 s. 6; No. 9 of 1983 s. 4 and 30; No. 104 of 1985 s. 4; No. 40 of 1987 s. 26 and 84; No. 79 of 1987 s. 3; No. 36 of 2000 s. 32(1); No. 64 of 2006 s. 16; No. 7 of 2009 s. 5; No. 14 of 2016 s. 6; No. 20 of 2021 s. 24; No. 30 of 2023 s. 15.]

17AA. Entitlement to be enrolled for persons who attain 16 years of age

- (1) A person is entitled to be enrolled for a district if —
 - (a) the person has attained 16 years of age but has not attained 18 years of age or subsection (3) applies; and
 - (b) the person would be entitled to be enrolled for the district if the person had attained 18 years of age.
- (2) For the purposes of this Act, until a person who is enrolled under subsection (1) attains 18 years of age, the person —
 - (a) is taken not to be an elector; and
 - (b) is not entitled to vote in an election; and
 - (c) is taken to be a silent elector.
- (3) For the purposes of subsection (1)(a) and section 44(4)(a), this subsection applies if —
 - (a) the person who claims to be entitled to be enrolled does not know their age; and
 - (b) a claim for enrolment contains a statement to that effect; and
 - (c) a person who may attest as to the person's identity under the *Commonwealth Electoral Act 1918* section 98AA(2)(c), in relation to an application or claim to which that section applies, certifies in writing that they are satisfied that the claimant has attained 16 years of age and is under 18 years of age.

[Section 17AA inserted: No. 30 of 2023 s. 16.]

17A. Electors leaving Australia but staying on Commonwealth roll to stay on register of electors

- (1) This section applies to a person if —
 - (a) the person is enrolled for a district; and

- (aa) the person's name appears on the electoral roll maintained under the *Commonwealth Electoral Act 1918* for a Commonwealth subdivision in the State in respect of an address that is the same as the person's electoral address; and
 - (b) by virtue of an application made under the *Commonwealth Electoral Act 1918* section 94(1) before the person ceased to reside in Australia, the name of the person is retained on the electoral roll maintained under that Act for the Commonwealth subdivision referred to in paragraph (aa); and
 - (c) the Commonwealth roll referred to in paragraph (b) is annotated to indicate that the person is an eligible overseas elector under the *Commonwealth Electoral Act 1918* section 94.
- (2) While the name of the person continues to be included on the Commonwealth roll referred to in subsection (1)(b) with the annotation referred to in subsection (1)(c) —
- (a) the person is entitled to be, and continues to be, enrolled for the district referred to in subsection (1)(a); and
 - (b) the person is entitled to vote in —
 - (i) any Council election; and
 - (ii) any election in the district for which the person continues to be enrolled.

[Section 17A inserted: No. 64 of 2006 s. 17; amended: No. 20 of 2021 s. 25; No. 30 of 2023 s. 17.]

17B. Enrolment of elector with no fixed address if enrolled on Commonwealth roll

- (1) If —
- (a) a person fulfils the requirements of section 17(1)(a) and (b) but does not live in any particular district in the State; and

- (b) the person's name appears on a roll maintained under the *Commonwealth Electoral Act 1918* in respect of an address in a Commonwealth subdivision in the State with which the person has established a connection under section 96 of that Act; and
- (c) the Commonwealth roll referred to in paragraph (b) is annotated to indicate that the person is an itinerant elector under the *Commonwealth Electoral Act 1918* section 96,

the person is to be enrolled for the district in which the address referred to in paragraph (b) is situated.

- (2) While the name of the person continues to be included on the Commonwealth roll referred to in subsection (1)(b) with the annotation referred to in subsection (1)(c), the person is entitled —
 - (a) to remain enrolled for the district referred to in subsection (1); and
 - (b) to vote in —
 - (i) any Council election; and
 - (ii) any election in the district.

[Section 17B inserted: No. 7 of 2009 s. 6; amended: No. 20 of 2021 s. 26; No. 30 of 2023 s. 18.]

18. People not entitled to vote and be enrolled

- (1) A person is not entitled to vote in an election if the person —
 - (a) is the subject of a lack of capacity notice; or
 - (aa) is not on the Commonwealth roll for this State under the ground specified in the *Commonwealth Electoral Act 1918* section 93(8)(a); or
 - (b) has been convicted of treason and has not been granted a pardon for the offence; or

- (c) is serving or is yet to serve a sentence of detention (imposed under the *Young Offenders Act 1994*), or imprisonment, of 1 year or longer; or
 - (ca) is serving or is yet to serve indefinite imprisonment imposed under the *Sentencing Act 1995* Part 14; or
 - (cb) is subject to an order under section 279(5)(b) of *The Criminal Code*; or
 - (cc) is subject to an order under repealed section 19(6a)(a), 282(c)(iii) or (d)(ii), 653, 661, 662 or 693(4) of *The Criminal Code*; or
 - (cd) is a supervised person as defined in the *Criminal Law (Mental Impairment) Act 2023* section 9(1); or
 - (d) is the holder of a temporary visa for the purposes of the *Migration Act 1958* (Commonwealth) or is an unlawful non-citizen under that Act.
- (2) A person mentioned in subsection (1)(a), (aa), (b) or (d) is not entitled to be enrolled as an elector.

[Section 18 amended: No. 39 of 1934 s. 2; No. 58 of 1951 s. 3; No. 51 of 1962 s. 3; No. 68 of 1964 s. 6; No. 39 of 1979 s. 7; No. 78 of 1995 s. 35; No. 69 of 1996 s. 23; No. 34 of 2004 Sch. 2 cl. 8; No. 84 of 2004 s. 82; No. 64 of 2006 s. 18; No. 29 of 2008 s. 32; No. 7 of 2009 s. 7; No. 30 of 2023 s. 19; No. 10 of 2023 s. 338.]

Division 2 — Register of electors

[Heading inserted: No. 30 of 2023 s. 20.]

19. Register of electors

- (1) The Electoral Commissioner must establish a register (the *register of electors*) for the purposes of enrolling persons under this Act.

- (2) The register of electors must —
 - (a) include the details entered under section 40A of the persons who are enrolled; and
 - (b) not include the names of persons whose names are removed or omitted from the register under this Act.
- (3) The register of electors may be in electronic form.
- (4) The Electoral Commissioner must update the register of electors in accordance with this Part.

[Section 19 inserted: No. 30 of 2023 s. 21.]

[20. Deleted: No. 36 of 2000 s. 28(1).]

[21-30. Deleted: No. 30 of 2023 s. 21.]

31. Arrangement with Commonwealth for single enrolment procedure

- (1) The Governor may arrange with the Governor General of the Commonwealth for the Australian Electoral Officer to perform all or any of the following functions —
 - (a) the receipt and initial checking of claims for enrolment under this Act (including claims under section 45(2)) and the undertaking of enquiries in respect thereof; and
 - (b) the transmission to the Electoral Commissioner of the information necessary for changes to be made to the register of electors under this Act.
- (2) An arrangement entered into under subsection (1) may provide that —
 - (a) the Australian Electoral Officer shall be the officer to whom a claimant shall send any claim under this Act, but that a claim may be sent, or in specified circumstances or cases may be sent, to a Divisional Returning Officer or an Assistant Divisional Returning Officer (within the meaning of those terms in the

Commonwealth Electoral Act 1918) acting on behalf of the Australian Electoral Officer; and

- (b) the Australian Electoral Officer shall have the powers, functions and duties conferred or imposed on the Electoral Commissioner or an enrolment officer by sections 42(1)(c), 44(2) and (3), 44A(3) and (5), and 45(6); and
- (c) a claim shall be in a form provided by the Electoral Commissioner and the Australian Electoral Officer for putting into effect a single enrolment procedure for the purpose of Commonwealth and State elections,

but shall not make provision for the removal of the name of a person from the register of electors otherwise than pursuant to a provision of this Act.

- (3) Where an arrangement is entered into under subsection (1) the Governor may by order, which shall be published in the *Gazette*, declare that a single enrolment procedure is in operation for the purpose of enrolment for Commonwealth and State elections as from such date as is specified in the order.
- (4) An order under subsection (3) —
 - (a) shall be accompanied by an explanatory note indicating briefly to intending claimants the requirements of the single enrolment procedure so far as it affects the making of a claim under this Act;
 - (b) may contain such incidental or transitional provisions as the Governor considers necessary to give effect to this section;
 - (c) may be revoked by the Governor by further order published in the *Gazette*.
- (5) An order under subsection (3), and the arrangement to which it relates shall have effect notwithstanding anything in this Act.

- (6) In this section and in sections 31A and 31B **Australian Electoral Officer** means the Australian Electoral Officer for this State provided for by section 20 of the *Commonwealth Electoral Act 1918* of the Commonwealth Parliament or any provision amending, or in substitution for, that section.

[Section 31 inserted: No. 9 of 1983 s. 5; amended: No. 76 of 1984 s. 4; No. 40 of 1987 s. 84; No. 36 of 2000 s. 28(1) and 29; No. 30 of 2023 s. 22.]

31A. Arrangement with Commonwealth for sharing of information to revise register of electors

- (1) The Governor may arrange with the Governor General of the Commonwealth for the Australian Electoral Officer to notify the Electoral Commissioner (whether in lists or otherwise) of the name and description of —
- (a) each person whose name is removed, in accordance with the *Commonwealth Electoral Act 1918*, from a Commonwealth roll for this State on the ground that the person is no longer living at the address in respect of which the person was enrolled; and
 - (b) each person whose enrolment on a Commonwealth roll for this State is updated or transferred under the *Commonwealth Electoral Act 1918* section 103A; and
 - (c) each person whose name is entered on a Commonwealth roll for this State under the *Commonwealth Electoral Act 1918* section 103B.
- (2) During any period when an arrangement is in operation under subsection (1), section 35A has effect despite anything in this Act other than section 76AB.
- (3) An arrangement for notification under subsection (1)(b) or (c) may relate to additions to or alterations of a Commonwealth roll

whether made before or after the commencement of the *Electoral Amendment Act 2016* section 7.

[Section 31A inserted: No. 14 of 2016 s. 7; amended: No. 30 of 2023 s. 23.]

[31AB. Deleted: No. 30 of 2023 s. 24.]

31B. Arrangement with Commonwealth in relation to silent elector applications under s. 51B

- (1) The Governor may arrange with the Governor General of the Commonwealth for the Australian Electoral Officer to perform the functions of the receipt, assessment and grant or refusal of applications to be a silent elector under section 51B.
- (2) An arrangement entered into under subsection (1) may provide that —
 - (a) the Australian Electoral Officer shall be the officer to whom a person shall send an application under section 51B to be a silent elector, but that an application may be sent, or in specified circumstances and cases may be sent, to a Divisional Returning Officer or an Electoral Officer (within the meaning of those terms in the *Commonwealth Electoral Act 1918*) acting on behalf of the Australian Electoral Officer; and
 - (b) the Australian Electoral Officer shall have the powers, functions and duties conferred on the Electoral Commissioner by section 51B; and
 - (c) an application to be a silent elector under section 51B shall be in a form provided by the Electoral Commissioner and the Australian Electoral Officer for putting into effect a single procedure for the purpose of making an application under section 51B of this Act and the *Commonwealth Electoral Act 1918* section 104.
- (3) Where an arrangement is entered into under subsection (1) the Governor may by order, which shall be published in the

Gazette, declare that a single procedure is in operation for the purpose of making an application to be a silent elector under section 51B of this Act and the *Commonwealth Electoral Act 1918* section 104 from such date as is specified in the order.

- (4) An order under subsection (3) —
- (a) shall be accompanied by an explanatory note indicating briefly the requirements of the procedure insofar as it affects the making of an application to be a silent elector under section 51B;
 - (b) may contain such incidental or transitional provisions as the Governor considers necessary to give effect to this section;
 - (c) may be revoked by the Governor by further order published in the *Gazette*.
- (5) An order under subsection (3), and the arrangement to which it relates shall have effect notwithstanding anything in this Act.

[Section 31B inserted: No. 76 of 1984 s. 6; amended: No. 40 of 1987 s. 84; No. 36 of 2000 s. 28(1) and 29; No. 30 of 2023 s. 25.]

[32, 33. Deleted: No. 36 of 2000 s. 28(1).]

34. Register of electors and other documents not invalid in particular cases

The register of electors, or another document, is not invalid only because the register of electors or the document —

- (a) is not printed, kept or published as required under this Act; or
- (b) contains an error in copying or printing.

[Section 34 inserted: No. 30 of 2023 s. 26.]

35. Public officers to give particular persons information to revise register of electors

All public officers in the service of the State, and all officers in the service of any local government are hereby authorised and required to furnish to the Electoral Commissioner or any officers information the Electoral Commissioner requires to prepare or to revise the register of electors.

[Section 35 amended: No. 40 of 1987 s. 84; No. 14 of 1996 s. 4; No. 30 of 2023 s. 27.]

35A. Electoral Commissioner may revise register of electors due to information received from Commonwealth or State

(1) In this section —

received information, about a person, means information the Electoral Commissioner receives about the person under section 31A or 35.

(2) If the Electoral Commissioner considers, based on received information about a person, that the person is entitled to be enrolled, the Electoral Commissioner may enrol the person.

(3) If the Electoral Commissioner considers, based on received information about a person who is enrolled for a district, that the person's primary residential address in the district (the *new address*) is different to the elector's electoral address, the Electoral Commissioner may change the elector's electoral address to the new address.

(4) If the Electoral Commissioner considers, based on received information about a person, that the person is incorrectly enrolled for a district (the *first district*), but that person is entitled to be enrolled for another district (the *second district*), the Electoral Commissioner may amend the register of electors to change the district for which the person is enrolled from the first district to the second district.

- (5) If the Electoral Commissioner considers, based on received information about a person who is enrolled for a district, that the person is not entitled to be enrolled for that district, the Electoral Commissioner may remove the person's name from the register of electors in relation to the district.

[Section 35A inserted: No. 30 of 2023 s. 28.]

[36. Deleted: No. 36 of 2000 s. 28(1).]

[37. Deleted: No. 30 of 2023 s. 29.]

38. Regulation-making power in relation to enrolment

- (1) The Governor may make regulations for and in relation to —
- (a) enrolment as an elector; and
 - (b) compulsory enrolment of persons as electors, including a procedure for imposing and recovery of penalties by the Electoral Commissioner for offences against the compulsory enrolment provisions of this Act; and
 - (c) anything necessary or convenient to be prescribed for paragraphs (a) and (b).
- (2) Without limiting subsection (1), the regulations may provide —
- (a) subject to subsection (3), that a person entitled to be enrolled must send a claim for enrolment and comply with particular provisions of this Act; and
 - (b) a penalty not exceeding \$50 for the contravention of a regulation made under this section.
- (3) Regulations under subsection (1) must not require a person who has sent a claim for enrolment to sign or send in another claim unless the person has changed their primary residential address.

[Section 38 inserted: No. 30 of 2023 s. 29.]

[39. Deleted: No. 30 of 2023 s. 29.]

40. Changes to register of electors

- (1) The following persons must be removed from the register of electors —
- (a) subject to section 51A, a person who is not entitled to be enrolled, including under section 18;
 - (b) a person who, from information supplied by the chief executive officer as defined in the *Prisons Act 1981* section 3(1), appears to not be entitled to be an elector;
 - (c) a person who does not appear to live in the district for which they are enrolled, unless the person is enrolled under section 17(4), 17A or 17B.
- (2) If a person's name appeared on the register of electors and was removed under subsection (1), an enrolment officer must give notice to the person stating —
- (a) the person's name was removed from the register of electors under subsection (1); and
 - (b) the person may be enrolled again if the person makes and sends a claim to be enrolled.

[Section 40 inserted: No. 30 of 2023 s. 30.]

Division 3 — Enrolment

[Heading inserted: No. 30 of 2023 s. 31.]

40A. When persons are enrolled

A person is *enrolled* if the following details about the person are entered on the register of electors —

- (a) the person's surname;
- (b) the person's given name;
- (c) if a person is enrolled under section 17B — the address referred to in section 17B(1)(b);
- (d) if paragraph (c) does not apply — the person's primary residential address;

- (e) the district for which the person is enrolled;
- (f) the person's gender;
- (g) other prescribed details about the person;
- (h) other details about the person the Electoral Commissioner considers are appropriate or necessary to include in the register of electors.

[Section 40A inserted: No. 30 of 2023 s. 32.]

41. How persons may be enrolled

A person may be enrolled —

- (a) by an enrolment officer pursuant to a claim; or
- (b) by the Electoral Commissioner under section 35A(2).

[Section 41 inserted: No. 30 of 2023 s. 32.]

42. Form of claims

(1) A claim —

- (a) may be in the prescribed form; and
- (b) must be signed by the claimant; and
- (ca) must include or be accompanied by such evidence of identity as is required under the *Commonwealth Electoral Act 1918* section 98AA(2) in relation to an application or claim to which that section applies; and
- (c) must be sent to the Electoral Commissioner.

(2) Despite subsection (1)(b), if —

- (a) the claimant is already enrolled; and
- (b) the claimant's name is still the same as the name under which the claimant is enrolled,

the requirement that the claim be signed is to be taken to be satisfied if the claimant instead satisfies the requirements to be satisfied in respect of a claim under the *Commonwealth Electoral Act 1918* section 382(7).

- (3) If the Electoral Commissioner receives a claim under subsection (1)(c), the Electoral Commissioner must cause the claim, and any application to be a silent elector lodged with it under section 51B(1), to be referred to an officer.
- (4) An officer who receives a claim under subsection (3) must record the claim.

[Section 42 inserted: No. 9 of 1983 s. 6; amended: No. 36 of 2000 s. 28(1); No. 35 of 2012 s. 8; No. 30 of 2023 s. 33.]

[42A. Omitted under the Reprints Act 1984 s. 7(4)(e).]

43. Claims of certain Cwltth electors to be taken to be in order

- (1) In this section —

claim means a claim made —

- (a) on or after 21 November 2006; but
(b) before commencement day;

commencement day means the day on which the *Electoral Amendment Act 2012* Part 3 Division 1 comes into operation;

Commonwealth elector means a person enrolled under the *Commonwealth Electoral Act 1918* in respect of an address in a Commonwealth subdivision in the State;

in order means in order for the purposes of section 44A.

- (2) If a claimant —

- (a) is a Commonwealth elector on commencement day; and
(b) made a claim that was rejected as not in order,

then, on and after commencement day, the claim is to be taken to be in order if the claim would have been in order had it been made on commencement day.

[Section 43 inserted: No. 35 of 2012 s. 9.]

44. Essential parts of claims

- (1) For the purposes of section 44A(1), a claim complies with this section if it includes —
 - (a) the surname and given names in full of the claimant; and
 - (b) the claimant’s primary residential address in accordance with subsection (2) or (3); and
 - (c) subject to subsection (4), the date of birth of the claimant.
- (2) If the claimant’s primary residential address is within a local government district or townsite, the name of the street and the number of the house, if numbered, must be stated, and if not numbered, such particulars must be given as, in the opinion of the enrolment officer, are sufficient to enable the exact locality of the claimant’s primary residential address to be ascertained.
- (3) If the claimant’s primary residential address is not within a local government district or townsite, the claimant’s address must be stated with such particulars as are, in the opinion of the enrolment officer, sufficient to enable the exact locality of the claimant’s primary residential address to be ascertained.
- (4) A claimant need not comply with subsection (1)(c) if —
 - (a) the claimant is entitled to be enrolled under section 17AA(1) and section 17AA(3) applies to the claimant; or
 - (b) in any other case —
 - (i) the claimant is unable to include in their claim the date of birth because it is not known to them; and
 - (ii) the claim contains a statement to that effect; and
 - (iii) a person who may attest as to the claimant’s identity under the *Commonwealth Electoral Act 1918* section 98AA(2)(c), in relation to an application or claim to which that section

applies, certifies in writing that they are satisfied that the claimant is not under 18 years of age.

[Section 44 amended: No. 44 of 1911 s. 14 and 43; No. 63 of 1948 s. 7; No. 33 of 1964 s. 16; No. 68 of 1964 s. 8; No. 33 of 1967 s. 6; No. 94 of 1970 s. 4; No. 39 of 1979 s. 9; No. 31 of 1982 s. 4; No. 9 of 1983 s. 9; No. 79 of 1987 s. 9; No. 14 of 1996 s. 4; No. 36 of 2000 s. 28(2); No. 35 of 2012 s. 10; No. 30 of 2023 s. 34.]

44A. Enrolment of claimants and rejection of claims

- (1) A claim is in order for the purposes of this section if it complies with sections 42(1)(b) and (ca) and 44.
- (2) The enrolment officer must enrol a claimant if the claimant's claim —
 - (a) is in order and is not objected to by the enrolment officer under section 47; or
 - (b) although it is not in order on receipt by the enrolment officer, is —
 - (i) rectified as mentioned in subsection (5); and
 - (ii) not objected to by the enrolment officer under section 47.
- (2A) After enrolling the claimant under subsection (2), the enrolment officer must give the claimant a notice stating that —
 - (a) the claimant has been enrolled; and
 - (b) if the claimant is enrolled under section 17AA(1) —
 - (i) the claimant is taken to be a silent elector under section 17AA(2)(c); and
 - (ii) unless the claimant applies to be a silent elector under section 51B, the claimant will no longer be a silent elector when the claimant attains 18 years of age.

- (3) If a claim is not in order the enrolment officer must —
 - (a) reject it and give notice of the rejection to the claimant in the prescribed form; or
 - (b) make enquiries or seek further information under subsection (5).
- (4) The enrolment officer may exercise any power mentioned in subsection (3) notwithstanding that the power is for the time being vested also in the Australian Electoral Officer for this State pursuant to section 31.
- (5) If a part of a claim is not in order but the enrolment officer considers that any defect in that part may be able to be rectified as a result of the making of enquiries or the seeking of further information or otherwise, the enrolment officer may, for that purpose and without prejudice to enrolment as provided in subsection (2)(b), defer rejection of the claim until the enrolment officer considers it is no longer expedient to seek to have the claim rectified.

[Section 44A inserted: No. 9 of 1983 s. 10; amended: No. 36 of 2000 s. 28(1) and (2); No. 35 of 2012 s. 11; No. 30 of 2023 s. 35.]

45. Offences in relation to compulsory enrolment

- (1) A person who is entitled to be enrolled for a district, otherwise than under section 17AA(1), and who is not enrolled for the district at the end of the period of 21 days beginning on the day they become entitled to be enrolled, or on any subsequent day while they continue to be entitled to be enrolled, commits an offence.
Penalty for this subsection: a fine of \$50.
- (2) A person (including a silent elector) who is enrolled for a district, and who changes their primary residential address from 1 address in the district to another address in the district, must,

within 21 days after the change, give notice in writing of the new address to the Electoral Commissioner.

Penalty for this subsection: a fine of \$50.

- (3) The fact that a person who is entitled to be enrolled for a district is not enrolled at the end of the period of 21 days beginning on the day they become entitled to be enrolled for the district is prima facie evidence of a contravention of subsection (1).
- (4) A person does not contravene subsection (1) if they prove that their non-enrolment is not because of their failure to send or deliver to the Electoral Commissioner a claim in the prescribed form duly filled in and signed in accordance with the directions printed on the form.
- (5) A person does not contravene this section if the person is not enrolled as provided in subsection (1), or fails to comply with subsection (2), because the person has a physical or mental impairment.
- (6) The Electoral Commissioner or the enrolment officer must issue a receipt to a person for each claim received from the person.
- (7) If a person sends a claim for enrolment to the Electoral Commissioner or lodges a claim for enrolment under the *Commonwealth Electoral Act 1918*, proceedings must not be instituted against the person for any offence against subsection (1) before the claim was sent or the person was enrolled.
- (8) If a person gives a notice in writing of a new primary residential address to the Electoral Commissioner or lodges a claim for enrolment under the *Commonwealth Electoral Act 1918*, proceedings must not be instituted against the person for any offence against subsection (2) committed before the notice was sent.

[Section 45 inserted: No. 30 of 2023 s. 36.]

[(2) deleted]

- (3) The following provisions apply where the enrolment officer decides to object to a claim:
- (a) The enrolment officer shall give notice of objection to the claimant setting forth —
 - (i) the grounds of objection; and
 - (ii) that unless notice of appeal is given within a time stated (not being less than 7 days) specifying the grounds of the appeal, the claim will be rejected.

The notice of objection may be in the prescribed form, and a form of notice of appeal shall be annexed thereto.

- (b) If notice of appeal is not duly given, the enrolment officer may reject the claim.
- (ba) If notice of appeal is duly given and the enrolment officer is satisfied on the grounds specified in the notice of appeal that the claimant is entitled to be enrolled the enrolment officer shall withdraw the objection.
- (c) If notice of appeal is duly given and the enrolment officer is not satisfied on the grounds specified in the notice of appeal that the claimant is entitled to be enrolled the enrolment officer shall set down the objection for hearing by the Electoral Commissioner, who shall appoint a day and place for the hearing.
- (d) The enrolment officer shall give notice to the claimant of the day and place appointed for the hearing.
- (e) The Electoral Commissioner must hear and determine the objection, and may direct the enrolment officer to enrol the claimant or reject the claim, as the Electoral Commissioner thinks fit, but no grounds of objection can be entertained except such as are specifically set forth in the notice of objection.

Subdivision 2 — To enrolment

[Heading inserted: No. 14 of 2016 s. 28(2).]

48. Objections to enrolment

- (1) A person's enrolment for a district may be objected to —
 - (a) by an elector enrolled for the district; or
 - (b) by an enrolment officer if the enrolment officer has reason to believe that the name should not be retained on the register of electors.
- (2) If the objection is by an elector, the following provisions shall apply:
 - (a) The objection shall be in writing lodged in duplicate with the Electoral Commissioner, setting forth the grounds thereof, and may be in the prescribed form.
 - (b) The sum of \$50 shall be deposited with the Electoral Commissioner, and shall be forfeited if the objection is held not to be reasonable.
 - (ba) The Electoral Commissioner shall cause the objection to be referred to an enrolment officer.
 - (c) The enrolment officer shall set down the objection for hearing by the Electoral Commissioner, who shall appoint a day and place for the hearing.
 - (d) The enrolment officer shall give notice to the objector and the person objected to of the day and place appointed for the hearing, and a copy of the objection, setting forth the ground thereof, shall be sent therewith to the person objected to.
 - (e) The person objected to, may, on the hearing of the objection, either —
 - (i) appear in person to prove their claim, or
 - (ii) appear by an agent appointed in writing under their hand, or

- (iii) forward by post, addressed to the enrolment officer, a statement made by the person objected to and signed before another elector of the same district, setting forth reasons for their remaining on the register of electors.
 - (f) The Electoral Commissioner must hear and determine the objection, and may direct the enrolment officer to retain the name on the register of electors, or to remove the name from the register of electors, or to make such amendment as may be necessary according to such determination; but no grounds of objection can be entertained except such as are specifically set forth in the objection lodged as aforesaid.
- (3) If the objection is by an enrolment officer, the following provisions shall apply:
 - (a) The enrolment officer shall give notice of objection to the person objected to setting forth —
 - (i) the grounds of objection; and
 - (ii) that unless notice of appeal is given specifying the grounds of the appeal within a time stated (not being less than 7 days), the name of the elector will be removed from the register of electors.

The notice of objection may be in the prescribed form, and a form of notice of appeal must be attached to the notice.
 - (b) If notice of appeal is not duly given, the enrolment officer may remove the name from the register of electors.
 - (ba) If notice of appeal is duly given and the enrolment officer is satisfied on the grounds specified in the notice of appeal that the person objected to is entitled to remain enrolled the enrolment officer shall withdraw the objection.

- (c) If notice of appeal is duly given and the enrolment officer is not satisfied on the grounds specified in the notice of appeal that the person objected to is entitled to remain enrolled the enrolment officer shall set down the objection for hearing by the Electoral Commissioner, who shall appoint a day and place for the hearing.
 - (d) The enrolment officer shall give notice to the person objected to of the day and place appointed for hearing.
 - (e) The Electoral Commissioner must hear and determine the objection, and may direct the enrolment officer to retain the name on the register of electors, or to remove the name from the register of electors, or to make such amendment as may be necessary according to such determination; but no grounds of objection can be entertained except such as are specifically set forth in the notice of objection.
- (4) The name of every elector whose enrolment is objected to shall be publicly exhibited outside such place or places as the Electoral Commissioner may direct, and maintained there until the objection is heard and determined.

[(5) *deleted*]

[Section 48 amended: No. 44 of 1911 s. 43; No. 63 of 1948 s. 9; No. 33 of 1964 s. 17; No. 68 of 1964 s. 10; No. 113 of 1965 s. 8; No. 54 of 1983 s. 7; No. 40 of 1987 s. 32 and 84; No. 79 of 1987 s. 12; No. 36 of 2000 s. 28(1), (2) and (3); No. 64 of 2006 s. 24; No. 20 of 2021 s. 31; No. 30 of 2023 s. 39.]

Subdivision 3 — Powers of Electoral Commissioner on appeal

[Heading inserted: No. 14 of 2016 s. 28(3).]

49. Electoral Commissioner's powers

- (1) The Electoral Commissioner shall, for the purposes of this Part, be deemed to be and shall have all the powers of the Magistrates Court, and if any objection, except an objection by an enrolment

51A. Persons who lack capacity to vote not to be on register of electors

- (1) The Electoral Commissioner must not include, or must remove, a person's name from the register of electors if the person —
- (a) is the subject of a lack of capacity notice; or
 - (b) is not on the Commonwealth roll for this State under the ground specified in the *Commonwealth Electoral Act 1918* section 93(8)(a).

Note for this subsection:

Under section 18(1)(a) and (aa) and (2), a person is not entitled to vote in an election nor be enrolled as an elector if paragraph (a) or (b) of this subsection applies.

- (2) If the Electoral Commissioner takes action under subsection (1), the Electoral Commissioner must give the relevant person a notice stating —
- (a) the action taken; and
 - (b) the reason the action has been taken; and
 - (c) the effect of subsection (3).
- (3) A person whose name has not been included, or has been removed, from the register of electors under subsection (1) may be enrolled if —
- (a) subsection (1)(a) or (b) no longer apply to the person; and
 - (b) the person is entitled to be enrolled; and
 - (c) the person makes a claim for enrolment.

[Section 51A inserted: No. 30 of 2023 s. 41.]

51AA. Removal of name following declaration by SAT

- (1) On receipt of notice of a declaration under the *Guardianship and Administration Act 1990* section 111 in respect of an elector by the State Administrative Tribunal, the Electoral

Commissioner must cause the name of that elector to be removed from the register of electors.

- (2) A person whose name has been removed from the register of electors under subsection (1) may be enrolled if —
- (a) the declaration referred to in subsection (1) is no longer in force; and
 - (b) the person is entitled to be enrolled; and
 - (c) the person makes a claim for enrolment.

[Section 51AA inserted: No. 24 of 1990 s. 123; amended: No. 69 of 1996 s. 26; No. 36 of 2000 s. 28(1); No. 55 of 2004 s. 468; No. 25 of 2014 s. 60; No. 30 of 2023 s. 42.]

51B. Silent electors

- (1) A person may apply to the Electoral Commissioner to be a silent elector if the person —
- (a) is an elector or is claiming enrolment; and
 - (b) considers that having the person's electoral address shown on a roll or a register extract places, or would place, the personal safety of that person, or members of the family of that person, at risk (the **relevant risk**).
- (2) An application under subsection (1) must —
- (a) be in the approved form; and
 - (b) state the particulars of the relevant risk; and
 - (c) be verified by statutory declaration either by the person making the application or another person.
- (3) If the Electoral Commissioner is satisfied of the relevant risk, the Electoral Commissioner must —
- (a) grant the application; and
 - (b) give the person a written notice stating the decision; and
 - (c) indicate in the register of electors the person's status as a silent elector.

- (4) If the Electoral Commissioner is not satisfied of the relevant risk, the Electoral Commissioner must —
- (a) refuse the application; and
 - (b) give the person a written notice stating —
 - (i) the decision; and
 - (ii) the reasons for the decision.

Notes for this section:

1. Under section 62A(2)(b)(ii), a register extract must not include a silent elector's electoral address.
2. Under sections 76AA(5) and 76AC(3)(d), rolls prepared under those sections must not include a silent elector's electoral address.

[Section 51B inserted: No. 30 of 2023 s. 43.]

51C. Review of register of electors in relation to silent electors

- (1) The Electoral Commissioner may request that an enrolment officer conduct a review of the register of electors in relation to silent electors.
- (2) If an enrolment officer considers that the relevant risk as defined in section 51B(1)(b) may not exist in relation to a silent elector, the enrolment officer must give the silent elector a written notice stating that —
- (a) the enrolment officer considers that the relevant risk may not exist; and
 - (b) as a result, the enrolment officer may revoke the silent elector's status as a silent elector under subsection (3); and
 - (c) within a reasonable period stated in the notice, the silent elector may make submissions about whether the silent elector's status should be revoked.
- (3) If the enrolment officer is satisfied that, after having regard to submissions (if any) received under subsection (2)(c), the relevant risk does not exist, the enrolment officer must revoke the elector's status as a silent elector.

- (4) If the enrolment officer makes a decision under subsection (3), the enrolment officer must —
- (a) give the elector a notice in writing stating —
 - (i) the decision; and
 - (ii) if the decision is to revoke the elector’s status as a silent elector — the reasons for the decision;
 - and
 - (b) if the decision is to revoke the elector’s status as a silent elector — alter the register of electors to remove the elector’s status as a silent elector.

[Section 51C inserted: No. 30 of 2023 s. 43.]

52. Permitted alterations to register of electors

- (1) In addition to the other powers of alteration conferred by this Act, the register of electors may be altered by the Electoral Commissioner or by an enrolment officer as follows:
- (a) By correcting any obvious mistake or omission, but not to the extent of wholly removing a name from the register of electors except where a name is repeated.
 - (aa) By altering the particulars of the enrolment of an elector so as to record any change therein resulting from —
 - (i) the numbering or renumbering of a street or locality; or
 - (ii) the naming or renaming of a street or locality; or
 - (iii) any other like circumstance.
 - (b) By removing the name of any person who requests in writing that their name may be removed from the register of electors.
 - (c) By changing, upon the written application of an elector, the electoral address of the elector to an altered name or address.
 - [(d) deleted]*

- (e) By removing the names of persons reported as being —
 - (i) dead;
 - (ii) disqualified by section 18;
 - (iii) already enrolled in another district or whose names are repeated on the same roll.
- (f) By re-instating any name removed by mistake under the last preceding paragraph.

[(g) deleted]

[(2) deleted]

[Section 52 amended: No. 44 of 1911 s. 18 and 43; No. 63 of 1948 s. 11; No. 68 of 1964 s. 11; No. 28 of 1970 s. 7; No. 39 of 1979 s. 10; No. 40 of 1987 s. 36 and 84; No. 79 of 1987 s. 13; No. 36 of 2000 s. 28(3); No. 35 of 2012 s. 30; No. 30 of 2023 s. 44.]

[53-55. Deleted: No. 30 of 2023 s. 45.]

56. Registrar of Births, Deaths and Marriages to notify Electoral Commissioner of deaths in State

The Registrar of Births, Deaths and Marriages must, as soon as is reasonably practicable after the end of each month, forward to the Electoral Commissioner a list, in the prescribed form, containing the names, address, occupation, and age at the time of death of every person not under 16 years of age, whose death has been registered in the State during the month.

[Section 56 inserted: No. 40 of 1998 s. 11(b); amended: No. 36 of 2000 s. 82; No. 30 of 2023 s. 46.]

[57. Deleted: No. 69 of 1996 s. 27.]

[58. Deleted: No. 58 of 1951 s. 6.]

59. Electoral Commissioner to be informed about particular prisoners and detained persons

(1) In this section —

chief executive officer, prisons means the chief executive officer as defined in the *Prisons Act 1981* section 3;

Mental Impairment Review Tribunal registrar means the registrar of the Mental Impairment Review Tribunal under the *Criminal Law (Mental Impairment) Act 2023* section 188(1);

~~*mentally impaired accused* has the meaning given to that term in the *Criminal Law (Mentally Impaired Accused) Act 1996* Part 5;~~

prisoner means a person of a kind referred to in section 18(1)(b) to (cd) who is detained in a prison;

required information, in relation to a person, means that person's name, address, date of birth, occupation and sex;

supervised person has the meaning given in the *Criminal Law (Mental Impairment) Act 2023* section 9(1).

(2) As soon as practicable after the beginning of each month —

(a) the chief executive officer, prisons must forward to the Electoral Commissioner —

(i) a list containing the required information for each person who became a prisoner during the preceding month; and

(ii) a list containing the required information for each person who ceased to be a prisoner during the preceding month;

and

(b) the Mental Impairment Review Tribunal registrar must forward to the Electoral Commissioner —

(i) a list containing the required information for each person who became a supervised person during the preceding month; and

- (ii) a list containing the required information for each person who ceased to be a supervised person during the preceding month.
- (3) Within 4 days after the date of the writ for an election —
 - (a) the chief executive officer, prisons must forward to the Electoral Commissioner —
 - (i) a list containing the required information for each person who became a prisoner during the period since the end of the most recent month in relation to which a list was forwarded under subsection (2)(a)(i); and
 - (ii) a list containing the required information for each person who ceased to be a prisoner during the period since the end of the most recent month in relation to which a list was forwarded under subsection (2)(a)(ii);
 - and
 - (b) the Mental Impairment Review Tribunal registrar must forward to the Electoral Commissioner —
 - (i) a list containing the required information for each person who became a supervised person during the period since the end of the most recent month in relation to which a list was forwarded under subsection (2)(b)(i); and
 - (ii) a list containing the required information for each person who ceased to be a supervised person during the period since the end of the most recent month in relation to which a list was forwarded under subsection (2)(b)(ii).
- (4) If required information is forwarded to the Electoral Commissioner under subsection (2)(a)(i) or (3)(a)(i) in relation to a person referred to in section 18(1)(c), the chief executive officer, prisons must include in the list containing the required

information the length of the term of detention or imprisonment of the person.

~~(5) The references in subsections (2)(b) and (3)(b) to a supervised person include a reference to a mentally impaired accused.~~

~~[(5) deleted]~~

[Section 59 inserted: No. 64 of 2006 s. 25; amended: No. 7 of 2009 s. 10; No. 17 of 2014 s. 11; No. 30 of 2023 s. 47; No. 10 of 2023 s. 339¹⁴.]

60. Changes to register of electors required due to information given under s. 56 and 59

- (1) Upon receipt of a list under section 56, the Electoral Commissioner must cause the names of such persons enumerated in such lists, as are enrolled as electors for the Council and Assembly, to be ascertained and removed from the register of electors.
- (2) Upon receipt of a list under section 59(2)(a)(i), (2)(b)(i), (3)(a)(i) or (3)(b)(i), the Electoral Commissioner must cause the names of the persons on the list who are enrolled as electors to be ascertained and cause the register of electors to be annotated in a manner that will enable those persons to be identified for the purposes of section 18(1).
- (3) Upon receipt of a list under section 59(2)(a)(ii), (2)(b)(ii), (3)(a)(ii) or (3)(b)(ii), the Electoral Commissioner must cause the names of the persons who are on the list, and in respect of whom there is an annotation under subsection (2), to be ascertained and cause that annotation to be removed from the register of electors.

[Section 60 amended: No. 44 of 1911 s. 21; No. 33 of 1964 s. 22; No. 68 of 1964 s. 12; No. 40 of 1987 s. 84; No. 24 of 1990 s. 123; No. 36 of 2000 s. 28(1); No. 64 of 2006 s. 26; No. 30 of 2023 s. 48.]

61. General postal voters

- (1) An elector may apply to the Electoral Commissioner to be registered as an elector who votes by postal voting in every election and referendum (a *general postal voter*) if the elector —
- (a) has an electoral address that will not be within 20 km, by the nearest practicable route, of a polling place; or
 - (b) is seriously ill or infirm or has a permanent mental impairment or physical impairment; or
 - (c) has attained 70 years of age; or
 - (d) will be unable to attend a polling place because the elector is caring for a person mentioned in paragraph (b); or
 - (e) will be unable to attend a polling place because the elector is a member of a religious order or because of the elector's religious beliefs; or
 - (f) is a silent elector; or
 - (g) is entitled to vote under section 17A(2).

Note for this subsection:

See sections 62 and 100P for offences in relation to an application made under this subsection.

- (2) The application must be in writing and —
- (a) state the applicant's name and electoral address; and
 - (b) contain a statement by the applicant —
 - (i) to the effect that the applicant is an elector; and
 - (ii) that the applicant is eligible to be a general postal voter, and the basis for the eligibility;
- and
- (c) subject to subsection (3), be signed by the applicant; and
 - (d) if the applicant expects to be absent from the applicant's electoral address when the postal ballot paper will be

sent by the issuing officer — state an address to which the postal ballot paper must be sent.

- (3) If an elector who wishes to make an application under subsection (2) satisfies a witness that the elector is unable to sign the application because the elector has a sight impairment or other physical impairment or has insufficient literacy skills, the elector may, before the witness, make a distinguishing mark on the application.
- (4) The Electoral Commissioner may grant an application if —
- (a) the application is validly made; and
 - (b) the Electoral Commissioner is satisfied the elector is entitled to be registered as a general postal voter.

Note for this subsection:

A person whose application is granted under this provision must be sent a postal ballot paper and other documents for an election under section 100D, for a referendum under section 100D as applied by the *Referendums Act 1983* section 18(c), or for an election and referendum held on the same day under the *Referendums Act 1983* section 19(aa).

- (5) Upon making a decision under subsection (4), the Electoral Commissioner must —
- (a) give the elector a written notice of the decision; and
 - (b) if the decision is to reject the application — state the reasons for the decision.
- (6) The Electoral Commissioner may, by written notice given to an elector, revoke the elector's registration as a general postal voter at any time other than during the period —
- (a) beginning on the issue of the writ for an election in which the elector is entitled to vote or a referendum; and
 - (b) ending on the return of the writ for the election or referendum.

[Section 61 inserted: No. 30 of 2023 s. 49.]

62. Offences in relation to applications to be general postal voters

- (1) A person commits a crime if the person distributes or makes available a form for making an application under section 61(1), or causes or permits a form for making an application to be distributed or made available, unless —
- (a) the person is authorised by the Electoral Commissioner to do so; or
 - (b) the form is accompanied by a statement advising that when the application has been completed it must be returned directly to the Electoral Commissioner.

Penalty for this subsection: imprisonment for 2 years and a fine of \$24 000.

- (2) A person must not persuade or induce an elector, or associate with any other person in persuading or inducing an elector, to make an application under section 61(1).

Penalty for this subsection: a fine of \$1 000.

- (3) An elector must not make, and a person must not induce an elector to make, a false statement in an application under section 61(1).

Penalty for this subsection: a fine of \$1 000.

- (4) If an elector gives a person an application made under section 61(1) so that the person can send or deliver the application to an officer, the person must send or deliver it to an officer.

Penalty for this subsection: a fine of \$1 000.

[Section 62 inserted: No. 30 of 2023 s. 49.]

[62A. *Deleted: No. 30 of 2023 s. 50.]*

Division 6 — Accessing enrolment information

62A. Preparing register extracts for disclosure

- (1) The Electoral Commissioner must cause an extract of the register of electors (a *register extract*) to be prepared for the purposes of being disclosed or made available to persons under this Act.
- (2) A register extract —
 - (a) may relate to —
 - (i) the electors in 1 or more districts; or
 - (ii) the electors in the whole of State electorate;and
 - (b) if the extract relates to 1 district — must include —
 - (i) subject to regulations made under subsection (4), the name of each elector who is enrolled for the district when the extract is prepared; and
 - (ii) the electoral address of an elector, other than a silent elector, whose name appears on the extract under subparagraph (i);and
 - (c) if the extract relates to more than 1 district or the whole of State electorate — must include —
 - (i) subject to regulations made under subsection (4), the name of each elector who is enrolled when the extract is prepared and the district for which they are enrolled; and
 - (ii) the electoral address of an elector, other than a silent elector, whose name appears on the extract under subparagraph (i);and
 - (d) must state the date on which it was prepared; and

- (e) must not include the names of persons whose names are removed or omitted from the register of electors under this Act; and
 - (f) must not be inconsistent with regulations made under subsection (4).
- (3) A register extract may be in electronic form.
- (4) The regulations may provide for and in relation to the information that is included on the register extract, including —
- (a) requiring that the register extract include, or not include, certain names or details of electors contained in the register of electors; or
 - (b) permitting the register extract to include, or not include, certain details contained in the register of electors.

Example for this subsection:

The regulations may provide that the names of silent electors must not be included in a register extract.

[Section 62A inserted: No. 30 of 2023 s. 51.]

62AA. Public inspection of register extracts

- (1) The Electoral Commissioner must make a register extract available for inspection by the public, without fee, at the office of the Electoral Commissioner.
- (2) The Electoral Commissioner may, subject to regulations made under section 62A(4), decide on the form in which a register extract or roll is made available for inspection by the public under subsection (1).

[Section 62AA inserted: No. 30 of 2023 s. 51.]

62AB. Disclosing particular information to members of Parliament and parliamentary parties

- (1) In this section —
relevant information, in relation to an elector, means —
- (a) if the elector is not a silent elector —
 - (i) the elector’s electoral address; and
 - (ii) if the elector has provided a separate postal address to the Electoral Commissioner — the postal address;
 - and
 - (b) details of when the particulars on the register of electors relating to the elector were entered or most recently changed; and
 - (c) the local government district in which, and if that local government district is divided into wards, the ward in which, the elector’s electoral address is situated; and
 - (d) the elector’s date of birth.
- (2) A parliamentary party that has a branch or division in a district may request that the Electoral Commissioner disclose any or all of the following —
- (a) a register extract in relation to the district;
 - (b) a roll for a district that has been prepared for an election;
 - (c) the relevant information relating to each elector in the district.
- (3) A member of the Council may request that the Electoral Commissioner disclose any or all of the following —
- (a) a register extract;
 - (b) a roll that has been prepared for a Council election;

- (c) the relevant information relating to each elector.
- (4) A member of the Assembly may request that the Electoral Commissioner disclose any or all of the following —
 - (a) a register extract in relation to the district for which the member was elected;
 - (b) the relevant information relating to each elector in the district.
- (5) The Electoral Commissioner —
 - (a) must disclose the information in accordance with a request made under this section without charge; and
 - (b) may disclose the information electronically.
- (6) However, the Electoral Commissioner must not disclose the addresses of silent electors under subsection (5).

[Section 62AB inserted: No. 30 of 2023 s. 51.]

62AC. Disclosing particular information to persons other than parliamentary parties and members of Parliament

- (1) A person who is not a parliamentary party or a member of the Council or the Assembly may request that the Electoral Commissioner disclose enrolment information.
- (2) The Electoral Commissioner may disclose enrolment information to the person.
- (3) However, the Electoral Commissioner must not disclose the enrolment information under subsection (2) unless —
 - (a) the Electoral Commissioner considers that the public interest in making the enrolment information available outweighs the public interest in protecting the privacy of personal information; and

- (b) the person gives the Electoral Commissioner an undertaking that the person —
 - (i) will only use the requested enrolment information for the purpose for which the Electoral Commissioner agreed to disclose it; and
 - (ii) will not copy the enrolment information or disclose it to any other person or organisation; and
 - (iii) will return the enrolment information to the Electoral Commissioner or destroy the enrolment information after using it for the purpose for which the Electoral Commissioner agreed to disclose it.
- (4) The Electoral Commissioner must not disclose the addresses of silent electors under subsection (2).
- (5) The regulations may provide that a silent elector's name may be omitted when the Electoral Commissioner discloses enrolment information available under subsection (2).
- (6) The Electoral Commissioner may charge a fee that covers the cost of disclosing enrolment information under this section.

[Section 62AC inserted: No. 30 of 2023 s. 51.]

62AD. Disclosing enrolment information to government departments

The Electoral Commissioner may disclose enrolment information to a person employed in a department or an organisation as those terms are defined in the *Public Sector Management Act 1994* section 3(1) in accordance with an arrangement with its chief executive officer or chief employee.

[Section 62AD inserted: No. 30 of 2023 s. 51.]

62AE. Restricted use of information given under this Division

A person to whom information has been disclosed under section 62AB(5), 62AC(2) or 62AD must not use that information except for a permitted purpose.

Penalty: a fine of \$10 000.

[Section 62AE inserted: No. 30 of 2023 s. 51.]

62AF. Restricted use of protected information given under this Division

- (1) For the purposes of this section, information disclosed under section 62AB(5), 62AC(2) or 62AD is **protected information** in relation to a person if the person knows, or has reasonable grounds for believing, that the information has been disclosed under section 62AB(5), 62AC(2) or 62AD.
- (2) A person must not use or disclose protected information unless the use or disclosure is for a permitted purpose.

Penalty for this subsection:

- (a) if the information is used or disclosed for a commercial purpose — a fine of \$100 000;
- (b) otherwise — a fine of \$10 000.

[Section 62AF inserted: No. 30 of 2023 s. 51.]

Part IIIA — Registration of political parties

[Heading inserted: No. 36 of 2000 s. 63.]

62B. Scope of Part

This Part sets out the way in which certain political parties may become registered for various purposes under this Act.

[Section 62B inserted: No. 36 of 2000 s. 63.]

62C. Terms used

(1) In this Part —

election period, in relation to an election, means the period commencing on the day of issue of the writ for the election and ending on the last day for the return of the writ;

eligible political party means a political party that has at least 500 members who are electors and that has a constitution that specifies as 1 of its objects or activities the promotion of the election to the Parliament of the State of a candidate or candidates endorsed by it.

[(2) deleted]

(3) For the purposes of this Part, if the Assembly has expired or been dissolved, a reference to a member of the Assembly is a reference to a person who was a member of it immediately before it expired or was dissolved.

(4) If a political party (the *State party*) is the branch or division for this State of a political party (the *parent body*) that is organised on a basis that includes this State and another State or Territory or other States or Territories, the reference to the constitution of the State party in the definition of *eligible political party* in subsection (1) includes a reference to the constitution of the parent body.

[Section 62C inserted: No. 36 of 2000 s. 63; amended: No. 20 of 2021 s. 33; No. 30 of 2023 s. 52.]

s. 62CA

62CA. Membership requirements for qualification as eligible political party

- (1) For the purposes of this Part, 2 or more political parties cannot rely on the same person as a member for the purpose of qualifying or continuing to qualify as an eligible political party.
- (2) If 2 or more political parties purport to rely on the same person as a member for the purpose described in subsection (1), the following provisions apply —
 - (a) the Electoral Commissioner must, in accordance with the regulations, give the person an opportunity to nominate the political party entitled to rely on the person;
 - (b) if the person does not nominate a political party, the person cannot be relied on by any of those political parties.
- (3) The registration of a political party must not be cancelled because of the operation of this section unless the political party is given an opportunity by the Electoral Commissioner, in accordance with the regulations, to change the person or persons on whom it relies.

[Section 62CA inserted: No. 20 of 2021 s. 34.]

62D. Register of political parties, Electoral Commissioner to keep etc.

- (1) The Electoral Commissioner is to keep a register containing the names of, and other information and documents related to, political parties registered under this Part.
- (2) Subject to this Part, the register is to be kept in the form and way that the Electoral Commissioner considers appropriate.
- (3) The register is called the register of political parties.

[Section 62D inserted: No. 36 of 2000 s. 63.]

62E. Applications for registration

- (1) An application for registration of a political party is to be made in accordance with this section.
- (2) The application can only be made for the registration of an eligible political party.
- (3) The application is to be made by the secretary of the party.
- (4) The application is to be made to the Electoral Commissioner in an approved form and is to —
 - (a) state a name for the political party; and
 - (b) if the political party wishes to use an abbreviation or acronym of its name on ballot papers for elections — set out the abbreviation or acronym; and
 - (c) set out the name and address of —
 - (i) the secretary of the political party; and
 - (ii) another person who is to be a registered officer of the political party;and
 - (d) set out the names and addresses of at least 500 members of the party who are electors and on whom the party relies for the purpose of qualifying as an eligible political party; and
 - (da) be accompanied by declarations as to membership of the party, in an approved form, completed and signed by the members on whom the party relies for the purpose of qualifying as an eligible political party; and
 - (e) be accompanied by a copy of the party’s constitution; and
 - (f) set out any other prescribed information and be accompanied by a copy of any other prescribed document; and

s. 62F

(g) be accompanied by a fee of \$2 000 or any greater amount that is prescribed.

(5) Applications for registration of political parties are to be determined in the order in which they are received by the Electoral Commissioner.

[Section 62E inserted: No. 36 of 2000 s. 63; amended: No. 35 of 2012 s. 7; No. 20 of 2021 s. 35; No. 30 of 2023 s. 53.]

62F. Variation of application, Electoral Commissioner may advise etc.

(1) Where, after initial consideration of an application for the registration of a political party, the Electoral Commissioner is of the opinion that the application has to be refused but that the applicant might be prepared to vary the application in such a way that it would not have to be refused, the Electoral Commissioner is to give the applicant written notice of that opinion, setting out the reasons for that opinion and the terms of subsections (2) and (3).

(2) Where notice is given under subsection (1) in relation to an application, the Electoral Commissioner is not required to give further consideration to the application unless and until notice is lodged under subsection (3).

(3) Within one month after notice is given under subsection (1) in relation to an application for the registration of a political party, the applicant may lodge with the Electoral Commissioner a written request, signed by the applicant, to —

- (a) vary the application in a manner specified in the request; or
- (b) proceed with the application in the form in which it was lodged,

and the Electoral Commissioner is to comply with the request.

- (4) If a request is made under subsection (3) to vary an application, the application as varied is to be treated as if it were a new application but, for the purposes of section 62E(5), it is to be regarded as having been received when the original application was received.

[Section 62F inserted: No. 36 of 2000 s. 63.]

62G. Public notice of application to be given

- (1) As soon as practicable after an application is made to the Electoral Commissioner, the Electoral Commissioner is to publish a notice in relation to the application —
- (a) in the *Gazette*; and
 - (b) on the Commission website; and
 - (c) in another manner approved by the Electoral Commissioner.
- (2) Subsection (1) does not apply if the Electoral Commissioner gives a notice under section 62F(1) unless and until a request is made under section 62F(3)(b).
- (3) The notice has to —
- (a) set out any information included in the application under section 62E(4)(a) to (c); and
 - (b) invite any elector who believes that the application —
 - (i) is not in accordance with section 62E; or
 - (ii) should be refused under section 62J,to submit to the Electoral Commissioner, within one month after the day of publication of the *Gazette* notice, a statement under subsection (4).
- (4) The statement has to —
- (a) set out in detail the grounds for the elector's belief under subsection (3)(b); and

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- (b) set out the elector's enrolled address and postal address; and
 - (c) be signed by the elector.
- (5) The Electoral Commissioner is to make the statement available at the office of the Electoral Commissioner and allow public inspection of the statement without fee.
- (6) Unless the Electoral Commissioner considers the statement to be frivolous the Electoral Commissioner is to give the applicant —
 - (a) a copy of the statement; and
 - (b) a notice inviting the applicant to give the Electoral Commissioner a reply to the statement within such reasonable period as is specified in the notice.
- (7) If the applicant gives the Electoral Commissioner a reply within the period, the Electoral Commissioner is to make the reply available at the office of the Electoral Commissioner as soon as practicable and allow public inspection of the reply without fee.

[Section 62G inserted: No. 36 of 2000 s. 63; amended: No. 30 of 2023 s. 54.]

62H. Registration of political party

- (1) If the Electoral Commissioner, after considering all statements and replies to the statements under section 62G, is satisfied that the application complies with the requirements of section 62E, then, subject to subsection (3) and section 62J, the Electoral Commissioner is to register the political party.
- (2) Registration is effected by entering or otherwise including in the register of political parties —
 - (a) the information set out in the application (other than under section 62E(4)(d)); and
 - (b) any document accompanying the application (other than under section 62E(4)(da)).

- (3) The Electoral Commissioner is not to register the political party or take any other action in relation to the application during the election period in relation to an election.
- (4) The Electoral Commissioner is not to register a political party other than in accordance with this section.
- (5) As soon as possible after registering the political party, the Electoral Commissioner is to —
 - (a) give written notice of the registration to the applicant; and
 - (b) if any elector made a statement to the Electoral Commissioner under section 62G in relation to the application — give written notice to the elector stating that the party has been registered and setting out why the reasons in the elector’s statement were rejected; and
 - (c) notify the party’s registration by notice in the *Gazette*.

[Section 62H inserted: No. 36 of 2000 s. 63; amended: No. 20 of 2021 s. 36.]

62HA. Political party taken not to be registered for certain purposes

Despite the registration of a political party under this Part, the party is taken not to be a registered political party for the purposes of Part IV Division 2, Part 6 Division 2A and sections 94B and 94C, in relation to a general election, if the party’s application for registration was made in the period of 12 months ending on the day of issue of the writ for the general election.

[Section 62HA inserted: No. 20 of 2021 s. 37; amended: No. 30 of 2023 s. 55.]

s. 62I

62I. Parliamentary party existing at 21 Oct 2000, registration of as political party

- (1) Despite anything in sections 62E to 62H, on the commencement of section 63 of the *Electoral Amendment Act 2000* any political party that is at that time a parliamentary party becomes a registered political party by operation of this subsection.
- (2) Subsection (1) only applies to a political party if the party was in existence on 14 June 2000 and at least one member of the party was a member of the Assembly or the Council on that day.
- (3) The registration of a political party under subsection (1) ceases to have effect at the end of the period of 3 months from the day on which section 63 of the *Electoral Amendment Act 2000* commences unless, within that period, the secretary of the political party provides the Electoral Commissioner with the information and documents referred to in section 62E(4)(a), (b), (c), (e) and (f).

[Section 62I inserted: No. 36 of 2000 s. 63; amended: No. 64 of 2006 s. 53.]

62J. Refusal of registration, grounds for etc.

- (1) In this section —

application name means a name for a political party, or the abbreviation or acronym of the name for a political party, set out in the party's application for registration;

existing party means another party —

- (a) that is a parliamentary party; or
- (b) that is a registered political party; or
- (c) at least one member of which is a member of the Parliament of the Commonwealth;

public body name means the name, or an abbreviation or acronym of the name, of a prominent public body.

