

LOCAL GOVERNMENT.

No. 27 of 1981.

AN ACT to amend the Local Government Act
1960-1980.

[Assented to 26 May 1981.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY.

1. (1) This Act may be cited as the *Local Government Amendment Act 1981*. Short title and citation.

(2) In this Act the Local Government Act 1960-1980 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Local Government Act 1960-1981.

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

PART II—AMENDMENTS TO PRINCIPAL ACT.

Section 3
amended.

3. Section 3 of the principal Act is amended by deleting the passage commencing “PART IV.—THE MUNICIPAL COUNCIL, ss. 35 to 154.” and ending “*Division 5.—Electoral Offences, ss. 138 to 154.*” and substituting the following—

“PART IV.—THE MUNICIPAL COUNCIL, ss. 35 to 154N.

Division 1.—The Electoral Roll, ss. 35 to 64.

Subdivision A.—Persons Eligible to be Registered as Electors, s. 35.

Subdivision B.—Application for Registration on Electoral Roll, ss. 36 and 37.

Subdivision C.—Compilation of Annual Electoral Roll, ss. 38 to 43.

Subdivision D.—Revision of Annual Electoral Roll, ss. 44 to 49.

Subdivision E.—Supplementary Electoral Roll, ss. 50 to 54.

Subdivision F.—General, ss. 55 to 64.

Division 2.—Qualification of Mayor or President and Councillors, ss. 65 to 71.

Division 3.—Election of Council, ss. 72 to 154N.

Subdivision A.—Times Appointed for Election, ss. 72 to 75.

Subdivision B.—Preliminaries to an Election, ss. 76 to 80.

Subdivision C.—Nomination of Candidates, ss. 81 to 90.

Subdivision D.—Vacancies Remaining after Nomination Procedures Completed, ss. 91 and 92.

Subdivision E.—Ballot Papers, s. 93.

Subdivision F.—Number of Votes an Elector May Cast, s. 94.

Subdivision G.—System of Voting, ss. 95 to 97.

Subdivision H.—The Polling Procedures, ss. 98 to 110.

Subdivision I.—Entitlement to Vote of Person Whose Name does not Appear on Electoral Roll, ss. 111 to 113.

Subdivision J.—Voting Other Than on Election Day, ss. 114 to 126.

Subdivision K.—Voting Other Than on Election Day—General Provisions, ss. 127 to 130.

Subdivision L.—Ascertaining the Result of the Poll, ss. 131 to 136.

Subdivision M.—Declaration of Result of Election and Consequential Procedures, ss. 137 and 138.

Subdivision N.—Terms of Office of Mayors, Presidents and Councillors, ss. 139 and 140.

Subdivision O.—Election of Mayor or President or Deputy Mayor or Deputy President by Council, ss. 141 to 144.

Subdivision P.—Miscellaneous Matters Arising from Election, ss. 145 to 149.

Subdivision Q.—Disputed Returns, s. 150.

Subdivision R.—Electoral Offences, ss. 151 to 154N." .

4. Section 6 of the principal Act is amended in subsection (1)—

Section 6
amended.

(a) in the definition "electoral officer", by deleting "and person authorised to witness applications for absent voting certificates and absent voting papers" and substituting the following—

“ and officers appointed to issue early, absent and postal voting papers ”;
and

(b) by deleting the definition "returning officer".

Section 7
repealed.

5. Section 7 of the principal Act is repealed.

Section 10A
amended.

6. Section 10A of the principal Act is amended by repealing subsection (6).

Section 20
amended.

7. Section 20 of the principal Act is amended in subsection (2) by deleting "after the thirteenth day of January in any year".

Section 28
amended.

8. Section 28 of the principal Act is amended in paragraph (b) by inserting before "shall prepare for" the following—

" the returning officer " .

Section 30
amended.

9. Section 30 of the principal Act is amended in subsection (1)—

(a) by deleting paragraphs (a) and (c); and

(b) by deleting paragraph (b) and substituting the following paragraph—

" (b) a person who is registered on the electoral roll of the municipality in the district of which the poll is being taken and who—

(i) where the petition prays for the constitution of a municipality, is registered in respect of rateable property in such portion of the district as is proposed in the petition to form or be included in the district of the new municipality; or

(ii) where the petition prays for the exercise of any other power, is registered in respect of any rateable property in the district in which the poll is being taken,

is entitled to vote at the poll; " .

10. Section 30A of the principal Act is amended in paragraph (b) of subsection (6) by inserting before "shall prepare for" the following—

Section 30A
amended.

" the returning officer " .

11. Part IV of the principal Act is repealed and the following Part is substituted—

Part IV
substituted.

" PART IV.—THE MUNICIPAL COUNCIL.

Division 1.—The Electoral Roll.

Subdivision A.—Persons Eligible to be Registered as Electors.

35. (1) Subject to this section, a person is eligible to be registered as an elector on the electoral roll of a municipality, if—

Eligibility for
registration
as an elector.

- (a) he has attained the age of 18 years;
- (b) he is a natural-born or naturalized British subject or is ordinarily resident in the State; and
- (c) he is the owner or occupier of rateable property in the district of the municipality.

(2) Where the district is divided into wards, the person eligible to be registered as an elector shall be eligible to be registered in respect of the ward in which the property by virtue of which he is eligible to be registered is situated.

(3) Where rateable property, held as one holding, is situated partly in one ward and partly in another ward or other wards, the person eligible to be registered as an elector shall be eligible to be registered in respect of only one of those wards, being the ward—

- (a) nominated by the person so eligible; or
- (b) selected by the clerk if the person so eligible does not so nominate.

(4) Except where the provisions of subsection (3) of this section are applicable, where the district is divided into wards, and a person who is eligible to be registered as an elector owns or occupies rateable property in 2 or more of the wards, that person is entitled to be registered on the ward rolls or roll as an elector in respect of each of the wards in which the property is situated.

(5) Where 2 or more persons in conjunction own, or wholly occupy, rateable property—

- (a) each, if there are only 2 of those persons; or
- (b) if there are more than 2 of those persons, each of 2 only of them, being the 2 from time to time selected or deemed to be selected under subsection (8) of this section,

shall, for the purposes of this Part, be deemed to be an owner or occupier, as the case may be, of the property.

(6) Where one person occupies a separate and distinguishable portion of rateable property, whether the occupancy is of a separate portion of a building on the property, or is of any other portion, he shall, for the purposes of this Part, be deemed to be an occupier of rateable property being the portion so occupied.

(7) Where 2 or more persons in conjunction occupy a separate and distinguishable portion of rateable property—

- (a) each, if there are only 2 of those persons; or
- (b) if there are more than 2 of those persons, each of 2 only of them, being the 2 from time to time selected or deemed to be selected under subsection (8) of this section,

shall, for the purposes of this Part, be deemed to be an occupier of rateable property being the portion so occupied.

(8) The 2 persons referred to in paragraph (b) of subsection (5) and paragraph (b) of subsection (7) of this section may be selected by all or a majority of all of the persons so owning or occupying the property or portion thereof, but if for any reason a selection is not so made, or if, having been made, both or either of the persons selected cease or ceases to have an interest in the property or portion thereof as conjoint owner or occupier and the continuing owners or occupiers being 3 or more in number fail to make a further selection, then the 2 persons whose names are first and second in alphabetical order of the names of all the continuing owners or occupiers and who are otherwise eligible to be registered as electors shall be deemed to be so selected.

(9) Where rateable property is owned or occupied by a body corporate, each of 2 persons nominated by it shall be eligible to be registered on behalf of the body corporate as an elector.

