



Western Australia

Electoral Act 1907

Compare between:

[08 Dec 2006, 13-d0-03] and [01 Feb 2007, 13-e0-04]

Western Australia

Electoral Act 1907

An Act to regulate Parliamentary elections.

Part I — Preliminary

1. Short title

This Act may be cited as the *Electoral Act 1907*¹.

2. Commencement

This Act shall come into operation on 1 March 1908.

[3. *Repealed by No. 10 of 1998 s. 76.*]

4. Interpretation

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

“**absent voter**” means any person who votes under the provisions of section 99A;

“**Assembly**” means the Legislative Assembly;

“**Australian citizen**” means a person who is an Australian citizen under the *Australian Citizenship Act 1948* of the Commonwealth or any Act amending that Act or substituted therefor;

“**candidate**” in Parts II and VII includes any person who, within 3 months before the day of election, offers himself for election as a member of the Council or Assembly;

“**christian name**” means the name or names prefixed to the surname of any person, whether received at Christian baptism or not;

“**conjoint election**” means a general election for the Council and the Assembly that are both to be held on the same 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;

- “Deputy Electoral Commissioner”** means the person holding or acting in the office of Deputy Electoral Commissioner referred to in section 5A;
- “district”**, in relation to the Assembly, means an electoral district for the election of a member of the Assembly and, in relation to the Council, means an electoral district that forms part of a region;
- “early ballot paper”** means a ballot paper issued under section 90 and **“early vote”** has a corresponding meaning;
- “election”** means an election in a region or an election in a district;
- “elector”** means any person whose name appears on a roll as an elector;
- “electoral census”** means any enumeration of persons eligible as electors for the Council or Assembly, made under the provisions of Part III;
- “Electoral Commissioner”** means the Electoral Commissioner appointed under this Act;
- “general election”**—
- (a) in relation to the Assembly, means the elections in the districts the writ for which is issued under section 64(1);
 - (b) in relation to the Council, means the elections in the regions the writ for which is issued under section 64(2);
- “general polling place”** has the meaning given by section 100(3);
- “group”** means a group constituted in accordance with section 80;
- “hour of nomination”** means the hour fixed by section 85(2);
- “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, except as an honorary Government electoral agent;

“official paper” means paper referred to in section 113(4);

“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 a candidate or candidates endorsed by it or by a body or organisation that forms part of it; 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;
 - (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 a candidate or candidates endorsed by it or by a body or organisation that forms part of it;

“polling place” means any building or structure in which the polling at elections is appointed to take place;

“President” means the President of the Legislative Council;

“print”, “printed” or “printing” in relation to an electoral roll or a supplementary electoral roll means an electoral roll or supplementary roll printed under the authority of the Government Printer;

“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;

“region” means an electoral region for the election of members of the Council;

“registered political party” has the meaning given by section 62C;

“relevant citizenship law” means the *Australian Citizenship Act 1948* 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 Commonwealth, as so amended and in force;

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

“Returning Officer” includes Deputy Returning Officer;

“roll” means an electoral roll under this Act;

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

“single member election” means —

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

“Speaker” means the Speaker of the Legislative Assembly;

“sub-district” means a portion of a district the boundaries of which have been defined under the provisions of section 100;

“voting ticket” means a written statement of a particular order in which an elector might allocate preferences, in an election, being a statement for use under this Act in

interpreting the votes of electors who choose to vote in accordance with the voting ticket;

“voting ticket square” means a square printed on a ballot paper to indicate in relation to the name of a candidate, or the names of candidates included in a group, that a voting ticket is registered in relation to that candidate or group;

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

- (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 for a region or an election in or for a region is a reference to a poll or election for the return by a region of a member or members, as the case may 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 full election in a region is a reference to an election in a region for the return of —
 - (a) 7 members of the Council in the case of the North Metropolitan Region or the South West Region; or
 - (b) 5 members in any other case.
- (5) A reference in this Act to the functions of the Electoral Commissioner is a reference to his functions under this Act and other written laws.

[Section 4 amended by 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.]

Part II — Administration

4A. Western Australian Electoral Commission

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 by No. 40 of 1987 s. 18.]

5. Electoral Commissioner

There shall be an Electoral Commissioner.

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

5A. Deputy Electoral Commissioner

There shall be a Deputy Electoral Commissioner.

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

5B. Appointment, terms and conditions etc. 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 shall be appointed by the Governor on the recommendation of the Premier, and shall hold office in accordance with this Act.
- (3) Before making a recommendation under subsection (2) the Premier shall consult with the Parliamentary leader of each party in the Parliament.
- (4) A person appointed as the Electoral Commissioner shall hold office for such term not exceeding 9 years as is specified in the instrument of his appointment, and is eligible for reappointment.
- (5) The Electoral Commissioner may, at any time, by writing under his hand, addressed to the Governor, resign his office, and on

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receipt of his resignation by the Governor, he shall vacate office as Electoral Commissioner.

[(6) *repealed*]

- (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 ~~Fund~~[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) No person who is or has been a member of the Parliament of the Commonwealth or any State or Territory shall 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 he shall vacate office as Electoral Commissioner.
- (11) The Electoral Commissioner shall not, except in so far as he is authorised so to do by resolutions of both Houses of Parliament, hold any office of profit or trust (other than his office as Electoral Commissioner) or engage in any occupation for reward outside the duties of his office and if the Electoral Commissioner contravenes this subsection he shall be regarded, for the purposes of section 5C, as being guilty of misconduct.
- (12) Section 52 of the *Interpretation Act 1984* does not apply to the office of Electoral Commissioner.

[Section 5B inserted by No. 40 of 1987 s. 20; amended by No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 42 of 1997 s. [88](#); No. [77](#) of 2006 s. 4.]

5C. Removal or suspension of Electoral Commissioner or Deputy Electoral Commissioner

- (1) The Electoral Commissioner may, at any time, be suspended or removed from his 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 his office;
 - (b) has shown himself incompetent properly to perform, or has neglected, those duties;
 - (c) has applied to take, or has taken, advantage of any law relating to bankruptcy, or has compounded, or entered into any arrangement, with his creditors; or
 - (d) has been guilty of misconduct,the Governor may suspend him from his office.
- (3) When the Electoral Commissioner has been suspended from his office under subsection (2) he shall be restored to office unless —
 - (a) a statement of the grounds of his 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 his removal from his office.

[Section 5C inserted by No. 40 of 1987 s. 20.]

5D. Acting appointments

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- (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;
 - (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 shall consult with the Parliamentary leader of each party in the Parliament.
- (3) While the Acting Electoral Commissioner is so acting —
 - (a) he may perform the functions of the Electoral Commissioner, and anything done by him 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 shall be regarded as effectually done if done to, by reference to or in relation to the Acting Electoral Commissioner.

[Section 5D inserted by No. 40 of 1987 s. 20.]

5E. Supplementary provisions as to Electoral Commissioner, Deputy Electoral Commissioner and Acting Electoral Commissioner

- (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 he is entitled to retain all his existing and accruing rights as if his service in such an office, were a continuation of his 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 his service in such an office shall be regarded as service in the Public Service for the purposes of determining his rights as an officer of the Public Service.
- (5) Where the Electoral Commissioner immediately before his appointment to such an office occupied an office under Part 3 of the *Public Sector Management Act 1994*, he shall, if his term of office expires by effluxion of time and he is not reappointed, be entitled to be appointed to an office under Part 3 of the *Public Sector Management Act 1994*, not lower in status than the office which he occupied immediately prior to his 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 his appointment to that office, he occupied an office under that Act.

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

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;
 - (b) is responsible for the proper maintenance of electoral rolls and the proper conduct of elections under this Act;
 - (c) shall consider, and report to the Minister on, electoral matters referred to him by the Minister and such other electoral matters as the Electoral Commissioner thinks fit;

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- (d) shall promote public awareness of electoral and Parliamentary matters by means of the conduct of education and information programmes and by other means;
 - (e) shall provide information and advice on electoral matters to the Parliament, Members of Parliament, the Government, departments and authorities of the State;
 - (ea) may conduct elections or polls that are provided for under any other written law if authorised to do so under that written law or the regulations;
 - (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;
 - (f) may conduct and promote research into electoral matters and other matters that relate to his functions;
 - (g) may publish material on matters that relate to his functions; and
 - (h) shall perform such other functions as are conferred on him 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 his functions.

[Section 5F inserted by No. 40 of 1987 s. 20; amended by No. 36 of 2000 s. 72.]

5G. Delegation by Electoral Commissioner

- (1) The Electoral Commissioner may —
- (a) by instrument in writing signed by him; and
 - (b) either generally or as otherwise provided by that instrument,

delegate to the Deputy Electoral Commissioner —

- (c) any of the functions of the Electoral Commissioner under this Act other than this power of delegation; or
 - (d) any of the functions of the Electoral Commissioner under any other written law.
- (2) Nothing in subsection (1) 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 by No. 40 of 1987 s. 20; amended by No. 36 of 2000 s. 73.]

5H. Functions of Deputy Electoral Commissioner

- (1) The Deputy Electoral Commissioner shall assist the Electoral Commissioner as directed by the Electoral Commissioner and shall perform any function delegated to him 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;
 - (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 he is so acting —
- (d) he may perform all the functions of the Electoral Commissioner and anything done by him 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 done to, by reference to or in relation to the Deputy Electoral Commissioner.

[Section 5H inserted by No. 40 of 1987 s. 20.]

6. Enrolment officers and Returning Officers

- (1) The Electoral Commissioner may appoint such enrolment officers and Returning Officers as may be required for the effective administration of this Act.
- (2) A person appointed to be an enrolment officer or Returning Officer shall be deemed to have been appointed, where no date is specified in his appointment as the date of his appointment, on the date on which he is appointed as an enrolment officer or Returning Officer, as the case may be.

[Section 6 inserted by No. 68 of 1964 s. 4; amended by No. 40 of 1987 s. 21; No. 36 of 2000 s. 28(1).]

7. Substitutes

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.

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

[8. Repealed by No. 36 of 2000 s. 28(1).]

9. Returning Officers

There shall be a Returning Officer for each region and district.

[Section 9 amended by No. 40 of 1987 s. 84.]

10. Deputy Returning Officers

The Returning Officer for each district shall be a Deputy Returning Officer for the region within which his district is situated.

[Section 10 amended by No. 40 of 1987 s. 84.]

[11. Repealed by No. 36 of 2000 s. 28(1).]

[12. *Repealed by No. 43 of 1996 s. 5.*]

13. Resignation of Returning Officer after issue of writ

No person being a Returning Officer for any region or district shall, without the consent of the Electoral Commissioner, resign his office after the issue of any writ for a general election, or an election in that region or district, before sending any statement required under section 147(1)(b).

[Section 13 amended by No. 40 of 1987 s. 23 and 84; No. 36 of 2000 s. 5.]

14. Death, resignation or removal of Returning Officer after issue of writ

- (1) If the Returning Officer for any region or district dies, resigns, leaves, or is removed, after the issue of a writ for a general election or an election for such region or district, the Electoral Commissioner may appoint some other person to be the Returning Officer in his place; and so far as the Returning Officer's functions under this Act in relation to the writ and the election have yet to be completed, those functions may be performed by the Returning Officer so appointed.

[(2) *repealed*]

[Section 14 amended by No. 44 of 1911 s. 5; No. 40 of 1987 s. 24 and 84; No. 36 of 2000 s. 6.]

15. Temporary assistants

- (1) The Electoral Commissioner may appoint such temporary assistants as he may consider 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 by No. 40 of 1987 s. 25; No. 32 of 1994 s. 11.]

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15A. Declarations by officers

- (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 by No. 43 of 1996 s. 6.]

16. Disqualification of officers

- (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, he shall be deemed to have vacated the office held by him under this Act, and some other person shall be appointed in his stead.

Part IIA — Representation in Parliament

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

Division 1 — Preliminary

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

16A. Terms used in this Part

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*;

“**relevant day**”, in relation to a division of the State into districts and regions in accordance with this Part, means the day specified in section 16E(a) or (b) as the day as soon as practicable after which the division is to be carried out.

[Section 16A inserted by No. 1 of 2005 s. 4.]

16B. Electoral Distribution Commissioners

- (1) For the purposes of this Part there shall be 3 Electoral Distribution Commissioners of whom —
 - (a) one shall be the Chief Justice of Western Australia who shall be chairman;
 - (b) one shall be the Electoral Commissioner; and
 - (c) one shall be the Government Statistician.
- (2) If the office of Chief Justice of Western Australia is vacant, or the Chief Justice is absent or is for any other reason unable to act as an Electoral Distribution Commissioner, the Governor

may appoint another Judge of the Supreme Court to act in the office of Electoral Distribution Commissioner and as chairman under subsection (1)(a) during the vacancy, 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.
- (5) Before making a recommendation under subsection (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.
- (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 the Commissioners have the powers of a duly appointed Royal Commission, and of a chairman of a Royal Commission, under the *Royal Commissions Act 1968*.
- (8) The moneys reasonably required for the purposes of the Commissioners shall be charged, on the certificate of the Auditor General, to the Consolidated ~~Fund~~[Account](#), which this subsection appropriates to the necessary extent.

[Section 16B inserted by No. 1 of 2005 s. [4](#); amended by No. 77 of 2006 s. 4.]

Division 2 — Districts, regions and representation

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

16C. Electoral districts and representation

- (1) The State shall be divided into 59 electoral districts.
- (2) Each district will return one member to serve in the Assembly.

[Section 16C inserted by No. 1 of 2005 s. 4; amended by No. 2 of 2005 s. 4(2).]

16D. Electoral regions and representation

- (1) The State shall be divided into 6 electoral regions.
- (2) Each region will return 6 members to serve in the Council.

[Section 16D inserted by No. 1 of 2005 s. 4.]

Division 3 — Division of State into districts and regions

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

16E. Division required after each election

The State shall be divided into districts and regions in accordance with this Part —

- (a) as soon as practicable after 26 February 2007; and
- (b) as soon as practicable after the day that is 2 years after polling day for any subsequent general election for the Assembly.

[Section 16E inserted by No. 1 of 2005 s. 4.]

16F. Commissioners' functions

- (1) The Commissioners shall divide the State into districts and regions 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;
 - (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;
 - (c) consider all of the suggestions and comments lodged with the Commissioners under paragraph (a);
 - (d) within 42 days from 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;
 - (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, but not more than 90 days 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;
 - (b) in respect of each of the districts —
 - (i) the name assigned to the district;
 - (ii) the boundaries fixed for the district; and
 - (iii) the number of electors within the boundaries as so fixed;
 - and
 - (c) the districts included in each of the regions,and shall include a map or maps showing the boundaries of the districts and the boundaries of the regions.
- (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.

[Section 16F inserted by No. 1 of 2005 s. 4; amended by No. 2 of 2005 s. 4(3).]

16G. Basis for division of the State into districts

- (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 by No. 1 of 2005 s. 4.]

16H. Basis for division of the State into regions

- (1) The Commissioners shall divide the State into regions so that those regions generally reflect the recognised communities of interest and land use patterns in the State and so that —
- (a) 3 contiguous regions, to be known, respectively, as the North Metropolitan Region (being a region that is generally to the north of the Swan River), the South Metropolitan Region (being a region that is generally to the south of the Swan River) and the East Metropolitan Region (being a region that includes the hills and foothills of the Darling Escarpment) —
 - (i) each consist of approximately the same number of complete and contiguous districts; and
 - (ii) together form an area that is generally coextensive with the metropolitan area of Perth;

- (b) one region, to be known as the Mining and Pastoral Region, consists of complete and contiguous districts that together form an area that is remote from Perth and in which the land use is primarily for mining and pastoral purposes;
- (c) one region, to be known as the Agricultural Region, consists of complete and contiguous districts that together form an area that is generally south, or south and west, of and adjacent to the Mining and Pastoral Region and in which the land use is primarily for agricultural purposes; and
- (d) one region, to be known as the South West Region (being a region that includes coastal and forest areas in the south-west of the State), consists of complete and contiguous districts.

(2) In subsection (1) —

“metropolitan area of Perth” means the part of the State that comprises —

- (a) the region that was, as at the relevant day, described in the Third Schedule to the *Metropolitan Region Town Planning Scheme Act 1959*; and
- (b) Rottnest Island.

[Section 16H inserted by No. 1 of 2005 s. 4.]

16I. Matters to be considered in dividing the State into regions and districts

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

- (a) community of interest;
- (b) land use patterns;
- (c) means of communication and distance from the capital;
- (d) physical features;

- (e) existing boundaries of regions and districts;
- (f) existing local government boundaries; and
- (g) the trend of demographic changes.

[Section 16I inserted by No. 1 of 2005 s. 4.]

16J. Power of Commissioners to modify boundaries of districts

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 by No. 1 of 2005 s. 4.]

16K. Effect of notice dividing the State into districts and regions

On and by virtue of a notice being published in the *Gazette* under section 16F(2)(f), the division of the State by the Commissioners into districts and regions as set out in that notice takes effect and has the force of law and applies in respect of —

- (a) elections in districts held after the date of the publication of the notice other than elections held before the first general election for the Assembly held after that date; and
- (b) elections in regions held after the date of the publication of the notice other than elections held before the first general election for the Council held after that date,

unless and until a further division of the State into districts and regions takes effect under this section.

[Section 16K inserted by No. 1 of 2005 s. 4.]

16L. Transitional provisions

- (1) In this section —

“previous electoral distribution” means the division of the State into districts and regions for the election of members of the Assembly and the Council that was in effect on 26 February 2005.

- (2) Despite the repeal of the *Electoral Distribution Act 1947* by section 8 of the *Electoral Amendment and Repeal Act 2005*, the previous electoral distribution continues to apply in respect of —
- (a) elections in districts held before the first general election for the Assembly held after the commencement of the *Electoral Amendment and Repeal Act 2005*;
 - (b) elections in regions held before the first general election for the Council held after the commencement of the *Electoral Amendment and Repeal Act 2005*; and
 - (c) the representation of electoral districts and electoral regions by members of the Assembly and the Council elected —
 - (i) before the commencement of the *Electoral Amendment and Repeal Act 2005*;
 - (ii) at elections referred to in paragraphs (a) and (b); or
 - (iii) under sections 156C and 156D before 22 May next following the first general election for the Council held after the commencement of the *Electoral Amendment and Repeal Act 2005*.

[Section 16L inserted by No. 1 of 2005 s. 4.]

16M. Absolute majorities required for Bills affecting one vote one value principle

- (1) A Bill that repeals or alters any of the provisions of this Part, other than Division 2, section 16G(3) or (4) or section 16L, 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

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whole number of the members for the time being of the Council and the Assembly, respectively.

- (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 by No. 1 of 2005 s. 4.]

Part III — Enrolment

Division (1) — Qualification of electors

17. Qualification of electors

(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;

(b) who has attained 18 years of age; and

(c) who has lived in the district or sub-district for which he claims to be enrolled as an elector for one month last past,

is entitled —

(d) to be enrolled as an elector for the Council and the Assembly; and

(e) when so enrolled and while he continues to live in that district or sub-district, to vote at —

- (i) any election in the region of which the district or sub-district forms part; and
- (ii) any election in the district or the district of which the sub-district forms part.

(2) Subject to sections 145(7) and 172(1)(c) where an elector changes his place of living to another district he may, until his name is transferred to another roll, vote at any election in the

region or district in respect of which his name continues enrolled if the election is held within 3 months after he has so changed his place of living.

- (3) For the purposes of this Act a person shall be deemed to have lived within a district or sub-district, if he has his usual place of abode therein and notwithstanding his occasional absence from that district or sub-district and any period of absence from such usual place of abode by a person who is not disqualified by section 18 —
- (a) while serving a sentence of imprisonment for an offence; or
 - (b) while otherwise in lawful custody or detention in relation to an offence,

shall be deemed to be such occasional absence, and that person shall be deemed not to have his usual place of abode at the place of imprisonment or custody or detention, as the case may be.

- (4) A member —
- (a) of the Council and his spouse may claim to be enrolled for a district or sub-district that forms part of the region which that member represents; and
 - (b) of the Assembly and his spouse may claim to be enrolled for the district which that member represents,
- and when so enrolled shall be deemed to live in that region or district and if —
- (c) that region or district is wholly or partly included, pursuant to the provisions of any Act, in another region or district, however named, that member and his spouse may claim to be enrolled as an elector in respect of that other region or district; and
 - (d) that member is a candidate for election in respect of that other region or district, he and his spouse may, while they are enrolled therefor, vote at the general election next following the inclusion of the region or district in

another region or district and while so enrolled and while the member is such a candidate they shall be deemed to live in that other region or district.

- (4a) A person who —
- (a) has attained 17 years of age; and
 - (b) would be entitled to be enrolled on a roll if he had attained 18 years of age,
- is entitled to be enrolled on that roll as an elector.
- (4b) Notwithstanding section 4, or subsection (4a), or an enrolment under subsection (4a), if a person who has been enrolled under subsection (4a) does not attain 18 years of age until after the date fixed for the polling in an election, that person —
- (a) is not entitled to vote at that election; and
 - (b) shall not be taken to be —
 - (i) an elector;
 - (ii) entitled to be enrolled on a roll; or
 - (iii) enrolled on a roll,for the purposes of this Act in relation to that election.
- (4c) Subsection (4a) does not apply to a person who does not know his date of birth.
- (5) Subject to subsection (4) a person is not entitled to be enrolled on any roll other than the roll for the district or sub-district in which he lives or for the district or sub-district of the region in which he lives.

[Section 17 inserted by No. 33 of 1964 s. 6; amended by 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).]

18. Disqualifications

Every person, nevertheless, shall be disqualified from being enrolled as an elector, or if enrolled, from voting at any election, who —

- (a) is of unsound mind; or
- (b) has been attainted of treason;
- (c) is serving or is yet to serve a sentence or sentences of detention (imposed under the *Young Offenders Act 1994*), or imprisonment, totalling one year or longer;
- (ca) is serving or is yet to serve indefinite imprisonment imposed under Part 14 of the *Sentencing Act 1995*;
- (cb) is subject to an order under section 282(c)(iii) or (d)(ii), 653 or 693(4) of *The Criminal Code*;
- (cc) is subject to an order under repealed section 19(6a)(a), 661 or 662 of *The Criminal Code*;
- (cd) is, or is taken to be, a mentally impaired accused as defined in the *Criminal Law (Mentally Impaired Accused) Act 1996*; or
- (d) is the holder of a temporary entry permit for the purposes of the *Migration Act 1958*, of the Parliament of the Commonwealth as amended from time to time, or is a prohibited immigrant under that Act.

[Section 18 amended by 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 s. 251; No. 84 of 2004 s. 82.]

Division (2) — Electoral rolls

19. Electoral rolls

- (1) There shall be a roll for each region.
- (2) There shall be a roll for each district.

- (3) There shall be a roll for each sub-district.
- (4) All the rolls for the sub-districts of a district form the roll for that district.
- (5) All the rolls for the districts in a region form the roll for that region.
- (6) Each person whose name, whether immediately before or at any time after the coming into operation of the *Electoral Act Amendment Act 1964*¹, is on the roll for a district is, subject to this Act, entitled to vote at any election in the district and at any election in the region of which the district forms part.

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

[Section 19 inserted by No. 33 of 1964 s. 7; amended by No. 40 of 1987 s. 27 and 84.]

[20. Repealed by No. 36 of 2000 s. 28(1).]

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

22. Form of roll

- (1) Subject to section 51B, rolls may be in the prescribed form, and shall set out the surname, christian or given name, and residence of each elector and, subject to subsection (2), such other particulars as are prescribed.
- (2) The regulations may provide that particulars prescribed for the purposes of subsection (1) may be omitted when rolls are printed under section 24, made available under section 25, provided under section 25A or supplied under section 112 or when information on or derived from rolls is made available under section 25 or provided under section 25A.

[Section 22 inserted by No. 79 of 1987 s. 4; amended by No. 43 of 1996 s. 7; No. 36 of 2000 s. 30.]

23. Arrangement of rolls

- (1) The rolls shall be arranged in lexicographical order of surnames, and where the surnames are identical, then in lexicographical order of the christian or given names.
- (2) The names appearing on the printed roll shall be numbered in regular, progressive arithmetical order, commencing with number 1 for the first name.
- (3) In the supplementary printed roll the first name shall have the number next following that which is set against the last name on the general printed roll.

[Section 23 amended by No. 44 of 1911 s. 8; No. 79 of 1987 s. 5.]

24. Printing of rolls

- (1) The rolls shall be printed, and issued under the hand of the Electoral Commissioner, whenever he thinks fit.
- (2) An amalgamation of each roll with its supplement shall be made, and shall be printed immediately after the close of the rolls for a general election or the writ for a referendum.
- (3) Without limiting subsection (1), the rolls shall be printed and issued as soon as practicable after a notice dividing the State into districts and regions has been published.

[Section 24 amended by No. 5 of 1918 s. 2; No. 54 of 1983 s. 5; No. 40 of 1987 s. 84; No. 79 of 1987 s. 6; No. 1 of 2005 s. 5.]

25. Inspection and purchase of rolls

- (1) The Electoral Commissioner is to make rolls available, in any form the Electoral Commissioner thinks fit, for inspection by the public, without fee, at the office of the Electoral Commissioner.
- (2) Copies of rolls in printed form and in any other form the Electoral Commissioner thinks fit are to be available for purchase by the public at the office of the Electoral Commissioner.

- (3) The Electoral Commissioner may also make rolls or information on rolls available, in any form the Electoral Commissioner thinks fit, for inspection and purchase at any other place or in any other manner determined by the Electoral Commissioner.
- (4) If by virtue of section 51B information is not shown on a roll, that information is not to be made available under this section.
- (5) The regulations may provide that if by virtue of section 51B information relating to a person is not shown on a roll, that person's name may be omitted when the Electoral Commissioner makes rolls or information on rolls available under this section.

[Section 25 inserted by No. 36 of 2000 s. 31.]

25A. Provision of rolls and habitation indexes to parliamentary parties and members of Parliament

- (1) Subject to subsections (3) and (5), the Electoral Commissioner shall at the request of the person or organisation in question cause to be provided, without charge —
 - (a) to any parliamentary party — 2 copies of the latest print of the rolls for each district and region;
 - (b) to a member of the Legislative Council — 2 copies of the latest print of the roll for each district in the region for which the member was elected;
 - (c) to a member of the Legislative Assembly — 2 copies of the latest print of the roll for the district for which the member was elected;
 - (d) to such other persons or organisations (if any) as the Electoral Commissioner determines to be appropriate — a copy of the latest print of such rolls as the Electoral Commissioner considers appropriate.
- (2) Subject to subsection (3), the Electoral Commissioner shall, so far as it is practicable to do so, cause to be provided to each parliamentary party, without charge, at the request of the party

once during each Parliament, 2 copies of a habitation index for each district, being a list of electors for that district arranged, in a manner determined by the Electoral Commissioner, by reference to the residences of the electors whose names are entered on the roll for that district.

- (3) The Electoral Commissioner shall not provide a parliamentary party with —
- (a) copies of a print of the roll for a district under subsection (1); or
 - (b) copies of a habitation index in respect of a district under subsection (2),

unless a branch or division of the party is organised in that district or in the region of which that district forms part.

- (4) The Electoral Commissioner shall not include on a habitation index for a district provided under subsection (2) the names and addresses of persons whose residences are not shown on the roll for that district by virtue of section 51B.
- (5) Instead of providing copies of a printed roll or habitation index as required under subsection (1) or (2) the Electoral Commissioner may comply with the requirement by providing the information on the roll or index in the form of particulars recorded or stored on a mechanical, electrical, or other device.
- (6) In this section —

“parliamentary party” has the meaning given by section 62C.

[Section 25A inserted by No. 79 of 1987 s. 7; amended by No. 36 of 2000 s. 64.]

26. Supplementary rolls

Supplementary rolls, setting out additions and alterations since the last print, shall be printed and issued under the hand of the Electoral Commissioner whenever he thinks fit.

[Section 26 inserted by No. 28 of 1970 s. 4; amended by No. 40 of 1987 s. 84.]

27. Incorporation of supplementary rolls

In the printing of a second or subsequent supplementary roll, all the names in the last preceding supplementary roll shall be incorporated in lexicographical order.

[Section 27 inserted by No. 44 of 1911 s. 11.]

28. Amalgamation of rolls

- (1) Whenever the Electoral Commissioner thinks fit, the roll and any supplementary roll may be printed in an amalgamated form.
- (2) In the preparation of such amalgamated roll, the provisions of section 23 shall be observed.
- (3) Every amalgamated roll shall have printed upon it in a conspicuous place an indication of what roll and supplementary roll it is an amalgamation, giving the number and date of such rolls.

[Section 28 amended by No. 40 of 1987 s. 28.]

29. Rolls to be dated

Each new or amalgamated roll shall be dated with the date of its completion.

30. Supplementary rolls to be numbered and dated

- (1) The supplementary rolls shall be numbered in regular progressive arithmetical order. The first issue following upon a new roll, or an amalgamated roll as aforesaid, shall be supplementary roll No. 1, and subsequent rolls numbered consecutively.
- (2) The date to which a supplementary roll is made up shall also appear on such roll.

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 the preparation, alteration, and revision of rolls 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;
 - (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(c), 44(2) and (3), 44A(3) and (5), and 45(4); 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 roll 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 by No. 9 of 1983 s. 5; amended by No. 76 of 1984 s. 4; No. 40 of 1987 s. 84; No. 36 of 2000 s. 28(1) and 29.]

31A. Arrangement with Commonwealth for sharing of certain information for revision of rolls

- (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 each person whose name is removed, in accordance with the *Commonwealth Electoral Act 1918*, from

the Commonwealth roll for this State on the ground that he is no longer living at the address in respect of which he was enrolled.

- (2) During any period when an arrangement is in operation under subsection (1), subsection (3) shall have effect notwithstanding anything in this Act.
- (3) If the Electoral Commissioner is satisfied that a person —
 - (a) is named in a notification received by him pursuant to an arrangement under subsection (1); and
 - (b) is enrolled under this Act as living at the address referred to in the notification,

he shall cause the name of the person to be removed from the roll.

[Section 31A inserted by No. 9 of 1983 s. 5; amended by No. 76 of 1984 s. 5; No. 40 of 1987 s. 84; No. 79 of 1987 s. 8; No. 36 of 2000 s. 28(1).]

31B. Arrangement with Commonwealth in relation to addresses on roll

- (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 requests 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 a request under section 51B, but that a request 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;

- (b) the Australian Electoral Officer shall have the powers, functions and duties conferred on the Electoral Commissioner by section 51B; and
 - (c) a request 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 a request under section 51B of this Act and section 104 of the *Commonwealth Electoral Act 1918*.
- (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 a request under section 51B of this Act and section 104 of the *Commonwealth Electoral Act 1918* 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 a request 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 by No. 76 of 1984 s. 6; amended by No. 40 of 1987 s. 84; No. 36 of 2000 s. 28(1) and 29.]