- (1A) The Electoral Commissioner must refuse to register a political party if it is not an eligible political party.
- (2) The Electoral Commissioner may refuse to register a political party if the Electoral Commissioner believes on reasonable grounds that information set out in, or documents required to accompany, the application are incorrect.
- (3) The Electoral Commissioner is to refuse to register a political party if the party's application name —
 - (a) has more than 4 words; or
 - (b) is obscene or offensive; or
 - (c) is the name, or an abbreviation or acronym of the name, of an existing party; or
 - (d) so nearly resembles the name, or an abbreviation or acronym of the name, of an existing party that it is likely to be confused with or mistaken for the name, abbreviation or acronym; or
 - (e) includes the word “royal” or the word “independent”; or
 - (ea) includes a word of which a letter, other than the first letter, is a capital letter; or
 - (f) would otherwise be likely to cause confusion if registered.
- (4) Subsection (3)(c) or (d) does not apply if the existing party is related to the party in respect of which the application is made.
- (4A) For the purposes of subsection (4), the existing party is related to the party in respect of which the application is made if —
 - (a) one is a part of the other party; or
 - (b) both are parts of the same political party.
- (4B) Subsection (3)(ea) does not apply if the word is an acronym.

s. 62K

- (5) The Electoral Commissioner may refuse to register a political party if the party's application name —
- (a) is a public body name; or
 - (b) so nearly resembles a public body name that it is likely to be confused with or mistaken for the public body name.

[(6) deleted]

- (7) If the Electoral Commissioner decides to refuse an application, the Electoral Commissioner is to give the applicant written notice of —
- (a) the refusal; and
 - (b) the reasons for the refusal.

[Section 62J inserted: No. 36 of 2000 s. 63; amended: No. 20 of 2021 s. 38.]

62K. Amendment of register

- (1) An application may be made under this section to the Electoral Commissioner for the amendment of the information, or the replacement of documents, in the register of political parties in relation to a registered political party.
- (2) The application has to be made in an approved form and in a way approved by the Electoral Commissioner.
- (3) The application is to be made by the secretary of the party.
- (4) If the application is to amend the register by —
 - (a) changing the name of the party to a name set out in the application; or
 - (b) if an abbreviation of the name of the party is entered in the register, changing that abbreviation to an abbreviation set out in the application; or

- (c) if an abbreviation of the name of the party is not entered in the register, entering in the register an abbreviation set out in the application,

sections 62F, 62G, 62H and 62J apply to the application under this section, subject to any necessary changes, as if it were an application for registration of a political party.

[Section 62K inserted: No. 36 of 2000 s. 63; amended: No. 35 of 2012 s. 7.]

62KA. Annual returns in relation to continued registration

- (1) The secretary of a registered political party must, in the period beginning on 1 June and ending on 30 June each year, lodge a return with the Electoral Commissioner in relation to its continued eligibility for registration under this Part.
- (2) The return must be —
 - (a) in an approved form; and
 - (b) accompanied by any documents specified in the approved form.
- (3) However, the secretary of a registered political party is not required to lodge a return if, at the beginning of the period referred to in subsection (1), the party has been registered for less than 6 months.

[Section 62KA inserted: No. 20 of 2021 s. 39.]

62L. Cancellation of registration

- (1) The Electoral Commissioner may cancel the registration of a political party at the written request of the secretary of the party.
- (2) The Electoral Commissioner must cancel the registration of a political party if the Electoral Commissioner is satisfied on reasonable grounds that —
 - (a) the party no longer exists; or

s. 62L

- (b) the party (not being a parliamentary party) is no longer an eligible political party; or
 - (c) the candidates at a conjoint election held after the registration of the party did not include at least 1 endorsed candidate of the party; or
 - (d) the registration was obtained by fraud or misrepresentation; or
 - (e) a return required to be lodged under Part 6 by the agent of that political party has been outstanding for more than 12 months.
- (2A) The Electoral Commissioner must cancel the registration of a political party if the secretary of the party fails to comply with section 62KA.
- (3) If the Electoral Commissioner proposes to cancel the registration of a political party, other than because of subsection (2)(d), the Electoral Commissioner must —
- (a) give written notice of the proposed cancellation to the secretary of the party at the address shown in the register; and
 - (b) give notice of the proposed cancellation —
 - (i) in the *Gazette*; and
 - (ii) on the Commission website; and
 - (iii) in another manner approved by the Electoral Commissioner;
- and
- (c) include in the notice under paragraph (b) a statement that persons may, within 14 days after the *Gazette* notice is given, object to the Electoral Commissioner in writing against the proposed cancellation.
- (4) The Electoral Commissioner is to consider any objection made under subsection (3) before taking any further action in relation to the cancellation.

- (5) If the Electoral Commissioner decides to cancel the registration of a political party, the Electoral Commissioner is to —
- (a) give notice of the cancellation and the reasons for it to the secretary of the party; and
 - (b) give notice of the cancellation in the *Gazette*; and
 - (c) cancel the information in, and remove the documents from, the register of political parties relating to the political party; and
 - (d) retain the documents.
- (6) During the election period in relation to an election, the Electoral Commissioner is not to cancel the registration of a political party other than because of subsection (2)(d).

[Section 62L inserted: No. 36 of 2000 s. 63; amended: No. 20 of 2021 s. 40; No. 30 of 2023 s. 56.]

62M. Public inspection and notice of register

- (1) The Electoral Commissioner is to make the register of political parties available at the office of the Electoral Commissioner and allow public inspection of the register without fee.
- (2) As soon as practicable after the issue of a writ for an election, the Electoral Commissioner is to publish in the *Gazette* —
- (a) a list of the names of all political parties included in the register; and
 - (b) a list of the names of the registered officers of the political parties.

[Section 62M inserted: No. 36 of 2000 s. 63; amended: No. 30 of 2023 s. 57.]

62N. Review of decision under s. 62H, 62J or 62L

- (1) Any person affected by —
- (a) a decision under section 62H to register a political party;
- or

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- (b) a decision under section 62J to refuse to register a political party; or
- (c) a decision under section 62L to cancel the registration of a political party; or
- (d) a decision to grant or refuse an application under section 62K,

may apply for review of the decision.

- (2) An application for review of a decision has to —
 - (a) be in writing; and
 - (b) be made to the Supreme Court; and
 - (c) be made within one month after the decision comes to the notice of the applicant or such further period as the Supreme Court allows; and
 - (d) set out the grounds on which review is sought.
- (3) The Supreme Court is to review the decision and make an order —
 - (a) confirming the decision; or
 - (b) directing the Electoral Commissioner to vary the decision; or
 - (c) directing the Electoral Commissioner to set aside the decision and make a decision in substitution as directed in the order.
- (4) An order under subsection (3)(b) or (c) has effect subject to the operation of sections 62H(3) and 62L(6).
- (5) The Supreme Court is to be constituted by a single judge for the purposes of this section.

[Section 62N inserted: No. 36 of 2000 s. 63; amended: No. 64 of 2006 s. 53.]

62O. False representation as to registration, offence

Any person who, knowing that a political party is not registered —

- (a) makes any representation to the effect that the party is registered; or
- (b) publishes any document that indicates or implies that the party is registered,

commits an offence.

Penalty: \$1 500.

[Section 62O inserted: No. 36 of 2000 s. 63.]

62P. Electoral Commissioner may request information from political party

The Electoral Commissioner may request a registered officer of a political party, or a person who purports to be a registered officer of a political party, to provide the Electoral Commissioner with information of such nature, and in such form, as the Electoral Commissioner considers necessary for the performance of the functions conferred by this Part.

[Section 62P inserted: No. 36 of 2000 s. 63; amended No. 30 of 2023 s. 58.]

62Q. Offences relating to information

- (1) A person must not in an application under section 62E or 62K, in a return under section 62KA, or in response to a request under section 62P, make a statement or provide information that the person knows to be false or misleading.

Penalty: \$1 500.

s. 62R

- (2) A person to whom a request is made under section 62P must comply with the request.

Penalty: \$1 500.

[Section 62Q inserted: No. 36 of 2000 s. 63; amended: No. 20 of 2021 s. 41.]

62R. Certificate of Electoral Commissioner is evidence

A certificate of the Electoral Commissioner as to —

- (a) the nature or content of information or a document in the register of political parties; or
- (b) whether or not information or a document is in the register of political parties,

is evidence of the matter stated.

[Section 62R inserted: No. 36 of 2000 s. 63.]

Part IV — Elections

Division 1 — Writs

[Heading amended: No. 14 of 2016 s. 28(6).]

[63. Deleted: No. 36 of 2000 s. 7.]

64. General elections, issue of writs for

- (1) If an Assembly is dissolved before 1 November last preceding its expiry year, the Governor shall cause a writ for elections in all the districts to be issued not later than 10 days after the dissolution.
- (2) If an Assembly is not dissolved before 1 November last preceding its expiry year, the Governor shall cause a writ for elections in all the districts to be issued on the first Wednesday of February in the expiry year.
- (3) In order to fill seats in the Council that are to be vacated by effluxion of time at the end of 21 May in a year, the Governor shall cause a writ for an election in the whole of State electorate to be issued on the first Wednesday of February last preceding that 21 May.

[Section 64 inserted: No. 49 of 2011 s. 5; amended: No. 20 of 2021 s. 42.]

65. Writ issued under s. 64, 67 or 156E, notice of to be gazetted etc.

- (1) The Electoral Commissioner is to publish notice of the issue of a writ under section 64, 67 or 156E in the *Gazette*.
- (2) The notice is to state the day of issue of the writ.

[Section 65 inserted: No. 36 of 2000 s. 9.]

[66. Deleted: No. 79 of 1987 s. 20.]

[66A. Deleted: No. 47 of 1940 s. 2.]

67. Vacancy in Assembly, issue of writ for etc.

- (1) Whenever a vacancy occurs in the Assembly from any cause, the Speaker, upon a resolution by the House declaring such vacancy and the cause thereof, shall cause a writ to be issued to supply the vacancy.
- (2) Subject to section 39(4) of the *Constitution Acts Amendment Act 1899*, in the case of any such vacancy when Parliament is not in session, or when the vacancy occurs during any adjournment for a longer period than 7 days of the Assembly, the Speaker may, without such preceding resolution, cause a writ to be issued to supply the vacancy.
- (3) Subject to section 39(4) of the *Constitution Acts Amendment Act 1899*, if at the occurrence of any such vacancy there is no Speaker, and Parliament is not in session, or if the Speaker is absent from the State, the Governor shall, if satisfied of the existence of such vacancy, cause a writ to be issued for the election of a member for the seat so vacated.
- (4) In the case of a vacancy caused by death, the Speaker or the Governor, as the case may require, is to cause the writ to be issued on receiving notice of the death in the prescribed form signed by 2 members of the Assembly of which the deceased was a member.
- (4a) However, subject to section 39(4) of the *Constitution Acts Amendment Act 1899*, if the Speaker or Governor, as the case may be, is satisfied of the existence of the vacancy, the writ can be issued whether or not notice has been received under subsection (4).
- (5) Whenever a vacancy occurs by reason of any of the disqualifications mentioned in section 32(1)(a), and section 38(d), of the *Constitution Acts Amendment Act 1899*, it shall be the duty of the Registrar in Bankruptcy forthwith to give notice thereof in writing to the Speaker, if within the State, and otherwise to the Governor, and on receipt of such notice the

Speaker, if within the State, or otherwise the Governor, shall forthwith, cause a writ to be issued for the election of a member to supply the vacancy.

[Section 67 amended: No. 44 of 1911 s. 24 and 43; No. 78 of 1984 s. 16; No. 40 of 1987 s. 39; No. 36 of 2000 s. 10; No. 64 of 2006 s. 53.]

68. Writ deemed to be issued at 6 p.m. on day of issue

[(1) deleted]

- (2) Every writ shall be deemed to have been issued at the hour of 6 p.m. of the day on which it was issued.

[Section 68 amended: No. 9 of 1983 s. 15; No. 40 of 1987 s. 40.]

69. Form and content of writs

A writ is to be in the prescribed form and is to fix —

- (a) the time before which a person may nominate as a candidate; and
- (b) the day for the polling (***polling day***); and
- (c) the last day for the return of the writ.

[Section 69 inserted: No. 36 of 2000 s. 11; amended: No. 30 of 2023 s. 59.]

69A. When close of rolls occurs after issue of writ

The time of the close of the roll for an election is 6 p.m. on the day 8 days after the date of the writ.

Note for this section:

Under section 76AA(7), the roll for a Council election is formed by all of the rolls for the districts.

[Section 69A inserted: No. 79 of 1987 s. 21; amended: No. 30 of 2023 s. 60.]

70. Rules for fixing close of nominations

For the purposes of section 69(a), the close of nominations for an election must be fixed as —

- (a) for a periodic election — 12 noon on the second Thursday next following the date of the writ; or
- (b) otherwise — 12 noon on a day that is not less than 7 nor more than 45 days after the date of the writ.

[Section 70 inserted: No. 30 of 2023 s. 61.]

71. Rules for fixing polling day

- (1) In this section —

available day means any day that is not an excluded day;

excluded day means —

- (a) a day appointed as polling day for an election of the Senate or a general election of the House of Representatives or as the voting day for a referendum as defined in the *Referendum (Machinery Provisions) Act 1984* (Commonwealth); or
 - (aa) Christmas Day; or
 - (b) Easter Saturday or the Saturday immediately preceding or succeeding Easter Saturday.
- (2) Subsection (3) applies to any election other than an election that is, or is held as part of, a periodic election.
- (3) The date fixed for the polling in an election to which this subsection applies must be a Saturday that —
- (a) is not less than 21 nor more than 45 days after the day on which the close of nominations occurs; and
 - (b) is an available day.
- (4) The same date shall be fixed under subsection (3) for the polling in each election in a district held as part of a general election for the Assembly for which the writ is issued under section 64(1).

- (5) The date fixed for the polling in a general election for the Council and, in the case of a periodic election for the Assembly, the date fixed for the polling in each election in a district, must be —
- (a) the second Saturday of March in the election year; or
 - (b) if the second Saturday of March in the election year is an excluded day, the first succeeding Saturday that is an available day.
- (6) If the Premier, with the agreement of the Leader of the Opposition in the Legislative Assembly, recommends to the Governor that the date to be fixed under subsection (5) for the polling be postponed because of exceptional circumstances, the date fixed for the polling shall be the first Saturday after the second Saturday of March that is an available day on which polling is practicable.
- (7) In the case of a general election for the Council, the date fixed for the polling shall not be postponed to such an extent as would prevent the return of the writ on or before 21 May in the year in which seats in the Council are to be vacated by effluxion of time.

[Section 71 inserted: No. 49 of 2011 s. 7; amended: No. 20 of 2021 s. 43; No. 30 of 2023 s. 62.]

72. Last day for return of writ, rules for fixing

- (1) The date fixed as the last day for the return of the writ shall not be more than 90 days after the date of the writ.
- (2) In the case of a general election for the Council, the date fixed as the last day for the return of a writ in the election shall be not later than 21 May in the year in which seats in the Council are to be vacated by effluxion of time.

[Section 72 amended: No. 63 of 1948 s. 15; No. 9 of 1983 s. 17; No. 79 of 1987 s. 24; No. 36 of 2000 s. 12; No. 49 of 2011 s. 8.]

[73. Deleted: No. 36 of 2000 s. 13.]

74. Writ to be addressed to Electoral Commissioner who is to forward copy to returning officer etc.

A writ is to be addressed to the Electoral Commissioner and the Electoral Commissioner is to forward a copy of the writ —

(a) in the case of a Council election, to the returning officer and the returning officer for each district;

[(b) *deleted*]

(c) in the case of a general election for the Assembly, to the returning officer for each district;

(d) in the case of any other election in a district, to the returning officer for the district.

[Section 74 inserted: No. 36 of 2000 s. 14; amended: No. 20 of 2021 s. 44; No. 30 of 2023 s. 63.]

75. Advertisement of writ and other matters relating to election

(1) In this section —

advertise means advertise on the Commission website and in any other way the Electoral Commissioner considers appropriate.

(2) Having received a writ for an election the Electoral Commissioner must —

(a) within 24 hours after receiving the writ, advertise the day of issue of the writ and the writ's particulars; and

(b) as soon as practicable after receiving the writ, advertise the place of declaration of nominations appointed under section 85(1) for the election; and

(c) publish whatever information the Electoral Commissioner considers necessary to adequately inform electors about places to vote and voting areas for places to vote.

[(3) deleted]

[Section 75 inserted: No. 20 of 2021 s. 45; amended: No. 30 of 2023 s. 64.]

76. Time fixed in writ, extending

- (1) Subject to subsections (2) and (3) the Governor may extend the time appointed for the nomination of candidates, the taking of the poll, or the return of the writ for any election.
- (2) No extension of the time for taking the poll shall be made under this section at any time later than 7 days before the time originally appointed.
- (3) In the case of a general election for the Council —
 - (a) the time appointed for the nomination of candidates or the taking of the poll shall not be extended to such an extent as would prevent the return of the writ on or before 21 May; and
 - (b) the time appointed for the return of the writ shall not be extended beyond 21 May,in the year in which seats in the Council are to be vacated by effluxion of time.
- (4) If the time for taking the poll is extended under this section, the Electoral Commissioner must publish notice of the extension —
 - (a) on the Commission website; and
 - (b) in any other way the Electoral Commissioner considers appropriate.

[Section 76 inserted: No. 40 of 1987 s. 41; amended: No. 36 of 2000 s. 16; No. 49 of 2011 s. 9; No. 20 of 2021 s. 46.]

Division 1A — Rolls for elections

76AA. Rolls for elections to be prepared

- (1) As soon as is practicable after the close of the roll for an election, the Electoral Commissioner must cause a roll to be prepared for the election.
- (2) The roll prepared under subsection (1) —
 - (a) must include persons who are electors at the close of the roll and who may vote in the election; and
 - (b) may include a person who —
 - (i) made a claim for enrolment before the close of the roll that is not decided before the close of the roll; and
 - (ii) is enrolled during the period (the *preparation period*) beginning on the day after the close of the roll and ending on the day the roll is prepared under subsection (1); and
 - (iii) once enrolled, may vote in the election;and
 - (c) must include a person if —
 - (i) at the close of the roll, the person is not on the register of electors due to an error; and
 - (ii) the error is identified before the end of the preparation period;and
 - (d) may include a person who is enrolled under section 47(3)(g) during the preparation period and who may vote in the election; and
 - (e) must reflect the removal of names from the register of electors under section 51 during the preparation period; and

- (f) must not include a person removed from the register of electors under section 51A or 51AA during the preparation period; and
 - (g) may include changes to reflect changes made to the register of electors under section 40 or 52 during the preparation period; and
 - (h) must include changes to reflect changes made to the register of electors under section 60 during the preparation period.
- (3) The roll must —
- (a) subject to regulations made under section 76AF, include the following details of each person who is included on the roll under subsection (2) —
 - (i) the person's name;
 - (ii) the person's gender;
 - (iii) subject to subsection (5) — the person's electoral address;and
 - (b) arrange the names of persons who are included on the roll under subsection (2) —
 - (i) in alphabetical order by surname; and
 - (ii) if more than 1 person has the same surname — in alphabetical order by given name;and
 - (c) include a number for the name of each person who is included on the roll under subsection (2) starting at number 1.
- (4) The roll —
- (a) may be in printed or electronic form; and
 - (b) if the roll is printed — must be in the prescribed form; and

- (c) if the roll is in electronic form — must be in the form approved by the Electoral Commissioner; and
 - (d) must state the day on which the roll is prepared; and
 - (e) must state the election for which the roll is to be used; and
 - (f) must contain any marks required by section 47(3)(g) or other annotations or marks required to be made on the roll under this Act; and
 - (g) if the roll is for a Council election — must be a roll for the whole of State electorate; and
 - (h) if the roll is for a district election — must be a roll for the district.
- (5) The roll must not include an elector’s electoral address if the elector —
- (a) is a silent elector when the roll is prepared; or
 - (b) is enrolled under section 17(4), 17A or 17B.
- (6) Despite subsection (5)(a), the roll must not include an elector’s status as a silent elector if the register of electors is altered under section 51C(4)(b) during the preparation period.
- (7) When a roll is prepared under subsection (1) for a general election for the Council held as part of a conjoint election, the roll for the election is formed by all of the rolls for the districts.
- (8) When a roll is prepared under subsection (1) for any other Council election, rolls are to be prepared for all of the districts and the roll for the election is formed by all of those rolls.

[Section 76AA inserted: No. 30 of 2023 s. 65.]

76AB. Altering or amending rolls after they are prepared

- (1) A roll must not be amended unless it is done in accordance with this section.

- (2) A roll may be amended —
- (a) to include a person who is not on the roll when it is prepared if the person is not on the register of electors or the roll due to an error; and
 - (b) to include a person who made a claim for enrolment before the close of the roll but who is not enrolled when the roll is prepared if —
 - (i) a notice of objection to the claim has not been given under section 47; and
 - (ii) the person is enrolled during the period (the ***amendment period***) beginning on the day on which the roll is prepared but before the 14th day before the polling day in the election;
- and
- (c) to include a claimant who is enrolled under section 47(3)(g) during the amendment period; and
 - (d) to reflect the removal of names from the register of electors under section 51, 51A or 51AA during the amendment period; and
 - (e) to remove a silent elector's electoral address from the roll if an application is granted under section 51B(3) during the amendment period; and
 - (f) to reflect the alteration of the register of electors under section 51C(4)(b) during the period ending on the day that is 14 days before polling day; and
 - (g) to reflect changes made to the register of electors under section 40 or 52 during the period ending on the day that is 14 days before polling day; and
 - (h) to reflect changes made to the register of electors under section 60 during the period ending on the day that is 14 days before polling day.

- (3) An amendment to a roll under this section —
- (a) must not be made after the 14th day before the polling day in the election; and
 - (b) must be made by supplementary roll.

[Section 76AB inserted: No. 30 of 2023 s. 65.]

76AC. Supplementary rolls

- (1) The Electoral Commissioner may make a supplementary roll to alter or amend a roll.
- (2) If a supplementary roll (a ***previous supplementary roll***) is made and an amalgamated roll has not been issued that incorporates the previous supplementary roll, the Electoral Commissioner may make a further supplementary roll that —
- (a) shows the additions and alterations to the roll since the previous supplementary roll was made; and
 - (b) includes the names in the previous supplementary roll in lexicographical order.
- (3) A supplementary roll —
- (a) must be numbered and, if a previous supplementary roll is made, the numbering must start at the number after the last number used in the most recent previous supplementary roll; and
 - (b) must state the day on which the supplementary roll is made; and
 - (c) may omit the particulars prescribed under section 76AF(2)(a)(i); and
 - (d) must not include an elector's electoral address if the elector is a silent elector or is enrolled under section 17(4), 17A or 17B.

[Section 76AC inserted: No. 30 of 2023 s. 65.]

76AD. Amalgamated rolls

- (1) If a supplementary roll has been made, the Electoral Commissioner may issue an amalgamated version of the roll (an *amalgamated roll*) that amalgamates —
 - (a) either —
 - (i) a roll issued under section 76AA(1); or
 - (ii) a previous amalgamated roll;and
 - (b) the supplementary roll.
- (2) The amalgamated roll —
 - (a) must comply with section 76AA(3) and (4); and
 - (b) must state the day on which the amalgamated roll is issued; and
 - (c) must state which supplementary rolls have been amalgamated into the roll, including by reference to the numbers of the supplementary rolls; and
 - (d) may omit the particulars prescribed under section 76AF(2)(a)(ii).

[Section 76AD inserted: No. 30 of 2023 s. 65.]

76AE. Rolls not invalid in particular cases

A roll is not invalid only because the roll —

- (a) is not printed, kept or published as required under this Act; or
- (b) contains an error in copying or printing.

[Section 76AE inserted: No. 30 of 2023 s. 65.]

76AF. Regulation-making power in relation to preparing rolls

- (1) The Governor may make regulations prescribing —
 - (a) how rolls, supplementary rolls and amalgamated rolls are to be prepared or made; and
 - (b) anything else necessary or convenient to be prescribed in relation to the preparation or making of rolls, supplementary rolls and amalgamated rolls.
- (2) Without limiting subsection (1), the regulations may —
 - (a) provide that prescribed details of electors may be omitted when —
 - (i) a supplementary roll is made; or
 - (ii) an amalgamated roll is prepared and issued; or
 - (iii) rolls are made accessible or delivered under section 93C;and
 - (b) apply generally or to a particular roll.

[Section 76AF inserted: No. 30 of 2023 s. 65.]

Division 2 — Nominations

[Heading amended: No. 14 of 2016 s. 28(6).]

76A. Who is qualified to be elected as member of Parliament

- (1) Unless this Act or another enactment provides otherwise, a person who —
 - (a) has reached the age of 18; and
 - (b) is not subject to any legal incapacity; and
 - (c) is an Australian citizen; and
 - (d) has resided in the State for one year; and

- (e) is an elector entitled to vote in an election in a district, is qualified to be elected as a member of the Council or the Assembly.
- (2) The reference in subsection (1)(e) to an elector entitled to vote in an election in a district includes a reference to a person if —
- (a) the person is entitled to be an elector enrolled to vote in an election in a district; and
 - (b) the person's name appeared on the register of electors or the person has made a claim for enrolment; and
 - (c) by mistake, the Electoral Commissioner or an enrolment officer has omitted or removed the person's name from the register of electors or has not included the person's name on the register of electors.

[Section 76A inserted: No. 64 of 2006 s. 27(1); amended: No. 30 of 2023 s. 66.]

76B. Who is not qualified to be elected as member of Parliament

- (1) A person to whom the *Constitution Acts Amendment Act 1899* section 32 or 34(1) applies is disqualified from being elected as a member of the Council or the Assembly.
- (2) A person to whom the *Constitution Acts Amendment Act 1899* section 34(2) applies is disqualified from being elected as a member of the House of which the person is not a member.

[Section 76B inserted: No. 64 of 2006 s. 27(1).]

77. Rules about nominating candidates

- (1) A person is not capable of being elected at an election unless —
 - (a) the person has nominated as a candidate in the election and the nomination is valid and has effect; and
 - (b) the person is qualified to be elected and is not disqualified from being elected as, or from being, a

member of the House for which the election is being held.

(2) Where —

- (a) a day is fixed as the polling day for 2 or more elections; and
- (b) at the close of nominations there exist nominations of a person for 2 or more of those elections,

each of those nominations is invalid.

(3) For the purposes of subsection (2) where a person has nominated as a candidate in an election and the person withdraws that nomination under section 82 before the close of nominations, the nomination of the person is taken to have ceased to have effect at the time when the person withdraws that nomination.

(3a) If a person who is not qualified under section 76A nominates as a candidate in an election, the nomination is invalid.

(4) A person commits an offence if —

- (a) the person nominates as a candidate in an election; and
- (b) at the close of nominations for the election, the person is disqualified —
 - (i) from being elected at that election as a member of the House for which the election is held; or
 - (ii) from being a member of the House for which the election is held.

Penalty for this subsection: a fine of \$2 500.

(5) If there is a contravention of subsection (4) in relation to a nomination, the nomination is invalid.

[Section 77 inserted: No. 40 of 1987 s. 42; amended: No. 50 of 2003 s. 56(2); No. 64 of 2006 s. 28 and 53; No. 30 of 2023 s. 67.]

78. Form and content of nominations

- (1) A nomination must be in an approved form and must —
 - (a) be signed by the candidate; and
 - (b) state the surname and each given name, the primary residential address and occupation of the candidate and the form in which the candidate's name is to be printed on the ballot papers for the election; and
 - (ba) include details of a means by which the candidate can be contacted in connection with the election; and
 - (c) in the case of a Council election, unless the nomination is a party nomination as defined in section 81A(1), be accompanied by declarations in support of the nomination, in an approved form, completed and signed by at least 250 electors entitled to vote in the election.
- (2A) Despite subsection (1)(b), the candidate's primary residential address is not required to be stated on the nomination form if the candidate is a silent elector.
- (2) The statement of the form of the candidate's name to be printed on the ballot papers must include the candidate's surname and may include each, or one or more, of the candidate's given names.
- (3) For the purposes of subsection (2) a given name may be stated by specifying —
 - (a) the name; or
 - (b) an initial standing for the name; or
 - (c) a commonly accepted variation of the name (including an abbreviation or truncation of the name or an alternative form of the name).
- (4) If the nomination forms for 2 or more candidates are accompanied by a declaration completed and signed by the

same elector, the elector cannot be relied on by any of those candidates for the purposes of subsection (1)(c).

[Section 78 amended: No. 44 of 1911 s. 43; No. 51 of 1962 s. 5; No. 79 of 1987 s. 25; No. 36 of 2000 s. 34; No. 35 of 2012 s. 7 and 12; No. 20 of 2021 s. 47; No. 30 of 2023 s. 68.]

79. When returning officer may receive nominations

- (1) Nominations may be received by the returning officer at any time after the issue of the writ and before the close of nominations.
- (2) In the case of a Council election, a nomination may also be given to the returning officer for any district.
- (3) A nomination received by the returning officer for a district under subsection (2) is taken to have been received by the returning officer for the whole of State electorate at the time at which it was received by the returning officer for a district.
- (4) A candidate whose nomination is received under subsection (2) cannot participate in a group claim under section 80.

[Section 79 amended: No. 30 of 2023 s. 69.]

80. Grouping of candidates

- (1) Two or more candidates nominated for a Council election where the relevant number is more than one may, in an approved form and before the close of nominations, make a claim (a **group claim**) to the returning officer —
 - (a) to have their names included in a group in the ballot papers to be used in that election; and
 - (b) to have their names included in that group in the order specified in that claim.
- (2A) A group claim may be made on behalf of a group —
 - (a) where all the candidates in the group are the subject of a party nomination, under section 81A, by a particular

- (6) Where a group claim is made and any of the persons who made the claim is a person whose nomination is invalid under section 77 —
- (a) where there are 2 or more other persons who made that claim, the group shall consist of the remainder of those persons only; or
 - (b) where there is only one other person who made that claim, the claim shall be of no force or effect.

[Section 80 inserted: No. 40 of 1987 s. 43; amended: No. 35 of 2012 s. 7 and 13; No. 20 of 2021 s. 48 and 94; No. 30 of 2023 s. 70.]

80A. Lodging group claims with Electoral Commissioner

- (1) If a group claim under section 80 is made to the Electoral Commissioner, the claim is taken to have been made to the returning officer for the whole of State electorate when the claim was received by the Electoral Commissioner.
- (2) This section does not affect the operation of section 81A.

[Section 80A inserted: No. 30 of 2023 s. 71.]

81. Nomination paper and deposit required for valid nomination

- (1) A nomination is not valid unless —
- (a) the nomination paper is received by the returning officer after the issue of the writ and before the close of nominations; and
 - (b) at or before the close of nominations, the required deposit is lodged with the returning officer by or on behalf of the candidate in money, by a cheque drawn by a financial institution upon itself and payable to the Electoral Commissioner, by electronic transfer or in such other manner as may be prescribed.

- (2) For the purposes of subsection (1)(b), the required deposit is —
 - (a) in the case of an election in a district — \$250 or any greater amount that is prescribed; or
 - (b) in the case of a Council election — \$2 000 or any greater amount that is prescribed.
- (3) Despite subsection (2)(b), if the candidate is included in a group consisting of more than 5 candidates the required deposit is the amount obtained by dividing \$10 000, or any greater amount that is prescribed, by the number of candidates included in the group.

[Section 81 inserted: No. 43 of 1996 s. 9; amended: No. 24 of 2000 s. 50; No. 35 of 2012 s. 14; No. 20 of 2021 s. 49; No. 30 of 2023 s. 72.]

81A. Making and effect of party nominations

- (1) In this section —
party nomination means the nomination of an endorsed candidate in an election by a registered political party.
- (2) A party nomination is to be regarded as having been made in accordance with sections 79 and 81 if —
 - (a) it contains a declaration by the secretary of the registered political party that the candidate is publicly recognised by the party as being an endorsed candidate of the party; and
 - (b) it is received by the Electoral Commissioner after the issue of the writ and not later than 24 hours before the close of nominations; and
 - (c) not later than 24 hours before the close of nominations, the required deposit (or an amount that includes that deposit) for the purposes of section 81(1)(b) is lodged with the Electoral Commissioner on behalf of the candidate in money, by a cheque drawn by a financial institution on itself and payable to the Electoral

Commissioner or in such other manner as may be prescribed under that section.

- (2A) Subsection (2B) applies if —
- (a) the Electoral Commissioner receives 2 or more party nominations by the same registered political party for a single member election; and
 - (b) all but 1 of the party nominations are not withdrawn under section 82.
- (2B) When this subsection applies, all of the party nominations for the single member election by the registered political party are of no force or effect.
- (3) Nothing in this section prevents a party nomination from being made in accordance with sections 79 and 81.
- (4) If 2 or more party nominations for a Council election are made in accordance with subsection (2), a claim under section 80(1) may be made to the Electoral Commissioner together with the nominations.
- (4A) Subsection (4B) applies if —
- (a) for a Council election where the relevant number is more than one, the Electoral Commissioner receives more party nominations by the same registered political party than the relevant number for the election; and
 - (b) all but the relevant number of the party nominations are not withdrawn under section 82.
- (4B) When this subsection applies, all of the party nominations for the Council election by the registered political party are of no force or effect.
- (5) If a party nomination has been made in accordance with subsection (2), the Electoral Commissioner must —
- (a) give a registered officer of the registered political party a notice acknowledging receipt by the Electoral

83. Nomination paper, effect of defects etc. in

No nomination paper shall be rejected by reason of any defect or error therein, if the returning officer or Electoral Commissioner receiving it is satisfied that the provisions of this Act have been substantially complied with.

[Section 83 amended: No. 36 of 2000 s. 36.]

84. Deposit by candidate, return or forfeiture of

(1) The deposit made by or on behalf of a person nominated shall be retained pending the election, and after the election shall be returned in accordance with subsection (3) or (4) if the person is elected or —

- (a) in the case of a Council election where the relevant number is more than one, if the total number of first preference votes polled in the person's favour or in favour of the members of the group in which the person is included is more than 4% of the total number of first preference votes polled by all the candidates in the election;
- (b) in the case of a single member election where there are more than 2 candidates, if the total number of first preference votes polled in the person's favour is more than 4% of the total number of first preference votes polled by all the candidates in the election;
- (c) in the case of a single member election where there are only 2 candidates, if the number of votes polled in the person's favour is more than 4% of the total number of votes polled by both the candidates in the election,

otherwise it shall be forfeited to the Crown.

(2) If a candidate dies before polling day or on polling day before the close of the poll —

- (a) the deposit made by or on behalf of the candidate must be returned in accordance with subsection (3) or (4); and

section 81(1)(a) or 81A(5)(b)(i) between the issue of the writ and the close of nominations; and

- (b) declare the names of all candidates nominated; and
- (c) state that the name of each candidate nominated, and details of a means by which the candidate can be contacted, will be published on the Commission website as soon as practicable after the close of nominations; and
- (d) ensure the name of each candidate nominated, and details of a means by which the candidate can be contacted, are published on the Commission website.

(2AAA) Despite subsection (2), if a candidate is a silent elector the returning officer must not publish information that might enable the candidate's residential address to be ascertained.

(2aa) If there is only one candidate for election the returning officer must declare that candidate duly elected.

(2a) If there are 2 or more candidates for election the order of the names of the candidates to be placed on the ballot papers must be determined as follows —

- (a) the returning officer must, at the place of declaration of nominations immediately after the close of nominations and before all persons then present, make out in respect of each candidate, a slip bearing the candidate's name, and deal with the slips in accordance with Schedule 2;
- (b) the candidate whose name appears on the first slip obtained by the returning officer in accordance with Schedule 2 must be placed first on the ballot papers, the candidate whose name appears on the second slip so obtained must be placed second on the ballot papers, and so on, until the placing of all the names of those candidates on the ballot papers has been determined.

(2b) The returning officer must forthwith after the order of the placing of the names of the candidates has been determined in accordance with subsection (2a), forward to the Electoral

(3A) Despite subsection (3), if a candidate is a silent elector the returning officer must not publish information that might enable the candidate's residential address to be ascertained.

[(4A) deleted]

(4) If the candidates are not greater in number than the candidates required to be elected, the returning officer must declare the candidates duly elected.

(5) If there are more candidates for election than the relevant number and they comprise or include 2 or more groups the order of the groups to be placed on the ballot papers must be determined as follows —

(a) the returning officer must, at the place of declaration of nominations, as soon as practicable after the close of nominations and before all persons then present —

(i) make out in respect of each group in which each of the candidates is an endorsed candidate of the same registered political party, a slip bearing the names of the candidates in the group, and deal with the slips in accordance with Schedule 2; and

(ii) make out in respect of each other group, a slip bearing the names of the candidates in the group, and deal with the slips in accordance with Schedule 2;

(b) the group whose names appear on the first slip obtained by the returning officer in accordance with clause 5 of Schedule 2 must be placed first on the ballot papers, the group whose names appear on the second slip so obtained must be placed second on the ballot papers, and so on, until the placing of all the groups on the ballot papers has been determined.

(6) If there are more candidates for election than the relevant number and 2 or more of them are not included in a group, the

order of the names of the candidates not included in a group to be placed on the ballot papers must be determined as follows —

- (a) the returning officer must, at the place of declaration of nominations, as soon as practicable after the close of nominations and before all persons present, make out in respect of each of those candidates, a slip bearing the candidate's name, and proceed to deal with the slips in accordance with Schedule 2;
- (b) the candidate whose name appears on the first slip obtained by the returning officer in accordance with clause 5 of Schedule 2 must, of those candidates, be placed first on the ballot papers, the candidate whose name appears on the second slip so obtained must, of those candidates, be placed second on the ballot papers, and so on, until the placing of all the names of the candidates on the ballot papers has been determined.

[(7) deleted]

- (8) Subject to section 88(1) the proceedings shall then stand adjourned to polling day.

[Section 87 inserted: No. 40 of 1987 s. 48; amended: No. 79 of 1987 s. 27; No. 36 of 2000 s. 39 and 41; No. 64 of 2006 s. 53; No. 35 of 2012 s. 17; No. 20 of 2021 s. 53; No. 30 of 2023 s. 77.]

87A. Close of nominations, returning officer's other duties as to

- (1) Before attending the place of declaration of nominations as required by section 86(1a) or 87(2) the returning officer shall ascertain the correct time; and in any dispute that may arise as regards time the returning officer's decision is final.
- (2) The returning officer shall give a receipt in the prescribed form to any candidate who has duly nominated, or to their agent,

acknowledging that candidate's nomination and deposit received by the returning officer pursuant to section 81.

[Section 87A inserted: No. 40 of 1987 s. 49; amended: No. 36 of 2000 s. 39; No. 30 of 2023 s. 182.]

88. Death of candidate after nomination

- (1) If, in a Council election where the relevant number is more than one, a candidate dies during the relevant period and the candidates remaining are not greater in number than the candidates required to be elected, the returning officer must declare the remaining candidates duly elected.

- (1A) In subsection (1) —

relevant period means the period beginning when nominations have been declared and ending before the hour of closing the poll.

- (2) If, after the nominations have been declared and before or on polling day before the hour of closing the poll, any candidate in a single member election dies, such election must, by reason of such death, be deemed to have wholly failed, and in such case the following provisions apply:

- (a) Where the candidate dies before polling day the returning officer must, upon being satisfied of the fact of the death of the candidate —
- (i) countermand the notice of the poll; and
 - (ii) report the fact of the death and the date of the countermand of the notice of the poll to the Electoral Commissioner; and
 - (iii) if a polling place for the single member election is an early polling place for another election that is also being held — keep the polling place open for receiving votes for the other election on the early voting days.

- (b) Where the candidate dies on polling day, the returning officer must, upon being satisfied of the fact of the death of the candidate —
 - (i) immediately close the poll for the election for which the deceased candidate had nominated; and
 - (ia) keep the polling place open for receiving votes for candidates for any other elections then being held; and
 - (ii) report the fact of the death and the time of the closing of the poll to the Electoral Commissioner.
- (ba) On receipt of a report under paragraph (a)(ii) or (b)(ii) in relation to an election in a district the Electoral Commissioner is to send a notice, with a copy of the report, to the Speaker or the Governor, whichever of them caused the writ to be issued.
- (bb) If there is no Speaker, and Parliament is not in session, or if the Speaker is absent from the State, a notice under paragraph (ba) may be sent to the Governor in any case.
- (bc) On receipt of a report under paragraph (a)(ii) or (b)(ii) in relation to a Council election the Electoral Commissioner must send a notice, with a copy of the report, to the President.
- (bd) If there is no President, and Parliament is not in session, or if the President is absent from the State, a notice under paragraph (bc) may be sent to the Governor in any case.
- (c) Where any poll is interrupted, in consequence of the death of a candidate all ballot papers placed in the several ballot boxes in respect of the election for which the deceased candidate had nominated must be taken out by the several presiding officers, and, being made up into sealed packages, must be sent by them respectively

unopened to the returning officer for the whole of State electorate or returning officer for a district who must, in the presence of a magistrate or justice of the peace, burn or otherwise destroy the sealed packages unopened.

- (d) When a notice is sent under paragraph (ba) a fresh writ must be issued forthwith for a new election in the place of the election which has failed as aforesaid, and save and except as in this subsection otherwise provided, all proceedings in connection with such new election must be had and taken anew.
- (e) The roll prepared for the election which has failed must, without any amendment thereof or addition thereto, be used at the new election.

[(f) deleted]

- (g) The appointment of officials and of polling places as made for and in connection with the election which has failed, is not merely by reason of the failure of such election, be void or in any way affected, and may continue and apply for and in connection with the new election:

Provided that nothing in this paragraph operates so as to prevent the cancellation of any of the appointments aforesaid or the making of new appointments of officials or of polling places for and in connection with the new election.

- (3) If, after the close of the poll for a single member election and before the counting of the votes in the election has been completed, a candidate dies, and on the completion of the count of the votes it is found that such candidate, if still living, would have been entitled to be declared and to be returned as elected, no candidate is returned as elected at the election, and section 89 applies.

- (4) Subsection (5) applies if —
- (a) a candidate in a Council election where the relevant number is more than one dies during the period beginning on the close of the poll for the election and ending when the counting of the votes in the election has been completed; and
 - (b) the candidate is elected.
- (5) The candidate is taken for the purposes of the *Constitution Acts Amendment Act 1899* section 10 and Part IVA of this Act to have vacated a seat in the Council immediately after being elected.

[Section 88 inserted: No. 18 of 1940 s. 3; amended: No. 58 of 1951 s. 7; No. 33 of 1967 s. 11; No. 40 of 1987 s. 50 and 84; No. 36 of 2000 s. 17 and 48(1); No. 20 of 2021 s. 54; amended: No. 30 of 2023 s. 78.]

89. Failure and partial failure of election, when occurs and consequences of

- (1) If no candidate is nominated for an election, or if no candidate is returned as elected at an election, the election shall be deemed to have wholly failed, and a new writ shall forthwith be issued for a supplementary election.
- (2) If an insufficient number of candidates is nominated for a Council election where the relevant number is more than one, or if an insufficient number of candidates is returned as elected at such an election, the election shall be deemed to have partially failed, and a new writ shall forthwith be issued for a supplementary election to fill the remaining vacancy or vacancies, as the case may be.

[Section 89 inserted: No. 18 of 1940 s. 4; amended: No. 40 of 1987 s. 51; No. 20 of 2021 s. 94.]

Division 2A — Registration of how-to-vote cards

[Heading inserted: No. 30 of 2023 s. 79.]

Note for this Division:

See sections 191B, 191C and 191D for offences in relation to distributing or publishing how-to-vote cards.

89A. How-to-vote cards

- (1) A *how-to-vote card* is a card, pamphlet, handbill or other similar document that is —
- (a) given to an elector in an election for the purpose of instructing the elector on how to vote for —
 - (i) a particular candidate or particular candidates in the election; or
 - (ii) a particular group in the election;and
 - (b) lists or shows any or all candidates or groups, or candidates and groups, in the election and —
 - (i) indicates the candidate or group to vote for or a numerical order of voting preference for candidates or groups; or
 - (ii) specifies the manner in which a ballot paper for the election should be marked.
- (2) Without limiting subsection (1)(b), a how-to-vote card may be in a form that is a representation, or purports to be a representation, of all or part of a ballot paper for the election.

[Section 89A inserted: No. 30 of 2023 s. 79.]

89B. When how-to-vote cards are suitable to be registered

- (1) In this Division, a how-to-vote card is *suitable to be registered* if —
- (a) the how-to-vote card clearly identifies the person, political party or group on whose behalf the how-to-vote card is to be distributed or published; and
 - (b) the how-to-vote card —
 - (i) if the ballot paper is for a single member election — indicates or specifies a method of marking an elector’s vote on the ballot paper that is in accordance with section 98C; and
 - (ii) if the ballot paper is for a Council election where the relevant number is more than one — indicates or specifies a method or methods of marking an elector’s vote on the ballot paper that is or are in accordance with sections 98D and 98E;
- and
- (c) the name and address of the person, political party or group authorising the how-to-vote card is stated on each side of the how-to-vote card where a statement referred to in paragraph (b) is stated.
- (2) However, a how-to-vote card is not *suitable to be registered* if the how-to-vote card —
- (a) is likely to mislead or deceive an elector in relation to the casting of an elector’s vote for a particular candidate, political party or group; or
 - (b) is likely to induce an elector to mark their ballot paper otherwise than in accordance with the directions on the ballot paper, including by containing a representation or purported representation of a ballot paper for use in the election; or

- (c) contains an error or abusive, obscene, threatening, violent or unlawful or similarly offensive material.

[Section 89B inserted: No. 30 of 2023 s. 79.]

89C. Applications to register how-to-vote cards

- (1) In this section —
registration period, for an election, means the period —
 - (a) beginning on the day after the day on which the close of nominations occurs for the election; and
 - (b) ending on the day that is 6 business days before polling day in the election.
- (2) During the registration period for an election a person, political party or group wishing to distribute or publish a how-to-vote card (the **distributor**) may apply to the Electoral Commissioner to register a how-to-vote card for the election.
- (3) If an application to register a how-to-vote card has been refused under section 89D(1), the distributor may apply, within the period of 3 days beginning on the day on which the distributor receives a written notice under section 89D(4), to the Electoral Commissioner to register a modified version of the how-to-vote card for the election.
- (4) An application made under subsection (2) or (3) must —
 - (a) be in the approved form; and
 - (b) identify the distributor; and
 - (c) state the contact details of the distributor; and
 - (d) if the distributor is not a legal person, or a person other than the distributor is to be accountable for the publication and distribution of the how-to-vote card — state the name and contact details of the person; and
 - (e) state the election for which the how-to-vote card will be distributed or published; and

- (f) be accompanied by the how-to-vote card that is proposed to be distributed or published; and
 - (g) state that the distributor considers the how-to-vote card is suitable to be registered; and
 - (h) if the how-to-vote card includes or gives access to audio, or audio-visual material — be accompanied by —
 - (i) a copy of the audio or audio-visual material; or
 - (ii) a transcript of the audio or audio-visual material;and
 - (i) if the how-to-vote card includes a language other than English — be accompanied by —
 - (i) a translation into English; and
 - (ii) a certificate from the person who did the translation stating the translator's name and address, their qualifications to translate the language into English and that the translation is a correct translation.
- (5) A person who translates a how-to-vote card must not make a false statement in relation to the translation or certificate accompanying the application under subsection (4)(i).

Penalty for this subsection: a fine of \$1 000.

[Section 89C inserted: No. 30 of 2023 s. 79.]

89D. Commissioner must register suitable how-to-vote cards

- (1) If the Electoral Commissioner receives an application to register a how-to-vote card under section 89C, the Electoral Commissioner must register, or refuse to register, the how-to-vote card.
- (2) If the Electoral Commissioner is satisfied the how-to-vote card is suitable to be registered, the Electoral Commissioner must register the how-to-vote card.

- (3) However, the Electoral Commissioner may refuse to register the how-to-vote card if —
- (a) the person, political party or group wishing to distribute or publish the how-to-vote card (the *second card*) for an election already has a registered how-to-vote card (the *first card*) for the election; and
 - (b) the first card's registration has not been cancelled under section 89E(3)(b), 89F(3)(b) or (4) or 89G(2)(a); and
 - (c) the second card is —
 - (i) substantially similar to the first card; or
 - (ii) not intended to be used in respect of more than 1 election or district.
- (4) If the Electoral Commissioner makes a decision under subsection (1), the Electoral Commissioner must give the accountable person for the how-to-vote card a written notice —
- (a) stating the decision; and
 - (b) if the decision is to refuse to register the how-to-vote card, stating —
 - (i) the reasons for the decision; and
 - (ii) that the person, political party or group may, within the period of 3 days beginning on the day on which the written notice is received, apply again to register the how-to-vote card under section 89C(3).

[Section 89D inserted: No. 30 of 2023 s. 79.]

89E. Replacing registered how-to-vote cards

- (1) The accountable person for a registered how-to-vote card may apply to the Electoral Commissioner to replace the registered how-to-vote card with another how-to-vote card (the *replacement how-to-vote card*).

- (2) The application must —
- (a) be in writing; and
 - (b) state that the person, political party or group seeks to replace a registered how-to-vote card; and
 - (c) be accompanied by the replacement how-to-vote card; and
 - (d) state the differences between the registered how-to-vote card and the replacement how-to-vote card; and
 - (e) if the differences correct an error on the registered how-to-vote card — state the error.
- (3) If the Electoral Commissioner considers the replacement how-to-vote card is suitable to be registered, the Electoral Commissioner must —
- (a) register the replacement how-to-vote card; and
 - (b) cancel the registration of the previous how-to-vote card; and
 - (c) give the applicant under subsection (1) a written notice stating the decision and the reasons for the decision.
- (4) If the Electoral Commissioner considers the replacement how-to-vote card is not suitable to be registered, the Electoral Commissioner must —
- (a) refuse to register the replacement how-to-vote card; and
 - (b) give the applicant under subsection (1) a written notice stating —
 - (i) the decision; and
 - (ii) the reasons for the decision.

[Section 89E inserted: No. 30 of 2023 s. 79.]

89F. Correcting errors identified by Electoral Commissioner in registered how-to-vote cards

- (1) This section applies if the Electoral Commissioner becomes aware of an error in a registered how-to-vote card.
- (2) The Electoral Commissioner may give the accountable person for the registered how-to-vote card a notice (an *error notice*) that —
 - (a) states the error (the *identified error*); and
 - (b) if the Electoral Commissioner considers the identified error to be material and serious, states that —
 - (i) the Electoral Commissioner considers the identified error to be material and serious; and
 - (ii) the accountable person for the how-to-vote card must take immediate steps to ensure that the how-to-vote card is no longer distributed or published unless and until the Electoral Commissioner gives the accountable person a notice under subsection (6);and
 - (c) states that the accountable person must, within the reasonable time stated in the notice —
 - (i) give the Electoral Commissioner a replacement how-to-vote card with the identified error corrected on it and a statement explaining the amendments made to correct the identified error; or
 - (ii) make submissions to the Electoral Commissioner disputing the existence of the identified error;and

- (d) states that the registration of the registered how-to-vote card may be cancelled unless the person, political party or group —
 - (i) complies with paragraph (c)(i); or
 - (ii) makes submissions under paragraph (c)(ii) and satisfies the Electoral Commissioner that the identified error is not an error;and
 - (e) states that —
 - (i) if the error notice states that the Electoral Commissioner considered the identified error was material and serious — the accountable person may commit a crime against section 191C(1) if the person fails to comply with a requirement under paragraph (b)(ii) stated in the error notice; or
 - (ii) the accountable person may commit an offence against section 191C(2) if the person fails to comply with a requirement under paragraph (c)(i) or (ii) stated in the error notice.
- (3) If the Electoral Commissioner receives a replacement how-to-vote card from the accountable person for a how-to-vote card in compliance with an error notice and considers the replacement how-to-vote card corrects the error identified in the error notice and is suitable to be registered, the Electoral Commissioner must —
- (a) register the replacement how-to-vote card; and
 - (b) cancel the registration of the previous how-to-vote card; and
 - (c) give the accountable person a written notice stating the decision and the effect of the decision.

- (4) The Electoral Commissioner may cancel the registration of a registered how-to-vote card in which an error has been identified in an error notice if —
- (a) the Electoral Commissioner receives a replacement how-to-vote card and considers that the replacement card does not correct the error or is not suitable to be registered; or
 - (b) the accountable person that is given the error notice —
 - (i) does not comply with subsection (2)(c)(i); or
 - (ii) does not make submissions under subsection (2)(c)(ii);or
 - (c) the Electoral Commissioner receives submissions under subsection (2)(c)(ii) and is satisfied, despite the submissions, that the identified error in the registered how-to-vote card is an error.
- (5) If the Electoral Commissioner cancels the registration of a registered how-to-vote card under subsection (4), the Electoral Commissioner must give the accountable person for the registered how-to-vote card a written notice stating —
- (a) the decision; and
 - (b) the reasons for the decision.
- (6) If the Electoral Commissioner decides not to apply the provisions of subsection (4), the Electoral Commissioner must give the accountable person for the registered how-to-vote card a written notice stating the decision.

[Section 89F inserted: No. 30 of 2023 s. 79.]

89G. Cancelling registration of registered how-to-vote cards on request

- (1) The accountable person for a registered how-to-vote card may, by notice in writing, request the Electoral Commissioner to cancel the registration of the how-to-vote card.
- (2) If the Electoral Commissioner receives a request under subsection (1), the Electoral Commissioner must —
 - (a) cancel the registration of the registered how-to-vote card; and
 - (b) give the person, political party or group who made the request written notice of the cancellation.

[Section 89G inserted: No. 30 of 2023 s. 79.]

89H. Nominating or changing accountable person for how-to-vote cards

- (1) The accountable person for a registered how-to-vote card, or the person, political party or group on whose behalf the how-to-vote card is registered, may, by written notice given to the Electoral Commissioner, nominate a person to be the accountable person for a registered how-to-vote card.
- (2) If a person is nominated as the accountable person for a registered how-to-vote card under subsection (1) —
 - (a) the person becomes the accountable person for the how-to-vote card; and
 - (b) any other person who was the accountable person ceases to be the accountable person.

[Section 89H inserted: No. 30 of 2023 s. 79.]

89I. Publishing registered how-to-vote cards on Commission website

- (1) The Electoral Commissioner must publish each registered how-to-vote card on the Commission website.

- (2) A failure to comply with subsection (1) in relation to 1 or more registered how-to-vote cards for an election does not invalidate the election.

[Section 89I inserted: No. 30 of 2023 s. 79.]

Division 3 — Procedural provisions about voting

[Heading inserted: No. 30 of 2023 s. 80.]

Subdivision 1 — Establishing places to vote

[Heading inserted: No. 30 of 2023 s. 80.]

90. Appointing places in relation to voting

- (1) For the purpose of an election, the Electoral Commissioner may, by written notice published on the Commission website, do any or all of the following —
- (a) appoint a place as a polling place for the whole of State electorate;
 - (b) appoint a place as a polling place for 1 or more districts;
 - (c) appoint a polling place as either or both of the following —
 - (i) a polling place at which a person may vote in an election on an early voting day;
 - (ii) a polling place at which a person may vote in an election on polling day;
 - (d) appoint, or appoint part of, any of the following as a mobile voting place —
 - (i) an institution or hospital where persons reside;
 - (ii) a prison as defined in the *Prisons Act 1981* section 3(1);
 - (iii) a psychiatric hospital;
 - (iv) a nursing home;

- (e) if the Electoral Commissioner considers it is difficult for persons to vote at a polling place in an area of the State because of the area's remoteness or for another reason, appoint, or appoint part of, any other location or place in that area as a mobile voting place;
 - (f) fix a voting area in relation to each polling place and mobile voting place.
- (2) Each place appointed as a place to vote for a district or districts is taken to have been appointed as a place to vote for the whole of State electorate.
- (3) If a place is a licensed premises, as defined in the *Liquor Control Act 1988* section 3(1), a notice under subsection (1) cannot appoint the place, or a part of it, as a place to vote unless the Electoral Commissioner considers, and states in the notice, that there are exceptional circumstances justifying the appointment.
- (4) An appointment under subsection (3) may be the subject of conditions.
- (5) A voting area fixed under subsection (1)(f) must —
- (a) be adjacent to an entrance for the place to vote; and
 - (b) have boundaries that are no more than 100 m from an entrance for the place to vote.
- (6) A written notice made under subsection (1) is not subsidiary legislation.

[Section 90 inserted: No. 30 of 2023 s. 80.]

90A. Amending notices made under s. 90

- (1) The Electoral Commissioner may, by written notice published on the Commission website, amend a notice published under section 90(1) (the *original notice*) —
- (a) to abolish a polling place; or

- (b) to cancel a declaration under section 90(1)(f) or amend the areas fixed under that paragraph; or
 - (c) for any other purpose.
- (2) The original notice as amended under subsection (1) must comply with section 90.
- (3) The Electoral Commissioner may, by written notice published on the Commission website, repeal a notice published under section 90(1).
- (4) A written notice made under subsection (1) or (3) is not subsidiary legislation.

[Section 90A inserted: No. 30 of 2023 s. 80.]

90B. Certain buildings to be used for free

The following places may be used free of charge as a place of declaration of nominations under section 86(1a) or 87(2) or as a place to vote —

- (a) a place under the control of the State;
- (b) a place owned by, or under the control of, a local government;
- (c) an Agricultural Hall;
- (d) a building —
 - (i) to which the public is entitled to have access; and
 - (ii) the construction of which has been subsidised by the State.

[Section 90B inserted: No. 30 of 2023 s. 80.]

90C. Liquor not to be sold in licensed premises where people vote

While a licensed premises, as defined in the *Liquor Control Act 1988* section 3(1), is being used as a place to vote, the part

of the licensed premises that is being used for that purpose must not be —

- (a) used for the sale of liquor; or
- (b) accessible from a part of the licensed premises where liquor is sold.

[Section 90C inserted: No. 30 of 2023 s. 80.]

90D. Officers and times to vote at mobile voting places

- (1) The returning officer for a district must appoint, for each mobile voting place in the district —
 - (a) a presiding officer to preside at the mobile voting place; and
 - (b) another officer to work at the mobile voting place.
- (2) In a conjoint election, a person appointed under subsection (1)(a) or (b) for a mobile voting place in a district is also appointed to the same position for the mobile voting place for the general election for the Council.

Note for this subsection:

Other officers may be appointed under section 92D in relation to mobile voting places.

- (3) The Electoral Commissioner must —
 - (a) decide how many mobile ballot boxes are to be present at the mobile voting place for an election; and
 - (b) decide the times in the period of 14 days up to and including polling day during which the officers appointed for the mobile voting place under subsection (1) are required to attend the mobile voting place.
- (4) In making a decision under subsection (3), the Electoral Commissioner must have regard to giving an opportunity to

vote to persons who will vote in an election at mobile voting places for the election.

[Section 90D inserted: No. 30 of 2023 s. 80.]