(10) A nomination or selection mentioned in subsection (3), (8) or (9) of this section—

(a) shall be in writing served upon the clerk;
and

(b) may be made from time to time and shall remain in force until it is withdrawn by notice in writing, served upon the clerk, by the persons eligible at that time to make a further nomination or selection or until the property ceases to be held, owned or occupied as referred to in subsection (3), (8) or (9) of this section, as the case may be.

(11) Where a person occupies property which is owned by the Crown in right of the Commonwealth or State or by any agency or instrumentality of the Crown in right of the Commonwealth or State, if in respect of the property the Crown or the agency or instrumentality pays to the municipality in the district of which the property is situated an *ex gratia*

payment in lieu of rates, the property shall for the purposes of this Part, be deemed to be rateable property.

(12) The husband or wife, as the case may be, of the owner or occupier of rateable property, if residing on the property, shall be deemed to be an occupier for the purposes of this Part.

Subdivision B.—Application for Registration on Electoral Roll.

Application
for registra-
tion.

36. A person eligible to be registered as an elector may apply to the clerk in the prescribed form at any time to be so registered.

Acknowledg-
ment of
application.

37. (1) The clerk shall, if he is satisfied that a person who has applied to be registered as an elector is eligible to be registered, send to that person by post an acknowledgment in the prescribed form.

(2) The clerk shall, if he is not satisfied that a person who has applied to be registered as an elector is eligible to be registered, reject the application and send to that person by post a notice in the prescribed form giving the grounds for the rejection of the application.

Subdivision C.—Compilation of Annual Electoral Roll.

Annual
preparation
of roll.

38. Once in each year the clerk of the council of each municipality shall, in accordance with this Subdivision, compile an annual electoral roll in the prescribed form.

Clerk to give
notice that
applications
for registra-
tion may
be made.

39. For the purpose of compiling the annual electoral roll the clerk shall, not earlier than 15 November and not later than 15 December in each year, by notice published at least once in a newspaper circulating in the district of the municipality,

and by exhibiting a copy of the notice on the official notice board of the council, give notice that persons who are eligible to be registered as electors who require to be so registered may, on or before the ninety-second day prior to the annual election day, apply to the clerk in the prescribed form to be so registered.

40. The clerk shall, if he is satisfied that the person is eligible to be registered, include on the annual electoral roll—

Clerk to include names on roll.

- (a) the name of each person on the most recent previous electoral roll;
- (b) the name of each person whose name was omitted in error from the most recent previous electoral roll;
- (c) the name of each person who has become entitled to be registered in the capacity of an owner of rateable property within the district on or before the ninety-second day prior to the annual election day;
- (d) the name of each occupier of rateable property within the district who has applied to the clerk to be registered as an elector on or before the ninety-second day prior to the annual election day;
- (e) the name of each person last selected or deemed to be selected or last nominated under subsection (8) or (9) of section 35 on or before the ninety-second day prior to the annual election day.

41. The clerk shall—

- (a) cause the names on the annual electoral roll to be arranged in alphabetical order; and
- (b) cause the prescribed particulars for each elector to be included on the roll.

Particulars on roll.

Form of
electoral roll.

42. (1) Subject to subsection (2) of this section the annual electoral roll shall comprise—

(a) where the district is not divided into wards—a district roll;

(b) where the district is divided into wards and the mode of election to the office of mayor or president is by the electors of the municipality—

(i) a district roll; and

(ii) ward rolls for each of the wards of the district or a combined ward roll that sufficiently identifies the ward in relation to which each elector is entitled to be registered;

(c) where the district is divided into wards and the mode of election to the office of mayor or president is by the council—

(i) ward rolls for each of the wards of the district; or

(ii) a combined ward roll that sufficiently identifies the ward in relation to which each elector is entitled to be registered.

(2) In a case to which paragraph (b) of subsection (1) of this section applies it shall not be necessary for a district roll to be compiled if a combined ward roll is compiled and that roll is suitable for use as a district roll.

Date for
compilation
of roll.

43. The clerk shall compile the annual electoral roll not later than 71 days prior to the annual election day and upon completion of the roll the clerk and the mayor or the president, as the case may be, shall sign and date the roll on the last page thereof.

Subdivision D.—Revision of Annual Electoral Roll.

44. The clerk shall, at least once prior to 71 days prior to the annual election day, by notice published in a newspaper circulating in the district of the municipality, give notice that the annual electoral roll will be open for public inspection.

Notice that
roll open for
inspection.

45. A copy of the annual electoral roll shall be made available for inspection by the public, without charge, at the office of the council and at such other place or places as the council may determine, during the ordinary hours of business, for the period of 7 days subsequent to 71 days prior to the annual election day.

Inspection of
roll.

46. (1) Subject to subsection (2) of this section, on or before 64 days prior to the annual election day, a person—

Application
for amend-
ment of roll.

- (a) who is eligible to be registered as an elector but whose name has been omitted from the roll;
- (b) who, being registered as an elector, objects to the retention of a name on the roll, on the ground of ineligibility for registration as an elector;
- (c) who is eligible to be registered as an elector in respect of rateable property but whose name has been omitted from the roll and in respect of which property the name of another person is shown as owner or occupier; or
- (d) who, being registered as an elector, objects to any of the particulars recorded against his name or against the name of any other elector on the roll,

may apply to the clerk in the prescribed form to have the annual electoral roll amended accordingly.

(2) Nothing contained in subsection (1) of this section shall entitle an occupier of rateable property who has failed to apply for registration within the time limited by paragraph (d) of section 40 to apply to have his name included on the annual electoral roll.

Notification
to person in
relation to
whom
amendment
to roll
sought.

47. (1) Subject to subsection (2) of this section, when the clerk receives an application pursuant to section 46 for the amendment of the roll in relation to a person other than the applicant, the clerk shall send by post a copy of the application to the person to whom the amendment being sought relates, together with a notice from the clerk in the prescribed form advising that he has 7 days from the date of the notice within which to deliver a reply in writing to the clerk setting out his comments as to the matter or matters raised in the application.

(2) If the clerk is satisfied that the grounds of an application are frivolous or that the application discloses no reasonable cause for amending the annual electoral roll, he may reject the application without sending either a copy of the application or the notice referred to in subsection (1) of this section to the person to whom the amendment being sought relates.

(3) As soon as practicable after rejecting an application pursuant to subsection (2) of this section, the clerk shall serve on the applicant notice of his determination in the prescribed form.

Consideration
of
application
for amend-
ment of roll.

48. (1) Subject to subsection (2) of section 47, the clerk shall consider each application for amendment of the roll received by him pursuant to section 46 and any written reply delivered to him pursuant to subsection (1) of section 47 and he shall, as soon as practicable, but in any case not later than 14 days after the last day for applying for the amendment of the annual electoral roll, determine whether to amend the annual electoral roll.

(2) As soon as practicable after making a determination under subsection (1) of this section, the clerk shall serve notice of his determination in the prescribed form on the applicant and on any other person who is named in the application.

49. (1) A person receiving a notice pursuant to subsection (3) of section 47 or subsection (2) of section 48, may appeal against the determination to a court of summary jurisdiction.

Appeal
against de-
termination.

(2) The appeal shall be instituted by complaint under the Justices Act 1902 and shall be determined only by a stipendiary magistrate.

(3) The time limited for the making of a complaint under this section is 3 months from the date of service of notice of the determination.

(4) The court shall consider and determine the appeal and shall give such directions to the clerk as are necessary to give effect to its determination.

Subdivision E.—Supplementary Electoral Roll.