[32, 33. *Repealed by No. 36 of 2000 s. 28(1).]*

34. Rolls and documents not be invalidated

No roll or other document shall be invalidated by reason only that it is not printed, kept, or published in the place or manner or for the time required for such purposes respectively, nor by reason of any error in the copying or printing of the same.

35. Officers to furnish information

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 of his officers all such information as he requires to enable him to prepare or to revise the rolls.

[Section 35 amended by No. 40 of 1987 s. 84; No. 14 of 1996 s. 4.]

[36. Repealed by No. 36 of 2000 s. 28(1).]

37. New rolls

A new roll for any region or district, and new rolls generally, shall be prepared by enrolment officers under the supervision of, and issued by, the Electoral Commissioner, whenever directed by proclamation, and shall come into operation at the date stated in the same or any subsequent proclamation.

[Section 37 amended by No. 40 of 1987 s. 84; No. 36 of 2000 s. 28(1).]

38. Regulations relating to preparation of rolls and compulsory enrolment

The Governor may by regulations, either general or applicable to any particular roll, specify the method of preparation and prescribe the rules to be observed in regard thereto.

Any such regulations may provide that any person entitled to enrolment as an elector for the Council or the Assembly shall fill in, sign, and send to the officer indicated therein a claim for

enrolment in accordance with this Act, and otherwise comply with the relative provisions of this Act:

Provided that any elector who has been enrolled in pursuance of any claim signed by him and is correctly enrolled shall not be required to sign and send in any further claim for enrolment in connection with the preparation of a new roll unless he has changed his place of living.

The regulations may prescribe anything necessary or convenient to be prescribed for carrying a system of compulsory enrolment into effect and in particular prescribing the procedure in relation to the imposition and recovery of penalties by the Electoral Commissioner for offences against the compulsory enrolment provisions of this Act, and may prescribe a penalty not exceeding \$20 for the contravention of any regulation.

[Section 38 inserted by No. 59 of 1919 s. 2; amended by No. 33 of 1964 s. 14; No. 68 of 1964 s. 7; No. 113 of 1965 s. 8; No. 76 of 1984 s. 7; No. 40 of 1987 s. 84.]

39. Electoral census

- (1) New rolls for the whole or any portion of the State shall, if the Governor so orders, be prepared, by enrolment officers under the supervision of the Electoral Commissioner, from the results obtained by means of an electoral census to be taken for that purpose.
- (2) Such electoral census shall be taken under the direction and superintendence of the Electoral Commissioner, in the manner prescribed by regulations, and at such time or times as the Governor may direct.
- (3) In such portion or portions of the State for which an electoral census may be ordered, the result of such census shall alone be used for the purpose of preparing new rolls.

[Section 39 amended by No. 40 of 1987 s. 84; No. 36 of 2000 s. 28(1).]

40. Insertion or omission of names

- (1) In preparing new rolls —
- (a) the names of all persons who appear to be qualified shall be inserted; and
 - (b) the names of all persons —
 - (i) who, from information supplied by the Registrar of Births, Deaths and Marriages, appear to be dead, or who, from information supplied by the Chief Psychiatrist referred to in section 8 of the *Mental Health Act 1996*, and the chief executive officer, within the meaning of that expression as defined in section 3 of the *Prisons Act 1981*, appear to be disqualified; or
 - (ii) who appear to be otherwise disqualified; or
 - (iii) who do not appear to reside in the district for which they are enrolled,shall be omitted.
- (2) The enrolment officer preparing a roll for a district shall forthwith give notice to any person whose name is omitted, if such name appears on an existing roll for the same district.
- (3) If the person to whom such notice is given makes and sends in a claim to be enrolled, and such claim appears to the enrolment officer to be in order, he shall enrol the claimant.
- (4) If the enrolment officer rejects such claim, he shall forthwith give notice thereof to the claimant, and the claimant may, within the prescribed time, appeal from the rejection of his claim to the Electoral Commissioner, and the provisions of Division (4) shall apply.

[Section 40 amended by No. 33 of 1964 s. 15; No. 33 of 1967 s. 4; No. 40 of 1987 s. 30 and 84; No. 69 of 1996 s. 24; No. 40 of 1998 s. 11(a); No. 36 of 2000 s. 28(1) and (2) and 82.]

Division (3) — Additions to rolls

41. Addition of names

New names may be added to rolls by enrolment officers pursuant to claims.

[Section 41 amended by No. 36 of 2000 s. 28(1).]

42. Claims

A claim —

- (a) may be in the prescribed form;
- (b) shall be signed by the claimant in the presence of an elector, or a person qualified to be enrolled as an elector, of the Commonwealth Parliament or of the Assembly who shall sign his name as witness in his own handwriting; and
- (c) is to be sent to the Electoral Commissioner who shall cause the claim, and any request lodged with it under section 51B(1), to be referred to and recorded by an enrolment officer (in this Division and section 47 called “**the enrolment officer**”).

[Section 42 inserted by No. 9 of 1983 s. 6; amended by No. 36 of 2000 s. 28(1).]

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

[43. Repealed by No. 9 of 1983 s. 8.]

44. Essential particulars

- (1) The essential parts of a claim shall be —
 - (a) the surname and christian or given names in full of the claimant;
 - (b) the residence of the claimant;
 - (c) the date of birth of the claimant;
 - (d) the place of birth of the claimant;

- (e) the usual signature of the claimant in his own handwriting; and
 - (f) the usual signature in his own handwriting of the person who witnessed the signing of the claim by the claimant.
- (2) If the residence of the claimant is within a local government district or townsite, the name of the street and the number of the house, if numbered, shall be stated, and if not numbered, such particulars shall be given as, in the opinion of the enrolment officer, are sufficient to enable the exact locality of the claimant's residence to be ascertained.
- (3) If the residence of a claimant is not within a local government district or townsite, his residence shall be stated with such particulars as are, in the opinion of the enrolment officer, sufficient to enable the exact locality of the claimant's residence to be ascertained.
- (4) If the claimant is unable to insert in his claim the date of his birth because it is not known to him but —
- (a) the claim contains a statement to that effect; and
 - (b) the person who witnesses the claim certifies in writing that he is satisfied that the claimant is not under 18 years of age,

the claim shall be taken to sufficiently comply with subsection (1)(c).

[Section 44 amended by 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).]

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(b) and 44.

- (2) If a 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,

the enrolment officer shall enrol the claimant by entering his name and the other prescribed particulars on the roll.

- (3) If a claim is not in order the enrolment officer shall —
- (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, he may, for that purpose and without prejudice to enrolment as provided in subsection (2)(b), defer rejection of the claim until he considers it is no longer expedient to seek to have the claim rectified.

[Section 44A inserted by No. 9 of 1983 s. 10; amended by No. 36 of 2000 s. 28(1) and (2).]

45. Compulsory enrolment

- (1) Every person who is entitled to have his name placed on the roll for any district or sub-district, otherwise than under

section 17(4a) and whose name is not on the roll upon the expiration of 21 days from the date upon which he became so entitled, or at any subsequent date while he continues to be so entitled, shall be guilty of an offence unless he proves that his non-enrolment is not in consequence of his 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 thereon.

Penalty: \$50.

- (2) Every person (including a person whose residence, in pursuance of a request made under section 51B is not entered on a roll) who is enrolled on the roll of any district or sub-district, and who changes his place of living from one address in the district or sub-district to another address therein, shall within 21 days after the change, give notice in writing of the new address to the Electoral Commissioner.

Penalty: \$50.

- (3) The fact that the name of any elector who has become entitled to have his name enrolled on any roll has not been enrolled thereon within 21 days after he became so entitled shall be prima facie evidence of a contravention on his part of the provisions of subsection (1).
- (3a) Where a person fails to have his name placed on a roll as provided in subsection (1) or fails to comply with the provisions of subsection (2), if the Electoral Commissioner is satisfied that such failure was in consequence of the physical incapacity, mental illness or mental disorder of that person, the failure shall be deemed not to be a contravention of this section.
- (4) The Electoral Commissioner or the enrolment officer shall issue a receipt to an elector for each claim received from the elector.
- (5) Where a person sends a claim to the Electoral Commissioner for enrolment on the relevant roll, proceedings shall not be

instituted against the person for any offence against subsection (1) before the claim was sent.

- (6) Where a person sends a notice in writing of a new address to the Electoral Commissioner, proceedings shall not be instituted against the person for any offence against subsection (2) committed before the notice was sent.

[Section 45 inserted by No. 59 of 1919 s. 3; amended by No. 58 of 1951 s. 4; No. 51 of 1962 s. 4; No. 33 of 1967 s. 7; No. 28 of 1970 s. 6; No. 70 of 1973 s. 4; No. 39 of 1979 s. 5; No. 66 of 1983 s. 4; No. 76 of 1984 s. 8; No. 40 of 1987 s. 84; No. 79 of 1987 s. 10 and 77; No. 36 of 2000 s. 28(1).]

46. Where enrolment officer considers qualification insufficient or incorrect

- (1) If the enrolment officer has reason to believe that the qualification of the claimant as set out in his claim is insufficient or incorrect he may, if he thinks fit, refer the claim to —
- (a) any officer mentioned in section 35, qualified in his opinion to report thereon;
 - (b) an officer of the Australian Electoral Commission established by section 6 of the *Commonwealth Electoral Act 1918*, if he has reason to believe that an officer of that Commission is willing to report thereon.
- (2) An officer to whom a claim is referred under subsection (1)(a) shall forthwith make all necessary inquiries and report to the enrolment officer.
- (3) If a report from an officer mentioned in subsection (1) is adverse to the claimant, the enrolment officer shall object to the claim under section 47(3)(a) or, if the claimant has been enrolled, to the enrolment under section 48(3)(a).

[Section 46 inserted by No. 9 of 1983 s. 11; amended by No. 36 of 2000 s. 28(2) and 29.]

Division (4) — Objections

(i) To claims

47. Objections to claims

- (1) The enrolment officer shall object to any claim if he has reason to believe that the claimant is not entitled to be enrolled.

[(2) repealed]

- (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 shall hear and determine the objection, and may direct the enrolment officer to enrol the claimant or reject the claim, as he thinks fit, but no grounds of objection shall be entertained except such as are specifically set forth in the notice of objection.
 - (f) No notice of objection shall be given by the enrolment officer between the day on which a writ is issued for an election in the region or district, as the case may be, and either the close of polling at such election, or if only one candidate is nominated, the close of nominations for such election or between the day on which a writ is issued for a referendum and the close of voting at that referendum, but a claim may be rejected pursuant to paragraph (b) at any time before the 14th day next preceding the day fixed for an election in the region or district, as the case may be, or a referendum.
 - (g) If any appeal has not been heard and determined on the 14th day next preceding the day fixed for an election in the region or district, as the case may be, or a referendum and the claim was received by the enrolment officer before the time of the close of the roll, it shall be the duty of the enrolment officer to enrol the claimant but the enrolment officer shall place a mark in the prescribed manner against the claimant's name when enrolled, and section 122 applies to a person whose name is so marked.
- (4) Paragraphs (f) and (g) of subsection (3) do not apply where the claim is for enrolment under section 17(4a) and the election is an election referred to in section 17(4b).

[Section 47 amended by No. 44 of 1911 s. 43; No. 63 of 1948 s. 8; No. 68 of 1964 s. 9; No. 113 of 1965 s. 8; No. 9 of 1983 s. 12; No. 54 of 1983 s. 6; No. 40 of 1987 s. 31 and 84; No. 79 of 1987 s. 11; No. 36 of 2000 s. 28(2).]

(ii) To enrolment

48. Objections to enrolment

- (1) Any name on the roll may be objected to —
 - (a) by an elector enrolled on the same roll; or
 - (b) by an enrolment officer if the enrolment officer has reason to believe that the name should not be retained on the roll.
- (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 \$2 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 his claim, or
 - (ii) appear by an agent appointed in writing under his 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 or region, setting forth reasons for his remaining on the roll.

- (f) The Electoral Commissioner shall hear and determine the objection, and may direct the enrolment officer to retain the name on the roll, or to strike the name off the roll, or to make such amendment as may be necessary according to such determination; but no grounds of objection shall 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 struck off the roll.

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 strike the name off the roll.
 - (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 shall hear and determine the objection, and may direct the enrolment officer to retain the name on the roll, or to strike the name off the roll, or to make such amendment as may be necessary according to such determination; but no grounds of objection shall 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) No name shall be struck from, or other amendment made to, a roll under this section during the period from the close of the roll for an election to the close of the polling at the election except where the name objected to was enrolled under section 17(4a) and the election is an election referred to in section 17(4b).

[Section 48 amended by 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).]

(iii) Powers of Electoral Commissioner on appeal

[Heading amended by No. 40 of 1987 s. 33.]

49. Powers of Electoral Commissioner

- (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

officer, is held not to be reasonable, may make such order as to costs as he thinks fit.

- (2) If the parties to any proceeding appear by an authorised agent, the Electoral Commissioner may, if he deems it necessary, adjourn the hearing for the attendance of any party in person, and may make an order requiring his attendance accordingly.
- (3) The Electoral Commissioner shall make such order for the forfeiture or return of the sum deposited with the objection as he thinks fit.

[Section 49 amended by No. 40 of 1987 s. 34; No. 36 of 2000 s. 28(3); No. 59 of 2004 s. 141.]

Division (5) — Miscellaneous

[50. Repealed by No. 33 of 1964 s. 18.]

51. Removal of names repeated on roll

- (1) If the name of the same person appears more than once on the same roll, or on more than one district roll, the Electoral Commissioner is to cause all but the latest enrolled name to be removed.
- (2) The Electoral Commissioner may take such action and give such directions as he considers necessary in order for the rolls to be adjusted to give effect to a division of the State into districts and regions.

[Section 51 amended by No. 44 of 1911 s. 17; No. 63 of 1948 s. 10; No. 33 of 1964 s. 19; No. 40 of 1987 s. 35 and 84; No. 36 of 2000 s. 28(1); No. 1 of 2005 s. 6.]

51A. Power of Electoral Commissioner to remove names of incapacitated electors

- (1) Where the Electoral Commissioner is satisfied, that in consequence of physical incapacity, mental illness or mental disorder an elector is incapable of complying with the

provisions of this Act relating to compulsory voting, the Electoral Commissioner may remove the name of that elector from the roll.

- (2) The Electoral Commissioner shall not, under subsection (1), remove the name of the elector from the roll unless —
 - (a) he has, by notice in writing served on the elector, given notice of his intention so to remove the name of the elector;
 - (b) he has, in the notice, specified a date being not less than 14 days from the date of the notice on or before which the elector may by notice in writing served on the Electoral Commissioner advise him that he objects to his name being so removed; and
 - (c) the elector has failed to serve a notice on the Electoral Commissioner under and in accordance with the provisions of paragraph (b).
- (3) A person whose name has been removed from a roll pursuant to this section may claim in the manner prescribed in section 42, to have his name entered upon any roll for which he possesses the necessary qualification.
- (4) The power of removal conferred on the Electoral Commissioner by subsection (1) does not extend to —
 - (a) a person in respect of whom a guardianship or administration order is in force under the *Guardianship and Administration Act 1990*; or
 - (b) a person in respect of whom an order of the kind referred to in section 201(1) of the *Mental Health Act 1996* is in force.

[Section 51A inserted by No. 33 of 1967 s. 8; amended by No. 40 of 1987 s. 84; No. 24 of 1990 s. 123; No. 69 of 1996 s. 25.]

51AA. Removal of name following declaration by State Administrative Tribunal

- (1) On receipt of notice of a declaration under section 111 of the *Guardianship and Administration Act 1990* in respect of an elector by the State Administrative Tribunal the Electoral Commissioner shall cause the name of that elector to be removed from the roll.
- (1a) On receipt under section 202 of the *Mental Health Act 1996* of notice of a determination under section 201 of that Act in respect of an elector, the Electoral Commissioner shall remove the name of that elector from the roll.
- (2) A person whose name has been removed from a roll pursuant to this section may claim in the manner prescribed in section 42 to have his name entered upon any roll for which he possesses the necessary qualification, but may not do so while a declaration referred to in subsection (1), or a determination referred to in subsection (1a), is in force.

[Section 51AA inserted by No. 24 of 1990 s. 123; amended by No. 69 of 1996 s. 26; No. 36 of 2000 s. 28(1); No. 55 of 2004 s. 468.]

51B. Request for address not to be shown on roll

- (1) Where a person claiming enrolment under this Act considers that having a residence shown on a roll would place the personal safety of that person or members of the family of that person, at risk, that person may lodge with the claim a request, in the prescribed form, that the residence not be entered on the rolls.
- (2) Where —
 - (a) the residence of a person is included in the particulars relating to the person that are entered on a roll; and

- (b) the person considers that having the residence so shown places the personal safety of that person, or members of the family of that person, at risk,

the person may lodge with the Electoral Commissioner a request, in the prescribed form, that the residence be deleted from the particulars that are entered on the roll and the Electoral Commissioner is to cause the request to be referred to an enrolment officer.

- (3) A request under subsection (1) or (2) shall give particulars of the relevant risk and shall be verified by statutory declaration by the person making the request or some other person.

- (4) Where —

- (a) a request has been made under subsection (1) or (2); and
- (b) the enrolment officer to whom the request was referred is satisfied that having the residence of the person making the request shown on a roll would place or places the personal safety of the person or members of the family of that person, at risk,

the enrolment officer —

- (c) where the request is lodged under subsection (1), shall not include the residence of the person in the particulars that are entered on a roll; and
- (d) where the request is lodged under subsection (2), subject to section 53, shall delete the residence of the person from the particulars that are entered on the roll.

- (5) Where an enrolment officer grants or refuses a request made by a person under subsection (1) or (2), the enrolment officer shall notify the person in writing of the decision.

- (6) Notwithstanding anything contained in section 54, where a residence is deleted from a roll under subsection (4), the particulars so deleted shall be obliterated.

- (7) An enrolment officer shall, when directed to do so by the Electoral Commissioner, conduct a review of a roll in relation to electors whose residences are not shown on the roll by virtue of this section and, upon completion of the review, shall make such alterations to the roll as the enrolment officer thinks necessary to ensure that the only electors whose residences are not shown on the roll by virtue of this section are electors the personal safety of whom or of whose family, the enrolment officer is satisfied, would be at risk if their address were shown on the roll.

[Section 51B inserted by No. 76 of 1984 s. 9; amended by No. 40 of 1987 s. 84; No. 36 of 2000 s. 28(1) and (2).]

52. Alteration of rolls

- (1) In addition to the other powers of alteration conferred by this Act, rolls 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 roll 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;
 - (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 his name may be removed from the roll.
 - (c) By changing, upon the written application of an elector, the original name or address of the elector to an altered name or address.
 - (d) For the purposes of giving effect to a nomination made under section 61.

- (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 struck off by mistake under the last preceding paragraph.
- (g) By changing the address of an elector from that appearing on the claim, to the address inserted by the electoral canvasser on the roll revised by him after an electoral canvass or census taken by order of the Governor, if the new address is within the boundaries of the same district.

[(2) repealed]

[Section 52 amended by 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).]

53. Time for altering rolls

No addition to or alteration of the roll shall be made between the time of the close of the roll for an election for the region or the district, as the case may be, and the closing of the poll at such election, or if only one candidate is nominated, the close of nominations for such election, or between the time of the close of the roll for a referendum and the close of voting at the referendum except that —

- (a) claims received before the time of the close of the roll may be enrolled after that time if no notice of objection to such claim has been lodged or given under section 47;
- (b) a claimant may be enrolled pursuant to section 47(3)(e) after that time; and

[(c), (d) deleted]

- (e) alterations may be made at any time not later than the 14th day next preceding the day fixed for the election or referendum pursuant to the provisions of sections 51 and 52.

[Section 53 inserted by No. 63 of 1948 s. 12; amended by No. 33 of 1964 s. 20; No. 9 of 1983 s. 13; No. 54 of 1983 s. 8; No. 40 of 1987 s. 84; No. 79 of 1987 s. 14.]

54. Alterations, how to be made

All alterations of the rolls shall be made in such manner that the original writing or print shall not be obliterated, and the reason for the alteration, the date thereof, and such reference to authority as may be deemed necessary, shall be set against the alteration together with the initials of the person making such alteration.

[Section 54 amended by No. 44 of 1911 s. 19; No. 36 of 2000 s. 28(1).]

55. Method of removing names from a printed roll

A name shall be deemed to be removed from the roll when a line in ink is drawn through the name and a note stating the ground of removal made opposite thereto, with such reference to authority as may be deemed necessary, and initialled and dated by an officer authorised to remove such name from the roll.

56. Lists of deaths occurring in the State

The Registrar of Births, Deaths and Marriages shall, 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 17 years of age, whose death has been registered in the State during the month.

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

[57. *Repealed by No. 69 of 1996 s. 27.*]

[58. *Repealed by No. 58 of 1951 s. 6.*]

59. Returns in respect of certain prisoners and other persons under detention

During the months of January, April, July and October in each year —

- (a) the chief executive officer, within the meaning of that expression as defined in section 3 of the *Prisons Act 1981*, shall forward to the Electoral Commissioner, in the prescribed form, a list containing the names and age of each person of a kind referred to in section 18(b) to (cd) and received by him in each of Her Majesty's prisons during the preceding 3 months, and shall show on the form the address and occupation of each such person prior to the sentence, order or direction, as the case may be, to which he is subject; and
- (b) the secretary of the Mentally Impaired Accused Review Board established under the *Criminal Law (Mentally Impaired Accused) Act 1996* shall forward to the Electoral Commissioner, in the prescribed form, a list containing the names and age of each person who became a mentally impaired accused, as defined in Part 5 of that Act, during the preceding 3 months and shall show on the form the address and occupation of each such person prior to the person becoming a mentally impaired accused.

[Section 59 inserted by No. 39 of 1979 s. 11; amended by No. 40 of 1987 s. 84; No. 66 of 1990 s. 5; No. 31 of 1993 s. 38; No. 69 of 1996 s. 28; No. 84 of 2004 s. 82.]

60. Electoral Commissioner to cause certain names to be struck off the rolls

- (1) Upon receipt of the lists referred to in section 56(a) and section 59, the Electoral Commissioner shall 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 rolls.

[(2) repealed]

[Section 60 amended by 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).]

61. Electoral Commissioner may request married women to nominate surname

- (1) Upon the receipt of the lists referred to in section 56(b) the Electoral Commissioner may —
- (a) cause the names of the married women enumerated in those lists who are enrolled as electors for the Council and Assembly to be ascertained under the surname of such women before their marriage; and
 - (b) cause each such elector to nominate which of the surnames the elector is entitled to use the elector wishes to be enrolled under.
- (2) A nomination for the purposes of subsection (1)(b) shall be —
- (a) in a form approved by the Electoral Commissioner;
 - (b) signed by the elector in the presence of a person authorised by this Act to witness the signatures of claimants; and
 - (c) returned to the Electoral Commissioner.
- (3) On receipt of a nomination made under subsection (1)(b) the Electoral Commissioner shall give such directions as are necessary to give effect to the nomination.

[Section 61 inserted by No. 79 of 1987 s. 17.]

62. Method for re-enrolment when elector no longer disqualified

Every person whose name had been removed from any roll under the provisions of section 60 pursuant to the lists furnished under section 59, may, when no longer disqualified, claim, in the manner prescribed in section 42, to have his name entered upon any roll for which he possesses the necessary qualification.

[Section 62 amended by No. 28 of 1970 s. 8; No. 24 of 1990 s. 123.]

62A. Computer records relating to roll

- (1) Where, but for this subsection, the Electoral Commissioner or an enrolment officer is required or permitted under this Act to record particulars in a written form on a roll, the Electoral Commissioner or enrolment officer may do so by recording or storing those particulars, or causing those particulars to be recorded or stored, on a mechanical, electrical or other device approved by the Electoral Commissioner.
- (2) Where the Electoral Commissioner or an enrolment officer is required or permitted under this Act to vary or remove particulars which, but for this section, would be on a roll but which have been recorded or stored in accordance with this section, the Electoral Commissioner or enrolment officer shall do so by varying or removing the particulars so recorded or stored, or causing the particulars so recorded or stored to be varied or removed, as the case may be.
- [(3) repealed]*
- (4) Where the Electoral Commissioner or an enrolment officer who is required under this Act to enter particulars on, vary particulars on, or remove particulars from, a roll complies with the requirement by taking action in accordance with this section, the

Electoral Commissioner or enrolment officer shall, for the purposes of this Act, including any provisions imposing obligations on the Electoral Commissioner or enrolment officer, be taken to have entered those particulars on the roll, varied those particulars or removed those particulars, as the case may be.

- (5) Sections 54 and 55 do not apply to alterations of a roll made pursuant to this section.
- (6) A reference in this section to the entering or recording of particulars on a roll includes a reference to the making of annotations on a roll.

[Section 62A inserted by No. 79 of 1987 s. 18; amended by No. 36 of 2000 s. 28(1) and (2).]

Part IIIA — Registration of political parties

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

62C. Definitions and interpretation

(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 one of its objects or activities the promotion of the election to the Parliament of the State of a candidate or candidates endorsed by it;

“**member**”, in relation to a political party, includes a person who is a member of a related political party;

“**parliamentary party**” means a political party of which at least one member is a member of the Assembly or the Council;

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

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

“**related political party**” has the meaning given by subsection (2).

(2) For the purposes of this Part, 2 political parties are related political parties if —

(a) one is a part of the other; or

(b) both are parts of the same political party.

- (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 by No. 36 of 2000 s. 63.]

62D. Register of political parties

- (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 by 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 a form approved by the Electoral Commissioner for the purposes of this section, and is to —
 - (a) state a name for the political party;

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- (b) if the political party wishes to use an abbreviation of its name on ballot papers for elections — set out the abbreviation;
 - (c) set out the name and address of the secretary of the political party;
 - (d) set out the names and addresses of at least 500 members of the party who are electors;
 - (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.
- (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 by No. 36 of 2000 s. 63.]

62F. Variation of application

- (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 by No. 36 of 2000 s. 63.]

62G. Publication of notice of application

- (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 in —
 - (a) the *Gazette*; and
 - (b) a newspaper circulating generally in the State.
- (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).

s. 62H

- (4) The statement has to —
 - (a) set out in detail the grounds for the elector's belief under subsection (3)(b);
 - (b) set out the elector's residential 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 by No. 36 of 2000 s. 63.]

62H. Registration

- (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 as required by section 62E(4)(e) and (f).
- (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;
 - (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 by No. 36 of 2000 s. 63.]

62I. Registration of existing parliamentary parties

- (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 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

s. 62J

information and documents referred to in section 62E(4)(a), (b), (c), (e) and (f).

[Section 62I inserted by No. 36 of 2000 s. 63.]

62J. Refusal of registration

(1) In this section —

“application name” means a name for a political party, or the abbreviation 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;
- (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.

(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 6 words;
- (b) is obscene or offensive;
- (c) is the name, or an abbreviation or acronym of the name, of an existing party;
- (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;
- (e) includes the word “royal” or the word “independent”; 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.
- (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) The Electoral Commissioner may refuse to register a political party if the Electoral Commissioner believes on reasonable grounds that a substantial proportion of the electors whose names are set out in the party's application as required by section 62E(4)(d) are electors whose names have also been provided to the Electoral Commissioner under this Part for the purposes of the registration or continued registration of another political party (not being a related political party).
- (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 by No. 36 of 2000 s. 63.]

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 the form and way approved by the Electoral Commissioner.

s. 62L

- (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;
 - (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 by No. 36 of 2000 s. 63.]

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 may cancel the registration of a political party if the Electoral Commissioner is satisfied on reasonable grounds that —
 - (a) the party no longer exists;
 - (b) the party is not a parliamentary party and does not have at least 500 members who are electors;
 - (c) the candidates at a conjoint election held after the registration of the party did not include at least one candidate endorsed by the party;
 - (d) the registration was obtained by fraud or misrepresentation; or
 - (e) a return required to be lodged under Part VI by the agent of that political party has been outstanding for more than 12 months.

- (3) If the Electoral Commissioner proposes to cancel the registration of a political party, other than because of subsection (2)(d), the Electoral Commissioner is to —
- (a) give written notice of the proposed cancellation to the secretary of the party at the address shown in the register;
 - (b) give notice of the proposed cancellation in —
 - (i) the *Gazette*; and
 - (ii) a newspaper circulating generally in the State;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;
 - (b) give notice of the cancellation in the *Gazette*;
 - (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 by No. 36 of 2000 s. 63.]

s. 62M

62M. Public access to 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 secretaries of the political parties.

[Section 62M inserted by No. 36 of 2000 s. 63.]

62N. Review of decisions

- (1) Any person affected by —
 - (a) a decision under section 62H to register a political party;
 - (b) a decision under section 62J to refuse to register a political party;
 - (c) 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;
 - (b) be made to the Supreme Court;
 - (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;
 - (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 by No. 36 of 2000 s. 63.]

62O. False representation as to registration

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 by No. 36 of 2000 s. 63.]

62P. Request to provide information

The Electoral Commissioner may request the secretary of a political party, or a person who purports to be the secretary 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 by No. 36 of 2000 s. 63.]

s. 62Q

62Q. Offences relating to information

- (1) A person must not in an application under section 62E or 62J, 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.

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

Penalty: \$1 500.

[Section 62Q inserted by No. 36 of 2000 s. 63.]

62R. Evidence by certificate

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 by No. 36 of 2000 s. 63.]

Part IV — Elections

Division (1) — Writs

[63. *Repealed by No. 36 of 2000 s. 7.]*

64. Issue of writs for general election

- (1) Whenever an Assembly expires or is dissolved the Governor shall, not later than 21 days after the dissolution or expiry, cause a writ to be issued for elections in all the districts.
- (2) Whenever the occasion arises under the *Constitution Acts Amendment Act 1899* for a writ to be issued for elections in all the regions the Governor shall, within the time prescribed by that Act, cause that writ to be issued.

[Section 64 inserted by No. 40 of 1987 s. 38; amended by No. 36 of 2000 s. 8.]

65. Notice to be published

- (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 by No. 36 of 2000 s. 9.]

[66. *Repealed by No. 79 of 1987 s. 20.]*

[66A. *Repealed by No. 47 of 1940 s. 2.]*

67. Issue of writs in cases of vacancy

- (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(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 by 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.]

68. Time of issue of writs

[(1) repealed]

- (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 by No. 9 of 1983 s. 15; No. 40 of 1987 s. 40.]

69. Form of writ

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

- (a) the last day for the nomination of candidates;
- (b) the day for the polling (“**polling day**”); and
- (c) the last day for the return of the writ.

[Section 69 inserted by No. 36 of 2000 s. 11.]