90E. Notice to be given in relation to mobile voting places

- (1) The Electoral Commissioner must ensure that, before the end of the period of 48 hours before the first mobile voting time for a mobile voting place for an election, each candidate in the election is given a written notice of —
 - (a) each mobile voting place for the election; and
 - (b) the mobile voting times for the mobile voting place.
- (2) An election and the result of an election are not affected if a notice is not given under subsection (1) if the Electoral Commissioner has a reasonable excuse for failing to give a written notice.

[Section 90E inserted: No. 30 of 2023 s. 80.]

Subdivision 2 — Early voting days for elections

[Heading inserted: No. 30 of 2023 s. 80.]

91. Rules for fixing early voting days

- (1) In this section —

available day means any day that is not —

 - (a) a day appointed as polling day in an election of the Senate or a general election of the House of Representatives or as the voting day for a referendum as defined in the *Referendum (Machinery Provisions) Act 1984* (Commonwealth) section 3(1); or
 - (b) Christmas Day; or
 - (c) Easter Saturday; or
 - (d) a Sunday.

- (2) The 11 consecutive available days ending on the Friday before the polling day in an election are the early voting days on which a person can vote in the election at an early polling place.
- (3) However, if the polling day in an election is postponed under section 71(6), the early voting days for the election are —
 - (a) if the polling day is postponed before the first early voting day fixed under subsection (2) — the 11 consecutive available days ending on the Friday before the polling day as postponed; or
 - (b) otherwise — each available day that falls between the period beginning on the day on which the polling day is postponed and ending on the day before the polling day as postponed.
- (4) The Electoral Commissioner must publish a written notice on the Commission website stating —
 - (a) the early voting days under subsection (2) for an election; and
 - (b) if the polling day in an election is postponed under section 71(6) — the early voting days under subsection (3) for the election.

[Section 91 inserted: No. 30 of 2023 s. 80.]

Subdivision 3 — Appointments and functions of persons in relation to holding an election

[Heading inserted: No. 30 of 2023 s. 80.]

92. Returning officer's duties in relation to elections

If the proceedings after the close of nominations stand adjourned to polling day under section 87(8), the returning officer must make all necessary arrangements for taking the poll in accordance with this Subdivision and Subdivisions 4 and 5.

[Section 92 inserted: No. 30 of 2023 s. 80.]

92A. Electoral Commissioner and returning officers may appoint issuing officers

For the purposes of paragraph (f) of the definition of *issuing officer* in section 4(1) —

- (a) the Electoral Commissioner may, in writing, appoint a person to be an issuing officer; and
- (b) a returning officer may, in writing, appoint a person to be an issuing officer.

[Section 92A inserted: No. 30 of 2023 s. 80.]

92B. Electoral Commissioner may give directions in relation to elections

- (1) The Electoral Commissioner may give a direction if the Electoral Commissioner considers the direction necessary or expedient to implement the provisions of this Act for the proper and efficient conduct of an election.
- (2) Without limiting subsection (1), the Electoral Commissioner may, for the purpose of assisting an elector to vote under section 98F, give a direction the Electoral Commissioner considers is necessary or expedient about and in relation to methods of —
 - (a) conveying details on the ballot paper to the elector without conveying political information other than names or words printed in accordance with section 94B or 94C; and
 - (b) translating the elector's instructions; and
 - (c) eliciting the exact direction of the elector's preferences.

[Section 92B inserted: No. 30 of 2023 s. 80.]

92C. Appointing presiding officers and assistant presiding officers at polling places

- (1) The returning officer for a district must appoint, for each polling place in the district —
 - (a) a presiding officer to preside at the polling place; and
 - (b) all necessary assistant presiding officers and other officers to work at the polling place.
- (2) An appointment under subsection (1) must be in writing in the approved form.
- (3) In a conjoint election, a person appointed under subsection (1)(a) or (b) for a polling place in a district is also appointed to the same position for the polling place for the purposes of the general election for the Council.

[Section 92C inserted: No. 30 of 2023 s. 80.]

92D. Substitute and assistant presiding officers

- (1) The presiding officer for a place to vote may appoint a substitute presiding officer to act as presiding officer for the place to vote during the presiding officer's temporary absence or when the presiding officer is prevented from acting, including due to illness.
- (2) A substitute presiding officer for a place to vote who is acting as presiding officer has, and may perform, the functions of the presiding officer for the place to vote.
- (3) The Electoral Commissioner or returning officer for a district may authorise the presiding officer for a place to vote to appoint under subsection (4) an assistant presiding officer for the place to vote.
- (4) The presiding officer for a place to vote may, if authorised under subsection (3), appoint an assistant presiding officer for the place to vote.

- (5) An assistant presiding officer appointed under subsection (4) or section 92C(1)(b) has, and subject to the direction of the presiding officer, may perform, the functions of the presiding officer.

[Section 92D inserted: No. 30 of 2023 s. 80.]

92E. Effect of failure to take poll if presiding officer is absent

- (1) If a poll is not taken at a place to vote on polling day because neither the presiding officer appointed for the place to vote, nor a substitute presiding officer appointed under section 92D(1), is present on polling day —
- (a) the election is not void by reason only of the poll not being taken; and
 - (b) the returning officer may appoint another day not later than 21 days after polling day for taking the poll at the place to vote.
- (2) If another day for the taking of the poll is appointed under subsection (1)(b), the Electoral Commissioner must ensure a written notice is published on the Commission website, or that other public notice is given, of the day appointed.
- (3) If the poll is taken on the day appointed under subsection (1)(b), the poll is taken to have been taken on the original polling day.

[Section 92E inserted: No. 30 of 2023 s. 80.]

92F. Appointment of scrutineers during polling

- (1) A candidate in an election, or the candidate's official agent, may appoint a scrutineer to represent the candidate at a place to vote during the polling for the election.
- (2) A candidate in a group, or the official agent of a group, in a Council election where the relevant number is more than one may appoint a scrutineer to represent the group at a place to vote during the polling for the election.

- (3) An appointment under subsection (1) or (2) must —
- (a) be in writing given to the returning officer for the district in which the place to vote is located or the presiding officer at the place to vote; and
 - (b) unless subsection (4) applies — state the scrutineer’s name and address; and
 - (c) be signed by —
 - (i) the candidate or the candidate’s official agent; or
 - (ii) if the scrutineer is representing a group in a Council election — a candidate included in the group or the group’s official agent.
- (4) The returning officer for the district in which the place to vote is located or the presiding officer for the place to vote may approve an appointment under subsection (1) or (2) that does not comply with subsection (3)(b).
- (5) Before a scrutineer appointed under subsection (1) or (2) acts as a scrutineer at a place to vote, the scrutineer must make a declaration, in the approved form, in the presence of the returning officer for the district in which the place to vote is located or the presiding officer for the place to vote.

[Section 92F inserted: No. 30 of 2023 s. 80.]

92G. Election campaign workers to have access to toilet facilities

The Electoral Commissioner must ensure that, to the extent practicable, election campaign workers have access to toilet facilities at places to vote.

[Section 92G inserted: No. 30 of 2023 s. 80.]

92H. Responsibilities in relation to election campaign workers

- (1) A candidate, group or political party must ensure that an election campaign worker for the candidate, group or political party —
 - (a) complies with this Act; and
 - (b) while acting as an election campaign worker, behaves in a respectful and otherwise appropriate manner to all persons, including electors, officers and other election campaign workers; and
 - (c) while acting as an election campaign worker (otherwise than as a scrutineer), wears or displays identification identifying the candidate, group or political party for which they are working or volunteering; and
 - (d) complies with a direction given under subsection (2).
- (2) The presiding officer or assistant returning officer for a place to vote or counting place may direct an election campaign worker at the place to do, or refrain from doing, something in order to ensure the election campaign worker complies with subsection (1)(a) to (c).
- (3) An election campaign worker who is given a direction under subsection (2) must comply with the direction.

[Section 92H inserted: No. 30 of 2023 s. 80.]

92I. Returning officer may provide or require persons to wear identification

- (1) The returning officer may require any of the following persons to wear or display identification at a place to vote —
 - (a) presiding officers;
 - (b) assistant presiding officers;
 - (c) other officers working at the place to vote;
 - (d) scrutineers.

- (2) If the returning officer requires a person to wear or display identification under subsection (1), the person must comply with the requirement.
- (3) The returning officer may provide identification for the purposes of subsection (1).

[Section 92I inserted: No. 30 of 2023 s. 80.]

92J. Police at places to vote

- (1) The Electoral Commissioner, returning officer or presiding officer may request a police officer to attend a place to vote to do any of the following —
 - (a) preserve order at the place to vote;
 - (b) remove from the place to vote a person considered by the Electoral Commissioner, returning officer or presiding officer to be obstructing the polling or contravening this Act;
 - (c) cause a person who obstructs an approach to, or a designated entrance of, the place to vote to be removed.
- (2) A police officer must aid and assist the returning officer or presiding officer in the performance of their duty.

[Section 92J inserted: No. 30 of 2023 s. 80.]

92K. Candidate not to conduct election

The following persons must not take part in the conduct of an election —

- (a) a candidate in the election;
- (b) an election campaign worker, other than a scrutineer, at a place to vote or counting place at the election.

[Section 92K inserted: No. 30 of 2023 s. 80.]

Subdivision 4 — Requirements for places to vote

[Heading inserted: No. 30 of 2023 s. 80.]

93. Duties for places to vote, ballot boxes and ballot papers

The returning officer for a district must —

- (a) ensure that each polling place in the district has adequate and appropriate furniture, fittings and equipment; and
- (b) ensure that each mobile voting place in the district has adequate and appropriate furniture, fittings and equipment, having regard to the nature of the place or location where the mobile voting place is located; and
- (c) provide each place to vote in the district with —
 - (i) a ballot box that has a cleft for receiving ballot papers; and
 - (ii) a sealing device for the ballot box.

[Section 93 inserted: No. 30 of 2023 s. 80.]

93A. Designated entrances for places to vote

- (1) Before opening a mobile voting place for voting, the presiding officer may place a sign at an entrance to the mobile voting place to designate that it is an entrance for use by electors to enter the mobile voting place.
- (2) Before opening a polling place for voting, the presiding officer must place a sign at at least 1 entrance to the polling place to designate that it is an entrance for use by electors to enter the polling place.

[Section 93A inserted: No. 30 of 2023 s. 80.]

93B. Returning officer to ensure separate voting compartments and pens or pencils are provided

The returning officer for a district must ensure that —

- (a) separate voting compartments are erected at each polling place in the district to allow persons to mark their ballot papers without being observed; and
- (b) pens or pencils are available for persons to use to mark their ballot papers at each place to vote in the district.

[Section 93B inserted: No. 30 of 2023 s. 80.]

93C. Ensuring access to rolls for elections

- (1) The Electoral Commissioner, in accordance with the regulations, must ensure that access to any rolls for elections that are in electronic form is available to each of the following —
 - (a) for a Council election —
 - (i) the returning officer;
 - (ii) the returning officer for the district;
 - (iii) the presiding officers and other officers at places to vote;
 - (b) for an election in a district —
 - (i) the returning officer for the district;
 - (ii) the presiding officers and other officers at places to vote in the district.
- (2) If the roll for a district that forms part of the roll for a Council election is in printed form —
 - (a) the Electoral Commissioner must ensure that a copy of the printed roll is delivered to the returning officer; and

- (b) before voting in the election occurs in the district —
 - (i) the Electoral Commissioner must ensure that sufficient copies of the printed roll are delivered to the returning officer for the district; and
 - (ii) the returning officer for the district must ensure that sufficient copies of the printed roll are delivered to each presiding officer for a place to vote in the district.
- (3) If the roll for an election in a district is in printed form, before voting in the election occurs in the district —
 - (a) the Electoral Commissioner must ensure that sufficient copies of the printed roll are delivered to the returning officer for the district; and
 - (b) the returning officer must ensure that sufficient copies of the printed roll are delivered to each presiding officer for a place to vote in the district.
- (4) Subsection (3) does not have to be complied with if the election has the same polling day as a Council election and copies of the roll are delivered under subsection (2)(b).
- (5) Subsection (2)(b) or (3) does not apply if voting in the election is not required or the election is deemed to have wholly failed.

[Section 93C inserted: No. 30 of 2023 s. 80.]

Subdivision 5 — Ballot papers

[Heading inserted: No. 30 of 2023 s. 80.]

94. Providing ballot papers to places to vote

The returning officer for a district must provide ballot papers that comply with this Subdivision to each place to vote in the district.

[Section 94 inserted: No. 30 of 2023 s. 80.]

94A. Form and content of ballot papers generally

- (1) A ballot paper must —
 - (a) be in an approved form; and
 - (b) contain the names of all the persons nominated as candidates; and
 - (c) contain typeface of a size, or sizes, approved by the Electoral Commissioner.
- (2) A ballot paper may be printed on paper (*official paper*) that —
 - (a) has a prescribed watermark; or
 - (b) incorporates security features or devices approved by the Electoral Commissioner by written notice published on the Commission website.
- (3) If 2 or more candidates have similar names that the Electoral Commissioner considers are likely to cause confusion, the ballot paper may include a description or addition to the names that distinguishes them from each other.

[Section 94A inserted: No. 30 of 2023 s. 80.]

94B. Printing political party names on ballot papers

- (1) In this section —
name includes an abbreviation or acronym of a name.
- (2) A candidate in an election may apply to the returning officer before the close of nominations to have either of the following printed adjacent to the candidate's name on the ballot papers for the election —
 - (a) the name of a registered political party;
 - (b) the composite name of the names of 2 registered political parties.
- (3) An application under subsection (2) must —
 - (a) be in an approved form; and

- (b) be signed by the candidate; and
 - (c) specify the name to be printed adjacent to the candidate's name; and
 - (d) contain a declaration signed by a registered officer of the registered political party or, if the application is for the printing of a composite name, by a registered officer of each registered political party concerned, stating that the party supports the application; and
 - (e) if the name of the candidate is to be included in a group — be in the form of a joint application by all the candidates to be included in the group to have the same name (the *specified name*) adjacent to the name of each of those candidates.
- (4) If an application under subsection (2) is received by the returning officer before the close of nominations and the returning officer is satisfied that the application is in accordance with subsection (3), a ballot paper must —
- (a) have the specified name printed adjacent to the candidate's name; and
 - (b) if the ballot paper is for a Council election and the application is for a group under subsection (3)(e) —
 - (i) have the specified name printed adjacent to the name of each candidate in that group; and
 - (ii) if there is an above-the-line square printed for the group on the ballot paper — include the specified name adjacent to that square.
- (5) If an application under subsection (2) is received by the Electoral Commissioner, the application is taken to have been made to the returning officer when the application is received by the Electoral Commissioner.

[Section 94B inserted: No. 30 of 2023 s. 80.]

94C. Printing “Independent” on ballot papers

- (1) A non-party candidate in an election may apply to the returning officer before the close of nominations to have the word “Independent” printed adjacent to the candidate’s name on the ballot papers for the election.
- (2) An application under subsection (1) must —
 - (a) be in an approved form; and
 - (b) be signed by the candidate; and
 - (c) if the name of the candidate is to be included in a group — be in the form of a joint application by all the candidates to be included in the group to have the word “Independent” printed adjacent to the name of each of those candidates.
- (3) If an application under subsection (1) is received by the returning officer before the close of nominations and the returning officer is satisfied that the application is in accordance with subsection (2), a ballot paper must —
 - (a) include the word “Independent” adjacent to the candidate’s name; or
 - (b) if the ballot paper is for a Council election and the application is for a group under subsection (2)(c) —
 - (i) include the word “Independent” adjacent to the name of each candidate in the group; and
 - (ii) if there is an above-the-line square printed for the group on the ballot paper — include the word “Independent” adjacent to that square.
- (4) If an application under subsection (1) is received by the Electoral Commissioner, it is taken to have been received by the returning officer when it was received by the Electoral Commissioner.

[Section 94C inserted: No. 30 of 2023 s. 80.]

94D. Printing Council ballot papers

- (1) A ballot paper for a Council election where the relevant number is one must include —
 - (a) the names of the candidates in the order determined under section 87(6); and
 - (b) a square opposite the name of each candidate.
- (2) A ballot paper for a Council election where the relevant number is more than one must comply with subsections (3) to (6).
- (3) If there is only 1 group, the names of candidates included in the group must be printed on the ballot paper in a group before the names of candidates, if any, not included in the group.
- (4) If there are 2 or more groups, the following apply —
 - (a) if in only 1 of the groups each of the candidates is an endorsed candidate of the same registered political party — the names of candidates included in the group must be printed on the ballot paper in a group before the names of candidates included in the other group or groups;
 - (b) if in 2 or more of the groups each of the candidates is an endorsed candidate of the same registered political party — the names of candidates included in the groups must be printed in groups in columns sequentially from the left across the ballot paper in the order determined under section 87(5), before the names of candidates included in any other group or, if there is no other group, before the names of candidates, if any, not included in a group;
 - (c) if only 1 of the groups remains after the application of paragraph (a) or (b) — the names of candidates included in the group must be printed on the ballot paper in a group before the names of candidates, if any, not included in a group;

- (d) if 2 or more of the groups remain after the application of paragraph (a) or (b) or neither of those paragraphs applies — the names of candidates included in the groups must be printed in groups in columns sequentially from the left across the ballot papers in the order determined under section 87(5), before the names of candidates, if any, not included in a group;
 - (e) the order, within a group, in which the names of candidates in that group are printed must be the order specified in the claim made by them under section 80(1);
 - (f) the names of candidates, if any, not included in a group must be printed —
 - (i) in a column or, if there are too many names to print in 1 column, in 2 or more columns; and
 - (ii) in the order determined under section 87(6).
- (5) If there are no groups, the names of the candidates must be printed on the ballot paper in the order determined under section 87(6).
- (6) In printing the ballot papers —
- (a) a square must be printed opposite the name of each candidate; and
 - (b) if the names of 5 or more candidates are included in a group —
 - (i) a dividing line must be printed above the squares printed opposite those names; and
 - (ii) a square must be printed above the dividing line and above the below-the-line squares printed opposite those names.
- (7) If, before polling day in a Council election where the relevant number is more than one, a candidate is declared by a court to be incapable of being elected at that election, the returning officer may take any action in relation to the printing of the

ballot papers the returning officer considers necessary as a consequence of the declaration, including the following —

- (a) causing the ballot papers to be reprinted;
- (b) causing notations or marks to be made on the ballot papers;
- (c) again applying section 87(6).

[Section 94D inserted: No. 30 of 2023 s. 80.]

94E. Printing Assembly ballot papers

A ballot paper for an election in a district must include —

- (a) the names of the candidates in the order determined under section 86(2a); and
- (b) a square opposite the name of each candidate.

[Section 94E inserted: No. 30 of 2023 s. 80.]

Division 3A — Voting

[Heading inserted: No. 30 of 2023 s. 80.]

Subdivision 1 — Entitlement to vote if person on roll

[Heading inserted: No. 30 of 2023 s. 80.]

95. Person may vote if name on roll

Subject to this Act, the inclusion of an elector's name on the roll for an election is conclusive evidence that the elector is entitled to vote in the election.

Note for this section:

See sections 96C and 97F.

[Section 95 inserted: No. 30 of 2023 s. 80.]

Subdivision 2 — Polling places

[Heading inserted: No. 30 of 2023 s. 80.]

96. Persons who may be at polling places

- (1) A person must not enter or remain at a polling place for an election while the presiding officer is complying with section 96A or during the polling unless the person is —
 - (a) the Electoral Commissioner; or
 - (b) a returning officer; or
 - (c) the presiding officer or an assistant presiding officer; or
 - (d) another officer working at the polling place; or
 - (e) a scrutineer appointed for the polling place and allowed at the polling place under subsection (2) or (3); or
 - (f) a police officer on duty at the polling place; or
 - (g) a person who is voting or about to vote; or
 - (h) a person nominated under section 98F(2) to assist a person who is voting or about to vote; or
 - (i) if the election is held on the same day as a referendum — a scrutineer for the polling place appointed under an enactment for the purposes of the referendum.
- (2) At a polling place for a single member election, only 1 scrutineer at a time is allowed for each candidate.
- (3) At a polling place for a Council election where the relevant number is more than one —
 - (a) only 1 scrutineer at a time is allowed for each group; and
 - (b) only 1 scrutineer at a time is allowed for each candidate who is not included in a group.

[Section 96 inserted: No. 30 of 2023 s. 80.]

96A. Ballot box to be exhibited and sealed before voting commences

- (1) Before opening a polling place for voting, the presiding officer must exhibit the open and empty ballot box.
- (2) The presiding officer must then —
 - (a) securely fasten and secure the ballot box with a sealing device so that nothing can be removed from the ballot box without breaking the seal; and
 - (b) place the sealed ballot box in a position in full view of all persons present in the polling place.

[Section 96A inserted: No. 30 of 2023 s. 80.]

96B. When electors can vote at polling places

- (1) An elector can vote at a polling place —
 - (a) if the polling place is appointed as a place at which an elector may vote in an election on polling day under section 90(1)(c)(ii) — when the polling place is open on polling day; and
 - (b) if the polling place is an early polling place — when the early polling place is open on each early voting day.
- (2) On each early voting day, an early polling place must open and close at the times decided by the Electoral Commissioner under subsection (3).
- (3) The Electoral Commissioner must decide the opening and closing times for early polling places on each early voting day and publish those times on the Commission website.
- (4) On polling day the polls at a polling place must —
 - (a) open at 8 am; and
 - (b) close when all electors who are at the polling place at 6 pm and want to vote have voted.

- (5) If there is a dispute about when a polling place is to open or close, the decision of the presiding officer is final.

[Section 96B inserted: No. 30 of 2023 s. 80.]

96C. Questions to be put to people claiming to vote at polling place

- (1) This section applies if, at a polling place for a district, a person claims to vote in an election as an elector enrolled for that district.
- (2) An officer working at the polling place must ask the person the following questions —
- (a) *Have you already voted in this election (or, if there is more than 1 election, these elections)?*
 - (b) *What is your full name?*
 - (c) *What is the address of where you live?*
- (3) If the officer considers that the person does not understand a question asked under subsection (2) —
- (a) the officer may ask the question in a less formal manner; and
 - (b) if the person finds it difficult to answer that question even when it is asked in that manner, the officer may assist the person to answer the question.
- (4) The officer may also ask the person any other question the officer considers necessary to determine whether and where the person is enrolled.
- (5) Subject to subsection (6), the person's answers to the questions are conclusive and the matter must not be further inquired into during the polling.

- (6) The person's claim to vote in an election must be rejected if any of the following applies —
- (a) the person refuses to fully answer a question asked by an officer under this section;
 - (b) despite section 95, the officer is not satisfied, based on the answers to the questions asked under this section, that the person is entitled to vote in the election;
 - (c) the officer is satisfied that the person has previously voted in the election;
 - (d) the person refuses to make a declaration when required under Subdivision 3.
- (7) However, subsection (6)(a) does not apply if the person is a silent elector to the extent the person refuses to answer a question the answer to which might enable their electoral address to be ascertained.

[Section 96C inserted: No. 30 of 2023 s. 80.]

96D. Voting at polling place for person's district

- (1) Subsection (2) applies if —
- (a) under section 96C(1), a person claims to vote in an election at a polling place for a district; and
 - (b) the person's name is on the roll for the district; and
 - (c) the claim is not rejected under section 96C.
- (2) The person may vote in the election in accordance with Subdivision 4.
- (3) For the purposes of subsection (1)(b) —
- (a) the person's surname is taken to be on the roll for the district as long as the name on the roll is a surname that the person is entitled to use; and
 - (b) if an officer working at the polling place is satisfied of the identity of the person, the occurrence of 1 or more of

the following on the roll for the district is to be ignored in determining whether the person's name is on the roll —

- (i) a name of the person (other than a surname) being omitted;
- (ii) a wrong name (other than a surname) being entered for the person;
- (iii) a name of the person being misspelled.

[Section 96D inserted: No. 30 of 2023 s. 80.]

Subdivision 3 — Absent and provisional voting at polling places

[Heading inserted: No. 30 of 2023 s. 80.]

97. Term used: vote as a provisional voter

In this Subdivision —

vote as a provisional voter means to vote in the manner prescribed under section 97I and in accordance with Subdivision 4.

[Section 97 inserted: No. 30 of 2023 s. 80.]

97A. Absent voting

- (1) Subsection (2) applies if —
 - (a) at a polling place for a district, a person claims to vote in an election as an elector enrolled for another district; and
 - (b) an officer working at the polling place is satisfied that the person has not otherwise voted in the election.
- (2) The person may, subject to the regulations, vote as an absent voter at the polling place in the manner prescribed under section 97I and in accordance with Subdivision 4.
- (3) The Electoral Commissioner may make arrangements for the taking of absent votes at a polling place in a district for which a

candidate has been declared elected before polling day under section 86(2aa).

[Section 97A inserted: No. 30 of 2023 s. 80.]

97B. Provisional voting when required by officers

- (1) An officer working at a polling place may require a person claiming under section 96C(1) or 97A(1)(a) to vote in an election at the polling place to make a prescribed declaration before the officer.
- (2) Without limiting subsection (1), if the officer is satisfied that the person has not otherwise voted in the election, the officer may require the person to make a prescribed declaration if —
 - (a) the person refuses to fully answer a question asked under section 96C; or
 - (b) despite section 95, the officer is not satisfied, on the basis of the answers to the questions asked under section 96C, that the person is entitled to vote in the election.
- (3) However, subsection (2)(a) does not apply to a person who is a silent elector to the extent the person refuses to answer a question the answer to which might enable their electoral address to be ascertained.
- (4) A scrutineer may request that the presiding officer for a polling place require a person to make a prescribed declaration before the person is permitted to vote in an election at the polling place under section 96D(2) or 97A(2).
- (5) If the presiding officer receives a request under subsection (4), the presiding officer must require the person to make a prescribed declaration before an officer working at the polling place before the person is permitted to vote.

- (6) A person who makes a declaration as required under subsection (1) or (5) may vote as a provisional voter.

[Section 97B inserted: No. 30 of 2023 s. 80.]

97C. Provisional voting when enrolled under s. 47

- (1) If a person claiming under section 96C(1) or 97A(1)(a) to vote in an election at a polling place has been enrolled under section 47(3)(g), an officer working at the polling place must require the person to make a prescribed declaration before the officer.

- (2) A person who makes a declaration as required under subsection (1) may vote as a provisional voter.

[Section 97C inserted: No. 30 of 2023 s. 80.]

97D. Provisional voting when not on or removed from roll

- (1) If subsection (2) applies to a person who claims under section 96C(1) or 97A(1)(a) to vote in an election at a polling place, the person may, after making a prescribed declaration before an officer working at the polling place, vote as a provisional voter.

- (2) This subsection applies to the person if the name of the person is not on the roll for the district and —

- (a) the person's name is on the register of electors for the district but has been omitted from the roll because of an error of an officer or a mistake of fact; or
- (b) the person's name is not on the register of electors for the district because of an error of an officer or a mistake of fact; or
- (c) the person's name was on the register of electors for the district but was removed under section 48 because of an error of an officer or a mistake of fact and —
 - (i) the person's name was not, to the best of their knowledge, removed from the register of electors

due to objection to, or duplication of, their enrolment or because the person is not entitled to be enrolled for the district; and

- (ii) from the time of the person's enrolment for the district to the time of the close of the roll for the election, the person continuously retained their right to enrolment for the district;

or

- (d) a duly completed claim for the enrolment of the person for the district was received under section 42 before the close of the roll for the election and no circumstances existed after the sending or delivery of the claim that would have compelled or authorised an enrolment officer to —
 - (i) reject the claim under section 47; or
 - (ii) remove the name of the person from the register of electors under section 48.

[Section 97D inserted: No. 30 of 2023 s. 80.]

97E. Provisional voting when name cannot be found on roll

A person who claims under section 96C(1) or 97A(1)(a) to vote in an election at a polling place may vote as a provisional voter if —

- (a) the person's name cannot be found on the roll by an officer working at the polling place; and
- (b) section 97D is not applicable; and
- (c) the person makes a prescribed declaration before the officer.

[Section 97E inserted: No. 30 of 2023 s. 80.]

97F. Provisional voting if record made that person has received ballot paper

A person who claims under section 96C(1) or 97A(1)(a) to vote in an election at a polling place may vote as a provisional voter if —

- (a) the person's name is on a roll but a record has been made in respect of their name on the roll under section 98A(1)(b), 100D(5)(a) or 102C(2); and
- (b) the person claims that they have not received a ballot paper for the election; and
- (c) the person makes a prescribed declaration before an officer working at the polling place.

[Section 97F inserted: No. 30 of 2023 s. 80.]

97G. Provisional voting if person applies to enrol on day on which they intend to vote

- (1) A person entitled to be enrolled under section 17(3) may vote as a provisional voter in an election if, at a polling place in a district on the day on which the person intends to vote, the person —

- (a) makes —
 - (i) a claim for enrolment under this Act; or
 - (ii) a claim for enrolment or transfer of enrolment under the *Commonwealth Electoral Act 1918* to be enrolled on a Commonwealth roll for this State;

and

- (b) makes a prescribed declaration before an officer working at the polling place.

- (2) Subsection (1) applies even if the claim relates to enrolment for another district.

[Section 97G inserted: No. 30 of 2023 s. 80.]

97H. Declaration made under this Subdivision sufficient for elections that have same polling day

If an election in a district and a Council election have the same polling day, a person's declaration made under this Subdivision applies in relation to each of the elections.

[Section 97H inserted: No. 30 of 2023 s. 80.]

97I. Regulations about absent and provisional voting

(1) In this section —

absent voting means voting as an absent voter under section 97A;

provisional voting means voting as a provisional voter under this Subdivision;

relevant ballot paper means a ballot paper given under Subdivision 4 if a person is absent voting or provisional voting.

(2) The regulations may make provision for and in relation to —

- (a) absent voting and provisional voting; and
- (b) anything necessary or convenient to be prescribed for carrying the provisions of this Act relating to absent voting and provisional voting into effect.

(3) Without limiting subsection (2), the regulations may provide for and in relation to —

- (a) the manner of absent voting or provisional voting; and
- (b) the manner of dealing with relevant ballot papers, including the placing of relevant ballot papers into prescribed envelopes and the placing of those envelopes into ballot boxes in use at the polling place; and
- (c) the manner of the scrutiny and counting of votes on the relevant ballot papers; and
- (d) the retention and preservation of documents likely to be required in case of a disputed election, including

envelopes, rejected votes and relevant ballot papers, until the validity of the election in respect of which they are used cannot be disputed.

- (4) Subject to sections 144(2b), 146, 146I(1) and 146J, if under subsection (3)(b) the regulations require prescribed ballot papers to be placed into prescribed envelopes then, unless the regulations provide otherwise, the following things can only be done by the Electoral Commissioner or a directed officer under section 142A(1) or that section as applied by section 146B(1) —
- (a) the opening of a prescribed envelope and removal of the prescribed ballot paper from it;
 - (b) the scrutiny of the prescribed ballot paper and counting of the votes on it.
- (5) A returning officer or another officer who is authorised under this Act to open a ballot box must, without opening the envelope containing any relevant ballot paper, transmit it in the manner prescribed to the Electoral Commissioner.

[Section 97I inserted: No. 30 of 2023 s. 80.]

Subdivision 4 — How to vote

[Heading inserted: No. 30 of 2023 s. 80.]

98. Terms used

In this Subdivision —

claim voter means an elector to whom section 96D(2) applies;

declaration voter means a person who makes a declaration under Subdivision 3;

voter means a claim voter or declaration voter.

[Section 98 inserted: No. 30 of 2023 s. 80.]

98A. Giving ballot papers to persons who have right to vote or who made declarations

- (1) An officer working at a polling place must —
 - (a) give a voter at the polling place a ballot paper that is printed on official paper or initialled by the officer in a place that can be easily seen when the ballot paper is folded to conceal the vote; and
 - (b) make a record, in a prescribed manner, in respect of the voter's name on the electronic roll, if the officer has access to it, or on a copy of the printed roll in use at the polling place to show that the voter has received a ballot paper.
- (2) A record made on the electronic roll or on a copy of the printed roll under subsection (1)(b) is evidence —
 - (a) of the identity of the voter; and
 - (b) that the voter voted in the election.

[Section 98A inserted: No. 30 of 2023 s. 80.]

98B. Method of voting at polling place

After a voter has received a ballot paper under section 98A(1)(a), the voter must —

- (a) go to an unoccupied voting compartment at the polling place; and
- (b) mark the voter's vote on the ballot paper in accordance with —
 - (i) if the ballot paper is for a single member election — section 98C; or
 - (ii) if the ballot paper is for a Council election where the relevant number is more than one — section 98D or 98E;

and

- (c) fold the ballot paper to conceal the vote and —
 - (i) in the case of a claim voter — deposit the folded ballot paper in the ballot box; or
 - (ii) in the case of a declaration voter — deal with the ballot paper in accordance with the method prescribed under section 97I(3)(b);and
- (d) leave the polling place.

[Section 98B inserted: No. 30 of 2023 s. 80.]

98C. How ballot paper is to be marked by voter for single member election

In a single member election, a voter must mark the voter's vote on the ballot paper —

- (a) if there are only 2 candidates — by placing the numeral 1 in the square opposite the name of the candidate for whom the voter votes; or
- (b) if there are more than 2 candidates — by placing —
 - (i) the numeral 1 in the square opposite the name of the candidate for whom the voter votes as the voter's first preference; and
 - (ii) consecutive numerals from 2 in the squares opposite the names of the remaining candidates in order of the voter's preference for those candidates.

[Section 98C inserted: No. 30 of 2023 s. 80.]

98D. Marking ballot paper for Council election where relevant number is more than one if at least 1 above-the-line square

- (1) This section applies in a Council election where the relevant number is more than one if there is at least 1 above-the-line square on the ballot paper.

- (2) If there are 3 or more above-the-line squares, a voter must mark the voter's vote on the ballot paper by either —
- (a) placing the numeral 1 in the square relating to the group for which the voter votes as the voter's first preference and, if the voter wishes —
 - (i) placing the numeral 2 in the square relating to the group for which the voter votes as the voter's second preference; or
 - (ii) placing consecutive numerals from 2 in 2 or more of the other squares in order of the voter's preference for the groups to which those squares relate;
 - or
 - (b) marking below-the-line squares on the ballot paper in accordance with section 98E.
- (3) If there are 2 above-the-line squares, a voter must mark the voter's vote on the ballot paper by either —
- (a) placing the numeral 1 in the square relating to the group for which the voter votes as the voter's first preference and, if the voter wishes, placing the numeral 2 in the square relating to the group for which the voter votes as the voter's second preference; or
 - (b) marking below-the-line squares on the ballot paper in accordance with section 98E.
- (4) If there is 1 above-the-line square, a voter must mark the voter's vote on the ballot paper by either —
- (a) placing the numeral 1 in the square; or
 - (b) marking below-the-line squares on the ballot paper in accordance with section 98E.

[Section 98D inserted: No. 30 of 2023 s. 80.]

98E. Voting in below-the-line-squares or if no above-the-line squares

- (1) This section applies in a Council election where the relevant number is more than one if —
 - (a) under section 98D(2)(b), (3)(b) or (4)(b), a voter votes by marking below-the-line squares on the ballot paper; or
 - (b) there are no above-the-line squares on the ballot paper.
- (2) If this section applies because of subsection (1)(a), references in subsections (3), (4) and (5) to squares are references to below-the-line squares.
- (3) If there are 22 or more squares on the ballot paper, a voter must mark the voter's vote on the ballot paper by —
 - (a) placing —
 - (i) the numeral 1 in the square opposite the name of the candidate for whom the voter votes as the voter's first preference; and
 - (ii) consecutive numerals from 2 to 20 in the squares opposite the names of 19 other candidates in order of the voter's preference for those candidates;and
 - (b) if the voter wishes, placing —
 - (i) the numeral 21 in the square opposite the name of the candidate for whom the voter votes as the voter's 21st preference; or
 - (ii) consecutive numerals from 21 in 2 or more of the squares opposite the names of other candidates in order of the voter's preference for those candidates.

- (4) If there are 21 squares on the ballot paper, a voter must mark the voter's vote on the ballot paper by —
- (a) placing —
 - (i) the numeral 1 in the square opposite the name of the candidate for whom the voter votes as the voter's first preference; and
 - (ii) consecutive numerals from 2 to 20 in the squares opposite the names of 19 other candidates in order of the voter's preference for those candidates;
 - and
 - (b) if the voter wishes, placing the numeral 21 in the square opposite the name of the candidate for whom the voter votes as the voter's 21st preference.
- (5) If there are 20 or fewer squares on the ballot paper, a voter must mark the voter's vote on the ballot paper by placing —
- (a) the numeral 1 in the square opposite the name of the candidate for whom the voter votes as the voter's first preference; and
 - (b) consecutive numerals from 2 in the squares opposite the names of the other candidates in order of the voter's preference for those candidates.

[Section 98E inserted: No. 30 of 2023 s. 80.]

98F. Assisting particular voters to vote at polling place

- (1) This section applies if a voter who is voting at a polling place cannot vote without assistance because the voter has a sight impairment or other physical impairment or has insufficient literacy skills.
- (2) The voter may nominate a person (the *nominated person*) to assist the voter.

- (3) The nominated person cannot be a candidate in the election or an election campaign worker.
- (4) The nominated person must mark the voter's vote on the ballot paper in the presence of an officer working at the polling place according to the directions of the voter and must —
 - (a) fold the ballot paper to conceal the vote and, subject to section 98G(2) —
 - (i) if the voter is a claim voter — deposit the folded ballot paper in the ballot box; or
 - (b) if the voter is a declaration voter — deal with the ballot paper in accordance with the method prescribed under section 97I(3)(b);
 - and
 - (b) otherwise carry out any of the functions of the voter under this Subdivision according to the directions of the voter; and
 - (c) leave the polling place.
- (5) Without limiting subsection (4), the voter may indicate the manner in which the voter wishes the ballot paper to be marked by presenting to the nominated person a statement in writing (which may be, or include, a registered how-to-vote card) that specifies the manner in which the ballot paper is to be marked.

[Section 98F inserted: No. 30 of 2023 s. 80.]

98G. Person with physical impairment voting at place near polling place

- (1) If a voter with a physical impairment is at a place (the *external place*) that is in close proximity to a polling place and is unable to enter the polling place because of their impairment, sections 96B to 96D and this Subdivision apply, or may be applied, to the voter at the external place as if the voter were at the polling place and an officer attending at the external place were working at the polling place.

- (2) After the voter's vote has been marked on the ballot paper by the voter or, if there is a nominated person under section 98F as applied by subsection (1), by the nominated person, the voter or nominated person must fold the ballot paper to conceal the vote and —
 - (a) if the voter is a claim voter — hand the ballot paper to an officer attending at the external place; or
 - (b) if the voter is a declaration voter — deal with the voting paper in the manner prescribed under section 97I(3)(b) except that the prescribed envelope must be handed to an officer attending at the external place.
- (3) The voter's ballot paper may be marked under subsection (2) in the presence of any scrutineers who are at the place where the ballot paper is marked.
- (4) After being handed a ballot paper or prescribed envelope under subsection (2)(a) or (b), an officer attending at the external place must return to the polling place and deposit ballot paper or prescribed envelope in the ballot box.

[Section 98G inserted: No. 30 of 2023 s. 80.]

98H. Spoilt ballot papers

- (1) This section applies if, before a voter's ballot paper is placed in a ballot box at a polling place —
 - (a) the voter satisfies an officer working at the polling place that the ballot paper has been spoilt by mistake or accident; and
 - (b) the voter gives up the spoilt ballot paper to the officer.
- (2) The officer must —
 - (a) give the voter a new ballot paper; and
 - (b) immediately cancel the spoilt ballot paper by writing "spoilt" on the back of it; and

- (c) place the spoilt ballot paper in an envelope and —
 - (i) seal the envelope; and
 - (ii) write on the envelope an indication of the type of ballot paper enclosed and that it is spoilt; and
 - (iii) sign the envelope.
- (3) The envelopes containing spoilt ballot papers cancelled at a polling place must be sealed up in a packet that must be given to the returning officer after the close of the poll.

[Section 98H inserted: No. 30 of 2023 s. 80.]

98I. Rules for ballot boxes and rolls at close of poll

- (1) At the close of the poll the presiding officer for a polling place must take charge of the ballot box and —
 - (a) publicly close, fasten and secure the ballot box with a sealing device; and
 - (b) if the ballot box is to be transported — close and seal the cleft; and
 - (c) as soon as possible, forward the ballot box to the counting place for the purposes of scrutiny.
- (2) A scrutineer present may sign the record of the sealing device secured on the ballot box.
- (3) A ballot box closed, fastened and secured under subsection (1) must not be opened except as allowed by this Act.
- (4) If a copy of the printed roll is used at a polling place, the presiding officer for the polling place must —
 - (a) endorse and sign the marked roll used at the polling place; and
 - (b) forward to the counting place —
 - (i) the marked roll; and

- (ii) any other documents received before or during the polling.
- (5) If the roll used at a polling place is in electronic form, the presiding officer for the polling place must —
- (a) ensure the roll is returned to, or is accessible by, the Electoral Commissioner; and
 - (b) forward to the counting place any other documents received before or during the polling.

[Section 98I inserted: No. 30 of 2023 s. 80.]

Subdivision 5 — Voting at mobile voting places

[Heading inserted: No. 30 of 2023 s. 80.]

99. Persons who may be at mobile voting places

- (1) To enable persons to vote at a mobile voting place, the mobile voting officers for the mobile voting place must attend the mobile voting place during mobile voting times for the mobile voting place with the amount of mobile ballot boxes decided for the mobile voting place under section 90D(3)(a).
- (2) The failure of a mobile voting officer to attend a mobile voting place under subsection (1) does not affect an election, or the result of an election, if the officer has a reasonable excuse for failing to attend.
- (3) A person must not be near a mobile ballot box at a mobile voting place during the polling unless the person is —
 - (a) the Electoral Commissioner; or
 - (b) a returning officer; or
 - (c) the presiding officer or an assistant presiding officer; or
 - (d) a mobile voting officer; or

- (e) a scrutineer appointed for the mobile voting place and allowed at the mobile voting place under subsection (4) or (5); or
 - (f) an election campaign worker accompanying a mobile ballot box to distribute registered how-to-vote cards to persons casting their votes at the mobile voting place; or
 - (g) a police officer on duty at the mobile voting place; or
 - (h) a person who is voting or about to vote; or
 - (i) a nominated person under section 98F(2) as applied under section 99B(2) to assist a person who is voting or about to vote; or
 - (j) if the election is held on the same day as a referendum — a scrutineer for the mobile voting place appointed under an enactment for the purposes of the referendum.
- (4) At a mobile voting place for a single member election, only 1 scrutineer at a time is allowed for each candidate.
- (5) At a mobile voting place for a Council election where the relevant number is more than one —
- (a) only 1 scrutineer at a time is allowed for each group; and
 - (b) only 1 scrutineer at a time is allowed for each candidate who is not included in a group.

[Section 99 inserted: No. 30 of 2023 s. 80.]

99A. When electors can vote at mobile voting places

A mobile voting place must be opened and closed in accordance with the mobile voting times for the mobile voting place.

[Section 99A inserted: No. 30 of 2023 s. 80.]

99B. Voting at mobile voting places to be generally conducted consistently with voting at polling places

- (1) Subject to sections 99 and 99A, the presiding officer for a mobile voting place must, so far as is practicable, operate the mobile voting place in accordance with Subdivisions 2 (other than sections 96 and 96B) and 3 and those provisions apply —
 - (a) as if a reference in them to a polling place were a reference to a mobile voting place; and
 - (b) as if a reference in them to a ballot box were a reference to a mobile ballot box; and
 - (c) as if a reference in them to an officer were a reference to a mobile voting officer; and
 - (d) with any other necessary modifications.
- (2) Subdivision 4 applies, as far as practicable, to voting at a mobile voting place —
 - (a) as if a reference in that Subdivision to a polling place were a reference to a mobile voting place; and
 - (b) as if a reference in that Subdivision to a ballot box were a reference to a mobile ballot box; and
 - (c) as if a reference in that Subdivision to an officer were a reference to a mobile voting officer; and
 - (d) as if the reference in section 98B(a) to an unoccupied voting compartment were a reference to a place at the mobile voting place where no one else can see the voter's ballot paper; and
 - (e) with any other necessary modifications.

[Section 99B inserted: No. 30 of 2023 s. 80.]

[Part IV (s. 99C-99O) deleted: No. 30 of 2023 s. 80.]

Subdivision 6 — Postal voting

[Heading inserted: No. 30 of 2023 s. 80.]

100. Terms used

In this Subdivision —

postal application period, for an election, means the period —

- (a) beginning on —
 - (i) a day that is fixed under section 100A for the purposes of the election; or
 - (ii) if a day is not fixed under section 100A — the day after the day on which the writ for the election is issued;

and

- (b) ending at 6 pm on the Wednesday before polling day;

postal vote application has the meaning given in section 100B(1).

[Section 100 inserted: No. 30 of 2023 s. 80.]

100A. Fixing day for commencement of postal application period

- (1) The Electoral Commissioner may, by written notice published on the Commission website, fix a day as the day on which the postal application period for an election begins.
- (2) For the purposes of subsection (1), the day fixed must be —
 - (a) after —
 - (i) for a periodic election — 1 November of the year before the year in which the polling day will occur; or
 - (ii) for any other election — the public announcement of the polling day by the Government;

and

- (b) before the day on which the writ for the election is issued.

[Section 100A inserted: No. 30 of 2023 s. 80.]

100B. Postal vote applications

- (1) During the postal application period for an election, an elector may make an application (a ***postal vote application***) in the approved form to an issuing officer to vote by postal voting in the election.
- (2) The postal vote application —
 - (a) may be made within or outside the State; and
 - (b) must —
 - (i) state the applicant’s name and electoral address; and
 - (ii) contain a statement by the applicant to the effect that the applicant is an elector; and
 - (iii) subject to subsection (3), be signed by the applicant; and
 - (iv) if the elector expects to be absent from their electoral address if and when documents are sent under section 100D — state an address to which the documents must be sent.
- (3) If the elector satisfies a witness that the elector is unable to sign the postal vote application because the elector has a sight impairment or other physical impairment or has insufficient literacy skills, the elector may make a distinguishing mark on the postal vote application before the witness.
- (4) A person may be a witness for the purposes of subsection (3) if the person —
 - (a) has attained the age of 18 years; and
 - (b) is not a candidate in an election in relation to which the postal vote application is made.

- (5) If an election in a district and a Council election have the same polling day, the elector's application is taken to be an application to vote by postal voting at each of those elections.

[Section 100B inserted: No. 30 of 2023 s. 80.]

100C. Dealing with postal vote applications

- (1) If an issuing officer receives a postal vote application, the issuing officer must —
- (a) endorse on the application the date of its receipt and sign the endorsement; and
 - (b) if the postal vote application complies with section 100B — number it in the manner prescribed by the regulations.

- (2) If the postal vote application complies with section 100B, the issuing officer must approve the postal vote application.

Note for this subsection:

A person whose postal vote application is approved under this subsection must be sent a postal ballot paper and other documents under section 100D.

- (3) If the issuing officer considers the postal vote application does not comply with section 100B, the issuing officer must reject the postal vote application by written notice given to the applicant stating —
- (a) that the postal vote application has been rejected because it does not comply with section 100B; and
 - (b) the reasons why it does not comply; and
 - (c) that the applicant may make another postal vote application during the postal application period.
- (4) However, the issuing officer must not reject the postal vote application under subsection (3) only because there is an omission or incorrect description in respect of any of the particulars required to be contained in it if the application is

signed by the applicant or a distinguishing mark is made under section 100B(3).

[Section 100C inserted: No. 30 of 2023 s. 80.]

100D. Sending postal ballot papers

- (1) This section applies in an election to the following persons (each a *postal voter*) —
 - (a) an elector whose postal vote application in relation to the election has been approved under section 100C(2);
 - (b) a general postal voter.
- (2) The Electoral Commissioner must, after the period of 24 hours after the close of nominations for the election, send the following to a postal voter —
 - (a) a ballot paper (a *postal ballot paper*) for the election that is —
 - (i) printed on official paper; or
 - (ii) initialled by an issuing officer in a place that can be easily seen when the ballot paper is folded to conceal the vote;
 - (b) a declaration in the approved form;
 - (c) an envelope marked “postal ballot paper”;
 - (d) another envelope addressed to the Electoral Commissioner for the purpose of returning the envelope containing the postal ballot paper and the declaration.
- (3) If an election in a district and a Council election have the same polling day —
 - (a) only 1 declaration mentioned in subsection (2)(b) is required for the elections; and
 - (b) the Electoral Commissioner must send the postal voter a postal ballot paper and envelopes under subsection (2)(a), (c) and (d) for each election.

- (4) The Electoral Commissioner is not required to send the documents required under subsection (2) before the end of the period of 8 days after the close of nominations.
- (5) Immediately after sending the documents required under subsection (2), the Electoral Commissioner must —
 - (a) make a record of the postal voter's name on the roll in the manner prescribed for the purposes of section 98A(1)(b); or
 - (b) if neither the electronic roll nor a copy of the printed roll is available — make a record of the postal voter's name and the other prescribed particulars of the postal voter.
- (6) A record made on the electronic roll or on a copy of the printed roll under subsection (5) is evidence —
 - (a) of the identity of the postal voter; and
 - (b) subject to section 100H(5), that the postal voter voted in the election.

[Section 100D inserted: No. 30 of 2023 s. 80.]

100E. Replacing postal ballot papers

- (1) This section applies if —
 - (a) an elector satisfies an issuing officer that any or all of the documents sent to the elector under section 100D have been lost or destroyed; or
 - (b) an elector —
 - (i) satisfies an issuing officer that any or all of the documents sent to the elector under section 100D have been spoiled by mistake or accident; and
 - (ii) delivers up the spoiled documents;or
 - (c) an elector satisfies an issuing officer that the documents required to be sent under section 100D have not been delivered to the elector.

- (2) The issuing officer must send to the elector the documents required to be sent under section 100D that were lost, destroyed, spoilt or not delivered.

[Section 100E inserted: No. 30 of 2023 s. 80.]

100F. Informing political parties and candidates of postal voters

- (1) If a candidate in an election is endorsed by a registered political party, the political party may, in the approved form, ask the Electoral Commissioner for the name and electoral address of —
- (a) each elector whose postal vote application has been approved under section 100C(2); and
 - (b) each general postal voter.
- (2) A non-party candidate may, in the approved form, ask the Electoral Commissioner for the name and electoral address of —
- (a) each elector whose postal vote application has been approved under section 100C(2); and
 - (b) each general postal voter.
- (3) The Electoral Commissioner must comply with a request under subsection (1) or (2) except in relation to an elector who is —
- (a) enrolled under section 17B; or
 - (b) a silent elector.
- (4) A person must not use or disclose information the person receives under subsection (3) unless the use or disclosure is for a permitted purpose.

Penalty for this subsection:

- (a) if the information is used or disclosed for a commercial purpose — a fine of \$100 000;
- (b) otherwise — a fine of \$10 000.

[Section 100F inserted: No. 30 of 2023 s. 80.]

100G. Method of postal voting

- (1) If an elector receives documents sent to the elector under section 100D, whether within or outside of the State, the elector must —
 - (a) mark the elector’s vote on the postal ballot paper in accordance with —
 - (i) if the ballot paper is for a single member election — section 98C; or
 - (ii) if the ballot paper is for a Council election where the relevant number is more than one — section 98D or 98E;and
 - (b) enclose the postal ballot paper in the envelope marked “postal ballot paper”; and
 - (c) sign and date the declaration provided with the postal ballot paper; and
 - (d) enclose the envelope marked “postal ballot paper” and the declaration in the envelope addressed to the Electoral Commissioner; and
 - (e) ensure that the envelope addressed to the Electoral Commissioner —
 - (i) is sent to the Electoral Commissioner under subsection (3); or
 - (ii) is delivered to the Electoral Commissioner before the close of the poll.
- (2) If an election in a district and a Council election have the same polling day, a declaration made in relation to a postal ballot paper under subsection (1)(c) applies in relation to both of the elections.

- (3) The envelope addressed to the Electoral Commissioner is sent to the Electoral Commissioner under this subsection if —
- (a) the envelope is received before 9 am on the Thursday after polling day; and
 - (b) any of the following apply —
 - (i) the postmark on the envelope is dated on or before polling day;
 - (ii) the postmark on the envelope is dated with the date of the Sunday immediately after polling day and the declaration is signed on or before polling day;
 - (iii) the postmark on the envelope is not legible, or there is no postmark on the envelope, but the declaration is signed on or before polling day.

[Section 100G inserted: No. 30 of 2023 s. 80.]

100H. Return of postal ballot paper unopened by elector

- (1) This section applies if an elector —
- (a) receives a postal ballot paper for an election, whether within or outside of the State; and
 - (b) believes on reasonable grounds that the envelope addressed to the Electoral Commissioner cannot be sent to the Electoral Commissioner under section 100G(3) or delivered to the Electoral Commissioner before the close of the poll for the election.
- (2) The elector may deliver the envelope and its contents unopened to the returning officer or presiding officer for a place to vote for the election before the close of the poll.
- (3) The returning officer or a presiding officer for a place to vote who receives an envelope under subsection (2) before the close

of the poll must, in accordance with any regulations made for the purposes of this subsection —

- (a) send the envelope to the Electoral Commissioner; and
 - (b) make a record of the elector's name on the roll for the election.
- (4) A record made on the roll under subsection (3)(b) is evidence that the elector has not voted by postal voting in the election.
- (5) The returning officer or a presiding officer for a place to vote who receives an envelope after the close of the poll must not accept it.

[Section 100H inserted: No. 30 of 2023 s. 80.]

100I. Assisting elector to vote by postal voting

- (1) This section applies if an elector who receives a postal ballot paper cannot vote without assistance because the elector has a sight impairment or other physical impairment or has insufficient literacy skills.
- (2) The elector may nominate a person (the *nominated person*) to assist the elector.
- (3) The nominated person cannot be a candidate at the election or an election campaign worker.
- (4) The nominated person must, in accordance with the elector's directions, mark the elector's vote on the postal ballot paper and perform the functions in section 100G(1)(b), (d) and (e) and 100H instead of the elector.
- (5) If the nominated person performs a function under subsection (4), the nominated person must —
 - (a) state on the declaration provided with the postal ballot paper under section 100G(1)(c) their full name and address; and

- (b) state on the declaration that the person is the nominated person to assist the elector; and
 - (c) sign and date the declaration.
- (6) Subsection (4) or (5) does not prevent the elector from personally performing a function in section 100G(1)(b) to (e) or 100H if the elector wishes and is able to do so.
- (7) If an elector has not appointed a nominated person and has completed the declaration accompanying the elector's postal ballot paper but is unable to mark the elector's vote on the postal ballot paper or perform another function under section 100G(1)(b), (d) or (e) or 100H, the elector may ask another person to assist the elector in carrying out the function according to the directions of the elector.

[Section 100I inserted: No. 30 of 2023 s. 80.]

100J. Offence to sign declaration as another person

- (1) A person commits an offence if the person signs or makes a mark on a declaration under this Subdivision as another person.
Penalty for this subsection: a fine of \$1 000.
- (2) A person commits the offence against subsection (1) whether or not they have the authority of the other person.

[Section 100J inserted: No. 30 of 2023 s. 80.]

100K. Postal voting in particular places

- (1) In this section —

medical practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession (other than as a student);

relevant place means —

- (a) a mobile voting place that is a location or place, or part of a location or place, referred to in section 90(1)(d); or

- (b) an institution, or an institution in a class, prescribed by the regulations as an institution or class to which this section applies.
- (2) A medical practitioner may direct a person not to visit an elector who resides, or is temporarily staying, in a relevant place in connection with or in relation to the elector voting by postal voting at the relevant place.
- (3) If a medical practitioner directs under subsection (2) a person not to visit an elector, the person must not visit the elector at the relevant place in connection with or in relation to the elector voting by postal voting at the relevant place.

Penalty for this subsection: a fine of \$1 000.

[Section 100K inserted: No. 30 of 2023 s. 80.]

100L. Electoral Commissioner must store postal ballot papers until scrutinised

The Electoral Commissioner must retain in a ballot box secured with a sealing device all envelopes containing postal ballot papers received by the Electoral Commissioner during the period —

- (a) beginning on the close of nominations; and
- (b) ending when the Electoral Commissioner begins the scrutiny of declarations under section 100M.

[Section 100L inserted: No. 30 of 2023 s. 80.]

100M. Preliminary scrutiny of declarations relating to postal ballot papers

- (1) The Electoral Commissioner, or officers directed by the Electoral Commissioner, must, at a time not earlier than 72 hours before the commencement of the poll on polling day, begin the scrutiny of declarations relating to postal ballot papers in the prescribed manner.

- (2) A postal ballot paper must be rejected if —
- (a) the declaration to which the ballot paper relates is not signed by —
 - (i) the elector to whom it was sent; or
 - (ii) if section 100I applies — a person authorised to sign the declaration under that section;
 - or
 - (b) the postal ballot paper contained in an envelope marked “postal ballot paper” is not the ballot paper for the election in relation to which the vote is cast.
- (3) Without limiting sections 140 and 146E, a postal ballot paper must not be rejected because of a mistake in spelling.
- (4) A postal ballot paper must not be rejected only because a declaration relating to the ballot paper is enclosed in the envelope marked “postal ballot paper”.
- (5) If the Electoral Commissioner believes that a declaration relating to a postal ballot paper is enclosed in the envelope marked “postal ballot paper”, the Electoral Commissioner may —
- (a) open that envelope and look for a declaration in that envelope, without permitting anyone to see the postal ballot paper; and
 - (b) if there is a declaration in that envelope — extract the declaration; and
 - (c) close and reseal the envelope containing the postal ballot paper; and
 - (d) deal with the envelope in the prescribed manner.

[Section 100M inserted: No. 30 of 2023 s. 80.]

100N. Decisions in relation to postal ballot papers subject to review by Court of Disputed Returns

A decision of an officer to reject, disallow, allow or admit a postal ballot paper is final, subject to —

- (a) sections 144(2b), 146, 146I(1) and 146J; and
- (b) review only by the Court of Disputed Returns under Part V.

[Section 100N inserted: No. 30 of 2023 s. 80.]

100O. Dealing with postal ballot papers

The Electoral Commissioner, or officers directed by the Electoral Commissioner, may open an envelope containing a postal ballot paper and deal with the ballot paper in the prescribed manner once the envelope has been dealt with under —

- (a) the regulations made for the purposes of section 100M(1); or
- (b) section 100M(5)(d).

[Section 100O inserted: No. 30 of 2023 s. 80.]