50. The clerk shall compile a supplementary roll prior to the first day for the receipt of nominations for the annual election.

Compilation
of supple-
mentary roll
for annual
election.

51. The clerk shall include on the supplementary roll referred to in section 50—

Changes to
be included
on supple-
mentary roll.

- (a) the name of each person who has, during the period commencing on the ninety-second day and terminating on the fiftieth day prior to the annual election day, become eligible to be registered;
- (b) the name of each person who has become eligible to be registered as the result of the determination, on or before the fiftieth day

prior to the annual election day, of an application made under section 46 or of an appeal under section 49;

- (c) any amendment to the particulars recorded on the electoral roll required as the result of the determination, on or before the fiftieth day prior to the annual election day, of an application made under section 46 or of an appeal under section 49; and
- (d) the name of each person who is eligible to be registered and whose name was omitted in error from the most recent previous electoral roll,

and shall record on the supplementary roll the deletion of the name of any person coming to his notice who has ceased to be eligible to be registered since the compilation of the most recent previous annual electoral roll.

Date for
compilation
of supple-
mentary roll
for extra-
ordinary
election.

52. The clerk shall compile a supplementary roll prior to the first day for the receipt of nominations for an extraordinary election.

Compilation
of supple-
mentary roll
for extra-
ordinary
elections.

53. The clerk shall include on the supplementary roll referred to in section 52—

- (a) the name of each person who has, during the period commencing on the ninety-second day prior to the most recent annual election day and terminating on the fiftieth day prior to the day appointed for the extraordinary election, become eligible to be registered;
- (b) the name of each person who has become eligible to be registered as the result of the determination, on or before the fiftieth day prior to the day appointed for the extraordinary election of an application made under section 46 or of an appeal under section 49;

- (c) any amendment to the particulars recorded on the electoral roll required as the result of the determination, on or before the fiftieth day prior to the day appointed for the extraordinary election, of an application made under section 46 or of an appeal under section 49; and
- (d) the name of each person who is eligible to be registered and whose name has been omitted in error from the most recent previous electoral roll,

but—

- (e) it shall not be necessary to include in any such supplementary roll any amendments already included in a previous supplementary roll compiled since the compilation of the last annual electoral roll; and
- (f) where a district is divided into wards, the clerk shall only be required to compile a supplementary roll in relation to the particular ward in which the extraordinary vacancy occurs.

54. The clerk and the mayor or president, as the case may be, shall sign and date the supplementary roll on the last page thereof.

Signing and
dating of
supple-
mentary roll.

Subdivision F.—General.

55. A person shall not amend an electoral roll except as provided in Subdivision E of this Division.

Amendment
of roll.

56. Subject to section 63, the annual electoral roll, together with the supplementary roll or rolls compiled in accordance with this Division, shall be the electoral roll of the municipality until superseded by the subsequent annual electoral roll.

Roll of the
municipality.

57. The clerk shall cause an adequate number of copies of the annual electoral roll and of the supplementary roll or rolls to be prepared and may

Provisions of
copies of roll.

at his discretion consolidate the annual electoral roll and the supplementary roll or rolls and cause an adequate number of copies of the roll so consolidated to be prepared.

Clerk to
furnish
copies of
roll.

58. (1) The clerk shall furnish copies of the annual electoral roll or of the supplementary roll or rolls or, as the case may be, of any consolidated roll, to persons requiring them, on payment of the fee determined by the council for each copy, not exceeding the maximum fee prescribed.

(2) The council may determine different fees for different rolls provided that those fees do not exceed the maximum fee prescribed under subsection (1) of this section.

(3) The clerk shall supply free of charge to—

- (a) each member of the council a copy of the current electoral roll for the district, or at the option of the member, a copy of any current electoral roll which may have been compiled for the ward that he represents;
- (b) each candidate to fill a vacancy in an office of member of the council, a copy of the current electoral roll for the district, or at the option of the candidate, a copy of any current electoral roll which may have been compiled for the ward in respect of which he is a candidate for election.

Clerk to
supply copy
of roll to
Chief Elec-
toral Officer.

59. In each year, not later than 31 May, the clerk shall deliver a copy of the annual electoral roll to the Chief Electoral Officer of the State.

Certified
copy of roll
to be evi-
dence.

60. A copy certified by the clerk to be a copy of the electoral roll is evidence that it is a copy of the original of which it is certified to be a copy.

Minister may
appoint time
for doing
anything
connected
with rolls
not done
within time
prescribed.

61. If anything required by this Act to be done in connection with the compilation of the annual electoral roll or of a supplementary roll has not been done within the time appointed or limited for that

purpose, the Minister may, by one or more public notices, direct it to be done, and may appoint the several times or intervals of time, as the case requires, at or within which anything required to be done in connection with the compilation of the annual electoral roll or supplementary roll shall or may be done, and the omission or non-compliance shall be rectified accordingly and the roll validated according to the tenor of the public notice or notices.

62. Where the Minister is satisfied that an annual electoral roll or a supplementary roll, having been compiled, has not been duly and regularly compiled in accordance with this Division, he may, by one or more public notices, direct the compilation of a fresh annual electoral roll or supplementary roll and that the annual electoral roll or supplementary roll be compiled in accordance with those directions which have effect according to their tenor, and an annual electoral roll or supplementary roll so compiled supersedes a prior annual electoral roll or supplementary roll, as the case may be.

Minister may direct compilation of fresh roll in certain cases.

63. (1) Where—

- (a) a district is divided so as to constitute 2 or more districts, or is divided into wards;
- (b) there is an adjustment of a ward or wards;
- (c) 2 or more municipalities are united; or
- (d) an annexation to a district includes part of another district,

Compilation of roll on division of municipal districts.

the clerk of the council of the municipality or the clerks of the respective councils of the municipalities created or affected, as the case may be, shall divide the electoral roll or rolls of the municipality or those municipalities into separate electoral rolls of electors of the resulting districts or wards or shall make up the rolls into new rolls of the new districts or of the adjusted ward or wards, or into an electoral roll or rolls of the district of the united municipality, as

the case requires, but shall make only such changes in the particulars set against the names of electors and only such transpositions of those names from the roll of one district or ward to that of another district or ward, as the case requires.

(2) In carrying out the duties imposed upon him or them by subsection (1) of this section, the clerk or clerks of the respective councils shall observe the provisions of section 41 in respect of the rolls resulting from the carrying out of those duties, and shall sign and date the rolls on the last page thereof.

(3) In subsections (4) and (5) of this section—

“new roll” means a roll resulting from the carrying out by the clerk or clerks of the duties imposed by subsection (1) of this section;

(4) Where a new roll is compiled for a district, or a ward of a district, the mayor or president of the municipality shall satisfy himself that the new roll is correctly compiled and if so satisfied he shall at the end of the new roll sign and date a certificate to that effect.

(5) Sections 55 to 62 inclusive shall apply *mutatis mutandis* to a new roll or the compilation of a new roll.

Governor
may validate
irregular roll.

64. (1) Where a provision of this Division has not been complied with, the Governor may, by Order, declare that an electoral roll is valid notwithstanding the non-compliance.

(2) Where an Order is made under this section in respect of an electoral roll, the Minister shall not, in respect of that roll, exercise the powers conferred upon him by section 62, and if the Minister has, before the making of the Order, already issued a direction under section 62 to which effect has not been completely given, he shall cancel the direction on the making of the Order.

Division 2.—Qualification of Mayor or President and Councillors.

65. (1) A person is eligible to be elected as a member of the council of a municipality, whether as mayor, president or councillor, if—

Qualification
of mayor or
president
and coun-
cillors.