69A. Close of rolls

The time of the close of the rolls is 6 p.m. on the day 8 days after the date of the writ.

[Section 69A inserted by No. 79 of 1987 s. 21.]

70. Date of nomination

The date fixed as the last day for the nomination of candidates shall not be less than 7 nor more than 45 days from the date of the writ.

[Section 70 amended by No. 63 of 1948 s. 13; No. 57 of 1952 s. 2; No. 33 of 1964 s. 25; No. 9 of 1983 s. 16; No. 79 of 1987 s. 22; No. 36 of 2000 s. 33.]

71. Date of polling

- (1) The date fixed for the polling shall not be less than 21 days nor more than 45 days after the date of nomination.

- (2) The day fixed for the polling shall be a Saturday, other than Easter Saturday or the Saturday immediately preceding or succeeding Easter Saturday.
- (3) In the case of a general election for the Council or the Assembly the same date shall be fixed for the polling in each region or district as the case requires.

[Section 71 amended by No. 38 of 1931 s. 2; No. 63 of 1948 s. 14; No. 59 of 1959 s. 4; No. 79 of 1987 s. 23.]

72. Date of return of writ

- (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) repealed]

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

[73. Repealed by No. 36 of 2000 s. 13.]

74. Address and distribution of writs

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 general election for the Council, to the Returning Officer and Deputy Returning Officers for each region;
- (b) in the case of any other election in a region, to the Returning Officer and Deputy Returning Officers for the region;
- (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 by No. 36 of 2000 s. 14.]

75. Duty of officer on receipt of writ

- (1) Having received a writ for an election in a region or an election in a district the Electoral Commissioner is to —
 - (a) advertise in the region or district the day of issue of the writ and the writ's particulars;
 - (b) as soon as practicable after receiving the writ, advertise in the region or district the place of nomination appointed under section 85(1) for the election; and
 - (c) publish whatever information the Electoral Commissioner considers necessary to adequately inform electors about polling places at which the poll will be taken and polling areas declared under section 100(1)(i) in relation to polling places.
- (2) The advertisement under subsection (1)(a) must give at least 10 clear days' public notice of polling day.
- (3) In the case of a general election the Electoral Commissioner is to comply with subsections (1) and (2) in respect of each region or district.
- (4) In this section “**advertise**” in relation to a region or district means advertise in a newspaper circulating in the region or district, or by placards or otherwise.

[Section 75 inserted by No. 40 of 1987 s. 41; amended by No. 58 of 1988 s. 4; No. 36 of 2000 s. 15.]

76. Extension of time

- (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 the time prescribed for the return of the writ shall not be extended under this section beyond the time prescribed by the *Constitution Acts Amendment Act 1899*.

(4) Where an extension of the time for taking the poll is made under this section public notice of the extension shall forthwith be given in the region or district in which the election is to be held.

[Section 76 inserted by No. 40 of 1987 s. 41; amended by No. 36 of 2000 s. 16.]

Division (2) — Nominations

77. Candidates to nominate

(1) A person shall not be capable of being elected at an election unless he —

- (a) duly nominates himself; and
- (b) is qualified to be elected and is not disqualified from being elected as 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 hour of nomination 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 himself in relation to an election and the person withdraws that nomination under section 82 before the hour of nomination, the nomination of the person for the election shall be taken to have ceased to have effect at the time when the person withdraws that nomination.

- (4) A person shall not nominate himself as a candidate in an election if, prior to and until the hour of nomination, he is, either by this Act or any other Act, disqualified from being elected at that election as, or from being, a member of the House for which the election is being held.

Penalty: \$200.

- (5) A nomination made in contravention of subsection (4) is invalid.

[Section 77 inserted by No. 40 of 1987 s. 42; amended by No. 50 of 2003 s. 56(2).]

78. Mode of nomination

- (1) Nominations may be in a form approved by the Electoral Commissioner, and shall —
- (a) be signed by the candidate; and
 - (b) state the surname and each christian or given name, the place of residence 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.
- (2) The statement of the form of the candidate's name to be printed on the ballot papers shall 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;
 - (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).

[Section 78 amended by No. 44 of 1911 s. 43; No. 51 of 1962 s. 5; No. 79 of 1987 s. 25; No. 36 of 2000 s. 34.]

79. Time for receipt of nominations

Nominations may be received by the Returning Officer at any time after the issue of the writ and before the hour of nomination.

80. Grouping of candidates

- (1) Two or more candidates nominated for an election in a region where the relevant number is more than one may, in a form approved by the Electoral Commissioner and before the hour of nomination, make a 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.
- (2) Subject to subsections (3), (4), (5) and (6), candidates nominated for an election in a region who have under subsection (1) made a claim referred to in that subsection shall, for the purposes of that election, be included in a group in the order specified in the claim.
- (3) Two or more candidates who have made a claim under subsection (1) may, in a form approved by the Electoral Commissioner and before the hour of nomination, withdraw that claim.
- (4) A claim under subsection (1) is of no force or effect if —
 - (a) the name of any candidate included in the claim is included in any other claim under that subsection; or
 - (b) the nomination of any candidate whose name is included in the claim is withdrawn under section 82.
- (5) Where a claim is made under subsection (1) in respect of an election and any of the persons who made the claim is, before polling day for that election, declared by any court to be

incapable of being elected at that election, then, after the making of the declaration —

- (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.
- (6) Where a claim is made under subsection (1) 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 by No. 40 of 1987 s. 43.]

81. Nomination paper and deposit

- (1) No nomination shall be valid unless —
- (a) the nomination paper is received by the Returning Officer after the issue of the writ and before the hour of nomination; and
 - (b) at or before the hour of nomination, the required deposit is lodged with the Returning Officer by or on behalf of the candidate in money or by a cheque drawn by a financial institution upon itself and payable to the Electoral Commissioner.
- (2) Unless a greater amount is prescribed, \$250 is the “**required deposit**” for the purposes of subsection (1)(b).

[Section 81 inserted by No. 43 of 1996 s. 9; amended by No. 24 of 2000 s. 50.]

81A. Centralised nomination procedure

- (1) In this section —
- “party nomination”** means the nomination for an election of a candidate publicly recognised by a particular registered political party as being an endorsed candidate of that 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;
 - (b) it is received by the Electoral Commissioner after the issue of the writ and not later than 24 hours before the hour of nomination; and
 - (c) not later than 24 hours before the hour of nomination, 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 or by a cheque drawn by a financial institution on itself and payable to the Electoral Commissioner.
- (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 an election in a region are made in accordance with subsection (2), a claim under section 80(1) may be made to the Electoral Commissioner together with the nominations.
- (5) If a party nomination has been made in accordance with subsection (2), the Electoral Commissioner is to —
- (a) give the secretary of the registered political party a notice acknowledging receipt by the Electoral

Commissioner of the candidate's nomination and the deposit lodged on behalf of the candidate; and

- (b) give the Returning Officer, as soon as practicable before the hour of nomination —
 - (i) a copy of the nomination paper;
 - (ii) advice that the required deposit for the purposes of section 81(1)(b) has been lodged with the Electoral Commissioner on behalf of the candidate; and
 - (iii) details of any claim under section 80(1) made under subsection (4).
- (6) The reference in subsection (5)(b)(i) to a copy of the nomination paper includes a reference to a copy generated by way of transmission by facsimile or other electronic means under section 210(2).

[Section 81A inserted by No. 36 of 2000 s. 35; amended by No. 74 of 2003 s. 47(2).]

82. Withdrawal of nomination

- (1) Subject to subsection (2), a candidate may withdraw his nomination by lodging with the Returning Officer notice in writing of withdrawal of his nomination at any time before the hour of nomination, and thereupon the nomination shall be cancelled and the deposit lodged with the nomination shall be forfeited to the Crown.
- (2) Where 2 or more candidates for an election in a region are included in a group, a candidate included in the group shall not, under subsection (1), withdraw his nomination except with the consent of the other or others.

[Section 82 inserted by No. 33 of 1967 s. 10; amended by No. 40 of 1987 s. 44.]

83. Formal defects

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 by No. 36 of 2000 s. 36.]

84. Return or forfeiture of deposit

(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 he is elected or —

- (a) in the case of an election in a region where the relevant number is more than one, if the total number of first preference votes polled in his favour or in favour of the members of the group in which he 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 his 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 his 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) On the death of a candidate before polling day, or on polling day before the close of the poll, the deposits made by or on behalf of that candidate and the other candidates shall be returned in accordance with subsection (3) or (4).

- (3) If a candidate was nominated under subsection 81A(2) the deposit (or an amount that includes the deposit) shall be returned to the person who paid it, or to a person authorised in writing by the person who paid it.
- (4) In all other cases, the deposit shall be returned to the candidate, or to a person authorised in writing by the candidate or, if the candidate is dead, to the candidate's legal representative.

[Section 84 inserted by No. 40 of 1987 s. 45; amended by No. 36 of 2000 s. 37; No. 55 of 2006 s. 4.]

85. Place of declaration of nominations and hour of nomination

- (1) The Electoral Commissioner is to appoint a place as the place of declaration of nominations for an election for the purposes of section 86 or 87, as the case may be.
- (2) The hour of nomination for an election is 6 p.m. on the last day for the nomination of candidates.

[Section 85 inserted by No. 36 of 2000 s. 38.]

86. Proceedings on nomination day — Assembly election

- (1) This section applies to an election in a district and not to an election in a region.
- (1a) The Returning Officer shall attend at the place of declaration of nominations for the period of one hour immediately prior to the hour of nomination.
- (2) At the hour of nomination the Returning Officer shall publicly produce all nomination papers received by him under section 81 or 81A(5)(b) between the issue of the writ and the hour of nomination, and declare the names, occupations, and residences of all candidates nominated.
- (2aa) If there is only one candidate for election the Returning Officer shall declare that candidate duly elected.

- (2a) If there are 2 or more candidates for election the order of the names of the candidates as they shall be placed on the ballot papers shall be determined as follows —
- (a) the Returning Officer shall, 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 his 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 shall be placed first on the ballot papers, the candidate whose name appears on the second slip so obtained shall 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 shall 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 Commissioner at Perth, by telegraph or other expeditious means, the names and other particulars of the several candidates in such order and also advertise those names and particulars in such order in a newspaper circulating within the district for which the candidates have nominated.
- (3) Subject to section 88(2) the proceedings shall then stand adjourned to polling day.

[Section 86 amended by No. 68 of 1964 s. 17; No. 28 of 1970 s. 12; No. 40 of 1987 s. 47 and 84; No. 36 of 2000 s. 39 and 40.]

87. Proceedings on nomination day — Council election

- (1) This section applies to an election in a region and not to an election in a district.

- (2) The Returning Officer shall attend at the place of declaration of nominations for the period of one hour immediately prior to the hour of nomination.
- (3) At the hour of nomination the Returning Officer shall publicly produce all nomination papers received by him under section 81 or 81A(5)(b) between the issue of the writ and the hour of nomination, and declare the names, occupations, and residences of all candidates nominated.
- (4) If there are not more candidates for election than the relevant number the Returning Officer shall declare that candidate or those candidates, as the case may be, 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 as they shall be placed on the ballot papers shall be determined as follows —
 - (a) the Returning Officer shall, 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 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 shall be placed first on the ballot papers, the group whose names appear on the second slip so obtained shall 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 as they shall be placed on the ballot papers shall be determined as follows —

- (a) the Returning Officer shall, 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 of those candidates, a slip bearing his 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 shall, of those candidates, be placed first on the ballot papers, the candidate whose name appears on the second slip so obtained shall, 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) As soon as is practicable the Returning Officer shall advertise the names and other particulars of the several candidates, in the order prescribed by section 113A, in a newspaper circulating in the region.
- (8) Subject to section 88(1) the proceedings shall then stand adjourned to polling day.

[Section 87 inserted by No. 40 of 1987 s. 48; amended by No. 79 of 1987 s. 27; No. 36 of 2000 s. 39 and 41.]

87A. Further duties of Returning Officer

- (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 his decision shall be final.
- (2) The Returning Officer shall give a receipt in the prescribed form to any candidate who has duly nominated, or to his agent, acknowledging that candidate's nomination and deposit received by the Returning Officer pursuant to section 81.

*[Section 87A inserted by No. 40 of 1987 s. 49; amended by
No. 36 of 2000 s. 39.]*

88. Death of candidate after nomination

[(1) repealed]

- (2) If, after the nominations have been declared and before or on polling day before the hour of closing the poll, any candidate in an election dies, such election shall, by reason of such death, be deemed to have wholly failed, and in such case the following provisions shall apply:
- (a) Where the candidate dies before polling day the returning officer shall, 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.
 - (b) Where the candidate dies on polling day, the Returning Officer shall, 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 but shall keep the polling place open for receiving early and absent 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) 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.
- (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 shall be taken out by the several presiding officers, and, being made up into sealed packages, shall be sent by them respectively unopened to the Returning Officer or Deputy Returning Officer, who shall forthwith, 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 shall 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 shall be had and taken anew.
- (e) The roll which was in force and required to be used at the election which has failed shall, 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, shall 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 shall operate 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 an election in a district 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 shall be returned as elected at the election, and section 89 shall apply.
- (4) If, after the close of the poll for an election in a region and before the counting of the votes in the election has been completed, a candidate dies, and during the count of the votes or the continuation of the count of the votes after his death, as the case may be, that candidate is elected, he, shall be deemed for the purposes of section 10 of the *Constitution Acts Amendment Act 1899* and Part IVA of this Act to have vacated a seat in the Council immediately after he was elected.

[Section 88 inserted by No. 18 of 1940 s. 3; amended by 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).]

89. Failure or partial failure of election

- (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 an election in a region 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 by No. 18 of 1940 s. 4; amended by No. 40 of 1987 s. 51.]

Division (3) — Voting

(i) Early and absent voting

[Heading amended by No. 63 of 1948 s. 16; No. 36 of 2000 s. 48(5).]

90. Voting by post

- (1) An elector who —
- (a) being enrolled for a region or district, has reason to believe that throughout the hours of polling on polling day, he will be more than 8 kilometres by the nearest practicable route from any polling place open in the State for the purpose of an election for the Council or the Assembly;
 - (b) will, by reason of emergency duty or requirements of employment, be precluded throughout the hours of polling on polling day from attending to vote at any polling place open in the State;
 - (c) will, throughout the hours of polling on polling day, be travelling under conditions that will preclude him from voting during those hours at any polling place open in the State;
 - (d) is seriously ill or infirm and by reason of such illness or infirmity will be precluded from attending to vote during the hours of polling at any polling place open in the State or, being a woman that will by approaching maternity be so precluded;
 - (da) will be precluded from attending to vote during the hours of polling at any polling place open in the State because the elector will be caring for a person who is seriously ill or infirm or who is expected shortly to give birth;

- (db) is an elector whose residence is not shown on the roll because a request under section 51B has been granted;
 - (e) is, by reason of his membership of a religious order or his religious beliefs —
 - (i) precluded from attending at a polling place; or
 - (ii) precluded from voting throughout the hours of polling on polling day or throughout the greater part of those hours;
 - (f) is by reason of —
 - (i) serving a sentence of imprisonment for an offence; or
 - (ii) being otherwise in lawful custody or detention, precluded from attending at a polling place,may after the polling day has been publicly announced by the Government, make application for an early ballot paper.
- (1a) An elector may make an application for an early ballot paper at any time during the period referred to in subsection (1) to —
- (a) the Electoral Commissioner;
 - (b) the Deputy Electoral Commissioner;
 - (c) a Returning Officer for any district or region;
 - (d) an officer of the Western Australian Electoral Commission appointed by the Electoral Commissioner to issue early ballot papers;
 - (e) a registrar of the Magistrates Court; or
 - (f) a person appointed in writing by the Electoral Commissioner.
- (2) Each of the persons referred to in subsection (1a)(a), (b), (c), (d), (e) and (f) is in this Part called an **“issuing officer”**.

- (3) An application for an early ballot paper may be made orally or in writing and, if made in writing, may be made whether the elector is within or outside the State at the time of applying.
- (3a) A written application for an early ballot paper may be in the prescribed form for the election or elections, as the case may be, and shall —
- (a) contain a statement by the applicant to the effect that the applicant is an elector who is entitled to apply for an early ballot paper;
 - (b) be signed by the applicant; and
 - (c) be made to an issuing officer.
- (3b) If an elector who wishes to make a written application for an early ballot paper is blind or the sight of the elector is so impaired that the elector is unable to sign the application, or the elector is unable to write or is otherwise so physically incapable that the elector is unable to sign the application, then on satisfying an authorised witness of that inability to sign the elector may make a distinguishing mark on the application which shall be witnessed by the authorised witness.
- (3c) Where an elector who makes a written application for an early ballot paper expects to be absent from the address for which he is enrolled at the time that the early ballot paper will be forwarded by the issuing officer the elector may in the application state an address to which the ballot paper is to be forwarded.
- (3d) Any ballot paper, declaration, envelope or notice that is required by this section to be posted to an elector who has made a written application for an early ballot paper shall be posted to the address for which the elector is enrolled unless the elector has stated another address under subsection (3c) in which case it shall be posted to that other address.
- (3e) An oral application for an early ballot paper shall be made in person before an issuing officer and —

- (a) shall include the following statements —
 - (i) a statement of the ground upon which the applicant applies for an early ballot paper;
 - (ii) a statement specifying the district for which the applicant is enrolled;
 - (iii) a statement of such other particulars (if any) as are prescribed;
 - (b) shall not be made earlier than 24 hours after the hour of nomination.
- (4) On receipt of a written application made under this section, the issuing officer —
- (a) shall enter on the application form the date of its receipt and sign the endorsement;
 - (b) shall number it in the manner prescribed by the regulations, if it is properly signed and, in the case of an elector making his mark, it is witnessed and the application is otherwise in order; and
 - (c) shall after the close of nominations, post to the elector or deliver to him at the place of issue
 - (i) an early ballot paper printed under the authority of the Electoral Commissioner in the form prescribed by the regulations and initialled by the issuing officer and a declaration in the form so prescribed;
 - (ii) an envelope marked “ballot paper”; and
 - (iii) a further envelope addressed to the Electoral Commissioner for the purpose of returning therein to him the declaration which was completed by the elector and authorised witness together with the envelope containing the ballot paper.

- (4aa) A ballot paper printed on official paper does not have to be initialled by the issuing officer under subsection (4)(c)(i) or (4b)(a).
- (4a) The Electoral Commissioner may direct any issuing officer to forward all or any written applications made under this section to the office of the Electoral Commissioner so that any such applications can be dealt with in terms of subsection (4) by an issuing officer designated by the Electoral Commissioner.
- (4b) Where an oral application for an early ballot paper is made to an issuing officer and the issuing officer is satisfied that the application is properly made, the issuing officer shall deliver to the elector —
- (a) an early ballot paper printed under the authority of the Electoral Commissioner in the form prescribed by the regulations and initialled by the issuing officer and a declaration in the form so prescribed; and
 - (b) the envelopes specified in subsection (4)(c)(ii) and (iii), and make a record of the name of the elector and of such other particulars as are prescribed.
- (5) Notwithstanding anything in subsection (1), (4) or (4b), an issuing officer shall not issue an early ballot paper —
- (a) in respect of a written application for an early ballot paper unless the application is received before 6 p.m. on the Thursday next preceding polling day;
 - (b) in respect of an oral application for an early ballot paper unless the application is made before 6 p.m. on the day immediately preceding polling day.
- (6) When a written application for an early ballot paper has been dealt with by an issuing officer, the issuing officer shall forthwith send the application to the Electoral Commissioner.
- (7) Where the issuing officer dealing with a written application for an early ballot paper —

- (a) is not satisfied that the application is in order; or
- (b) is not satisfied that the applicant is entitled to an early ballot paper,

the issuing officer shall forthwith post to the applicant a notice in the prescribed form.

- (7a) When a written application for an early ballot paper is properly signed by the applicant therefor, if the issuing officer is satisfied that the applicant is entitled to an early ballot paper, the application shall not be deemed insufficient or invalid by reason only that in the application there is an omission or incorrect description or misdescription in respect of any of the particulars required by law to be contained therein.
- (8)(a) An issuing officer shall not visit any elector for the purpose of taking his vote, but if a request is made at any time within 7 days before 6 p.m. on the day immediately preceding polling day to an issuing officer by or on behalf of an elector who is entitled to an early ballot paper under subsection (1)(d), the issuing officer may visit the elector by or on whose behalf the request was made, for the purpose, and shall obtain from the elector an application for an early ballot paper under and in accordance with this section.
 - (b) When the issuing officer receives the application he shall if the elector is entitled to an early ballot paper issue him with one and the vote of the elector shall be taken in accordance with the provisions of this section.
- (9) Where an issuing officer issues an early ballot paper to an elector under this section and the elector satisfies the issuing officer that the ballot paper has not been delivered to the elector or has been lost or destroyed the issuing officer shall issue a further ballot paper together with the necessary envelopes and declaration to the elector and shall advise the Electoral Commissioner of that fact.

- (10) A person who obtains an early ballot paper by impersonating another person or making a false statement either in a written application or in an oral application commits an offence.
Penalty: \$4 000 or 12 months imprisonment.
- (11) Where a person wishes to vote at 2 elections that are held on the same day only one application for an early ballot paper is necessary in respect of the elections and the issuing officer shall, subject to this Act, provide an applicant for an early ballot paper with such ballot papers and ballot paper envelopes as are necessary in respect of each election.
- (12) Notwithstanding the *Prisons Act 1981* or any regulation or rule thereunder, correspondence, in relation to an early ballot paper, entitlement thereto, or guidance thereon permitted by this Act, between the Electoral Commissioner and an elector entitled to an early ballot paper by virtue of subsection (1)(f) shall not be censored.
- (13) Notwithstanding anything in this section, the issuing officer is not —
- (a) authorised to issue early ballot papers before the expiration of 24 hours after the hour of nomination; or
 - (b) required to issue an early ballot paper before the expiration of 48 hours after the hour of nomination.

[Section 90 inserted by No. 59 of 1959 s. 5; amended by No. 51 of 1962 s. 6; No. 33 of 1964 s. 28; No. 68 of 1964 s. 18; No. 113 of 1965 s. 8; No. 28 of 1970 s. 13; No. 94 of 1972 s. 4; No. 39 of 1979 s. 12; No. 9 of 1983 s. 18; No. 40 of 1987 s. 52 and 84; No. 79 of 1987 s. 28; No. 78 of 1995 s. 147; No. 43 of 1996 s. 10; No. 36 of 2000 s. 28(1), 44, 48(1), (2), (3) and (4) and 82; No. 59 of 2004 s. 141.]

[91.] *Repealed by No. 53 of 1957 s. 4.]*

92. Directions for early voting

- (1) The directions prescribed by this section for regulating voting by means of early ballot papers, whether within or outside the State, shall be complied with.
- (2)(a) The elector shall complete the declaration and exhibit his early ballot paper, unmarked, to an authorised witness.
 - (b) The authorised witness shall sign his name in his own handwriting on the declaration in the space provided for the purpose and shall add the date he so signs and his address as at that date.
 - (c) The elector shall in the presence of the authorised witness indicate his vote on the early ballot paper in the manner prescribed by section 128, but so that the witness shall not see the vote.
 - (d) The elector shall fold the ballot paper and in the presence of the authorised witness put it in the envelope marked “ballot paper”, and fasten the envelope.
 - (e) The elector shall enclose the declaration duly completed and the envelope marked “ballot paper” and its contents in the envelope addressed to the Electoral Commissioner and fasten the envelope.
- [(3) repealed]*
- (4) Subject to subsection (4a) the elector shall, before the close of the poll, post or deliver the envelope, or cause it to be posted or delivered, to the Electoral Commissioner.
- (4a) If the elector believes on reasonable grounds that the envelope —
 - (a) if posted under subsection (4), would not reach the Electoral Commissioner before 9 a.m. on the Tuesday next succeeding polling day; or

- (b) if delivered under subsection (4), would not reach the Electoral Commissioner before the close of the poll, the envelope and its contents may be posted or delivered unopened to a Returning Officer, or delivered unopened to a presiding officer in charge of any polling place open on polling day, so as to reach the Returning Officer or presiding officer before the close of the poll, and the Returning Officer or presiding officer shall, in accordance with the regulations, send the envelope and its contents unopened to the Electoral Commissioner.
- (4b) A Returning Officer or presiding officer shall not accept an early ballot paper after the close of the poll.
- (4c) Where an envelope that contains an early ballot paper —
- (a) is posted to the Electoral Commissioner bearing a postmark that includes a time after the close of the poll; or
 - (b) reaches the Electoral Commissioner at or after 9 a.m. on the Tuesday next succeeding polling day,
- the early ballot paper shall be rejected.
- (5)(a) If an elector (“**the elector**”) cannot read or write or is so disabled as to be unable to vote without assistance, another elector appointed by the elector (being an elector who is not a candidate at the election) may, according to the directions of the elector, do for the elector any act required or authorised by subsection (2), (4) or (4a).
- (b) An elector appointed under paragraph (a) is to state in the declaration his full name and address and the fact that he has been appointed by the elector to mark the ballot paper for the elector.
 - (ba) Without limiting paragraph (a), if the elector completes the declaration but is so disabled as to be unable to vote without assistance the authorised witness may, according to the directions of the elector, mark the ballot for the elector and do

for the elector any other act required or authorised by subsection (2)(d) or (e), (4) or (4a).

(c) Subject to paragraph (a), a person who, not being the declarant named in a declaration made under this section, —

- (i) signs as the declarant; or
- (ii) makes a distinguishing mark as the declarant,

on the declaration with or without the authority of the declarant so named commits an offence.

Penalty: \$1 000.

(d) An authorised witness shall not witness the signature or mark of any elector on a declaration made under this section unless —

- (i) he has satisfied himself as to the identity of the declarant named therein;
- (ii) he has seen the declarant —
 - (I) sign the declaration in his, the declarant's own hand writing; or
 - (II) make his mark thereon;

and

- (iii) he knows the statements contained in the declaration are true, or has satisfied himself, by inquiry from the declarant or otherwise, that the statements contained in the declaration are true.

Penalty: \$1 000.

(6) An elector to whom an early ballot paper has been issued is not entitled to vote at any polling place unless the early ballot paper has been delivered to the presiding officer for cancellation, but if the elector claims not to have received the early ballot paper, the elector may be permitted to vote after making a declaration in the prescribed form before the presiding officer at the polling place.

- (7) The Electoral Commissioner shall retain at his office in a sealed ballot box all envelopes containing early ballot papers received by him after the close of nominations and up to the time when he commences scrutiny of the declarations relating to the early ballot papers enclosed in those envelopes as provided in subsection (8).
- (8) At any time not earlier than 72 hours before the commencement of the poll, the Electoral Commissioner or an Assistant Returning Officer appointed under section 142A, or that section as applied by section 146B(1), together with such other assistant presiding officers appointed by the Electoral Commissioner or the Assistant Returning Officer as may be necessary, shall commence the scrutiny of the declarations relating to the early ballot papers in the prescribed manner.
- (9) Where a declaration relating to an early ballot paper —
- (a) is not signed by the elector to whom it was issued or a person appointed under subsection (5)(a);
 - (b) is not witnessed by an authorised witness in accordance with this Act;
 - (c) does not bear the date the authorised witness signed the declaration; or
 - (d) does not bear the address of the authorised witness as at the date he signed the declaration as required by subsection (2)(b),
- the early ballot paper shall be rejected.
- (9a) A determination of an entitlement to vote at an election being held on any day applies to any other election being held on that day and only one declaration is required under this section.
- (10)(a) An early ballot paper shall not be rejected for the reason only that the declaration relating to it has been enclosed with the early ballot paper in the envelope marked “ballot paper”.

- (b) Where the Electoral Commissioner has reason to believe that the declaration relating to the early ballot paper is so enclosed, he may open the envelope marked “ballot paper” and, without permitting any person to see the ballot paper enclosed therein, and if the declaration is so enclosed, extract the declaration and in any case refasten the envelope containing the early ballot paper and deal with the early ballot paper in the prescribed manner.
- (11) The decision of the Electoral Commissioner as to the rejection or admission of any early ballot paper is subject to review only by the Court of Disputed Returns.
- (12) At any time after an envelope containing an early ballot paper has been dealt with in accordance with —
- (a) the regulations made for the purposes of subsection (8);
or
 - (b) subsection (10),

an officer or officers referred to in subsection (8) may, in the prescribed manner, open the envelope and deal with the ballot paper in it.

[Section 92 inserted by No. 53 of 1957 s. 5; amended by No. 59 of 1959 s. 6; No. 51 of 1962 s. 7; No. 33 of 1964 s. 29; No. 68 of 1964 s. 19; No. 113 of 1965 s. 8; No. 33 of 1967 s. 12; No. 70 of 1973 s. 6; No. 40 of 1987 s. 53 and 84; No. 79 of 1987 s. 29; No. 66 of 1990 s. 5; No. 78 of 1995 s. 147; No. 36 of 2000 s. 45 and 48(1) to (3).]

93. Registration of general early voters

- (1) Any person —
- (a) whose place of living is not within 20 kilometres, by the nearest practicable route, of a polling place;
 - (aa) who is, by reason of caring for a person who is seriously ill or infirm, precluded from attending at a polling place;

- (ab) whose residence is not shown on the roll because a request under section 51B has been granted;
 - (b) who is, by reason of membership of a religious order or religious beliefs —
 - (i) precluded from attending at a polling place; or
 - (ii) precluded from voting throughout the hours from 8 a.m. to 6 p.m. on Saturday or throughout the greater part of those hours;
- or
- (c) who is permanently disabled,

may, at any time, lodge an application in writing with the Electoral Commissioner to be registered as a general early voter.

- (2) If it appears to the Electoral Commissioner that the application is validly made and that the elector is entitled to be registered as a general early voter, he shall register the elector and notify him to that effect, but if the Electoral Commissioner is not satisfied that the elector is entitled to be registered as a general early voter, he shall reject the application and notify the elector of his decision.
- (3) Any registration under this section may at any time other than between the issue of the writ for an election at which the elector is entitled to vote or for a referendum and the return of the writ, be cancelled by the Electoral Commissioner who shall send notice of the cancellation to the elector.
- (4) As soon as is practicable after nominations have been declared, the Electoral Commissioner shall send an early ballot paper to each elector registered under this section and the provisions of section 92 apply in respect of the ballot paper as if repeated in this section.

[Section 93 inserted by No. 53 of 1957 s. 6; amended by No. 33 of 1967 s. 13; No. 54 of 1983 s. 9; No. 40 of 1987 s. 54 and 84; No. 79 of 1987 s. 30; No. 36 of 2000 s. 46, 48(1) and (2).]

94. Authorised witnesses

- (1) Except as provided in subsection (2) any person who has attained the age of 18 years is an authorised witness for the purposes of this Division.
- (2) No person who is a candidate at any election shall be, or act as, an authorised witness in connection with that election.