100P. Offences in relation to postal vote applications and applications to be general postal voter

- (1) A person must not obtain a postal ballot paper by —
 - (a) impersonating another person in relation to a postal vote application or an application made under section 61(1); or
 - (b) making a false statement in relation to a postal vote application or an application made under section 61(1).

Penalty for this subsection: imprisonment for 12 months.

- (2) A person commits a crime if the person distributes or makes available a form for making a postal vote application, or causes

or permits a form for making a postal vote application to be distributed or made available, unless —

- (a) the person is authorised by the Electoral Commissioner to do so; or
- (b) the form is —
 - (i) the approved form; and
 - (ii) accompanied by a statement advising that when the postal vote application has been completed it must be returned directly to the Electoral Commissioner.

Penalty for this subsection: imprisonment for 2 years and a fine of \$24 000.

[Section 100P inserted: No. 30 of 2023 s. 80.]

100Q. Offences about influencing persons in relation to postal voting

- (1) A person must not persuade or induce an elector, or associate with any other person in persuading or inducing an elector, to make a postal vote application.

Penalty for this subsection: a fine of \$1 000.

- (2) A person must not persuade or induce an elector to hand over to them a postal ballot paper upon which a vote has been recorded.

Penalty for this subsection: a fine of \$1 000.

- (3) Subsections (1) and (2) do not apply to —

- (a) publishing advertising material authorised by the Electoral Commissioner or a returning officer that states that a person may vote in an election by means of postal voting or a postal ballot paper; or
- (b) actions taken by officers that are authorised by the Electoral Commissioner or a returning officer and relate to providing information that a person may vote in an

election by means of postal voting or a postal ballot paper.

[Section 100Q inserted: No. 30 of 2023 s. 80.]

100R. Offence about false statements in relation to postal voting

An elector must not make, and a person must not induce an elector to make, a false statement in a postal vote application.

Penalty: a fine of \$1 000.

[Section 100R inserted: No. 30 of 2023 s. 80.]

100S. Offences about marking postal ballot papers

- (1) A person must not mark a vote on a postal ballot paper unless the person is —
- (a) the elector to whom the postal ballot paper was sent; or
 - (b) if section 100I applies — a person authorised to sign the declaration under that section.

Penalty for this subsection: a fine of \$1 000.

- (2) A person nominated under section 100I(2) or a person assisting an elector under section 100I(7) must not disclose any knowledge of the vote of the elector on whose behalf they marked the vote on the postal ballot paper.

Penalty for this subsection: a fine of \$1 000.

[Section 100S inserted: No. 30 of 2023 s. 80.]

100T. Offences about custody of documents

- (1) If an elector gives a person a postal vote application or an envelope containing or purporting to contain a postal ballot paper so that the person can send or deliver the application or envelope to an officer, the person must send or deliver it to an officer.

Penalty for this subsection: a fine of \$1 000.

- (2) A person must not open an envelope which is addressed to the Electoral Commissioner and in which a postal ballot paper or an envelope containing a postal ballot paper has been enclosed unless the person is the Electoral Commissioner or is authorised to do so by the Electoral Commissioner.

Penalty for this subsection: a fine of \$1 000.

[Section 100T inserted: No. 30 of 2023 s. 80.]

100U. Regulations about postal voting

- (1) The regulations may make provision for and in relation to —
- (a) postal voting and postal ballot papers; and
 - (b) anything necessary or convenient to be prescribed for carrying the provisions of this Act relating to postal voting and postal ballot papers into effect.
- (2) Without limiting subsection (1), the regulations may provide for and in relation to —
- (a) the method of dealing with postal ballot papers, including the scrutiny and counting of votes on the postal ballot papers; and
 - (b) retaining and preserving documents likely to be required if an election is disputed, including envelopes, rejected votes and postal ballot papers, until the validity of the election in respect of which they are used cannot be disputed.

[Section 100U inserted: No. 30 of 2023 s. 80.]

100V. Electors enrolled under s. 47 who vote by postal voting taken to have made declaration

If a declaration required under section 100G(1)(c) is made by an elector who has been enrolled under section 47(3)(g), or by the elector's person nominated under section 100I(2), the elector is

taken to have made a prescribed declaration as required under section 97C(1).

[Section 100V inserted: No. 30 of 2023 s. 80.]

Subdivision 7 — Technology assisted voting

[Heading inserted: No. 30 of 2023 s. 80.]

101. Terms used

In this Subdivision —

approved procedures means the procedures approved under section 101A;

eligible elector —

- (a) means an elector who cannot vote without assistance because the elector has a sight impairment or other physical impairment or has insufficient literacy skills; but
- (b) does not include an elector of a class that is excluded from this definition under the regulations;

technology assisted voting means a method of voting by which an eligible elector votes by means of an electronic device, such as by a telephone or by a computer linked to the internet.

[Section 101 inserted: No. 30 of 2023 s. 80.]

101A. Electoral Commissioner may approve procedures for technology assisted voting

- (1) The Electoral Commissioner may approve procedures to facilitate voting by eligible electors in an election by means of technology assisted voting.
- (2) The approved procedures must be in writing and published on the Commission website.

- (3) The approved procedures must provide for the following —
- (a) the registration of an eligible elector before the eligible elector votes by means of technology assisted voting;
 - (b) the making of a record of each eligible elector who has voted by means of technology assisted voting;
 - (c) the authentication of the eligible elector's vote;
 - (d) the secrecy of the eligible elector's vote;
 - (e) the means of ensuring that any vote cast in accordance with the approved procedures is securely transmitted to the Electoral Commissioner and securely stored by the Electoral Commissioner;
 - (f) the scrutiny and counting of votes cast in accordance with the approved procedures.
- (4) The validity of a vote cast in accordance with the approved procedures cannot be disputed on the ground that the elector could have voted without assistance.

[Section 101A inserted: No. 30 of 2023 s. 80.]

101B. Record of vote

- (1) The regulations may provide, in relation to each vote cast by a person using technology assisted voting, for the production of a record (a *vote record*) of the vote the person has cast.
- (2) The vote record must not contain any means of identifying the person who cast the vote.
- (3) A vote record must be in a form that enables the vote cast by an eligible elector to be accurately determined.

[Section 101B inserted: No. 30 of 2023 s. 80.]

101C. Independent auditing of technology assisted voting

- (1) The Electoral Commissioner must engage an independent person (the *independent auditor*) to conduct audits of the information technology used under the approved procedures.

- (2) Without limiting the content of the audit, the independent auditor must determine whether test votes cast in accordance with the approved procedures were accurately reflected in the corresponding test vote record produced under those procedures.
- (3) The independent auditor may make recommendations to the Electoral Commissioner to reduce or eliminate any risks that could affect the security, accuracy or secrecy of voting in accordance with the approved procedures.
- (4) The results of any audit of the information technology used under subsection (1) must be published on the Commission website as soon as practicable and no later than 30 days following the close of polling.

[Section 101C inserted: No. 30 of 2023 s. 80.]

101D. Scrutineers

- (1) A candidate or the candidate's official agent may appoint a scrutineer to represent the candidate in observing —
 - (a) any production of the vote record; and
 - (b) any other element of the technology assisted voting process that is approved by the Electoral Commissioner for the purposes of this section.
- (2) At the place where the observation mentioned in subsection (1) occurs for a single member election only 1 scrutineer at a time is allowed for each candidate.
- (3) At the place where the observation mentioned in subsection (1) occurs for a Council election where the relevant number is more than one —
 - (a) 1 scrutineer at a time is allowed for each group; and
 - (b) 1 scrutineer at a time is allowed for each candidate who is not included in a group.

- (4) An appointment of a scrutineer under subsection (1) must be —
- (a) made by written notice given to the Electoral Commissioner; and
 - (b) signed by the candidate or the candidate’s official agent.
- (5) Section 137 does not apply to the scrutiny of votes cast under this Subdivision.

[Section 101D inserted: No. 30 of 2023 s. 80.]

101E. Counting of technology assisted votes

A vote cast in an election by an eligible elector and transmitted to the Electoral Commissioner in accordance with the approved procedures is to be counted as if it were a vote cast by a person voting at a polling place under Subdivision 3.

[Section 101E inserted: No. 30 of 2023 s. 80.]

101F. Secrecy relating to technology assisted voting

- (1) A person commits a crime if the person —
- (a) becomes aware of how an eligible elector, voting in accordance with the approved procedures, voted; and
 - (b) gives that information to any other person except in accordance with the approved procedures.

Penalty for this subsection: imprisonment for 2 years.

Summary conviction penalty for this subsection: a fine of \$6 000.

- (2) A person commits a crime if the person discloses to any other person any source code or other computer software that relates to technology assisted voting under the approved procedures, except in accordance with the approved procedures or in accordance with any arrangement entered into by the person with the Electoral Commissioner.

Penalty for this subsection: imprisonment for 5 years.

Summary conviction penalty for this subsection: imprisonment for 2 years and a fine of \$24 000.

[Section 101F inserted: No. 30 of 2023 s. 80.]

101G. False or misleading statements in relation to technology assisted voting

A person must not make a statement (whether orally, in writing or by means of electronic communication) that the person knows to be false or misleading in a material particular for the purposes of or in connection with —

- (a) making an application for registration for technology assisted voting; or
- (b) casting a vote using technology assisted voting.

Penalty: a fine of \$1 000.

[Section 101G inserted: No. 30 of 2023 s. 80.]

101H. Protection of computer hardware and software

A person commits a crime if the person, without reasonable excuse, destroys or interferes with any computer program, data file or electronic device used, or intended to be used, by the Electoral Commissioner for or in connection with technology assisted voting.

Penalty: imprisonment for 5 years.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

[Section 101H inserted: No. 30 of 2023 s. 80.]

101I. Regulations relating to technology assisted voting

- (1) The regulations may make provision for or in relation to voting by eligible electors by means of technology assisted voting.
- (2) Without limiting subsection (1), the regulations may make provision for or in relation to the period during which voting by

eligible electors using technology assisted voting is permitted (including a period before polling day).

- (3) The regulations may provide that technology assisted voting is not to be used at a specified election.
- (4) Neither this section nor any regulations made under this section prevent approved procedures dealing with matters referred to in this section.
- (5) If a regulation made under this section is inconsistent with an approved procedure, the regulation prevails to the extent of the inconsistency.

[Section 101I inserted: No. 30 of 2023 s. 80.]

101J. How this Act applies in relation to technology assisted voting

- (1) If an eligible elector casts a vote in accordance with the approved procedures —
 - (a) the requirements of this Act relating to the elector’s right to receive a ballot paper are taken to have been satisfied; and
 - (b) the requirements of this Act relating to the elector’s duties on receiving a ballot paper are taken to have been satisfied; and
 - (c) the requirements of this Act relating to the marking of a ballot paper are taken to have been satisfied.
- (2) The regulations may make provision for additional matters relating to how this Act applies in relation to votes cast using technology assisted voting.

[Section 101J inserted: No. 30 of 2023 s. 80.]

101K. Electoral Commissioner may determine that technology assisted voting is not to be used

- (1) The Electoral Commissioner may determine that technology assisted voting is not to be used at a specified election.

- (2) A determination under this section must be in writing and published on the Commission website.

[Section 101K inserted: No. 30 of 2023 s. 80.]

101L. Eligible electors enrolled under s. 47 who vote by means of technology assisted voting taken to have made declaration

If an eligible elector is enrolled under section 47(3)(g) and votes by means of technology assisted voting in accordance with the approved procedures under this Subdivision, the elector is taken to have made a prescribed declaration as required under section 97C(1).

[Section 101L inserted: No. 30 of 2023 s. 80.]

Subdivision 8 — Visiting electors who need assistance

[Heading inserted: No. 30 of 2023 s. 80.]

102. Application of Subdivision

This Subdivision applies to an elector who —

- (a) cannot go to a place to vote in order to vote in an election during the hours of polling because the elector has a physical impairment; and
- (b) has not applied to vote by postal voting.

[Section 102 inserted: No. 30 of 2023 s. 80.]

102A. Issuing officer not to visit elector to take vote unless under Subdivision

An issuing officer must not visit an elector for the purpose of taking an elector's vote unless the visit is made under this Subdivision.

[Section 102A inserted: No. 30 of 2023 s. 80.]

102B. Visiting electors to take vote

- (1) An elector, or a person acting on behalf of an elector, may contact an issuing officer to request that an issuing officer visit the elector for the purpose of taking the elector's vote under this section.
- (2) A request under subsection (1) may be made only in the period of 7 days ending at 6 pm on the day immediately before polling day.
- (3) If a request is made in accordance with subsections (1) and (2), an issuing officer may visit the elector for the purpose of taking the elector's vote.
- (4) During a visit under subsection (3), the elector must —
 - (a) apply to the issuing officer to vote under this Subdivision; and
 - (b) state that they are an elector; and
 - (c) state the district for which they are enrolled.

[Section 102B inserted: No. 30 of 2023 s. 80.]

102C. Giving electors ballot papers

- (1) After an application is made under section 102B(4), the issuing officer must give the elector —
 - (a) a ballot paper that is —
 - (i) printed on official paper; or
 - (ii) initialled by the issuing officer in a place that can be easily seen when the ballot paper is folded to conceal the vote;and
 - (b) a declaration in the approved form; and
 - (c) an envelope marked “postal ballot paper”; and
 - (d) an envelope addressed to the Electoral Commissioner.

- (2) Immediately after giving the documents under subsection (1), the issuing officer must —
 - (a) make a record of the elector’s name on the roll in the manner prescribed for the purposes of section 98A(1)(b); or
 - (b) if neither the electronic roll nor a copy of the printed roll is available — make a record of the elector’s name and the other prescribed particulars of the elector.
- (3) A record made on the electronic roll or on a copy of the printed roll under subsection (2) is evidence —
 - (a) of the identity of the elector; and
 - (b) that the elector voted in the election.
- (4) If an election in a district and a Council election have the same polling day —
 - (a) only 1 declaration mentioned in subsection (1)(b) is required in relation to all ballot papers for the elections; and
 - (b) the issuing officer must give the elector the documents required under subsection (1)(a), (c) and (d) for each election.

[Section 102C inserted: No. 30 of 2023 s. 80.]

102D. Method of marking ballot paper

- (1) If an elector is given the documents under section 102C(1), the elector must —
 - (a) mark the elector’s vote on the ballot paper given under that section in a manner so that no other person can see the elector’s vote in accordance with —
 - (i) if the ballot paper is for a single member election — section 98C; or

- (ii) if the ballot paper is for a Council election where the relevant number is more than one — section 98D or 98E;
 - and
 - (b) enclose the ballot paper in the envelope marked “postal ballot paper”; and
 - (c) sign and date the declaration provided with the ballot paper; and
 - (d) enclose the envelope marked “postal ballot paper” and the declaration in the envelope addressed to the Electoral Commissioner; and
 - (e) return the envelope to the issuing officer.
- (2) If an elector who receives a ballot paper under section 102C cannot vote without assistance because the elector has a sight impairment or other physical impairment or has insufficient literacy skills, the elector may nominate a person (the ***nominated person***) to assist the elector.
- (3) The nominated person cannot be a candidate at the election or an election campaign worker.
- (4) The nominated person must, in accordance with the elector’s directions, mark the elector’s vote on the ballot paper and perform the functions in subsection (1)(b), (d) and (e) instead of the elector.
- (5) If the nominated person performs a function under subsection (4), the nominated person must —
- (a) state on the declaration provided with the ballot paper under section 102C(1)(b) their full name and address; and
 - (b) state on the declaration that the person is the nominated person to assist the elector; and
 - (c) sign and date the declaration.

- (6) Subsection (4) or (5) does not prevent the elector from personally performing a function in subsection (1) if the elector wishes and is able to do so.

[Section 102D inserted: No. 30 of 2023 s. 80.]

102E. Dealing with envelope received under s. 102D

- (1) If an issuing officer receives an envelope under section 102D(1), the issuing officer must give the envelope to the Electoral Commissioner.
- (2) If an envelope is given to the Electoral Commissioner under subsection (1) —
- (a) the ballot paper in it is taken to be a postal ballot paper; and
 - (b) the envelope is taken to be an envelope containing a postal ballot paper.

Note for this subsection:

See Subdivision 6 in relation to envelopes containing postal ballot papers.

[Section 102E inserted: No. 30 of 2023 s. 80.]

102F. Offence to sign declaration as another person

- (1) A person commits an offence if the person signs or makes a mark on a declaration under this Subdivision as another person.
Penalty for this subsection: a fine of \$1 000.
- (2) A person commits the offence against subsection (1) whether or not they have the authority of the other person.

[Section 102F inserted: No. 30 of 2023 s. 80.]

Subdivision 9 — Adjourning and postponing voting

[Heading inserted: No. 30 of 2023 s. 80.]

103. Adjourning and postponing polling

- (1) If polling at a place to vote is interrupted or obstructed due to a threat to safety, including from a fire or flood or from a riot or other acts of violence, the presiding officer for the place to vote may adjourn polling until the threat has ended.
- (2) If a presiding officer adjourns polling under subsection (1) for a period of more than 24 hours, the presiding officer must give public notice of the adjournment.
- (3) If, for any reason, a polling place at which voting will occur on polling day is not opened on polling day, or opens but polling cannot proceed, the Electoral Commissioner or presiding officer for the polling place may postpone or adjourn polling at the place for a period not longer than 21 days.
- (4) If, for any reason, polling cannot commence or proceed at a mobile voting place on polling day, the Electoral Commissioner or presiding officer for the mobile voting place may postpone or adjourn polling at the place for a period not longer than 21 days.
- (5) If the Electoral Commissioner or a presiding officer postpones or adjourns polling under subsection (3) or (4), the Electoral Commissioner or presiding officer must give public notice of the postponement or adjournment.

[Section 103 inserted: No. 30 of 2023 s. 80.]

103A. Voting after postponed or adjourned polling

If polling is postponed or adjourned at a place to vote under section 103, only those electors who are entitled to vote at the place and who have not already voted are entitled to vote at the postponed or adjourned polling at that place to vote.

[Section 103A inserted: No. 30 of 2023 s. 80.]

[Part IV (s. 104-133) deleted: No. 30 of 2023 s. 80.]

Division 4 — Counting of votes (general)

[Heading amended: No. 40 of 1987 s. 63; No. 14 of 2016 s. 28(6).]

134. Rules for conducting count of votes

The result of the polling must be ascertained by scrutiny of the ballot papers and by count of the votes in accordance with section 101E or Division 4A or 4B, as the case may require, and must be conducted in the presence of any candidate or scrutineer that may be present in the following manner:

- (1) The scrutiny and count of votes must commence as soon as practicable after the closing of the poll.
- (2) The candidates, the scrutineers, and officers may be present, but no other person.
- (2a) The scrutineers and officers present must wear or display such identification as is provided or required by the returning officer for the district.
- (3) Where the count of the votes is not commenced immediately after the close of the poll, the scrutineers must be informed in writing by the officer conducting the count as regards the time and place when and where such count will be commenced and conducted by the officer.
- (4) All the proceedings at the count of the votes are subject to the inspection of the scrutineers.
- (5) All informal votes must be rejected and the number recorded.

- (6) The count of the votes may, from time to time, be adjourned as the officer conducting the count may deem necessary, until it has been duly completed.

[Section 134 amended: No. 44 of 1911 s. 33; No. 40 of 1987 s. 84; No. 79 of 1987 s. 56; No. 14 of 2016 s. 18; No. 30 of 2023 s. 81.]

135. Adjournment of count etc. to be announced

Each adjournment shall be announced to the scrutineers and officers by the officer conducting the count and the time and place for the continuation of the count shall be in a similar manner made known to them.

[Section 135 amended: No. 40 of 1987 s. 84.]

136. Ballot papers to be sealed in boxes before adjournment

- (1) Before every adjournment of the count of the votes all ballot papers and other documents connected with that count must be placed in 1 or more ballot boxes, and the officer conducting the count must then, in the presence of such scrutineers and officers as are present, secure a ballot box or boxes with a sealing device.
- (1A) A scrutineer may sign the record of the sealing device secured on the ballot box.
- (1B) The officer conducting the count must also close and seal the cleft.
- (2) Before recommencing the count the sealing device must be exhibited unbroken to the scrutineers and officers.

[Section 136 amended: No. 59 of 1919 s. 5; No. 40 of 1987 s. 84; No. 30 of 2023 s. 82.]

Division 4A — Scrutiny and count (Assembly elections)

[Heading inserted: No. 40 of 1987 s. 64; amended: No. 14 of 2016 s. 28(6).]

136A. Application of Division

Subject to sections 146B(1), 146D, and 146E, this Division applies only in relation to an election in a district and the poll for such an election.

[Section 136A inserted: No. 40 of 1987 s. 64; amended: No. 79 of 1987 s. 57.]

137. Appointment of scrutineers

- (1) Each candidate or the candidate's official agent may appoint scrutineers to represent the candidate at the scrutiny and count of votes at each counting place.
- (2) An appointment under subsection (1) must be made in writing and addressed to the returning officer for the district, or assistant returning officer, as the case may be.
- (3) For each counting place, each candidate or the candidate's official agent may appoint not more than —
 - (a) 2 scrutineers; or
 - (b) if counting of votes takes place simultaneously at 2 or more locations in that place, one scrutineer for each of those locations,

unless the returning officer for the district, or assistant returning officer, as the case may be, allows a greater number.

[Section 137 amended: No. 40 of 1987 s. 84; No. 64 of 2006 s. 36; No. 14 of 2016 s. 19; No. 30 of 2023 s. 83.]

138. Scrutineers, submissions by etc.

- (1) A scrutineer may make submissions in relation to any ballot paper that the ballot paper is informal or not informal, and the officer conducting the count shall endorse the paper as

“rejected” or “admitted” according to their decision to admit or reject the ballot paper.

- (2) Where an officer makes an endorsement referred to in subsection (1) the officer shall initial the endorsement.
- (3) Subject to sections 144(2b) and 146 a decision of an officer on a submission under subsection (1) is final unless reversed under Part V.
- (4) Nothing in this section prevents the officer conducting the count from rejecting any ballot paper as being informal or from admitting a ballot paper to the count in the absence of a submission by a scrutineer.

[Section 138 inserted: No. 79 of 1987 s. 58; amended: No. 30 of 2023 s. 182.]

139. Informal ballot papers defined

A ballot paper is informal —

- (a) if it is not initialled by an officer working at a polling place, or, in the case of a postal ballot paper, not initialled by the issuing officer, but where a ballot paper is not initialled by the officer, if it is printed on official paper the fact that it is not so initialled does not of itself render the ballot paper informal; or

[(b) deleted]

- (c) if it has upon it any mark or writing not authorised by this Act which, in the opinion of the returning officer, will enable any person to identify the elector; or
- (d) where there are only 2 candidates, if it does not indicate the candidate for whom the elector votes, or, where there are more than 2 candidates, if it does not indicate the order of the elector’s preference for all candidates, but

the operation of this paragraph is subject to section 140A; or

- (e) if no mark is indicated on it, or the surname of any candidate is omitted from it, or no name of any candidate is written on it.

[Section 139 amended: No. 44 of 1911 s. 34; No. 53 of 1957 s. 12; No. 59 of 1959 s. 12; No. 68 of 1964 s. 26; No. 40 of 1987 s. 65; No. 79 of 1987 s. 59; No. 43 of 1996 s. 16; No. 36 of 2000 s. 48(2); No. 30 of 2023 s. 84.]

140. Elector's intention to be given effect

- (1) A ballot paper shall not be informal for any reason other than the reasons enumerated in section 139.
- (2) Without limiting the generality of subsection (1), where the vote of an elector is marked on a ballot paper in a manner other than the prescribed manner but the ballot paper clearly indicates the elector's intention as necessary under section 139(d) and is not informal under section 139(a), (c) or (e), that ballot paper —
 - (a) shall not be informal; and
 - (b) shall be given effect to according to the elector's intention.
- (3) In subsection (2) *prescribed manner* means —
 - (a) where there are only 2 candidates on the ballot paper, the manner required by section 98C(a); or
 - (b) where there are more than 2 candidates on the ballot paper, the manner required by section 98C(b).

[Section 140 inserted: No. 40 of 1987 s. 66; amended: No. 79 of 1987 s. 60; No. 20 of 1988 s. 7; No. 43 of 1996 s. 17; No. 20 of 2021 s. 69; No. 30 of 2023 s. 85.]

140A. Some ballot papers with non-consecutive preferences can be formal

- (1) Where a ballot paper in an election in which there are more than 2 candidates —
 - (a) has the numeral 1 in the square opposite the name of a candidate; and
 - (b) has other numerals in the squares opposite the names of the remaining candidates or all but one of the remaining candidates; and
 - (c) but for this subsection, would be informal under section 139(d),then —
 - (d) the ballot paper shall not be informal under section 139(d); and
 - (e) the numeral 1 shall be taken to express the elector's first preference; and
 - (f) where numerals in squares opposite the names of candidates are in a sequence of consecutive numbers beginning with the numeral 1, the elector shall be taken to have expressed a preference by the other numeral, or to have expressed preferences by the other numerals, in that sequence; and
 - (g) the elector shall not be taken to have expressed any other preference.
- (2) In considering, for the purposes of subsection (1), whether numerals are in a sequence of consecutive numerals, any numeral that is repeated shall be disregarded.
- (3) If a ballot paper does not have a numeral in the square opposite the name of a candidate but a preference for that candidate is marked on the ballot paper in some other manner that clearly indicates the elector's intention, the ballot paper shall be regarded, for the purposes of this section, as having the numeral

appropriate to that preference marked in the square opposite the name of that candidate.

[Section 140A inserted: No. 43 of 1996 s. 18; amended: No. 30 of 2023 s. 86.]

[140B. Deleted: No. 20 of 1988 s. 8.]

141. Counting places

- (1) Each polling place in a district is a counting place unless the returning officer for the district declares, by written notice, that it is not a counting place.
- (2) The returning officer for a district may, by written notice, appoint as many places in the district, other than polling places, as counting places as the returning officer considers necessary.
- (3) A written notice made under subsection (1) or (2) must be published —
 - (a) on the Commission website; and
 - (b) in another manner approved by the Electoral Commissioner.
- (4) If a place referred to in section 90B(a) to (d) is a counting place under subsection (1) or (2), it may be used as a counting place free of charge.
- (5) The returning officer must appoint an assistant returning officer at each counting place to count, at the counting place, votes cast at 1 or more polling places.
- (6) This section does not limit section 134(3).

[Section 141 inserted: No. 30 of 2023 s. 87.]

142. Procedure for count of votes by assistant returning officers

The procedure at the count of votes by the assistant returning officers is as follows:

- (1) An assistant returning officer at a counting place must open all ballot boxes at the counting place.
- (2) An assistant returning officer must count all the votes on the ballot papers found in the boxes opened by the assistant returning officer, rejecting all informal ballot papers, and ascertain —
 - (a) the number of votes for each candidate, if there are only 2 candidates; or
 - (b) if there are more than 2 candidates, the number of first preference votes given for each candidate,and must make and keep a record of the total number of votes for each candidate counted by the assistant returning officer from each of such ballot boxes.
- [(3) deleted]*
- (4) Each assistant returning officer at a counting place must certify in writing, addressed to the returning officer, the number of votes or first preference votes, as the case may be, given for each candidate in the ballot papers contained in the ballot boxes counted at the counting place.
- (5) An assistant returning officer may communicate to the returning officer the number of votes or first preference votes, as the case may be, recorded for each candidate at the counting place for which the assistant returning officer is appointed, and the returning officer, in ascertaining the result of the poll, may act upon the information so received.

- (6) Each assistant returning officer must —
- (a) enclose —
 - (i) in 1 packet, all the used ballot papers in their possession; and
 - (ii) in another packet, all the unused ballot papers in their possession; and
 - (iii) in another packet, all copies of rolls, books, communications from officers, or other papers or documents used or received at or in connection with the election, that are in their possession;and
 - (b) seal up the several packets and endorse the same with a description and the number of the contents thereof respectively, and the name of the counting place and the date of the polling, and sign the endorsement, and forthwith forward the packets to the returning officer; and
 - (c) seal up the packet containing the used ballot papers in front of the scrutineers, if any, present at the count.
- (7) A scrutineer may sign a packet sealed in front of the scrutineer under subsection (6)(c).

[Section 142 amended: No. 44 of 1911 s. 35; No. 59 of 1919 s. 5; No. 58 of 1961 s. 17; No. 68 of 1964 s. 28; No. 40 of 1987 s. 68 and 84; No. 79 of 1987 s. 78; No. 36 of 2000 s. 68; No. 30 of 2023 s. 88.]

142A. Counting postal, absent and provisional votes

- (1) The Electoral Commissioner may direct an officer (a *directed officer*) to count, under the direction of the Electoral Commissioner, postal ballot papers, and absent votes and provisional votes cast under Division 3A Subdivision 3.

- (2) A directed officer must certify in writing addressed to the returning officer for the district concerned the number of votes or first preference votes, as the case may be, given for each candidate on postal ballot papers, and absent voters' ballot papers and ballot papers used for provisional voting under Division 3A Subdivision 3, counted by the directed officer.
- (3) A directed officer may communicate to the returning officer for the district concerned the number of votes or first preference votes, as the case may be, given for each candidate on postal ballot papers, and absent voters' ballot papers and ballot papers used for provisional voting under Division 3A Subdivision 3, counted by the directed officer, and the returning officer in ascertaining the result of the poll may act upon the information so received.
- (4) A directed officer must, as soon as possible after completing the count of the votes on such postal ballot papers, absent voters' ballot papers and ballot papers used for provisional voting under Division 3A Subdivision 3, transmit the same in the prescribed manner to the returning officer for the district concerned.

[Section 142A inserted: No. 63 of 1948 s. 21; amended: No. 58 of 1951 s. 18; No. 57 of 1952 s. 11; No. 40 of 1987 s. 69 and 84; No. 79 of 1987 s. 63; No. 36 of 2000 s. 48(1), 52 and 68; No. 30 of 2023 s. 89.]

143. Returning officer to ascertain number of votes for each candidate

- (1) The returning officer for the district shall, in manner hereinafter provided, ascertain the total number of votes given for each candidate.

[(2) deleted]

[Section 143 amended: No. 40 of 1987 s. 70 and 84.]

144. Procedure for counting votes

- (1) The procedure at the count of the votes by the returning officer for each district is, if there are only 2 candidates, as follows:
 - (a) The returning officer must —
 - (i) open all ballot boxes not opened by assistant returning officers; and
 - (ii) count all the votes on the ballot papers found in such ballot boxes, rejecting all informal ballot papers, and ascertain the number of votes given for each candidate; and
 - (iii) make and keep a record of the number of votes counted from each ballot box.
 - (b) The returning officer must then —
 - (i) ascertain from the communications received from officers the number of votes given for each candidate at polling places where the ballot boxes have been opened by assistant returning officers, by persons voting as absent voters and provisional voters under Division 3A Subdivision 3 and by persons who vote by postal voting; and
 - (ia) ascertain and keep a record of the number of votes given for each candidate under Division 3A Subdivision 7; and
 - (ii) add the votes so given for each candidate to the votes counted by the returning officer in favour of each such candidate, so as to ascertain, for the whole district, the number of votes given for each candidate respectively.
 - (c) The candidate who has received the largest number of votes must be declared by the returning officer duly elected.
 - (d) If the candidates have an equal number of votes section 145 applies.

- (2) The procedure at the count of the votes by the returning officer for each district, if there are more candidates than 2, is as follows:
- (a) The returning officer must —
 - (i) open all ballot boxes not opened by assistant returning officers; and
 - (ii) arrange the ballot papers under the names of the respective candidates and place in a separate parcel all those on which a first preference is indicated for the same candidate, rejecting informal ballot papers; and
 - (iii) count all the first preference votes given for each candidate respectively; and
 - (iv) make and keep a record of the number of votes counted by the returning officer from each ballot box.
 - (b) The returning officer must then —
 - (i) ascertain from the communications received from officers the number of first preference votes given for each candidate at polling places where the ballot boxes have been opened by such assistant returning officers by persons voting as absent voters and provisional voters under Division 3A Subdivision 3 and persons who vote by postal voting; and
 - (ia) ascertain and keep a record of the number of first preference votes given for each candidate under Division 3A Subdivision 7; and
 - (ii) add the first preference votes so given for each candidate to the votes counted by the returning officer in favour of each such candidate, so as to ascertain, for the whole district, the number of first preference votes polled by each candidate respectively.

- (c) The candidate who has received the largest number of first preference votes must, if such number constitutes an absolute majority of votes, be declared by the returning officer duly elected.
- (d) If no candidate has an absolute majority of votes the returning officer —
 - (i) must open the packets of ballot papers received from the officers, including absent voters' ballot papers and ballot papers used for provisional voting under Division 3A Subdivision 3 and postal ballot papers, and deal with the ballot papers contained therein as prescribed by paragraph (a)(ii), adding such ballot papers to those previously counted by the returning officer for each candidate; and
 - (ia) must ascertain and keep a record of the number of first preference votes given for each candidate under Division 3A Subdivision 7, adding the votes to those previously counted by the returning officer for each candidate; and
 - (ii) must then declare the candidate who has obtained the fewest first preference votes to be a defeated candidate, and each ballot paper or vote record counted to the defeated candidate must be distributed among the non-defeated candidates next in order of the elector's preference.
- (e) After such distribution the number of votes given to each non-defeated candidate must again be ascertained.
- (ea) The candidate who then has obtained the largest number of votes must, if such number constitutes an absolute majority of votes, be declared duly elected.
- (f) If no candidate then has an absolute majority of votes the process of declaring the candidate who has the fewest votes to be defeated, and distributing each of that candidate's ballot papers and vote records amongst the

non-defeated candidates next in order of the elector's preference must be repeated, and the votes re-counted after every such redistribution until 1 candidate has obtained an absolute majority of votes, and such candidate must then be declared duly elected.

- (fa) A ballot paper or vote record must be set aside as exhausted where on a count it is found that the ballot paper or vote record expresses no preference for any non-defeated candidate.
- (g) If, after any count, the candidate with the fewest votes has to be declared to be defeated under paragraph (d) or (f), and 2 or more candidates (in this paragraph called the *tied candidates*) have an equal number of votes (each other candidate having a larger number of votes) —
 - (i) the returning officer must make out in respect of each of the tied candidates a slip bearing the name of the candidate, and deal with the slips in accordance with Schedule 2; and
 - (ii) the candidate whose name is on the slip obtained by the returning officer in accordance with clause 5 of Schedule 2 must be declared to be defeated.
- (h) If after any count 2 or more candidates have an equal number of votes and they are the only candidates, or the only non-defeated candidates, section 145 applies.
- (2a) Where there are more candidates than 2 then, notwithstanding that a candidate has been declared duly elected, the process of excluding the candidate who has the fewest votes and distributing that candidate's preferences to the candidate next in order of the elector's preference must be continued until there are only 2 unexcluded candidates.
- (2b) At any time before a candidate has been declared duly elected the returning officer may, if the returning officer thinks fit,

make a fresh scrutiny of all the ballot papers and vote records or any parcel of them and for that purpose has the same power in relation to the counting of the votes as on the first scrutiny and may reverse any decision given by an officer on the original scrutiny and if after such scrutiny 1 of the candidates is found to have obtained an absolute majority of votes must declare that candidate duly elected.

- (3) In this section *absolute majority of votes* means a greater number than one-half of the whole number of ballot papers and vote records other than informal ballot papers and vote records.
- (3A) For the purposes of subsection (3), if at any stage of the count, ballot papers or vote records have been set aside under subsection (2)(fa), the whole number of ballot papers and vote records, at that stage, are to be taken to be reduced by the number of those ballot papers and vote records set aside.
- (4) Where the returning officer is satisfied that the votes —
- (a) on any ballot papers issued at a mobile voting place in connection with the election that have not been received by the returning officer; and
 - (b) on absent voters' ballot papers or ballot papers used for provisional voting under Division 3A Subdivision 3 or postal ballot papers used for voting that have not been received by the returning officer,
- cannot, having regard to the number of those ballot papers, possibly affect the result of the election, the returning officer may, subject to the concurrence of the Electoral Commissioner —
- (c) if there are only 2 candidates, declare the candidate who has received the largest number of votes on the ballot papers then received and counted to be duly elected; or
 - (d) if there are more than 2 candidates and 1 candidate has received an absolute majority of the votes on the ballot

papers then received and counted, declare such candidate duly elected; or

- (e) if no candidate has an absolute majority of the votes, then received and counted, proceed with the scrutiny;

without awaiting the receipt of the ballot papers which have not been received by the returning officer.

[Section 144 amended: No. 59 of 1919 s. 5; No. 63 of 1948 s. 22; No. 57 of 1952 s. 12; No. 40 of 1987 s. 71 and 84; No. 79 of 1987 s. 64; No. 43 of 1996 s. 19; No. 36 of 2000 s. 48(8) and (9), 53, 69 and 82; No. 14 of 2016 s. 20; No. 30 of 2023 s. 90.]

145. Equal votes, procedure in case of etc.

- (1) If after any count 2 or more candidates have an equal number of votes and they are the only candidates, or the only non-defeated candidates, the returning officer shall re-count the votes and, where appropriate, declare one of the candidates duly elected under section 144(1)(c), (2)(ea) or (2)(f).
- (2) The returning officer conducting the re-count shall have the same powers as if the re-count were the scrutiny, and may reverse any decision in relation to the scrutiny as to the allowance or admission or disallowance or rejection of any ballot paper.
- (3) If after the re-count 2 or more candidates (in this section called the *tyed candidates*) have an equal number of votes and they are the only candidates, or the only non-defeated candidates, the returning officer shall notify the Electoral Commissioner of the result of the re-count.
- (4) On receipt of notification under subsection (3) the Electoral Commissioner shall file a petition addressed to the Court of Disputed Returns constituted under Part V —
 - (a) setting out the results of the scrutiny and count and the re-count; and

- (b) requesting the Court to determine whether any of the candidates was duly elected and, if so, to declare that candidate duly elected.
- (5) Part V applies in respect of the petition as if it were a petition duly filed under sections 158 to 160 and, for the purposes of that application, the tied candidates shall be regarded as parties to the petition.
- (6) The Court shall endeavour to make its determination as soon as practicable after the petition is filed.
- (7) The Court may order that a new election be held in place of the election to which the petition relates if —
 - (a) the tied candidates both or all jointly request the Court to do so; or
 - (b) the Court is unable to declare any of the candidates duly elected,

and, notwithstanding anything in this Act, except where the Court otherwise orders, the same roll as was used for that election shall be used for the new election.

[Section 145 inserted: No. 40 of 1987 s. 72; amended: No. 14 of 2016 s. 21.]

146. When re-count may be conducted

- (1) At any time before the declaration of the poll the returning officer may, if the returning officer thinks fit, on the written request of any candidate setting forth the reasons for the request, or of the returning officer's own motion, re-count the votes.
- (2) The returning officer conducting the re-count shall have the same powers as if the re-count were the scrutiny, and may reverse any decision in relation to the scrutiny as to the

allowance or admission or disallowance or rejection of any ballot paper or vote record.

[Section 146 amended: No. 44 of 1911 s. 36; No. 14 of 2016 s. 22; No. 30 of 2023 s. 91.]

Division 4B — Scrutiny and count (Council elections)

[Heading inserted: No. 40 of 1987 s. 73 amended: No. 14 of 2016 s. 28(6).]

146A. Application and construction of Division

- (1) This Division applies only in relation to a Council election and the poll taken for such an election.
- (2) Where in relation to a Council election the relevant number is one and there are only 2 candidates, a reference in this Division and Schedule 1 to —
 - (a) the indication of an elector's first preference for a candidate, shall be read and construed as a reference to the indication of the candidate for whom the elector votes;
 - (b) first preference votes given for a candidate, shall be read and construed as a reference to votes given for the candidate.

[Section 146A inserted: No. 40 of 1987 s. 73; amended: No. 20 of 2021 s. 94.]

146B. Rules about officers and counting places

- (1) Sections 141 and 142A apply to and in relation to a Council election as if references in those sections to a district were references to the whole of State electorate.
- (2) In the case of a conjoint election appointments of assistant returning officers and counting places, and of directed officers under section 142A(1), for the purposes of an election for the

Assembly have effect for the purposes of the corresponding election for the Council.

[Section 146B inserted: No. 40 of 1987 s. 73; amended: No. 20 of 2021 s. 71 and 94; No. 30 of 2023 s. 92.]

146C. Appointment of scrutineers

- (1) Where the relevant number is more than one —
 - (a) each group, or the group's official agent, may appoint not more than 3 scrutineers to represent the candidates included in that group at the scrutiny and count of votes at each counting place where such scrutiny and count are conducted under section 146G or 146H;
 - (b) each group, or the group's official agent, may appoint scrutineers, not exceeding in number such number as the returning officer determines, to represent the candidates included in that group at the scrutiny and count of votes under section 146I;
 - (c) each candidate who is not included in any group, or the candidate's official agent, may appoint not more than 2 scrutineers to represent the candidate at the scrutiny and count of votes at each counting place where such scrutiny and count are conducted under section 146G or 146H;
 - (d) each candidate who is not included in any group, or the candidate's official agent, may appoint scrutineers, not exceeding in number such number as the returning officer determines, to represent the candidate at the scrutiny and count of votes under section 146I.
- (2) Where the relevant number is one —
 - (a) each candidate, or the candidate's official agent, may appoint not more than 2 scrutineers to represent the candidate at the scrutiny and count of votes at each counting place where such scrutiny and count are conducted under section 146G or 146H;

- (b) each candidate, or the candidate's official agent, may appoint scrutineers, not exceeding in number such number as the returning officer determines, to represent the candidate at the scrutiny and count of votes under section 146I.
- (3) An appointment under subsection (1) or (2) shall be made in writing and addressed to the returning officer for the whole of State electorate, returning officer for the district or assistant returning officer, as the case may be.

[Section 146C inserted: No. 40 of 1987 s. 73; amended: No. 64 of 2006 s. 37; No. 14 of 2016 s. 23; No. 30 of 2023 s. 93.]

146D. Scrutineers, submissions by etc.

Section 138 applies to and in relation to Council ballot papers as if the references in section 138(3) to sections 144(2b) and 146 were references to sections 146I(1) and 146J.

[Section 146D inserted: No. 79 of 1987 s. 65; amended: No. 20 of 2021 s. 72.]

146E. Informal ballot papers

- (1) Section 139(a), (c) and (e) apply to and in relation to a Council ballot paper.
- (2) A Council ballot paper is informal, where the relevant number in the election is one —
 - (a) where there are only 2 candidates — if it does not indicate the candidate for whom the elector votes; or
 - (b) where there are more than 2 candidates — if it does not indicate the elector's preference for all candidates.

Note for this subsection:

See section 98C in relation to the method for an elector to mark their vote in relation to a Council election where the relevant number is one.

- (3) Subsection (3A) applies to a Council ballot paper if —
 - (a) the relevant number in the election is more than one; and

- (b) there is at least 1 above-the-line square on the ballot paper; and
 - (c) there are more than 20 below-the-line squares on the ballot paper.
- (3A) The ballot paper is informal if neither of the following applies —
 - (a) at least 1 above-the-line square is marked to indicate the elector's preference for a group or groups;
 - (b) 20 or more below-the-line squares are marked to indicate the elector's preference for candidates.
- (3B) Subsection (3C) applies to a Council ballot paper if —
 - (a) the relevant number in the election is more than one; and
 - (b) there is at least 1 above-the-line square on the ballot paper; and
 - (c) there are 20 or fewer below-the-line squares on the ballot paper opposite the names of candidates.
- (3C) The ballot paper is informal if neither of the following applies —
 - (a) at least 1 above-the-line square is marked to indicate the elector's preference for a group or groups;
 - (b) all the below-the-line squares are marked to indicate the elector's preference for candidates.
- (3D) Subsection (3E) applies to a Council ballot paper if —
 - (a) the relevant number in the election is more than one; and
 - (b) there are no above-the-line squares on the ballot paper; and
 - (c) there are more than 20 squares on the ballot paper opposite the names of candidates.
- (3E) The ballot paper is informal if fewer than 20 of the squares are marked to indicate the elector's preference for candidates.

- (3F) Subsection (3G) applies to a Council ballot paper if —
- (a) the relevant number in the election is more than one; and
 - (b) there are no above-the-line squares on the ballot paper; and
 - (c) there are 20 or fewer squares on the ballot paper opposite the names of candidates.

- (3G) The ballot paper is informal if the squares are not all marked to indicate the elector's preference for candidates.

Note for subsections (3) to (3G):

See sections 98D and 98E in relation to the method for an elector to mark their vote in relation to a Council election where the relevant number is more than one.

- (4) The operation of subsection (2) is subject to section 146EA and the operation of subsections (3) to (3G) are subject to sections 146EA and 146EB.
- (5) A Council ballot paper is not informal for any reason other than the reasons enumerated in section 139(a), (c) and (e) and subsections (2) to (3G) of this section.

[(6) *deleted*]

- (7) Without limiting the generality of subsection (5), if, after the nominations have been declared and before or on polling day before the hour of closing the poll in an election where the relevant number is more than one, a candidate dies and the number of candidates remaining is greater than the number of candidates to be elected, a Council ballot paper is not informal by reason only —
- (a) of the inclusion on the ballot paper of the name of the deceased candidate; or
 - (b) of the marking of any consecutive number opposite that name; or

- (c) of the omission to place a number opposite that name, or of any resultant failure to indicate in consecutive order the elector's preference.
- (8) Without limiting the generality of subsection (5), where the vote of an elector is marked on a ballot paper in a manner other than a prescribed manner but the ballot paper clearly indicates the elector's intention as necessary under subsection (2)(a) or (b) or (3) to (3G) and is not informal under section 139(a), (c) or (e), that ballot paper —
 - (a) is not informal; and
 - (b) is to be given effect according to the elector's intention.
- (9) In subsection (8) —

prescribed manner means —

 - (a) where the relevant number in the election is one and there are only 2 candidates on the ballot paper, the manner required by section 98C(a); or
 - (b) where the relevant number in the election is one and there are more than 2 candidates on the ballot paper, the manner required by section 98C(b); or
 - (c) where the relevant number is more than one and there is at least 1 above-the-line square on the ballot paper —
 - (i) the manner applicable to the ballot paper under section 98D(2)(a), (3)(a) or (4)(a); or
 - (ii) the manner applicable to the ballot paper under section 98D(2)(b), (3)(b) or (4)(b) and section 98E(3), (4) or (5);

or

 - (d) where the relevant number in the election is more than one and there are no above the line squares on the ballot

paper, the manner applicable to the ballot paper under section 98E(3), (4) or (5).

[Section 146E inserted: No. 20 of 2021 s. 73; amended: No. 30 of 2023 s. 94.]

146EA. Formal votes for individual candidates

- (1) In a Council election where the relevant number is one and there are more than 2 candidates, or where the relevant number is more than one and there are no above-the-line squares on the ballot papers, the following numerals placed in a square on a ballot paper must be disregarded —
 - (a) numerals that are repeated and any numerals that are higher than a repeated numeral;
 - (b) if a numeral is missed — any numerals that are higher than the missing numeral.
- (2) In a Council election where the relevant number is more than one and there are 1 or more above-the-line squares on the ballot papers, the following numerals placed in a below-the-line square on a ballot paper must be disregarded —
 - (a) numerals that are repeated and any numerals that are higher than a repeated numeral;
 - (b) if a numeral is missed — any numerals that are higher than the missing numeral.

[Section 146EA inserted: No. 20 of 2021 s. 73; amended: No. 30 of 2023 s. 95.]

146EB. Formal votes for groups

- (1) In a Council election an elector who, in an above-the-line square on a ballot paper, places only a single tick or cross is taken to have written the numeral 1 in the square in accordance with section 98D or 98E.

- (2) In a Council election the following numerals placed in an above-the-line square on a ballot paper must be disregarded —
 - (a) numerals that are repeated and any numerals that are higher than a repeated numeral;
 - (b) if a numeral is missed — any numerals that are higher than the missing numeral.
- (3) If above-the-line squares on a ballot paper are marked in accordance with section 98D and below-the-line squares on the ballot paper are marked but not in accordance with section 98E, then, for the purposes of sections 146EC, 146G and 146H, the only squares that are taken to have been marked on the ballot paper are the marked above-the-line squares.
- (4) If above-the-line squares on a ballot paper are marked, whether in accordance with section 98D or not, and below-the-line squares on the ballot paper are marked in accordance with section 98E, then, for the purposes of sections 146EC, 146G and 146H, the only squares that are taken to have been marked on the ballot paper are the marked below-the-line squares.

[Section 146EB inserted: No. 20 of 2021 s. 73; amended: No. 30 of 2023 s. 96.]

146EC. Treatment of ballot papers of electors who have voted above the line

- (1) This section applies if —
 - (a) a ballot paper is marked in accordance with section 98D or 98E; and
 - (b) one or more numerals are placed in above-the-line squares on the ballot paper in relation to groups of candidates (each group being a *preferred group*).
- (2) The ballot paper is taken to have been marked as if, instead of the numerals referred to in subsection (1)(b) —
 - (a) each candidate in a preferred group was given a different numeral starting from 1; and

- (b) candidates in a preferenced group were given numerals consecutively, starting with the candidate whose name on the ballot paper is at the top of the group and ending with the candidate whose name is at the bottom of the group; and
- (c) the order in which candidates in different preferenced groups are given numerals is worked out by reference to the order in which the groups were given numerals on the ballot paper, starting with the group marked 1; and
- (d) when all the candidates in a preferenced group have been given numerals, the candidate whose name is at the top of the next preferenced group is given the next consecutive numeral.

[Section 146EC inserted: No. 20 of 2021 s. 73; amended: No. 30 of 2023 s. 97.]

[146F. Deleted: No. 20 of 2021 s. 73.]

146G. Procedure for count of votes by assistant returning officers

- (1) As soon as practicable after the close of the poll each assistant returning officer must —
 - (a) open all ballot boxes received at the assistant returning officer's counting place and reject all informal ballot papers; and
 - (b) on the other ballot papers —
 - (i) if there are 1 or more above-the-line squares on the ballot paper, count the number of first preference votes marked in that square or each of those squares; or
 - (ii) in a single member election or if there are no above-the-line squares on the ballot paper, count the number of first preference votes given for each candidate;

and

- (c) enclose —
 - (i) in one packet (the *ballot paper packet*), all the used ballot papers in the assistant returning officer's possession; and
 - (ii) in another packet, all the unused ballot papers in the assistant returning officer's possession; and
 - (iii) in another packet, all copies of rolls, books, communications from officers, or other papers or documents used or received at or in connection with the election, that are in the assistant returning officer's possession;and
 - (d) seal up those packets, endorse each with a description of its contents and with the name of the counting place and the date of the polling, sign the endorsement, and forward the packets to the returning officer for the district together with —
 - (i) if paragraph (b)(i) applies, a list of the total number of first preference votes marked in the above-the-line square, or each of the above-the-line squares, on the ballot papers contained in the ballot paper packet; or
 - (ii) if paragraph (b)(ii) applies, a list of the total number of first preference votes given for each candidate on the ballot papers contained in the ballot paper packet.
- (2) The ballot paper packet must be sealed before the scrutineers, if any, present and a scrutineer may sign the packet.
 - (3) The list made out under subsection (1)(d)(i) or (ii) must be verified by the signature of the assistant returning officer and also by the signatures of such of the scrutineers, if any, as are present and consent to sign it.

- (4) In the case of a conjoint election subsection (1)(c)(iii) does not apply to papers or documents that apply to both the election for the Assembly and the election for the Council.

[Section 146G inserted: No. 40 of 1987 s. 73; amended: No. 20 of 2021 s. 74; No. 30 of 2023 s. 98.]

146H. Procedure for count of votes

- (1) As soon as practicable after the close of the poll an officer must —
- (a) open all ballot boxes received from polling places within the district that have not been opened by an assistant returning officer and reject all informal ballot papers; and
 - (aa) on the other ballot papers —
 - (i) if there are 1 or more above-the-line squares on the ballot paper, count the number of first preference votes marked in that square or each of those squares; or
 - (ii) in a single member election or if there are no above-the-line squares on the ballot paper, count the number of first preference votes given for each candidate;
- and
- (b) enclose —
 - (i) in 1 packet, all the used ballot papers in the officer's possession; and
 - (ii) in another packet, all the unused ballot papers in the officer's possession; and
 - (iii) in another packet all copies of rolls, books, communications from officers, or other papers or documents used or received at or in connection

with the election, that are in the officer's possession,

other than those that have been forwarded to the returning officer for the district under section 146G(1)(d); and

- (c) seal up those packets, endorse each with a description of its contents and with the name of the district and the date of the polling, and sign the endorsement; and
- (d) make out —
 - (i) if paragraph (aa)(i) applies, a list of the total number of first preference votes marked in the above-the-line square, or each of the above-the-line squares, on the ballot papers contained in the packet mentioned in paragraph (b)(i); or
 - (ii) if paragraph (aa)(ii) applies, a list of the total number of first preference votes given for each candidate on the ballot papers contained in the packet mentioned in paragraph (b)(i);

and

- (e) enclose —
 - (i) in 1 packet, all the packets made up under section 146G(1)(c)(i) and forwarded to the officer under section 146G(1)(d), the lists forwarded to the officer with those packets, the packet made up by the officer under paragraph (b)(i) and the list made out by the officer under paragraph (d)(i) or (ii); and
 - (ii) in another packet, all the packets made up under section 146G(1)(c)(ii) and forwarded to the officer under section 146G(1)(d) and the packet made up by the officer under paragraph (b)(ii); and

- (iii) in another packet, all the packets made up under section 146G(1)(c)(iii) and forwarded to the officer under section 146G(1)(d) and the packet made up by the officer under paragraph (b)(iii);
 - and
 - (f) seal up those packets, endorse each with a description of its contents and with the name of the district and the date of the polling, sign the endorsement, and forward the packets to the returning officer.
- (2) The packets mentioned in subsection (1)(b)(i) and (e)(i), respectively, must be sealed before the scrutineers, if any, present and any scrutineer who desires to do so must be permitted by an officer to sign the record of the sealing device secured on the packet.
 - (3) The list made out under subsection (1)(d)(i) or (ii) must be verified by the signature of the returning officer for the district and also by the signatures of such of the scrutineers, if any, as are present and consent to sign it.
 - (4) In the case of a conjoint election subsection (1)(b)(iii) and subsection (1)(e)(iii) do not apply to papers or documents that relate to both the election for the Assembly and the election for the Council.

[Section 146H inserted: No. 40 of 1987 s. 73; amended: No. 20 of 2021 s. 75; No. 30 of 2023 s. 99.]

146I. Procedure for count of votes by returning officers

- (1) The returning officer must open the sealed packets of ballot papers made up under sections 146G(1)(c)(i) and 146H(1)(b)(i) and forwarded to the returning officer under section 146H(1)(f), and must make a fresh scrutiny of the ballot papers contained in the packets and the ballot papers transmitted to the returning officer under section 142A(4), and for this purpose the returning officer has the same powers as if the fresh scrutiny were the original scrutiny, and may reverse any decision given by an

assistant returning officer, returning officer for the district or any other officer in relation to the original scrutiny as to the admission or rejection of any ballot paper.

- (2) The returning officer shall ascertain the result of the polling using the method provided in Schedule 1.
- (3) For the purposes of subsection (2) the returning officer may, if the returning officer thinks fit —
 - (a) cause the preferences indicated on ballot papers to be recorded in an automated form; and
 - (b) on the basis of the information so recorded, use automated means to carry out the procedures set out in Schedule 1 other than the procedures referred to in clauses 12, 15 and 17 of that Schedule for resolving equalities of votes or surpluses under those clauses.
- (4) For proceedings under subsection (3) the requirements of section 134(4) are met if —
 - (a) the recording of preferences in an automated form is subject to the inspection of the scrutineers; and
 - (b) the scrutineers have access to the information so recorded and information as to the results obtained by using automated means to carry out the various procedures set out in Schedule 1.
- (5) If the result of the election is ascertained in accordance with subsection (3) —
 - (a) when transmitting documents to the Electoral Commissioner under section 151(d), the returning officer shall transmit to the Electoral Commissioner a copy, in an automated form, of the information recorded under subsection (3)(a); and
 - (b) despite section 152(1)(b), ballot papers do not have to be preserved or held in custody after the election can no longer be questioned if the preferences on them have been recorded in an automated form; and

- (ba) despite section 155(2), books, documents or papers used for or in connection with a general election for the Council may be destroyed under section 155(1) if the books, documents and papers have been recorded in an automated form; and
 - (c) section 155 extends to information recorded in an automated form; and
 - (d) on any recount, under section 156D, of the votes on the ballot papers used in the counting of votes at the election, the Electoral Commissioner shall, on the basis of the information recorded under subsection (3)(a), use automated means to carry out the procedures set out in Schedule 1 (as modified to give effect to section 156D(5) to (7)) other than the procedures referred to in clauses 12, 15 and 17 of that Schedule for resolving equalities of votes or surpluses under those clauses.
- (6) In this section *automated* means involving the use of a computer.

[Section 146I inserted: No. 40 of 1987 s. 73; amended: No. 79 of 1987 s. 68 and 78; No. 43 of 1996 s. 21; No. 20 of 2021 s. 76; No. 30 of 2023 s. 100.]

146J. Re-count, when may be conducted etc.

- (1) At any time before the declaration of the result of the election the returning officer may, if the returning officer thinks fit, on the written request of any candidate setting forth the reasons for the request, or of their own motion, re-count the votes on the ballot papers from any district or portion of a district, or on the ballot papers contained in any parcel or on the ballot papers of any particular class.
- (2) In conducting the re-count the returning officer shall have the same powers as if the re-count were the scrutiny, and may reverse any decision in relation to the scrutiny as to the

allowance or admission or disallowance or rejection of any ballot paper.

- (3) Section 146I(3) to (5) apply in relation to the re-count.

[Section 146J inserted: No. 40 of 1987 s. 73; amended: No. 43 of 1996 s. 22; No. 30 of 2023 s. 182.]

Division 5 — Declaration of poll and return of the writ

[Heading amended: No. 14 of 2016 s. 28(6).]

147. Declaration of poll and certification and return of writ

- (1) As soon as practicable after the result of the election has been ascertained, the returning officer is to —

- (a) declare the result of the election and the name of the candidate, or names of the candidates, elected; and
- (b) send to the Electoral Commissioner a written statement setting out —
 - (i) the result of the election; and
 - (ii) the day on which the result was declared; and
 - (iii) the name of the candidate, or names of the candidates, elected.