- (a) he has attained the age of 18 years;
- (b) he is a natural-born or naturalized British subject;
- (c) he is the owner or occupier of rateable property in the district of the municipality;
- (d) he is registered as an elector on the electoral roll of the municipality; and
- (e) he is not disqualified from being elected as a member under section 66 or 67.

(2) Where a district is divided into wards, a person shall be eligible to be elected as a councillor notwithstanding that the property of which he is the owner or occupier is not within the ward for which he has nominated for election as a councillor.

(3) The Governor may, by Order, at the request of the council thereof direct that subsection (4) of this section shall apply to a district.

(4) Where, in a district in which the Governor has directed that this subsection applies,—

- (a) the owner of rateable property in that district who does not reside in the district; or
- (b) a corporation that is the owner of rateable property in that district which is a farming property or that is the holder of a pastoral lease in that district under the Land Act 1933 or under any Act repealed by that Act,

may, by notice in writing to the clerk, nominate a person who resides in the district, who has attained the age of 18 years, who is a natural-born or naturalized British subject and who is not disqualified from being elected as a member under section 66 or 67, and the person so nominated is qualified to

be elected and act as a member, notwithstanding that he does not have the qualification set out in paragraph (c) or (d) of subsection (1) of this section, for so long as the owner or corporation referred to herein is the owner of that rateable property or the holder of that lease.

(5) A nomination made under subsection (4) of this section may be withdrawn by notice in writing to the clerk but any withdrawal of the nomination shall not disqualify the person whose nomination has been withdrawn from continuing to act as a member for the balance of any term for which he has been elected prior to the withdrawal of the nomination.

Disqualifica-
tion for un-
paid rates.

66. (1) Subject to this section, a person is disqualified from being elected as mayor, president or councillor of a municipality and from acting as such if, at the date of his nomination for election to the office, or if, while holding the office, he owes to the municipality in respect of rateable property—

- (a) owned by him in his personal capacity; or
- (b) owned by him in the capacity of a trustee for any other person,

rates imposed by the municipality on the property which have been due and payable by him at the relevant time for more than 6 months.

(2) Where a person owns or occupies rateable property in his personal capacity and also owns other rateable property in the capacity of a trustee for any other person, he shall not be disqualified by reason only of the fact that he so owes in his capacity as trustee rates if no such rates are so owed for more than 6 months in respect of property owned by him in his personal capacity.

(3) A person shall not be disqualified by reason only of the fact that he owes to the municipality rates in respect of which he is entitled to a rebate or

deferment pursuant to the Pensioners (Rates Rebates and Deferments) Act 1966.

(4) Where the Governor is of the opinion that on account of economic or seasonal conditions it is desirable that the operation of subsection (1) of this section should be suspended, he may, from time to time, by Order, suspend the operation of that subsection in such districts and for such periods as are specified in the Order and may by subsequent Order revoke or vary the Order.

67. (1) A person who—

Disqualifica-
tion from
being elected
or acting.

- (a) is an undischarged bankrupt or is under any composition with his creditors by any deed of assignment or arrangement made by virtue of the Bankruptcy Act 1966, as amended, of the Parliament of the Commonwealth or any Act amending that Act or enacted in substitution for that Act;
 - (b) is a person convicted of and under sentence for a crime;
 - (c) is of unsound mind;
 - (d) is the holder of an office of profit of the municipality;
 - (e) has a direct or indirect pecuniary interest in an agreement to which the municipality is a party; or
 - (f) is not qualified to be elected as a member,
- is, except where subsection (3), (4) or (5) of this section provides otherwise, disqualified from being elected or acting as mayor, president or councillor of a municipality.

(2) A person is disqualified from acting as mayor, president or councillor of a municipality if during the term for which he is elected he is convicted of—

- (a) a misdemeanour under this Part; or

- (b) an offence under section 154C, 154D or 154E or paragraph (d), (g) or (m) of section 154G,

in relation to his election to that office.

(3) A person is not disqualified under subsection (1) of this section—

- (a) on the ground that he is the holder of an office of profit of the municipality by reason only that—

- (i) he receives a mayoral or presidential allowance or travelling allowance;
- (ii) he acts as an electoral officer, whether or not he receives remuneration for so acting;
- (iii) he receives payment under paragraph (g), (h) or (ha) of subsection (1) of section 513; or
- (iv) he is or may be entitled to any remuneration pursuant to section 38 or 40 of the Bush Fires Act 1954, but the exemption provided under this subparagraph continues so long only as the remuneration is not paid to him or, at his request or direction, to any other person;

- (b) on the ground that he has a direct or indirect pecuniary interest in an agreement to which the municipality is a party by reason only that—

- (i) he has the interest as a director, manager or secretary of or as a member of and in common with other members of an incorporated company which has at least 20 members and which is a party to the agreement;
- (ii) in the ordinary course of business and in good faith, he, or a company of which he is a director, manager, secretary or member, or a firm in

which he is a partner, sells goods to, supplies services to, or does work for, the municipality, or for any person who has entered into an agreement with the municipality;

- (iii) he is the lessee, licensee or occupier of land from the municipality;
- (iv) he lends to the municipality money lawfully borrowed by the municipality in accordance with this Act;
- (v) he purchases or hires chattels or engages servants from the municipality, where the purchases are made or the hiring or engaging is effected on the same terms and conditions as are available to other persons who are not members of the council or he agrees with the municipality for the council thereof to carry out work for him under subsection (2) of section 520;
- (vi) he transfers to the municipality land acquired by it under its powers for the compulsory acquisition of land, or claims or receives compensation from the municipality in respect of the acquisition if the amount of compensation is determined by a court pursuant to the provisions of the Public Works Act 1902, or by an agreement of which the Minister approves;
- (vii) he has the interest in a contract of insurance effected by the council under subparagraph (v) or (va) of paragraph (b) of subsection (1) of section 513 or he is insured against personal injury pursuant to section 37 of the Bush Fires Act 1954;
- (viii) he receives financial assistance from

the municipality under this or any other Act;

- (ix) he has the interest as a member of an association, which interest arises out of an agreement made or purporting to be made by or on behalf of the association with the municipality, being an interest which is held in common with all other members of the association;
- (x) he purchases land or chattels sold for or on behalf of the municipality by public auction;
- (xi) he supplies to the municipality, at a price and under conditions substantially the same as those usually paid and applied and accepted by the municipality, materials which a municipality may lawfully take under subsection (1) of section 281; or
- (xii) he accepts compensation made under section 281 at the rate or rates usually paid by the municipality.

(4) A person is not disqualified from being elected or acting as mayor, president or councillor of a municipality on the ground that he has a direct or indirect pecuniary interest in an agreement to which the municipality is a party if, prior to his nomination as a candidate for election, the Minister determines in writing that having the interest shall not so disqualify that person.

(5) A person acting as mayor, president or councillor of a municipality is not disqualified from continuing so to act on the ground that he has a direct or indirect pecuniary interest in an agreement to which the municipality is a party, if, prior to his having the interest, the Minister determines in writing that having the interest shall not so disqualify that person.

(6) For the purposes of this section "association" means a body of persons, whether incorporated or not, consisting of not less than 10 members which is not formed for the purpose of securing pecuniary profit to its members from the transactions thereof and having for its object social, sporting, religious, educational, literary, musical, scientific, agricultural, horticultural or other like activities or the welfare and recreation of its members.

68. (1) A member of a council who—

Disqualifica-
tion from
acting.