[Section 94 inserted by No. 53 of 1957 s. 7; amended by No. 59 of 1959 s. 7; No. 51 of 1962 s. 8; No. 70 of 1973 s. 7.]

95. Offences relating to postal voting

- (1) A person shall not persuade or induce, or associate with any other person in persuading or inducing, an elector to make application for an early ballot paper.
- (1a) An elector shall not make, and a person shall not induce an elector to make, any false statement in an application for an early ballot paper.
- (2) A person other than the elector to whom the early ballot paper has been issued, or other than a person appointed by the elector in pursuance of section 92(5), shall not mark a vote on any ballot paper.
- (3) A person shall not open any envelope which is addressed to the Electoral Commissioner, and in which an early ballot paper has been enclosed, unless authorised to do so by the Electoral Commissioner.
- (4) A person shall not persuade or induce an elector to hand over to him an early ballot paper upon which a vote has been recorded.

- (5) An authorised witness shall not influence or attempt to influence in any way the vote of an elector voting by early vote before him.
- (6) An authorised witness shall not disclose any knowledge of the vote of any elector voting by early vote before him.
- (6a) A person appointed by an elector to mark the vote of an elector on the ballot paper under the provisions of section 92(5) shall not disclose any knowledge of the vote of the elector on whose behalf he marked the vote on the ballot paper.
- (7) Any person present when an elector is before an authorised witness for the purpose of voting —
 - (a) shall obey all directions of the authorised witness; and
 - (b) shall not, except as provided in section 92(5) —
 - (i) make any communication whatever to the elector in relation to his vote;
 - (ii) assist the elector, or in any way interfere with him in relation to his vote; and
 - (iii) look at, or do anything else whereby he may become acquainted with the elector's vote.
- (8) Where an elector is an inmate in an institution, which institution is prescribed by the regulations as one to which the provisions of this section apply, or is an inmate in an institution or is a patient in a hospital at which a polling place has been appointed under the provisions of section 100, then notwithstanding any other provision of this Act, a person shall not —
 - (a) give to the elector an early ballot paper;
 - (b) be present when the elector indicates his vote on the early ballot paper;
 - (c) sign his name on the declaration accompanying the early ballot paper;

- (d) take custody of or transmit to the Electoral Commissioner the envelope containing the early ballot paper; or
- (e) visit the elector in connection with or relative to his voting by early vote, if such visit is forbidden by or on behalf of a legally qualified medical practitioner,

unless, except in the case referred to in paragraph (e), he is authorised in writing by the Electoral Commissioner to do so.

- (9) A person to whom an application for an early ballot paper or an envelope containing or purporting to contain an early ballot paper is entrusted by a voter for the purpose of posting it or delivering it to the Electoral Commissioner or a Returning Officer or delivering it to a presiding officer, shall forthwith post or deliver the application or envelope.
- (10) A person guilty of any contravention of any of the provisions of this section is liable to a penalty not exceeding \$1 000.

[Section 95 inserted by No. 53 of 1957 s. 8; amended by No. 59 of 1959 s. 8; No. 113 of 1965 s. 8; No. 39 of 1979 s. 13; No. 40 of 1987 s. 84; No. 79 of 1987 s. 78; No. 78 of 1995 s. 147; No. 36 of 2000 s. 48(1), (2), (4), (6) to (8).]

[96. Repealed by No. 57 of 1952 s. 5.]

97. Mistakes

Without limiting the generality of section 140 or 146F an early ballot paper shall not be rejected as informal by reason only of any mistake in spelling.

[Section 97 inserted by No. 40 of 1987 s. 55; amended by No. 36 of 2000 s. 48(2).]

98. Officer to decide

Subject to sections 144(2b), 146, 146I(1), and 146J, the decision of the officer conducting the count of the votes as to the

allowance or disallowance of any early ballot paper is final unless reversed under Part V.

[Section 98 inserted by No. 79 of 1987 s. 31; amended by No. 36 of 2000 s. 48(1).]

[99. Repealed by No. 53 of 1957 s. 9.]

99A. Absent voting

- (1) Where, on polling day for an election, an elector is absent from the district for which he is enrolled and has not applied for or obtained a ballot paper under and in accordance with the provisions of section 90, such elector shall, subject to the regulations relating to absent voting, be permitted to vote in person in the prescribed manner as an absent voter at any polling place open outside the district for which he is enrolled.
- (2) For the purposes of this section, the Electoral Commissioner may make all arrangements for the taking of absent votes at any one or more of the polling places appointed under the provisions of section 100 in any region or district for which a candidate shall have been declared elected before the polling day under section 87(4) or 88(1) or section 86(2aa).
- (3) This section does not apply to a person who claims to vote at a polling place that is appointed under section 100 for the district for which the person is enrolled.

[Section 99A inserted by No. 63 of 1948 s. 18; amended by No. 58 of 1951 s. 10; No. 57 of 1952 s. 7; No. 33 of 1964 s. 30; No. 33 of 1967 s. 14; No. 40 of 1987 s. 56 and 84; No. 36 of 2000 s. 74.]

99B. Regulations relating to early, absent, and provisional voting

- (1) In this section, “**ballot papers**” means early ballot papers mentioned in section 90, ballot papers for absent voting under section 99A, and ballot papers for provisional voting under section 119(4a), 122(2) or 122A.

- (2) The regulations relating to early voting, absent voting under section 99A, and provisional voting under section 119(4a), 122(2) or 122A may prescribe all matters, not inconsistent with this Act, necessary or convenient to be prescribed for carrying the provisions of this Act relating to those methods of voting into effect, and in particular may provide for —
- (a) the forms of ballot papers;
 - (b) the manner in which votes are to be marked on ballot papers;
 - (c) the method of dealing with ballot papers, including the scrutiny thereof and the counting of votes thereon;
 - (d) the grounds upon which ballot papers are to be rejected as informal; and
 - (e) the retention and preservation of documents likely to be required in case of a disputed election including envelopes, rejected votes and ballot papers until validity of the election in respect of which they are used is no longer liable to be disputed.
- (3) Ballot papers containing votes and enclosed in any prescribed envelope may, if so provided by the regulations, be placed in any ballot box in use at the polling place at which the votes were cast and in the case of early ballot papers, in any ballot box in use at the place at which they were received but subject to sections 144(2b), 146, 146I(1), and 146J a prescribed envelope containing a ballot paper shall, unless the regulations provide otherwise, only be opened and the ballot paper dealt with, as regards the scrutiny thereof and the counting of the votes thereon by the Electoral Commissioner or an Assistant Returning Officer appointed pursuant to section 142A or pursuant to that section as applied by section 146B(1).
- (4) The Returning Officer or Assistant Returning Officer who is authorised by the provisions of this Act to open the ballot box, shall, without opening the envelope containing any ballot paper,

transmit it in the manner prescribed to the Electoral Commissioner.

- (5) Nothing in this section shall authorise any elector to vote more than once at any election.

[Section 99B inserted by No. 58 of 1951 s. 11; amended by No. 57 of 1952 s. 8; No. 53 of 1957 s. 10; No. 40 of 1987 s. 57 and 84; No. 79 of 1987 s. 32; No. 36 of 2000 s. 48(1) and (9).]

(ii) At the poll

100. Polling places

- (1) The Electoral Commissioner may, by notice in the *Government Gazette* —
- (a) appoint such polling places for regions and districts as the Electoral Commissioner considers necessary;
 - [(b) deleted]*
 - (c) appoint such other polling places as he thinks fit in any institution or hospital, or both;
 - (d) declare any institution or hospital, or both, so appointed to be a special institution or hospital, or both, for the purposes of this Act;
 - (e) declare any area of the State in which he considers attendance of electors at a polling place under usual conditions is difficult by reason of remoteness, to be a remote area for the purposes of this Act;
 - (f) abolish any polling place;
 - (g) cancel or amend a declaration made under paragraph (d) or (e);
 - (h) establish sub-districts and fix the boundaries thereof, and abolish sub-districts;
 - (i) declare, and fix the boundaries of, a polling area for the purposes of section 193 in relation to each polling place appointed under paragraph (a);

- (j) cancel a declaration under paragraph (i) or amend boundaries fixed under that paragraph.
- (2) When a sub-district is established or abolished the Electoral Commissioner may, by notification in the *Government Gazette*, give such directions as are thereby rendered necessary or expedient for the change of electors from one roll to another roll and effect shall be given forthwith to such directions in the manner prescribed by such notice.
- (3) If a polling place is appointed under subsection (1) for all regions, or all districts, for the purposes of a general election, that polling place is referred to as a **“general polling place”**.
- (3a) The Electoral Commissioner may, in relation to a general polling place, perform the functions of the Returning Officers for the regions, or districts, under the provisions listed in the Table to this subsection.

Table of provisions

section 102	section 112(3)
section 105(1)	section 115(1a)
section 106(2)	section 116
section 107(1)	section 132
section 110	section 141(4)

- (3b) References in this Act to the Returning Officer may be read as references to the Electoral Commissioner where necessary for the purposes of subsection (3a).
- (4) A polling area declared under subsection (1)(i) in relation to a polling place shall be adjacent to the entrance to the polling place and no part of the boundaries fixed under subsection (1)(i) or (j) shall be more than 100 metres from that entrance.

[Section 100 amended by No. 44 of 1911 s. 29; No. 26 of 1949 s. 4; No. 59 of 1959 s. 9; No. 39 of 1979 s. 14; No. 40 of 1987 s. 58 and 84; No. 79 of 1987 s. 33; No. 58 of 1988 s. 5; No. 14 of 1996 s. 4; No. 36 of 2000 s. 50.]

100A. Mobile portable ballot boxes at certain institutions and hospitals

- (1) Where a polling place has been appointed under the provisions of section 100, at any institution or hospital, the presiding officer appointed under section 102(5), notwithstanding any other provision of this Act, shall with another officer attend at the polling place, at such times or during such hours as are provided by subsection (2) with such number of mobile portable ballot boxes as the Electoral Commissioner thinks fit and approved by him for the purpose of affording an opportunity to vote to every elector who —
 - (a) is for the time being resident in the institution or hospital wherein the polling place is appointed to be; and
 - (b) by reason of illness or infirmity or in the case of a woman, by reason of approaching maternity, is unable to attend at another polling place to record his vote.
- (2) For the purposes of subsection (1), the attendance of the presiding officer and another officer at any institution or hospital, to which that section applies, shall be —
 - (a) where the institution or hospital is a special one for the purposes of this Act by virtue of a declaration under section 100(1)(d), at such times in the period of 14 days up to and including polling day as the Electoral Commissioner thinks fit; or
 - (b) where the institution or hospital is not such a special one, during polling hours as provided by section 117(2).
- (3) On a visit to an elector by the officer in charge of the mobile portable ballot box the vote of the elector shall, so far as is reasonably practicable, be taken in all respects as if the vote were recorded at a polling place under usual conditions.
- (4) The presiding officer and another officer shall together be in attendance with the mobile portable ballot box when an elector records his vote thereat and shall be accompanied by such of the

scrutineers appointed by candidates to represent them at the polling place during the polling, as choose to accompany them.

- (5) The Electoral Commissioner or the Returning Officer as the case may require shall give not less than 48 hours notice in writing to each candidate for the region and district in which the institution or hospital is situated of the time or times at which the presiding officer and another officer will be in attendance pursuant to subsection (2)(a).

[Section 100A inserted by No. 59 of 1959 s. 10; amended by No. 33 of 1964 s. 31; No. 39 of 1979 s. 15; No. 9 of 1983 s. 19; No. 40 of 1987 s. 84.]

100B. Mobile portable ballot boxes in certain remote areas

- (1) Where any area of the State is a remote area of the State for the purposes of this Act by virtue of a declaration under section 100(1)(e), the presiding officer and other officer appointed under section 102(5), notwithstanding any other provision of this Act, shall attend at such places in the remote area, and at such times in the period of 14 days up to and including polling day, as the Electoral Commissioner thinks fit, with such number of mobile portable ballot boxes as the Electoral Commissioner thinks fit and approved by him for the purpose of affording an opportunity to vote to every elector who may have difficulty in attending at a polling place under usual conditions.
- (2) For the purposes of subsection (1) of this section, subsections (3) and (4) of section 100A apply with such modifications as are necessary.
- (2a) The Returning Officer shall give not less than 48 hours notice in writing to each candidate for the region or district in which a place is situated of the time or times at which the presiding officer and another officer will be in attendance at that place under subsection (1).

- (3) Where, for reasonable cause, there is a failure to attend a place in a remote area as required by subsection (1) or to give the notice required by subsection (2a), the election and the result thereof shall be deemed not to be affected thereby.

[Section 100B inserted by No. 39 of 1979 s. 16; amended by No. 40 of 1987 s. 84; No. 79 of 1987 s. 34.]

101. Arrangements for taking the poll

If the proceedings on the day of nomination stand adjourned to polling day, the Returning Officer shall immediately make all necessary arrangements for taking the poll.

102. Duties of Returning Officer

In particular the Returning Officer shall —

- (1) appoint a presiding officer to preside at each polling place at which he will not be continuously present;
- (2) appoint all necessary assistant presiding officers, poll clerks and doorkeepers;
- (3) furnish polling places and provide ballot boxes;
- (4) provide ballot papers and copies of the roll for use at each polling place;
- (5) appoint a presiding officer and another officer to be in attendance with and operate each mobile portable ballot box at each polling place appointed at an institution or hospital, and at each place in a remote area where a presiding officer and another officer are required to attend pursuant to section 100B.

[Section 102 amended by No. 59 of 1959 s. 11; No. 68 of 1964 s. 22; No. 39 of 1979 s. 17.]

102A. Conjoint elections

- (1) In the case of a conjoint election, every person appointed as a presiding officer, an assistant presiding officer, a poll clerk or a

doorkeeper for any polling place in a district shall, without any further appointment or authority than this subsection, be the presiding officer, the assistant presiding officer, poll clerk or doorkeeper, as the case may be, for that polling place in respect of any election for the region of which the district forms part.

- (2) The Electoral Commissioner may give such directions as he may consider necessary or expedient to implement the provisions of this Act, for the proper and efficient conduct of any election.
- (3) Without limiting the generality of subsection (2), the Electoral Commissioner may, for the purpose of assisting an elector on request as provided by section 129, give such directions as he may consider necessary or expedient on 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 113C;
 - (b) translating the voter's instructions; and
 - (c) eliciting the exact direction of the voter's preferences.

[Section 102A inserted by No. 33 of 1964 s. 32; amended by No. 39 of 1979 s. 18; No. 40 of 1987 s. 84; No. 79 of 1987 s. 35.]

[103. Repealed by No. 36 of 2000 s. 75.]

104. Appointment of polling place officers

- (1) The appointment of presiding officers, assistant presiding officers, poll clerks, and doorkeepers shall be made in writing in the prescribed form.

[(2) repealed]

[Section 104 amended by No. 44 of 1911 s. 43; No. 40 of 1987 s. 84; No. 43 of 1996 s. 11.]

105. Substitute presiding officers and powers of assistant presiding officers

- (1) Any presiding officer may appoint a substitute to perform his duties during his temporary absence, and may, if authorised by the Returning Officer so to do, appoint in writing one or more assistant presiding officers to assist him in presiding at any polling place.
- (2) Any assistant presiding officer may, subject to the direction of the presiding officer, exercise all or any of his powers, and shall, in respect of those powers, be deemed to be the presiding officer.

106. Absence of Returning Officer or presiding officer not to invalidate election

- (1) In case any Returning Officer or presiding officer is prevented from attendance by illness or other sufficient cause, and time does not permit of a substitute being appointed under the provisions of section 7, he may appoint by writing under his hand, a substitute to act for him, who shall have full power and authority to do all things required by this Act to be done by his principal.
- (2) If, by reason of the absence of the presiding officer, the poll is not taken at any polling place, the election shall not therefore be void, but the Returning Officer may appoint another day not later than 21 days from the day fixed for the election, for taking the poll at such polling place, of which appointment public notice shall be given, and the poll shall be taken accordingly and be deemed to have been taken on the day previously appointed.

107. Subdivision of polling places

- (1) When a large number of electors is likely to vote at a polling place, the Returning Officer may subdivide a polling place into sections, and shall, in such case, appoint presiding officers to

take the poll at each section at which he does not himself preside.

- (2) If a polling place is divided into sections there shall be fixed over each such section, a notice indicating the letters of the alphabet for the section of such polling place at which each elector, according to the initial letter of his surname, is to vote; and no elector shall be permitted to vote in any section thereof save that which is so denoted by the initial letter of his surname.
- (3) All the provisions of this Act relating to presiding officers shall apply to presiding officers at each section of a polling place.

108. No licensed premises to be used

No part of any premises licensed for the sale of intoxicating liquors shall be used for the purposes of any polling place.

109. Certain buildings to be used free

All buildings under the control of the Government, or the property of a local government and all Agricultural Halls, Mechanics' and Miners' Institutes, and other buildings which have been or may hereafter be subsidised in their erection by the Government, may be used free of charge, for the purposes of any nomination proceedings or poll.

[Section 109 amended by No. 33 of 1964 s. 33; No. 14 of 1996 s. 4.]

110. Separate compartments

Polling places shall have separate voting compartments, constructed so as to screen the electors from observation while they are marking their ballot papers, and each compartment shall be furnished by the Returning Officer with a pencil for the use of electors.

111. Ballot boxes

Each polling place or section of a polling place shall be provided with a ballot box, with a lock and key or other sealing device, and with a cleft for receiving the ballot papers.

[Section 111 amended by No. 59 of 1919 s. 5; No. 79 of 1987 s. 36.]

112. Supply of rolls

- (1) As soon as is practicable after the close of the roll for an election the Electoral Commissioner shall cause a roll to be provided for use in the election.
- (2) The roll so supplied shall contain any marks required by section 47(3)(g).
- (3) The Electoral Commissioner shall cause a sufficient number of copies of the roll to be delivered to the Returning Officer and, before the hour of opening of the poll, the Returning Officer shall cause a sufficient number of copies of the roll to be delivered to each presiding officer.
- (4) The Electoral Commissioner shall cause copies of the rolls to be delivered to the presiding officer at each general polling place.

[Section 112 inserted by No. 43 of 1996 s. 12; amended by No. 36 of 2000 s. 28(1) and 51.]

113. Ballot papers

- (1) Ballot papers shall be in the appropriate prescribed form.
- (1a) Ballot papers shall contain the names of all the persons nominated as candidates.
- (2) Where similarity in the names of 2 or more candidates is likely to cause confusion, the names of those candidates may be arranged with such description or addition as will distinguish them from one another.

- (3) The printing in a ballot paper shall be in characters of such size or sizes as the Electoral Commissioner determines.
- (4) The official paper for use in the printing of ballot papers is paper that either —
 - (a) has a water mark in it as prescribed; or
 - (b) incorporates such security features or devices as the Electoral Commissioner approves.

[Section 113 amended by No. 44 of 1911 s. 43; No. 28 of 1970 s. 14; No. 40 of 1987 s. 59; No. 79 of 1987 s. 37; No. 43 of 1996 s. 13; No. 36 of 2000 s. 81(1).]

113A. Voting tickets

- (1) For the purposes of an election in a region a candidate or a group may, before the expiration of 24 hours after the hour of nomination, lodge a voting ticket with the Returning Officer.
- (2) A voting ticket may be lodged under subsection (1) on behalf of a candidate or a group by a person who is authorised to do so by a notice in writing that has been —
 - (a) signed by that candidate, or by each candidate included in that group; and
 - (b) lodged with the Returning Officer at or before the hour of nomination.
- (3) Where a candidate is included in a group, a voting ticket may not be lodged under subsection (1) by or on behalf of the candidate individually, but only by or on behalf of the group as a whole.
- (4) A voting ticket lodged under subsection (1) must —
 - (a) indicate by consecutive numbers commencing with the number 1 an order of preference for all candidates in the election; and
 - (b)(i) in the case of a voting ticket lodged by or on behalf of a candidate who is not included in any group — indicate a

preference for that candidate over all other candidates in the election;

- (ii) in the case of a voting ticket lodged by or on behalf of a group — indicate preferences for the candidates in the group —
 - (A) in the order in which the names of those candidates are to appear in the ballot paper; and
 - (B) over all candidates in the election who are not included in that group.

(5) If —

- (a) for the purposes of an election in a region for which there is a group —
 - (i) a voting ticket has been lodged under subsection (1) by or on behalf of a group; or
 - (ii) a voting ticket has been lodged under subsection (1) by or on behalf of a candidate not included in any group;

or

- (b) for the purposes of an election in a region for which there are no groups a voting ticket has been lodged under subsection (1) by or on behalf of a candidate,

then, except in the case of a voting ticket lodged by or on behalf of a candidate in an election in which there are not more than 2 candidates, the voting ticket shall be regarded as being registered in relation to the group or candidate, as the case may be, for the purposes of the election.

[Section 113A inserted by No. 40 of 1987 s. 60; amended by No. 79 of 1987 s. 38; No. 20 of 1988 s. 4.]

113B. Printing Council ballot papers

- (1) In printing the ballot papers for an election in a region for which there is a group —
 - (a) if there is only one group, the names of candidates included in that group shall be printed in a group before the names of candidates, if any, not included in that group;
 - (b) if there are 2 or more groups, the names of candidates included in the groups shall be printed in groups in the ballot papers in the order determined under section 87(5), before the names of candidates, if any, not included in any such group;
 - (c) the order, within a group, in which the names of candidates in that group shall be printed in the ballot papers shall be the order specified in the claim made by them in accordance with section 80(1); and
 - (d) the names of candidates, if any, not included in any group shall be printed in the ballot papers in the order determined under section 87(6).
- (2) In printing the ballot papers for an election in a region for which there are no groups, the names of the candidates shall be printed in the order determined under section 87(6).
- (3) In printing the ballot papers for an election in a region —
 - (a) a square shall be printed opposite the name of each candidate; and
 - (b) where a voting ticket is registered in relation to the election an additional square shall be printed in the prescribed position —
 - (i) in the case of a voting ticket lodged by or on behalf of a group — adjacent to the names of the candidates included in the group or adjacent to the squares printed opposite those names; and

- (ii) in the case of a voting ticket lodged by or on behalf of a candidate — adjacent to the name of that candidate or adjacent to the square printed opposite that name,

in order to indicate that a voting ticket is registered in relation to the group or candidate, as the case may be.

[(4) repealed]

- (5) Where before polling day for an election in a region where the relevant number is more than one any candidate is declared by any court to be incapable of being elected at that election, the Returning Officer may take such action with respect to the printing of the ballot papers (including, if he thinks fit, causing the ballot papers to be reprinted, causing notations or marks to be made on them or again applying the provisions of section 87(6)) as in his opinion is necessary as a consequence of the declaration.

[Section 113B inserted by No. 40 of 1987 s. 60; amended by No. 79 of 1987 s. 39.]

113BA. Printing Assembly ballot papers

In printing the ballot papers for an election in a district —

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

[Section 113BA inserted by No. 79 of 1987 s. 40; amended by No. 20 of 1988 s. 5.]

113C. Printing of political party names or “independent” on ballot papers

- (1) Subject to this section, where a candidate in an election applies to have a name specified in the application being —
- (a) a name of a registered political party; or

- (b) a composite name of 2 registered political parties comprising a name of one registered political party and a name of the other registered political party,

printed adjacent to the applicant's name on the ballot papers for use in the election, the name so specified shall be so printed on those ballot papers.

(2) Where —

- (a) in accordance with subsection (1), a name is printed adjacent to the name of a candidate on ballot papers for use in an election; and
- (b) a voting ticket square is printed on those ballot papers in relation to the candidate or in relation to a group in which the candidate is included,

the name so printed shall also be printed adjacent to that voting ticket square.

(3) An application under subsection (1) —

- (a) must be in a form approved by the Electoral Commissioner;
- (b) must be signed by the candidate;
- (c) must contain a declaration signed by the secretary of the registered political party or, if the application is for the printing of a composite name, by the secretary of each registered political party concerned, stating that the party supports the application;
- (d) where the name of the applicant is to be included in a group, must be in the form of a joint application by all the candidates to be included in the group for the printing of the same name, adjacent to the name of each of those candidates; and
- (e) must be received by the Returning Officer not later than the hour of nomination.

[(4) repealed]

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- (5) Subject to this section, where a candidate in an election who is not endorsed as a candidate in the election by a registered political party applies to have the word “Independent” printed adjacent to the applicant’s name on the ballot papers for use in the election that word shall be so printed on those ballot papers.
- (6) Where —
- (a) in accordance with subsection (5), the word “Independent” is printed adjacent to the name of the candidate on ballot papers for use in an election; and
 - (b) a voting ticket square is printed on those ballot papers in relation to the candidate or in relation to a group in which the candidate is included,
- that word shall also be printed adjacent to that voting ticket square.
- (7) An application under subsection (5) —
- (a) must be in a form approved by the Electoral Commissioner;
 - (b) must be signed by the candidate;
 - (c) where the name of the applicant is to be included in a group, must be in the form of a joint application by all the candidates to be included in the group for the printing of the word “Independent” adjacent to the name of each of those candidates; and
 - (d) must be received by the Returning Officer not later than the hour of nomination.

[(8) and (9) repealed]

- (10) In this section —

“name” includes an abbreviation or acronym of a name.

[Section 113C inserted by No. 40 of 1987 s. 60; amended by No. 79 of 1987 s. 41; No. 66 of 1990 s. 5; No. 36 of 2000 s. 65.]

113D. Claims etc., may be lodged with Electoral Commissioner

- (1) Where a claim, voting ticket, notice or application under section 80, 113A or 113C is lodged with the Electoral Commissioner it shall be deemed to have been made to, lodged with or received by the Returning Officer and to have been so made, lodged or received at the time at which it was lodged with the Electoral Commissioner.
- (2) This section does not affect the operation of section 81A.
[Section 113D inserted by No. 40 of 1987 s. 60; amended by No. 36 of 2000 s. 42.]

[113E. Repealed by No. 79 of 1987 s. 42.]

114. Scrutineers

- (1) Scrutineers may be appointed by candidates to represent them at polling places during the polling but —
 - (a) at a single member election, not more than one scrutineer at a time shall be allowed to each candidate at each polling place, or section of a polling place, if divided;
 - (b) at an election in a region where the relevant number is more than one —
 - (i) not more than one scrutineer at a time shall be allowed to each group; and
 - (ii) not more than one scrutineer at a time shall be allowed to each candidate who is not included in any group,at each polling place, or section of a polling place, if divided.
- (2) The appointment of scrutineers shall be made by written notice to the Returning Officer or presiding officer, signed by the candidate, or any candidate included in the group in the case of an appointment under subsection (1)(b)(i), giving the names and

addresses of the scrutineers, or without such notice by permission of the Returning Officer or presiding officer.

- (3) Every scrutineer shall, upon his appointment, make and subscribe a declaration in the presence of the Returning Officer or presiding officer in the prescribed form.

[Section 114 amended by No. 44 of 1911 s. 43; No. 40 of 1987 s. 61; No. 79 of 1987 s. 43.]

115. Persons present at polling

- (1) No candidate shall in any way take part in the conduct of an election; and no one, other than the Electoral Commissioner or an officer deputed by him, presiding officer, assistant presiding officer, the poll clerks, doorkeepers, scrutineers, and any member of the Police Force on duty at a polling place, and the electors voting or about to vote, and any person appointed under section 129(1)(b) to be present while an elector's ballot paper is marked, shall be permitted to enter or remain in the polling place during the polling.
- (1a) A presiding officer, assistant presiding officer, poll clerk, doorkeeper or scrutineer in a polling place shall wear or display such identification as is provided or required by the Returning Officer.
- (2) Where an election is conducted on the same day as a referendum the reference in subsection (1) to scrutineers shall be deemed to include a reference to scrutineers (if any) appointed under any Act for the purposes of the referendum.

[Section 115 amended by No. 68 of 1964 s. 23; No. 54 of 1983 s. 10; No. 40 of 1987 s. 84; No. 79 of 1987 s. 44.]

116. Maintenance of order

- (1) The Returning Officer or presiding officer may summon to his assistance in such polling place any member of the Police Force for the purpose of —
 - (a) preserving the public peace or preventing any breach thereof, and for removing out of such polling place any person who, in his opinion, is wilfully and unnecessarily obstructing the polling, or wilfully violating any of the provisions of this Act;
 - (b) causing to be removed any person who obstructs the approaches to a polling place; or
 - (c) causing to be arrested and taken before a Justice of the Peace, without any other warrant than this Act, any person reasonably suspected by the Returning Officer or presiding officer of committing or attempting to commit at a polling place any of the offences mentioned in this Act.
- (2) All members of the Police Force shall aid and assist the Returning Officer or presiding officer in the performance of his duty.

117. Conduct of the poll

The polling shall be conducted as follows:

- (1) Before any vote is taken the presiding officer shall exhibit the ballot box empty, and shall then securely fasten and seal it so that nothing can be removed without breaking the seal.
- (2) Subject to sections 100A and 100B, the poll shall be open at 8 a.m., and shall not close until all the electors present in the polling place at 6 p.m., and desiring to vote, have voted; and in any dispute as regards the time the decision of the presiding officer shall be final.

- (3) At the close of the poll the presiding officer shall publicly close, fasten, seal, and take charge of the ballot box, and with the least possible delay forward it to the counting place for the purposes of scrutiny; and it shall on no account be opened except as allowed by this Act. The cleft shall also be closed and sealed unless the ballot box is provided with an outer cover without a cleft.
- (4) The presiding officer shall also forward to the counting place the marked roll or rolls used at the poll, and any other documents received before or during the poll, having first endorsed and signed such rolls to identify them.
- (5) Any scrutineer present may affix his seal to the cover of the ballot box.

[Section 117 amended by No. 44 of 1911 s. 30; No. 59 of 1919 s. 5; No. 10 of 1936 s. 2; No. 57 of 1952 s. 9; No. 68 of 1964 s. 24; No. 39 of 1979 s. 19; No. 79 of 1987 s. 45.]

118. Persons claiming to vote to give name etc.

Every person claiming to vote shall —

- (a) state his surname and christian or given name; and
- (b) if so desired by the presiding officer, state any other particulars necessary to be stated in the roll for the purpose of identifying the name upon the roll under which the vote is claimed.

[Section 118 amended by No. 79 of 1987 s. 46.]

119. Questions to be put to voters

- (1) The presiding officer shall put to any person claiming to vote at any election the following question —
 - (a) Have you already voted here or elsewhere at this election?

And if question (a) is answered in the negative, the following additional question —

- (b) Do you live in the electoral district of
(being the electoral district for which the person claims to vote or the electoral district that forms part of the region for which the person claims to vote)?