- (1a) A declaration under subsection (1) is to be made —

- (a) in the case of an election in a district, within the district at a place appointed by the returning officer, unless the Electoral Commissioner decides that the declaration is to be made at a place outside the district; or
- (b) in the case of a Council election, at a place appointed by the Electoral Commissioner.

- (2) A statement under subsection (1)(b) is not required if the election has wholly failed or the returning officer has given the Electoral Commissioner a notification under section 145(3).

[(3) deleted]

- (4) In the case of a Council election, when the statement required under subsection (1)(b) has been received the Electoral Commissioner is to certify on the writ —
 - (a) the name of the candidate, or names of the candidates, elected; and
 - (b) the day on which the result of the election was declared.
- (5) In the case of a general election for the Assembly, when all, or all except not more than 5, of the statements required under subsection (1)(b) have been received the Electoral Commissioner is to certify on the writ, in respect of each district for which a statement has been received —
 - (a) the name of the candidate elected; and
 - (b) the day on which the result of the election was declared.
- (6) In the case of any other election in a district, when the statement required under subsection (1)(b) has been received the Electoral Commissioner is to certify on the writ —
 - (a) the name of the candidate elected; and
 - (b) the day on which the result of the election was declared.
- (7) A certificate under subsection (4), (5) or (6) is to be signed and dated by the Electoral Commissioner.
- (8) The writ is to be regarded as having been returned on the date of the certificate.
- (9) As soon as practicable after the return of the writ the Electoral Commissioner is to forward to the Clerk of the Council or the Clerk of the Assembly, as the case may require, the name of the member, or names of the members, elected together with a copy of the certified writ.
- (10) If in the case of a general election for the Assembly a statement required under subsection (1)(b) is received after the writ has

been certified under subsection (5), the Electoral Commissioner is to —

- (a) comply with subsections (5) and (7) in respect of the district for which the statement was received; and
- (b) forward to the Clerk of the Assembly the name of the member elected together with a copy of the writ as further certified,

but the writ is still regarded as having been returned on the date of the original certificate.

[Section 147 inserted: No. 36 of 2000 s. 18; amended: No. 64 of 2006 s. 38; No. 20 of 2021 s. 77 and 94.]

148. Election not to be questioned on certain grounds

No election shall be liable to be questioned by reason of any defect in the title or any want of title of any person by or before whom such election is held, if such person really acted at such election, nor by reason of any formal error or defect in any declaration or other instrument, or in any publication made under this Act or intended to be so made, nor by reason of any such publication being out of time.

149. Informality in election, Governor's powers as to

No election shall be void in consequence solely of any delay in holding the election at the time appointed, or in taking the poll, or in the return of the writ, or in consequence of any impediment of a merely formal nature; and the Governor may adopt such measures as may be necessary for removing any obstacle of a merely formal nature by which the due course of any election might be impeded:

Provided that the validity of the election and the measures so taken shall be forthwith declared by the Governor by proclamation.

149A. Election of unqualified or disqualified person void

- (1) If a person not qualified under section 76A is elected as a member of the Council or the Assembly, the election of that person is void.
- (2) If a person disqualified under section 76B(1) is elected as a member of the Council or the Assembly, the election of that person is void.
- (3) If a person disqualified under section 76B(2) from being elected as a member of a House is elected as a member of that House, the election of that person is void.

[Section 149A inserted: No. 64 of 2006 s. 39.]

Division 6 — After the poll

[Heading amended: No. 14 of 2016 s. 28(6).]

149B. Term used: document

In this Division —

document includes a document in digital or electronic form.

[Section 149B inserted: No. 14 of 2016 s. 24.]

150. Dealing with statistical returns and rolls

- (1) The returning officer must, after the day of polling at any election, immediately complete and forward to the Electoral Commissioner a statistical return in the prescribed form.
- (1A) The returning officer must ensure that, if an electronic roll is used in the election by the returning officer and the presiding officers, the roll is made available to the Electoral Commissioner.
- (2) The returning officer must also forward to the Electoral Commissioner all the certified printed copies of the marked and signed rolls used at the election by the returning

officer and the presiding officers, upon which rolls records have been made under sections 98A(1)(b), 100D(5)(a) and 102C(2)(a) in respect of the names of electors who voted in the election.

[Section 150 amended: No. 40 of 1987 s. 84; No. 36 of 2000 s. 77(4); No. 20 of 2021 s. 78; No. 30 of 2023 s. 101.]

151. Returning officer to provide other election material to Electoral Commissioner

The returning officer must also, as soon as practicable after the day of polling at any election —

- (a) enclose —
 - (i) in a packet or packets, as the case may require, all the used ballot papers; and
 - (ii) in another packet or other packets, as the case may require, all books, communications from officers, or other papers or documents used or received at or in connection with the election, that are in his possession (with the exception of the signed rolls);
- (b) seal up the said several packets and endorse the same with a description and the number of the contents thereof respectively, and the date of the polling, and, in the case of an election for a district, the name of the district, and must sign the endorsement, and forthwith forward the said packets to the Electoral Commissioner;
- (c) seal up, endorse, and transmit in a similar manner to the Electoral Commissioner a packet or packets, as the case may require, containing all ballot papers printed for the said election and not used by an officer;

- (d) seal up, endorse, and transmit to the Electoral Commissioner all declarations in the prescribed form, excluding declarations relating to postal votes, absent votes and provisional votes cast under Division 3A Subdivision 3, received by the Electoral Commissioner and the presiding officers;
- (e) the Electoral Commissioner must immediately give or send to the returning officer a receipt for the packets, declarations and the printed rolls or electronic roll.

[Section 151 amended: No. 44 of 1911 s. 43; No. 58 of 1951 s. 19; No. 68 of 1964 s. 29; No. 40 of 1987 s. 74 and 84; No. 79 of 1987 s. 70; No. 36 of 2000 s. 48(1); No. 35 of 2012 s. 23; No. 20 of 2021 s. 79; No. 30 of 2023 s. 102.]

152. Keeping election material

- (1) The Electoral Commissioner shall preserve and hold in custody all such ballot papers and other documents forwarded by the returning officers under the provisions of this Part until —
 - (a) in the case of a Council election other than a general election for the Council, the election concerned can be no longer questioned; or
 - (b) in the case of a general election for the Council, the members elected at the next succeeding general election for the Council become entitled to sit and vote,

when such ballot papers and other documents shall be destroyed.

Note for this subsection:

Subsection (1)(b) is subject to section 146I(5)(b).

- (2) If the Electoral Commissioner has consented to the use, for the purposes of research or analysis, of any ballot papers or other documents that are liable to be destroyed under subsection (1),

then the Electoral Commissioner may defer their destruction until the conclusion of that research or analysis.

[Section 152 amended: No. 40 of 1987 s. 75; No. 35 of 2012 s. 24; No. 20 of 2021 s. 80; No. 30 of 2023 s. 103.]

153. Disclosure or production of rolls used in election to candidates

- (1) Any candidate on payment of a fee of \$100 may give notice to the Electoral Commissioner requiring disclosure of the electronic roll or production of the printed rolls at any election, and if the notice is so given after the day of the election and before the day when the election can no longer be questioned such returning officer or assistant returning officers must disclose the electronic roll or produce the printed rolls in the presence of the other candidates (if they wish to be present) within 35 days of the date of service of the notice.
- (2) If the returning officer is satisfied that the application was made for a bona fide purpose the returning officer may direct repayment of the sum deposited.

[Section 153 amended: No. 28 of 1970 s. 15; No. 64 of 2006 s. 40; No. 30 of 2023 s. 104.]

154. Election papers, production of to Court of Disputed Returns; purposes for which they can be used restricted

- (1) Such ballot papers and other documents as may be required by the Court of Disputed Returns shall, upon an order of the Court, be produced by the Electoral Commissioner.
- (2) Ballot papers or other documents held by the Electoral Commissioner under section 152 shall not be used or made available for any purpose other than —
 - (a) a purpose mentioned in subsection (1); or
 - (b) for the purposes of the election of a member of the Council under sections 156C and 156D; or

- (c) a purpose mentioned in section 152.

[Section 154 amended: No. 40 of 1987 s. 76; No. 35 of 2012 s. 25.]

155. Destruction of election papers

- (1) Subject to subsection (2), all books, documents, and papers used for or in connection with any election may, when the election can be no longer questioned, be destroyed by the Electoral Commissioner, or with the Electoral Commissioner's approval, by any returning officer.
- (2) Subsection (1) does not apply to books, documents or papers used for or in connection with a general election for the Council that may be required for the purposes of the election of members of the Council under sections 156C and 156D.

Note for this subsection:

This subsection is subject to section 146I(5)(ba).

[Section 155 amended: No. 40 of 1987 s. 77 and 84; No. 79 of 1987 s. 78; No. 36 of 2000 s. 28(1); No. 20 of 2021 s. 81; No. 30 of 2023 s. 105.]

155AA. Election papers used for referendum etc., use of and destruction of afterwards

Notwithstanding sections 152, 154 and 155, where books, documents or papers used in connection with an election were also used in connection with a referendum or another election —

- (a) they shall be available for purposes connected with that referendum or other election; and
- (b) they shall not be destroyed while that referendum or other election can be questioned.

[Section 155AA inserted: No. 54 of 1983 s. 12.]

[155A. Deleted: No. 40 of 1987 s. 78.]

Division 7 — Voting to be compulsory

[Heading amended: No. 33 of 1964 s. 37; No. 14 of 2016 s. 28(6).]

155AB. Terms used

In this Division —

infringement notice means a notice under section 156(13A);

penalty notice means a notice under section 156(4);

prepared means produced or generated and recorded or stored, whether mechanically, magnetically, electronically or otherwise;

response date, in relation to —

- (a) a penalty notice, means the date referred to in section 156(6)(c) and set out in the notice;
- (b) an infringement notice, means the date referred to in section 156(13A)(b) and set out in the notice.

[Section 155AB inserted: No. 35 of 2012 s. 27.]

156. Electors' voting obligations

- (1A) In this section, a ***valid and sufficient reason*** in relation to a failure to vote includes an honest belief on the part of an elector that abstaining from voting is part of their religious duty.
- (1) An elector must vote in any election for the whole of State electorate, and in any election for the district for which the elector is enrolled, unless prevented from doing so by absence from the State, or because the person has a mental or physical impairment on the days on which voting occurs in the election.
- (2) As soon as practicable after the election the Electoral Commissioner must ensure that there is prepared a list of the names and addresses of the electors who were on the roll for the whole of State electorate or the roll for the district, as the case requires, and did not vote in the election.

- (2a) A list prepared under subsection (2) shall be certified by statutory declaration of the Electoral Commissioner, or a person authorised by the Electoral Commissioner.
- (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 in 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; or
 - (b) was outside the State on polling day; or
 - (c) was ineligible to vote in 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 in the election; and
 - (b) that it is an offence to fail to vote in 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 response date set out in the notice —
 - (i) if the elector did vote as required by this Act — give the Electoral Commissioner particulars of the circumstances of the elector's voting; or

- (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 must be an amount not exceeding —
- (a) if the elector has not previously paid a modified penalty under this section or been convicted of an offence against this section — \$50; or
 - (b) otherwise — \$75.

[(9), (10) deleted]

- (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).

- (12) Subsection (13A) applies to an elector if a penalty notice is sent to the elector and —
- (a) the elector does not respond to the penalty notice on or before the response date; or
 - (b) the elector responds to the penalty notice on or before the response date in the manner indicated in subsection (6)(c)(i) or (ii) but the Electoral Commissioner is not satisfied —
 - (i) in the case of a response under subsection (6)(c)(i) — that the elector voted 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.
- (13A) If this subsection applies to an elector the Electoral Commissioner may send to the elector an infringement notice in a prescribed form —
- (a) notifying the elector —
 - (i) that the elector has not responded to a penalty notice; or
 - (ii) that the elector's response to a penalty notice has not satisfied the Electoral Commissioner,as the case may be; and
 - (b) informing the elector that if the elector does not wish to be prosecuted in a court for an alleged offence of failure to vote in an election without a valid and sufficient reason for such failure, the elector may, on or before the response date set out in the infringement notice, pay to the Electoral Commissioner the penalty set out in the infringement notice (the *modified penalty*).
- (13) Subsections (7) and (8) apply, with any necessary modifications, to an infringement notice.

- (14) If in response to an infringement notice 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 their place of living or physical incapacity, to respond to a penalty notice or to an infringement notice 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.
- (15) At the conclusion of an election, the Electoral Commissioner must —
- (a) cause to be ascertained whether any person who failed or neglected to respond to a penalty notice or an infringement notice is living at the address shown in the roll; and
 - (b) if the Electoral Commissioner is satisfied that the person is no longer living at that address, cause the name of that person to be removed from the register of electors.
- (15A) A person whose name has been removed from the register of electors under subsection (15) must make a new claim for enrolment before their name is reinstated on the register of electors.
- (16) If an elector fails to vote in an election without a valid and sufficient reason, the elector commits an offence.
Penalty for this subsection: a fine of \$200.
- (16A) If, in response to a penalty notice or to an infringement notice, an elector makes a statement that the elector knows to be false or misleading in a material particular, the elector commits an offence.
Penalty for this subsection: a fine of \$1 000.

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

[Section 156 inserted: No. 10 of 1936 s. 3; amended: 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 s. 71 and 77; No. 43 of 1996 s. 23; No. 36 of 2000 s. 28(1); No. 64 of 2006 s. 41; No. 35 of 2012 s. 28; No. 20 of 2021 s. 82; No. 30 of 2023 s. 106.]

156AA. Evidentiary certificate for s. 156 proceedings

- (1) In proceedings for an offence against section 156, a certificate containing a statement described in subsection (2) and purporting to be signed by the Electoral Commissioner is, without proof of any appointment or signature, evidence of the facts stated in the certificate.
- (2) A certificate may state any or all of the following —
- (a) a specified date is the date that an election was held;
 - (b) a specified person was an elector on a specified date;
 - (c) a specified person did not vote in an election;
 - (d) a specified person —
 - (i) was sent a penalty notice or an infringement notice;
 - (ii) did or did not (as the case may be) respond to a penalty notice or an infringement notice on or by a specified date;
 - (iii) responded to a penalty notice or an infringement notice in a specified manner;
 - (e) a penalty notice or an infringement notice was sent on a specified date;
 - (f) a specified date was the response date for a penalty notice or an infringement notice.

- (3) In subsection (2) —
specified means specified in the certificate.

*[Section 156AA inserted: No. 35 of 2012 s. 29; amended:
No. 30 of 2023 s. 107.]*

Part IVA — Filling vacancies in the Council

[Heading inserted: No. 40 of 1987 s. 79.]

156A. Terms used

In this Part —

original election, in relation to a vacancy, means the general election for the Council in respect of which the vacancy has occurred at which —

- (a) the member in whose seat the vacancy has occurred; or
- (b) in a case where the member in whose seat the vacancy has occurred was elected under sections 156C and 156D or under section 156E, the member who was the predecessor (whether immediate, intermediate, or original) of that member,

was elected;

qualified person, in relation to a vacancy, means a person who —

- (a) was a candidate at the original election; and
- (b) did not withdraw from, and was not elected at, that election; and
- (c) has not become a member of the Council since that election; and
- (d) is qualified to be elected and is not disqualified from being elected as a member of the Council;

vacancy means a vacancy in the Council that occurs otherwise than because of —

- (a) the expiration of the term of service of a member; or
- (b) a Council election failing wholly or partially; or

- (c) the declaration of a Council election to be absolutely void.

[Section 156A inserted: No. 40 of 1987 s. 79; amended: No. 36 of 2000 s. 55(1) and (2); No. 64 of 2006 s. 53; No. 20 of 2021 s. 83 and 94.]

156B. Vacancy in Council, Governor to be notified of etc.

- (1) Where a vacancy occurs the President, upon a resolution of the Council declaring the vacancy and the cause thereof, shall, by notice signed by the President, inform the Governor of the vacancy.
- (2) Subject to section 39(4) of the *Constitution Acts Amendment Act 1899*, where a vacancy occurs when Parliament is not in session or during an adjournment for longer than 7 days of the Council the President may, without a resolution of the Council, by notice signed by the President, inform the Governor of the vacancy.
- (3) Subject to section 39(4) of the *Constitution Acts Amendment Act 1899*, where a vacancy occurs when there is no President, or when the President is absent from the State, the Governor may take notice of the vacancy.

[Section 156B inserted: No. 40 of 1987 s. 79; amended: No. 30 of 2023 s. 182.]

156C. Electoral Commissioner's duties when informed of vacancy; nominations of candidates for vacancy being filled by re-count

- (1) Where the Governor receives or takes notice of a vacancy under section 156B the Governor shall inform the Electoral Commissioner who shall —
- (a) if satisfied that it is practicable to fill the vacancy under this section and section 156D, publish on the Commission website, and in any other way the Electoral Commissioner considers appropriate, a notice in

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accordance with the prescribed form to the effect that the vacancy has occurred; or

- (b) by notice signed by the Electoral Commissioner, inform the Governor that the Electoral Commissioner is not satisfied that it is practicable to fill the vacancy under this section and section 156D.

- (2) Where a vacancy is to be filled and —

- (a) the member in whose seat the vacancy has occurred; or
- (b) in a case where the member in whose seat the vacancy has occurred was elected under this section and section 156D or under section 156E, the member who was the predecessor (whether immediate, intermediate, or original) of that member,

was, at the time of being elected at the original election, publicly recognised by a particular political party as being an endorsed candidate of that party and publicly represented themselves to be such a candidate at that time then, without limiting the generality of subsection (1), it shall be taken to be impracticable to fill the vacancy under this section and section 156D if the parliamentary leader of that party, by notice signed by the leader, informs the Electoral Commissioner that there is no available qualified person who is a member of that party.

- (3) Where notice of a vacancy is published under subsection (1)(a) a qualified person may nominate themselves as a candidate for the vacancy in accordance with this section.
- (4) A person may make a nomination under subsection (3) —
 - (a) by delivering or posting their written consent to act, if elected; or

- (b) by signifying their consent to act, if elected, by a message sent by telegram, telex, or other electronic means,

to the Electoral Commissioner so that it is received by the Electoral Commissioner before 12 noon on the tenth day after the day on which the notice of the vacancy was published under subsection (1)(a).

- (5) Where a nomination under subsection (3) is made otherwise than by telegram, telex, or other electronic means, it is not valid unless made in the prescribed form by the nominating candidate and unless their signature is witnessed by an elector.
- (6) Where such a nomination is made by a message by telegram, telex, or other electronic means, it is not valid unless it is verified in the prescribed manner.

[Section 156C inserted: No. 40 of 1987 s. 79; amended: No. 36 of 2000 s. 55(2); No. 20 of 2021 s. 84; No. 30 of 2023 s. 182.]

156D. Procedure at close of nominations if vacancy being filled by re-count

- (1) At 12 noon on the tenth day after the day on which notice of a vacancy was published under section 156C(1)(a) the Electoral Commissioner shall declare the names of each person who has made a nomination in accordance with section 156C (in this section referred to as a **consenting candidate**).
- (2) If there is no consenting candidate for the vacancy the Electoral Commissioner shall, by written notice, inform the Governor accordingly.
- (3) If there is only 1 consenting candidate for the vacancy the Electoral Commissioner shall —
- (a) declare that consenting candidate to be elected as a member of the Council to fill the vacancy; and

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- (b) by written notice, inform the Governor of the election of that consenting candidate.
- (4) If there are 2 or more consenting candidates for the vacancy the Electoral Commissioner, using the method prescribed in Schedule 1, shall re-count the votes on the ballot papers used in the counting of votes at the original election.
- (5) On the re-count under subsection (4) a preference indicated on a ballot paper for a previously elected member whose seat has become vacant shall be disregarded and the ballot paper shall be treated as if the numeral indicating any subsequent preference had been altered accordingly.
- (6) If on the re-count under subsection (4) a non-participating candidate is elected that election has no effect and the Electoral Commissioner shall terminate that re-count and repeat the procedure of re-counting the votes on the ballot papers until a consenting candidate is elected.
- (7) On a re-count under subsection (6) a preference indicated on a ballot paper for —
 - (a) a previously elected member whose seat has become vacant; or
 - (b) a non-participating candidate who has been elected on the re-count under subsection (4) or on a previous re-count under subsection (6),shall be disregarded and the ballot paper shall be treated as if the numeral indicating any subsequent preference had been altered accordingly.
- (8) When on a re-count under this section a consenting candidate is elected the Electoral Commissioner shall —
 - (a) in the prescribed manner, declare that consenting candidate to be elected as a member of the Council to fill the vacancy; and

- (b) by written notice, inform the Governor of the election of that consenting candidate.
- (9) A re-count under this section does not affect the election of a previously elected member and where a previously elected member is elected or excluded during a re-count that election or exclusion has effect for the purposes of the continuation of the re-count and for those purposes only.
- (10) The Electoral Commissioner shall make such arrangements for a re-count under this section as are prescribed.
- (11) A consenting candidate or the consenting candidate's official agent may appoint one scrutineer to represent the candidate at a re-count under this section.
- (12) When a member has been elected under this section the Electoral Commissioner shall not destroy papers and documents relating to the election of the member until the election can be no longer questioned.
- (13) If no re-count under subsection (4) or (6) results in the election of a consenting candidate the Electoral Commissioner shall, by written notice, inform the Governor that the vacancy has not been filled under this section.
- (14) In this section —
- ballot paper** includes a vote record;
- non-participating candidate** means a person who was a candidate at the original election and is neither a consenting candidate nor a previously elected member;
- previously elected member** means a person who —
- (a) was elected as a member of the Council at the original election; or

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- (b) was declared elected as a member of the Council under this section after the original election.

Note for this section:

This section is subject to section 146I(5).

[Section 156D inserted: No. 66 of 1990 s. 3; amended: No. 36 of 2000 s. 55(2); No. 35 of 2012 s. 26; No. 14 of 2016 s. 25; No. 30 of 2023 s. 108.]

156E. Vacancy being filled by fresh election, writ for

- (1) Subject to subsection (2), where after receiving or taking notice of a vacancy under section 156B the Governor receives a notice under section 156C(1)(b), 156D(2) or 156D(13) in relation to the vacancy the Governor shall cause a writ to be issued for an election in the whole of State electorate to fill the vacancy.
- (2) A writ shall not be issued under subsection (1) on or after 1 January in the year in which the term of service of the member whose seat has been vacated would have expired and, in that case, the vacancy shall be deemed for the purposes of section 64(3) and the *Constitution Acts Amendment Act 1899* section 10 to occur by effluxion of time at the close of 21 May in that year.

[Section 156E inserted: No. 40 of 1987 s. 79; amended: No. 66 of 1990 s. 4; No. 36 of 2000 s. 19; No. 49 of 2011 s. 10; No. 20 of 2021 s. 85.]

Part V — Disputed returns

157. Validity of election or return, how to dispute

- (1) The validity of any election or return may be disputed by petition addressed to the Court of Disputed Returns, and not otherwise.
- (2) A judge of the Supreme Court sitting in open Court shall constitute the Court of Disputed Returns.

158. Content of petition to Court of Disputed Returns

Every petition disputing an election or return, in this Part called the petition, must —

- (1) set out the facts relied on to invalidate the election or return;
- (2) contain a request for the relief the petitioner claims to be entitled to;
- (3) be signed by a candidate at the election in dispute;
- (4) be attested by 2 witnesses whose occupations and addresses are stated;
- (5) be filed in the Central Office of the Supreme Court within 40 days after the return of the writ.

[Section 158 amended: No. 39 of 1979 s. 22; No. 30 of 2023 s. 109.]

159. Return of writ, presumed date of

For the purpose of the last preceding section the writ shall be deemed not to have been returned earlier than the date thereby appointed as the day on or before which the same is to be returned.

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160. Security for costs, petitioner to give

At the time of filing the petition the petitioner shall deposit with the Principal Registrar of the Supreme Court the sum of \$100 as security for costs.

[Section 160 amended: No. 113 of 1965 s. 8; No. 67 of 1979 s. 53.]

161. No proceedings on petition unless it complies with law

No proceedings shall be had on the petition unless the requirements of the preceding sections are complied with.

162. Court's powers on petition

- (1) The powers of the Court of Disputed Returns shall include the following:
 - (a) To adjourn.
 - (b) To compel the attendance of witnesses and the production of documents.
 - (c) To examine witnesses on oath.
 - (ca) To grant to any party to the petition, leave to inspect in the presence of a prescribed officer, the rolls and other documents (except ballot papers) used at or in connection with any elections and to take, in the presence of the prescribed officer, extracts from those rolls and documents.
 - (cb) To permit, at any stage of the proceedings and on such terms as may be just, all such amendments to the petition or other pleadings, as shall appear to the Court to be necessary or convenient.
 - (d) To declare that any person who was returned as elected was not duly elected.
 - (e) To declare any candidate duly elected who was not returned as elected.
 - (f) To declare any election absolutely void.

- (g) To dismiss or uphold any petition, in whole or in part.
 - (h) To award costs.
 - (i) To punish any contempt of its authority by fine or imprisonment.
- (2) The Court may exercise all or any of its powers under this section on such grounds as the Court in its discretion thinks fit and sufficient.
- (3) Without limiting the powers conferred by this section, it is hereby declared that the power of the Court to declare that any person who was returned as elected was not duly elected, or to declare an election absolutely void, may be exercised on the ground that illegal practices were committed in connection with the election.

[Section 162 amended: No. 63 of 1948 s. 24.]

163. Court's functions in relation to status of roll and electors' entitlement to be included on roll

- (1) The Court must inquire whether or not the requisites of section 158 have been observed, and, so far as the voting is concerned, may inquire into the identity of persons, and whether their votes were improperly admitted or rejected, and whether the result of the polling was correctly ascertained, but the roll is conclusive evidence that the persons shown on the roll are, on the day stated in the roll as the day on which the roll is prepared, entitled to be included on the roll.
- (2) An election cannot be declared void on the ground that a person whose name appears on the roll for the whole of State electorate or a district, and who has voted as an elector for that electorate or district —
- (a) was not entitled to be enrolled, or to continue to be enrolled, as an elector for that electorate or district; or

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(b) was not entitled to be included on that roll.

[Section 163 amended: No. 67 of 1979 s. 53; No. 40 of 1987 s. 84; No. 20 of 2021 s. 86; No. 30 of 2023 s. 110.]

164. Bribery etc. by candidate or illegal practice, voiding election in case of

- (1) If the Court of Disputed Returns finds that a candidate has committed or has attempted to commit bribery or undue influence and the candidate is elected, the Court must declare the candidate's election void.
- (2) No finding by the Court of Disputed Returns shall bar or prejudice any prosecution for any illegal practice.
- (3) The Court of Disputed Returns shall not declare that any person returned was not duly elected, or declare any election void —
 - (a) on the ground of any illegal practice committed by any person other than the candidate and without their knowledge or authority; or
 - (b) on the ground of any illegal practice, other than bribery or corruption or attempted bribery or corruption, unless the Court is satisfied that the result of the election was intended to be and was actually affected thereby, and that it is just that the candidate should be declared not to be duly elected, or that the election should be declared void.

[Section 164 amended: No. 30 of 2023 s. 182.]

165. Illegal practice, Court to report to Electoral Commissioner

When the Court of Disputed Returns finds that any person has committed an illegal practice, the Principal Registrar of the Supreme Court shall forthwith report the finding to the Electoral Commissioner.

[Section 165 amended: No. 67 of 1979 s. 53; No. 40 of 1987 s. 84.]

166. Delays and immaterial errors not to vitiate election

No election shall be voided on account of any delay in the declaration of nominations, the polling, or the return of the writ, or on account of the absence or error of any officer which shall not be proved to have affected the result of the election.

167. Court's decision is final

All decisions of the Court shall be final and conclusive without appeal, and shall not be questioned in any way.

168. Copies of petition etc. to be sent to House affected

The Principal Registrar of the Supreme Court shall forthwith, after the filing of the petition, forward to the Clerk of the House of Parliament affected by the petition a copy thereof, and, after the trial of the petition, shall forthwith forward to such Clerk a copy of the order of the Court.

[Section 168 amended: No. 67 of 1979 s. 53.]

169. Costs

The Court may award costs against an unsuccessful party to the petition, to be taxed by the Taxing Officer of the Supreme Court, and may in its discretion recommend that costs be paid by the Crown.

[Section 169 amended: No. 39 of 1979 s. 23.]

170. Security for costs, how to be dealt with

If costs are awarded to any party against the petitioner, the deposit shall be applicable in payment of the sum ordered, but otherwise the deposit shall be repaid to the petitioner.

171. Other costs

All other costs awarded by the Court, including any balance above the deposit payable by the petitioner, shall be recoverable

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as if the order of the Court were a judgment of the Supreme Court, and such order, certified by the Court, may be entered as a judgment of the Supreme Court, and enforced accordingly.

172. Effect of Court's decision

- (1) Effect must be given to any decision of the Court as follows:
 - (a) If any person returned is declared not to have been duly elected, the person ceases to be a member of the Council or the Assembly.
 - (b) If any person not returned is declared to have been duly elected they may take their seat accordingly.
 - (c) If any election is declared absolutely void a new election must be held, and, notwithstanding any provisions elsewhere in this Act contained, except where the Court otherwise orders, the same roll as was used for the voided election, must be used for such new election.
- (2) The proceedings of the Legislative Council or Legislative Assembly are not invalidated by reason of the presence in that House of any person returned under this Act as elected to that House but later subject to a declaration of the Court that —
 - (a) the person was not duly elected to that House; or
 - (b) the person's election to that House is void or absolutely void.
- (3) Where a person returned under this Act as elected to the Legislative Council or Legislative Assembly receives an appointment to 1 or more of the principal executive offices of the Government referred to in section 43 of the *Constitution Acts Amendment Act 1899*, but later the person is subject to a declaration by the Court that —
 - (a) they were not duly elected to that House; or

(b) their election to that House is void or absolutely void, any act, matter, or thing made, done, or executed in the exercise or purported exercise of the functions of that office or those offices from the time of their appointment until the time of the declaration are not invalidated by reason of the effect of that declaration apart from this subsection.

[Section 172 amended: No. 63 of 1948 s. 25; No. 39 of 1979 s. 24; No. 30 of 2023 s. 111.]

173. Rules of Court for this Part

- (1) The judges of the Supreme Court or any 2 of them may make Rules of Court not inconsistent with this Act for carrying this Part into effect, and in particular for regulating the practice and procedure of the Court the forms to be used, and the fees to be paid by parties.
- (2) Every such Rule of Court shall be laid before both Houses of Parliament within 40 days next after it is made, if Parliament is then sitting, or if Parliament is not then sitting, then within 40 days after the next meeting of Parliament.
- (3) If an address is presented to the Governor by either House of Parliament within the next subsequent 40 sitting days of the House praying that any such rule may be annulled, the Governor may thereupon annul the same.
- (4) The rule so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which have in the meantime been taken under it.

174. Election of MLC on re-count, application of this Part to

Sections 157, 158, 160, 161, 162(1) and (2), 163(1) and 167 to 173 apply to and in relation to the election of a member of the Council under sections 156C and 156D as if that election was an

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election within the meaning of this Act, but for the purposes of that application —

- (a) section 158(5) shall be deemed to be amended by deleting “return of the writ” and substituting the following —
“ declaration of the election ”; and
- (b) section 162(1)(ca) and (f) and section 172(1)(c) shall be deemed to be deleted; and
- (c) section 163(1) shall be deemed to be repealed and the following subsection substituted —
“
(1) The Court may inquire whether or not the requisites of section 158 have been observed, whether or not a nomination was validly made under section 156C(3), and whether or not the re-count of votes conducted under section 156D was correctly conducted, but shall not inquire into any other matter.

”.

[Section 174 inserted: No. 40 of 1987 s. 80.]

Part 6 — Electoral finance and disclosure of political contributions, income and expenditure

[Heading inserted: No. 36 of 2000 s. 58; amended: No. 55 of 2006 s. 5; No. 30 of 2023 s. 112; No. 24 of 2024 s. 4.]

Division 1 — Preliminary

[Heading inserted: No. 75 of 1992 s. 4.]

175. Terms used

In this Part, unless the contrary intention appears —

affiliate fee means a fee paid by a person (who is not an associated entity) to an associated entity or political party so the person can affiliate with the associated entity or party;

agent means agent for the purposes of this Part;

associated entity means an incorporated body, unincorporated body or trustee of a trust that —

- (a) is controlled by 1 or more political parties; or
- (b) operates for the benefit of 1 or more political parties;

broadcast means broadcast by radio, television, the internet or another form of electronic communication;

campaign committee, in relation to a registered political party, means a body of persons appointed or engaged to form a committee to assist the campaign of —

- (a) the endorsed candidates of the political party in a general election; or
- (b) an endorsed candidate of the political party in a single member election; or
- (c) a group in a Council election all the persons included in which are endorsed candidates of the political party;

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capped expenditure period, for an election, means the period —

- (a) commencing on the day of issue of the writ for the election; and
- (b) ending at the latest time on polling day in the election at which an elector in the State could enter a place to vote for the purpose of casting a vote in the election;

compulsory party levy means an amount a political party requires to be paid to the party by —

- (a) an elected member who is a member of the political party; or
- (b) a person employed by, or appointed or employed to assist, an elected member who is a member of the political party, including an electorate officer as defined in the *Parliamentary and Electorate Staff (Employment) Act 1992* section 3(1); or
- (c) a person employed by the political party;

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; and
- (b) the creation of a trust in respect of property; and
- (c) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property; and
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of any debt, loan, contract or chose in action, or of any interest in respect of property; and
- (da) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of interest payments in respect of a debt or loan; and

- (e) the exercise by a person of a general power of appointment over property in favour of any other person; and
- (f) any transaction entered into by any person with intent thereby 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;

division, in relation to a political party, includes a branch or campaign committee of the party;

electoral expenditure, in relation to an election, has the meaning given in section 175AA(1);

electoral matter means matter that is intended, calculated or likely to affect voting in an election;

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;
- (c) in other cases, the person responsible for maintaining the financial records of the entity;

foreign contribution means a political contribution the donor of which is a foreign donor;

foreign donor means a person who makes a political contribution who is any of the following —

- (a) a body politic of a foreign country;
- (b) a body politic of a part of a foreign country;
- (c) a part of a body politic mentioned in paragraph (a) or (b);
- (d) a foreign public enterprise as defined in the *Criminal Code* (Commonwealth) section 70.1;
- (e) a body (whether or not incorporated) that does not meet any of the following conditions —
 - (i) the body is incorporated in Australia;

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- (ii) the body's head office is in Australia;
- (iii) the body's principal place of activity is, or is in, Australia;
- (f) an individual who is none of the following —
 - (i) an elector;
 - (ii) an Australian citizen;
 - (iii) an Australian resident;
 - (iv) a New Zealand citizen who holds a Subclass 444 (Special Category) visa under the *Migration Act 1958* (Commonwealth), or if that Subclass ceases to exist, the kind of visa that replaces the Subclass;

general election means a general election for the Assembly or the Council;

gift has the meaning given in section 175AB;

higher reimbursement amount has the meaning given in section 175LB(1);

journal means a newspaper, magazine or other periodical, whether published for sale or for distribution without charge;

LA by-election cap amount, for an election in a district not held as part of a general election for the Assembly, means —

- (a) if polling day in the election is before 1 July 2025 — \$390 000; or
- (b) if polling day in the election is in a financial year that begins on or after 1 July 2025 — the amount calculated under section 175AC for the financial year in which polling day in the election occurs;

LA candidate cap amount, for an election in a district held as part of a general election for the Assembly, means —

- (a) if polling day in the election is before 1 July 2025 — \$130 000; or

- (b) if polling day in the election is in a financial year that begins on or after 1 July 2025 — the amount calculated under section 175AC for the financial year in which polling day in the election occurs;

LC by-election cap amount, for a Council election that is not a general election, means —

- (a) if polling day in the election is before 1 July 2025 — \$195 000; or
- (b) if polling day in the election is in a financial year that begins on or after 1 July 2025 — the amount calculated under section 175AC for the financial year in which polling day in the election occurs;

LC candidate cap amount, for a general election for the Council, means —

- (a) if polling day in the election is before 1 July 2025 — \$65 000; or
- (b) if polling day in the election is in a financial year that begins on or after 1 July 2025 — the amount calculated under section 175AC for the financial year in which polling day in the election occurs;

lower reimbursement amount has the meaning given in section 175LB(2);

non-party group means a group that is not a party group;

party group means a group all the endorsed candidates included in which have been endorsed by —

- (a) the same registered political party; or
- (b) 1 or more registered political parties;

political contribution means any of the following —

- (a) an affiliate fee;
- (b) a compulsory party levy;
- (c) a gift;

political entity means —

- (a) a member of the Council or the Assembly; or
- (b) a political party; or
- (c) an associated entity; or
- (d) a candidate in an election; or
- (e) a group in an election; or
- (f) a third-party campaigner;

political purpose means 1 or more of the following purposes —

- (a) to promote or oppose a political party;
- (b) to have a candidate elected;
- (c) to otherwise influence voting in an election;

principal officer of a public agency means —

- (a) in relation to a department of the Public Service or an SES organisation under the *Public Sector Management Act 1994* — the chief executive officer of that department or organisation;
- (b) in relation to the Police Force of Western Australia — the Commissioner of Police;
- (c) in relation to a public agency that consists of one person (not being an incorporated body) — that person;
- (d) in relation to a public agency for which the regulations declare an officer to be the principal officer of the agency — that officer;
- (e) in relation to any other public agency —
 - (i) if it is an incorporated body that has no members — the person who manages the affairs of the body; or
 - (ii) if it is a body (whether incorporated or not) that is constituted by 2 or more persons — the person who is entitled to preside at any meeting of the body at which the person is present;

property includes money;

public agency means —

- (a) a department of the Public Service or an organisation specified in column 2 of Schedule 2 to the *Public Sector Management Act 1994*; or
- (b) the Police Force of Western Australia; or
- (c) a body or office that is established for a public purpose under a written law; or
- (d) a body or office that is established by the Governor or a Minister; or
- (e) any other body or office that is declared by the regulations to be a public agency being —
 - (i) a body or office established under a written law; or
 - (ii) a corporation or association over which control can be exercised by the State, a Minister, a body referred to in paragraph (a), (c), (d) or (e)(i), or the holder of an office referred to in paragraph (d) or (e)(i);

registered third-party campaigner means a person who is registered on the third-party campaigners register;

responsible person means —

- (a) for a member of the Council or the Assembly — the agent of the member; or
- (b) for a political party — the agent of the party; or
- (c) for an associated entity — the financial controller of the associated entity; or
- (d) for a candidate in an election — the agent of the candidate; or
- (e) for a group in an election — the agent of the group; or
- (f) for a third-party campaigner — the agent of the third-party campaigner under section 175DA;

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specified amount means —

- (a) before 1 July 2025 — \$2 600; or
- (b) otherwise — the amount worked out for a financial year under section 175AC;

third-party campaigner —

- (a) means a person who —
 - (i) incurs, or authorises another person to incur, electoral expenditure in relation to an election; or
 - (ii) receives a gift that is made for a political purpose;

but

- (b) does not include —
 - (i) a member of the Council or the Assembly; or
 - (ii) a registered political party; or
 - (iii) an associated entity; or
 - (iv) a candidate; or
 - (v) a group;

third-party campaigners register has the meaning given in section 175SS(1);

third-party general cap amount, in relation to an election, means —

- (a) if polling day in the election is before 1 July 2025 — \$500 000; or
- (b) if polling day in the election is in a financial year that begins on or after 1 July 2025 — the amount calculated under section 175AC for the financial year in which polling day in the election occurs;

third-party LC cap amount, in relation to an election, means —

- (a) if polling day in the election is before 1 July 2025 — \$19 500; or

- (b) if polling day in the election is in a financial year that begins on or after 1 July 2025 — the amount calculated under section 175AC for the financial year in which polling day in the election occurs.

[Section 175 inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26); amended: No. 36 of 2000 s. 59 and 66; No. 35 of 2012 s. 5; No. 30 of 2023 s. 113.]

175AA. Electoral expenditure and when it is incurred in relation to election and capped expenditure period

- (1) In this Part, *electoral expenditure* is expenditure in relation to an election that is incurred on the following goods and services —
- (a) broadcasting an advertisement;
 - (b) publishing an advertisement in a journal;
 - (c) displaying an advertisement at a theatre or other place of entertainment;
 - (d) producing an advertisement that is broadcast, published or displayed as referred to in paragraph (a), (b) or (c);
 - (e) producing any material (other than an advertisement relating to the election mentioned in paragraph (a), (b) or (c)) that is required under section 187 to include the name and address of the person authorising the material;
 - (f) producing and distributing electoral matter that is addressed to particular persons or organisations;
 - (g) paying an advertising agent's or a consultant's fees in relation to the provision of material or services relating to a political purpose;
 - (h) carrying out an opinion poll, or other research, for a political purpose.
- (2) For the purposes of this Part, electoral expenditure in relation to an election is incurred during the capped expenditure period if it is incurred on goods and services that are to be provided during

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the capped expenditure period, whether or not it is incurred during the capped expenditure period.

Notes for this section:

1. See section 175SM(2) and (4) in relation to when electoral expenditure is substantially incurred in relation to a candidate in a particular district in a general election for the Assembly for the purposes of that section.
2. See section 175SN(2) and (4) in relation to when electoral expenditure is substantially incurred in relation to a candidate in a general election for the Council for the purposes of that section.

[Section 175AA inserted: No. 30 of 2023 s. 114.]

175AB. Gifts

- (1) In this Part, a *gift* is —
 - (a) a disposition of property made by a person to another person (otherwise than by will) without consideration in money or money's worth or with inadequate consideration; or
 - (b) the provision of a service by a person to another person without consideration in money or money's worth or for inadequate consideration if the service is one that would normally only be provided in return for adequate consideration.
- (2) However, a *gift* does not include —
 - (a) a disposition of property, or the provision of a service, to a candidate or third-party campaigner for a purpose other than a political purpose; and
 - (b) an annual subscription of not more than \$200 paid by a person to a political party or to a division of a political party in respect of the person's membership of the party or division.

[Section 175AB inserted: No. 30 of 2023 s. 114.]

175AC. Recalculation of amounts under Part

(1) In this section —

CPI number means the all groups consumer price index number for Perth published by the Australian Bureau of Statistics established by the *Australian Bureau of Statistics Act 1975* (Commonwealth) section 5(1);

previous amount, in relation to a relevant amount, means that relevant amount applicable in the previous financial year;

relevant amount means —

- (a) the LA by-election cap amount; or
 - (b) the LA candidate cap amount; or
 - (c) the LC by-election cap amount; or
 - (d) the LC candidate cap amount; or
 - (e) the third-party general cap amount; or
 - (f) the third-party LC cap amount; or
 - (g) an expenditure cap for a third-party campaigner that is —
 - (i) specified in the Table to section 175SL(3); or
 - (ii) specified in section 175SM(3) or 175SN(3);
- or
- (h) the higher reimbursement amount; or
 - (i) the lower reimbursement amount; or
 - (j) the specified amount.

(2) For the financial year beginning on 1 July 2025 and each subsequent financial year, each relevant amount must be calculated on 1 July of that financial year using the formula —

$$\frac{A \times B}{C}$$

where —

- A is the previous amount for the relevant amount;
 - B is the CPI number published for the March quarter in the previous financial year or another number from a similar index nominated by the Electoral Commissioner under subsection (7);
 - C is the CPI number published for the March quarter in the financial year before the previous financial year or another number from a similar index nominated by the Electoral Commissioner under subsection (7).
- (3) However, if, for a particular financial year, a relevant amount calculated under subsection (2) is less than the previous amount for the relevant amount, the relevant amount for the financial year is the same as the previous amount.
- (4) If the calculation of a relevant amount other than the higher reimbursement amount or lower reimbursement amount for a financial year results in an amount that is not a whole number multiple of \$100, the amount must be rounded up to the nearest whole number multiple of \$100 and the amount as rounded is, subject to subsection (3), the relevant amount for the financial year.
- (5) If the calculation of the higher reimbursement amount or lower reimbursement amount for a financial year results in an amount that has more than 5 decimal places and the 6th decimal place is more than 4, the amount is, subject to subsection (3), the amount calculated to 5 decimal places and increased by 0.00001.
- (6) The Electoral Commissioner must publish each relevant amount for a financial year calculated under this section on the Commission website.

- (7) If the CPI number is not published for a March quarter for the previous financial year or the financial year before the previous financial year, the Electoral Commissioner may, by written notice published on the Commission website, nominate a number for the variables B and C in the formula in subsection (2) from a similar index.

[Section 175AC inserted: No. 30 of 2023 s. 114.]

175A. Interpretation of this Part

- (1) A reference in this Part to things done by or with the authority of a political party or a division of a political party shall, if the party or division 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 or division on behalf of the party or division.

[(2), (3) deleted]

- (4) For the purposes of this Part, the amount or value of a gift consisting of or including a disposition of property other than money shall, if the regulations so provide, be determined in accordance with principles set out or referred to in the regulations.
- (4A) For the purposes of this Part, the amount or value of a gift for which inadequate consideration is provided is the difference between the consideration provided and the value of the gift.
- (5) For the purposes of this Part —
- (a) a body corporate and any other body corporate that is related to the first-mentioned body corporate shall be deemed to be the same person; and
 - (b) the question whether a body corporate is related to another body corporate shall be determined in the same manner as the question whether a corporation is related to another corporation is determined under the *Corporations Act 2001* of the Commonwealth.

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[(6) deleted]

- (7) For the purposes of this Part, an advertisement relates to an election if it contains electoral matter, whether or not consideration was given for the publication or broadcasting of the advertisement.
- (8) For the purposes of Division 4, electoral expenditure incurred by or with the authority of a division of a political party shall be taken to have been incurred by the party.

[Section 175A inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26); amended: No. 10 of 2001 s. 220; No. 30 of 2023 s. 115.]

Division 2 — Agents

[Heading inserted: No. 75 of 1992 s. 4.]

175B. Agent of political party, appointment of

- (1) A political party shall appoint a person as its agent.
- (2) If an appointment under subsection (1) ceases to be in force the political party shall make another appointment under that subsection.

[Section 175B inserted: No. 75 of 1992 s. 4.]

175C. Agents of candidates

- (1) A candidate in an election (including a person included in a group) may appoint a person as the agent of the candidate in relation to the election in accordance with section 175E.
- (2) When there is no appointment in force under subsection (1) of an agent of a candidate in an election —
 - (a) if the candidate is an endorsed candidate of a registered political party, the agent of the political party is the agent of the candidate in relation to the election; or

- (b) if paragraph (a) does not apply, the candidate is the agent in relation to the election.

[Section 175C inserted: No. 75 of 1992 s. 4; amended: No. 7 of 2009 s. 14; No. 30 of 2023 s. 116.]

175CA. Agents of members of Council or Assembly

- (1) A member of the Council or the Assembly may appoint a person as the agent of the member in accordance with section 175E.
- (2) If there is no appointment in force under subsection (1) of an agent of a member, the agent of the member is —
- (a) if the member is a member of a political party — the agent of the political party; or
- (b) if the member is a candidate in an election and is not a member of a political party — the agent of the candidate under section 175C; or
- (c) otherwise — the member.

[Section 175CA inserted: No. 30 of 2023 s. 117.]

175D. Agents of groups

- (1) Subject to subsection (2) the persons included in a group in an election may appoint a person as the agent of the group in relation to the election in accordance with section 175E.
- (2) Where all the persons included in a group in an election are endorsed candidates of the same registered political party, the agent of the political party is the agent of the group in relation to the election.
- (3) When there is no appointment in force under subsection (1) of an agent of a group in an election and subsection (2) does not apply to the group, the person whose name is to appear first in the group in the ballot papers under section 94D(4)(e) is the agent of the group in relation to the election.

[Section 175D inserted: No. 75 of 1992 s. 4; amended: No. 20 of 2021 s. 87; No. 30 of 2023 s. 118.]

175DA. Agents of third-party campaigners

- (1) A third-party campaigner may appoint a person as the agent of the third-party campaigner in accordance with section 175E.
- (2) If there is no appointment in force under subsection (1) of an agent, the agent of the third-party campaigner is —
 - (a) if the third-party campaigner is an unincorporated body —
 - (i) if the third-party campaigner has an executive committee (however described) — each member of the executive committee, and an obligation on an agent of a third-party campaigner under this Act applies to that member as if the obligation rested on that member alone; or
 - (ii) otherwise — each member of the third-party campaigner, and an obligation on an agent of a third-party campaigner under this Act applies to that member as if the obligation rested on that member alone;
 - or
 - (b) in any other case — the third-party campaigner.

[Section 175DA inserted: No. 30 of 2023 s. 119.]

175E. Appointing agents for political entities other than associated entities

- (1) An appointment of an agent under section 175B, 175C(1), 175CA(1), 175D(1) or 175DA(1) has no effect unless —
 - (a) the person appointed is a natural person who has attained the age of 18 years; and
 - (b) notice of the appointment, setting out the name and address of the person appointed, is given to the Electoral Commissioner by the political party, the candidate, the member of the Council or Assembly, each candidate

- included in the group, or the third-party campaigner making the appointment; and
- (c) the person appointed has signed a form of consent to the appointment and a declaration of eligibility for appointment.
- (2) The notice under subsection (1)(b) shall be in an approved form incorporating the consent and declaration under subsection (1)(c).
- (3) Where a person who is the agent of a political party, of a candidate, or of a group is convicted of an offence against this Part in relation to a particular election, the person is not eligible to be appointed or hold office as an agent in relation to any subsequent election.
- (4) An appointment of an agent under section 175C(1) or 175D(1) is not effective in relation to anything required by this Part to be done —
- (a) in respect of a return under this Part in relation to an election; or
- (b) during a prescribed period after polling day in an election,

if notice of the appointment was given to the Electoral Commissioner after 6 p.m. on the day before polling day in the election.

[Section 175E inserted: No. 75 of 1992 s. 4; amended: No. 36 of 2000 s. 60; No. 30 of 2023 s. 120.]

175F. Agent of political party, registration of

- (1) The Electoral Commissioner shall keep a register for the purposes of this section (the *party agents register*).

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- (2) The Electoral Commissioner shall enter in the party agents register the name and address of every person appointed to be an agent of a political party.

[Section 175F inserted: No. 75 of 1992 s. 4.]

175G. Agent of political party, appointment of has no effect if not on register

The appointment of an agent by a political party —

- (a) takes effect on the entry of the name and address of the agent in the party agents register; and
- (b) ceases to have effect if the name and address of the agent are removed from the party agents register.

[Section 175G inserted: No. 75 of 1992 s. 4.]

175H. Agent of political party, removing from register

The name and address of a person shall not be removed from the party agents register unless —

- (a) the person gives to the Electoral Commissioner notice, in an approved form, of having resigned the appointment as agent; or
- (b) the political party that appointed the person gives to the Electoral Commissioner notice, in an approved form, that the person's appointment has been revoked or that the person has died or resigned and also gives notice under section 175E(1)(b) of the appointment of another person as agent of the party; or
- (c) the person is convicted of an offence against this Part.

[Section 175H inserted: No. 75 of 1992 s. 4.]

175I. Agent of political party, evidence of appointment of

An entry in the party agents register is, for all purposes, conclusive evidence that the person described in the entry is the agent of the political party named in the entry.

[Section 175I inserted: No. 75 of 1992 s. 4.]

175J. No agent of political party, who has Div. 3 duties in case of

Where Division 3 imposes an obligation on the agent of a political party and there is no agent of the party, the obligation rests on each of the members of the executive committee of the party and this Act applies to each of those members as if the obligation rested on that member alone.

[Section 175J inserted: No. 75 of 1992 s. 4.]

175K. Ending appointment of agents for political entities other than political parties and associated entities

(1) In this section —

principal, in relation to an agent under section 175C(1), 175CA(1), 175D(1) or 175DA(1), means —

- (a) if the agent is appointed under section 175C(1) — the candidate who appointed the agent; or
- (b) if the agent is appointed under section 175CA(1) — the member of the Council or the Assembly who appointed the agent; or
- (c) if the agent is appointed under section 175D(1) — each person included in the group who appointed the agent; or
- (d) if the agent is appointed under section 175DA(1) — the third-party campaigner who appointed the agent.

(2) The agent's principal may, by giving notice to the Electoral Commissioner, revoke the appointment of the agent.

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- (3) The notice must —
 - (a) be in the approved form; and
 - (b) be signed by the agent's principal.
- (4) If an agent under section 175C(1), 175CA(1), 175D(1) or 175DA(1) dies or resigns, the agent's principal must, without delay, give to the Electoral Commissioner notice, in the approved form, of the death or resignation.

[Section 175K inserted: No. 30 of 2023 s. 121.]

[175L. Deleted: No. 30 of 2023 s. 121.]

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[Heading inserted: No. 55 of 2006 s. 6.]

175LA. Terms used and interpretation

- (1) In this Division —

election does not include an election held before the coming into operation of the *Electoral Reform (Electoral Funding) Act 2006* section 6;

eligible vote means —

 - (a) a vote given at an election in which there are only 2 candidates; or
 - (b) a first preference vote given at an election in which there are more than 2 candidates,

but does not include any vote on a ballot paper that has been rejected.
- (2) For the purposes of this Division, a reference to a vote given includes a reference to a vote taken under section 146EC(2) to have been given.
- (3) For the purposes of this Division, electoral expenditure incurred in relation to an election by or with the authority of an endorsed candidate of a registered political party who is not included in a

group is taken to have been incurred by or with the authority of the registered political party.

- (4) For the purposes of this Division, electoral expenditure incurred in relation to an election by or with the authority of an endorsed candidate of a registered political party who is included in a group, and who incurs electoral expenditure substantially for the purposes of the candidate and not the group, is taken to incur the electoral expenditure by or with the authority of the registered political party.
- (5) For the purposes of this Division, electoral expenditure incurred in relation to an election by or with the authority of a party group is taken to have been incurred by or with the authority of —
- (a) if all of the endorsed candidates in the group are endorsed by the same registered political party — the registered political party; or
 - (b) if all of the endorsed candidates in the group are endorsed by more than 1 registered political party — each registered political party with an endorsed candidate in the group in a proportion —
 - (i) agreed between the parties; or
 - (ii) if subparagraph (i) does not apply — worked out in accordance with the following formula —

$$A \times \frac{B}{C}$$

where —

A is the total electoral expenditure incurred in relation to an election by or with the authority of the party group;

B is the number of endorsed candidates of the registered political party in the party group;

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C is the total number of candidates in the party group.

[Section 175LA inserted: No. 55 of 2006 s. 6; amended: No. 20 of 2021 s. 88; No. 30 of 2023 s. 122.]

175LB. Higher reimbursement amount and lower reimbursement amount

- (1) The **higher reimbursement amount**, in relation to an election, is —
 - (a) if polling day in the election is before 1 July 2025 — \$4.40; or
 - (b) for a financial year that begins on or after 1 July 2025 — the amount worked out for the financial year under section 175AC.
- (2) The **lower reimbursement amount**, in relation to an election, is —
 - (a) if polling day in the election is before 1 July 2025 — \$2.26; or
 - (b) if polling day in the election is in a financial year that begins on or after 1 July 2025 — the amount worked out for the financial year under section 175AC.

[Section 175LB inserted: No. 30 of 2023 s. 123.]

175LC. Registered political party opting in and out of receiving higher reimbursement amount

- (1) A registered officer of a registered political party may, within the period of 28 days beginning on the day after the day on which the party is given written notice of the party's registration under section 62H(5)(a), lodge a request (a **party opt-in request**) in writing to the Electoral Commissioner to receive the higher reimbursement amount under this Division.
- (2) After a party opt-in request for a registered political party has been lodged under subsection (1), a registered officer of the

party may lodge a request in writing with the Electoral Commissioner to withdraw the party opt-in request.

- (3) If a party opt-in request for a registered political party is withdrawn under subsection (2) and the party endorses at least 1 candidate in a subsequent election, a registered officer of the party may lodge another party opt-in request within the period of 10 days beginning on the day on which the writ for the election is issued.

[Section 175LC inserted: No. 30 of 2023 s. 123.]

175LCA. Non-party candidates may opt in and out of receiving higher reimbursement amount

- (1) The agent of a non-party candidate in an election may, on or before the day of the close of nominations for every election at which the non-party candidate will be a candidate in the election, lodge an opt-in request (a ***non-party opt-in request***) in writing with the Electoral Commissioner to receive the higher reimbursement amount under this Division.
- (2) After a non-party opt-in request for a non-party candidate has been lodged under subsection (1), the agent of the candidate may lodge a request in writing with the Electoral Commissioner to withdraw the non-party opt-in request.
- (3) If a non-party opt-in request for a non-party candidate is withdrawn under subsection (2) and the candidate becomes a non-party candidate in a subsequent election, the agent of the candidate may lodge another non-party opt-in request within the period of 10 days beginning on the day on which the writ for the election is issued.

[Section 175LCA inserted: No. 30 of 2023 s. 123.]

175LCB. Publishing information about who has opted in to receive higher reimbursement amount

- (1) Within 5 days after the day on which the Electoral Commissioner receives a party opt-in request, the Electoral Commissioner must publish on the Commission website the name of the registered political party in relation to which the party opt-in request has been lodged.
- (2) On the next business day after the close of nominations, the Electoral Commissioner must publish on the Commission website the names of all non-party candidates in relation to whom a non-party opt-in request has been lodged.
- (3) If the Electoral Commissioner receives a written withdrawal under section 175LC(2) of a party opt-in request, or a written withdrawal of a non-party opt-in request under section 175LCA(2), the Electoral Commissioner must publish on the Commission website that the opt-in request has been withdrawn.

[Section 175LCB inserted: No. 30 of 2023 s. 123.]

175LCC. Entitlement to election funding reimbursement amount

- (1) In this section —
eligible candidate means—
 - (a) an endorsed candidate of a registered political party in relation to which a party opt-in request is lodged under section 175LC and is not withdrawn; or
 - (b) a non-party candidate in relation to whom a non-party opt-in request is lodged under section 175LCA and is not withdrawn.
- (2) Subject to this Division, after an election the higher reimbursement amount is payable for each eligible vote given in the election for an eligible candidate.

- (3) Subject to this Division, after an election the lower reimbursement amount is payable for each eligible vote given in the election for a candidate who is not an eligible candidate.

[Section 175LCC inserted: No. 30 of 2023 s. 123.]

175LD. Claim for payment, requirement for and making etc.