- (a) does not within 2 months after the day on which he has been declared elected as mayor, president or councillor, as the case may be, make and subscribe the oath or affirmation and declaration required by section 140; or
- (b) subject to subsection (2) of this section, is absent without leave of the council, granted by resolution thereof and recorded in the minute book, throughout 3 consecutive ordinary meetings,

is disqualified from acting as mayor, president or councillor of the municipality.

(2) The non-attendance of a member of a council at the time and place appointed for an ordinary meeting of the council does not constitute absence from an ordinary meeting of the council—

- (a) unless a meeting of the council at which a quorum is present is actually held on that day; or
- (b) if the non-attendance occurs while the member has ceased to act as a member after written notice has been served upon him by the clerk under subsection (2) of section 70 and prior to service of written notice upon him under subsection (3) of section 70 or while proceedings in connection with the qualification of the member have been commenced and are pending or while the election of the member is disputed and

proceedings relating to the disputed election have been commenced and are pending.

Extraordinary vacancies.

69. (1) Subject to subsection (2) of this section, where a member of a council—

- (a) dies;
- (b) by written notice, signed and dated by him and delivered to the clerk of the council, resigns from his office; or
- (c) is ousted from office by a Court of Disputed Returns under section 150,

his office of member becomes vacant and the vacancy is an extraordinary vacancy.

(2) A resignation from office pursuant to subsection (1) of this section shall take effect from the date of the notice unless a later date is specified therein, in which event the resignation shall take effect and the office shall become vacant on the later date therein specified.

(3) Where a councillor is elected by the electors to fill the office of mayor or president of the municipality, his office of councillor shall become vacant and the vacancy is an extraordinary vacancy which shall be deemed to have occurred on the date of his election as mayor or president.

(4) Where a person is elected by the electors to fill the office of mayor or president of a municipality and at an election held on the same day or subsequent thereto, during the term of his office, he is elected to an office of councillor of the municipality, his office of councillor shall become vacant and the vacancy is an extraordinary vacancy which shall be deemed to have occurred on the date of his election as councillor.

Procedure to determine disqualification.

70. (1) Where a member of a council considers that he is disqualified he shall forthwith give written notice to the clerk.

(2) Where the clerk has reason to believe that a member is disqualified, he shall forthwith serve written notice upon the member indicating the reasons why he believes the member to be disqualified and informing the member that, if he believes that he is not so disqualified, he may advise the clerk in writing within 28 days from the date of service of the notice or, if he accepts that he is disqualified in accordance with the terms of the notice, he shall so advise the clerk in writing.

(3) Where a member satisfies the clerk within 28 days from the date of service upon him of written notice under subsection (2) of this section that he is not so disqualified, the clerk shall notify the member in writing accordingly.

(4) Where within 28 days from the date of service upon him of a written notice under subsection (2) of this section a member does not advise the clerk in writing that he accepts that he is disqualified in accordance with the terms of the notice and fails to satisfy the clerk that he is not so disqualified, the clerk shall apply to a court of summary jurisdiction seeking a declaration as to the qualification of that member to act.

(5) Any person other than the clerk may at any time apply to a court of summary jurisdiction for a declaration as to a member's qualification to act.

(6) An application to a court of summary jurisdiction under this section shall be instituted by complaint under the Justices Act 1902 and shall be determined only by a stipendiary magistrate.

(7) Where—

- (a) a member gives written notice to the clerk under subsection (1) of this section;
- (b) a member advises the clerk in writing that he accepts that he is disqualified in accordance with the terms of a notice served upon him under subsection (2) of this section; or

- (c) a court of summary jurisdiction declares, pursuant to an application under subsection (4) or (5) of this section that a member is disqualified,

the office of the member shall become vacant and the vacancy is an extraordinary vacancy.

Validation of
proceedings
and acts.

71. (1) The proceedings of a council are, notwithstanding any defect in the election or appointment of a person acting as a member of the council or that at a material time a person elected and acting as a member of the council was or is not qualified to do so, as valid as if there were no defect in the election or appointment and the person were or is so qualified.

(2) The acts of a person acting as a member of a council are, notwithstanding any defect in his election or appointment or that at a material time the person was or is not qualified to act as a member of the council, as valid as if there were no defect in the election or appointment and he were or is so qualified.

Division 3.—Election of Council.

Subdivision A.—Times Appointed for Election.

First elec-
tions in
newly con-
stituted
municipali-
ties.

72. Where a municipality is newly constituted the Governor may, by Order, appoint for the holding of an election to elect the members of the first council such day after the constitution of the municipality as allows sufficient time for compliance with the provisions of this Act relating to the nomination of candidates and to the other prerequisites for the holding of the election.

Annual
elections.

73. (1) Vacancies in offices of member of the council of each municipality which occur through effluxion of time shall be filled by the election by the electors of the municipality of persons to the

vacancies on the first Saturday in May of each year, which day is, unless some other day is appointed in pursuance of subsection (2) of this section, appointed for the holding of the annual elections.

(2) Where the first Saturday in May of a year is—

- (a) a day appointed as polling day for an election of either House of the Parliament of the State or for a referendum conducted by the State;
- (b) a day appointed as polling day for an election of the Senate or a general election of the House of Representatives of the Parliament of the Commonwealth;
- (c) a day fixed for the taking of the votes of electors upon a proposed law for the alteration of the Commonwealth of Australia Constitution Act; or

(d) a public holiday,

the Governor may, by Order, appoint another Saturday in May of that year to be the day for the holding of the annual elections in that year.

(3) Where another day is appointed for the holding of the annual elections under this section, the Governor may, by the same or another Order give such directions for extending, shortening or otherwise altering or adjusting any time or period fixed by the Act for the implementation of any procedure in connection with the holding of the elections and that Order shall have effect according to its tenor.

74. (1) The day for the holding of an election by the electors to fill an extraordinary vacancy in an office of member of the council of a municipality is the day appointed for the purpose—

Election by electors to fill extraordinary vacancy.

- (a) by the mayor or president in writing prior to the first meeting of the council after the vacancy occurs;

- (b) by the council by resolution at its first meeting after the vacancy occurs, if a day has not previously been appointed under paragraph (a) of this subsection; or
- (c) by the Minister in writing, if a day has not previously been appointed under either paragraph (a) or paragraph (b) of this subsection,

being such day as soon after the vacancy occurs as is reasonably practicable and which allows sufficient time for compliance with the provisions of this Act relating to the nomination of candidates and to the other prerequisites for the holding of the election and not being a day referred to in subsection (2) of section 73.

(2) If the council fails to appoint a day for the holding of an election under paragraph (b) of subsection (1) of this section the clerk shall forthwith advise the Minister accordingly.

(3) If the day appointed for the holding of an election under subsection (1) of this section is a day referred to in subsection (2) of section 73, the Governor may, by Order, appoint another day for the holding of the election and subsection (3) of section 73 shall apply *mutatis mutandis*.

(4) Notwithstanding subsection (1) of this section, a day may be appointed for the holding of an election to fill an extraordinary vacancy resulting from the resignation of a member of the council not earlier than one month prior to the date on which the resignation of the member takes effect and for the purposes of that subsection the vacancy shall be deemed to have occurred on the receipt by the clerk of the notice of resignation.

Vacancy to remain unfilled in certain circumstances.

75. (1) Notwithstanding section 74, where there is an extraordinary vacancy in an office of member of a council and—

- (a) that vacancy occurs during the period of 105 days next preceding the first Saturday

in May in a year and at a time which allows compliance with the provisions of this Act relating to the nomination of candidates and to the other prerequisites for the holding of an election; or

- (b) the Minister, at the request of the council, so directs, notwithstanding that the vacancy occurs more than 105 days prior to the first Saturday in May in a year,

the day for the holding of the election to fill the vacancy shall be the annual election day next following the occurrence of the vacancy and in the meantime the vacancy shall remain unfilled.