And if question (b) is answered in the negative, the following additional questions —

- (c) Have you within the last preceding 3 months bona fide lived within that district?
(d) Where was your place of living in that electoral district?
(e) Does your name appear on the roll for any other electoral district?

but the asking of questions (c), (d), and (e) shall be subject to the provisions of sections 145(7) and 172(1)(c).

[(2) and (3) repealed]

- (4) The presiding officer may and shall, when requested by a scrutineer, require any person claiming to vote to make a declaration in the prescribed form before the person is permitted to vote.
- (4a) A person who makes a declaration as required under subsection (4) shall be permitted to vote as a provisional voter in the prescribed manner.
- (5) Subject to the provisions of section 122A, the electoral roll in force at the time of the election shall be conclusive evidence of the right of each person enrolled thereon to vote as an elector, unless he refuses to answer fully any such question put to him by the presiding officer, or to make the declaration requested of him, or fails by his answers to satisfy the presiding officer that he is entitled to vote.

- (6) A determination of an entitlement to vote at an election being held on any day applies to any other election being held on that day and only one declaration is required under subsection (4).
- (7) Where it appears to the presiding officer that an elector does not understand any question he is asked pursuant to subsection (1) or (2) —
- (a) the presiding officer shall ask the elector the question in less formal language than the language provided in the subsection but in words to the like effect; and
 - (b) if the elector then finds difficulty with the question, the presiding officer may assist him in answering it.

[Section 119 inserted by No. 44 of 1911 s. 31; amended by No. 63 of 1948 s. 19; No. 26 of 1949 s. 5; No. 53 of 1957 s. 11; No. 33 of 1964 s. 35; No. 33 of 1967 s. 15; No. 94 of 1970 s. 7; No. 39 of 1979 s. 20; No. 9 of 1983 s. 20 and 31; No. 104 of 1985 s. 5; No. 40 of 1987 s. 84; No. 79 of 1987 s. 47; No. 36 of 2000 s. 32(2).]

120. Consequences of answers

If any person refuses to answer fully any such question put to him by the presiding officer, or to make the declaration requested of him, or fails by his answer to satisfy the presiding officer that he is entitled to vote, his claim to vote shall be rejected.

121. Answer conclusive

The elector's answers to the questions shall be conclusive, and the matter shall not be further inquired into during the polling.

122. Persons objected to — how to vote

- (1) No person whose name on the roll has been objected to and is marked in accordance with the provisions of section 47 shall have a right to vote until he has made a declaration in the prescribed form.

- (2) A person who makes a declaration as required by subsection (1) shall be permitted to vote as a provisional voter in the prescribed manner.
- (3) Every elector who has voted by early vote shall be deemed to have made such declaration.

[Section 122 amended by No. 44 of 1911 s. 43; No. 40 of 1987 s. 84; No. 79 of 1987 s. 48; No. 36 of 2000 s. 48(8).]

122A. Vote of person whose name is not on roll or has been struck off roll or is on roll and cannot be found or has been struck out under section 126

- (1) Notwithstanding anything contained in this Act, where a person who is entitled to be enrolled on the roll for a region or district claims to vote at any election in respect thereof at a polling place at which there is a copy of the roll and his name has been omitted from or struck off the roll owing to an error of an officer or a mistake of fact, or where any person who is so enrolled so claims to vote at such a polling place and his name cannot be found on the roll by the presiding officer or a record has been made in respect of his name on the copy of the roll under the provisions of section 126, he may subject to this Act and the regulations, be permitted to vote as a provisional voter if —
 - (a) in the case of a person whose name has been omitted from the roll —
 - (i) a duly completed claim for the enrolment of the person in respect of the region of which the district forms part, or the district, was received under section 42 before the close of the roll for the election; and
 - (ii) no circumstances occurred after sending or delivering the claim as would have compelled or authorised an enrolment officer to reject the claim under the provisions of section 47 or to

strike the name off the roll under the provisions of section 48;

or

- (b) in the case of a person whose name has been struck off the roll —
 - (i) his name was not, to the best of his knowledge, struck off the roll for the region or district as the case may be, owing to objection, or duplication of enrolment or disqualification; and
 - (ii) he had from the time of his enrolment for the region or district, as the case may be, to the time of the close of the roll for the election continuously retained his right to enrolment for that region or district;

or

- (c) in the case of a person whose name is on the roll for a region or district as the case may be but cannot be found by the presiding officer, he claims that his name appears or should appear on the roll; or
- (d) in the case of a person in respect of whose name a record has been made on a copy of the roll under the provisions of section 126, he denies that he has been previously handed a ballot paper or has voted at that election,

and if, in every such case, such person makes a declaration in the prescribed form before the presiding officer at the polling place.

- (2) A determination of an entitlement to vote at an election being held on any day applies to any other election being held on that day and only one declaration is required under subsection (1).

[Section 122A inserted by No. 63 of 1948 s. 20; amended by No. 58 of 1951 s. 12; No. 33 of 1964 s. 36; No. 9 of 1983 s. 21; No. 40 of 1987 s. 84; No. 79 of 1987 s. 49; No. 36 of 2000 s. 28(1) and (3), 76 and 77(3).]

123. No other question or declaration necessary

- (1) No elector shall at any election be required to answer any question or to make any declaration, except as herein provided.
- (2) No person claiming to vote at any election shall be excluded from voting thereat except by reason of —
 - (a) it appearing to the presiding officer, upon putting the questions hereinbefore prescribed, or any of them —
 - (i) that he is not the person whose name appears on the roll; or
 - (ii) that he has previously voted for the region or district at the same election; or
 - (iii) that he is otherwise not entitled to vote under this Act;
 - or
 - (b) such person refusing to answer any of such questions, or to make the declaration required under sections 119 and 122.

[Section 123 amended by No. 40 of 1987 s. 84.]

124. Right to vote despite error in roll or change of name on marriage

- (1) No omission from the roll of any name other than the surname, or entry of a wrong name other than the surname, and no misspelling of any name, shall warrant the rejection at any polling of any claim to vote, if the elector is sufficiently identified in the opinion of the presiding officer.
- (2) No elector shall be disqualified from voting under the surname appearing on the roll by reason of having become entitled to use another surname.

[Section 124 amended by No. 79 of 1987 s. 50.]

125. Ballot paper to be handed to elector

- (1) If the name under which the elector claims to vote is upon the copy of the roll, and his right to vote is not challenged, or, if challenged, he makes the necessary declaration, or answers the prescribed questions satisfactorily, the presiding officer shall deliver to him a ballot paper.
- (2) Before the delivery of the ballot paper to the elector, it shall be marked on the back by the presiding officer with his initials.
- (2a) A ballot paper printed on official paper does not have to be initialled by the presiding officer.
- (3) The initials of the presiding officer shall be placed on the back of the ballot paper in such a position as to be easily seen when the ballot paper is folded to conceal the vote.
- (3a) Where an election is held on the same day as a referendum a ballot paper shall not be issued to a person for the election (other than by way of replacement for a spoilt ballot paper) unless a ballot paper is issued to the person for the referendum.
- (4) Every presiding officer who fails faithfully to perform any duty imposed on him by this section by reason whereof any of the requirements of this section are not effectively fulfilled, is liable to a fine not exceeding \$20.

[Section 125 amended by No. 113 of 1965 s. 8; No. 54 of 1983 s. 11; No. 40 of 1987 s. 84; No. 79 of 1987 s. 51; No. 43 of 1996 s. 14.]

126. Roll to be marked on ballot paper being issued

- (1) Immediately upon handing the ballot paper to the person claiming to vote, the officer shall make a record, in a prescribed manner, in respect of the person's name on the copy of the roll.
- (2) The record so made on the copy of the roll shall be prima facie evidence of the identity of the person to whom the ballot paper is delivered, with the elector in respect of whose name a record

is so made on the roll, and of the fact that such elector voted at the election.

[Section 126 amended by No. 36 of 2000 s. 77(1) and (2).]

127. Vote to be marked in private

Upon receipt of the ballot paper the elector shall, subject to the provisions of section 129, without delay —

- (a) retire alone to some unoccupied voting compartment and there, in private, mark his vote on the ballot paper in the manner hereinafter described;
- (b) fold the ballot paper so as to conceal the names of the candidates and then forthwith, without unfolding it, deposit it in the ballot box;
- (c) quit the polling place.

[Section 127 amended by No. 58 of 1951 s. 13; No. 43 of 1996 s. 15.]

128. How votes to be marked

- (1) In an election where there are only 2 candidates on the ballot paper an elector shall mark his vote on the ballot paper by placing the numeral “1” in the square opposite the name of the candidate for whom he votes.
- (2) In an election in a region where there are more than 2 candidates on the ballot paper an elector shall mark his vote on the ballot paper —
 - (a) by placing the numeral “1” in the square opposite the name of the candidate for whom he votes as his first preference and consecutive numerals beginning with the numeral “2” in the squares opposite the names of the remaining candidates so as to indicate the order of his preference for all candidates; or
 - (b) by placing the numeral “1”, a tick or a cross in a voting ticket square printed on the ballot paper.

- (3) In an election in a district where there are more than 2 candidates on the ballot paper an elector shall mark his vote on the ballot paper by placing the numeral “1” in the square opposite the name of the candidate for whom he votes as his first preference and consecutive numerals beginning with the numeral “2” in the squares opposite the names of the remaining candidates so as to indicate the order of his preference for all candidates.

[Section 128 inserted by No. 40 of 1987 s. 62; amended by No. 79 of 1987 s. 52; No. 20 of 1988 s. 6.]

[128A. Repealed by No. 79 of 1987 s. 53.]

129. Assistance to electors

- (1) On request from an elector the presiding officer, an assistant presiding officer, or a poll clerk, in the presence of such scrutineers as are present, or, if there are no scrutineers present, then in the presence of —
- (a) another electoral officer; or
 - (b) if the elector so desires, in the presence of a person, other than an electoral officer, appointed by such elector,

shall mark the elector’s ballot paper according to the instructions of the elector, and fold and deposit the ballot paper for him, after which the elector and any person appointed by him, shall quit the polling place.

- (2) Without limiting the generality of subsection (1), an elector to whom that subsection applies may indicate the manner in which the elector wishes the ballot paper to be marked by presenting to the person marking the ballot paper a statement in writing (which may be, or include, a “how-to-vote” card) that specifies the manner in which the ballot paper is to be marked.
- (3) Where an elector is at a place that is in close proximity to a polling place but is unable to enter the polling place because of physical disability, sections 118 to 126 shall apply, or may be

applied, to the person at the first-mentioned place and, at that place —

(a) the elector —

- (i) may mark his vote on the ballot paper in the presence of the presiding officer, an assistant presiding officer or a poll clerk, and of such scrutineers as are present; and
- (ii) fold the ballot paper so as to conceal the names of the candidates, and hand the ballot paper to the electoral officer in whose presence it was marked;

or

(b) the elector's ballot paper may be marked and folded by an electoral officer in accordance with subsection (1).

- (4) The electoral officer who is handed a ballot paper under subsection (3)(a)(ii), or who marks and folds a ballot paper under subsection (3)(b), shall return to the polling place and deposit the ballot paper in the ballot box.

[Section 129 inserted by No. 39 of 1979 s. 21; amended by No. 79 of 1987 s. 54.]

130. Spoilt ballot papers

- (1) If any elector satisfies the presiding officer, before his ballot paper is deposited in the ballot box that he has spoilt it by mistake or accident, he may, on giving it up, receive a new ballot paper from the presiding officer, who shall there and then cancel the spoilt ballot paper by writing "spoilt" on the back of it.
- (2) Having cancelled a spoilt ballot paper the presiding officer is to —
 - (a) place the ballot paper in an envelope, seal the envelope and write on the envelope an indication of the type of ballot paper enclosed and that it is spoilt; and
 - (b) sign the envelope.

- (3) The envelopes containing spoilt ballot papers cancelled at a polling place are to be sealed up in a packet that is to be given to the Returning Officer after the close of the poll.

[Section 130 amended by No. 59 of 1919 s. 5; No. 36 of 2000 s. 78.]

131. Adjournment of polling on account of riot

The presiding officer may adjourn the polling from day to day in any case where polling is interrupted or obstructed by riot or open violence.

132. Adjournment in other cases

- (1) If from any cause any polling place is not opened on polling day, or, if opened, the poll cannot be proceeded with, the Returning Officer or the presiding officer may adjourn the polling for a period not to exceed 21 days, and shall forthwith give public notice of the adjournment.
- (2) If from any cause polling cannot be commenced or proceeded with at a special institution or hospital appointed under section 100(1)(c) or (d) or at any place within a remote area declared under section 100(1)(e) the Returning Officer or the presiding officer may postpone or adjourn the polling for a period not to exceed 21 days, and shall forthwith give public notice of the postponement or adjournment, as the case may be.

[Section 132 amended by No. 79 of 1987 s. 55.]

133. Voting at adjourned polling

Where for any reason the polling is adjourned at any polling place, those electors only who are entitled to vote at such polling place who have not already voted shall be entitled to vote at the adjourned polling at that polling place.

Division (4) — Counting of votes (general)

[Heading amended by No. 40 of 1987 s. 63.]

134. Count of votes — how conducted

The result of the polling shall be ascertained by scrutiny of the ballot papers and by count of the votes in accordance with Division (4a) or (4b), as the case may require, and shall 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 shall 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 shall wear or display such identification as is provided or required by the Returning Officer.
- (3) Where the count of the votes is not commenced immediately after the close of the poll, the scrutineers shall 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 him.
- (4) All the proceedings at the count of the votes shall be subject to the inspection of the scrutineers.
- (5) All informal votes shall 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 by No. 44 of 1911 s. 33; No. 40 of 1987 s. 84; No. 79 of 1987 s. 56.]

135. Adjournment 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 by No. 40 of 1987 s. 84.]

136. Before adjourning, ballot papers etc., to be sealed in boxes

- (1) Before every adjournment of the count of the votes all ballot papers and other documents connected with such count shall be placed in one or more ballot boxes, and the officer conducting the count shall then, in the presence of such scrutineers and officers as are present, seal such ballot box or boxes with his official seal, if any, or with his private seal, and any scrutineer who shall desire so to do, shall be permitted by the officer conducting the count to place his special seal upon such ballot box or boxes. The cleft shall also be closed and sealed unless the ballot box is provided with an outer cover without a cleft.
- (2) Before recommencing the count such seals shall be exhibited unbroken to the scrutineers and officers.

[Section 136 amended by No. 59 of 1919 s. 5; No. 40 of 1987 s. 84.]

Division (4a) — Scrutiny and count (Assembly elections)

[Heading inserted by No. 40 of 1987 s. 64.]

136A. Application

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 by No. 40 of 1987 s. 64; amended by No. 79 of 1987 s. 57.]

137. Power to appoint scrutineers

- (1) Each candidate may appoint one scrutineer to represent him at the scrutiny and count of votes at each place where such scrutiny and count are conducted.
- (2) Such appointment shall be made in writing and addressed to the Returning Officer, or Assistant Returning Officer, as the case may be.

[Section 137 amended by No. 40 of 1987 s. 84.]

138. Submissions by scrutineers

- (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 his 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 by No. 79 of 1987 s. 58.]

139. Informal ballot papers

A ballot paper shall be informal —

- (a) if it is not initialled by the presiding officer, or, in the case of an early ballot paper, not initialled by the issuing officer, but where a ballot paper is not initialled by the presiding officer or the issuing officer, if it is printed on

official paper the fact that it is not so initialled shall 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 by 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).]

140. Effect to be given to elector's intention

- (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 128(1);

- (b) where there are more than 2 candidates on the ballot paper, the manner required by section 128(3).

[Section 140 inserted by No. 40 of 1987 s. 66; amended by No. 79 of 1987 s. 60; No. 20 of 1988 s. 7; No. 43 of 1996 s. 17.]

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;
 - (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);
 - (e) the numeral “1” shall be taken to express the elector’s first preference;
 - (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 by No. 43 of 1996 s. 18.]

[140B. Repealed by No. 20 of 1988 s. 8.]

141. Counting places and Assistant Returning Officers

- (1) Subject to subsection (3) each polling place appointed under section 100(1)(a), (b) or (c) shall be a counting place.
- (2) The Returning Officer may, by notice published in a newspaper circulating in the region or district, appoint such other counting places as he considers necessary for the region or district.
- (3) The Returning Officer may, by notice published in a newspaper circulating in the region or district, declare that subsection (1) does not apply to a polling place specified in the notice.
- (4) The Returning Officer shall appoint Assistant Returning Officers to count, at counting places referred to in subsection (1) or appointed under subsection (2), votes cast at one or more polling places.
- (5) This section does not limit section 134(3).

[Section 141 inserted by No. 79 of 1987 s. 62.]

142. The count of votes by Assistant Returning Officers

The procedure at the count of votes by the Assistant Returning Officers shall be as follows:

- (1) Each Assistant Returning Officer shall open all ballot boxes received at his counting place.

- (2) The Assistant Returning Officer shall count all the votes on the ballot papers found in the boxes opened by himself, 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 shall make and keep a record of the total number of votes for each candidate counted by him from each of such ballot boxes.
- [(3) *deleted*]
- (4) Each Assistant Returning Officer shall 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 his 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 he 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 shall —
- (a) enclose —
 - (i) in one packet, all the used ballot papers in his possession;
 - (ii) in another packet, all the unused ballot papers in his 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 his 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 said packets to the Returning Officer.
- (c) The packet containing the used ballot papers shall be sealed before the scrutineers, if any, present at the count, and any scrutineer who desires so to do shall be permitted by the Assistant Returning Officer to affix his seal upon such packet.

[Section 142 amended by 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.]

142A. Appointment of Assistant Returning Officers for counting early, absent and provisional votes

- (1) The Electoral Commissioner may appoint Assistant Returning Officers for the purpose of counting, under the direction of the Electoral Commissioner, votes cast at general polling places, early and absent votes and provisional votes cast under section 119(4a), 122(2), or 122A.
- (2) Each such Assistant Returning Officer shall certify in writing addressed to the Returning Officer of the district concerned, the number of votes or first preference votes, as the case may be, given for each candidate on the ballot papers used for voting at general polling places, early and absent voters' ballot papers and ballot papers used for provisional voting under section 119(4a), 122(2), or 122A counted by him.

- (3) Any such Assistant Returning Officer may communicate to the Returning Officer of the district concerned, the number of votes or first preference votes, as the case may be, given for each candidate on the ballot papers used for voting at general polling places, early and absent voters' ballot papers and ballot papers used for provisional voting under section 119(4a), 122(2) or 122A counted by him, and the Returning Officer in ascertaining the result of the poll may act upon the information so received.
- (4) Each such Assistant Returning Officer shall, as soon as possible after completing the count of the votes on such ballot papers used for voting at general polling places, early and absent voters' ballot papers and ballot papers used for provisional voting under section 119(4a), 122(2), or 122A, transmit the same in the prescribed manner to the Returning Officer of the district concerned.

[Section 142A inserted by No. 63 of 1948 s. 21; amended by 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.]

143. Returning Officer to ascertain result of poll

- (1) The Returning Officer for the district shall, in manner hereinafter provided, ascertain the total number of votes given for each candidate.

[(2) repealed]

[Section 143 amended by No. 40 of 1987 s. 70 and 84.]

144. Counting of votes by Returning Officers

- (1) The procedure at the count of the votes by the Returning Officer for each district shall, if there are only 2 candidates, be as follows:
 - (a) The Returning Officer shall —
 - (i) open all ballot boxes not opened by Assistant Returning Officers;

- (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 shall then —
 - (i) ascertain from the communications received from Assistant Returning Officers the number of votes given for each candidate at polling places where the ballot boxes have been opened by Assistant Returning Officers and by persons voting at general polling places, absent voters and persons voting provisionally under section 119(4a), 122(2), or 122A and persons voting by early vote; and
 - (ii) add the votes so given for each candidate to the votes counted by himself 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 shall 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, shall be as follows:
 - (a) The Returning Officer shall —
 - (i) open all ballot boxes not opened by Assistant Returning Officers;
 - (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 him from each ballot box.
- (b) The Returning Officer shall then —
- (i) ascertain from the communications received from Assistant Returning 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 and by persons voting at general polling places, absent voters and persons voting provisionally under section 119(4a), 122(2), or 122A and persons voting by early vote; and
 - (ii) add the first preference votes so given for each candidate to the votes counted by himself 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 shall, 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) shall open the packets of ballot papers received from the Assistant Returning Officers, including ballot papers used for voting at general polling places, absent voters' ballot papers and ballot

papers used for provisional voting under section 119(4a), 122(2), or 122A and early 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 himself for each candidate; and

- (ii) shall then declare the candidate who has obtained the fewest first preference votes to be a defeated candidate, and each ballot paper counted to him shall 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 shall again be ascertained.
- (ea) The candidate who then has obtained the largest number of votes shall, 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 his ballot papers amongst the non-defeated candidates next in order of the voter's preference shall be repeated, and the votes re-counted after every such redistribution until one candidate has obtained an absolute majority of votes, and such candidate shall then be declared duly elected.
- (fa) A ballot paper shall be set aside as exhausted where on a count it is found that the ballot paper 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 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
 - (ii) the candidate whose name is on the slip obtained by the Returning Officer in accordance with clause 5 of Schedule 2 shall 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 shall 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 he thinks fit, make a fresh scrutiny of all the ballot papers 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 Assistant Returning Officer on the original scrutiny and if after such scrutiny one of the candidates is found to have obtained an absolute majority of votes shall 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 other than informal ballot papers.
- (3a) For the purposes of subsection (3), if at any stage of the count, ballot papers have been set aside under subsection (2)(fa), the

whole number of ballot papers, at that stage, shall be taken to be reduced by the number of those ballot papers set aside.

- (4) Where the Returning Officer is satisfied that the votes —
- (a) on any ballot papers issued at some remote polling place in connection with the election, which have not been received by him; and
 - (b) on any ballot papers used for voting at general polling places or absent voters' ballot papers or ballot papers used for provisional voting under section 119(4a), 122(2), or 122A or ballot papers used for voting by early vote which have not been received by him,

cannot, having regard to the number of those ballot papers, possibly affect the result of the election, he 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 one 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 him.

[Section 144 amended by 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.]

145. Tied elections

- (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 on the ballot papers 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 tied 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 by No. 40 of 1987 s. 72.]

146. Re-count

- (1) At any time before the declaration of the poll the Returning Officer may, if he thinks fit, at the request of any scrutineer, or of his own motion, re-count the ballot papers contained in any parcel.
- (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.

[Section 146 amended by No. 44 of 1911 s. 36.]

Division (4b) — Scrutiny and count (Council elections)

[Heading inserted by No. 40 of 1987 s. 73.]

146A. Application and construction

- (1) This Division applies only in relation to an election in a region and the poll taken for such an election.
- (2) Where in relation to an election in a region 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 by No. 40 of 1987 s. 73.]

146B. Appointment of Assistant Returning Officers and counting places

- (1) Sections 141 and 142A apply to and in relation to an election in a region as if references in those sections to a district were references to a region.
- (2) In the case of a conjoint election appointments of Assistant Returning Officers and counting places under section 141, and of Assistant Returning Officers under section 142A, for the purposes of an election for the Assembly have effect for the purposes of the corresponding election for the Council.

[Section 146B inserted by No. 40 of 1987 s. 73.]

146C. Power to appoint scrutineers

- (1) Where the relevant number is more than one —
 - (a) each group may appoint not more than 3 scrutineers to represent the candidates included in that group at the scrutiny and count of votes at each place where such scrutiny and count are conducted under section 146G or 146H;
 - (b) each group 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 may appoint one scrutineer to represent the candidate at the scrutiny and count of votes at each place where such scrutiny and count are conducted under section 146G or 146H;

- (d) each candidate who is not included in any group 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 may appoint one scrutineer to represent the candidate at the scrutiny and count of votes at each place where such scrutiny and count are conducted under section 146G or 146H;
 - (b) each candidate 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, Deputy Returning Officer or Assistant Returning Officer, as the case may be.

[Section 146C inserted by No. 40 of 1987 s. 73.]

146D. Submissions by scrutineers

Section 138 applies to and in relation to ballot papers used in an election in a region 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 by No. 79 of 1987 s. 65.]

146E. Informal and formal ballot papers

- (1) Section 139 applies to and in relation to ballot papers used in an election in a region as if the reference in section 139(d) to section 140A were a reference to section 146E(3).
- (2) Subsections (1) and (2) of section 140 apply to and in relation to ballot papers used in an election in a region and in

subsection (2) of that section, as applied by this section,
“prescribed manner” means —

- (a) where there are only 2 candidates on the ballot paper, the manner required by section 128(1);
 - (b) where there are more than 2 candidates on the ballot paper, the manner authorised by section 128(2)(a).
- (3) A ballot paper shall not be informal under section 139(d) if the elector has marked his vote on the ballot paper under section 128(2)(b).
- (4) If a ballot paper —
- (a) has been marked under section 128(2)(b); but
 - (b) has also been marked so as to indicate the order of the elector’s preference in such a manner that it would not be informal under section 139(d) even if it were not marked under section 128(2)(b),

the elector shall, for the purposes of subsection (5) and section 146F, be deemed not to have marked his vote on the ballot paper under section 128(2)(b).

- (5) If a ballot paper has been marked under section 128(2)(b) any indication of preferences on the ballot paper otherwise than under section 128(2)(b) shall be disregarded for the purposes of this Division.
- (6) For the purposes of this section and section 146F an elector shall not be taken to have marked his vote under section 128(2)(b) if the elector has placed a preference mark in 2 or more voting ticket squares printed on the ballot paper.
- (7) In subsection (6) **“preference mark”** means the numeral “1”, a tick or a cross.

[Section 146E inserted by No. 20 of 1988 s. 9; amended by No. 43 of 1996 s. 20.]

146F. Ballot papers deemed to be marked according to voting tickets

Where an elector has marked his vote on the ballot paper under section 128(2)(b) the ballot paper shall be deemed to have been marked in accordance with the voting ticket registered for the purposes of the election in relation to the candidate or group whose voting ticket square the elector has marked.

[Section 146F inserted by No. 40 of 1987 s. 73; amended by No. 79 of 1987 s. 67.]

146G. Counting of votes by Assistant Returning Officers

- (1) As soon as practicable after the close of the poll each Assistant Returning Officer shall —
 - (a) open all ballot boxes received at his counting place, reject all informal ballot papers, and count the number of first preference votes given for each candidate;
 - (b) enclose —
 - (i) in one packet, all the used ballot papers in his possession;
 - (ii) in another packet, all the unused ballot papers in his 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 his possession;

and

 - (c) 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 Deputy Returning Officer for the district together with 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).

- (2) The packet mentioned in subsection (1)(b)(i) shall be sealed before the scrutineers, if any, present and any scrutineer who desires to do so shall be permitted by the Assistant Returning Officer to affix his seal on the packet.
- (3) The list made out under subsection (1)(c) shall 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)(b)(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 by No. 40 of 1987 s. 73.]

146H. Counting of votes by Deputy Returning Officers

- (1) As soon as practicable after the close of the poll the Deputy Returning Officer for each district shall —
 - (a) open all ballot boxes received from polling places within the district that have not been opened by an Assistant Returning Officer, reject all informal ballot papers, and count the number of first preference votes given for each candidate;
 - (b) enclose —
 - (i) in one packet, all the used ballot papers in his possession;
 - (ii) in another packet, all the unused ballot papers in his 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 his possession, other than those that have been forwarded to him under section 146G(1)(c);

- (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;
 - (d) make out 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);
 - (e) enclose —
 - (i) in one packet, all the packets made up under section 146G(1)(b)(i) and forwarded to him under section 146G(1)(c), the lists forwarded to him with those packets, the packet made up by him under paragraph (b)(i) of this subsection and the list made out by him under paragraph (d);
 - (ii) in another packet, all the packets made up under section 146G(1)(b)(ii) and forwarded to him under section 146G(1)(c) and the packet made up by him under paragraph (b)(ii) of this subsection; and
 - (iii) in another packet, all the packets made up under section 146G(1)(b)(iii) and forwarded to him under section 146G(1)(c) and the packet made up by him under paragraph (b)(iii) of this subsection;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, shall be sealed before the scrutineers, if any, present and any scrutineer who desires to do so shall be permitted by the Deputy Returning Officer to affix his seal on any such packet.

- (3) The list made out under subsection (1)(d) shall be verified by the signature of the Deputy 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)(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 by No. 40 of 1987 s. 73.]

146I. Counting of votes by Returning Officers

- (1) The Returning Officer shall open the sealed packets of ballot papers made up under sections 146G(1)(b)(i) and 146H(1)(b)(i) and forwarded to him under section 146H(1)(f), and shall make a fresh scrutiny of the ballot papers contained in the packets and the ballot papers transmitted to him under section 142A(4), and for this purpose he shall have the same powers as if the fresh scrutiny were the original scrutiny, and may reverse any decision given by an Assistant Returning Officer or Deputy Returning 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);
 - (b) despite section 152(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;
 - (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 11 (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 by No. 40 of 1987 s. 73; amended by No. 79 of 1987 s. 68 and 78; No. 43 of 1996 s. 21.]

146J. Re-count

- (1) At any time before the declaration of the result of the election the Returning Officer may, if he thinks fit, on the written request of any candidate setting forth the reasons for the request, or of his 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 by No. 40 of 1987 s. 73; amended by No. 43 of 1996 s. 22.]

Division (5) — Declaration of poll and return of the writ

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) at a place in the region or district, as the case requires, appointed by the Returning Officer 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;

- (ii) the day on which the result was declared; and
 - (iii) the name of the candidate, or names of the candidates, elected.
- (2) A statement under subsection (1)(b) is not required if the election in the region or district has wholly failed or the Returning Officer has given the Electoral Commissioner a notification under section 145(3).
- (3) In the case of a general election for the Council, when all the statements required under subsection (1)(b) have been received the Electoral Commissioner is to certify on the writ, in respect of each region —
 - (a) the names of the candidates elected; and
 - (b) the day on which the result of the election was declared.
- (4) In the case of any other election in a region, 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 (3), (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 by No. 36 of 2000 s. 18.]

148. Election not to be questioned

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. Remedy for informalities in election proceedings

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.

Division (6) — After the poll

150. Returning Officer to forward statistical return and rolls to Electoral Commissioner

- (1) The Returning Officer shall forthwith, after the day of polling at any election, complete and forward to the Electoral Commissioner a statistical return in the prescribed form.
- (2) He shall also forward to the Electoral Commissioner all the certified copies of the marked and signed rolls used in his region or district by himself and by the presiding officers, upon which rolls records have been made under section 126 in respect of the names of electors who voted at the election.

[Section 150 amended by No. 40 of 1987 s. 84; No. 36 of 2000 s. 77(4).]