- (1) A payment under this Division cannot be made unless a claim for the payment has been lodged with the Electoral Commissioner in an approved form before the expiration of the claims period referred to in subsection (6).
- (2) A claim for payment under this Division for the eligible votes given for an endorsed candidate of a registered political party may be lodged by, and only by —
- (a) in the case of a candidate not included in a group, the agent of the registered political party; or
 - (b) in the case of a candidate included in a party group, the agent of the registered political party; or
 - (c) in the case of a candidate included in a non-party group, the agent of the group.
- (3) If a registered political party has endorsed candidates in 2 or more elections that have the same polling day, all claims for payment under this Division lodged by the agent of the party under subsection (2)(a) or (b) in relation to those elections must be lodged as one claim.
- (4) A claim for payment under this Division for the eligible votes given for a non-party candidate may be lodged by, and only by —
- (a) in the case of a candidate not included in a group, the agent of the candidate; or
 - (b) in the case of a candidate included in a group, the agent of the group.

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- (5) A claim for a payment under this Division is to be accompanied by any information required by the Electoral Commissioner regarding —
- (a) in the case of a claim lodged by the agent of a registered political party under subsection (2)(a) or (b), the electoral expenditure incurred by or with the authority of the party in relation to —
 - (i) the election to which the claim relates; or
 - (ii) in the case of a claim lodged in accordance with subsection (3), the elections to which the claim relates;
 - or
 - (b) in the case of a claim lodged by the agent of a candidate under subsection (4)(a), the electoral expenditure incurred by or with the authority of the candidate in relation to the election to which the claim relates; or
 - (c) in the case of a claim lodged by the agent of a group under subsection (2)(c) or (4)(b), the electoral expenditure incurred by or with the authority of persons included in the group in relation to the election to which the claim relates.
- (6) For the purposes of subsection (1) the claims period is —
- (a) the period of 20 weeks after polling day in the election or elections to which the claim relates; or
 - (b) such longer period as the Electoral Commissioner fixes before the end of the period specified in paragraph (a).
- (7) The Electoral Commissioner cannot fix a longer period for the purpose of subsection (6)(b) unless satisfied that the circumstances of the case justify the fixing of a longer period.

[Section 175LD inserted: No. 55 of 2006 s. 6; amended: No. 30 of 2023 s. 124.]

175LE. Electoral Commissioner to determine claims

A claim for payment under this Division is to be decided by the Electoral Commissioner in accordance with this Division.

[Section 175LE inserted: No. 55 of 2006 s. 6.]

175LF. Circumstances in which payment to be made

- (1) Subject to subsections (2) and (3), a payment can be made under this Division in respect of eligible votes given for a candidate in an election if, and only if, the number of those eligible votes is more than 4% of the total number of eligible votes given at the election.
- (2) If a candidate in a Council election is included in a group, a payment can be made under this Division in respect of eligible votes given for the candidate as long as the total number of eligible votes given for candidates in the election included in the group is more than 4% of the total number of eligible votes given at the election.
- (3) In the case of a claim lodged by the agent of the registered political party in accordance with section 175LD(3), a payment can be made under this Division in respect of eligible votes given for an endorsed candidate of the party as long as the total number of eligible votes given, at the elections to which the claim relates, for endorsed candidates of the party is more than 4% of the total number of eligible votes given at those elections.
- (4) Subsections (2) and (3) do not limit each other's operation.

[Section 175LF inserted: No. 55 of 2006 s. 6; amended: No. 20 of 2021 s. 94; No. 30 of 2023 s. 125.]

175LG. Amount paid not to exceed electoral expenditure

- (1) The amount of a payment under this Division made in respect of a claim under section 175LD is not to exceed —
- (a) if the claim is lodged by the agent of a registered political party under section 175LD(2)(a) or (b), the electoral expenditure incurred by or with the authority of the party in relation to —
 - (i) the election to which the claim relates; or
 - (ii) in the case of a claim lodged in accordance with section 175LD(3), the elections to which the claim relates,less any input tax credit in respect of that expenditure; or
 - (b) if the claim is lodged by the agent of a candidate under section 175LD(4)(a), the electoral expenditure incurred by or with the authority of the candidate in relation to the election to which the claim relates, less any input tax credit in respect of that expenditure; or
 - (c) if the claim is lodged by the agent of a group under section 175LD(2)(c) or (4)(b), the electoral expenditure incurred by or with the authority of persons included in the group in relation to the election to which the claim relates, less any input tax credit in respect of that expenditure.

- (2) In subsection (1) —

input tax credit means an entitlement arising under section 11-20 or 15-15 of the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

[Section 175LG inserted: No. 55 of 2006 s. 6.]

175LH. Payments to be made in respect of claims

- (1) If the Electoral Commissioner is satisfied, in respect of a claim under section 175LD(2)(a) or (b), that an amount is payable under this Division for eligible votes given at an election or

elections for an endorsed candidate or endorsed candidates of a registered political party, the Electoral Commissioner shall make the payment to the agent of the party.

- (2) If the Electoral Commissioner is satisfied, in respect of a claim under section 175LD(4)(a), that an amount is payable under this Division for eligible votes given at an election for a candidate, the Electoral Commissioner shall make the payment to the agent of the candidate.
- (3) If the Electoral Commissioner is satisfied, in respect of a claim under section 175LD(2)(c) or (4)(b), that an amount is payable under this Division for eligible votes given at an election for persons included in a group, the Electoral Commissioner shall make the payment to the agent of the group.
- (4) If a payment is made under this Division and the recipient is not entitled to receive the whole or a part of the amount paid, whether because of a false statement in a claim or otherwise, the amount or the part of the amount may be recovered by the State as a debt due to the State by action, in a court of competent jurisdiction, against the person.

[Section 175LH inserted: No. 55 of 2006 s. 6; amended: No. 30 of 2023 s. 126.]

175LI. Decision as to payment, revoking and re-making

- (1) If the Electoral Commissioner is satisfied that the amount of a payment decided under section 175LE exceeds, or is less than, the amount payable to the claimant, the Commissioner may revoke the decision and make a fresh decision.
- (2) If the amount payable under the fresh decision is less than the amount paid to a person under the revoked decision, the difference between the amounts fixed by the decisions may be recovered by the State as a debt due to the State by action, in a court of competent jurisdiction, against the person.

[Section 175LI inserted: No. 55 of 2006 s. 6.]

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175LJ. Payments to be made in respect of candidate who died

(1) If a candidate for whom eligible votes were given at an election dies, a payment under this Division for the eligible votes given for the candidate may be made despite the candidate's death.

(2) If the candidate —

- (a) was a non-party candidate; and
- (b) was not included in a group; and
- (c) had not appointed an agent,

a claim for the payment may be lodged by, and the payment may be made to, the legal personal representative of the candidate.

(3) If the candidate —

- (a) was included in a non-party group; and
- (b) was the agent of the group,

another person included in the group may lodge a claim for a payment under this Division for the eligible votes given for persons included in the group, and the payment may be made to that other person.

(4) This section has effect despite sections 175LD and 175LH.

[Section 175LJ inserted: No. 55 of 2006 s. 6; amended: No. 30 of 2023 s. 127.]

175LK. Appropriation for payments under this Division

Any payment made under this Division shall be charged to the Consolidated Account which is to the extent necessary appropriated accordingly.

[Section 175LK inserted: No. 55 of 2006 s. 6; amended: No. 77 of 2006 s. 4.]

Division 2B — State campaign accounts

[Heading inserted: No. 30 of 2023 s. 128.]

175LL. Terms used

In this Division —

authorised deposit-taking institution has the meaning given in the *Banking Act 1959* (Commonwealth) section 5(1);

eligible SCA nominee, in relation to a political entity, means —

- (a) for an endorsed candidate — the political party that endorsed the candidate; or
- (b) for a candidate included in a group — the group; or
- (c) for an elected member —
 - (i) if the elected member is a member of a political party — the political party; or
 - (ii) if the member is a member of a group — the group;

or

- (d) for an associated entity — a political party, or the party group of a political party, to which the associated entity relates;

group terminating event has the meaning given in section 175LT(1)(a);

participation day, in relation to a political entity, means the day on which —

- (a) if the political entity is a political party — the party becomes a registered political party; or
- (b) if the political entity is a group — the group becomes constituted for an election; or
- (c) if the political entity is a candidate — the candidate becomes nominated in relation to an election; or

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- (d) if the political entity is a third-party campaigner or associated entity — the third-party campaigner or associated entity incurs electoral expenditure in relation to an election;

State campaign account, in relation to a political entity, means an account for the purposes of money being paid into, and out of, the account for the political entity's electoral expenditure in relation to an election.

[Section 175LL inserted: No. 30 of 2023 s. 128.]

175LM. State campaign accounts to be kept for electoral expenditure

- (1) The responsible person for a political entity must, unless the responsible person has a reasonable excuse, ensure that a State campaign account for the political entity is —
 - (a) established at an authorised deposit-taking institution within the period of 5 business days after the first participation day in relation to the political entity; and
 - (b) kept during the period in which the political entity engages in incurring electoral expenditure in relation to elections.

Penalty for this subsection:

- (a) if the political entity is a political party — a fine of \$36 000;
 - (b) otherwise — a fine of \$24 000.
- (2) Subsection (1) does not apply if —
 - (a) a political entity (the **relevant political entity**) who or which is not a group, political party or third-party campaigner does not have a State campaign account because the relevant political entity intends to make use of the State campaign account of another political entity; and
 - (b) the other political entity is an eligible SCA nominee in relation to the relevant political entity; and

- (c) the other political entity consents to make payments for electoral expenditure on behalf of the relevant political entity out of the other political entity's State campaign account; and
- (d) the responsible person for the relevant political entity lodges a notice under section 175LN(1).

[Section 175LM inserted: No. 30 of 2023 s. 128.]

175LN. Notifying Electoral Commissioner about State campaign accounts

- (1) The responsible person for a political entity must, unless the responsible person has a reasonable excuse, lodge with the Electoral Commissioner a written notice in the approved form within the period of 5 business days after the first participation day in relation to the political entity stating —
 - (a) that the political entity —
 - (i) has a State campaign account; or
 - (ii) intends to make use of the State campaign account of another political entity named in the notice that is an eligible SCA nominee in relation to the political entity and has given the consent mentioned in section 175LM(2)(c);and
 - (b) the name of the authorised deposit-taking institution at which the account is kept; and
 - (c) the details about the account required by the approved form.
- (2) If information given to the Electoral Commissioner under this section changes, the responsible person for the political entity must, unless the responsible person has a reasonable excuse, lodge with the Electoral Commissioner a written notice in the approved form stating, within the period of 5 business days after

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the day on which the change occurs, details about the changes to the information, including —

- (a) if the change is that a new State campaign account is established — the information about that State campaign account mentioned in subsection (1)(b) and (c); and
- (b) if the change is that the political entity intends to make use of the State campaign account of another political entity — that the other political entity is an eligible SCA nominee in relation to the relevant political entity and has given the consent mentioned in section 175LM(2)(c).

Note for this section:

Division 5 contains offences in relation to notices to be given under this section.

[Section 175LN inserted: No. 30 of 2023 s. 128.]

175LO. Money in State campaign accounts

- (1) The responsible person for a political entity must ensure that money is not paid into the political entity's State campaign account unless the money may be paid into the account under this section.

Penalty for this subsection:

- (a) if the political entity is a political party — a fine of \$36 000;
 - (b) otherwise — a fine of \$24 000.
- (2) The following may be paid into a State campaign account of a political entity —
 - (a) a political contribution;
 - (b) a subscription in respect of a person's membership of a political party, a division of a political party, an associated entity or a third-party campaigner;
 - (c) income that consists of a payment received under Division 2A;

- (d) other income received by the political entity;
 - (e) a payment for interest paid on amounts in the account, a refund for electoral expenditure in relation to an election or other similar amounts;
 - (f) a payment of a kind determined by the Electoral Commissioner under subsection (5) as a payment that may be paid into a State campaign account.
- (3) However, the following must not be paid into a State campaign account of a political entity —
- (a) money to be used for a purpose related to an election or a by-election under the *Commonwealth Electoral Act 1918*;
 - (b) a foreign contribution.
- (4) The responsible person for a political entity does not commit an offence under subsection (1) if the responsible person or another person takes all reasonable steps to ensure the money paid into the political entity's State campaign account contrary to subsection (1) is withdrawn from the account within 5 business days after the day on which the person becomes aware that the money has been paid contrary to subsection (1).
- (5) The Electoral Commissioner may, by a written notice published on the Commission website, determine that a kind of payment (other than a payment referred to in subsection (3)) is a payment that may be paid into the State campaign account.
- (6) The Electoral Commissioner may, by a written notice published on the Commission website, amend or repeal a determination published under subsection (5).
- (7) The responsible person for a political entity does not commit an offence under subsection (1) if money is paid into the political entity's State campaign account in reliance on a determination

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or purported determination of the Electoral Commissioner under subsection (5) in force when the money is paid into the account.

[Section 175LO inserted: No. 30 of 2023 s. 128.]

175LP. Electoral expenditure to be paid out of State campaign accounts

- (1) The responsible person for a political entity must ensure that the political entity does not make a payment for electoral expenditure in relation to an election unless the payment is made out of the political entity's State campaign account.

Penalty for this subsection:

- (a) a fine of an amount equal to 2 times the payment; or
- (b) if the amount worked out under paragraph (a) is less than \$36 000 — a fine of \$36 000.

- (2) The responsible person for a political entity must ensure that the political entity does not make a payment out of the political entity's State campaign account unless the payment is —

- (a) for electoral expenditure incurred in relation to an election by the political entity; or
- (b) made under section 175LR, 175LS, 175LT, 175LU or 175LV.

Penalty for this subsection:

- (a) a fine of an amount equal to 2 times the payment; or
- (b) if the amount worked out under paragraph (a) is less than \$36 000 — a fine of \$36 000.

[Section 175LP inserted: No. 30 of 2023 s. 128.]

175LQ. Lodging annual returns in relation to State campaign accounts

- (1) The responsible person for a political entity must, by 30 November in each year, lodge with the Electoral Commissioner —
- (a) an annual return in the approved form setting out —
 - (i) amounts paid into, and out of, the political entity's State campaign account during the financial year ending on the previous 30 June; and
 - (ii) details of the amounts paid into, and out of, the account, including to whom the amounts were paid;and
 - (b) either —
 - (i) a report for the financial year prepared by an auditor registered under the *Corporations Act 2001* (Commonwealth) Part 9.2 in relation to the accuracy of the matters stated in the document referred to in paragraph (a); or
 - (ii) a document for the financial year approved by the Electoral Commissioner under subsection (2) in relation to the accuracy of the matters stated in the document referred to in paragraph (a).

Note for this subsection:

Division 5 contains offences in relation to documents to be given under this section.

- (2) The Electoral Commissioner may, by written notice published on the Commission website, approve a document for the purposes of subsection (1)(b)(ii) if the Electoral Commissioner is satisfied that the document provides sufficient evidence of the

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accuracy of the matters to be stated in an annual return referred to in subsection (1)(a).

[Section 175LQ inserted: No. 30 of 2023 s. 128.]

175LR. Candidates to pay amounts out of State campaign accounts after candidate terminating events

- (1) This section applies if —
 - (a) 1 of the following events (a *candidate terminating event*) occurs in relation to a candidate who is not a member of the Council or the Assembly —
 - (i) the candidate is not elected and does not intend to incur additional electoral expenditure in relation to an election;
 - (ii) the candidate dies;and
 - (b) the candidate's State campaign account has an amount remaining in it after debts owing in relation to the candidate's electoral expenditure in relation to an election or the account have been satisfied.
- (2) Within the period set out in subsection (3), the responsible person for the candidate must pay the amount remaining in the candidate's State campaign account to —
 - (a) if the candidate was a part of a group and a group terminating event has not occurred in relation to the group — the group's State campaign account; or
 - (b) if paragraph (a) does not apply and the candidate is an endorsed candidate of a registered political party when the candidate terminating event occurs — the State campaign account of the registered political party; or
 - (c) if paragraphs (a) and (b) do not apply — a charity nominated by the candidate or responsible person.

Penalty for this subsection: imprisonment for 2 years and a fine of \$24 000.

- (3) For the purposes of subsection (2), the period is 28 days beginning on —
- (a) if this section applies because of subsection (1)(a)(i) — the day on which the responsible person for the candidate becomes aware that the candidate does not intend to incur additional electoral expenditure in relation to an election; or
 - (b) otherwise — the day on which the candidate terminating event occurs.

[Section 175LR inserted: No. 30 of 2023 s. 128.]

175LS. Members to pay amounts out of State campaign accounts after member terminating events

- (1) This section applies if —
- (a) 1 of the following events (a *member terminating event*) occurs after a candidate has been elected a member of the Council or the Assembly —
 - (i) the member ceases to be a member and does not intend to incur additional electoral expenditure in relation to an election;
 - (ii) the member dies;and
 - (b) the member's State campaign account has an amount remaining in it after debts owing in relation to the account have been satisfied.
- (2) Within the period set out in subsection (3), the responsible person for the member must pay the amount remaining in the member's State campaign account to —
- (a) if, as a candidate, the member was a part of a group and a group terminating event has not occurred in relation to the group — the group's State campaign account; or
 - (b) if paragraph (a) does not apply and the member is a member of a political party when the member

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terminating event occurs — the political party's State
campaign account; or

- (c) if paragraphs (a) and (b) do not apply — a charity
nominated by the member or responsible person.

Penalty for this subsection: imprisonment for 2 years and a fine
of \$24 000.

- (3) For the purposes of subsection (2), the period is 28 days
beginning on —
- (a) if this section applies because of subsection (1)(a)(i) —
the day on which the responsible person for the member
becomes aware that the member does not intend to incur
additional electoral expenditure in relation to an
election; or
- (b) otherwise — the day on which the member terminating
event occurs.

[Section 175LS inserted: No. 30 of 2023 s. 128.]

**175LT. Groups to pay amounts out of State campaign accounts after
group terminating events**

- (1) This section applies if —
- (a) 1 of the following events (a **group terminating event**)
occurs in relation to a group —
- (i) the writ for the election for which the group is
constituted is returned and the group does not
intend to incur additional electoral expenditure in
relation to an election;
- (ii) the group ceases to exist;
- and
- (b) the group's State campaign account has an amount
remaining in it after debts owing in relation to the
account have been satisfied.

- (2) Within the period set out in subsection (3), the responsible person for the group must pay the amount remaining in the group's State campaign account to —
- (a) if the group is a party group — the State campaign account of the registered political party that endorsed all the candidates in the group; or
 - (b) if paragraph (a) does not apply — a charity nominated by the group or responsible person.
- (3) For the purposes of subsection (2), the period is 28 days beginning on —
- (a) if this section applies because of subsection (1)(a)(i) — the day on which the responsible person for the group becomes aware that the group does not intend to incur additional electoral expenditure in relation to an election; or
 - (b) otherwise — the day on which the group terminating event occurs.

[Section 175LT inserted: No. 30 of 2023 s. 128.]

175LU. Political parties to pay amounts out of State campaign accounts after party terminating events

- (1) This section applies if —
- (a) 1 of the following events (a *party terminating event*) occurs in relation to a political party —
 - (i) the political party ceases to be registered;
 - (ii) the political party does not intend to incur additional electoral expenditure in relation to an election;
 - (iii) the political party ceases to exist;
- and

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- (b) the party's State campaign account has an amount remaining in it after debts owing in relation to the account have been satisfied.
- (2) Within the period set out in subsection (3), the responsible person for the political party must pay the amount remaining in the party's State campaign account to a charity nominated by the party or responsible person.
- (3) For the purposes of subsection (2), the period is 28 days beginning on —
 - (a) if this section applies because of subsection (1)(a)(ii) — the day on which the responsible person for the political party becomes aware that the political party does not intend to incur additional electoral expenditure in relation to an election; or
 - (b) otherwise — the day on which the party terminating event occurs.

[Section 175LV inserted: No. 30 of 2023 s. 128.]

175LV. Third-party campaigners to pay amounts out of State campaign accounts after campaigner terminating events

- (1) This section applies if —
 - (a) 1 of the following events (a *campaigner terminating event*) occurs in relation to a third-party campaigner —
 - (i) the third-party campaigner does not intend to incur additional electoral expenditure in relation to an election;
 - (ii) the third-party campaigner is an individual who dies;
 - (iii) the third-party campaigner is not an individual and the campaigner ceases to exist;
- and

- (b) the third-party campaigner's State campaign account has an amount remaining in it after debts owing in relation to the account have been satisfied.
- (2) Within the period set out in subsection (3), the responsible person for a third-party campaigner must pay the amount remaining in the third-party campaigner's State campaign account to a charity nominated by the third-party campaigner or responsible person.
- (3) For the purposes of subsection (2), the period is 28 days beginning on —
 - (a) if this section applies because of subsection (1)(a)(i) — the day on which the responsible person for the third-party campaigner becomes aware that the third-party campaigner does not intend to incur additional electoral expenditure in relation to an election; or
 - (b) otherwise — the day on which the campaigner terminating event occurs.

[Section 175LV inserted: No. 30 of 2023 s. 128.]

Division 3 — Disclosure of political contributions and other income

[Heading inserted: No. 75 of 1992 s. 4; amended: No. 30 of 2023 s. 129.]

175M. Relevant details of political contributions

- (1) In this Division, the *relevant details* of a political contribution are the following —
 - (a) the amount or value of the contribution;
 - (b) the date on which the contribution was made or paid;
 - (c) if the contribution is a gift or affiliate fee — the information under subsection (2) in relation to the person who made the gift or paid the fee;

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- (d) if the contribution is a compulsory party levy — a description of the position held by the person who paid the levy.

Examples for the purposes of paragraph (d):

1. A person appointed by a political party to assist an elected member who is a member of the political party.
2. A person employed by a political party.
3. An elected member who is a member of a political party.

- (2) For the purposes of subsection (1)(c), information in relation to the person who made the gift or paid the affiliate fee is —

- (a) if the gift is made or fee is paid on behalf of the members of an unincorporated body —
- (i) the name of the body; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the body;

or

- (b) if the gift is, or is purportedly, made or fee is, or is purportedly, paid out of a trust fund or out of the funds of a foundation —
- (i) the names and addresses of the trustees of the trust fund or of the foundation and of the person for whose benefit the funds are held; and
 - (ii) the title or other description of the trust fund or the name of the foundation, as the case requires;

or

- (c) otherwise — the name and address of the person who made the gift or paid the fee.

[Section 175M inserted: No. 30 of 2023 s. 130.]

175MA. Disclosure of political contributions that are, or that are in combination, more than specified amount

- (1) This section applies if a political entity receives from a person in a financial year a political contribution —
 - (a) the amount or value of which is more than the specified amount; or
 - (b) the amount or value of which is, in combination with all previous political contributions received by the political entity from the same person in the same financial year, more than the specified amount.
- (2) The responsible person for the political entity must lodge a notice with the Electoral Commissioner by —
 - (a) if the political contribution is received during the capped expenditure period for an election — the end of the next business day after the day on which the political entity receives the political contribution; or
 - (b) otherwise — the end of the period of 7 days after the day on which the political entity receives the political contribution.
- (3) The notice must be in writing and state that the political entity has received a political contribution —
 - (a) the amount or value of which is more than the specified amount; or
 - (b) the amount or value of which is, in combination with all previous political contributions received by the political entity from the same person in the same financial year, more than the specified amount.
- (4) The notice must also state the relevant details of —
 - (a) the political contribution; and
 - (b) each political contribution, from the same person in the same financial year, for which the responsible person

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has not previously lodged a notice with the Electoral Commissioner.

- (5) The responsible person is taken to have lodged the notice if another person lodges the notice on behalf of the responsible person.

Note for this section:

Division 5 contains offences in relation to notices to be lodged under this section.

[Section 175MA inserted: No. 24 of 2024 s. 5.]

[175MB. Deleted: No. 24 of 2024 s. 5.]

175MC. Publication of information in notices on Commission website

- (1) The Electoral Commissioner must, as soon as practicable after receiving a notice under section 175MA, publish the information contained in the notice on the Commission website.
- (2) However, if the Electoral Commissioner considers that the information contained in the notice is false or misleading in a material particular, the Electoral Commissioner may refuse to publish the information contained in the notice.

Note for this subsection:

Under section 175U(3) and (4) it is an offence to provide a false or misleading notice in particular circumstances.

- (3) The Electoral Commissioner must ensure that the following information is not published under subsection (1) —
- (a) information about a person's bank accounts or other similar financial details;
 - (aa) a person's address other than their postcode;
 - (b) other personal information the Electoral Commissioner considers is not appropriate to publish because publication of the information places the personal safety of the person to whom the information relates, or the members of the family of that person, at risk.

- (4) If a person informs the Electoral Commissioner when giving a notice under section 175MA that the person is a silent elector, or enrolled on a roll in the Commonwealth or another State or a Territory with equivalent status as a silent elector, the Electoral Commissioner must ensure that the person's address (including their postcode) is not published under subsection (1).

*[Section 175MC inserted: No. 30 of 2023 s. 130; amended:
No. 24 of 2024 s. 6.]*

175N. Political parties to lodge annual return of political contributions and other income

- (1) The agent of a political party shall, by 30 November in each year, lodge a return with the Electoral Commissioner in an approved form setting out details of all political contributions under subsection (3) and other income received by the party during the financial year which ended on the last preceding 30 June.
- (2) The following political contributions and income received by the political party do not have to be included in the return —
- (a) gifts made to the party for a purpose related to an election or by-election under the *Commonwealth Electoral Act 1918*;
 - (b) other gifts and income which the party has used, or will use, for a purpose related to an election or by-election under the *Commonwealth Electoral Act 1918*;
 - (c) any income that consists of a payment received under Division 2A.
- (3) For the purposes of subsection (1), the details of the political contributions to be set out in the return are as follows —
- (a) the combined amount or value of all political contributions;

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- (b) the relevant details of each political contribution for which a notice under section 175MA is required to be lodged.

[(c) deleted]

[(4), (5) deleted]

Note for this section:

Division 5 contains offences in relation to returns to be lodged under this section.

[Section 175N inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26); amended: No. 55 of 2006 s. 7; No. 30 of 2023 s. 131; No. 24 of 2024 s. 7.]

175NA. Associated entities to lodge annual return of political contributions and other income

- (1) If an incorporated body, unincorporated body or trustee of a trust is an associated entity at any time during a financial year the financial controller of that entity shall, by 30 November next following the end of that financial year, lodge a return with the Electoral Commissioner in an approved form setting out details of all political contributions under subsection (2) and income received by the entity during that financial year.
- (2) For the purposes of subsection (1), the details of political contributions to be set out in the return are as follows —
 - (a) the combined amount or value of all political contributions;
 - (b) the relevant details of each political contribution for which a notice under section 175MA is required to be lodged.

[(c) deleted]

[(3) deleted]

Note for this section:

Division 5 contains offences in relation to returns to be lodged under this section.

[Section 175NA inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26); amended: No. 30 of 2023 s. 132; No. 24 of 2024 s. 8.]

175O. Candidates to lodge return of gifts received during disclosure period

- (1) The agent of a person (including a person included in a group) who was a candidate in an election shall, within 12 weeks after polling day in the election, lodge a return with the Electoral Commissioner in an approved form setting out —
- (a) the total amount or value of all gifts; and
 - (b) the number of persons who made gifts; and
 - (c) subject to subsection (4), the relevant details of each gift,

received by the person during the disclosure period for the election.

- (2) For the purposes of subsection (1), the disclosure period for an election (the *relevant election*) shall be determined as follows —
- (a) if the person was a candidate in a previous election and polling day in the previous election was within 5 years before polling day in the relevant election, the disclosure period is the period that —
 - (i) commenced at the end of 30 days after polling day in the most recent previous election in which the person was a candidate; and
 - (ii) ended 30 days after polling day in the relevant election;

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- (b) in any other case, the disclosure period is the period that —
 - (i) commenced one year before the day of the nomination of the person as a candidate in the relevant election; and
 - (ii) ended 30 days after polling day in the relevant election.
- (3) A gift does not have to be included in the return unless —
 - (a) the gift was made to the candidate for a purpose related to an election; or
 - (b) the candidate has used, or will use, the gift solely or substantially for a purpose related to an election.
- (4) The return does not have to set out the relevant details of a gift if the amount or value of the gift is less than the specified amount.

[(5) deleted]

Note for this section:

Division 5 contains offences in relation to returns to be lodged under this section.

[Section 175O inserted: No. 75 of 1992 s. 4; amended: No. 30 of 2023 s. 133.]

175P. Groups to lodge return of gifts received during disclosure period

- (1) Subject to subsection (3), the agent of a group in an election shall, within 12 weeks after polling day in the election, lodge a return with the Electoral Commissioner in an approved form setting out —
 - (a) the total amount or value of all gifts; and
 - (b) the number of persons who made gifts; and

- (c) subject to subsection (4), the relevant details of each gift,
received by the group during the disclosure period for the election.
- (2) For the purposes of subsection (1), the disclosure period for an election is the period that —
- (a) commenced when the persons who were included in the group made a claim under section 80(1) in relation to the election; and
- (b) ended 30 days after polling day in the election.
- (3) Where all the persons included in a group in an election are endorsed candidates of the same political party, a gift received by the group shall be taken to have been received by the party.
- (4) The return does not have to set out the relevant details of a gift if the amount or value of the gift is less than the specified amount.

[(5) deleted]

Note for this section:

Division 5 contains offences in relation to returns to be lodged under this section.

[Section 175P inserted: No. 75 of 1992 s. 4; amended: No. 30 of 2023 s. 134.]

175Q. Third-party campaigners to lodge return of gifts received during disclosure period

- (1) If a third-party campaigner incurs expenditure of more than \$500 for a political purpose in relation to an election, the third-party campaigner must, within 12 weeks after polling day in the election, lodge a return with the Electoral Commissioner in the approved form setting out the relevant details of all gifts received by the third-party campaigner during the disclosure period for the election.

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- (2) The return does not have to set out the relevant details of a gift unless —
- (a) the whole or a part of the gift was used by the third-party campaigner —
 - (i) to incur expenditure for a political purpose; or
 - (ii) to reimburse the campaigner for incurring expenditure for a political purpose;and
 - (b) the amount or value of the gift was not less than the specified amount.
- (3) A third-party campaigner does not have to lodge a return under subsection (1) if —
- (a) the third-party campaigner is not registered on the third-party campaigners register for the election and the electoral expenditure incurred in relation to the election by or with the authority of the third-party campaigner does not exceed \$500; or
 - (b) the third-party campaigner —
 - (i) is registered on the third-party campaigners register for the election; and
 - (ii) incurs expenditure for political purposes during the disclosure period for the election of less than or equal to the specified amount.
- (4) For the purposes of this section the disclosure period for an election (the **relevant election**) is the period that —
- (a) commenced at the end of 30 days after polling day in the last preceding general election; and
 - (b) ended 30 days after polling day in the relevant election.
- (5) A reference in this section to the incurring of expenditure for a political purpose is a reference to the incurring of expenditure for or in connection with promoting or opposing, directly or indirectly, a political party or a member of parliament or the

election of a candidate or candidates in an election, or for the purpose of influencing, directly or indirectly, voting in an election, and includes a reference to the incurring of expenditure —

- (a) in connection with, or by way of —
 - (i) the publication, broadcasting, display or distribution of electoral matter in relation to an election; or
 - (ii) the expression publicly, by any other means, of views on an issue in an election;
 - (b) in connection with, or by way of, the making of a gift to a candidate or group in an election;
 - (c) in connection with, or by way of, the making of a gift to a political party;
 - (d) in connection with, or by way of, the making of a gift to a person on the understanding that that person or another person will apply, either directly or indirectly, the whole or a part of the gift as mentioned in paragraph (a), (b) or (c).
- (6) In subsection (5) **election** means the election referred to in subsection (1) or any other election.
- (7) For the purposes of subsection (2), 2 or more gifts made by the same person to a third-party campaigner during the disclosure period for an election is taken to be 1 gift.
- (8) In the case of a conjoint election a third-party campaigner may lodge 1 return under subsection (1) relating to both general elections without showing the extent to which gifts referred to in the return were used in relation to 1 general election or the other.

[Section 175Q inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26); amended: No. 30 of 2023 s. 135.]

175R. Political contributions not to be accepted unless identity known, or believed to be known

(1AA) In this section —

acceptable action, in relation to a political contribution,
means —

- (a) an amount equal to the amount or value of the political contribution is transferred to the State; or
- (b) the political contribution is returned to the donor or another person acting on behalf of the donor; or
- (c) an amount equal to the amount or value of the political contribution is returned to the donor or another person acting on behalf of the donor;

donor, in relation to a political contribution, means the person who makes the political contribution, or on whose behalf the political contribution is made;

relevant political entity means —

- (a) a political party; or
- (b) an associated entity; or
- (c) a candidate in an election; or
- (d) a group in an election; or
- (e) a third-party campaigner.

(1) It is unlawful for a relevant political entity, or a person acting on behalf of a relevant political entity, to receive a political contribution to or for the benefit of the relevant political entity by another person unless —

- (a) the person receiving the political contribution (the ***recipient***) knows the name and address of the donor; or
- (b) at the time the political contribution is made —
 - (i) the name and address of the donor are given to the recipient; and

- (ii) the recipient has no grounds to believe that the name and address given are not the true name and address of the donor.
- (1A) A reference in this section to a relevant political entity, or a person acting on behalf of a relevant political entity, receiving a political contribution is, if the relevant political entity is a group in an election, a reference to a person included in the group, or a person acting on behalf of a person included in the group, receiving a political contribution.
- (1B) A reference in this section to a relevant political entity, or a person acting on behalf of a relevant political entity, receiving a political contribution to or for the benefit of the relevant political entity is, if the relevant political entity is a third-party campaigner, a reference to the third-party campaigner or a person acting on its behalf receiving a political contribution for the purpose of the incurring of expenditure for a political purpose.
- (2) A reference in subsection (1) to the name and address of a donor making a political contribution is —
 - (a) if the political contribution is made on behalf of the members of an unincorporated body —
 - (i) the name of the body; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the body;
 - and
 - (b) if the political contribution is, or is purportedly, made out of a trust fund or out of the funds of a foundation —
 - (i) the names and addresses of the trustees of the trust fund or of the foundation and of the person for whose benefit the funds are held; and

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- (ii) the title or other description of the trust fund or the name of the foundation, as the case requires;
 - and
 - (c) otherwise — the name and address of the donor who made the political contribution.
- (3) For the purposes of this section —
 - (a) a person who is a candidate in an election shall be taken to remain a candidate for 30 days after polling day in the election; and
 - (b) a person included in a group in an election shall be taken to continue to be included in that group for 30 days after polling day in the election; and
 - [(c) deleted]*
 - (d) a reference to the incurring of expenditure for a political purpose shall be read in accordance with section 175Q(5) and a reference to a political contribution made for the purpose of incurring such expenditure includes a reference to a political contribution the whole or part of which is used for that purpose.
- (4) The responsible person for a relevant political entity must, unless the responsible person has a reasonable excuse, ensure that neither of the following receives a political contribution if it is unlawful for either of the following to receive the political contribution under subsection (1) —
 - (a) the relevant political entity;
 - (b) a person acting on behalf of the relevant political entity.

Penalty for this subsection:

- (a) if the relevant political entity is a political party and the responsible person is the agent of the political party — a fine of \$36 000; or
- (b) otherwise — a fine of \$24 000.

- (4A) The responsible person for a relevant political entity does not commit an offence under subsection (4) if the responsible person, or another person acting on behalf of the responsible person, takes all reasonable steps to ensure that acceptable action is taken in relation to the political contribution by the end of the period of 7 days after the day on which the political contribution is received.
- (5) An amount equal to the amount or value of a political contribution received by a person is payable by the person to the State if —
- (a) it is unlawful for the person to receive the political contribution under subsection (1); and
 - (b) acceptable action is not taken in relation to the political contribution by the end of the period of 7 days after the day on which the political contribution is received.
- (6) The State may recover an amount payable under subsection (5), and may seek an order for the recovery of the amount in a court of competent jurisdiction, from —
- (a) in the case of a political contribution to or for the benefit of a political party —
 - (i) if the party is a body corporate — the party; or
 - (ii) in any other case — the agent of the party;or
 - (b) in the case of a political contribution to or for the benefit of an associated entity —
 - (i) if the associated entity is a body corporate — the associated entity; or
 - (ii) in any other case — the agent of the associated entity;or

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- (c) in the case of a political contribution to or for the benefit of a candidate — the candidate or the agent of the candidate; or
- (d) in the case of a political contribution to or for the benefit of a group — a person included in the group or the agent of the group; or
- (e) in the case of a political contribution to or for the benefit of a third-party campaigner — the third-party campaigner.

[Section 175R inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26); amended: No. 30 of 2023 s. 136; No. 24 of 2024 s. 9.]

175S. Reporting of political contributions under certain provisions required even if no details are required to be included in return

- (1) Where no details are required to be included in a return under section 175N, 175NA, 175O or 175P, the return must nevertheless be lodged and must include a statement to the effect that no political contributions of a kind required to be the subject of a return were received.
- (2) Where details of a political contribution or political contributions or income are included in a return under section 175N, 175NA, 175O, 175P or 175Q, the return shall include a statement to the effect that no other political contributions or income of a kind required to be the subject of a return were received.

[Section 175S inserted: No. 75 of 1992 s. 4; amended No. 30 of 2023 s. 137.]

Division 3A — Prohibition on receiving foreign contributions

[Heading inserted: No. 30 of 2023 s. 138.]

175SAA. Terms used

In this Division —

acceptable action, in relation to a foreign contribution,
means —

- (a) an amount equal to the amount or value of the foreign contribution is transferred to the State for the purposes of this Division; or
- (b) the foreign contribution is returned to the donor or the person who made the contribution on behalf of the donor; or
- (c) an amount equal to the amount or value of the foreign contribution is transferred to the donor or the person who made the contribution on behalf of the donor;

acceptable action period, in relation to a foreign contribution,
means —

- (a) if the foreign contribution is made to a member of the Council or the Assembly — the period of 6 weeks beginning on the day on which the foreign contribution is made; or
- (b) if the foreign contribution is made to a candidate in an election after they nominate as a candidate — the period of 6 weeks beginning on the day on which the foreign contribution is made; or
- (c) if the foreign contribution is made to a person before they nominate as a candidate in an election but after they publicly announce that they will be a candidate — the period of 6 weeks beginning on the day on which the foreign contribution is made; or

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- (d) if the foreign contribution is made to a person before the person publicly announces that they will be a candidate in an election — the period of 6 weeks beginning on the day of the announcement; or
 - (e) if the foreign contribution is made to a person who does not publicly announce that they will be a candidate in an election before nominating as a candidate — the period of 6 weeks beginning on the day on which the person nominates as a candidate; or
 - (f) if the foreign contribution is made to a group — the period of 6 weeks beginning on the later of the following —
 - (i) the day on which the foreign contribution is made;
 - (ii) the day on which the group claim is lodged under section 80;
- or
- (g) if the foreign contribution is made to a responsible person or political entity to which paragraphs (a) to (f) do not apply — the period of 6 weeks beginning on the day on which the foreign contribution is made;

appropriate donor information, about a donor, means —

- (a) if the donor is an individual —
 - (i) the particulars relating to the individual on the register of electors; or
 - (ii) a copy of a passport, a certificate evidencing the individual's naturalisation, or any other document evidencing the individual's Australian citizenship; or
 - (iii) a copy of a visa evidencing the individual's permanent residency in Australia; or

- (iv) a copy of the individual's Subclass 444 (Special Category) visa under the *Migration Act 1958* (Commonwealth) or, if that Subclass ceases to exist, the kind of visa that replaces the Subclass; or
 - (v) any information, or a copy of any document, prescribed by the regulations for the purposes of this subparagraph;
- or
- (b) if the donor is not an individual and is incorporated —
 - (i) a copy of the donor's incorporation in Australia; or
 - (ii) particulars of the donor's registration under Australian law evidencing the donor's incorporation in Australia; or
 - (iii) any information, or a copy of any document, prescribed by the regulations for the purposes of this subparagraph;
- or
- (c) if the donor is not an individual (whether or not it is incorporated), the information or documents referred to in 1 of the following (whether or not information is omitted, redacted or deleted from the documents) —
 - (i) copies of at least 3 recent minutes, or other documents, of the donor evidencing management actions of the donor are taken in Australia, with each document evidencing a different kind of decision;
 - (ii) copies of at least 3 official documents of the donor establishing that the donor's activities are principally carried out in Australia;

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- (iii) for a donor that is a trust or foundation — a trust deed or other document indicating that the law of an Australian jurisdiction is the governing law of the trust or foundation, or that the head office or principal place of activity is within Australia;
- (iv) any information, or a copy of any document, prescribed by the regulations for the purposes of this subparagraph;

donor, in relation to a political contribution, means the person who makes the political contribution, or on whose behalf the political contribution is made;

management actions, in relation to a donor that is not an individual, include —

- (a) decisions setting the operational policies of the donor; and
- (b) decisions appointing officers of the donor, or granting powers to such officers to carry on the donor's activities; and
- (c) directions to persons appointed to carry on the donor's activities as to how to perform functions; and
- (d) decisions on matters of finance, such as how profits are to be used;

official documents, in relation to a donor that is not an individual, include —

- (a) documents recording separately the number of staff or members of the donor in Australia, and overseas, carrying on activities for the donor; and
- (b) documents recording separately the scale or volume of the activities of the donor carried on in Australia and overseas (for example by reference to revenue derived in Australia and overseas).

[Section 175SAA inserted: No. 30 of 2023 s. 138.]

175SAB. Particular political entities not to accept foreign contributions

- (1) This section applies to a political entity other than a third-party campaigner.
- (2) The responsible person for a political entity commits a crime if —
 - (a) the political entity or the responsible person receives a foreign contribution or the benefit of a foreign contribution; and
 - (b) at the end of the acceptable action period in relation to the foreign contribution, acceptable action has not been taken in relation to the foreign contribution.

Penalty for this subsection:

- (a) imprisonment for 3 years or a fine of \$36 000;
 - (b) a daily penalty of a fine of \$500 for each day or part of a day after the end of the acceptable action period until the acceptable action is taken in relation to the foreign contribution.
- (3) Subsection (2) does not apply if the foreign contribution is made in a private capacity to the political entity or the responsible person for private use.
- (4) Subsection (2) does not apply if the terms on which the foreign contribution is made are inconsistent with the contribution's use as electoral expenditure in relation to an election.
- (5) In proceedings against the responsible person for a political entity for an offence under subsection (2), it is a defence for the accused person to prove —
 - (a) that before the end of the acceptable action period —
 - (i) the donor affirmed in writing to the political entity or the responsible person that the donor was not a foreign donor; or

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- (ii) the political entity or the responsible person obtained appropriate donor information about the donor to verify that the donor was not a foreign donor;
 - and
 - (b) that neither the political entity nor the responsible person knew, or had reasonable grounds to believe, at any time during the acceptable action period, that the donor was a foreign donor.
- (6) Without limiting subsection (5), if in proceedings against the responsible person for a political entity for an offence under subsection (2) it is proved that a foreign contribution, or the benefit of a foreign contribution, has been received by the political entity or the responsible person, the onus of proving that the contribution was not a foreign contribution is on the accused person.
- (7) For the purposes of subsection (2), a person who is a candidate in an election is taken to —
- (a) begin to be a candidate —
 - (i) if the person publicly announces that they will be a candidate in the election before nominating as a candidate — on the day that is 6 months before the day of the announcement; or
 - (ii) if the person does not publicly announce that they will be a candidate in the election before nominating as a candidate — on the day that is 6 months before the day on which the person nominates as a candidate;
 - and
 - (b) stop being a candidate at the end of the day that is 30 days after polling day in the election.

- (8) For the purposes of subsection (2), a group in an election is taken to —
- (a) begin to be a group on the day that is 6 months before the day on which a group claim for the group is lodged under section 80; and
 - (b) stop being a group in the election at the end of the day that is 30 days after polling day in the election.

[Section 175SAB inserted: No. 30 of 2023 s. 138.]

175SAC. Third-party campaigners not to receive foreign contributions

- (1) A third-party campaigner, and the responsible person for the third-party campaigner, commit a crime if —
- (a) the third-party campaigner receives a foreign contribution, or the benefit of a foreign contribution, the amount or value of which is more than the specified amount and uses it for the purposes of incurring electoral expenditure or creating or communicating electoral matter; and
 - (b) at the end of the acceptable action period in relation to the foreign contribution, acceptable action has not been taken in relation to the foreign contribution.

Penalty for this subsection:

- (a) imprisonment for 3 years or a fine of \$36 000;
- (b) a daily penalty of a fine of \$500 for each day or part of a day after the end of the acceptable action period until the acceptable action is taken in relation to the foreign contribution.

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- (2) In proceedings against a third-party campaigner, or the responsible person for a third-party campaigner, for an offence under subsection (1), it is a defence for the accused person to prove —
- (a) that before the end of the acceptable action period —
 - (i) the donor affirmed in writing to the third-party campaigner or the responsible person that the donor was not a foreign donor; or
 - (ii) the third-party campaigner or the responsible person obtained appropriate donor information about the donor to verify that the donor was not a foreign donor;
 - and
 - (b) that neither the third-party campaigner nor the responsible person knew, or had reasonable grounds to believe, at any time during the acceptable action period, that the donor was a foreign donor.
- (3) If, in any proceedings against a third-party campaigner, or the responsible person for a third-party campaigner, for an offence under subsection (1), it is proved that a foreign contribution, or the benefit of a foreign contribution, has been received by the third-party campaigner, the onus of proving that the contribution was not a foreign contribution is on the accused person.

[Section 175SAC inserted: No. 30 of 2023 s. 138.]

175SAD. Recovery of foreign contribution

- (1) This section applies if —
- (a) a person receives a foreign contribution; and
 - (b) a court determines that a person has contravened section 175SAB or 175SAC.

- (2) An amount equal to the value or amount of the foreign contribution may be recovered by the State as a debt due to the State by action, in a court of competent jurisdiction against the person who contravened the provision.

[Section 175SAD inserted: No. 30 of 2023 s. 138.]

175SAE. False affirmation or information about being foreign donor

- (1) A person commits a crime if the person makes an affirmation or gives appropriate donor information or other information under section 175SAB(5) or 175SAC(2) that the person knows is false or misleading in a material particular.

Penalty for this subsection: imprisonment for 3 years or a fine of \$36 000.

- (2) This section applies whether the person makes the affirmation or gives the information within or outside the State.

[Section 175SAE inserted: No. 30 of 2023 s. 138.]

175SAF. Offence to enter scheme to receive foreign contribution not permitted under Division

A person commits a crime if the person enters into or carries out an arrangement, understanding, course of conduct or other scheme, whether alone or with others, for the purpose of receiving a foreign contribution that is not permitted under this Division.

Penalty: imprisonment for 3 years and a fine of \$36 000.

[Section 175SAF inserted: No. 30 of 2023 s. 138.]

Division 4 — Disclosure of electoral expenditure

[Heading inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26).]

175SAG. Term used: expenditure disclosure period

In this Division —

expenditure disclosure period, for an election, means the longer of the following periods —

- (a) the period —
 - (i) beginning on 1 July immediately before the election; and
 - (ii) ending on polling day in the election;
- (b) the capped expenditure period for the election.

[Section 175SAG inserted: No. 30 of 2023 s. 139.]

175SA. Return required for political party's electoral expenditure

Where electoral expenditure in relation to an election is incurred by or with the authority of a registered political party during the expenditure disclosure period for the election, the agent of the party must, before the expiration of 12 weeks after polling day in the election, lodge a return with the Electoral Commissioner in an approved form setting out —

- (a) details of the party's electoral expenditure in relation to the election incurred during the expenditure disclosure period for the election; and
- (b) if the election is an election in a district and the party had an endorsed candidate in the election — the electoral expenditure substantially incurred, during the capped expenditure period for the election, in relation to

the party's endorsed candidate in the district under section 175SM.

[Section 175SA inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26); amended: No. 30 of 2023 s. 140.]

175SB. Return required for candidate's electoral expenditure

The agent of a person who is a candidate in an election (not being a person included in a group) shall, before the expiration of 12 weeks after the polling day in the election, lodge a return with the Electoral Commissioner in an approved form setting out details of all electoral expenditure in relation to the election incurred during the expenditure disclosure period for the election by or with the authority of the candidate.

[Section 175SB inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26); amended: No. 30 of 2023 s. 141.]

175SC. Return required for group's electoral expenditure

- (1) Subject to subsection (2), the agent of a group in an election shall, before the expiration of 12 weeks after the polling day in the election, lodge a return with the Electoral Commissioner in an approved form setting out details of all electoral expenditure in relation to the election incurred during the expenditure disclosure period for the election by or with the authority of persons included in the group.
- (2) Where electoral expenditure in relation to an election is incurred during the expenditure disclosure period for the election by or with the authority of persons included in a group and all the persons included in the group are endorsed candidates of the same registered political party, the electoral expenditure shall be taken to have been incurred by or with the authority of the party.

[Section 175SC inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26); amended: No. 30 of 2023 s. 142.]

175SD. Return required for third-party campaigner's electoral expenditure

If electoral expenditure that exceeds \$500 is incurred in relation to an election by or with the authority of a third-party campaigner during the expenditure disclosure period for the election, the third-party campaigner must, before the expiry of 12 weeks after polling day in the election, lodge a return with the Electoral Commissioner in the approved form setting out details of that electoral expenditure.

[Section 175SD inserted: No. 30 of 2023 s. 143.]

175SE. Reporting of expenditure under certain provisions required even if no details are required to be included in return

- (1) Where no details are required to be included in a return under section 175SA, 175SB or 175SC, the return shall nevertheless be lodged and shall include a statement to the effect that no expenditure of a kind required to be the subject of a return was incurred.
- (2) Where details of expenditure are included in a return under section 175SA, 175SB, 175SC or 175SD, the return shall include a statement to the effect that no other expenditure of a kind required to be the subject of a return was incurred.

[Section 175SE inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26); amended: No. 30 of 2023 s. 144.]

175SF. Two or more elections on one day, one return may be lodged in case of

- (1) Where —
 - (a) 2 or more elections have the same polling day; and

- (b) a person would, but for this subsection, be required to lodge 2 or more returns under this Division relating to those elections,

the person may, in lieu of lodging those returns, lodge one return, in an approved form, setting out the particulars that the person would have been required to set out in those returns.

- (2) Where —
- (a) a return is lodged by a person under subsection (1); and
- (b) particular electoral expenditure details of which are required to be set out in the return relates to more than one election,

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 particular election.

[Section 175SF inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26); amended: No. 30 of 2023 s. 182.]

Division 4A — Caps on electoral expenditure in relation to elections

[Heading inserted: No. 30 of 2023 s. 145.]

Subdivision 1 — Preliminary

[Heading inserted: No. 30 of 2023 s. 145.]

175SG. Terms used

In this Division —

expenditure cap means an expenditure cap specified in Subdivision 2;

permitted, in relation to incurring electoral expenditure in relation to an election, has the meaning given in section 175SH.

[Section 175SG inserted: No. 30 of 2023 s. 145.]

175SH. When incurring electoral expenditure is permitted in relation to election

- (1) Incurring electoral expenditure in relation to an election is *permitted* during a capped expenditure period for the election under this Division if —
 - (a) the electoral expenditure is incurred, or authorised to be incurred, in relation to the election by a person to whom an expenditure cap in Subdivision 2 applies for the election; and
 - (b) the total amount of the electoral expenditure incurred during the capped expenditure period for the election is the same as, or less than, the expenditure cap in Subdivision 2 that applies to the person for the election.
- (2) In addition to an expenditure cap in Subdivision 2 that applies to a registered political party, electoral expenditure that is substantially incurred by the party —
 - (a) in a general election for the Assembly in relation to the party's endorsed candidate in a district is *permitted* if it is incurred, or authorised to be incurred, in accordance with the expenditure cap stated in section 175SM(1); and
 - (b) in a general election for the Council in relation to a particular endorsed candidate of the party is *permitted* if it is incurred, or authorised to be incurred, in accordance with the expenditure cap stated in section 175SN(1).
- (3) In addition to an expenditure cap in Subdivision 2 that applies to a third-party campaigner, electoral expenditure that is substantially incurred by the third-party campaigner —
 - (a) in a general election for the Assembly in relation to a district is *permitted* if it is incurred, or authorised to be incurred, in accordance with the expenditure cap stated in section 175SM(3); and

- (b) in a general election for the Council in relation to a particular candidate is *permitted* if it is incurred, or authorised to be incurred, in accordance with the expenditure cap stated in section 175SN(3).

[Section 175SH inserted: No. 30 of 2023 s. 145.]

175SI. Certain electoral expenditure taken to be incurred by or with authority of political party or group

- (1) For the purposes of this Division, electoral expenditure incurred during the capped expenditure period for an election by or with the authority of an endorsed candidate of a registered political party (other than a candidate included in a group) is taken to have been incurred by or with the authority of the political party that endorsed the candidate.
- (2) Subsection (1) does not apply to a candidate in a Council election who is included in a group.
- (3) For the purposes of this Division, electoral expenditure incurred during the capped expenditure period for an election by or with the authority of an elected member who is a member of a registered political party is taken to have been incurred by or with the authority of the registered political party.
- (4) For the purposes of this Division, electoral expenditure incurred during the capped expenditure period for an election by or with the authority of a registered political party's associated entity is taken to have been incurred by or with the authority of the registered political party.
- (5) For the purposes of this Division, electoral expenditure incurred during the capped expenditure period for an election by or with the authority of a party group is taken to have been incurred by or with the authority of —
- (a) if all of the endorsed candidates in the group are endorsed by the same registered political party — the registered political party; or

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- (b) if the endorsed candidates in the group are endorsed by more than 1 registered political party — each registered political party with an endorsed candidate in the group in a proportion —
- (i) agreed between the parties; or
 - (ii) if subparagraph (i) does not apply — worked out in accordance with the following formula —

$$A \times \frac{B}{C}$$

where —

A is the total electoral expenditure incurred during the capped expenditure period for an election by or with the authority of the party group;

B is the number of endorsed candidates of the registered political party in the party group;

C is the total number of candidates in the party group.

- (6) For the purposes of this Division, electoral expenditure incurred during the capped expenditure period for an election by or with the authority of a candidate included in a non-party group is taken to have been incurred by or with the authority of the non-party group.

[Section 175SI inserted: No. 30 of 2023 s. 145.]

Subdivision 2 — Expenditure caps for particular elections

[Heading inserted: No. 30 of 2023 s. 145.]

175SJ. Expenditure caps for conjoint elections

- (1) The expenditure cap that applies to a person specified in column 1 of the Table in relation to electoral expenditure incurred

during the capped expenditure period for a conjoint election is set out, or is to be worked out in accordance with the method set out, opposite the person in column 2 of the Table.

Table

Column 1 Political entity	Column 2 Expenditure cap for election
Non-party candidate in an election in a district	The LA candidate cap amount
Non-party candidate in the general election for the Council who is not included in a group	The LC candidate cap amount
Non-party group	The number of candidates in the group multiplied by the LC candidate cap amount
Registered political party	The amount worked out under subsection (2)
Third-party campaigner	The third-party general cap amount

Notes for this subsection:

1. See section 80(4)(c) in relation to the maximum number of candidates in a valid group claim.
2. See section 175SM(1) in relation to the expenditure cap that applies to registered political parties for electoral expenditure substantially incurred, during the capped expenditure period, in relation to the party's endorsed candidate in a particular district in a general election for the Assembly.
3. See section 175SM(3) in relation to the expenditure cap that applies to third-party campaigners for electoral expenditure substantially incurred, during the capped expenditure period, in relation to a particular district in a general election for the Assembly.

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4. See section 175SN(1) in relation to the expenditure cap that applies to registered political parties for electoral expenditure substantially incurred, during the capped expenditure period, in relation to a particular endorsed candidate of the party in a general election for the Council.
 5. See section 175SN(3) in relation to the expenditure cap that applies to third-party campaigners for electoral expenditure substantially incurred, during the capped expenditure period, in relation to a particular candidate in a general election for the Council.
- (2) The expenditure cap that applies to a registered political party in relation to electoral expenditure incurred during the capped expenditure period for a conjoint election is the sum of —
- (a) the number of the party's endorsed candidates for the general election for the Council, multiplied by the LC candidate cap amount; and
 - (b) the number of the party's endorsed candidates for the general election for the Assembly, multiplied by the LA candidate cap amount.

Note for this subsection:

See section 81A(2A), (2B), (4A) and (4B) in relation to the maximum number of valid party nominations for elections that can be made by registered political parties.

[Section 175SJ inserted: No. 30 of 2023 s. 145.]

175SK. Expenditure caps for Council elections not part of conjoint elections

- (1) This section applies to a Council election other than a general election held as part of a conjoint election.
- (2) For a general election for the Council, the expenditure cap that applies to a person specified in column 1 of the Table in relation to electoral expenditure incurred during the capped expenditure period for the election is set out, or is to be worked out in accordance with the method set out, opposite the person in column 2 of the Table.

Table

Column 1 Political entity	Column 2 Expenditure cap for general election for Council
Non-party candidate who is not included in a group	The LC candidate cap amount
Non-party group	The number of candidates in the group multiplied by the LC candidate cap amount
Registered political party	The number of the party's endorsed candidates in the election multiplied by the LC candidate cap amount
Third-party campaigner	The third-party general cap amount

Notes for this subsection:

1. See section 80(4)(c) in relation to the maximum number of candidates in a valid group claim.
2. See section 81A(4A) and (4B) in relation to the maximum number of valid party nominations for Council elections where the relevant number is more than one that can be made by registered political parties.
3. See section 175SN(1) in relation to the expenditure cap that applies to registered political parties for electoral expenditure substantially incurred, during the capped expenditure period, in relation to a particular endorsed candidate of the party in a general election for the Council.
4. See section 175SN(3) in relation to the expenditure cap that applies to third-party campaigners for electoral expenditure substantially incurred, during the capped expenditure period, in relation to a particular candidate in a general election for the Council.

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- (3) For a Council election, other than a general election, where the relevant number is more than one, the expenditure cap that applies to a person specified in column 1 of the Table in relation to electoral expenditure incurred during the capped expenditure period is set out, or is to be worked out in accordance with the method set out, opposite the person in column 2 of the Table.

Table

Column 1 Political entity	Column 2 Expenditure cap for Council election, other than general election, where relevant number is more than one
Non-party candidate who is not included in a group	The LC by-election cap amount
Non-party group	The number of candidates in the group multiplied by the LC by-election cap amount
Registered political party	The number of the party's endorsed candidates in the election multiplied by the LC by-election cap amount
Third-party campaigner	The third-party LC cap amount

Notes for this subsection:

1. See section 80(4)(c) in relation to the maximum number of candidates in a valid group claim.
2. See section 81A(4A) and (4B) in relation to the maximum number of valid party nominations for Council elections where the relevant number is more than one that can be made by registered political parties.