(2) Notwithstanding section 74 or subsection (1) of this section where there is an extraordinary vacancy in an office of member of a council and—

- (a) that vacancy occurs during the period of 105 days next preceeding the first Saturday in May in the year in which the term of the person who held the office would have expired;
- (b) the Minister at the request of the council so directs, notwithstanding that the vacancy occurs more than 105 days prior to the first Saturday in May in the year in which the term of the person who held the office would have expired,

the vacancy shall remain unfilled and a vacancy in the office shall be deemed to occur by effluxion of time on the day on which the term of the person who held the office would have expired.

Subdivision B.—Preliminaries to an Election.

76. The chief electoral office of a municipality is that of returning officer.

Office of
returning
officer.

77. (1) Subject to this section, the clerk of the council is the returning officer of a municipality.

Occupant of
the office of
returning
officer.

- (2) The Minister may, whether or not the clerk

has acted in the office, appoint some other person to be the returning officer of a municipality where he is of the opinion that it is necessary or desirable to ensure the proper conduct of an election.

(3) A council may, with the approval of the Minister, appoint as returning officer an officer of the municipality other than the clerk for a poll or referendum of electors or ratepayers, other than an election, under this Act.

Duties of the
office of re-
turning
officer.

78. The returning officer shall—

- (a) ensure that the necessary preparations are made for the holding of elections, polls and referenda as and when required by this Act;
- (b) appoint a deputy returning officer, presiding officers and poll clerks;
- (c) appoint officers to issue early, absent and postal voting papers;
- (d) ensure that the elections, polls and referenda are held and conducted in accordance with the provisions of this Act;
- (e) ascertain the result of the elections, polls and referenda; and
- (f) discharge the obligations imposed upon the occupant of the office by this Act.

Duties of the
office of
deputy re-
turning
officer.

79. The deputy returning officer shall—

- (a) discharge such particular duties as may be delegated to his office by the returning officer; and
- (b) if the returning officer is for any reason unable to act, discharge such of the duties of the office of returning officer as the circumstances require.

Elections in
districts and
in wards.

80. The provisions of this Act relating to preparing for, conducting and ascertaining the

results of elections to fill vacancies in the offices of members of a council of—

- (a) a municipality whose district is not divided into wards, apply to the whole of the district;
- (b) a municipality whose district is divided into wards—
 - (i) apply where the vacancy is in the office of mayor or president and the mode of election to that office is by the electors, to the whole of the district; and
 - (ii) apply where the vacancy is in the office of councillor representing a ward, to that ward.

Subdivision C.—Nomination of Candidates.

81. In this Subdivision—

Interpretation.

“nomination day” means the last day upon which the nomination of a person as a candidate at an election to fill the office of member of the council of a municipality may be delivered by, or on behalf of, the person to the returning officer of the municipality.

82. The nomination day for an election is the thirtieth day last preceding the day appointed for the holding of the election.

Nomination day.

83. Where a date has been appointed for an election to fill a vacancy in an office of member of a council of a municipality, which vacancy may be filled by the election of a candidate by the electors, the returning officer shall appoint a nomination place and shall cause notice of the vacancy and of the nomination day and nomination place for the election to be published at least once in a newspaper circulating in the district not more than 42 days and not less than 28 days before the nomination day.

Returning officer to give notice of vacancy.

Candidates
for election.

84. A person may be a candidate for election to fill an office of member only—

- (a) if at the time of his nomination as a candidate he is qualified to hold the office if elected to it;
- (b) if at the time of his nomination as a candidate he is not a candidate at the same election or at any other election to fill another office of member of the council other than the office of mayor or president;
- (c) if he will not hold another office of member of that council after the election unless he is a candidate for the office of mayor or president; and
- (d) if, not earlier than 14 days before the nomination day and not later than 4 o'clock in the afternoon of the nomination day, he delivers or causes to be delivered to the returning officer at the nomination place a completed nomination paper accompanied by the deposit and accompanied, where the nomination paper is signed by his agent, by written authorization for the agent to sign the nomination paper on his behalf.

Form of
nomination
papers.

85. (1) The nomination paper shall incorporate a declaration as to the eligibility of the candidate for election and be in the form prescribed.

(2) A nomination paper may be signed by the candidate or by his agent authorized in writing to sign on his behalf.

(3) The amount of the deposit is the sum of \$40 and may be paid in legal tender, or by cheque, bank draft or postal money order.

(4) Where—

- (a) a nomination paper is not properly completed, is not accompanied by the deposit, is not, where the nomination paper is

signed by an agent, accompanied by written authorization for the agent to sign the nomination paper on behalf of the candidate, or is not received by the returning officer within the time limited in paragraph (d) of section 84; or

- (b) the person nominated as a candidate is not eligible to be a candidate by reason of paragraph (b) or (c) of section 84; or
- (c) the person nominated as a candidate is not registered as an elector on the electoral roll of the municipality,

the returning officer shall reject the nomination as invalid.

(5) Subject to subsection (4) of this section, the returning officer shall not reject a person's nomination on the ground that he has not the necessary qualification to hold the office of member of the council.

(6) If the returning officer rejects a nomination pursuant to subsection (4) of this section, he shall forthwith give notice in writing to that effect to the person nominating setting out his reason for rejecting the nomination.

(7) The deposit shall be paid into the trust fund of the municipality.

86. The returning officer shall exhibit or cause to be exhibited on the official notice board of the council on the day on which he accepts a nomination, a notice setting out the name of the candidate and the office to which he is a candidate, and shall cause it to continue to be so exhibited until 4 o'clock in the afternoon of the nomination day.

Nominations
to be
exhibited.

87. (1) The nomination of a candidate is cancelled by his death or by the withdrawal of his nomination in accordance with this section.

Cancellation
of nomina-
tion.

(2) A candidate may withdraw his nomination, if he has not previously been declared elected, not later than 4 o'clock in the afternoon of the fourth day after the nomination day by signing and delivering or causing to be delivered to the returning officer a written notice of withdrawal.

(3) Where a candidate withdraws his nomination not later than 4 o'clock in the afternoon of the day preceding the nomination day, he is entitled to a refund of his deposit and the council shall refund the deposit as soon as practicable, but if a candidate withdraws his nomination after that time the deposit is forfeited to the municipality and shall be paid into the municipal fund.

Cancellations
to be
exhibited.

88. The returning officer shall exhibit or cause to be exhibited on the official notice board of the council—

- (a) notice of the withdrawal of a candidate, on the day on which he receives the notice;
- (b) if the death of a candidate occurs, notice of the death, on the day on which he becomes aware that the death has occurred; and
- (c) if he rejects a nomination, notice of the reasons for the rejection on the day on which he rejects the nomination,

and shall cause the notice to continue to be so exhibited until 4 o'clock in the afternoon of the nomination day.

Proceedings
on and
subsequent
to
nomination
day.

89. (1) Forthwith after 4 o'clock in the afternoon of the nomination day, at the nomination place, the returning officer shall read aloud, in the presence of the persons then in attendance, the names of the candidates, the office to which each is a candidate, and, where a candidate is nominated by his agent, the name of the agent and the written authorization of the candidate for the agent to act on his behalf.

(2) If the number of candidates for election to the respective vacancies in the offices of member of the

council is equal to or less than the number of vacancies, the returning officer shall declare the respective candidates elected to the respective offices.