151. Returning Officer to send election papers to Clerk of Council or Assembly

The Returning Officer shall 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 name of the region or the district and the date of the polling, and shall sign the endorsement, and forthwith forward the said packets to the Clerk of the Council or the Clerk of the Assembly, as the case may be;
- (c) seal up, endorse, and transmit in a similar manner to the same Clerk a packet or packets, as the case may require, containing all ballot papers printed for the said election and not used by him or by Deputy or Assistant Returning Officers or presiding officers;
- (d) seal up, endorse, and transmit to the Electoral Commissioner the marked rolls used at the election and all declarations in the prescribed form, excluding declarations relating to early votes, absent votes and provisional votes cast under section 119(4a), 122(2), or 122A, received by himself and the presiding officers;
- (e) the Clerk of the Council, the Clerk of the Assembly, or the Electoral Commissioner, as the case may be, shall forthwith give or send to the Returning Officer a receipt under his hand for the said packets.

[Section 151 amended by 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).]

152. Preservation of election papers

The Clerk of the Council and the Clerk of the Assembly 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 an election other than a full election in a region, the election concerned can be no longer questioned; or
- (b) in the case of a full election in a region, the members elected at the next succeeding full election in the region become entitled to sit and vote,

when such ballot papers shall be destroyed.

[Section 152 amended by No. 40 of 1987 s. 75.]

153. Production of rolls used at election

- (1) Any candidate on payment of a fee of \$10 may give notice to the Returning Officer requiring production of the rolls used by him and any Assistant Returning Officers 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 shall produce such roll or 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 he may direct repayment of the sum deposited.

[Section 153 amended by No. 28 of 1970 s. 15.]

154. Election papers to be delivered to Court of Disputed Returns

- (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 Clerk of the Council or the Clerk of the Assembly.

(2) Such ballot papers and other documents as may be required for the purposes of the election of a member of the Council under sections 156C and 156D shall be made available to the Electoral Commissioner by the Clerk of the Council at the request of the Electoral Commissioner.

(3) Ballot papers or other documents held by the Clerk of the Council or the Clerk of the Assembly under section 152 shall not be made available for any purpose other than a purpose mentioned in subsection (1) or (2).

[Section 154 amended by No. 40 of 1987 s. 76.]

155. Election papers to be destroyed

(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 his approval, by any Returning Officer.

(2) Subsection (1) does not apply to books, documents or papers used for or in connection with a full election in a region that may be required for the purposes of the election of members of the Council under sections 156C and 156D.

[Section 155 amended by No. 40 of 1987 s. 77 and 84; No. 79 of 1987 s. 78; No. 36 of 2000 s. 28(1).]

155AA. Papers and documents used for dual purposes

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 by No. 54 of 1983 s. 12.]

[155A. Repealed by No. 40 of 1987 s. 78.]

Division (7) — Voting to be compulsory

[Heading amended by No. 33 of 1964 s. 37.]

156. Compulsory voting

- (1) It shall be the duty of every elector to record his vote at any election for the region or district for which he is enrolled unless he is prevented from doing so by absence from the State, or by illness or infirmity, or any physical incapacity on the day of the election.
- (2) As soon as practicable after the election the Electoral Commissioner shall prepare, or cause the Returning Officer to prepare and furnish to the Electoral Commissioner, a list of the names and descriptions of the electors enrolled for the region or district who did not vote at the election.
- (2a) A list prepared under subsection (2) shall be certified by statutory declaration of the person by whom it was prepared.
- (3) A list prepared and certified under subsections (2) and (2a) shall in all proceedings be prima facie evidence of the contents thereof and of the fact that the electors whose names appear therein did not vote at the election.
- (4) Subject to subsection (5), within the prescribed period after the close of each election, the Electoral Commissioner shall send a penalty notice to each elector whose name appears on the list prepared under subsection (2).
- (5) The Electoral Commissioner does not have to send a penalty notice to an elector if the Electoral Commissioner is satisfied that the elector —
 - (a) is dead;
 - (b) was outside the State on polling day;

- (c) was ineligible to vote at the election; or
 - (d) had a valid and sufficient reason for failing to vote.
- (6) A penalty notice is a notice in a prescribed form notifying the elector —
- (a) that the elector appears to have failed to vote at the election;
 - (b) that it is an offence to fail to vote at an election without a valid and sufficient reason for the failure; and
 - (c) that if the elector does not wish to have the apparent failure to vote dealt with by a court, the elector may on or before the date set out in the notice (the “**response date**”) —
 - (i) if the elector did vote as required by this Act — give the Electoral Commissioner particulars of the circumstances of the elector’s voting;
 - (ii) if the elector failed to vote — give the Electoral Commissioner a valid and sufficient reason for the failure; or
 - (iii) pay to the Electoral Commissioner the penalty set out in the notice (the “**modified penalty**”).
- (7) The response date set out in a penalty notice shall not be less than 21 days after the day on which the notice is sent.
- (8) The modified penalty set out in a penalty notice shall be an amount not exceeding \$20, unless the elector has previously paid a modified penalty under this section or been convicted of an offence against this section, in which case it shall be an amount not exceeding \$50.
- (9) If an elector does not respond to a penalty notice in the manner indicated in subsection (6)(c)(i), (ii) or (iii), on or before the response date, the Electoral Commissioner shall send to the elector a second penalty notice in a prescribed form.

- (10) Subsections (5) to (8) and (11), (12), (14a), (14b) and (16)(b) apply, with any necessary modifications, to a second penalty notice.
- (11) If, on or before the response date —
- (a) an elector responds to a penalty notice in the manner indicated in subsection (6)(c)(i) or (ii) and the Electoral Commissioner is satisfied —
 - (i) in the case of a response under subsection (6)(c)(i) — that the elector did vote as required by this Act; or
 - (ii) in the case of a response under subsection (6)(c)(ii) — that the reason for the failure to vote is a valid and sufficient reason;
 - or
 - (b) an elector responds to a penalty notice by paying the modified penalty,

proceedings are not to be taken against the elector for a contravention of subsection (16)(a).

- (12) If, on or before the response date, an elector responds to a penalty notice in the manner indicated in subsection (6)(c)(i) or (ii) but the Electoral Commissioner is not satisfied —
- (a) in the case of a response under subsection (6)(c)(i) — that the elector voted as required by this Act; or
 - (b) in the case of a response under subsection (6)(c)(ii) — that the reason for the failure to vote is a valid and sufficient reason,

the Electoral Commissioner shall send to the elector a notice in a prescribed form notifying the elector —

- (c) that the Electoral Commissioner is not so satisfied; and
- (d) that if the elector does not wish to have the apparent failure to vote without a valid and sufficient reason for such failure dealt with by a court, the elector may, on or

before the date set out in the notice (the “**response date**”) pay to the Electoral Commissioner the penalty set out in the notice (the “**modified penalty**”).

- (13) Subsections (7) and (8) apply, with any necessary modifications, to a notice under subsection (12).
- (14) If in response to a notice under subsection (12) the modified penalty is paid to the Electoral Commissioner on or before the response date, proceedings are not to be taken against the elector for a contravention of subsection (16)(a).
- (14a) If an elector is unable, by reason of absence from his place of living or physical incapacity, to respond to a penalty notice or to a notice under subsection (12) on or before the response date, any other elector who has a personal knowledge of the facts may, subject to the regulations, respond to the notice within that time, and that response is to be treated as compliance by the first-mentioned elector with the notice.
- (14b) In proceedings for an offence against this section a statement in a certificate signed by the Electoral Commissioner that a person named in the certificate —
 - (a) did not vote at an election;
 - (b) was sent a penalty notice or a notice under subsection (12);
 - (c) did or did not (as the case may be) respond to a penalty notice or a notice under subsection (12) on or before the response date; or
 - (d) responded to a penalty notice or a notice under subsection (12) in a particular manner,is evidence of the facts stated.
- (15) At the conclusion of an election, the Electoral Commissioner shall —

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

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

(16) Every elector who —

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

shall be guilty of an offence.

Penalty: \$50.

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

[Section 156 inserted by No. 10 of 1936 s. 3; amended by No. 63 of 1948 s. 23; No. 58 of 1951 s. 20; No. 33 of 1964 s. 38; No. 68 of 1964 s. 30; No. 28 of 1970 s. 16; No. 70 of 1973 s. 8; No. 123 of 1982 s. 2; No. 9 of 1983 s. 22; No. 40 of 1987 s. 84; No. 79 of 1987 s. 71 and 77; No. 43 of 1996 s. 23; No. 36 of 2000 s. 28(1).]

Part IVA — Filling vacancies in the Council

[Heading inserted by No. 40 of 1987 s. 79.]

156A. Interpretation of this Part

(1) In this Part —

“original election”, in relation to a vacancy, means the full election in the region 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 original election;
- (b) did not withdraw from, and was not elected at, that election;
- (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;
- (b) an election in a region failing wholly or partially; or
- (c) the declaration of an election in a region to be absolutely void.

[Section 156A inserted by No. 40 of 1987 s. 79; amended by No. 36 of 2000 s. 55(1) and (2).]

s. 156B

156B. Notification of vacancies in the Council

- (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 him, 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 him, 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 by No. 40 of 1987 s. 79.]

156C. Filling vacancy by re-count — nominations

- (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 in at least 2 newspapers circulating generally in the region in respect of which the vacancy has occurred a notice in accordance with the prescribed form to the effect that the vacancy has occurred; or
 - (b) by notice signed by him, inform the Governor that he 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 himself 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 him, 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 himself 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 his written consent to act, if elected; or
 - (b) by signifying his 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 his 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 by No. 40 of 1987 s. 79; amended by No. 36 of 2000 s. 55(2).]

s. 156D

156D. Filling vacancy by re-count — proceedings at close of nominations

- (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 one 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
 - (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 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 retain papers and documents relating to the election of the member until the election can be no longer questioned.

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(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 —

“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

(b) was declared elected as a member of the Council under this section after the original election.

[Section 156D inserted by No. 66 of 1990 s. 3; amended by No. 36 of 2000 s. 55(2).]

156E. Filling vacancy by fresh election

(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 region concerned 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 sections 8(6) and 10 of the *Constitution Acts Amendment Act 1899* to occur by effluxion of time at the close of 21 May in that year.

[Section 156E inserted by No. 40 of 1987 s. 79; amended by No. 66 of 1990 s. 4; No. 36 of 2000 s. 19.]

Part V — Disputed returns

157. Method of disputing validity of elections or returns

- (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. Requisites of petition

Every petition disputing an election or return, in this Part called the petition, shall —

- (1) set out the facts relied on to invalidate the election or return;
- (2) contain a prayer asking 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 by No. 39 of 1979 s. 22.]

159. Presumption as to date of return of writ

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. Deposit as security for costs

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 by No. 113 of 1965 s. 8; No. 67 of 1979 s. 53.]

161. No proceedings unless requisites complied with

No proceedings shall be had on the petition unless the requirements of the preceding sections are complied with.

162. Powers of Court

- (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 by No. 63 of 1948 s. 24.]

163. Inquiries by Court

- (1) The Court shall 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 Court shall deem the roll conclusive evidence that the persons enrolled were, at the date of the completion of the roll, entitled to be enrolled.
- (2) The qualification of any person enrolled shall not be questioned; and no election shall be declared void on the ground that any person whose name appears on the roll for a region or district, and who has voted as an elector for such region or district, was not qualified to be enrolled or to continue enrolled as an elector for such region or district.

[Section 163 amended by No. 67 of 1979 s. 53; No. 40 of 1987 s. 84.]

s. 164

164. Voiding election for illegal practices

- (1) If the Court of Disputed Returns finds that a candidate has committed or has attempted to commit bribery or undue influence, his election, if he is a successful candidate, shall be declared 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 his 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.

165. Court to report cases of illegal practices

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 by No. 67 of 1979 s. 53; No. 40 of 1987 s. 84.]

166. 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. Decisions to be 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 by 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 by No. 39 of 1979 s. 23.]

170. Deposit applicable for costs

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 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 decision

- (1) Effect shall be given to any decision of the Court as follows:
 - (a) If any person returned is declared not to have been duly elected, he shall cease to be a member of the Council or Assembly.
 - (b) If any person not returned is declared to have been duly elected he may take his seat accordingly.
 - (c) If any election is declared absolutely void a new election shall 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, shall be used for such new election.
- (2) The proceedings of the Legislative Council or Legislative Assembly shall not be 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) he was not duly elected to that House; or
 - (b) his 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 one or more of the principal executive offices of the Government referred to in section 43 of the *Constitution Acts Amendment Act 1899*, but later he is subject to a declaration by the Court that —
 - (a) he was not duly elected to that House; or
 - (b) his 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 his appointment until the time of the declaration shall not be invalidated by reason of the effect of that declaration apart from this subsection.

[Section 172 amended by No. 63 of 1948 s. 25; No. 39 of 1979 s. 24.]

173. Power to make Rules of Court

- (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. Application of Part V to the election of a member of the Council by re-count

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 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 ”;
- (b) section 162(1)(ca) and (f) and section 172(1)(c) shall be deemed to be deleted; and

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- (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 by No. 40 of 1987 s. 80.]

Part VI — Electoral funding and disclosure of gifts, income and expenditure

*[Heading inserted by No. 36 of 2000 s. 58; amended by No. 55
of 2006 s. 5.]*

Division 1 — Preliminary

[Heading inserted by No. 75 of 1992 s. 4.]

175. Definitions

In this Part, unless the contrary intention appears —

“agent” means agent for the purposes of this Part;

“approved” means approved by the Electoral Commissioner;

“associated entity” means an entity that —

- (a) is controlled by one or more political parties; or
- (b) operates for the benefit of one or more political parties;

“broadcast” means broadcast by radio or televise;

“campaign committee”, in relation to a political party, means a body of persons appointed or engaged to form a committee to assist the campaign in an election of —

- (a) the candidates in a general election who are endorsed by the party;
- (b) a candidate in the election who is endorsed by the party; or
- (c) a group in the election all the persons included in which are endorsed by the 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;
- (b) the creation of a trust in respect of property;

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- (c) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property;
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of any debt, contract or chose in action, or of any interest in respect of property;
- (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;

“election period”, in relation to an election, means the period commencing on the day of issue of the writ for the election and ending at the latest time on polling day at which an elector in the State could enter a polling booth for the purpose of casting a vote in the election;

“electoral expenditure”, in relation to an election, means expenditure incurred (whether or not incurred during the election period) on —

- (a) the broadcasting, during the election period, of an advertisement relating to the election;
- (b) the publishing in a journal, during the election period, of an advertisement relating to the election;
- (c) the display, during the election period, at a theatre or other place of entertainment, of an advertisement relating to the election;
- (d) the production of an advertisement relating to the election, being an advertisement that is broadcast,

published or displayed as mentioned in paragraph (a), (b) or (c);

- (e) the production of any material (not being material referred to in paragraph (a), (b) or (c)) that is required under section 187 to include the name and address of the person authorising the material and that is used during the election period;
 - (ea) the production and distribution of electoral matter that is addressed to particular persons or organisations and is distributed during the election period;
 - (f) consultant's or advertising agent's fees in respect of —
 - (i) services provided during the election period, being services relating to the election; or
 - (ii) material relating to the election that is used during the election period;
- or
- (g) the carrying out, during the election period, of an opinion poll, or other research, relating to the election;

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

“entity ” means —

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

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

- (a) if the entity is a company, the secretary of the company;
- (b) if the entity is the trustee of a trust, the trustee;

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- (c) in other cases, the person responsible for maintaining the financial records of the entity;

“general election” means a general election for the Assembly or the Council;

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

“journal” means a newspaper, magazine or other periodical, whether published for sale or for distribution without charge;

“principal officer” of a public agency means —

- (a) in relation to a department of the Public Service or an organisation specified in column 2 of the Schedule to the *Public Service Act 1978*³ — 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 he or she 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*;
- (b) the Police Force of Western Australia;
- (c) a body or office that is established for a public purpose under a written law;
- (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);

“specified amount” means \$1 500 or such greater amount as is determined and published by the Electoral Commissioner —

- (a) under the regulations; and
- (b) within the period of 30 days after the polling day in a general election.

[Section 175 inserted by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26); amended by No. 36 of 2000 s. 59 and 66.]

175A. References and interpretation

- (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) A reference in this Part 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.
- (3) A reference in this Part to a political party, other than a reference to the endorsement of a candidate or group in an election, shall be read as not including a reference to a part of the party.
- (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.
- (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.
- (6) If the Electoral Commissioner determines and publishes an amount for the purposes of the definition of “**specified amount**” in section 175, the amount published becomes the specified amount —

- (a) in relation to sections 175O, 175P, 175Q and 175R(1)(b), (c) and (d) — from the end of the period of 30 days mentioned in that definition; and
 - (b) in relation to sections 175N, 175R(1)(a) and 175ZE — on and from 1 July next following publication.
- (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 by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26); amended by No. 10 of 2001 s. 220.]

Division 2 — Agents

[Heading inserted by No. 75 of 1992 s. 4.]

175B. Agents of political parties

- (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 by 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.
- (2) When there is no appointment in force under subsection (1) of an agent of a candidate in an election, the candidate is the agent in relation to the election.

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[Section 175C inserted by No. 75 of 1992 s. 4.]

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.
- (2) Where all the persons included in a group in an election have been endorsed by the same 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 113B(1)(c) is the agent of the group in relation to the election.

[Section 175D inserted by No. 75 of 1992 s. 4.]

175E. Eligibility for, and notice of, appointment

- (1) An appointment of an agent under section 175B, 175C(1) or 175D(1) has no effect unless —
 - (a) the person appointed is a natural person who has attained the age of 18 years;
 - (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, or each person included in the group, 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 by No. 75 of 1992 s. 4; amended by No. 36 of 2000 s. 60.]

175F. Registration of agents of political parties

- (1) The Electoral Commissioner shall keep a register for the purposes of this section (“**the party agents register**”).
- (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 by No. 75 of 1992 s. 4.]

175G. Effect of registration

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

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- (b) ceases to have effect if the name and address of the agent are removed from the party agents register.

[Section 175G inserted by No. 75 of 1992 s. 4.]

175H. Removal of agent's name 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;
- (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 by No. 75 of 1992 s. 4.]

175I. Evidence of appointment

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 by No. 75 of 1992 s. 4.]

175J. Responsibility when office of agent of political party vacant

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 by No. 75 of 1992 s. 4.]

175K. Revocation of appointment of agent of candidate or group

- (1) A candidate or the persons included in a group may, by giving notice to the Electoral Commissioner in an approved form, revoke the appointment of a person as an agent of the candidate or group under section 175C(1) or 175D(1).
- (2) A notice under subsection (1) has no effect unless it is signed by the candidate or by each person included in the group, as the case requires.

[Section 175K inserted by No. 75 of 1992 s. 4.]

175L. Death or resignation of appointed agent of candidate or group

If an agent appointed by a candidate or group under section 175C(1) or 175D(1) dies or resigns, the candidate or a person included in the group, as the case requires, shall without delay give to the Electoral Commissioner notice, in an approved form, of the death or resignation.

[Section 175L inserted by No. 75 of 1992 s. 4.]

Division 2A — Electoral funding

[Heading inserted by No. 55 of 2006 s. 6.]

175LA. Terms used in this Division

- (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,

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but does not include any vote on a ballot paper that has been rejected;

“**party group**” means a group all the persons included in which have been endorsed by the same registered political party.

- (2) For the purposes of this Division, a reference to a vote given includes a reference to a vote deemed under section 146F 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 —
 - (a) a candidate endorsed by a registered political party who is not included in a group; or
 - (b) persons included in a party group,

is taken to have been incurred by or with the authority of the party.

[Section 175LA inserted by No. 55 of 2006 s. 6.]

175LB. General entitlement to funds

Subject to this Division, after an election the election funding reimbursement amount under section 175LC is payable for each eligible vote given for a candidate.

[Section 175LB inserted by No. 55 of 2006 s. 6.]

175LC. Election funding reimbursement amount

- (1) The election funding reimbursement amount —
 - (a) is taken, as at 30 June 2006, to have been \$1.39413; and
 - (b) thereafter is the amount worked out, to 5 decimal places, under subsection (2).
- (2) The election funding reimbursement amount is taken to have been adjusted on 1 July 2006 and is to be adjusted for each subsequent financial year on 1 July of that financial year using the formula —

$$\frac{A \times B}{C}$$

$$\frac{A \times B}{C}$$

where —

“**A**” is the election funding reimbursement amount immediately before 1 July in a year; and

“**B**” is the CPI number published for the March quarter in the year; and

“**C**” is the CPI number published for the March quarter in the previous year.

(3) In subsection (2) —

“**CPI**” means the all groups consumer price index for Perth published by the Australian Statistician referred to in section 5 of the *Australian Bureau of Statistics Act 1975* of the Commonwealth.

(4) If, for a particular financial year, adjustment of the election funding reimbursement amount would reduce the amount, the amount is not to be adjusted for the year.

(5) If an amount would, if calculated to 6 decimal places, end with a number more than 4, the amount is taken to be the amount calculated to 5 decimal places and increased by 0.00001.

[Section 175LC inserted by No. 55 of 2006 s. 6.]

175LD. Claims for payment

(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).

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- (2) A claim for payment under this Division for the eligible votes given for a candidate endorsed by 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 group, other than a party group, the agent of the group.
- (3) If a registered political party endorsed candidates in 2 or more elections held on the same 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 candidate not endorsed by 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 candidate; or
 - (b) in the case of a candidate included in a group, the agent of the group.
- (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 by No. 55 of 2006 s. 6.]

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 by 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.

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- (2) If a candidate in an election in a region 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 a candidate endorsed by the party as long as the total number of eligible votes given, at the elections to which the claim relates, for candidates endorsed by 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 by No. 55 of 2006 s. 6.]

175LG. Amount of payment 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 by No. 55 of 2006 s. 6.]

175LH. Making of payments

- (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 a candidate or candidates endorsed by 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

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as a debt due to the State by action, in a court of competent jurisdiction, against the person.

[Section 175LH inserted by No. 55 of 2006 s. 6.]

175LI. Revocation of decision regarding payment

- (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 by No. 55 of 2006 s. 6.]

175LJ. Death of candidate

- (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 not endorsed in the election by a registered political party; 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 group other than a 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 by No. 55 of 2006 s. 6.]

175LK. Appropriation of moneys

Any payment made under this Division shall be charged to the Consolidated ~~Fund~~[Account](#) which is to the extent necessary appropriated accordingly.

[Section 175LK inserted by No. 55 of 2006 s. ~~6~~; amended by [No. 77 of 2006 s. 4.](#)]

Division 3 — Disclosure of gifts and other income

[Heading inserted by No. 75 of 1992 s. 4.]

175M. Relevant details of gifts

For the purposes of this Division the relevant details of a gift are the amount or value of the gift, the date on which the gift was made, and —

- (a) in the case of a gift made on behalf of the members of an unincorporated association —
 - (i) the name of the association; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the association;
- (b) in the case of a gift 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 fund or of the funds of the foundation and of the person for whose benefit the fund or 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) in any other case, the name and address of the person who made the gift.

[Section 175M inserted by No. 75 of 1992 s. 4.]

175N. Annual disclosure of gifts and other income received by political parties

- (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 gifts and other income received by the party during the financial year which ended on the last preceding 30 June.
- (2) The following gifts 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) In the case of gifts the details to be set out in the return are as follows —
 - (a) the amount or value of all gifts; and
 - (b) the relevant details of each gift the value of which equals or exceeds the specified amount.
- (4) For the purposes of subsection (3)(b) the sum of the respective amounts or values of 2 or more gifts made to a political party by the same person shall be taken to be one gift but, in calculating

that sum, an amount or value that is less than one-third of the specified amount need not be counted.

- (5) The agent of a political party may comply with this section by lodging a return or the relevant portion of a return prepared, in relation to the financial year in question, for the purposes of section 314AB of the *Commonwealth Electoral Act 1918*, and a return or portion of a return so lodged is to be regarded as satisfying the requirements of this section even if —
- (a) it does not separate the amounts and values of gifts from the amounts and values of other income received by the party; and
 - (b) it does not separate gifts and income referred to in subsection (2) from other gifts and income.

[Section 175N inserted by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26); amended by No. 55 of 2006 s. 7.]

175NA. Annual disclosure of gifts and other income received by associated entities

- (1) If an entity 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 gifts and income received by the entity during that financial year.
- (2) Gifts and income received by the entity at a time when it was not an associated entity or before the commencement of section 4 of the *Electoral Amendment (Political Finance) Act 1992*¹ do not have to be included in the return.
- (3) Subsections (3), (4) and (5) of section 175N apply to and in relation to returns under this section as if any reference in those subsections to —
 - (a) a political party, were a reference to an associated entity;

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- (b) the agent of a political party, were a reference to the financial controller of an associated entity;
- (c) section 314AB of the *Commonwealth Electoral Act 1918*, were a reference to section 314AEA of that Act.

[Section 175NA inserted by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26).]

175O. Disclosure of gifts received by candidates

- (1) The agent of a person (including a person included in a group) who was a candidate in an election shall, within 15 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;
 - (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 for 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;

- (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) Subsection (4) does not apply in relation to a gift made by a person to the candidate if the sum of the amount or value of that gift and of other gifts which were made by that person to the candidate and are included in the return equals or exceeds the specified amount.

[Section 175O inserted by No. 75 of 1992 s. 4.]

175P. Disclosure of gifts received by groups of candidates

- (1) Subject to subsection (3), the agent of a group in an election shall, within 15 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;
 - (b) the number of persons who made gifts; and
 - (c) subject to subsection (4), the relevant details of each gift,

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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 have been endorsed by 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) Subsection (4) does not apply in relation to a gift made by a person to the group if the sum of the amount or value of that gift and other gifts that were made by that person to the group and are included in the return equals or exceeds the specified amount.

[Section 175P inserted by No. 75 of 1992 s. 4.]

175Q. Disclosure of gifts received by other persons who incur expenditure for political purposes

- (1) Where a person (not being a political party, an associated entity a candidate or a group) incurs expenditure for a political purpose during the disclosure period for an election, the person shall, within 15 weeks after polling day in the election, lodge a return with the Electoral Commissioner in an approved form setting out the relevant details of all gifts received by the person during that disclosure period.
- (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 person —

- (i) to incur expenditure for a political purpose; or
 - (ii) to reimburse the person 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 person does not have to lodge a return under subsection (1) if the total amount of expenditure incurred by the person for political purposes during the disclosure period for an election is less than 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;

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- (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 another person during the disclosure period for an election shall be taken to be one gift.
- (8) In the case of a conjoint election a person may lodge one 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 one general election or the other.

[Section 175Q inserted by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26).]

175R. Gifts must not be accepted from unidentified donors

- (1) It is unlawful for —
 - (a) a political party or a person acting on behalf of a political party to receive a gift made to or for the benefit of the party by another person, being a gift the amount or value of which is not less than the specified amount;
 - (b) a candidate in an election (including a person included in a group) or a person acting on behalf of a candidate in an election to receive a gift made to or for the benefit of the candidate by another person, being a gift the amount or value of which is not less than the specified amount;
 - (c) a person included in a group in an election or a person acting on behalf of a group in an election to receive a gift made to or for the benefit of the group by another person, being a gift the amount or value of which is not less than the specified amount; or

- (d) a person (not being a political party, a candidate or a group) to receive a gift made to or for the benefit of the person for the purpose of the incurring of expenditure for a political purpose, being a gift the amount or value of which is not less than the specified amount,

unless the name and address of the person making the gift (“**the donor**”) are known to the person receiving the gift (“**the recipient**”) or, at the time when the gift is made, the name and address of the donor are given to the recipient and the recipient has no grounds to believe that the name and address so given are not the true name and address of the donor.

- (2) A reference in subsection (1) to the name and address of a person making a gift is —
- (a) in the case of a gift made on behalf of the members of an unincorporated association, a reference to —
- (i) the name of the association; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the association;
- and
- (b) in the case of a gift purportedly made out of a trust fund or out of the funds of a foundation, a reference to —
- (i) the names and addresses of the trustees of the fund or of the funds of the foundation and of the person for whose benefit the fund or funds are held; and
 - (ii) the title or other description of the trust fund or the name of the foundation, as the case requires.
- (3) For the purposes of subsection (1) —
- (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;

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- (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;
 - (c) 2 or more gifts made during a prescribed period by the same person to or for the benefit of a political party, candidate, group or other person shall be taken to be one gift;
 - (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 gift made for the purpose of incurring such expenditure includes a reference to a gift the whole or part of which is used for that purpose.
- (4) The reference in subsection (3)(c) to a prescribed period is a reference —
- (a) in the case of a political party or an associated entity, to a financial year;
 - (b) in the case of a candidate, to the disclosure period applicable to the candidate under section 175O;
 - (c) in the case of a group, to the disclosure period applicable to the group under section 175P;
 - (d) in the case of a person (not being a political party, an associated entity, a candidate or a group) to the disclosure period for an election for the purposes of section 175Q.
- (5) Where a person receives a gift and, by virtue of subsection (1), it is unlawful for the person to receive that gift, an amount equal to the amount or value of the gift is payable by that person to the State and may be recovered by the State as a debt due to the State by action, in a court of competent jurisdiction, against —
- (a) in the case of a gift 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;
- (b) in the case of a gift to or for the benefit of a candidate, the candidate or the agent of the candidate;
- (c) in the case of a gift to or for the benefit of a group, a person included in the group or the agent of the group;
- (d) in the case of a gift to a person (not being a political party, a candidate or a group), that person.

[Section 175R inserted by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26).]

175S. Returns as to gifts and income required in all circumstances

- (1) Where no details are required to be included in a return under section 175N, 175O or 175P, the return shall nevertheless be lodged and shall include a statement to the effect that no gifts of a kind required to be disclosed were received.
- (2) Where details of a gift or gifts or income are included in a return under section 175N, 175O, 175P or 175Q, the return shall include a statement to the effect that no other gifts or income of a kind required to be disclosed were received.

[Section 175S inserted by No. 75 of 1992 s. 4.]

Division 4 — Disclosure of electoral expenditure

[Heading inserted by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26).]

175SA. Disclosure of electoral expenditure incurred by political parties

Where electoral expenditure in relation to an election is incurred by or with the authority of a political party, the agent of the party shall, before the expiration of 15 weeks after polling day in the election, lodge a return with the Electoral Commissioner in an approved form setting out details of that electoral expenditure.

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[Section 175SA inserted by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26).]

175SB. Disclosure of electoral expenditure incurred by candidates

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 15 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 by or with the authority of the candidate.

[Section 175SB inserted by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26).]

175SC. Disclosure of electoral expenditure incurred by groups

- (1) Subject to subsection (2), the agent of a group in an election shall, before the expiration of 15 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 by or with the authority of persons included in the group.
- (2) Where electoral expenditure in relation to an election is incurred by or with the authority of persons included in a group and all the persons included in the group have been endorsed by the same political party, the electoral expenditure shall be taken to have been incurred by or with the authority of the party.