- (4) For a Council election where the relevant number is one, the expenditure cap that applies to a person specified in column 1 of the Table in relation to electoral expenditure incurred during the capped expenditure period for the election is set out opposite the person in column 2 of the Table.

Table

Column 1 Political entity	Column 2 Expenditure cap for Council election where relevant number is one
Non-party candidate	The LC by-election cap amount
Registered political party with an endorsed candidate in the election	The LC by-election cap amount
Third-party campaigner	The third-party LC cap amount

[Section 175SK inserted: No. 30 of 2023 s. 145.]

175SL. Expenditure caps for elections in districts not part of conjoint elections

- (1) This section applies to an election in a district that is not held as part of a conjoint election.
- (2) For a general election for the Assembly, the expenditure cap that applies to a person specified in column 1 of the Table in relation to electoral expenditure incurred during the capped expenditure period for the election is set out, or is to be worked out in accordance with the method set out, opposite the person in column 2 of the Table.

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Table

Column 1 Political entity	Column 2 Expenditure cap for general election for the Assembly
Non-party candidate	The LA candidate cap amount
Registered political party	The number of the party's endorsed candidates in the general election multiplied by the LA candidate cap amount
Third-party campaigner	The third-party general cap amount

Notes for this subsection:

1. See section 175SM(1) in relation to the expenditure cap that applies to registered political parties for electoral expenditure substantially incurred, during the capped expenditure period, in relation to the party's endorsed candidate in a particular district in a general election for the Assembly.
 2. See section 175SM(3) in relation to the expenditure cap that applies to third-party campaigners for electoral expenditure substantially incurred, during the capped expenditure period, in relation to a particular district in a general election for the Assembly.
 3. See section 81A(2A) and (2B) in relation to the maximum number of valid party nominations for single member elections that can be made by registered political parties.
- (3) For an election in a district, other than an election held as part of a general election for the Assembly, the expenditure cap that applies to a person specified in column 1 of the Table in relation to electoral expenditure incurred during the capped expenditure period for the election is set out, or is to be worked out in accordance with the method set out, opposite the person in column 2 of the Table.

Table

Column 1 Political entity	Column 2 Expenditure cap for election in district that is not part of general election
Non-party candidate	The LA by-election cap amount
Registered political party with an endorsed candidate in the election	The LA by-election cap amount
Third-party campaigner	If polling day in the election is before 1 July 2025 — \$39 000; or If polling day in the election is in a financial year that begins on or after 1 July 2025 — the amount calculated under section 175AC for the financial year in which polling day occurs

[Section 175SL inserted: No. 30 of 2023 s. 145.]

Subdivision 3 — Additional expenditure caps for political parties and third-party campaigners

[Heading inserted: No. 30 of 2023 s. 145.]

175SM. Expenditure caps for electoral expenditure on particular district

- (1) The expenditure cap that applies to a registered political party in relation to electoral expenditure substantially incurred, during

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the capped expenditure period, in relation to the party's endorsed candidate in a district in a general election for the Assembly is the LA candidate cap amount.

- (2) For the purposes of subsection (1), electoral expenditure is substantially incurred in relation to a registered political party's endorsed candidate in a district in a general election for the Assembly if the expenditure relates to —
- (a) the production and broadcasting, publication or display of advertising or other material relating to the election that —
 - (i) explicitly mentions the name of the candidate; and
 - (ii) is communicated to electors in the district; and
 - (iii) is not mainly communicated to electors outside the district;
 - or
 - (b) a consultant's or advertising agent's fees in respect of services or material substantially used to promote the candidate or for the purposes of having the candidate elected.
- (3) The expenditure cap that applies to a third-party campaigner in relation to electoral expenditure substantially incurred, during the capped expenditure period, in relation to a particular candidate in a district in a general election for the Assembly is —
- (a) if polling day is before 1 July 2025 — \$13 000; or
 - (b) otherwise — the amount calculated under section 175AC for the financial year in which polling day occurs.
- (4) For the purposes of subsection (3), electoral expenditure is substantially incurred in a general election for the Assembly in

relation to a candidate in a district in a general election for the Assembly if the expenditure relates to —

- (a) the production and broadcasting, publication or display of advertising or other material relating to the election that —
 - (i) explicitly mentions the name of the candidate; and
 - (ii) is communicated to electors in the district; and
 - (iii) is not mainly communicated to electors outside the district;

or

- (b) a consultant's or advertising agent's fees in respect of services or material relating to the election that are used in relation to electoral expenditure on the candidate, including for the purposes of having the candidate elected or not elected.

[Section 175SM inserted: No. 30 of 2023 s. 145.]

175SN. Expenditure cap in relation to candidates for Legislative Council

- (1) The expenditure cap that applies to a registered political party in relation to electoral expenditure substantially incurred, during the capped expenditure period, in relation to a particular endorsed candidate of the party in a general election for the Council is the LC candidate cap amount.
- (2) For the purposes of subsection (1), electoral expenditure is substantially incurred in relation to an endorsed candidate of a registered political party in a general election for the Council if the expenditure relates to —
 - (a) the production and broadcasting, publication or display of advertising or other material relating to the election that explicitly mentions the name of the candidate; or

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- (b) a consultant's or advertising agent's fees in respect of services or material substantially used to promote the candidate or for the purposes of having the candidate elected.
- (3) The expenditure cap that applies to the third-party campaigner in relation to electoral expenditure substantially incurred, during the capped expenditure period, in relation to a particular candidate in a general election for the Council is —
 - (a) if polling day is before 1 July 2025 — \$6 500; or
 - (b) otherwise — the amount calculated under section 175AC for the financial year in which polling day occurs.
- (4) For the purposes of subsection (3), electoral expenditure is substantially incurred in relation to a particular candidate in a general election for the Council if the expenditure relates to —
 - (a) the production and broadcasting, publication or display of advertising or other material relating to the election that explicitly mentions the name of the candidate; or
 - (b) a consultant's or advertising agent's fees in respect of services or material relating to the election that are used in relation to electoral expenditure on the candidate, including for the purposes of having the candidate elected or not elected.

[Section 175SN inserted: No. 30 of 2023 s. 145.]

Subdivision 4 — Miscellaneous

[Heading inserted: No. 30 of 2023 s. 145.]

175SO. Recovery of electoral expenditure not permitted to be incurred under Division

- (1) This section applies if an amount of electoral expenditure that is not permitted to be incurred under this Division (the ***unlawful amount***) is incurred in relation to an election by or with the

authority of a person during the capped expenditure period for the election.

- (2) An amount equal to twice the unlawful amount is payable to the State as a debt due to the State by action, in a court of competent jurisdiction, against —
- (a) if the unlawful amount is incurred, or authorised to be incurred, by a political party —
 - (i) if the party is a body corporate — the party; or
 - (ii) otherwise — the agent of the party;
 - or
 - (b) if the unlawful amount is incurred, or authorised to be incurred, by a non-party candidate — the non-party candidate or the agent of the non-party candidate; or
 - (c) if the unlawful amount is incurred, or authorised to be incurred, by a non-party group — a candidate included in the non-party group or the agent of the non-party group; or
 - (d) if the unlawful amount is incurred, or authorised to be incurred, by a third-party campaigner — the agent of the third-party campaigner; or
 - (e) if the unlawful amount is incurred, or authorised to be incurred, by a person to whom paragraphs (a) to (d) do not apply — the person.
- (3) Nothing in this section affects the liability of a person to be convicted of an offence under section 175SP or 175SQ or the penalty that can be imposed for those offences.

[Section 175SO inserted: No. 30 of 2023 s. 145.]

175SP. Offence to incur electoral expenditure not permitted under Division

- (1) The agent of a registered political party commits a crime if —
- (a) electoral expenditure is incurred in relation to an election during the capped expenditure period for the election by or with the authority of the registered political party; and
 - (b) the incurring of the electoral expenditure is not permitted to be incurred under this Division.

Penalty for this subsection: imprisonment for 3 years and a fine of —

- (a) if an expenditure cap applies to the political party for the election and it is exceeded — an amount equal to 3 times the amount by which the electoral expenditure in relation to the election exceeds the expenditure cap; or
 - (b) if paragraph (a) does not apply, or the amount worked out under paragraph (a) is less than \$36 000 — \$36 000.
- (2) The agent of a non-party candidate who is not included in a group commits a crime if —
- (a) electoral expenditure is incurred in relation to an election during the capped expenditure period for the election by or with the authority of the non-party candidate; and
 - (b) the incurring of the electoral expenditure is not permitted to be incurred under this Division.

Penalty for this subsection: imprisonment for 3 years and a fine of —

- (a) if an expenditure cap applies to the non-party candidate for the election and it is exceeded — an amount equal to 3 times the amount by which the

electoral expenditure in relation to the election
exceeds the expenditure cap; or

- (b) if paragraph (a) does not apply, or the amount worked out under paragraph (a) is less than \$36 000 — \$36 000.
- (3) The agent of a non-party group who is not included in a group commits a crime if —
- (a) electoral expenditure is incurred in relation to an election during the capped expenditure period for the election by or with the authority of the non-party group; and
 - (b) the incurring of the electoral expenditure is not permitted to be incurred under this Division.

Penalty for this subsection: imprisonment for 3 years and a fine of —

- (a) if an expenditure cap applies to the non-party group for the election and it is exceeded — an amount equal to 3 times the amount by which the electoral expenditure in relation to the election exceeds the expenditure cap; or
 - (b) if the amount worked out under paragraph (a) is less than \$36 000 — \$36 000.
- (4) The agent of a third-party campaigner commits a crime if —
- (a) electoral expenditure is incurred in relation to an election during the capped expenditure period for the election by or with the authority of the third-party campaigner; and

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- (b) the incurring of the electoral expenditure is not permitted to be incurred under this Division.

Penalty for this subsection: imprisonment for 3 years and a fine of —

- (a) an amount equal to 3 times the amount by which the electoral expenditure in relation to the election exceeds the expenditure cap; or
 - (b) if the amount worked out under paragraph (a) is less than \$36 000 — \$36 000.
- (5) A person to whom subsections (1) to (4) do not apply commits a crime if —
- (a) electoral expenditure is incurred in relation to an election during the capped expenditure period for the election by or with the authority of the person; and
 - (b) the incurring of the electoral expenditure is not permitted to be incurred under this Division.

Penalty for this subsection: imprisonment for 3 years and a fine of —

- (a) if an expenditure cap applies to the person for the election and it is exceeded — an amount equal to 3 times the amount by which the electoral expenditure in relation to the election exceeds the expenditure cap; or
- (b) if paragraph (a) does not apply, or the amount worked out under paragraph (a) is less than \$36 000 — \$36 000.

[Section 175SP inserted: No. 30 of 2023 s. 145.]

175SQ. Offence to enter scheme to incur electoral expenditure not permitted under Division

A person must not enter into or carry out an arrangement, understanding, course of conduct or other scheme, whether alone or with others, for the purpose of incurring electoral expenditure that is not permitted under this Division.

Penalty: imprisonment for 3 years and a fine of \$36 000.

[Section 175SQ inserted: No. 30 of 2023 s. 145.]

Division 4B — Registration of third-party campaigners

[Heading inserted: No. 30 of 2023 s. 146.]

175SR. Particular third-party campaigners to be registered

- (1) The responsible person for a third-party campaigner for an election not registered on the third-party campaigners register for the election must take all action necessary to ensure that the electoral expenditure incurred in relation to the election by or with the authority of the third-party campaigner (the *electoral expenditure*) does not exceed \$500.

Penalty for this subsection: a fine of an amount equal to twice the amount by which the electoral expenditure exceeds \$500.

- (2) Proceedings against a responsible person for a third-party campaigner for an offence under subsection (1) must not be instituted if the responsible person applies under section 175ST(1) to register the third-party campaigner within the period of 7 days beginning on the day on which the electoral expenditure exceeds \$500.

[Section 175SR inserted: No. 30 of 2023 s. 146.]

175SS. Third-party campaigners register

- (1) The Electoral Commissioner must keep a list of persons who are registered as third-party campaigners (the *third-party campaigners register*).
- (2) The third-party campaigners register —
 - (a) must state for each registered third-party campaigner —
 - (i) the name and address of the registered third-party campaigner; and
 - (ii) a contact telephone number and email address of the registered third-party campaigner; and
 - (iii) the name of the responsible person for the third-party campaigner; and
 - (iv) the election for which the registered third-party campaigner is registered; and
 - (v) any other details prescribed by the regulations; and
 - (b) may be kept in the manner and form the Electoral Commissioner considers appropriate.
- (3) The Electoral Commissioner must ensure the third-party campaigners register is published on the Commission website.
- (4) However, if a registered third-party campaigner is an individual, the Electoral Commissioner must ensure that —
 - (a) the registered third-party campaigner's contact telephone number and email address are not published without the consent of the registered third-party campaigner; and
 - (b) if subsection (5) applies — the address of the registered third-party campaigner is not published; and
 - (c) if subsection (5) does not apply — the published address of the registered third-party campaigner does not include the street name and number; and

- (d) other personal information of the registered third-party campaigner is not published if the Electoral Commissioner considers it is not appropriate to publish the information because publishing it would place the personal safety of the person to whom the information relates, or the members of the family of that person, at risk.
- (5) This subsection applies if a person has informed the Electoral Commissioner when applying under section 175ST(1) or (2) that the registered third-party campaigner is a silent elector, or enrolled on a roll in the Commonwealth or another State or a Territory with equivalent status as a silent elector.

[Section 175SS inserted: No. 30 of 2023 s. 146.]

175ST. Application to be registered

- (1) A third-party campaigner in relation to an election, or the responsible person for the third-party campaigner, may apply to the Electoral Commissioner for the third-party campaigner to be registered on the third-party campaigners register in relation to the election.
- (2) A person who wishes to become a third-party campaigner in relation to an election, or a person who is authorised to act on behalf of the first person, may apply to the Electoral Commissioner for the first person to be registered on the third-party campaigners register in relation to the election.
- (3) The application must —
- (a) be made before the day before polling day in the election; and
 - (b) be in the approved form; and
 - (c) state the details required by subsection (4); and
 - (d) state any other details prescribed under section 175SS(2)(a)(v).

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- (4) The details required by this subsection are —
- (a) if the application is made under subsection (1) —
 - (i) the name, address, contact telephone number and email address of the third-party campaigner; and
 - (ii) if another person is the responsible person for the third-party campaigner — the name, address, contact telephone number and email address of that other person;

or

 - (b) if the application is made under subsection (2) —
 - (i) the name, address, contact telephone number and email address of the person the subject of the application; and
 - (ii) if another person is to be the responsible person for the person the subject of the application — the name, address, contact telephone number and email address of that other person.

[Section 175ST inserted: No. 30 of 2023 s. 146.]

175SU. Decision and registration

- (1) As soon as practicable after receiving an application in accordance with section 175ST, the Electoral Commissioner must decide whether to register, or refuse to register, the person the subject of the application on the third-party campaigners register.
- (2) The Electoral Commissioner must register the person on the third-party campaigners register if the application is not incomplete or incorrect.

- (3) However, the Electoral Commissioner must refuse to register the person on the third-party campaigners register if —
- (a) the Electoral Commissioner is satisfied —
 - (i) that the person is no longer, or is not, a third-party campaigner in relation to the election; or
 - (ii) that the electoral expenditure incurred in relation to the election by or with the authority of the person will not exceed \$500;
 - or
 - (b) the electoral expenditure incurred in relation to the election by or with the authority of the person will not exceed \$500.
- (4) If the Electoral Commissioner makes a decision under subsection (1), the Electoral Commissioner must, as soon as practicable after making the decision —
- (a) enter the details of the person required under section 175SS(2)(a) on the register; and
 - (b) give the person who made the application for registration a written notice stating the decision; and
 - (c) if the decision is to refuse to register the person, state in the notice —
 - (i) the reasons for the decision; and
 - (ii) if a reason for the decision is because the application is incomplete or incorrect — the errors or omissions in the application and that an application for registration can be resubmitted within 30 days after the day on which the person is given the notice.

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- (5) If an application is resubmitted in accordance with a notice given under subsection (4), the resubmitted application is taken to have been made on the day on which the original application was made.

[Section 175SU inserted: No. 30 of 2023 s. 146.]

175SV. Updating details on third-party campaigners register

- (1) If the information about a registered third-party campaigner included in the third-party campaigners register under section 175SS(2)(a) changes, the responsible person for the registered third-party campaigner must notify the Electoral Commissioner of the change of details within the period of 30 days beginning on the day on which the change occurs.
Penalty for this subsection: a fine of \$6 000.
- (2) The responsible person does not commit an offence under subsection (1) if the responsible person has a reasonable excuse.

[Section 175SV inserted: No. 30 of 2023 s. 146.]

175SW. Cancelling registration

- (1) If a person (the **registered person**) is a registered third-party campaigner in relation to an election, the responsible person for the registered person may, in writing, request the Electoral Commissioner to cancel the registered person's registration.
- (2) The Electoral Commissioner must cancel the registered person's registration if the Electoral Commissioner is satisfied —
- (a) that the registered person is no longer a third-party campaigner in relation to the election; or
 - (b) that the electoral expenditure incurred in relation to the election by or with the authority of the registered person will not exceed \$500.

- (3) If the Electoral Commissioner cancels the registered person's registration, the Electoral Commissioner must —
- (a) give the registered third-party campaigner a written notice stating —
 - (i) that the registered third-party campaigner's registration is cancelled; and
 - (ii) the day on which the cancellation takes effect;and
 - (b) record the cancellation and the day of cancellation in the third-party campaigners register.
- (4) The day of the cancellation of the registration stated in the notice under subsection (3)(a)(ii) cannot be earlier than the day on which the third-party campaigner receives the notice.
- (5) If the Electoral Commissioner refuses to cancel the registered person's registration, the Electoral Commissioner must give the registered person a written notice stating —
- (a) that the Electoral Commissioner has refused to cancel the registered person's registration; and
 - (b) the reasons for the decision.

[Section 175SW inserted: No. 30 of 2023 s. 146.]

Division 5 — Miscellaneous

[Heading inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26).]

175T. Terms used

- (1) In this Division —
- disclosure document*** means —
- (a) a notice under section 175LN(1) or (2); or
 - (b) a document under section 175LQ(1); or
 - (c) a return under Division 3 or 4; or

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(d) a notice under section 175MA.

- (2) Except in section 175X, a reference in this Division to a disclosure document or to a return under this Part includes a reference to particulars required under section 175X(3).

[Section 175T inserted: No. 30 of 2023 s. 147; amended: No. 24 of 2024 s. 10.]

175U. Offences

- (1) If a person fails to lodge a disclosure document that the person is required to lodge under this Part within the time required by this Part, the person commits an offence.

Penalty for this subsection:

- (a) if a disclosure document is required to be lodged by the agent of a registered political party — a fine of \$36 000; or
- (b) otherwise — a fine of \$24 000.

- (2) If a person lodges a disclosure document that the person is required to lodge under this Part and the document is incomplete, the person commits an offence.

Penalty for this subsection: a fine of \$3 000.

- (3) If the agent of a political party lodges a disclosure document that the agent is required to lodge under this Part, or a claim that the agent may lodge under Division 2A, and that disclosure document or claim contains particulars that are, to the agent's knowledge, false or misleading in a material particular, the agent commits an offence.

Penalty for this subsection: a fine of \$36 000.

- (4) If a person who is not the agent of a political party lodges a disclosure document that the person is required to lodge under this Part, or a claim that the person may lodge under Division 2A, and that disclosure document or claim contains particulars that are, to the person's knowledge, false or

misleading in a material particular, the person commits an offence.

Penalty for this subsection: a fine of \$24 000.

- (5) A person must not supply to another person who is required to lodge a disclosure document under this Part, or may lodge a claim under Division 2A, information that relates to the disclosure document or claim and that is, to the knowledge of the first-mentioned person, false or misleading in a material particular.

Penalty for this subsection: a fine of \$10 000.

- (6) If —

- (a) a person is required to lodge a disclosure document within a particular period; and
- (b) the person fails to lodge the disclosure document within that period,

the following provisions of this subsection have effect —

- (c) the obligation to lodge the disclosure document continues notwithstanding that that period has expired; and
- (d) where the person is convicted of an offence that is constituted by failure to lodge the disclosure document within that period, that person commits a separate and further offence in respect of each day after the day of the conviction during which the failure to lodge the document continues; and
- (e) the penalty applicable to each separate and further offence is a fine not exceeding \$500.

- (7) Charges against the same person for any number of offences under subsection (6)(d) may be joined in the one prosecution notice.

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- (8) If a person is convicted of more than one offence under subsection (6)(d), the court may impose one penalty in respect of all offences of which the person is so convicted but that penalty shall not exceed the sum of the maximum penalties that could be imposed if a penalty were imposed in respect of each offence separately.

[Section 175U inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26); amended: No. 84 of 2004 s. 80; No. 55 of 2006 s. 8; No. 30 of 2023 s. 148.]

175V. Payments due to State, recovery of

- (1) An action in a court to recover an amount due to the State under section 175LH(4), 175LI(2) or 175R(5) may be brought in the name of the State by the Electoral Commissioner.
- (2) Any process in the action required to be served on the State may be served on the Electoral Commissioner.

[Section 175V inserted: No. 75 of 1992 s. 4; amended: No. 55 of 2006 s. 9.]

175W. Investigative powers for this Part

- (1) In this section *authorised officer* means a person authorised by the Electoral Commissioner under subsection (2).
- (2) The Electoral Commissioner may, by instrument in writing authorise a person, or a person included in a class of persons, to perform functions under this section.
- (3) An authorised officer may, for the purpose of finding out whether a person has complied with this Part, serve a notice on the person requiring the person —
- (a) to produce, within the period and in the manner specified in the notice, the documents or other things referred to in the notice; or
 - (b) to appear, at a time and place specified in the notice, before the authorised officer to give evidence, either

orally or in writing, and to produce the documents or other things referred to in the notice.

- (4) Where an authorised officer has reasonable grounds to believe that a person is capable of producing documents or other things or giving evidence relating to a contravention, or possible contravention, of section 175U, or relating to matters that are set out in, or are required to be set out in, a disclosure document or claim under this Part, the authorised officer may serve a notice on the person requiring the person —
- (a) to produce, within the period and in the manner specified in the notice, the documents or other things referred to in the notice; or
 - (b) to appear, at a time and place specified in the notice, before the authorised officer to give evidence, either orally or in writing, and to produce the documents or other things referred to in the notice.
- (5) An authorised officer may require any evidence that is to be given in compliance with a notice under subsection (3) or (4) to be given on oath or affirmation and for that purpose the authorised officer may administer an oath or affirmation.
- (6) A person must not, without reasonable excuse, refuse or fail to comply with a notice under subsection (3) or (4) to the extent that the person is capable of complying with the notice.
Penalty for this subsection: a fine of \$3 000.
- (7) A person must not, in purported compliance with a notice under subsection (3) or (4), give evidence that is, to the knowledge of the person, false or misleading in a material particular.
Penalty for this subsection: a fine of \$6 000.
- (8) Where —
- (a) a police officer has reasonable grounds for suspecting that there may be, at any time within the next following 24 hours, upon any land or upon or in any premises,

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vessel, aircraft or vehicle, a document or other thing that may afford evidence relating to a contravention of section 175U; and

- (b) the police officer has reasonable grounds to believe that, if a notice under this section were issued for the production of the document or other thing, the document or other thing might be concealed, lost, mutilated or destroyed,

the police officer may make an application to a judge for the issue of a warrant under subsection (9).

- (9) Subject to subsection (10), where an application under subsection (8) is made by a police officer to a judge, the judge may issue a warrant authorising the police officer or any other person named in the warrant, with such assistance as the person named in the warrant thinks necessary and if necessary by force —
 - (a) to enter upon the land or upon or into the premises, vessel, aircraft or vehicle; and
 - (b) to search the land, premises, vessels, aircraft or vehicle for documents or other things that may afford evidence relating to a contravention of section 175U, being documents or other things of a kind described in the warrant; and
 - (c) to seize any documents or other things of the kind referred to in paragraph (b).
- (10) A judge shall not issue a warrant under subsection (9) unless —
 - (a) an affidavit has been given to the judge setting out the grounds on which the issue of the warrant is being sought; and
 - (b) the police officer applying for the warrant or some other person has given to the judge, either orally or by affidavit, such further information (if any) as the judge

- requires concerning the grounds on which the issue of the warrant is being sought; and
- (c) the judge is satisfied that there are reasonable grounds for issuing the warrant.
- (11) Where a judge issues a warrant under subsection (9), the judge shall state on the affidavit given under subsection (10)(a) which of the grounds specified in that affidavit the judge has relied on to justify the issue of the warrant and particulars of any other grounds relied on by the judge to justify the issue of the warrant.
- (12) A warrant issued under subsection (9) shall —
- (a) include a statement of the purpose for which the warrant is issued, which shall include a reference to the contravention of section 175U in relation to which the warrant is issued; and
 - (b) state whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (c) include a description of the kind of documents or other things authorised to be seized; and
 - (d) specify a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.
- (13) Where a document or other thing is seized by a person pursuant to a warrant issued under subsection (9) —
- (a) the person may retain the document or other thing so long as is reasonably necessary for the purposes of the investigation to which the document or other thing is relevant; and
 - (b) when the retention of the document or other thing by the person ceases to be reasonably necessary for those purposes, the person shall cause the document or other thing to be delivered to the person who appears to the

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first-mentioned person to be entitled to possession of the document or other thing.

- (14) In performing functions under this section the Electoral Commissioner and any authorised officer shall ensure, as far as practicable, that there is no duplication of functions performed or being performed under section 316 of the *Commonwealth Electoral Act 1918*.

[Section 175W inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26); amended: No. 55 of 2006 s. 10; No. 30 of 2023 s. 149.]

175X. Lodging incomplete disclosure documents

- (1) If a person who is required to lodge a disclosure document under this Part cannot complete the document because the person is unable to obtain particulars that are required for the preparation of the document, the person may —
- (a) prepare the document to the extent that it is possible to do so without those particulars; and
 - (b) lodge the document so prepared; and
 - (c) give to the Electoral Commissioner written notice —
 - (i) identifying the document; and
 - (ii) stating that the document is incomplete by reason that the person is unable to obtain certain particulars; and
 - (iii) identifying those particulars; and
 - (iv) setting out the reasons why the person is unable to obtain those particulars; and
 - (v) if the person believes, on reasonable grounds, that another person whose name and address the person knows can give those particulars, stating that belief and the reasons for it and the name and address of that other person.

- (2) A person who lodges a disclosure document under this Part and gives a notice under subsection (1)(c) does not, for the purposes of section 175U(2), lodge a disclosure document that is incomplete by reason of the omission of the particulars identified under subsection (1)(c)(iii).
- (3) If the Electoral Commissioner has been informed under subsection (1)(c)(v) or (4)(e) that a person can supply particulars that have not been included in a disclosure document, the Electoral Commissioner may, by written notice served on the person, require the person to supply those particulars to the Electoral Commissioner, in writing, within the time specified in the notice.
- (4) If a person who is required to supply particulars under subsection (3) is unable to obtain some or all of the particulars, the person must give to the Electoral Commissioner a written notice —
- (a) setting out the particulars (if any) that the person is able to give; and
 - (b) stating that the person is unable to obtain some or all of the particulars; and
 - (c) identifying the particulars the person is unable to obtain; and
 - (d) setting out the reasons why the person is unable to obtain those particulars; and
 - (e) if the person believes, on reasonable grounds, that another person whose name and address the person knows can give those particulars, stating that belief and the reasons for it and the name and address of that other person.
- (5) A person who gives a notice under subsection (4) does not, for the purposes of section 175U(2), lodge a disclosure document

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that is incomplete by reason of the omission of the particulars identified under subsection (4)(c).

[Section 175X inserted: No. 30 of 2023 s. 150.]

175Y. Extension of time to lodge annual return

If during the period from 30 June to 30 November in any year —

- (a) the polling in a general election is conducted; or
- (b) the writ for a general election is issued,

the Electoral Commissioner, by notice published in the *Gazette*, may extend the period within which returns under section 175N or 175NA have to be lodged so that it ends on a day specified in the notice.

[Section 175Y inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26); amended: No. 36 of 2000 s. 20.]

175Z. Verifying information in disclosure documents

Regulations may require information contained in a disclosure document (other than an annual return under Division 2B) lodged with the Electoral Commissioner under this Part to be verified or substantiated in accordance with the regulations.

Note for this section:

See section 175LQ in relation to an annual return lodged under Division 2B.

[Section 175Z inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26); amended: No. 30 of 2023 s. 151.]

175ZA. Non-compliance with Part does not affect election

- (1) A 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), if the agent of a candidate who is elected at an election fails to comply with a

provision of this Part in relation to the election, that failure does not invalidate the election of the candidate.

- (3) Without limiting the generality of subsection (1), if the agent of a group, being a group one or more of the persons included in which is or are elected at an election, fails to comply with a provision of this Part in relation to the election, that failure does not invalidate the election of the person or persons.

[Section 175ZA inserted: No. 75 of 1992 s. 4.]

175ZB. Amending disclosure documents and claims

- (1) Where the Electoral Commissioner is satisfied that a disclosure document or claim under this Part contains a formal error or is subject to a formal defect, the Electoral Commissioner may amend the disclosure document or claim to the extent necessary to correct the error or remove the defect.
- (2) A person who has lodged a disclosure document or claim under this Part may request the permission of the Electoral Commissioner to make a specified amendment of the disclosure document or claim for the purpose of correcting an error or omission.
- (2a) If the disclosure document or claim was lodged by a person as the registered agent of a political party or as the financial controller of an associated entity, a request under subsection (2) may be made either —
- (a) by that person; or
 - (b) by the person who is currently the registered agent of the political party or the financial controller of the associated entity, as the case may be.
- (3) A request under subsection (2) shall be made by notice in writing signed by the person making the request.
- (4) Where —
- (a) a request has been made under subsection (2); and

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- (b) the Electoral Commissioner is satisfied that there is an error in, or omission from, the disclosure document or claim to which the request relates,

the Electoral Commissioner shall permit the person making the request to amend the disclosure document or claim in accordance with the request.

- (5) Where the Electoral Commissioner decides to refuse a request under subsection (2), the Commissioner shall give to the person making the request written notice of the reasons for the decision.
- (6) An officer authorised for the purpose by the Electoral Commissioner may exercise the power of the Electoral Commissioner under subsection (4).
- (7) Where an officer acting under subsection (6) decides to refuse a request under subsection (2) —
- (a) subsection (5) applies as if the officer were the Electoral Commissioner; and
- (b) the person who made the request may, by written notice lodged with the Electoral Commissioner within 28 days after notice of the refusal was given, request the Electoral Commissioner to review the decision.
- (8) Where a request is made under subsection (7), the Electoral Commissioner shall review the decision to which the request relates and make a fresh decision.
- (9) The amendment of a disclosure document or claim under this section does not affect the liability of a person to be convicted of an offence against section 175U(2), (3) or (4) arising out of the furnishing of the disclosure document or claim.

[Section 175ZB inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26); amended: No. 55 of 2006 s. 11; No. 30 of 2023 s. 152.]

175ZC. Public availability of documents under this Part

- (1) The Electoral Commissioner must keep a copy of each claim lodged under Division 2A and each disclosure document lodged under this Part at the principal office of the Western Australian Electoral Commission.
- (2) The Electoral Commissioner must, as soon as practicable after a claim is lodged under Division 2A or a disclosure document is lodged under this Part, publish the claim or disclosure document on the Commission website.
- (3) After a claim or disclosure document is published on the Commission website, a person is entitled —
 - (a) to peruse a copy of the claim or disclosure document at the principal office of the Western Australian Electoral Commission; and
 - (b) if the person pays a fee determined by the Electoral Commissioner to cover the cost of copying, to obtain a copy of the claim or disclosure document from the principal office of the Western Australian Electoral Commission.
- (4) The Electoral Commissioner must ensure that the following information is not published under subsection (2) or available for perusal or to be copied under subsection (3) —
 - (a) information about a person's bank accounts or other similar financial details;
 - (aa) a person's address other than their postcode;
 - (b) other personal information the Electoral Commissioner considers is not appropriate to publish because publication of the information places the personal safety of the person to whom the information relates, or the members of the family of that person, at risk.

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- (5) If a person informs the Electoral Commissioner when lodging a claim under Division 2A or disclosure document under this Part that the person is a silent elector, or enrolled on a roll in the Commonwealth or another State or a Territory with equivalent status as a silent elector, the Electoral Commissioner must ensure that the person's address (including their postcode) is not published under subsection (2) or available for perusal or to be copied under subsection (3).

[Section 175ZC inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26); amended: No. 55 of 2006 s. 12; No. 30 of 2023 s. 153; No. 24 of 2024 s. 11.]

175ZD. Unincorporated party, proceedings against

- (1) A proceeding in respect of an offence against this Part alleged to be committed by a political party that is not a body corporate, or in respect of any amount recoverable from such a party under section 175LH(4), 175LI(2) or 175R(5), may be instituted against an officer or officers of the party as a representative or representatives of the members of the party, and a proceeding so instituted shall be deemed to be a proceeding against all the persons who were members of the party at any relevant time.
- (2) For the purposes of enforcing any judgment or order given or made in a proceeding under this Part against a party that is not a body corporate, process may be issued and executed against any property of the party, or any property in which the party has, or any members of the party have in their capacity as such members, a beneficial interest, whether vested in trustees or however otherwise held, as if the party were a body corporate and the absolute owner of the property or interest, but no process shall be issued or executed against any other property of members, or against any property of officers, of the party.

[Section 175ZD inserted: No. 75 of 1992 s. 4; amended: No. 55 of 2006 s. 13.]

175ZE. Public agencies to report on certain expenditure

- (1) If a public agency is required to publish an annual report under Part 5 of the *Financial Management Act 2006* or any other written law, the principal officer of the public agency shall ensure that a statement is included in the annual report setting out the details mentioned in subsection (2) of all expenditure incurred by or on behalf of the public agency during the reporting period in relation to the following —
- (a) advertising agencies;
 - (b) market research organisations;
 - (c) polling organisations;
 - (d) direct mail organisations;
 - (e) media advertising organisations.
- (2) The details to be set out in the statement are —
- (a) the total amount of the expenditure; and
 - (b) in relation to each class of expenditure constituted by a paragraph of subsection (1) —
 - (i) the amount of the expenditure for the class; and
 - (ii) the name of each person, agency or organisation to whom an amount was paid.
- (3) The principal officer does not have to set out the details mentioned in subsection (2)(b) in relation to a class of expenditure if the amount of the expenditure for the class is less than the specified amount.

[Section 175ZE inserted: No. 75 of 1992 s. 4; amended: No. 77 of 2006 Sch. 1 cl. 51.]

175ZF. Regulations for this Part

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Part to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Part and, in particular —

[(a) deleted]

- (aa) requiring the agent of a political party to lodge returns or other information identifying an incorporated body, unincorporated body or trustee of a trust that is or has been an associated entity in relation to that political party; and

[(ab) deleted]

- (ac) imposing such requirements as are necessary to ensure that the provisions of this Part as to the lodgment of disclosure documents in relation to a political party are complied with even if the political party ceases to exist; and

- (b) requiring the making, keeping and auditing of records of —

- (i) political contributions and other income received by political parties and associated entities; and
- (ii) political contributions received in respect of elections by candidates, groups and other persons; and
- (iii) electoral expenditure incurred in respect of elections by political parties, candidates, groups and other persons,

and requiring or otherwise providing for the production, examination and copying of those records; and

[(ba) deleted]

- (c) providing that contravention of a regulation constitutes an offence and providing for penalties not exceeding a fine of \$3 000 for offences against the regulations.

[(2) *deleted*]

[Section 175ZF inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26); amended: No. 36 of 2000 s. 61; No. 30 of 2023 s. 154.]

175ZG. Annual report by Electoral Commissioner

- (1) As soon as practicable after the end of the period within which returns under sections 175N and 175NA have to be lodged in relation to a financial year, the Electoral Commissioner shall prepare and submit to the Minister a report on the operation of this Part in relation to that financial year.
- (2) The Minister shall cause a copy of each report submitted under subsection (1) to be laid before each House of Parliament as soon as practicable after receiving the report.

[Section 175ZG inserted: No. 75 of 1992 s. 4 (as amended: No. 43 of 1996 s. 26).]

[176-178. Deleted: No. 39 of 1979 s. 25.]

Part VII — Electoral offences

179. Purpose of this Part

To secure the due execution of this Act and the purity of elections, this Part sets out criminal and other sanctions for the following —

- (a) breach or neglect of official duty;
- (b) illegal practices;
- (c) electoral offences.

[Section 179 inserted: No. 30 of 2023 s. 155.]

180. Term used: breach or neglect of official duty

Breach or neglect of official duty includes —

- (1) any attempt by any officer to influence the vote of any elector, or, except by recording their vote, the result of any election;
- (2) the disclosure of any knowledge officially acquired by any officer or scrutineer touching the vote of any elector;
- (3) any neglect or refusal by any officer to discharge any official duty, and any violation by any officer of any provision of this Act.

Breach or neglect of official duty is punishable by imprisonment not exceeding 1 year.

[Section 180 amended: No. 53 of 1957 s. 14; No. 113 of 1965 s. 8; No. 64 of 2006 s. 42; No. 30 of 2023 s. 182.]

181. Offence of bribery

Any person who —

- (a) promises, or offers, or suggests any valuable consideration, advantage, recompense, reward, or benefit for or on account of, or to induce any

candidature or withdrawal of candidature, or any vote or omission to vote, or any support of, or opposition to, any candidate, or any promise of any such vote, omission, support, or opposition; or

- (b) gives or takes any valuable consideration, advantage, recompense, reward, or benefit for, or on account of, any such candidature, withdrawal, vote, omission, support or opposition, referred to in paragraph (a), or promise thereof; or
- (c) promises, offers, or suggests any valuable consideration, advantage, recompense, reward or benefit for bribery, or gives or takes any valuable consideration, advantage, recompense, reward, or benefit for bribery; or
- (d) directly or indirectly makes overtures to any person for the acquiring by gift or purchase, or who acquires by gift or purchase from any person, a postal ballot paper; or
- (e) being an elector directly or indirectly makes overtures to any person for the giving away, or parting with the possession of, or selling, a postal ballot paper; or who gives away a postal ballot paper; or who sells a postal ballot paper; or, except as provided for in Part IV Division 3A Subdivision 6, parts with the possession of a postal ballot paper,

is guilty of bribery.

[Section 181 amended: No. 53 of 1957 s. 15; No. 51 of 1962 s. 9; No. 39 of 1979 s. 5; No. 66 of 1983 s. 5; No. 36 of 2000 s. 48(1); No. 30 of 2023 s. 156.]

182. Term used: bribery

Without limiting the effect of the general words in the preceding section, ***bribery*** particularly includes the supply of food, drink, or entertainment after the nominations have been officially

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declared, or transport for any voter whilst going to or returning from the poll, with a view to influencing the vote of an elector.

[Section 182 amended: No. 51 of 1962 s. 10; No. 39 of 1979 s. 5; No. 66 of 1983 s. 6; No. 64 of 2006 s. 43.]

183. Offence of undue influence

Any person who —

- (1) threatens, offers, or suggests any violence, injury, punishment, damage, loss, or disadvantage for or on account of or to induce any candidature, or withdrawal of candidature, or any vote or any omission to vote, or any support or opposition to any candidate, or any promise of any vote, omission, support, or opposition;
- (2) or uses, causes, inflicts, or procures any violence, punishment, damage, loss, or disadvantage for or on account of any such candidature, withdrawal, vote, omission, support or opposition, referred to in paragraph (1);
- (3) or by spoken words, or by written or printed words or signs in any form whatsoever, publishes any matter intended or intending to prevent or restrain the free exercise of the franchise by any person, or which threaten, offer, or suggest any damage, loss, or disadvantage, either in the present or in the future, to any person on account of their political opinions;
- (4) or in any way interferes with any elector, either in a place to vote, or within 6 m from a designated entrance for the place to vote, with the intention of influencing the elector or advising the elector as to their vote;

[(5), (6) deleted]

- (7) or, being a candidate attends at any meeting of electors other than the candidate's committee held for electoral purposes on polling day,

is guilty of undue influence.

[Section 183 amended: No. 63 of 1948 s. 26; No. 59 of 1959 s. 13; No. 51 of 1962 s. 11; No. 94 of 1972 s. 4; No. 39 of 1979 s. 5; No. 66 of 1983 s. 7; No. 7 of 2009 s. 15; No. 35 of 2012 s. 31; No. 30 of 2023 s. 157.]

184. Term used: undue influence

Without limiting the effect of the general words in the preceding section, ***undue influence*** includes every interference or attempted interference with the free exercise of the franchise of any voter.

[Section 184 amended: No. 51 of 1962 s. 12; No. 39 of 1979 s. 5; No. 66 of 1983 s. 8.]

185. Exception to what is bribery or undue influence

No declaration of public policy or promise of public action shall be deemed bribery or undue influence.

186. Disqualification for bribery or undue influence

Any person who —

- (a) is convicted of bribery or undue influence, or of attempted bribery or undue influence, at an election; or
- (b) is found by the Court of Disputed Returns to have committed or attempted to commit bribery or undue influence when a candidate,

during a period of 4 years from the date of the conviction or finding, is disqualified from being elected as, or from being, a member of the Council or the Assembly.

[Section 186 amended: No. 64 of 2006 s. 53; No. 30 of 2023 s. 158.]

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187. Illegal practices defined

(1A) In this section —

electoral material means any advertisement, handbill, pamphlet, notice, letter or article that is intended or calculated to affect the result of an election.

(1) The following are *illegal practices* —

- (a) bribery;
- (b) undue influence;
- (c) publishing any of the following publications without publishing at the end of the publication the name and address of the person authorising it —
 - (i) an electoral advertisement (other than an advertisement in a newspaper announcing the holding of a meeting);
 - (ii) a handbill, or pamphlet, other than a how-to-vote card;
- (d) publishing a how-to-vote card without stating the name and address of the person, political party or group authorising it on each side of the card where the statement referred to in section 89B(1)(b) is printed;
- (e) issuing electoral material not referred to in paragraphs (c) and (d) without publishing the name and address of the person authorising the material at the end of it;
- (f) the illegal practices referred to in sections 187A and 187B.

(2) Subsections (1)(c) and (e) do not apply in relation to —

- (a) T-shirts, lapel buttons, lapel badges, pens, pencils or balloons; or
- (b) business or visiting cards that promote the candidacy of any person in an election; or

- (c) letters and cards —
 - (i) that bear the name and address of the sender; and
 - (ii) that do not contain a representation or purported representation of a ballot paper for use in an election;
 - or
 - (d) an article included in a prescribed class of articles.
- (3) Nothing in subsection (2)(a), (b) or (c) is to be regarded as limiting, by implication, the kind of regulations that can be made for the purposes of subsection (2)(d).

[Section 187 amended: No. 68 of 1964 s. 36; No. 39 of 1979 s. 26; No. 36 of 2000 s. 79; No. 30 of 2023 s. 159.]

187A. Intentionally rendering person unable to vote etc.

- (1) A person who does any act or engages in any course of conduct intending that as a result thereof another person —
- (a) will be rendered; or
 - (b) will be encouraged or assisted to render themselves,
- unable to vote or mentally incapable of voting commits an offence and is liable to be punished under section 188(2).
- (2) Subject to proof of the other elements of the offence, a person is guilty of an offence under subsection (1) notwithstanding that —
- (a) the other person was not rendered or did not render themselves unable or incapable as mentioned therein; or
 - (b) the other person did vote.
- (3) An act or course of conduct which is made an offence under subsection (1) is also an illegal practice for the purposes of this Act.

[Section 187A inserted: No. 52 of 1980 s. 2; amended: No. 30 of 2023 s. 182.]

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187B. Electoral advertisement on internet, when publishing is an illegal practice

- (1) A person is guilty of an illegal practice if —
- (a) the person publishes an electoral advertisement on the internet or causes, permits or authorises an electoral advertisement to be published on the internet; and
 - (b) the electoral advertisement is intended to affect voting in an election; and
 - (c) the electoral advertisement is paid for by the person or another person; and
 - (d) the name and address of the person who authorised the advertisement do not appear at the end of the advertisement.
- (2) Subsection (1) does not apply if the matter published on the internet forms part of a general commentary on an internet website.

[Section 187B inserted: No. 64 of 2006 s. 44.]

188. Offences and penalties for illegal practices

- (1) A person who engages in bribery or undue influence in relation to a postal ballot paper or postal voting commits a crime.
Penalty for this subsection: imprisonment for 2 years.
- (1A) A person who engages in bribery or undue influence other than in relation to a postal ballot paper or postal voting commits an offence.
Penalty for this subsection: imprisonment for 12 months.
- (2) Any other illegal practice is punishable —
- (a) if the offence relates to a postal ballot paper or postal voting, by imprisonment for 12 months;

(b) in any other case, by a fine of \$6 000.

[Section 188 inserted: No. 64 of 2006 s. 45; amended: No. 30 of 2023 s. 160.]

189. Gift etc. by candidate to club etc., offence in some cases

Any person who, having announced themselves as a candidate, shall, after the date for an election is ascertained, and within 3 months of the polling day, offer, promise, or give, directly or indirectly, to or for any club or other association, any gift, donation, or prize, shall be guilty of an offence against this Act, unless such gift, donation or prize is similar to one that the person has given to that club or association before the date on which they announced themselves as a candidate:

Provided that no proceeding shall be taken for a contravention of this section except within 3 months after the act complained of.

[Section 189 amended: No. 68 of 1964 s. 37; No. 30 of 2023 s. 182.]

190. Electoral offences and punishments

- (1) A person who impersonates a person to secure a ballot paper to which the impersonator is not entitled commits a crime.
Penalty for this subsection: imprisonment for 2 years.
- (2) A person who impersonates any other person for the purpose of voting commits a crime.
Penalty for this subsection: imprisonment for 2 years.
- (3) A person who fraudulently destroys or defaces a nomination or ballot paper commits a crime.
Penalty for this subsection: imprisonment for 2 years.
- (4) A person who forges a nomination or ballot paper commits a crime.
Penalty for this subsection: imprisonment for 2 years.

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- (5) A person who uses a nomination or ballot paper knowing that it is forged commits a crime.

Penalty for this subsection: imprisonment for 2 years.

- (6) The matters mentioned in the first column of the Table are electoral offences, punishable as provided in the second column of the Table opposite the statement of the offence.

Table of electoral offences and punishments

First Column — Offences	Second Column — Punishments
Fraudulently putting any ballot or other paper into the ballot box.	Penalty not exceeding \$6 000.
Fraudulently taking any ballot paper out of a place to vote.	Penalty not exceeding \$6 000.
A person misconducting themselves, or failing to obey the lawful directions of a presiding officer, in a place to vote on a day on which voting occurs at the place to vote, or in a counting place.	Penalty not exceeding \$1 000.
Supplying ballot papers without authority.	Penalty not exceeding \$6 000.
Unlawfully destroying, taking, opening, or otherwise interfering with ballot boxes or ballot papers.	Imprisonment not exceeding 9 months.
Voting more than once at the same election.	Imprisonment not exceeding 12 months.
Wilfully making a false statement in any objection to any claim or to any name on the register of electors or a roll.	Imprisonment not exceeding 12 months.
Wagering on the result of any election.	Penalty not exceeding \$1 000.
Wilfully defacing, mutilating, destroying, or removing any notice, list, or other document	Penalty not exceeding \$1 000.

First Column — Offences	Second Column — Punishments
affixed by any returning officer or by their authority.	
Wilfully making false statement in any claim other than a false statement as to any entitlement under section 17(1)(a) or (c) or (2), or wilfully making false statement in any application, return, or declaration, or in answer to a question under this Act.	Imprisonment not exceeding 12 months.
Wilfully making false statement in any claim as to any entitlement under section 17(1)(a) or (c) or (2).	Penalty not exceeding \$1 000.
Signing as the claimant on a claim to be enrolled as an elector the name of any other person with or without the authority of such person.	Imprisonment not exceeding 12 months.
Distributing any advertisement, handbill, or pamphlet published in contravention of section 187.	Penalty not exceeding \$2 000.
The wearing or displaying by an officer or election campaign worker within a place to vote on a day on which voting occurs at the place to vote of any badge or emblem of a candidate or political party.	Penalty not exceeding \$50.
During the polling at any election wilfully taking any ballot paper out of a place to vote except to 1 of the voting compartments.	Penalty not exceeding \$1 000.

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First Column — Offences	Second Column — Punishments
Any contravention of this Act for which no other punishment is provided.	Penalty not exceeding \$1 000.

[Section 190 amended: No. 5 of 1918 s. 4; No. 63 of 1948 s. 27; No. 57 of 1952 s. 13; No. 68 of 1964 s. 38; No. 113 of 1965 s. 8; No. 33 of 1967 s. 17; No. 39 of 1979 s. 27; No. 31 of 1982 s. 5; No. 9 of 1983 s. 23; No. 79 of 1987 s. 72; No. 78 of 1995 s. 147; No. 50 of 2003 s. 56(4); No. 74 of 2003 s. 47(3); No. 64 of 2006 s. 46; No. 30 of 2023 s. 161.]

191. False statement in electoral paper

- (1) A person must not knowingly or wilfully make a false statement in any electoral paper, or in answer to any question under this Act, or in any information supplied to any officer for the purposes of updating the register of electors or preparing, altering or amending a roll.

Penalty for this subsection: a fine of \$1 000.

- (2) Subsection (1) does not affect the liability of any person to be proceeded against in respect of any other offence, but the person is not liable to be punished twice in respect of the same offence.
- (3) In this section the words *electoral paper* include any prescribed form.

[Section 191 inserted: No. 5 of 1918 s. 5; amended: No. 59 of 1919 s. 6; No. 113 of 1965 s. 8; No. 64 of 2006 s. 47; No. 30 of 2023 s. 162.]

191A. Misleading or deceptive publication

- (1) A person must not, during the relevant period in relation to an election, print, publish or distribute, or cause, permit or authorise to be printed, published or distributed, any matter or

thing that is likely to mislead or deceive an elector in relation to the casting of the elector's vote.

Penalty for this subsection: a fine of \$2 000.

- (2) A person must not, during the relevant period in relation to an election, print, publish or distribute, or cause, permit or authorise to be printed, published or distributed, an advertisement, handbill, pamphlet or notice that contains a representation or purported representation of a ballot paper for use in that election that is likely to induce an elector to mark their ballot paper otherwise than in accordance with the directions on the ballot paper.

Penalty for this subsection: a fine of \$2 000.

- (3) In a prosecution of a person for an offence against subsection (1), it is a defence if the person proves that they did not know, and could not reasonably be expected to have known, that the matter or thing was likely to mislead an elector in relation to the casting of the elector's vote.

- (4) In this section —

publish includes publish by radio or television or by electronic communication;

relevant period, in relation to an election, means the period commencing on the day that notice of issue of the writ for the election is published in the *Government Gazette* pursuant to section 65 and ending at the latest time on polling day at which an elector in the State could enter a place to vote for the purpose of casting a vote in the election.

[Section 191A inserted: No. 79 of 1987 s. 73; amended: No. 36 of 2000 s. 21 and 80; No. 50 of 2003 s. 56(5); No. 30 of 2023 s. 163.]

s. 191B

191B. Prohibition on distributing or publishing unregistered how-to-vote cards

- (1) A person commits a crime if the person distributes, or causes, permits or authorises the distribution of, a how-to-vote card within 100 m from a place to vote on a day on which voting occurs at the place unless it is a registered how-to-vote card.

Penalty for this subsection: imprisonment for 2 years and a fine of \$24 000.

- (2) A person commits a crime if the person publishes, or causes, permits or authorises the publication of, a how-to-vote card unless it is a registered how-to-vote card.

Penalty for this subsection: imprisonment for 2 years and a fine of \$24 000.

- (3) In a prosecution of a person for an offence against subsection (1) or (2), it is a defence if the person proves that they did not know, and could not reasonably be expected to have known, that the how-to-vote card was not a registered how-to-vote card when the offence is alleged to have been committed.

[Section 191B inserted: No. 30 of 2023 s. 164.]

191C. Registered how-to-vote cards with errors not to be published or distributed

- (1) The accountable person for a how-to-vote card commits a crime if —
- (a) the accountable person receives an error notice with a requirement under section 89F(2)(b)(ii) stated in the error notice; and
 - (b) the accountable person fails to comply with the requirement.

Penalty for this subsection: imprisonment for 2 years and a fine of \$24 000.

- (2) The accountable person for a how-to-vote card commits an offence if —
- (a) the accountable person receives an error notice; and
 - (b) the accountable person fails to comply with a requirement under section 89F(2)(c)(i) or (ii) stated in the error notice.

Penalty for this subsection: a fine of \$2 000.

[Section 191C inserted: No. 30 of 2023 s. 164.]

191D. Presiding officer may inspect and confiscate documents in relation to how-to-vote cards

- (1) If a presiding officer for a place to vote reasonably suspects that a person who is within 100 m from a place to vote on a day on which voting occurs at the place has contravened section 191B or 191C, the presiding officer may require the person to do either or both of the following —
- (a) produce a how-to-vote card the person has in their possession for inspection;
 - (b) give the presiding officer a how-to-vote card that is not a registered how-to-vote card.

- (2) A person to whom a requirement is made under subsection (1) commits a crime if they fail to comply with the requirement.

Penalty: imprisonment for 2 years and a fine of \$24 000.

[Section 191D inserted: No. 30 of 2023 s. 164.]

192. Prohibited acts in or near particular places to vote

- (1) In this section —
- voting day*** —
- (a) means a day on which voting occurs at a place to vote; and
 - (b) includes a day to which polling at a place to vote is adjourned or postponed.

s. 192A

- (2) A person must not do any of the following acts at a place to vote, or within 6 m from a designated entrance for the place to vote, during a voting day —
- (a) canvas for votes;
 - (b) solicit the vote of an elector;
 - (c) induce an elector not to vote for any particular candidate;
 - (d) induce an elector not to vote in the election.

Penalty for this subsection: a fine of \$1 000.

- (3) Despite subsection (2) —
- (a) a person may leave a document in relation to an election at the general office of a mobile voting place that is a location or place, or part of a location or place, referred to in section 90(1)(d) so that it is available on request for an elector who is a resident of the relevant institution; and
 - (b) an election campaign worker accompanying a mobile ballot box at a mobile voting place under section 99(3)(d) may distribute a registered how-to-vote card to persons casting their votes at the mobile voting place.

[Section 192 inserted: No. 30 of 2023 s. 165.]

192A. Loud speakers etc., use of during polling hours

During the hours of polling at any election —

- (a) no candidate shall use or permit to be used; and
- (b) no other person shall use,

any loud speaker, public address system or amplifier whether fixed or mobile, broadcasting van sound system, radio apparatus or any other apparatus or device for the broadcasting or dissemination of any matter intended or likely to affect the result of the election; and

- (c) no person shall make any public demonstration having reference to the election.

Penalty: \$1 000.

[Section 192A inserted: No. 28 of 1970 s. 17; amended: No. 64 of 2006 s. 49.]

193. Person not to conduct petitions, polls or surveys at polling places and mobile voting places or in voting areas

On any day on which voting occurs at a place to vote, a person must not collect, canvass for, solicit or invite signatures or comments for the purpose of any petition, opinion poll or survey, or display or distribute any information for such a purpose —

- (a) at the place to vote; or
- (b) in the voting area for the place to vote.

Penalty: a fine of \$1 000.

[Section 193 inserted: No. 30 of 2023 s. 166.]

194. Failure to transmit claim for enrolment

When any person has signed a claim to be enrolled as an elector, any other person who induces the claimant to let the other person have custody of the claim for transmission to the Electoral Commissioner, and fails without just cause or excuse to transmit the claim to the Electoral Commissioner, shall be guilty of a contravention of this Act.

[Section 194 amended: No. 31 of 1982 s. 6; No. 9 of 1983 s. 25; No. 36 of 2000 s. 28(1); No. 30 of 2023 s. 182.]

195. Electoral Commissioner may require information for particular purposes

- (1) For the purposes of updating the register of electors, preparing any roll or ensuring the enrolment of any elector, the Electoral Commissioner, any enrolment officer, or any person authorised

s. 196

in this behalf by the Electoral Commissioner, may require any person to answer any questions or furnish any return or fill in and sign any claim.

- (2) A person who is required to answer a question under subsection (1) must answer the question truthfully and completely to the best of their knowledge, information and belief.

Penalty for this subsection: a fine of \$1 000.

- (3) A person who is required to furnish a return or fill in and sign a claim under subsection (1) must comply, to the best of their ability, with the requirement.

Penalty for this subsection: a fine of \$1 000.

[Section 195 inserted: No. 59 of 1919 s. 4; amended: No. 113 of 1965 s. 8; No. 40 of 1987 s. 84; No. 36 of 2000 s. 28(2); No. 64 of 2006 s. 50; No. 30 of 2023 s. 167.]

196. Employer to allow employee leave of absence to vote

- (1) If an employee who is an elector notifies the elector's employer before polling day that the elector would like a leave of absence to enable them to vote in any election, the employer must, if the absence desired is necessary to enable the employee to vote in the election, allow them a leave of absence without any penalty or disproportionate deduction of pay for such reasonable period not exceeding 2 hours as is necessary to enable the employee to vote in the election.
- (2) No employee shall, under pretence that they intend to vote in the election, but without the bona fide intention of doing so, obtain leave of absence under this section.
- (3) This section shall not apply to any elector whose absence may cause danger or substantial loss in respect of the employment in which the person is engaged.

[Section 196 amended: No. 30 of 2023 s. 182.]

197. Removing misbehaving persons from places to vote

On each day on which voting occurs at a place to vote, or on a day to which polling at a place to vote is adjourned, a person may be removed, by a police officer authorised by the presiding officer, from the place to vote if the person —

- (a) misconducts themselves; or
- (b) fails to obey the lawful directions of the presiding officer.

[Section 197 inserted: No. 30 of 2023 s. 168.]

198. Re-entering places to vote after being removed

A person who has been removed from a place to vote under section 197 must not re-enter or attempt to re-enter the place without the permission of the presiding officer for the place.

Penalty: a fine of \$2 000.

[Section 198 inserted: No. 30 of 2023 s. 168.]

199. Incurring unauthorised electoral expense on behalf of a candidate

If any person purporting to act for and on behalf of a candidate incurs or authorises any electoral expense without the written authority of the candidate or the candidate's agent authorised in writing, the person is guilty of a contravention of this Act.

[Section 199 amended: No. 30 of 2023 s. 182.]

199A. Interfering with political liberty

- (1) A person shall not hinder or interfere with the free exercise or performance, by any other person, of any political right or duty that is relevant to an election or of the right to make a political gift.