(3) Where, at the time of the reading of the candidates' names on nomination day, there are more candidates for election to the respective vacancies in the offices of member of the council than there are vacancies but, by reason of the subsequent withdrawal of a nomination or nominations, the number of candidates remaining for election to the respective vacancies becomes equal to or less than the number of vacancies, the returning officer shall, on the expiration of the period during which nominations may be withdrawn under section 87, declare the respective candidates elected to the respective offices.

(4) If after the expiration of the period during which nominations may be withdrawn under section 87 there remain more candidates for election to the respective vacancies in the offices of member of the council than there are vacancies, the returning officer shall cause to be published in a newspaper circulating in the district a notice showing—

- (a) the names of the candidates and the respective offices to which each is a candidate for election;
- (b) the day appointed for holding the election; and
- (c) the polling place or places appointed for the election including the place or places appointed for the casting of early votes,

and may cause such other notice to be given as he thinks fit, and shall, in accordance with this Act, prepare for, conduct and ascertain the result of the election.

90. (1) Where a candidate for election to fill a vacancy in the office of member of a council dies after 4 o'clock in the afternoon of the nomination day and before a declaration has been made under section 89 or the close of the poll, as the case may be, the election is void and the vacancy in the office of

Death of
candidate.

member shall, for the purposes of section 74, be deemed to be an extraordinary vacancy in that office occurring on the date of the death of the candidate.

(2) Where a successful candidate for election to fill a vacancy in the office of member of a council dies before the commencement of his term of office, there shall, for the purposes of section 74, be deemed to be an extraordinary vacancy in that office occurring on the date of the death of the successful candidate.

Subdivision D.—Vacancies Remaining After Nomination
Procedures Completed.

Insufficient
nominations.

91. If, by the close of nominations, no nomination has been received or there are insufficient nominations to fill the vacancies or if at the expiration of the period during which nominations may be withdrawn nominations have been withdrawn, thereby reducing the number of candidates to less than the number of vacancies, the returning officer shall recommence the procedures for the filling of the remaining vacancy or vacancies which shall, for the purposes of section 74, be deemed to be an extraordinary vacancy or vacancies occurring on the fifth day following nomination day.

Appoint-
ments to
vacant
offices.

92. (1) If, at the expiration of the period during which nominations may be withdrawn following the recommencement of the procedures for the filling of the remaining vacancy or vacancies pursuant to section 91, there is no candidate or there are insufficient candidates to fill the vacancy or vacancies, the Minister may, on the recommendation of the council, appoint to the vacant office or offices a person who is, or persons who are, qualified and willing to act as a member or members.

(2) If the council fails for any reason to make a recommendation or sufficient recommendations to fill the vacancy or vacancies under subsection (1) of this section within the period of 2 months after becoming entitled to do so, the Minister may appoint to the vacant office or offices a person who is, or persons who are, qualified and willing to act as a member or members.

(3) Subject to subsection (9) of section 139, a person appointed under this section shall be deemed to have been elected at the election for which there were no or insufficient nominations.

Subdivision E.—Ballot Papers.

93. (1) The returning officer shall cause to be provided ballot papers in the prescribed form and of a number sufficient for the purposes of the election.

Ballot
papers.

(2) Where at the time of the reading out of the candidates' names on nomination day there are more candidates for election to the respective vacancies in the offices of member of the council than there are vacancies, the returning officer shall draw lots to determine the order of appearance of the candidates' names on the ballot paper.

(3) The candidates and other persons who desire to do so may attend at the drawing of lots under subsection (2) of this section.

(4) At the drawing of lots under subsection (2) of this section and in the presence of the persons then in attendance the returning officer shall—

- (a) exhibit a list of the names of the candidates;
- (b) exhibit as many papers as there are candidates, each paper being of the same size, shape and colour and having the name of a different candidate written upon it;
- (c) exhibit an empty receptacle;
- (d) place the papers in the receptacle and agitate them; and
- (e) in such manner that he is unable to see into it, draw the papers one at a time from the receptacle and record in a list the names appearing on the papers in the order in which they are drawn and sign and date the list, exhibit it to persons in attendance and retain it until the election can no longer be questioned.

(5) In the event of the withdrawal of a candidate or candidates under section 87 following the close of nominations, the name of that candidate or the names of those candidates shall be deleted from the list referred to in paragraph (e) of subsection (4) of this section and the order of the names of the remaining candidates shall be retained without redrawing lots.

(6) The returning officer shall cause the ballot papers to be printed so that the names of the candidates appear thereon in the same order as that in which they appear in the list referred to in paragraph (e) of subsection (4) of this section.

Subdivision F.—Number of Votes an Elector May Cast.

Limitation
on number of
votes.

94. Nothing in this Act shall be construed so as to confer on an elector the right to cast when voting at an election—

- (a) solely in a personal capacity, more than one vote;
- (b) solely as a person registered on behalf of a body corporate under subsection (9) of section 35, more than one vote;
- (c) in both a personal capacity and as a person registered on behalf of one or more bodies corporate, or as a person so registered on behalf of 2 or more bodies corporate, more than 2 votes.

Subdivision G.—System of Voting.

System of
voting.

95. (1) The system of voting at elections held under this Act, is that prescribed in this Division as the preferential system.

(2) Without affecting the generality of subsection (1) of this section, that subsection is expressly declared to apply to elections conducted pursuant to sections 141 and 143 and subsection (3) of section 182, provided however that subsection (6) of section 136 shall not apply to any such election.

96. Under the preferential system of voting at an election held to fill a vacancy in the office of member of a council, an elector votes effectively if he indicates in accordance with section 97 the order of preference in which he desires candidates whose names appear on the ballot paper to be elected.

Preferential
system.

97. (1) The elector shall indicate the order of preference in which he desires the candidates whose names appear on the ballot paper to be elected, by marking against each name a numeral commencing with the numeral, "1" to indicate his first preference, and continuing in numerical sequence by marking the numeral, "2" against the name of the candidate whom he desires elected if his first preference is not elected, and the numeral, "3" against the name of the candidate whom he desires elected if his first and second preferences are not elected, and so on until he has marked a numeral of the sequence against each of the names.

Numerical
recording of
vote.

(2) An elector shall be deemed to comply with subsection (1) of this section if he marks the numeral, "1" against the name of one candidate and omits to mark the numeral, "2" against the name of the other candidate where the names of only two candidates appear on the ballot paper, or if he marks the numerals in sequence in order of preference commencing with the numeral, "1" as required by that subsection against the names of all candidates whose names so appear except the final numeral where the names of more than two candidates appear on the ballot paper, in either of which events the candidate against whose name a numeral is not marked shall be deemed to rank last in the elector's order of preference.

Subdivision H.—The Polling Procedures.

98. (1) The council may appoint polling places and additional places for the casting of early votes, or may direct the returning officer, who shall give

Polling
places.

effect to the direction, to appoint those places or may appoint some places and direct the returning officer, who shall give effect to the direction, to appoint such other places as he considers necessary and those places so appointed are the polling places and additional places for the casting of early votes for the election but this subsection does not preclude the returning officer from appointing such places as he thinks are necessary.

(2) Where the council or the returning officer considers it desirable, polling places for the election may be appointed at places outside the district of the municipality.

(3) Where the district of the municipality is divided into wards, polling places may be appointed for one or more of the wards.

(4) At a polling place appointed for one or more wards, an elector qualified to do so, may vote only in respect of an election for a ward for which the polling place is appointed.