[Section 175SC inserted by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26).]

175SD. Disclosure of electoral expenditure incurred by other persons

- (1) Where electoral expenditure in relation to an election was incurred by or with the authority of a person and that expenditure was not incurred with the written authority of a political party, a candidate in the election or a person included

in a group in the election, the person shall, before the expiration of 15 weeks after the polling day in the election, lodge a return with the Electoral Commissioner in an approved form setting out details of that electoral expenditure.

- (2) A person is not required to furnish a return under subsection (1) in respect of an election if the total amount of the electoral expenditure incurred in relation to the election by or with the authority of the person does not exceed \$500.

[Section 175SD inserted by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26).]

175SE. Returns to state that no expenditure, or no other expenditure, was incurred

- (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 disclosed 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 disclosed was incurred.

[Section 175SE inserted by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26).]

175SF. Two or more elections on the same day

- (1) Where —
- (a) the polling at 2 or more elections took place on the same 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,

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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 by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26).]

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[Heading inserted by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26).]

175T. References

Except in section 175X, a reference in this Division to a return under Division 3 or 4 or to a return under this Part includes a reference to particulars required under section 175X(3).

[Section 175T inserted by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26).]

175U. Offences

- (1) Where a person fails to lodge a return that the person is required to lodge under Division 3 or 4 within the time required by this Part the person commits an offence and is liable to a fine not exceeding —
- (a) in the case of a return required to be lodged by the agent of a political party, \$7 500; or

- (b) in any other case, \$1 500.
- (2) Where a person lodges a return that is incomplete, being a return that the person is required to lodge under Division 3 or 4, the person commits an offence and is liable to a fine not exceeding \$1 500.
- (3) Where the agent of a political party lodges a return that the agent is required to lodge under Division 3 or 4 or a claim that the agent may lodge under Division 2A and that return or claim contains particulars that are, to the agent's knowledge, false or misleading in a material particular, the agent commits an offence and is liable to a fine not exceeding \$15 000.
- (4) Where a person (not being the agent of a political party) lodges a return that the person is required to lodge under Division 3 or 4 or a claim that the person may lodge under Division 2A and that return or claim contains particulars that are, to the person's knowledge, false or misleading in a material particular, the person commits an offence and is liable to a fine not exceeding \$7 500.
- (5) A person shall not supply to another person who is required to lodge a return under Division 3 or 4, or may lodge a claim under Division 2A, information that relates to the return or claim and that is, to the knowledge of the first-mentioned person, false or misleading in a material particular.
Penalty: \$1 500.
- (6) Where —
- (a) a person is required to lodge a return under Division 3 or 4 within a particular period; and
 - (b) the person fails to lodge the return within that period,
- the following provisions of this subsection have effect —
- (c) the obligation to lodge the return continues notwithstanding that that period has expired;

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- (d) where the person is convicted of an offence that is constituted by failure to lodge the return 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 return continues; and
 - (e) the penalty applicable to each separate and further offence is a fine not exceeding ~~₹~~\$150.
- (7) Charges against the same person for any number of offences under subsection (6)(d) may be joined in the one prosecution notice.
- (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 by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26); amended by No. 84 of 2004 s. 80; ~~amended by~~ No. 55 of 2006 s. 8.]

175V. Recovery of payments

- (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 by No. 75 of 1992 s. 4; amended by No. 55 of 2006 s. 9.]

175W. Investigations etc.

- (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 return 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 shall 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.

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Penalty: \$1 500.

- (7) A person shall 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: \$1 500.

- (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, 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 he thinks necessary and if necessary by force —

- (a) to enter upon the land or upon or into the premises, vessel, aircraft or vehicle;
- (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;
 - (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;
 - (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;
 - (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) —

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- (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 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 by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26); amended by No. 55 of 2006 s. 10.]

175X. Inability to complete returns

- (1) Where a person who is required to lodge a return under Division 3 or 4 considers that it is impossible to complete the return because he is unable to obtain particulars that are required for the preparation of the return, the person may —
- (a) prepare the return to the extent that it is possible to do so without those particulars;
 - (b) lodge the return so prepared; and
 - (c) give to the Electoral Commissioner notice in writing —
 - (i) identifying the return;
 - (ii) stating that the return is incomplete by reason that the person is unable to obtain certain particulars;
 - (iii) identifying those particulars;

- (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 return and gives a notice under subsection (1) shall not be taken, for the purposes of section 175U(2), to have lodged a return that is incomplete by reason of the omission of the particulars identified under subsection (1)(c)(iii).
- (3) Where the Electoral Commissioner has been informed under subsection (1)(c) or (4)(e) that a person can supply particulars that have not been included in a return, 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) considers that he is unable to obtain some or all of the particulars, the person shall give to the Electoral Commissioner a written notice —
- (a) setting out the particulars (if any) that the person is able to give;
 - (b) stating that the person is unable to obtain some or all of the particulars;
 - (c) identifying the particulars the person is unable to obtain;
 - (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

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the reasons for it and the name and address of that other person.

- (5) A person who gives a notice under subsection (4) shall not be taken, for the purposes of section 175U(2), to have lodged a return that is incomplete by reason of the omission of the particulars identified under subsection (4)(c).

[Section 175X inserted by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26).]

175Y. Extension of period for lodging annual returns

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 by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26); amended by No. 36 of 2000 s. 20.]

175Z. Verification of information

Regulations may require information contained in a return lodged with the Electoral Commissioner under Division 3 or 4 to be verified or substantiated in accordance with the regulations.

[Section 175Z inserted by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26).]

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 by No. 75 of 1992 s. 4.]

175ZB. Amendment of returns

- (1) Where the Electoral Commissioner [or claim](#) is satisfied that a return [or claim](#) under this Part contains a formal error or is subject to a formal defect, the Electoral Commissioner may amend the return or claim to the extent necessary to correct the error or remove the defect.
- (2) A person who has lodged a return [or claim](#) under this Part may request the permission of the Electoral Commissioner to make a specified amendment of the return or claim for the purpose of correcting an error or omission.
- (2a) If the return 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 —

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- (a) a request has been made under subsection (2); and
- (b) the Electoral Commissioner is satisfied that there is an error in, or omission from, the return or claim to which the request relates,

the Electoral Commissioner shall permit the person making the request to amend the return [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 return 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 return [or claim](#).

[Section 175ZB inserted by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26); amended by No. 55 of 2006 s. 11.]

175ZC. Public may obtain copies of returns

- (1) The Electoral Commissioner shall keep a copy of each claim under Division 2A and each return under Division 3 or 4 at the principal office of the Western Australian Electoral Commission.
- (2) A person is entitled —
 - (a) to peruse a copy of a claim or a return kept under subsection (1);
 - (b) on payment of a fee determined by the Electoral Commissioner to cover the cost of copying, to obtain a copy of a claim or a return a copy of which is kept under subsection (1),

at any time after the end of 4 weeks after the end of the period during which the claim or return was required to be lodged.

[Section 175ZC inserted by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26); amended by No. 55 of 2006 s. 12.]

175ZD. Proceedings against unincorporated parties

- (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

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process shall be issued or executed against any other property of members, or against any property of officers, of the party.

[Section 175ZD inserted by No. 75 of 1992 s. 4; amended by 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 Administration and Audit Management Act 1985/2006](#) 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 by No. 75 of 1992 s. 44; amended by [No. 77 of 2006 s. 17.](#)]

175ZF. Regulations under 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) prescribing the manner in which the Electoral Commissioner is to determine and publish the specified amount for the purposes of this Part;
 - (aa) requiring the agent of a political party to lodge returns or other information identifying any entity that is or has been an associated entity in relation to that political party;
 - (ab) requiring the agent of a political party to lodge a return setting out additional information as prescribed where section 175N(5)(a) or (b) applies in respect of a return lodged in relation to the political party;
 - (ac) imposing such requirements as are necessary to ensure that the provisions of this Part as to the lodgment of returns in relation to a political party are complied with even if the political party ceases to exist;
 - (b) requiring the making, keeping and auditing of records of —
 - (i) gifts and other income received by political parties and associated entities;
 - (ii) gifts 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;
 - (ba) facilitating the lodging of returns or portions of returns prepared for the purposes of sections 314AB and 314AEA of the *Commonwealth Electoral Act 1918* in

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satisfaction of the requirements of sections 175N and 175NA; and

- (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) The regulations referred to in subsection (1)(a) —
- (a) shall provide for the specified amount to be determined in a manner that incorporates any increase in the amount of \$1 500 that is appropriate to reflect movements that have occurred since the commencement of the *Electoral Amendment (Political Finance) Act 1992*¹ in the Consumer Price Index, All Groups Index number for Perth, published from time to time by the Commonwealth Statistician under the *Census and Statistics Act 1905* of the Commonwealth; but
 - (b) may provide for such an adjustment to be increased or decreased by an amount of not more than \$50 in order to ensure that the specified amount continues to be a multiple of \$100.

[Section 175ZF inserted by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26); amended by No. 36 of 2000 s. 61.]

175ZG. 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 by No. 75 of 1992 s. 4 (as amended by No. 43 of 1996 s. 26).]

[176-178. Repealed by No. 39 of 1979 s. 25.]

Part VII — Electoral offences

179. Offences

To secure the due execution of this Act and the purity of elections, the following acts are hereby prohibited and penalised:

- (1) Breach or neglect of official duty.
- (2) Illegal practices, including —
 - (a) bribery;
 - (b) undue influence.
- (3) Electoral offences.

180. Breach or neglect by officers

“Breach or neglect of official duty” includes —

- (1) any attempt by any officer to influence the vote of any elector, or, except by recording his 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 a penalty not exceeding \$400, or by imprisonment not exceeding one year.

[Section 180 amended by No. 53 of 1957 s. 14; No. 113 of 1965 s. 8.]

181. 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;

- (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;
- (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;
- (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, any early 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, any early ballot paper; or who gives away any early ballot paper; or who sells any early ballot paper; or, except as provided for in section 92(5), parts with the possession of, any early ballot paper,

shall be guilty of bribery.

[Section 181 amended by 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).]

182. Definition of 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 declared, or horse or carriage hire for any voter whilst

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going to or returning from the poll, with a view to influencing the vote of an elector.

[Section 182 amended by No. 51 of 1962 s. 10; No. 39 of 1979 s. 5; No. 66 of 1983 s. 6.]

183. 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 his political opinions;
- (4) or in any way interferes with any elector, either in the polling place or within 6 metres from the entrance thereto with the intention of influencing him or advising him as to his vote;
- (5) or at any time between the issue of the writ and the close of the poll publishes or exposes or causes to be published or exposed, to public view any document or writing or printed matter containing any untrue statement defamatory of any candidate and calculated to influence the vote of any elector;

- (6) or, being a candidate, personally solicits the vote of any elector on polling day;
- (7) or, being a candidate attends at any meeting of electors other than his committee held for electoral purposes on polling day,

shall be guilty of undue influence.

[Section 183 amended by 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.]

184. Definition of 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 by No. 51 of 1962 s. 12; No. 39 of 1979 s. 5; No. 66 of 1983 s. 8.]

185. Exception

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,

shall, during a period of 2 years from the date of the conviction or finding, be incapable of being chosen or of sitting as a member of the Council or the Assembly.

187. Illegal practices

- (1) In addition to bribery and undue influence, the following shall be illegal practices:
- (a) Any publication of any electoral advertisement (other than an advertisement in a newspaper announcing the holding of a meeting), handbill, or pamphlet, or any issue of any electoral notice without at the end thereof the name and address of the person authorising the same.
 - (b) Printing or publishing any printed electoral advertisement, handbill, or pamphlet (other than an advertisement in a newspaper), without the name and place of business of the printer being printed at the foot of it.
 - (c) The attendance by a candidate after nomination day at any committee meeting held for the purpose of promoting or procuring his election on premises on which the sale by retail of any intoxicating liquor is authorised by licence, except where the meeting is held in or on a part of those premises in or on which part, intoxicating liquor is not ordinarily sold by retail to members of the public and is a part that is ordinarily let for the holding of meetings.
 - (d) The attendance by any member of a committee formed in the interests and with a view to obtain the return of any candidate at an election at a committee meeting held on any premises licensed to sell by retail spirituous liquors, except where the meeting is held in or on a part of those premises in or on which part spirituous liquors are not ordinarily sold by retail to members of the public and is a part that is ordinarily let for the holding of meetings.
- (2) Subsection (1)(a) and (b) do not apply in relation to —
- (a) T-shirts, lapel buttons, lapel badges, pens, pencils or balloons;

- (b) business or visiting cards that promote the candidacy of any person in an election;
 - (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 by No. 68 of 1964 s. 36; No. 39 of 1979 s. 26; No. 36 of 2000 s. 79.]

187A. Purposely rendering person unable to vote or incapable of voting

- (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 himself,
- 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 himself unable or incapable as mentioned therein; or
 - (b) the other person did vote.

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- (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 by No. 52 of 1980 s. 2.]

188. Punishment

Any illegal practice shall be punishable as follows:

- (1) Bribery or undue influence by a penalty not exceeding \$400, or by imprisonment not exceeding one year.
- (2) Any other illegal practice by a penalty not exceeding \$200.

[Section 188 amended by No. 113 of 1965 s. 8; No. 50 of 2003 s. 56(3).]

189. Gifts by candidates

Any person who, having announced himself 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 he announced himself 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 by No. 68 of 1964 s. 37.]

190. Electoral offences

The matters mentioned in the first column of the table at the foot of this section 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
Falsely personating any person to secure a ballot paper to which the personator is not entitled or personating any other person for the purpose of voting.	Imprisonment not exceeding 2 years.
Fraudulently destroying or defacing any nomination or ballot paper.	Imprisonment not exceeding 2 years.
Fraudulently putting any ballot or other paper into the ballot box.	Penalty not exceeding \$6 000.
Fraudulently taking any ballot paper out of any polling place.	Penalty not exceeding \$6 000.
Forging or uttering, knowing the same to be forged, any nomination or ballot paper.	Imprisonment not exceeding 2 years.
In any polling place on polling day, or in any counting place, misconducting himself, or failing to obey the lawful directions of the presiding officer.	Penalty not exceeding \$300.
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 roll.	Imprisonment not exceeding 12 months.
Wagering on the result of any election.	Penalty not exceeding \$100.
Wilfully defacing, mutilating, destroying, or removing any notice, list, or other document affixed by any Returning Officer or by his authority.	Penalty not exceeding \$4.

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First Column — Offences	Second Column — Punishments
Wilfully making false statement in any claim other than a false statement as to any qualification required by section 17(1)(a) or (c), 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 qualification required by section 17(1)(a) or (c).	Penalty not less than \$10 nor more than \$100.
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 \$300.
The wearing or displaying by an officer or scrutineer in a polling place on polling day 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 polling place except to one of the voting compartments.	Penalty not exceeding \$100.
Any contravention of this Act for which no other punishment is provided.	Penalty not exceeding \$100.

[Section 190 amended by 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).]

191. False statements in electoral papers

- (1) A person shall 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 or canvasser for the purposes of the preparation of new rolls.

Penalty: \$40.

- (2) Subsection (1) shall not affect the liability of any person to be proceeded against in respect of any other offence, but he shall not be 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 by No. 5 of 1918 s. 5; amended by No. 59 of 1919 s. 6; No. 113 of 1965 s. 8.]

191A. Misleading or deceptive publications, etc.

- (1) A person shall 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: \$1 000.

- (2) A person shall 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 his ballot paper otherwise than in accordance with the directions on the ballot paper.

Penalty: \$1 000.

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- (3) In a prosecution of a person for an offence against subsection (1), it is a defence if the person proves that he 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 polling booth for the purpose of casting a vote in the election.

[Section 191A inserted by No. 79 of 1987 s. 73; amended by No. 36 of 2000 s. 21 and 80; No. 50 of 2003 s. 56(5).]

192. Prohibition of canvassing near polling place

- (1) The following acts are, on polling day, and on all days to which the polling is adjourned, prohibited in a polling place or within 6 metres from the entrance thereto, namely —
- (a) canvassing for votes; or
 - (b) soliciting the vote of any elector; or
 - (c) inducing any elector not to vote for any particular candidate; or
 - (d) inducing any elector not to vote at the election.
- (2) Subject to subsection (3), where a polling place has been appointed by the Electoral Commissioner under the provisions of section 100, at any institution or hospital, the acts referred to in subsection (1) are, at all times, prohibited in the institution or hospital, in the grounds thereof, or within 6 metres from the entrance to the institution or hospital or from the entrance to the

grounds thereof, whichever entrance is the furthest distance away from the institution or hospital itself.

- (3) Literature relating to political parties may be left at the general office of an institution or hospital referred to in subsection (2) so that such literature may be available on request by any elector who is for the time being resident in the institution or hospital wherein the polling place is appointed to be by reason of illness or infirmity or in the case of a woman, by reason of approaching maternity.
- (3a) A scrutineer accompanying a mobile portable ballot box under section 100A or 100B may distribute to persons recording their votes at the mobile portable ballot box literature (which may be, or include, “how-to-vote” cards) that suggests a manner in which ballot papers might be marked.
- (4) The acts referred to in subsection (1) are, at all times, prohibited in a prison, in the grounds thereof, or within 6 metres from the entrance to the prison or from the entrance to the grounds thereof, whichever entrance is the furthest distance away from the prison itself.
- (5) Subsection (4) does not apply to prohibit in a prison the reading, seeing, or hearing of electoral publicity in such newspapers or other media as are, under the due administration of the prison, permitted there.

[Section 192 amended by No. 63 of 1948 s. 28; No. 59 of 1959 s. 14; No. 94 of 1972 s. 4; No. 39 of 1979 s. 28; No. 40 of 1987 s. 81; No. 79 of 1987 s. 74.]

192A. Prohibition on dissemination of certain matter

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,

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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: \$100.

[Section 192A inserted by No. 28 of 1970 s. 17.]

193. Restrictions as to petitions, etc.

- (1) On polling day, or on a day to which polling is adjourned, a person shall not in —
 - (a) a polling place; or
 - (b) a polling area declared under section 100(1)(i) in relation to a polling place,

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.

- (2) In subsection (1) “**polling place**” does not include a polling place appointed under section 100(1)(c).

[Section 193 inserted by No. 58 of 1988 s. 6.]

194. Failure to transmit claim

When any person has signed a claim to be enrolled as an elector, any other person who induces the claimant to let him 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 by No. 31 of 1982 s. 6; No. 9 of 1983 s. 25; No. 36 of 2000 s. 28(1).]

195. Collection of information for preparation of rolls

- (1) For the purposes of preparing any roll or ensuring the enrolment of any elector on a roll, the Electoral Commissioner, any enrolment officer, or any person authorised 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) Every person to whom any question shall be put under this section shall answer the same truthfully and completely to the best of his knowledge, information, and belief, and shall comply to the best of his ability with any requisition made on him under this section.

Penalty: \$4.

[Section 195 inserted by No. 59 of 1919 s. 4; amended by No. 113 of 1965 s. 8; No. 40 of 1987 s. 84; No. 36 of 2000 s. 28(2).]

196. Employers to allow employees leave of absence to vote

- (1) If an employee who is an elector notifies his employer before the polling day that he desires leave of absence to enable him to vote at any election, the employer shall, if the absence desired is necessary to enable the employee to vote at the election, allow him 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 at the election.
- (2) No employee shall, under pretence that he intends to vote at 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 he is engaged.

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197. Offenders may be removed from polling place

Whoever in any polling place on polling day misconducts himself, or fails to obey the lawful directions of the presiding officer, may be removed from the polling place by any constable or by any person authorised by the presiding officer.

198. Further punishment

Any person so removed re-entering or attempting to re-enter the polling place, without the permission of the presiding officer, shall be guilty of a further electoral offence punishable, on conviction, by twice the penalties prescribed in the table for the original offence.

[Section 198 amended by No. 57 of 1952 s. 14.]

199. Expenditure 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 his agent authorised in writing, he shall be guilty of a contravention of this Act.

199A. Interference 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: \$1 000.

- (2) In subsection (1) —

“political gift” means a gift to —

- (a) a political party or an associated entity within the meaning of Part VI;
- (b) a candidate or group in an election; or
- (c) a person to whom section 175Q applies.

[Section 199A inserted by No. 75 of 1992 s. 7; amended by No. 50 of 2003 s. 56(6).]

200. Liability for indirect acts

Every person shall be liable for an illegal practice committed directly or indirectly by himself, or by any other person on his behalf, and with his knowledge and authority.

201. Attempt to commit an 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. Certificate evidence

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 by No. 40 of 1987 s. 84.]

[203. Repealed by No. 51 of 1992 s. 16(4).]

204. Indictable offences

Offences against this Act punishable by imprisonment exceeding one year are crimes.

[Section 204 amended by No. 4 of 2004 s. 58.]

205. Summary convictions

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 by No. 63 of 1948 s. 29; No. 4 of 2004 s. 58; No. 84 of 2004 s. 80.]

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206. Chapter XIV of *The Criminal Code* not to apply to Parliamentary elections

Nothing contained in Chapter XIV of *The Criminal Code* shall apply to Parliamentary elections.

Part VIII — Miscellaneous

207. Persons who may witness signatures and take declarations

- (1) The signatures to claims or other forms may be witnessed by an elector, or a person qualified 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 himself 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 by No. 9 of 1983 s. 26.]

208. Service of notices

Without limiting section 31(1) of the *Interpretation Act 1918*⁴, where any notice or notification is required to be served on, or given or sent to, any person under this Act, the same may be posted to him as a letter addressed to him —

- (a) at the address shown for him in the roll; or
- (b) if the person has notified a postal address to the Electoral Commissioner, at that postal address.

[Section 208 inserted by No. 9 of 1983 s. 27; amended by No. 40 of 1987 s. 84; No. 36 of 2000 s. 28(1).]

209. Electoral matter to be sent by post

- (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

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addressed on the day when, in the ordinary course of post, they should have been received at his 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 by No. 36 of 2000 s. 70.]

210. Electronic communication of electoral matter

- (1) If this Act provides for electoral matter to be transmitted by post but it is impracticable to transmit the matter by post without undue delay, the matter may be transmitted by electronic means.
- (2) Communications under this Act between officers may be transmitted by electronic means in any case.

[Section 210 inserted by No. 36 of 2000 s. 71.]

211. A person unable to write may make his mark

- (1) Any person required by this Act to sign his name may, on satisfying an attesting witness that he is unable to write, make his distinguishing mark, which shall be witnessed by the attesting witness and his distinguishing mark when so witnessed, shall, for the purposes of this Act, be deemed to be the personal signature of that person.
- (2) Where a person is required by this Act —
- (a) to sign his name; or
 - (b) make his 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 his name or make his 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 92(5)(a).

[Section 211 amended by 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.]

212. Forms

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 by 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.

[(2) repealed]

- (3) In subsections (4) to (8) “**ballot paper regulations**” means regulations made for the purposes of section 113(1).
- (4) Either House of the Parliament, within 14 sitting days of that House after ballot paper regulations have been laid before that House under section 42(1) of the *Interpretation Act 1984*, may, in pursuance of a motion upon notice, pass a resolution disallowing the regulations.
- (5) Where —
- (a) a notice referred to in subsection (4) is given with respect to ballot paper regulations; and
 - (b) at the expiration of the period during which a resolution disallowing the regulations could have been passed —
 - (i) the notice has not been withdrawn and the relevant motion has not been called on; or

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- (ii) the relevant motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of,

the regulations shall be deemed to have been disallowed.

- (6) If —

- (a) neither House of the Parliament passes a resolution in accordance with subsection (4) disallowing ballot paper regulations; and
- (b) the regulations have not been deemed to have been disallowed under subsection (5),

the regulations take effect on the day immediately following the last day upon which a resolution disallowing them could have been passed or on such later day as is specified or provided for in the regulations.

- (7) If, before the expiration of 14 sitting days of a House of the Parliament after ballot paper regulations have been laid before that House —

- (a) that House, being the Legislative Assembly, is dissolved or expires, or the Parliament is prorogued; and
- (b) a resolution for the disallowance of the regulations has not been passed by that House,

the regulations shall, for the purposes of this section, be deemed to have been laid before that House on the first sitting day of that House after the dissolution, expiry or prorogation, as the case may be.

- (8) Sections 41(1)(b) and 42(2) to (8) of the *Interpretation Act 1984* do not apply to ballot paper regulations.

[Section 213 amended by 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).]

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;

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- (iii) providing for consequential matters in relation to membership of that body.

[Section 213A inserted by No. 78 of 1984 s. 17.]

[214. *Omitted under the Reprints Act 1984 s. 7(4)(f).]*

Schedule 1

[Sections 146I, 156D]

Counting of votes at Legislative Council elections

[Heading inserted by No. 40 of 1987 s. 83.]

1.

The method of counting the votes to be used by the Returning Officer to ascertain the result of an election in a region shall be as provided in this Schedule.

2.

- (1) In this Schedule “**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 one more than the number of candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by one, 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 him 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 him 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 in accordance with clause 4(a) and (b), 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.

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.

For the purposes of the application of clause 4(a) and (b) in relation to a transfer under clause 5 or 9 of the surplus votes of an elected candidate, each ballot paper of the elected candidate that was obtained by him on a transfer under this Schedule shall be treated as if any vote it expressed for the elected candidate were a first preference vote, as if the name of any other candidate previously elected or excluded had not been on the ballot paper and as if the numbers indicating subsequent preferences had been altered accordingly.

8.

Where, after the 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 shall be excluded and all his votes shall be transferred to the continuing candidates as follows —

- (a) the total number of ballot papers of the excluded candidate that express the first preference vote for him and the next available preference for a particular continuing candidate shall be transferred, each ballot paper at a transfer value of one, to the continuing candidate and added to the number of votes of the continuing candidate and all those ballot papers shall be transferred to the continuing candidate;
- (b) the total number (if any) of other votes obtained by the excluded candidate on transfers under this Schedule shall be transferred from the excluded candidate in the order of the transfers on which he obtained them, the votes obtained on the earliest transfer being transferred first, as follows —
 - (i) the total number of ballot papers transferred to the excluded candidate from a particular candidate and expressing the next available preference for a particular continuing candidate shall be multiplied by the transfer value at which the votes were so transferred to the excluded candidate;
 - (ii) the number so obtained (disregarding any fraction) shall be added to the number of votes of the continuing candidate;
 - (iii) all those ballot papers shall be transferred to the continuing candidate.

9.

Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion 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 4(a) and (b), 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 the remaining votes of the excluded candidate have been transferred in accordance with clause 8(a) and (b) to continuing candidates.

10.

Subject to clause 12, where, after the transfer of all 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 his votes shall be transferred in accordance with clause 8(a) and (b).

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.

Notwithstanding any other provision of this Schedule, where the number of continuing candidates is equal to the number of remaining unfilled vacancies, those candidates shall be elected.

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 him, or the aggregate of first preference votes received by him and all other votes obtained by him 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 him from a particular candidate each constitutes a separate transfer.

[Schedule 1 inserted by No. 40 of 1987 s. 83.]

Schedule 2

[Sections 86, 87, 144;
Schedule 1, clauses 12, 15 and 17]

Ballot procedure

[Heading inserted by 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 by No. 40 of 1987 s. 83.]

[Schedule 3 repealed by No. 36 of 2000 s. 81(1).]

Notes

- ¹ This is a compilation of the *Electoral Act 1907* and includes the amendments made by the other written laws referred to in the following table^{1a, 5}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Electoral Act 1907</i>	27 of 1907	20 Dec 1907	1 Mar 1908 (see s. 2)
<i>Electoral Act Amendment Act 1911</i>	44 of 1911	16 Feb 1911	1 May 1911 (see s. 1)
<i>Electoral Act Amendment Act 1912</i>	56 of 1912	30 Dec 1912	30 Dec 1912
<i>Electoral Act Amendment Act 1918</i>	5 of 1918 (as amended by No. 59 of 1919 s. 6)	18 Mar 1918	18 Mar 1918
<i>Electoral Amendment Act 1919</i>	59 of 1919	17 Dec 1919	17 Dec 1919
<i>Electoral Act Amendment Act 1921</i>	7 of 1921	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	3 Dec 1931	3 Dec 1931
<i>Electoral Act Amendment Act 1934</i>	39 of 1934	4 Jan 1935	4 Jan 1935
<i>Electoral Act Amendment Act 1936</i>	10 of 1936	3 Dec 1936	3 Dec 1936
<i>Electoral Act Amendment Act 1940</i>	18 of 1940	29 Nov 1940	29 Nov 1940
<i>Electoral Act Amendment Act (No. 3) 1940</i>	47 of 1940	30 Dec 1940	30 Dec 1940
Reprint of the <i>Electoral Act 1907</i> in Volume 2 of Reprinted Acts ⁵ (includes amendments listed above)			
<i>Electoral Act Amendment Act 1948</i>	63 of 1948	21 Jan 1949	27 May 1949 (see s. 1 and <i>Gazette</i> 27 May 1949 p. 1133)
Reprint of the <i>Electoral Act 1907</i> approved 21 Oct 1949 (not in a Volume) (includes amendments listed above)			

Electoral Act 1907

Short title	Number and year	Assent	Commencement
<i>Electoral Act Amendment Act 1949</i>	26 of 1949	22 Oct 1949	22 Oct 1949
<i>Electoral Act Amendment Act 1951</i>	58 of 1951	7 Jan 1952	7 Jan 1952
<i>Electoral Act Amendment Act 1952</i>	57 of 1952	23 Dec 1952	23 Dec 1952
<i>Electoral Act Amendment Act (No. 2) 1953</i>	34 of 1953	18 Dec 1953	18 Dec 1953
Reprint of the <i>Electoral Act 1907</i> 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 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	3 Dec 1959	15 Jan 1960 (see s. 2 and <i>Gazette</i> 15 Jan 1960 p. 35)
Reprint of the <i>Electoral Act 1907</i> approved 26 Feb 1962 (not in a Volume) (includes amendments listed above)			
<i>Electoral Act Amendment Act 1962</i>	51 of 1962	20 Nov 1962	20 Nov 1962
<i>Electoral Act Amendment Act 1964</i>	33 of 1964	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	4 Dec 1964	31 Dec 1964 (see s. 2 and <i>Gazette</i> 24 Dec 1964 p. 4094)
Reprint of the <i>Electoral Act 1907</i> 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 <i>Electoral Act 1907</i> approved 12 Jan 1971 (not in a Volume) (includes amendments listed above)			

Short title	Number and year	Assent	Commencement
<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)
<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)

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Short title	Number and year	Assent	Commencement
<i>Acts Amendment and Repeal (Disqualification for Parliament) Act 1984</i> Pt. VII	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	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	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>)			
<i>Acts Amendment (Electoral Reform) Act 1987</i> Pt. IV ^{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	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	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)	16 Dec 1992	Act other than s. 5 and 6: 9 Nov 1996 (see s. 2 and <i>Gazette</i> 8 Nov 1996 p. 6265)
<i>Financial Administration Legislation Amendment Act 1993</i> s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))

Short title	Number and year	Assent	Commencement
<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)
<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 <i>Electoral Act 1907</i> as at 22 Apr 1997 (includes amendments listed above except those in 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)

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Short title	Number and year	Assent	Commencement
<i>Electoral Amendment Act 2000</i> ¹¹	36 of 2000	10 Oct 2000	Act other than s. 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 <i>Electoral Act 1907</i> as at 15 Dec 2000 (includes amendments listed above)			
<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> s. 251	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 <i>Electoral Act 1907</i> as at 9 Sep 2005 (includes amendments listed above except those in the <i>Children and Community Services Act 2004</i>)			

Short title	Number and year	Assent	Commencement
<i>Electoral Reform (Electoral Funding) Act 2006</i>	55 of 2006	26 Oct 2006	27 Oct 2006 (see s. 2)
<u>Financial Legislation Amendment and Repeal Act 2006 s. 4 and 17</u>	<u>77 of 2006</u>	<u>21 Dec 2006</u>	<u>1 Feb 2007 (see s. 2 and Gazette 19 Jan 2007 p. 137)</u>

^{1a} On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Electoral Amendment (Political Finance) Act 1992 s. 5 and 6</i> ^{13, 16}	75 of 1992 (as amended by No. 64 of 2006 Pt. 4)	16 Dec 1992	To be proclaimed (see s. 2)
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 75</i> ¹⁴	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))
<i>Electoral Legislation Amendment Act 2006 Pt. 3</i> ¹⁵	64 of 2006	8 Dec 2006	To be proclaimed (see s. 2(2))

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 endnote 14.