Penalty for this subsection: a fine of \$1 000.

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(2) In subsection (1) —

political gift means a gift to —

- (a) a political party or an associated entity within the meaning of Part 6; or
- (b) a candidate or group in an election; or
- (c) a person to whom section 175Q applies.

[Section 199A inserted: No. 75 of 1992 s. 7; amended: No. 50 of 2003 s. 56(6); No. 30 of 2023 s. 169.]

200. Illegal practice committed indirectly etc., liability for

Every person shall be liable for an illegal practice committed directly or indirectly by the person, or by another person on the first person's behalf, and with their knowledge and authority.

[Section 200 amended: No. 30 of 2023 s. 182.]

201. Attempt to commit offence

Any attempt to commit an offence against this Act shall be an offence against this Act punishable as if the offence has been committed.

202. Evidentiary provision

On any prosecution under this Act the certificate of the Electoral Commissioner or a returning officer that the election mentioned in the certificate was duly held, and that the person named in the certificate was a candidate at the election, shall be evidence of the matter stated.

[Section 202 amended: No. 40 of 1987 s. 84.]

[203. Deleted: No. 51 of 1992 s. 16(4).]

[204. Deleted: No. 30 of 2023 s. 170.]

205. Summary offences and time limit for prosecutions

All offences against this Act which are not crimes shall be punishable on summary conviction, and a prosecution for any such offence may be commenced within 12 months after the offence was allegedly committed.

[Section 205 amended: No. 63 of 1948 s. 29; No. 4 of 2004 s. 58; No. 84 of 2004 s. 80.]

206. *The Criminal Code* Ch. XIV not to apply to parliamentary elections

Nothing contained in Chapter XIV of *The Criminal Code* shall apply to parliamentary elections.

Part VIII — Miscellaneous

206A. Persons who lack capacity to vote

- (1) This section applies if —
- (a) the Electoral Commissioner considers that a person may have a mental impairment so that the person does not have the capacity to vote in an election; and
 - (b) a declaration is not in force in relation to the person under the *Guardianship and Administration Act 1990* section 111.

Note for this subsection:

See section 51AA in relation to persons under declarations made under the *Guardianship and Administration Act 1990* section 111.

- (2) The Electoral Commissioner may give the person a written notice stating —
- (a) that the Electoral Commissioner considers the person may have a mental impairment so that the person does not have the capacity to vote in an election; and
 - (b) that the Electoral Commissioner may remove the name of the person from the register of electors or a roll under this section because the person lacks capacity to vote; and
 - (c) that within the period of 14 days beginning on the day the person is given the notice, the person may make submissions about whether the person objects to the removal of the person's name from the register of electors or the roll.
- (3) If the Electoral Commissioner is satisfied, after having regard to any submissions received under subsection (2)(c), that the person has a mental impairment so that the person does not have the capacity to vote in an election, the Electoral Commissioner may decide to give the person a notice (a ***lack of capacity notice***).

- (4) The lack of capacity notice has effect for the period stated in the notice or, if no period is stated, continues until it is revoked under section 206B(3).
- (5) The lack of capacity notice must state —
 - (a) that the Electoral Commissioner is satisfied that the person lacks capacity to vote; and
 - (b) the Electoral Commissioner’s reasons for being satisfied about that lack of capacity; and
 - (c) the effect of the notice under sections 18(1)(a) and 51A; and
 - (d) that the notice may be revoked under section 206B if the person does not lack, or no longer lacks, capacity to vote; and
 - (e) the notice has effect for the period stated in the notice or, if no period is stated, until the notice is revoked.
- (6) If, after having regard to any submissions received under subsection (2)(c), the Electoral Commissioner decides not to give the person a lack of capacity notice, the Electoral Commissioner must give the person a written notice advising the person of that decision.

[Section 206A inserted: No. 30 of 2023 s. 171.]

206B. Revoking lack of capacity notice

- (1) A person who is the subject of a lack of capacity notice may apply to the Electoral Commissioner to revoke the notice because the person does not lack, or no longer lacks, the capacity to vote because of a mental impairment.
- (2) The application must be —
 - (a) in writing; and
 - (b) set out the grounds on which the person states that they do not lack, or no longer lack, capacity to vote.

s. 207

- (3) The Electoral Commissioner may, on an application under subsection (1) or on their own motion, revoke a lack of capacity notice if the Electoral Commissioner is satisfied the person does not lack, or no longer lacks, capacity to vote.
- (4) If the Electoral Commissioner revokes a lack of capacity notice under subsection (3), the Electoral Commissioner must give the person who is the subject of the lack of capacity notice a written notice stating that the lack of capacity notice is revoked.
- (5) If, on an application under subsection (1), the Electoral Commissioner decides not to revoke the lack of capacity notice, the Electoral Commissioner must give the person a written notice advising the person of that decision and the reasons for it.

[Section 206B inserted: No. 30 of 2023 s. 171.]

207. Who may witness signatures and take declarations

- (1) The signatures to claims or other forms may be witnessed by an elector, or a person entitled to be enrolled as an elector, of the Commonwealth Parliament or of the Assembly.
- (2) Any declaration required under this Act may be made before any person authorised to witness signatures to claims, and shall have the same force and effect, and in the case of a false declaration shall subject the declarant to the same penalty, as if such declaration had been made before a justice of the peace.
- (3) Any person who witnesses the signature of a claimant without being personally acquainted with the facts, or satisfying themselves by inquiry from the claimant or otherwise that the statements contained in the claim are true, commits an offence and is liable to a fine not exceeding \$100.

[Section 207 inserted: No. 9 of 1983 s. 26; amended: No. 30 of 2023 s. 172.]

208. Service of notices

Without limiting the *Interpretation Act 1984* sections 75 and 76, where any notice or notification is required to be served on, or given or sent to, any person under this Act, the notice or notification may be sent to the person as a letter addressed to the person —

- (a) if the person is an elector — at the elector's electoral address; or
- (b) if the person has notified a postal address to the Electoral Commissioner, at that postal address.

[Section 208 inserted: No. 9 of 1983 s. 27; amended: No. 40 of 1987 s. 84; No. 36 of 2000 s. 28(1); No. 35 of 2012 s. 32; No. 30 of 2023 s. 173.]

209. Electoral papers sent by post, deemed service of

- (1) All electoral papers transmitted through the post, if duly addressed, shall, on proof of posting, be deemed to have been duly served on and received by the person to whom they were addressed on the day when, in the ordinary course of post, they should have been received at their address.
- (2) Subsection (1) applies whether or not this Act provides that the electoral matter in question is to be transmitted by post.

[Section 209 amended: No. 36 of 2000 s. 70; No. 30 of 2023 s. 182.]

210. Electronic communication of electoral matter permitted

- (1) If this Act provides for electoral matter to be transmitted by post, the matter may be transmitted by electronic means if it is practicable to do so.
- (2) Communications under this Act between officers may be transmitted by electronic means in any case.

[Section 210 inserted: No. 36 of 2000 s. 71; amended: No. 64 of 2006 s. 51.]

s. 211A

211A. Certain documents may be transmitted electronically

(1) In this section —

certain document means a claim, nomination, application, notice, objection or other communication that is required or permitted to be transmitted to or from the Electoral Commissioner or any other officer under —

- (a) Part IIIA, IV or 6; or
- (b) any other provision of the Act as is prescribed;

transmitted includes sent, given, made, forwarded by post, delivered to or lodged with.

(2) If the Electoral Commissioner has established procedures for the electronic transmission and recording of data for certain documents, or a case or class of cases of such documents then, despite anything else in this Act, a document transmitted in accordance with those procedures is to be taken to be transmitted under this Act.

(3) If, under this Act, a certain document is required to be signed by a person, then, despite anything else in this Act, that requirement is to be taken to be satisfied in respect of an electronically transmitted document if procedures established under subsection (2) by the Electoral Commissioner include a method to be used to —

- (a) identify the person transmitting the document; and
- (b) indicate the person's intention in respect of the information communicated in the document,

and that method is complied with.

[Section 211A inserted: No. 35 of 2012 s. 6; amended: No. 30 of 2023 s. 174.]

211. Person unable to write may make mark

(1) Any person required by this Act to sign the person's name may, on satisfying an attesting witness that the person is unable to

write, make the person's distinguishing mark, which must be witnessed by the attesting witness and the person's distinguishing mark when so witnessed, is, for the purposes of this Act, deemed to be the personal signature of that person.

(2) Where a person is required by this Act —

- (a) to sign the person's name; or
- (b) make the person's distinguishing mark,

is unable to do either of those things and a legally qualified medical practitioner has certified in writing that the person is so physically incapacitated that the person cannot sign their name or make their distinguishing mark, another person may on behalf of the person sign the name of the person in accordance with the directions of the first-mentioned person.

(3) A certificate referred to in subsection (2) shall be attached to the document to which it relates.

(4) A certificate referred to in subsection (2) is not required in relation to a declaration completed under section 100I.

[Section 211 amended: No. 44 of 1911 s. 39; No. 68 of 1964 s. 39; No. 31 of 1982 s. 7; No. 9 of 1983 s. 28; No. 79 of 1987 s. 75; No. 36 of 2000 s. 47; No. 30 of 2023 s. 175.]

212. Forms, compliance requirements

Strict compliance with the prescribed forms shall not be required, and substantial compliance therewith shall suffice for the purposes of this Act.

[Section 212 amended: No. 44 of 1911 s. 40.]

213. Regulations generally

(1) The Governor may make regulations for carrying out this Act, and prescribing forms for use under this Act.

s. 213A

[(2)-(8) deleted]

[Section 213 amended: No. 44 of 1911 s. 41; No. 33 of 1964 s. 39; No. 40 of 1987 s. 82; No. 79 of 1987 s. 76; No. 36 of 2000 s. 81(1); No. 20 of 2021 s. 89.]

213A. Regulations affecting certain candidates

The Governor may make regulations —

- (a) requiring a person who holds any office or place mentioned in Part 2 of Schedule V to the *Constitution Acts Amendment Act 1899*, not being an office also mentioned in Part 1 of that Schedule, and who is nominated for election under this Act to take leave of absence from that office or place and —
 - (i) prescribing the period during which that leave of absence shall be taken;
 - (ii) authorising that leave of absence to be granted and taken notwithstanding anything contained in the Act under which that person is appointed or employed;
 - (iii) providing for that leave of absence to be taken without pay except to the extent to which that person has an accrued entitlement to, and applies for, leave of absence with pay;
- (b) prohibiting a person who is a member of any body mentioned in Part 3 of Schedule V to the *Constitution Acts Amendment Act 1899* and who is nominated for election under this Act from attending any meeting of that body, or carrying out any function or duty as a member of that body, or receiving any salary, fees, allowances, expenses or other remuneration as a member of that body and —
 - (i) prescribing the period during which those prohibitions shall have effect;

- (ii) providing that those prohibitions shall have effect notwithstanding anything to the contrary in the Act under which that person is appointed;
- (iii) providing for consequential matters in relation to membership of that body.

[Section 213A inserted: No. 78 of 1984 s. 17.]

[214.] *Omitted under the Reprints Act 1984 s. 7(4)(f).]*

Part 9 — Transitional provisions

[Heading inserted: No. 20 of 2021 s. 90; amended: No. 30 of 2023 s. 176.]

Division 1 — Transitional provisions for *Constitutional and Electoral Legislation Amendment (Electoral Equality) Act 2021*

[Heading inserted: No. 30 of 2023 s. 177.]

215. Terms used

In this Division —

amending provisions means the *Constitutional and Electoral Legislation Amendment (Electoral Equality) Act 2021* Parts 3 and 4;

commencement day means the day on which the *Constitutional and Electoral Legislation Amendment (Electoral Equality) Act 2021* section 90 comes into operation;

existing party means a political party that, immediately before commencement day, is a registered political party;

former provisions means this Act and the *Constitution Acts Amendment Act 1899* as they were enacted immediately before commencement day;

previous electoral distribution means the division of the State into regions for the election of members of the Council that took effect on 27 November 2019;

register of political parties has the meaning given in section 62C(1).

[Section 215 inserted: No. 20 of 2021 s. 90; amended: No. 30 of 2023 s. 178.]

216. Vacancies and representation in Legislative Council

Despite the amendments made to this Act and the *Constitution Acts Amendment Act 1899* by the amending provisions, the

former provisions and the previous electoral distribution continue to apply in respect of —

- (a) the filling of a vacancy in the Council under sections 156C and 156D before 22 May 2025; and
- (b) the representation of electoral regions by members of the Council elected —
 - (i) before the commencement of the amending provisions; or
 - (ii) as referred to in paragraph (a).

[Section 216 inserted: No. 20 of 2021 s. 90.]

217. Continued registration of existing parties

- (1) An existing party may, in the period of 12 months beginning on commencement day, make an application to the Electoral Commissioner under this section (an ***application for continued registration***).
- (2) Sections 62E, 62F and 62G apply for the purposes of this section as if references in those sections to an application or an application for registration were references to an application for continued registration.
- (3) The Electoral Commissioner must cancel the registration of an existing party if —
 - (a) the existing party does not make an application for continued registration within the period referred to in subsection (1); or
 - (b) the Electoral Commissioner, after considering an application for continued registration made by the existing party within that period, is satisfied that the application would have been refused under section 62J if the application had been an application for the registration of the existing party.

Electoral Act 1907

Part 9 Transitional provisions

Division 2 Transitional provisions for Electoral Amendment (Finance and Other Matters) Act 2023

s. 218

- (4) Sections 62L(3) to (6) and 62N apply to and in relation to a cancellation of registration under subsection (3) as if it were a cancellation of registration under section 62L (other than because of section 62L(2)(d)).
- (5) If the Electoral Commissioner does not cancel the registration of an existing party under subsection (3), the Electoral Commissioner must replace the information and documents in the register of political parties relating to the existing party with —
 - (a) the information set out in the existing party’s application for continued registration (other than under section 62E(4)(d) as applied by subsection (2)); and
 - (b) any document accompanying the existing party’s application for continued registration (other than under section 62E(4)(da) as applied by subsection (2)).
- (6) Nothing in this section prevents the cancellation of the registration of an existing party under section 62L.

[Section 217 inserted: No. 20 of 2021 s. 90.]

Division 2 — Transitional provisions for *Electoral Amendment (Finance and Other Matters) Act 2023*

[Heading inserted: No. 30 of 2023 s. 179.]

Subdivision 1 — Transitional provisions commencing on day after Royal Assent of *Electoral Amendment (Finance and Other Matters) Act 2023*

[Heading inserted: No. 30 of 2023 s. 179.]

218. Terms used

In this Subdivision —

amended Part 6 Division 2A means Part 6 Division 2A as amended by the *Electoral Amendment (Finance and Other Matters) Act 2023* section 123;

amount change day means the day on which the *Electoral Amendment (Finance and Other Matters) Act 2023* section 123 comes into operation;

commencement day means the day on which the *Electoral Amendment (Finance and Other Matters) Act 2023* section 179 comes into operation;

higher reimbursement amount means the higher reimbursement amount as defined in section 175LB(1) to be inserted by the *Electoral Amendment (Finance and Other Matters) Act 2023* section 123;

independent candidate means a candidate in an election who has not been endorsed by a body or organisation that is, includes or is part of a political party;

lodgment period means the period of 28 days beginning on commencement day;

post-change election means an election held after the amount change day;

pre-commencement registered party means a registered political party the registration for which was in force immediately before commencement day.

[Section 218 inserted: No. 30 of 2023 s. 179.]

219. Pre-commencement registered parties opting in to receive higher reimbursement amount

- (1) The secretary of a pre-commencement registered party may, within the lodgment period, lodge a request in writing to the Electoral Commissioner to receive the higher reimbursement amount under amended Part 6 Division 2A.
- (2) If, during the period beginning on commencement day and ending on the amount change day, a political party becomes a registered political party under this Act, the secretary of the party may, within 28 days after the day on which the party is given written notice of the party's registration under

section 62H(5)(a), lodge a request in writing to the Electoral Commissioner to receive the higher reimbursement amount under amended Part 6 Division 2A.

- (3) The secretary of a registered political party may, in writing, withdraw a request made under subsection (1) or (2) in relation to the party before the amount change day.
- (4) Subsection (5) applies if —
 - (a) a request made under subsection (1) or (2) in relation to a registered political party is withdrawn under subsection (3); and
 - (b) the party endorses at least 1 candidate in an election held on or after the amount change day.
- (5) The request withdrawn under subsection (3) is taken, for the purposes of section 175LC(3), to be a party opt-in request withdrawn under section 175LC(2).
- (6) A request lodged under subsection (1) or (2) that is not withdrawn under subsection (3) before the amount change day is taken to be, on and from that day, a party opt-in request lodged under section 175LC(1).

[Section 219 inserted: No. 30 of 2023 s. 179.]

220. Elected non-party members opting in to receive higher reimbursement amount for next election after amount change day

- (1) In this section —

elected non-party member means a member of the Council or the Assembly who is not a member of a registered political party;

pre-commencement elected non-party member means a person who, immediately before commencement day, is an elected non-party member.

- (2) Despite section 175LCA, a non-party opt-in request cannot be lodged under section 175LCA(1) or (3) in relation to —
 - (a) a person who is a pre-commencement elected non-party member for the next post-change election at which the person is a candidate; or
 - (b) a member (a *relevant member*) of the Council or the Assembly who becomes an elected non-party member other than by being elected during the period beginning on commencement day and ending on the amount change day.
- (3) A person who is a pre-commencement elected non-party member may, within the lodgment period, lodge a request in writing to the Electoral Commissioner to receive the higher reimbursement amount under amended Part 6 Division 2A for the next post-change election at which the person is a non-party candidate.
- (4) A person who is a relevant member may, within 28 days after the day on which they become an elected non-party member, lodge a request in writing to the Electoral Commissioner to receive the higher reimbursement amount under amended Part 6 Division 2A for the next post-change election at which the person is a non-party candidate.
- (5) An elected non-party member who lodges a request under subsection (3) or (4) may, in writing, withdraw the request before the amount change day.
- (6) The request withdrawn under subsection (5) is taken, for the purposes of section 175LCA(3), to be a non-party opt-in request withdrawn under section 175LCA(2) for the post-change election for which it was lodged.
- (7) A request lodged under subsection (3) or (4) that is not withdrawn under subsection (5) before the amount change day is taken to be, on and from that day, a non-party opt-in request

lodged under section 175LCA(1) for the post-change election for which it was lodged.

[Section 220 inserted: No. 30 of 2023 s. 179.]

221. Independent candidates may opt in to receive higher reimbursement amount for next post-change election

- (1) This section applies if, in the period beginning on commencement day and ending on amount change day —
 - (a) a person has nominated as an independent candidate in an election (the *relevant election*); and
 - (b) the polling day for the relevant election is fixed in the writ as being after the amount change day.
- (2) Despite section 175LCA, if the person is elected at the relevant election, a non-party opt-in request cannot be lodged under section 175LCA(1) or (3) in relation to the person for the next post-change election at which the person is an independent candidate.
- (3) The person's agent may, before the hour of nomination for the relevant election, lodge a request in relation to the person in writing to the Electoral Commissioner to receive the higher reimbursement amount under amended Part 6 Division 2A for the next post-change election at which the person is an independent candidate.
- (4) The person's agent may, in writing, withdraw a request made under subsection (3) in relation to the person before the amount change day.
- (5) The request withdrawn under subsection (4) is taken, for the purposes of section 175LCA(3), to be a non-party opt-in request withdrawn under section 175LCA(2) for the post-change election for which it was lodged.
- (6) A request lodged under subsection (3) that is not withdrawn under subsection (4) before the amount change day is taken to

be, on and from the amount change day, a non-party opt-in request lodged under section 175LCA(1) for the post-change election for which it was lodged.

[Section 221 inserted: No. 30 of 2023 s. 179.]

222. Independent candidates may opt in to receive higher reimbursement amount for that election held after amount change day

- (1) This section applies if —
 - (a) a person has nominated before the amount change day as an independent candidate in an election; and
 - (b) the polling day for the election occurs on or after the amount change day.
- (2) The person's agent may, before the hour of nomination for the election, lodge a request in writing to the Electoral Commissioner to receive the higher reimbursement amount under amended Part 6 Division 2A in respect of the election.
- (3) The person's agent may, in writing, withdraw a request made under subsection (2) in relation to the person before the amount change day.
- (4) A request lodged under subsection (2) that is not withdrawn under subsection (3) before the amount change day is taken to be, on and from that day, a non-party opt-in request lodged under section 175LCA(1).

[Section 222 inserted: No. 30 of 2023 s. 179.]

223. Publishing information about who has opted in to receive higher reimbursement amount

- (1) Within 5 days after the day on which the Electoral Commissioner receives a request made under section 219(1) or (2) or 220(3) or (4), the Electoral Commissioner must publish on the Commission website the name of the registered political party in relation to which the request has been lodged.

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- (2) On the next business day after the day on which the hour of nomination occurs for an election, the Electoral Commissioner must publish on the Commission website the names of all independent candidates in relation to whom a request under section 221(3) or 222(2) has been lodged.
- (3) If the Electoral Commissioner receives a written withdrawal of a request under section 219(3) or 220(5), or a written withdrawal of a non-party opt-in request under section 221(4) or 222(3), the Electoral Commissioner must publish on the Commission website that the request has been withdrawn.

[Section 223 inserted: No. 30 of 2023 s. 179.]

Subdivision 2 — Transitional provisions commencing on 1 July 2024

[Heading inserted: No. 30 of 2023 s. 180.]

224. Terms used

In this Subdivision —

commencement day means the day on which the *Electoral Amendment (Finance and Other Matters) Act 2023* section 180 comes into operation;

unamended Act means this Act as in force immediately before commencement day.

[Section 224 inserted: No. 30 of 2023 s. 180.]

225. Former provisions apply if election occurring at commencement

- (1) This section applies if a writ is issued for an election before commencement day and the polling day fixed in the writ for the election is after commencement day.
- (2) Despite the amendments made to this Act by the *Electoral Amendment (Finance and Other Matters) Act 2023*, the unamended Act continues to apply to the election.

[Section 225 inserted: No. 30 of 2023 s. 180.]

226. Persons on rolls before commencement taken to be enrolled on register of electors on commencement day

A person whose name appears on a roll as an elector immediately before commencement day is taken, on commencement day, to be enrolled.

[Section 226 inserted: No. 30 of 2023 s. 180.]

227. Claims for enrolment before commencement

- (1) This section applies if a claim for enrolment is received before commencement day but has not been finally dealt with before commencement day.
- (2) Despite the amendments made to this Act by the *Electoral Amendment (Finance and Other Matters) Act 2023*, the claim may be dealt with under the unamended Act.
- (3) If a claim dealt with under this section is found to be in order, the enrolment officer must enrol the claimant under section 44A as amended by the *Electoral Amendment (Finance and Other Matters) Act 2023*.

[Section 227 inserted: No. 30 of 2023 s. 180.]

228. Enrolment before commencement day taken to be entry of name on register of electors

- (1) If, immediately before commencement day, a person is enrolled on a roll, the person is, on commencement day, taken to be enrolled in accordance with section 40A.
- (2) If, immediately before commencement day, a person is an elector, the person is taken to be enrolled as an elector for the district in respect of which the person is enrolled immediately before commencement day.

[Section 228 inserted: No. 30 of 2023 s. 180.]

229. Pre-commencement arrangements made under former s. 31, 31A and 31B continue

Despite the amendments made to sections 31, 31A and 31B by the *Electoral Amendment (Finance and Other Matters) Act 2023* sections 22, 23 and 25, sections 31, 31A and 31B as in force immediately before commencement day apply to —

- (a) arrangements entered into under those sections before commencement day that are in force; and
- (b) an order made under section 31(3) before commencement day that has not been revoked.

[Section 229 inserted: No. 30 of 2023 s. 180.]

230. Silent electors

- (1) This section applies if a person's residence is not shown on a roll immediately before commencement day because of a request that has been granted under section 51B as in force before commencement day.
- (2) The person is taken to be an elector whose application to be a silent elector is granted on commencement day under section 51B(3) as inserted by the *Electoral Amendment (Finance and Other Matters) Act 2023* section 43.

[Section 230 inserted: No. 30 of 2023 s. 180.]

231. Registration of general early voters continues as general postal voters

- (1) This section applies if a person is registered as a general early voter under section 93 as in force immediately before commencement day.
- (2) The person is taken to have had an application to be a general postal voter granted under section 61.

[Section 231 inserted: No. 30 of 2023 s. 180.]

232. Approved procedures for technology assisted voting

If the Electoral Commissioner has approved procedures for technology assisted voting under former section 99D and the procedures are in force immediately before commencement day, those approved procedures are taken, on and from commencement day, to be approved procedures approved under section 101A.

[Section 232 inserted: No. 30 of 2023 s. 180.]

233. State campaign accounts

(1) In this section —

electoral expenditure, in relation to an election, has the meaning given in section 175AA(1);

section 175LN notice means a written notice that complies with the requirements of section 175LN(1).

(2) In this section the following terms have the meanings given in section 175LL —

authorised deposit-taking institution

participation day

State campaign account

(3) For the purposes of sections 175LM, 175LN and 175U(1) and this section, the first participation day of a person who is, on commencement day, an elected member is the day on which the elected member was nominated for election at the most recent election for which they were a candidate.

(4) Despite section 175LM, a responsible person for a political entity in relation to which a participation day has occurred

before commencement day does not commit an offence under section 175LM(1) if —

- (a) by the end of the period of 5 business days after commencement day —
 - (i) a State campaign account for the political entity is established at an authorised deposit-taking institution; and
 - (ii) a State campaign account for the political entity is kept during the period in which the political entity engages in incurring electoral expenditure in relation to an election; and
 - (iii) the responsible person gives the Electoral Commissioner a section 175LN notice in relation to the State campaign account;

or

 - (b) the responsible person for the political entity complies with section 175LM(2) by the end of the period of 5 business days after commencement day; or
 - (c) the responsible person has a reasonable excuse.
- (5) Despite sections 175LN and 175U, a responsible person for a political entity in relation to which a participation day has occurred before commencement day does not commit an offence under section 175U(1) in relation to the section 175LN notice if —
- (a) by the end of the period of 5 business days after commencement day, the responsible person gives the Electoral Commissioner a section 175LN notice in relation to the political entity's State campaign account; or
 - (b) the responsible person has a reasonable excuse.

- (6) Part 6 Division 5 applies to a section 175LN notice given under subsection (4) or (5) as if it were a disclosure document within the meaning of section 175T(1).

[Section 233 inserted: No. 30 of 2023 s. 180.]

234. Transitional regulations

- (1) In this section —
specified means specified or described in the regulations;
transitional matter —
- (a) means a matter or issue of a transitional nature that arises as a result of any of the amendments to this Act made by the *Electoral Amendment (Finance and Other Matters) Act 2023*; and
 - (b) includes a saving or application matter.
- (2) If there is not sufficient provision in this Act for dealing with a transitional matter, regulations may prescribe all matters that are required, or are necessary or convenient, to be prescribed for dealing with the matter.
- (3) If regulations made under subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in accordance with the *Interpretation Act 1984* section 41(1)(a) but not earlier than commencement day, the regulations have effect according to their terms.
- (4) If regulations made under subsection (2) contain a provision of a kind described in subsection (3), the provision does not operate so as —
- (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day on which those regulations are published; or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day on which those regulations are published.

[Section 234 inserted: No. 30 of 2023 s. 180.]

Schedule 1

[Sections 146I, 156D]

Counting of votes at Council elections

[Heading inserted: No. 40 of 1987 s. 83; amended: No. 20 of 2021 s. 91.]

1. The method of counting the votes to be used by the returning officer to ascertain the result of a Council election shall be as provided in this Schedule.
2. (1) In this Schedule —
ballot paper includes a vote record;
continuing candidate means a candidate not already elected or not excluded from the count.
(2) A reference in this Schedule to votes of or obtained or received by a candidate includes votes obtained or received by the candidate on any transfer under this Schedule.
3. The number of first preference votes given for each candidate and the total number of all such votes shall be ascertained and a quota shall be determined by dividing the total number of first preference votes by 1 more than the number of candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by 1, and any candidate who has received a number of first preference votes equal to or greater than the quota shall be elected.
4. Unless all the vacancies have been filled, the number (if any) of votes in excess of the quota (in this Schedule referred to as *surplus votes*) of each elected candidate shall be transferred to the continuing candidates as follows —
 - (a) the number of surplus votes of the elected candidate shall be divided by the number of first preference votes received by the candidate and the resulting fraction shall be the transfer value;
 - (b) the total number of ballot papers of the elected candidate that express the first preference vote for the candidate and the next

available preference for a particular continuing candidate shall be multiplied by the transfer value, the number so obtained (disregarding any fraction) shall be added to the number of first preference votes of the continuing candidate and all those ballot papers shall be transferred to the continuing candidate,

and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer shall be elected.

5. Unless all the vacancies have been filled, the surplus votes (if any) of any candidate elected under clause 4, or elected subsequently under this clause, shall be transferred to the continuing candidates as follows —

- (a) the number of surplus votes of the elected candidate shall be divided by the number of votes received by the candidate and the resulting fraction shall be the surplus fraction;
- (b) in relation to any particular ballot papers for surplus votes of the elected candidate, the surplus fraction shall be multiplied by the transfer value at which those ballot papers were transferred to the elected candidate, or by 1 if they expressed first preference votes for the elected candidate, and the product shall be the continued transfer value of those particular ballot papers;
- (c) the total number of ballot papers for surplus votes of the elected candidate that each —
 - (i) express the next available preference for a particular continuing candidate; and
 - (ii) have a particular continued transfer value,

shall be multiplied by that transfer value, the number so obtained (disregarding any fraction) shall be added to the number of votes of the continuing candidate and all those ballot papers shall be transferred to the continuing candidate,

and if on the completion of the transfer of the surplus votes of the elected candidate to a particular continuing candidate that candidate has received a number of votes equal to or greater than the quota, that candidate shall be elected.

6. Where a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under clause 4 or 5 of the surplus votes of a particular elected candidate, no votes of any other candidate shall be transferred to the continuing candidate.
- [7. *deleted*]
8. Where, after counting of first preference votes or the transfer of surplus votes (if any) of elected candidates, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes must be excluded and —
- (a) if the ballot papers of the excluded candidate express the first preference vote for the excluded candidate and the next available preference for a particular continuing candidate —
 - (i) the total number of those ballot papers must be added to the number of votes of the continuing candidate; and
 - (ii) all those ballot papers must be transferred to the continuing candidate, each ballot paper at a transfer value of 1;
 - (b) if votes have been obtained by the excluded candidate on a transfer from a particular candidate under this Schedule and ballot papers transferred to the excluded candidate from that candidate express the next available preference for a particular continuing candidate —
 - (i) the total number of those ballot papers that were transferred to the excluded candidate at a particular transfer value must be multiplied by that transfer value; and
 - (ii) the number so obtained (disregarding any fraction) must be added to the number of votes of the continuing candidate; and
 - (iii) all those ballot papers must be transferred to the continuing candidate.

- 8A. If votes have been obtained by the excluded candidate on transfers from 2 or more candidates under this Schedule, clause 8(b) must be applied to those transfers in the order in which they were received, the earliest transfer being dealt with first.
- 8B. A ballot paper must be set aside as exhausted if it is found that the ballot paper expresses no preference for any continuing candidate.
9. Any continuing candidate who has received a number of votes equal to or greater than the quota as a result of a transfer under clause 8 or 10 of votes of an excluded candidate shall be elected, and, unless all the vacancies have been filled, the surplus votes (if any) of the candidate so elected shall be transferred in accordance with clause 5, except that, where the candidate so elected is elected before all the votes of the excluded candidate have been transferred, the surplus votes (if any) of the candidate so elected shall not be transferred until clause 8(a) and (b) have been applied to the remaining votes of the excluded candidate.
10. Subject to clause 12, where, after the application of clause 8(a) and (b) to the votes of an excluded candidate, no continuing candidate has received a number of votes greater than the quota, the continuing candidate who has the fewest votes shall be excluded and clause 8(a) and (b) must be applied to the continuing candidate's votes.
11. Where a candidate is elected as a result of a transfer of the first preference votes of an excluded candidate or a transfer of all the votes of an excluded candidate that were transferred to the excluded candidate from a particular candidate, no other votes of the excluded candidate shall be transferred to the candidate so elected.
12. In respect of the last vacancy for which 2 continuing candidates remain, the continuing candidate who has the larger number of votes shall be elected notwithstanding that that number is below the quota, and if those candidates have an equal number of votes —
- (a) the returning officer shall make out in respect of each of those candidates, a slip bearing the name of the candidate, and deal with the slips in accordance with Schedule 2; and
 - (b) the candidate whose name is on the slip obtained by the returning officer in accordance with clause 5 of Schedule 2 shall be excluded and the other candidate shall be elected.

13. Despite any other provision of this Schedule, if the number of continuing candidates is equal to the number of remaining unfilled vacancies, each of those candidates is elected regardless of whether the candidate has received a number of votes below, equal to or greater than the quota.
14. Subject to clauses 15 and 16, where, after any count or transfer under this Schedule, 2 or more candidates have surplus votes, the order of any transfers of the surplus votes of those candidates shall be in accordance with the relative sizes of the surpluses, the largest surplus being transferred first.
15. Subject to clause 16, where, after any count or transfer under this Schedule, 2 or more candidates have equal surpluses, the order of any transfers of the surplus votes of those candidates shall be in accordance with the relative numbers of votes of those candidates at the last count or transfer at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count or transfer being transferred first, but if there has been no such count or transfer —
 - (a) the returning officer shall make out in respect of each of those candidates, a slip bearing the name of the candidate, and deal with the slips in accordance with Schedule 2; and
 - (b) the candidate whose name is on the slip obtained by the returning officer in accordance with clause 5 of Schedule 2 shall, as between those candidates, be deemed to have had the largest surplus.
16. Where, after any count or transfer under this Schedule, a candidate obtains surplus votes, those surplus votes shall not be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count or transfer.
17. Where the candidate who has the fewest votes is required to be excluded under clause 8 or 10, and 2 or more candidates (in this clause called the *tied candidates*) have an equal number of votes (each other candidate having a larger number of votes) whichever of the tied candidates had the fewest votes at the last count or transfer at which

each of the tied candidates had a different number of votes shall be excluded, but if there has been no such count or transfer —

- (a) the returning officer shall make out in respect of each of the tied candidates a slip bearing the name of the candidate, and deal with the slips in accordance with Schedule 2; and
- (b) the candidate whose name is on the slip obtained by the returning officer in accordance with clause 5 of Schedule 2 shall be excluded.

18. Where a candidate is elected by reason that the number of first preference votes received by the candidate, or the aggregate of first preference votes received by the candidate and all other votes obtained by the candidate on transfers under this Schedule, is equal to the quota, all the ballot papers expressing those votes shall be set aside as finally dealt with.
19. For the purposes of this Schedule, a transfer under clause 4, 5 or 9 of all the surplus votes of an elected candidate, a transfer in accordance with clause 8(a) of all first preference votes of an excluded candidate or a transfer in accordance with clause 8(b) of all the votes of an excluded candidate that were transferred to the candidate from a particular candidate each constitutes a separate transfer.
20. In a case to which section 146E(7) applies, a vote indicated on a ballot paper opposite the name of the deceased candidate must be counted to the candidate next in the order of the elector's preference, and the numbers indicating any subsequent preferences, if any, must be taken to be altered accordingly.

[Schedule 1 inserted: No. 40 of 1987 s. 83; amended: No. 64 of 2006 s. 52; No. 14 of 2016 s. 27; No. 20 of 2021 s. 92 and 94; No. 30 of 2023 s. 181 and 182.]

Schedule 2

[Sections 86, 87, 144;
Schedule 1, clauses 12, 15 and 17]

Ballot procedure

[Heading inserted: No. 40 of 1987 s. 83.]

1. Slips made out for the purposes of section 86(2a), 87(5) or (6) or 144(2)(g) or clause 12, 15 or 17 of Schedule 1 shall be dealt with as provided in this Schedule.
2. In this Schedule **ballot** means a hollow opaque sphere inside which a slip may be enclosed.
3. The returning officer shall place each of the slips in separate ballots of exact similarity, securely close the several ballots, deposit the several ballots in a ballot box, and securely fasten the ballot box.
4. The returning officer shall then shake and rotate the ballot box and shall permit any other person then present to do likewise, if the person so desires.
5. (1) The returning officer shall then —
 - (a) open the ballot box; and
 - (b) take out and open one of the ballots to obtain the slip enclosed therein.
- (2) Where the proceedings are being conducted for the purposes of section 86(2a) or 87(5) or (6) the returning officer shall repeat the procedure mentioned in subclause (1)(b) until no ballots remain in the ballot box.

[Schedule 2 inserted: No. 40 of 1987 s. 83.]

[Schedule 3 deleted: No. 36 of 2000 s. 81(1).]



Notes

This is a compilation of the *Electoral Act 1907* and includes amendments made by other written laws⁵. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Electoral Act 1907</i>	27 of 1907 (7 Edw. VII No. 27)	20 Dec 1907	1 Mar 1908 (see s. 2)
<i>Electoral Act Amendment Act 1911</i>	44 of 1911 (1 Geo. V No. 55)	16 Feb 1911	1 May 1911 (see s. 1)
<i>Electoral Act Amendment Act 1912</i>	56 of 1912 (3 Geo. V No. 37)	30 Dec 1912	30 Dec 1912
<i>Electoral Act Amendment Act 1918</i>	5 of 1918 (8 Geo. V No. 19) (as amended by No. 59 of 1919 s. 6)	18 Mar 1918	18 Mar 1918
<i>Electoral Amendment Act 1919</i>	59 of 1919 (10 Geo. V No. 47)	17 Dec 1919	17 Dec 1919
<i>Electoral Act Amendment Act 1921</i>	7 of 1921 (12 Geo. V No. 7)	26 Oct 1921	26 Oct 1921
Reprint of the <i>Electoral Act 1907</i> in Appendix Session Volume 1928 (includes amendments listed above)			
<i>Electoral Act Amendment Act 1931</i>	38 of 1931 (22 Geo. V No. 38)	3 Dec 1931	3 Dec 1931
<i>Electoral Act Amendment Act 1934</i>	39 of 1934 (25 Geo. V No. 38)	4 Jan 1935	4 Jan 1935

Short title	Number and year	Assent	Commencement
<i>Electoral Act Amendment Act 1936</i>	10 of 1936 (1 Edw. VIII No. 10)	3 Dec 1936	3 Dec 1936
<i>Electoral Act Amendment Act 1940</i>	18 of 1940 (4 Geo. VI No. 18)	29 Nov 1940	29 Nov 1940
<i>Electoral Act Amendment Act 1940 (No. 3)</i>	47 of 1940 (4 & 5 Geo. VI No. 47)	30 Dec 1940	30 Dec 1940
Reprint of the Electoral Act 1907 in Volume 2 of Reprinted Acts ⁵ (includes amendments listed above)			
<i>Electoral Act Amendment Act 1948</i>	63 of 1948 (12 & 13 Geo. VI No. 63)	21 Jan 1949	27 May 1949 (see s. 1 and <i>Gazette</i> 27 May 1949 p. 1133)
Reprint of the Electoral Act 1907 approved 21 Oct 1949 (not in a Volume) (includes amendments listed above and in the <i>Electoral Act Amendment Act 1949</i>)			
<i>Electoral Act Amendment Act 1949</i>	26 of 1949 (13 Geo. VI No. 112)	22 Oct 1949	22 Oct 1949
<i>Electoral Act Amendment Act 1951</i>	58 of 1951 (15 & 16 Geo. VI No. 58)	7 Jan 1952	7 Jan 1952
<i>Electoral Act Amendment Act 1952</i>	57 of 1952 (1 Eliz. II No. 57)	23 Dec 1952	23 Dec 1952
<i>Electoral Act Amendment Act (No. 2) 1953</i>	34 of 1953 (2 Eliz. II No. 34)	18 Dec 1953	18 Dec 1953
Reprint of the Electoral Act 1907 approved 19 Mar 1956 in Volume 9 of Reprinted Acts (includes amendments listed above)			
<i>Electoral Act Amendment Act (No. 2) 1957</i>	53 of 1957 (6 Eliz. II No. 53)	6 Dec 1957	14 Feb 1958 (see s. 2 and <i>Gazette</i> 14 Feb 1958 p. 244)
<i>Electoral Act Amendment Act (No. 3) 1959</i>	59 of 1959 (8 Eliz. II No. 59)	3 Dec 1959	15 Jan 1960 (see s. 2 and <i>Gazette</i> 15 Jan 1960 p. 35)

Short title	Number and year	Assent	Commencement
Reprint of the Electoral Act 1907 approved 26 Feb 1962 (not in a Volume) (includes amendments listed above)			
<i>Electoral Act Amendment Act 1962</i>	51 of 1962 (11 Eliz. II No. 51)	20 Nov 1962	20 Nov 1962
<i>Electoral Act Amendment Act 1964</i>	33 of 1964 (13 Eliz. II No. 33)	3 Nov 1964	31 Dec 1964 (see s. 2 and <i>Gazette</i> 24 Dec 1964 p. 4094)
<i>Electoral Act Amendment Act (No. 3) 1964</i>	68 of 1964 (13 Eliz. II No. 68)	4 Dec 1964	31 Dec 1964 (see s. 2 and <i>Gazette</i> 24 Dec 1964 p. 4094)
Reprint of the Electoral Act 1907 approved 9 Feb 1965 in Volume 19 of Reprinted Acts (includes amendments listed above)			
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
<i>Electoral Act Amendment Act 1967</i>	33 of 1967	17 Nov 1967	24 Nov 1967 (see s. 2 and <i>Gazette</i> 24 Nov 1967 p. 3195)
<i>Electoral Act Amendment Act 1970</i>	28 of 1970	20 May 1970	1 Nov 1970 (see s. 2 and <i>Gazette</i> 30 Oct 1970 p. 3343)
<i>Electoral Act Amendment Act (No. 2) 1970</i>	94 of 1970	30 Nov 1970	5 Dec 1970 (see s. 2 and <i>Gazette</i> 4 Dec 1970 p. 3705)
Reprint of the Electoral Act 1907 approved 12 Jan 1971 (not in a Volume) (includes amendments listed above)			
<i>Metric Conversion Act 1972</i>	94 of 1972	4 Dec 1972	Relevant amendments (see First Sch. ⁶) took effect on 1 Jan 1974 (see s. 4(2) and <i>Gazette</i> 7 Dec 1973 p. 4490)
<i>Electoral Act Amendment Act (No. 2) 1973</i>	70 of 1973	6 Dec 1973	1 Jan 1974 (see s. 2 and <i>Gazette</i> 28 Dec 1973 p. 4725)
<i>Electoral Act Amendment Act (No. 2) 1976</i>	129 of 1976	9 Dec 1976	9 Dec 1976
<i>Electoral Act Amendment Act (No. 2) 1979</i>	39 of 1979	25 Oct 1979	23 Nov 1979 (see s. 2 and <i>Gazette</i> 23 Nov 1979 p. 3635)
<i>Acts Amendment (Master, Supreme Court) Act 1979 Pt. XI</i>	67 of 1979	21 Nov 1979	11 Feb 1980 (see s. 2 and <i>Gazette</i> 8 Feb 1980 p. 383)

Short title	Number and year	Assent	Commencement
<i>Electoral Amendment Act 1980</i>	52 of 1980	19 Nov 1980	19 Nov 1980
Reprint of the Electoral Act 1907 approved 8 Dec 1981 (includes amendments listed above)			
<i>Electoral Amendment Act 1982</i>	31 of 1982	27 May 1982	11 Oct 1982 (see s. 2 and <i>Gazette</i> 10 Sep 1982 p. 3637)
<i>Electoral Amendment Act (No. 2) 1982</i>	123 of 1982	10 Dec 1982	10 Dec 1982
<i>Electoral Amendment Act 1983</i>	9 of 1983	29 Sep 1983	s. 5: 7 Oct 1983 (see s. 2 and <i>Gazette</i> 7 Oct 1983 p. 4066); s. 1-4 and 6-28: 1 Nov 1983 (see s. 2 and <i>Gazette</i> 14 Oct 1983 p. 4147); s. 29-31: 26 Jan 1984 (see s. 2 and <i>Gazette</i> 18 Nov 1983 p. 4559)
<i>Electoral Amendment Act (No. 2) 1983</i>	54 of 1983	13 Dec 1983	13 Dec 1983
<i>Electoral Amendment Act (No. 3) 1983</i>	66 of 1983	22 Dec 1983	26 Jan 1984 (see s. 2 and <i>Gazette</i> 20 Jan 1984 p. 119)
<i>Health Legislation Amendment Act 1984 Pt. VI</i>	28 of 1984	31 May 1984	1 Jul 1984 (see s. 2 and <i>Gazette</i> 15 Jun 1984 p. 1629)
<i>Acts Amendment and Repeal (Disqualification for Parliament) Act 1984 Pt. VII</i>	78 of 1984	14 Nov 1984	1 Jul 1985 (see s. 2 and <i>Gazette</i> 17 May 1985 p. 1671)
<i>Electoral Amendment Act 1984</i>	76 of 1984	26 Nov 1984	s. 1 and 2: 26 Nov 1984; Act other than s. 1 and 2: 24 Dec 1984 (see s. 2 and <i>Gazette</i> 21 Dec 1984 p. 4173)
<i>Electoral Amendment Act (No. 2) 1985</i>	104 of 1985 (as amended by No. 1 of 1987)	7 Dec 1985	s. 1 and 2: 7 Dec 1985; Act other than s. 1 and 2: 1 May 1987 (see s. 3 of Act No. 1 of 1987 and Commonwealth Special <i>Gazette</i> 68 of 1987)
Reprint of the Electoral Act 1907 as at 16 Jun 1986 (includes amendments listed above except those in the <i>Electoral Amendment Act (No. 2) 1985</i>)			

Electoral Act 1907**Notes**

Compilation table

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Electoral Reform) Act 1987 Pt. IV</i> ^{7,8}	40 of 1987	12 Jul 1987	30 Oct 1987 (see s. 2 and <i>Gazette</i> 30 Oct 1987 p. 3977)
<i>Electoral (Procedures) Amendment Act 1987</i>	79 of 1987	1 Dec 1987	s. 1 and 2: 1 Dec 1987; Act other than s. 1 and 2: 16 Feb 1988 (see s. 2 and <i>Gazette</i> 16 Feb 1988 p. 477)
<i>Electoral Amendment Act 1988</i>	20 of 1988	9 Sep 1988	9 Sep 1988 (see s. 2)
<i>Electoral Amendment Act (No. 2) 1988</i>	58 of 1988	8 Dec 1988	s. 1 and 2: 8 Dec 1988; Act other than s. 1 and 2: 27 Jan 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 264)
Reprint of the Electoral Act 1907 as at 1 Jan 1989 (includes amendments listed above except those in the <i>Electoral Amendment Act (No. 2) 1988</i>)			
<i>Guardianship and Administration Act 1990</i> s. 123	24 of 1990	7 Sep 1990	20 Oct 1992 (see s. 2 and <i>Gazette</i> 2 Oct 1992 p. 4811)
<i>Electoral Amendment Act 1990</i>	66 of 1990	17 Dec 1990	14 Jan 1991
<i>Criminal Law Amendment Act (No. 2) 1992</i> s. 16(4)	51 of 1992	9 Dec 1992	6 Jan 1993
<i>Electoral Amendment (Political Finance) Act 1992</i> ⁹	75 of 1992 (as amended by No. 43 of 1996 Pt. 3; No. 64 of 2006 s. 55)	16 Dec 1992	s. 1 and 2: 16 Dec 1992; Act other than s. 1, 2, 5 and 6: 9 Nov 1996 (see s. 2 and <i>Gazette</i> 8 Nov 1996 p. 6265); s. 5 and 6 repealed by No. 64 of 2006 s. 55
<i>Financial Administration Legislation Amendment Act 1993</i> s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Ministry of Justice) Act 1993</i> Pt. 8 ¹⁰	31 of 1993	15 Dec 1993	1 Jul 1993 (see s. 2)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 11	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)

Short title	Number and year	Assent	Commencement
<i>Sentencing (Consequential Provisions) Act 1995</i> Pt. 26 and s. 147	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Electoral Legislation Amendment Act 1996</i> Pt. 2	43 of 1996	16 Oct 1996	9 Nov 1996 (see s. 2(2) and <i>Gazette</i> 8 Nov 1996 p. 6265)
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Mental Health (Consequential Provisions) Act 1996</i> Pt. 6	69 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2)
Reprint of the Electoral Act 1907 as at 22 Apr 1997 (includes amendments listed above except those in the <i>Electoral Amendment (Political Finance) Act 1992</i> s. 5 and 6 and the <i>Mental Health (Consequential Provisions) Act 1996</i>)			
<i>Equal Opportunity Amendment Act (No. 3) 1997</i> s. 8	42 of 1997	9 Dec 1997	6 Jan 1998 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 76	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Acts Repeal and Amendment (Births, Deaths and Marriages Registration) Act 1998</i> s. 11	40 of 1998	30 Oct 1998	14 Apr 1999 (see s. 2 and <i>Gazette</i> 9 Apr 1999 p. 1433)
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 50	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
<i>Electoral Amendment Act 2000</i> ¹¹	36 of 2000	10 Oct 2000	s. 1 and 2: 10 Oct 2000; Act other than s. 1, 2, 28 and Pt. 5: 21 Oct 2000 (see s. 2 and <i>Gazette</i> 20 Oct 2000 p. 5899); s. 28 and Pt. 5: 11 Nov 2000 (see s. 2 and <i>Gazette</i> 10 Nov 2000 p. 6193)
Reprint of the Electoral Act 1907 as at 15 Dec 2000 (includes amendments listed above except those in the <i>Electoral Amendment (Political Finance) Act 1992</i> s. 5 and 6)			

Electoral Act 1907**Notes** Compilation table

Short title	Number and year	Assent	Commencement
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and Cwlth <i>Gazette</i> 13 Jul 2001 No. S285)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 56	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 47	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Criminal Code Amendment Act 2004</i> s. 58	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<i>Children and Community Services Act 2004</i> Sch. 2 cl. 8	34 of 2004	20 Oct 2004	1 Mar 2006 (see s. 2 and <i>Gazette</i> 14 Feb 2006 p. 695)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> s. 468 ¹²	55 of 2004	24 Nov 2004	24 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Electoral Amendment and Repeal Act 2005</i> Pt. 2	1 of 2005	20 May 2005	20 May 2005 (see s. 2)
<i>Constitution and Electoral Amendment Act 2005</i> s. 4	2 of 2005	23 May 2005	23 May 2005 (see s. 2)
Reprint 13: The Electoral Act 1907 as at 9 Sep 2005 (includes amendments listed above except those in the <i>Electoral Amendment (Political Finance) Act 1992</i> s. 5 and 6 and the <i>Children and Community Services Act 2004</i>)			
<i>Electoral Reform (Electoral Funding) Act 2006</i>	55 of 2006	26 Oct 2006	27 Oct 2006 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Electoral Legislation Amendment Act 2006</i> Pt. 3 ¹³	64 of 2006	8 Dec 2006	5 Mar 2007 (see s. 2(2) and <i>Gazette</i> 2 Mar 2007 p. 689)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4 and Sch. 1 cl. 51	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
Reprint 14: The Electoral Act 1907 as at 7 Dec 2007 (includes amendments listed above)			
<i>Criminal Law Amendment (Homicide) Act 2008</i> s. 32	29 of 2008	27 Jun 2008	1 Aug 2008 (see s. 2(d) and <i>Gazette</i> 22 Jul 2008 p. 3353)
<i>Electoral Amendment Act 2008</i>	38 of 2008	3 Jul 2008	s. 1 and 2: 3 Jul 2008 (see s. 2(a)); Act other than s. 1 and 2: 30 Apr 2010 (see s. 2(b) and <i>Gazette</i> 23 Apr 2010 p. 1523)
<i>Electoral Amendment (Miscellaneous) Act 2009</i>	7 of 2009	21 May 2009	Pt. 1: 21 May 2009 (see s. 2(a)); Act other than Part 1: 1 Oct 2009 (see s. 2(b) and <i>Gazette</i> 1 Sep 2009 p. 3393)
<i>Acts Amendment (Bankruptcy) Act 2009</i> s. 34	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
Reprint 15: The Electoral Act 1907 as at 23 Jul 2010 (includes amendments listed above)			
<i>Electoral and Constitution Amendment Act 2011</i> Pt. 2	49 of 2011	11 Nov 2011	21 Dec 2011 (see s. 2(b) and <i>Gazette</i> 20 Dec 2011 p. 5373)
<i>Electoral Amendment Act 2012</i>	35 of 2012	5 Nov 2012	s. 1 and 2: 5 Nov 2012 (see s. 2(a)); Act other than s. 1 and 2: 5 Dec 2012 (see s. 2(b) and <i>Gazette</i> 4 Dec 2012 p. 5907)
Reprint 16: The Electoral Act 1907 as at 11 Jan 2013 (includes amendments listed above)			
<i>Electoral Amendment Act 2014</i> Pt. 2	14 of 2014	2 Jul 2014	3 Jul 2014 (see s. 2(b))
<i>Statutes (Repeals and Minor Amendments) Act 2014</i> s. 11	17 of 2014	2 Jul 2014	6 Sep 2014 (see s. 2(b) and <i>Gazette</i> 5 Sep 2014 p. 3213)

Electoral Act 1907**Notes** Uncommenced provisions table

Short title	Number and year	Assent	Commencement
<i>Mental Health Legislation Amendment Act 2014</i> Pt. 4 Div. 4 Subdiv. 11	25 of 2014	3 Nov 2014	30 Nov 2015 (see s. 2(b) and <i>Gazette</i> 13 Nov 2015 p. 4632)
<i>Electoral Amendment Act 2016</i>	14 of 2016	11 Jul 2016	s. 1 and 2: 11 Jul 2016 (see s. (2)(a)); Act other than s. 1 and 2: 17 Aug 2016 (see s. 2(b) and <i>Gazette</i> 16 Aug 2016 p. 3469)
Reprint 17: The Electoral Act 1907 as at 9 Dec 2016 (includes amendments listed above)			
<i>Constitutional and Electoral Legislation Amendment (Electoral Equality) Act 2021</i> Pt. 4	20 of 2021	24 Nov 2021	25 Nov 2021 (see s. 2(b))
<i>Criminal Law (Mental Impairment) Act 2023</i> Pt. 15 Div. 13 (other than s. 339(8) and (9)) <u>13</u>	10 of 2023	13 Apr 2023	Pt. 15 Div. 13 (other than s. 339(8) and (9)) : 1 Sep 2024 (see s. 2(b) and SL 2024/175 cl. 2 <u>2</u>); s. 339(8) and (9) : 1 Oct 2024 (see s. 339(7) and SL 2024/175 cl. 2)
<i>Electoral Amendment (Finance and Other Matters) Act 2023</i> Pt. 2	30 of 2023	11 Dec 2023	s. 3 and 176-179: 12 Dec 2023 (see s. 2(b)); Pt. 2 (other than s. 3 and 176-179): 1 Jul 2024 (see s. 2(c))
<i>Electoral Amendment Act 2024</i>	24 of 2024	27 Jun 2024	1 Jul 2024 (see s. 2(b))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 75	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))

Short title	Number and year	Assent	Commencement
<i>Criminal Law (Mental Impairment) Act 2023</i> Pt. 15 Div. 13 s. 339(8) and (9)	10 of 2023	13 Apr 2023	1 Oct 2024 (see s. 2(b) and SL 2024/175 cl. 2 and s. 339(7))

Other notes

- ¹ Repealed by the *Australian Citizenship (Transitionals and Consequentials) Act 2007* (Cwlth) Sch. 1 Pt. 2. Now see the *Australian Citizenship Act 2007* (Cwlth).
- ² The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39 but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26 and those provisions may be amended by regulations under subsection (3) of that section. See also the uncommenced provisions table.
- ³ Footnote no longer applicable.
- ⁴ Footnote no longer applicable.
- ⁵ In this consolidation the renumbering of sections effected in the 1943 reprint (in Volume 2 of the Reprinted Acts of the Parliament of Western Australia) and retained in subsequent reprints has again been retained. References to the original numbering are contained in the 1943 reprint.
- ⁶ The Schedule to the *Metric Conversion Act 1972* was redesignated as the First Schedule by the *Metric Conversion Act Amendment Act 1973*.
- ⁷ The *Acts Amendment (Electoral Reform) Act 1987* s. 19(2) reads as follows:
 - (2) References to the Chief Electoral Officer in any written law shall, unless because of the context it would be inappropriate so to do, be read and construed as references to the Electoral Commissioner.
- ⁸ The *Acts Amendment (Electoral Reform) Act 1987* s. 21(2) reads as follows:
 - (2) A Registrar or returning officer holding office immediately before the commencement of this Act shall, on and from that commencement, be deemed to have been appointed by the Electoral Commissioner.

- ⁹ The *Electoral Amendment (Political Finance) Act 1992* s. 8 is a transitional provision that is of no further effect.
- ¹⁰ The *Acts Amendment (Ministry of Justice) Act 1993* Pt. 19 is a savings and transitional provision that is of no further effect.
- ¹¹ The *Electoral Amendment Act 2000* s. 81(2) reads as follows:
- (2) The repeal of Schedule 3 does not affect the operation of the *Electoral (Ballot Paper Forms) Regulations 1990*.
- ¹² The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.
- ¹³ The *Electoral Legislation Amendment Act 2006* s. 27(2)-(4) read as follows:
- (2) A person who is a member of the Legislative Assembly or the Legislative Council immediately before the commencement —
- (a) does not become disqualified, on the commencement, for membership of the Legislative Assembly or the Legislative Council for the purposes of the *Constitution Acts Amendment Act 1899* section 38(a) or 40(a); and
- (b) is not prevented from completing his or her current term as a member,
- by reason only of not being an Australian citizen as defined in the *Electoral Act 1907* section 4(1).
- (3) A person who has been elected as a member of the Legislative Council but has not begun his or her term as a member before the commencement —
- (a) does not become disqualified, on the commencement for membership of the Legislative Assembly or the Legislative Council for the purposes of the *Constitution Acts Amendment Act 1899* section 38(a) or 40(a); and
- (b) is not prevented from beginning and completing his or her term as a member,
- by reason only of not being an Australian citizen as defined in the *Electoral Act 1907* section 4(1).
- (4) In subsections (2) and (3) —
- commencement** means the coming into operation of this section.

¹⁴ ~~The *Criminal Law (Mental Impairment) Act 2023* s. 339(8) and (9) do not have effect until 1 Oct 2024 (see s. 339(7) and SL 2024/175 cl. 2).~~

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