³ Under the *Public Sector Management Act 1994* s. 112(1), a reference to the *Public Service Act 1978* is, unless the contrary is intended, to be read and construed as a reference to the *Public Sector Management Act 1994*.

⁴ Repealed by the *Interpretation Act 1984*.

⁵ In this reprint 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 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 On the date as at which this reprint was prepared, the *Electoral Amendment (Political Finance) Act 1992* s. 5 and 6 had not come into operation. They read as follows:

“

5. Section 191B inserted

After section 191A of the principal Act the following section is inserted —

“

191B. Certain government publications prohibited during elections

- (1) During the relevant period in relation to an election an officer of a public agency shall not —
- (a) print, publish or distribute any matter; or
 - (b) cause, permit or authorize any matter to be printed, published or distributed,

for or on behalf of the government or a government authority.

Penalty: A fine not exceeding \$1 000 or imprisonment for a period not exceeding 6 months, or both.

- (2) Subsection (1) does not apply in relation to exempt matter.
- (3) In this section —
- “exempt matter”** means —
- (a) a written law or proposed written law;
 - (b) matter directly relating to warnings of impending natural disasters or military or civil disorders;
 - (c) matter relating to measures (including relief measures) take to deal with —
 - (i) natural disasters or military or civil disorders; and
 - (ii) the consequences of the disasters or disorders;
 - (d) matter provided by the authorities responsible for the conduct of an election including material relating to the procedures and polling places for the election and the promotion of participation in the election;

- (e) an advertisement of goods and services offered for sale by or on behalf of the government or a government authority other than an advertisement containing a political reference;
- (f) an advertisement —
 - (i) relating to a vacant position; or
 - (ii) calling for expressions of interest in appointment to a public office;
- (g) an advertisement calling for tenders;
- (h) an announcement relating to any public inquiry or public hearing conducted under a law of the State, the Commonwealth, another State or a Territory; or
- (i) a notice or announcement required to be printed, published or distributed by or under a law of the State, the Commonwealth, another State or a Territory other than a prescribed notice or announcement;

“government authority” means —

- (a) a department of the Public Service or an organization specified in column 2 of the Schedule to the *Public Service Act 1978*; or
- (b) another authority or body (whether incorporated or not) that is established for a public purpose by the State, regardless of the way it is established;

“officer” of a public agency includes —

- (a) a member of the public agency;
- (b) the principal officer of the public agency; and
- (c) any person employed in, by, or for the purposes of, the public agency;

“public agency” has the same meaning as it has in Part VI;

“political reference” means material comprising an express or implied reference to, or comment on —

- (a) an election or an election that might be held in the future;
- (b) the government or the opposition or a previous government or opposition;
- (c) a member of the Council or the Assembly;
- (d) a political party;
- (e) a candidate or group in an election; or
- (f) an issue that is recognized, or is likely to become recognized, as an issue to be considered by electors in an election;

“relevant period” means —

- (a) a period that commences 3 years 6 months from the date of a general election and which expires at 6 pm on the day of polling for the next succeeding general election; or
- (b) where the Legislative Assembly is dissolved before it has existed 3 years 6 months, a period that commences at the expiry of the day on which writs are issued for the general election immediately following the dissolution and expires at 6 pm on the day of polling for the general election; and
- (c) in the case of a by-election means a period that commences at the expiry of the day upon which the vacancy leading to the by-election occurs and expires at 6 pm on the day of polling for that by-election.

”.

6. Section 191C inserted

After section 191B of the principal Act (as inserted by this Act) the following section is inserted —

“

191C. Travel entitlements during election period

- (1) A member of Parliament shall not undertake any prescribed air travel at the expense of the State during the relevant period in relation to an election.
- (2) Notwithstanding subsection (1) and the *Salaries and Allowances Act 1975* —
 - (a) the Premier and the Leader of the Opposition in the Legislative Assembly may undertake travel by air on official business at the expense of the State during the relevant period;
 - (b) the entitlements of the Premier under paragraph (a) may also be exercised by one member of Parliament nominated by the Premier;
 - (c) the entitlements of the Leader of the Opposition in the Legislative Assembly under paragraph (a) may also be exercised by one member of Parliament nominated by the Leader of the Opposition.
- (3) Travel under subsection (2) shall be by scheduled airline services unless there is no scheduled service operating at a reasonably convenient time in which case a charter service may be used.
- (4) If a day is fixed as the polling day for 2 or more elections, only one nomination may be made under each of paragraphs (b) and (c) of subsection (2) and a nomination so made has effect for each of the elections.
- (5) Notice of a nomination under subsection (2)(b) or (c) shall be given to the Electoral Commissioner.
- (6) A member of the Assembly who ceases to be a member of the Assembly by reason of its dissolution or its expiry by effluxion of time is to be regarded for the purposes of this section as

continuing to be a member of the Assembly until the end of the relevant period.

(7) This section does not apply to travel at the expense of the State under arrangements made under section 11A(1) of the *Salaries and Allowances Act 1975* but this subsection does not affect the power of the Treasurer to make a determination under section 11A(5) of that Act.

(8) In this section —

“electorate”, in relation to a member of Parliament, means the region or district which that member represents;

“prescribed air travel” means travel by air to, from or within the region or district in which the election is to be held but does not include —

- (a) travel by a Minister of the Crown to respond to an emergency or disaster where the presence of the Minister is necessary or desirable;
- (b) travel by any member of Parliament in the course of a journey to or from a destination outside the State on official Government or parliamentary business;
- (c) travel by any member of Parliament between the member’s principal residence, or the member’s electorate, and the metropolitan area of Perth for the purpose of attending —
 - (i) a meeting of the member’s parliamentary political party; or
 - (ii) an official Government, parliamentary or vice regal function;or
- (d) travel by any member of Parliament to, from and within the member’s electorate on parliamentary or electorate business;

“**relevant period**” has the same meaning as it has in section 191A.

”

”

¹⁴ On the date as at which this reprint was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 75 had not come into operation. It reads as follows:

“

75. Various provisions repealed

The provisions listed in the Table to this section are repealed.

Table of provisions repealed

Act	Provision
.....
<i>Electoral Act 1907</i>	s. 5E(2)
.....

”

¹⁵ On the date as at which this reprint was prepared, the *Electoral Legislation Amendment Act 2006* Pt. 3 had not come into operation. It reads as follows:

“

Part 3 — Electoral Act 1907 amended

11. The Act amended in this Part

The amendments in this Part are to the *Electoral Act 1907*.

12. Long title amended

The long title is amended by inserting after “elections” —

“ **and for related purposes** ”.

13. Section 4 amended

- (1) Section 4(1) is amended by inserting in the appropriate alphabetical positions —

“

“**authorised witness**” has the meaning given by section 94;

“**enrolment information**” means a roll, information on a roll or other information relating to electors;

”

- (2) Section 4(1) is amended by deleting the definition relating to “print”, “printed” or “printing”.

14. Section 5D amended

- (1) After section 5D(3) the following subsections are inserted —
- “
- (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 shall consult with the Parliamentary leader of each party in the Parliament.
- (6) While the Acting Deputy Electoral Commissioner is so acting —
- (a) he may perform the functions of the Deputy Electoral Commissioner, and anything done by him 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 shall be regarded as effectually done if done to, by reference to or in relation to the Acting Deputy Electoral Commissioner.
- ”

- (2) Section 5D(1) is amended by inserting after paragraph (a) —
- “ or ”.

15. Section 5F amended

Section 5F(1) is amended as follows:

- (a) by deleting paragraph (ea) and inserting instead —
- “
- (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

- (b) after each of paragraphs (a) to (e), (eb) and (f) by inserting —
“ and ”.

16. Section 17 amended

- (1) Section 17(2) is amended by inserting after “elector” —
“ enrolled under subsection (1) ”.
- (2) Section 17(3) is amended by deleting “who is not disqualified by section 18”.
- (3) Section 17(5) is amended by inserting after “subsection (4)” —
“ and section 17A ”.

17. Section 17A inserted

After section 17 the following section is inserted —

“

17A. Enrolled voters leaving Australia and retaining enrolment under Commonwealth Act

- (1) This section applies to a person if —
 - (a) the name of the person appeared on —
 - (i) the roll for a district or sub-district; and
 - (ii) the electoral roll maintained under the *Commonwealth Electoral Act 1918* for a Commonwealth subdivision in the State, in respect of the same 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 (a)(ii); 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 name of the person is to be retained on the roll for the district or sub-district referred to in subsection (1)(a)(i); and
 - (b) the person is entitled to vote at —
 - (i) any election in the region of which the district or sub-district forms part; and
 - (ii) any election in the district or the district of which the sub-district forms part.

”

18. Section 18 amended

- (1) Section 18 is amended as follows:
- (a) by inserting before “Every” the subsection designation “(1)”;
 - (b) by deleting “being enrolled as an elector, or if enrolled, from”;
 - (c) in paragraph (c) by deleting “, totalling one year or longer”.

- (2) At the end of section 18 the following subsection is inserted —

“

- (2) A person mentioned in subsection (1)(a), (b) or (d) is disqualified from being enrolled as an elector.

”

19. Section 22 amended

- (1) Section 22(1) is amended as follows:
- (a) by deleting “Subject to section 51B, rolls” and inserting instead —
“ Rolls ”;
 - (b) by deleting “residence of each elector” and inserting instead —

“

, subject to section 51B, the residence in respect of which each elector is enrolled

”

- (2) Section 22(2) is amended by deleting “or derived from rolls is made available under section 25 or provided under section 25A.” and inserting instead —

“

rolls or other information relating to electors is provided or made available under section 25A, 25B or 25C.

”.

20. Section 25 amended

- (1) Section 25(2), (3) and (4) are repealed.
(2) Section 25(5) is amended by deleting “or information on rolls”.
Note: The heading to section 25 will be altered by deleting “and purchase”.

21. Section 25A amended

Section 25A(1) is amended as follows:

- (a) in paragraph (a) by inserting after “region” —

“

and the prescribed information relating to each elector

”.

- (b) in paragraph (b) by inserting after “elected” —

“

and the prescribed information relating to each elector for each district in the region

”.

- (c) in paragraph (c) by deleting “elected;” and inserting instead —

“

elected and the prescribed information relating to each elector for the district.

”.

- (d) in paragraphs (b) and (c) by deleting “Legislative”;
(e) by deleting paragraph (d).

- (2) After section 25A(1) the following subsection is inserted —

“

- (1a) In subsection (1) —

“**prescribed information**” relating to an elector means —

- (a) the elector’s postal address; and

-
- (b) details of when the particulars on the roll relating to the elector were entered or most recently changed; and
 - (c) the local government district in which, and if that district is divided into wards the ward in which, the elector's residence is situated.

”

- (3) Section 25A(4) and (5) are repealed and the following subsections are inserted instead —

“

- (4) If by virtue of section 51B information is not shown on a roll, that information is not to be provided under this section.
- (5) Without limiting subsection (1) or (2), the Electoral Commissioner may comply with a requirement of this section by providing the required enrolment information in the form of particulars recorded or stored on a mechanical, electrical, or other device.

”

22. Sections 25B to 25E inserted

After section 25A the following sections are inserted —

“

25B. Availability of enrolment information to others

- (1) Subject to this section, the Electoral Commissioner may, at the request of a person or organisation not referred to in section 25A, make enrolment information available to that person or organisation.
- (2) Enrolment information is not to be made available under this section unless 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.
- (3) The Electoral Commissioner must obtain from the person or organisation to which enrolment information is to be made available under this section an undertaking that the person or organisation —
 - (a) will only use the enrolment information for the purpose for which the Commission agreed to make it available; and

- (b) will not copy the enrolment information or give it to any other person or organisation; and
 - (c) 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 make it available.
- (4) If by virtue of section 51B information is not shown on a roll, that information is not to be made available under this section.
 - (5) The regulations may provide that if by virtue of section 51B information relating to a person is not shown on a roll, that person's name may be omitted when the Electoral Commissioner makes enrolment information available under this section.
 - (6) The Electoral Commissioner may charge a fee that covers the cost of making enrolment information available under this section.

25C. Provision of enrolment information to government organisations

The Electoral Commissioner may provide enrolment information to a department or organisation as defined in the *Public Sector Management Act 1994* section 3(1) by arrangement with its chief executive officer or chief employee.

25D. Use of enrolment information

- (1) A person or organisation that has acquired enrolment information under section 25A, 25B or 25C must not use that enrolment information except for a permitted purpose.
Penalty: \$1 000.
- (2) In this section —
“permitted purpose” means —
 - (a) for a member of the Council or a member of the Assembly —
 - (i) the exercise of the member's functions; or
 - (ii) a purpose connected with an election or referendum; or
 - (iii) monitoring the accuracy of information in the roll; or
 - (iv) research regarding electoral matters;and
 - (b) for a parliamentary party —

- (i) the exercise by a party member of the member's function as a member of the Council or the Assembly; or
 - (ii) a purpose connected with an election or referendum; or
 - (iii) monitoring the accuracy of information in the roll; or
 - (iv) research regarding electoral matters;
- and
- (c) for a person or organisation to whom or which enrolment information is made available under section 25B, the purpose for which the Electoral Commissioner agreed to make the enrolment information available; and
 - (d) for a department or organisation referred to in section 25C, use in connection with the functions of that department or organisation.

25E. Prohibition of disclosure or commercial use of enrolment information

- (1) For the purposes of this section, enrolment information is protected information in relation to a person if the person knows, or has reasonable grounds for believing, that the information has been provided or made available under section 25A, 25B or 25C.
- (2) A person must not disclose protected information unless the disclosure would be a use of the information for a permitted purpose under section 25D.
Penalty: \$1 000.
- (3) A person must not use protected information for a commercial purpose.
Penalty: \$10 000.

”

23. Section 40 amended

After section 40(1) the following subsection is inserted —

“

- (1a) Subsection (1)(b)(iii) does not apply to a person whose name is on the existing roll because of section 17(4) or 17A.

”

24. Section 48 amended

Section 48(2)(b) is amended by deleting “\$2” and inserting instead —

“ \$50 ”.

25. Section 59 replaced

Section 59 is repealed and the following section is inserted instead —

“

59. Returns in respect of certain prisoners and other persons under detention

(1) In this section —

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

“**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(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;

“**secretary, Mentally Impaired Accused Review Board**” means the secretary of the Mentally Impaired Accused Review Board established under the *Criminal Law (Mentally Impaired Accused) Act 1996*.

(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 secretary, Mentally Impaired Accused Review Board must forward to the Electoral Commissioner —

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

- (ii) a list containing the required information for each person who ceased to be a mentally impaired accused 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 a list was last 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 a list was last forwarded under subsection (2)(a)(ii);
 - and
 - (b) the secretary, Mentally Impaired Accused Review Board must forward to the Electoral Commissioner —
 - (i) a list containing the required information for each person who became a mentally impaired accused during the period since a list was last forwarded under subsection (2)(b)(i); and
 - (ii) a list containing the required information for each person who ceased to be a mentally impaired accused during the period since a list was last forwarded under subsection (2)(b)(ii).

”

26. Section 60 amended

- (1) Section 60(1) is amended by deleting “the lists referred to in section 56(a) and section 59,” and inserting instead —
“ a list under section 56, ”.
- (2) After section 60(1) the following subsections are inserted —
“
 - (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 shall cause the names of the persons on the list who are enrolled as electors to be ascertained and cause the roll 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 shall 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 roll.

Note: The heading to section 60 will be altered to "Removal of names from, and annotation of, roll".

27. Sections 76A and 76B inserted and saving provision

- (1) Before section 77 the following sections are inserted in Part IV Division (2) —

76A. Qualification of persons for election

- (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 at 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 at an election in a district includes a reference to a person if —
- (a) the person is qualified to be an elector entitled to vote at an election in a district; and
 - (b) the person's name appeared on a roll 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 a roll or has not included the person's name on a roll.

76B. Disqualification of persons for election

- (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.

- (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.

28. Section 77 amended

- (1) After section 77(3) the following subsection is inserted —

“

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

”

- (2) Section 77(4) is amended in the penalty by deleting “\$200.” and inserting instead —

“ \$1 000. ”.

29. Section 90 amended

- (1) Section 90(1) is amended as follows:
- (a) in paragraph (e) by deleting “those hours;” and inserting instead —
“ those hours, ”;

- (b) by deleting paragraph (f);
 - (c) after each of paragraphs (a) to (db) by inserting —
“ or ”.
- (2) Section 90(1a) is amended as follows:
- (a) by deleting paragraph (e) and “or” after it and inserting instead —
“
(e) a registrar as defined in the *Magistrates Court Act 2004* section 3, other than a Deputy Registrar appointed under section 26(5) of that Act; or
”.
 - (b) after each of paragraphs (a) to (d) by inserting —
“ or ”.
- (3) Section 90(3a) is amended as follows:
- (a) by deleting paragraph (c) and inserting instead —
“
(c) be sent to an issuing officer by post.
”.
 - (b) after paragraph (a) by inserting —
“ and ”.
- (4) Section 90(4)(c) is amended by deleting “post to the elector or deliver to him at the place of issue” and inserting instead —
“ issue to the elector by post — ”.
- (5) Section 90(4b) is amended as follows:
- (a) by deleting “deliver” and inserting instead —
“ issue ”;
 - (b) in paragraph (a) by deleting “and a declaration in the form so prescribed”;
 - (c) by deleting paragraph (b) and inserting instead —
“
(b) an envelope marked “ballot paper”,
”.
- (6) After section 90(4b) the following subsection is inserted —
“
- (4c) Immediately on issuing the ballot paper and envelope to the elector under subsection (4b), the issuing officer shall —

- (a) if a copy of the electoral roll is available, make a record of the elector's name on a copy of the roll in the manner prescribed for the purposes of section 126(1); or
- (b) if a copy of the electoral roll is not available —
 - (i) issue the elector with a declaration in the prescribed form; and
 - (ii) make a record of the name of the elector and of such other particulars as are prescribed.

”

- (7) Section 90(8) is amended as follows:
 - (a) in paragraph (a) by inserting after “elector an” —
“ oral ”;
 - (b) in paragraph (b) by inserting after “section” —
“ and section 92(3) ”.
- (8) Section 90(10) is amended in the penalty by deleting “\$4 000 or”.
- (9) Section 90(12) is repealed.

Note: The heading to section 90 will be altered to “**Applications for early ballot papers**”.

30. Section 92 amended

- (1) After section 92(1) the following subsection is inserted —

“

- (1a) Subsection (2) applies if an elector is issued with an early ballot paper under section 90(4)(c).

”

- (2) After section 92(2)(e) the following paragraph is inserted —

“

- (f) The elector shall, before the close of the poll, post or deliver the envelope, or cause it to be posted or delivered, to the Electoral Commissioner.

”

- (3) Section 92(4) is repealed and the following subsections are inserted instead —

“

- (3) If an elector is issued with an early ballot paper under section 90(4b) —

- (a) the elector shall, if issued with a declaration under section 90(4c)(b), complete the declaration before the issuing officer and return it to the officer; and
 - (b) the elector shall indicate the elector's vote on the early ballot paper in the manner prescribed by section 128, but so that neither the issuing officer nor any other person can see the vote; and
 - (c) the elector shall fold the ballot paper, put it in the envelope marked "ballot paper", fasten the envelope and return it to the issuing officer.
- (4) An issuing officer who receives a declaration under subsection (3)(a) shall sign the declaration as the authorised witness and add the date he signs and his address at that date.
- (4aa) An issuing officer shall send any declaration signed under subsection (4) and any envelope received under subsection (3)(c) to the Electoral Commissioner forthwith.

”.

- (4) Section 92(4a) is amended as follows:
- (a) by deleting "the elector" and inserting instead —

“

an elector who votes as directed under subsection (2)

”.

- (b) in paragraph (a) by deleting "(4)" and inserting instead —
“ (2)(f) ”;
- (c) in paragraph (b) by deleting "(4)" and inserting instead —
“ (2)(f) ”.

- (5) Section 92(5) is amended as follows:
- (a) by deleting paragraph (a) and inserting instead —

“

- (a) If an elector cannot vote without assistance because the elector is sight impaired, physically incapacitated or illiterate, the elector may nominate a person (other than a candidate at the election) to assist the elector, and the nominated person must, in accordance with the directions of the elector, do any act required or authorised by subsection (2), (3) or (4a).

”.

-
- (b) in paragraph (b) by deleting “An elector” and inserting instead —
- “
- If the elector has been issued with a declaration under section 90(4)(c) or 90(4c)(b), the person
- ”.
- (c) after paragraph (b) by inserting —
- “
- (baa) If the elector’s name has been recorded under section 90(4c)(a), a person appointed under paragraph (a) must give the issuing officer his full name and address and satisfy the issuing officer that he has been appointed by the elector to mark the ballot paper for the elector.
- ”.
- (d) in paragraph (ba) by deleting “(4)” and inserting instead —
- “ (3)(c) ”;
- (e) after paragraph (d)(i) by inserting —
- “ and ”.
- (6) Section 92(6) is amended after “issued” by inserting —
- “ under section 90(4)(c) ”.
- (7) Section 92(8) is amended by deleting “the declarations relating to the” and inserting instead —
- “ declarations relating to ”.
- (8) Section 92(9) is amended as follows:
- (a) in paragraph (d) by inserting after “(2)(b)” —
- “ or (3)(a) ”;
- (b) by inserting after paragraphs (a) and (b) —
- “ or ”.
- (9) Section 92(10) is amended as follows:
- (a) in paragraph (a) by deleting “the declaration” and inserting instead —
- “ a declaration ”;
- (b) in paragraph (b) by deleting “the declaration” in the first 2 places where it occurs and inserting instead —
- “ a declaration ”;

- (c) in paragraph (b) by deleting “the early” in the first place where it occurs and inserting instead —
“ an early ”.

31. Section 118 repealed

Section 118 is repealed.

32. Section 119 amended

Section 119(1) is repealed and the following subsection is inserted instead —

“

- (1) The presiding officer shall put to any person claiming to vote at any election the following questions —

- (a) Have you cast an early vote for this election (or these elections, as the case requires) or already voted today?
- (b) What is your full name?
- (c) Where do you live?

and may then put any other question the presiding officer considers necessary to determine whether the person is enrolled to vote.

”

33. Section 120 amended

- (1) Section 120 is amended by inserting before “If” the subsection designation “(1)”.
- (2) At the end of section 120 the following subsection is inserted —

“

- (2) If by virtue of section 51B information relating to an elector is not shown on the roll, subsection (1) does not apply to a refusal to answer the question put to the elector under section 119(1)(c).

”

34. Section 122 amended

Section 122(3) is amended by deleting “shall be deemed to have made such declaration.” and inserting instead —

“

and made a declaration as required under section 92, shall be deemed to have made a declaration under this section.

”

35. Section 129 amended

- (1) Section 129(1) is repealed and the following subsections are inserted instead —

“

- (1) If an elector cannot vote without assistance because the elector is sight impaired, physically incapacitated or illiterate, the elector may nominate a person (other than a candidate at the election or a scrutineer for a candidate) to assist the elector, and the nominated person must mark the elector’s ballot paper according to the directions of the elector and fold and deposit the ballot paper in the ballot box.

- (1a) Dealings with a ballot paper under subsection (1) are to be conducted in the presence of such scrutineers as are present, or, if there are no scrutineers present, then in the presence of an electoral officer who is not the person nominated to assist the elector.

”

- (2) Section 129(3)(b) is amended by deleting “and folded by an electoral officer” and inserting instead —

“ , folded and deposited in a ballot box by a person ”.

- (3) Section 129(4) is amended by deleting “, or who marks and folds a ballot paper under subsection (3)(b),”.

36. Section 137 amended

- (1) Section 137(1) is amended by deleting “one scrutineer” and inserting instead —

“ scrutineers ”.

- (2) Section 137(2) is amended by deleting “Such appointment” and inserting instead —

“ An appointment under subsection (1) ”.

- (3) After section 137(2) the following subsection is inserted —

“

- (3) For each place where the scrutiny and count of votes are conducted, each candidate 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, or Assistant Returning Officer, as the case may be, allows a greater number.

”

37. Section 146C amended

- (1) Section 146C(1)(c) is amended by deleting “one scrutineer” and inserting instead —

“ not more than 2 scrutineers ”.

- (2) Section 146C(2)(a) is amended by deleting “one scrutineer” and inserting instead —

“ not more than 2 scrutineers ”.

38. Section 147 amended

- (1) Section 147(1) is amended as follows:

- (a) by deleting paragraph (a) and “and” after it and inserting instead —

“

- (a) declare the result of the election and the name of the candidate, or names of the candidates, elected; and

”

- (b) after paragraph (b)(i) by inserting —
“ and ”.

- (2) After section 147(1) the following subsection is inserted —

“

- (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 an election in a region, at a place appointed by the Electoral Commissioner.

”

39. Section 149A inserted

After section 149 the following section is inserted in Part IV Division (5) —

“

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.

”

40. Section 153 amended

Section 153(1) is amended by deleting “\$10” and inserting instead —

“ \$100 ”.

41. Section 156 amended

Section 156(9) and (10) are repealed.

42. Section 180 amended

Section 180 is amended by deleting “by a penalty not exceeding \$400, or”.

43. Section 182 amended

Section 182 is amended by deleting “horse and carriage hire” and inserting instead —

“ transport ”.

44. Section 187B inserted

After section 187A the following section is inserted —

“

187B. Publication of electoral advertisements on the internet

- (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.

”

45. Section 188 replaced

Section 188 is repealed and the following section is inserted instead —

“

188. Punishment for illegal practices

- (1) Bribery or undue influence is punishable —
 - (a) if the offence relates to an early ballot paper or early vote, by imprisonment for 2 years;
 - (b) in any other case, by imprisonment for 12 months.
- (2) Any other illegal practice is punishable —
 - (a) if the offence relates to an early ballot paper or early vote, by imprisonment for 12 months;
 - (b) in any other case, by a fine of \$6 000.

”

46. Section 190 amended

Section 190 is amended in the second column of the Table of Electoral Offences and Punishments as follows:

- (a) by deleting “\$300.” in both places where it occurs and inserting instead —
“ \$1 000. ”;
- (b) by deleting “exceeding \$100.” in each of the 3 places where it occurs and inserting instead —
“ exceeding \$1 000. ”;
- (c) by deleting “\$4.” and inserting instead —
“ \$1 000. ”;
- (d) by deleting “Penalty not less than \$10 nor more than \$100.” and inserting instead —
“ Penalty not exceeding \$1 000. ”.

47. Section 191 amended

Section 191(1) is amended in the penalty by deleting “\$40.” and inserting instead —

“ \$1 000. ”.

48. Section 192 amended

Section 192(4) and (5) are repealed.

49. Section 192A amended

Section 192A is amended in the penalty by deleting “\$100.” and inserting instead —

“ \$1 000. ”.

50. Section 195 amended

Section 195(2) is amended in the penalty by deleting “\$4.” and inserting instead —

“ \$100. ”.

51. Section 210 amended

Section 210(1) is repealed and the following subsection is inserted instead —

“

- (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.

”.

52. Schedule 1 amended

- (1) Schedule 1 clause 5 is repealed and the following clause is inserted instead —

“

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 him 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 one 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.

”

- (2) Schedule 1 clause 7 is repealed.
- (3) Schedule 1 clause 9 is amended by deleting “4(a) and (b)” and inserting instead —
 “ 5 ”.

53. Minor amendments

The Act is amended as set out in the Table.

Table	
Provision amended	Amendment
section 60(1)	the deletion of “56(a)” and insertion instead of — “ 56 ”.
section 61	the repeal of the section.
section 62I(2)	the insertion after “one member of” of — “ the ”.
section 62N(1)(c)	the insertion before “decision” of — “ a ”.
section 67(5)	the deletion of “32(a)” and insertion instead of — “ 32(1)(a) ”.

Provision amended	Amendment
section 75(1)(b)	the deletion of “nomination” and insertion instead of — “ declaration of nominations ”.
section 77(1)(b)	the insertion after “as” of — “ , or from being, ”.
section 85	the deletion of “6 p.m.” and insertion instead of — “ 12 noon ”.
section 87(7)	the deletion of “113A” and insertion instead of — “ 113B ”.
section 92(4c)(b)	the deletion of “Tuesday” and insertion instead of — “ Thursday ”.
section 100B(2a)	the insertion after “The” of — “ Electoral Commissioner or the ”.
section 119(7)	the deletion of “or (2)”.
section 141(1)	the deletion of “, (b)”.
section 156A	the deletion of “(1)”.
section 186	the deletion of “incapable of being chosen or of sitting as” and insertion instead of — “ disqualified from being elected as, or from being, ”.

¹⁶ On the date as at which this reprint was prepared, the *Electoral Legislation Amendment Act 2006* Pt. 4 had not come into operation. It reads as follows:

**Part 4 — Electoral Amendment (Political Finance)
Act 1992 amended**

54. The Act amended in this Part

The amendments in this Part are to the *Electoral Amendment (Political Finance) Act 1992*.

55. Sections 5 and 6 repealed

Sections 5 and 6 are repealed.