(5) The returning officer may appoint additional polling places under subsection (1) of this section subsequent to the publication of the notice under subsection (4) of section 89 but if he does so appoint additional polling places he shall cause to be published a further notice in a newspaper circulating in the district showing those additional polling places as having been appointed for the election.

Polling
places and
presiding
officers.

99. (1) Where only one polling place is appointed it is the chief polling place and the returning officer or another electoral officer appointed by the returning officer for the purpose shall preside there as the presiding officer.

(2) Where more polling places than one are appointed—

(a) one of them, nominated as such by the returning officer, is the chief polling place;

- (b) the returning officer or a presiding officer appointed by the returning officer for the purpose shall preside at the chief polling place; and
- (c) a presiding officer appointed by the returning officer for the purpose shall preside at each of the other polling places.

(3) The presiding officer at any polling place may appoint another electoral officer to act as his substitute during his temporary absence from the polling place.

100. At an election held to fill a vacancy in an office of member of a council, an elector may—

Voting in person or in absence.

- (a) vote in person by attending at the appropriate polling place between 8 o'clock in the forenoon and 8 o'clock in the afternoon of the polling day, recording his vote on the ballot paper supplied to him, and placing it in the appropriate ballot box provided at the polling place;
- (b) cast an early or postal vote in accordance with the provisions of Subdivision J of this Division; or
- (c) cast an absent vote in accordance with the provisions of Subdivision J of this Division if the election is an annual election.

101. The returning officer, either by causing separate voting compartments to be provided, or in such other manner as he thinks fit, shall ensure that at each polling place, the council office and any additional place appointed for the casting of early votes, an elector may mark his ballot paper so that the marking cannot be seen by a person other than the elector, subject however to paragraph (b) of subsection (1) of section 108.

Secrecy in voting.

Scrutineers.

102. (1) A candidate may, by notice in writing signed by him and served upon the returning officer, appoint as his scrutineers, such number of persons as he thinks fit and nominates, to attend during an election at the polling place specified in the notice.

(2) A person who is so appointed and who makes and subscribes the declaration mentioned in section 103, may attend the polling place so specified during the election and act as scrutineer for the candidate by whom he is appointed, but shall not remain in the polling place while another person so appointed by the candidate as his scrutineer is in the polling place.

(3) A candidate shall not act as a scrutineer at a polling place during the hours of polling and during those hours he may only enter or remain in a polling place for the purpose of casting his own vote.

(4) A scrutineer may observe the conduct of the election to ascertain that this Act is being complied with but subject to this Act he shall take no other part in the conduct of the poll and whilst in a polling place he shall have no communication with any elector attending to vote and he shall not engage in any form of canvassing but shall at all times observe the reasonable requests of any electoral officer.

**Declaration
by returning
officer and
other elec-
toral officers.**

103. (1) A person appointed to carry out the duties of an office of electoral officer or of scrutineer for an election, shall not commence to carry out the duties of the office until he has made and signed a declaration in the prescribed form, provided that a clerk shall only be required to make and subscribe a declaration once after he has taken up the appointment of clerk of the council of the municipality in which the election is to be held.

(2) The returning officer shall make and subscribe the declaration before a justice.

(3) The deputy returning officer shall make and subscribe the declaration before either a justice or the returning officer.

(4) A presiding officer or an officer appointed to issue early, absent or postal voting papers shall make and subscribe the declaration before a justice, the returning officer or the deputy returning officer.

(5) A poll clerk or scrutineer shall make and subscribe the declaration before a justice, the returning officer, the deputy returning officer or a presiding officer.

104. (1) A person occupying the office of returning officer, deputy returning officer, presiding officer or the substitute for a presiding officer, has power and authority—

Powers of returning officer, deputy returning officer and presiding officers.

- (a) to maintain and enforce order and keep the peace in or about a polling place;
- (b) without other warrant than this Act, to arrest or cause to be arrested and take or cause to be taken before a justice, and charged with having done any of the following acts, a person reasonably suspected by him of—
 - (i) knowingly and wilfully making a false answer to a question put to him under subsection (2) of section 107;
 - (ii) knowingly and wilfully casting or attempting to cast at an election a number of votes greater than the number which he is entitled to cast at the election; or
 - (iii) personating or attempting to personate an elector; and
- (c) without other warrant than this Act, to cause to be removed a person who obstructs the approaches to a polling place or who at a polling place conducts himself in a disorderly manner or misconducts himself

or does not obey the reasonable requests of the returning officer, deputy returning officer, presiding officer or the substitute for the presiding officer.

(2) A person so removed shall not again enter the polling place during the time the election is being held without the permission of the returning officer, deputy returning officer, presiding officer or the substitute for the presiding officer.

(3) Members of the Police Force of the State shall aid and assist the returning officer, deputy returning officer, presiding officer and the substitute for the presiding officer in exercising the powers and authorities conferred upon them by this section.

Ballot boxes.

105. (1) The returning officer shall cause to be provided at each polling place a sufficient number of ballot boxes for the receipt of ballot papers at the polling place in the course of the election or elections for which the polling place is appointed and shall also cause to be provided a sufficient number of ballot boxes for the receipt of early, absent and postal voting papers.

(2) A ballot box shall have 2 locks, being respectively an inner lock which shall secure the lid of the box and an outer lock which shall secure a cover over the opening provided for the insertion of ballot papers.

(3) A ballot box shall have a narrow opening sufficient to allow the insertion of a ballot paper into the box and shall effectively contain and conceal its contents.

(4) As soon as is reasonably practicable before a ballot box is used for receiving early, absent or postal voting papers, the returning officer shall satisfy himself that it is empty, and shall then secure the inner lock, retain the key to that lock and so seal the box that on its being opened the seal will break.

(5) As soon as is reasonably practicable before a ballot box is used for receiving ballot papers at a polling place, the presiding officer shall open the ballot box, satisfy himself that it is empty and exhibit it to the poll clerks and scrutineers, if any, then present, and shall then secure the inner lock and so seal the box that on its being opened the seal will break, and either deliver the key to the returning officer, or, at the returning officer's discretion, retain the key in accordance with the directions of the returning officer.

(6) The presiding officer shall place the ballot box at the polling place where it will, while the poll is being conducted, be constantly in his view or in the view of another electoral officer.

106. Subject to the provisions of section 110, the presiding officer appointed for a polling place shall ensure that it is open for receiving votes between 8 o'clock in the forenoon and 8 o'clock in the afternoon, when the poll closes, on the polling day, but may in case of riot or violence or other sufficient cause, close the polling place for such period as he shall consider necessary.

Time during
which polling
places open.

107. (1) A person who attends a polling place to vote in person shall present himself to an electoral officer.

Issue of
ballot papers
for voting in
person.

(2) The electoral officer may, but if requested to do so by a scrutineer shall, ask the person all or any of the following questions:—

- (a) What is your name and address?
- (b) Are you the person whose name appears as (here state the name) on the electoral roll of the (here state the name of the district or ward as the case requires)?
- (c) Have you attained the age of 18 years?
- (d) Have you already voted at this election?

(3) If the person—

- (a) does not answer such of the questions mentioned in subsection (2) of this section as are put to him; or
- (b) answers the questions but his answers do not, in the opinion of the electoral officer, establish his right to vote,

the electoral officer shall not give a ballot paper to the person.

(4) If the person satisfies the electoral officer that he is entitled to vote at the election, the electoral officer shall—

- (a) indicate by a mark against the name of the person on the electoral roll being used by him for the purpose of the election, that he is giving to that person a ballot paper; and
- (b) take a ballot paper, mark his initials on the back of the ballot paper and give the ballot paper to that person.

Where to
mark votes
on ballot
paper when
voting in
person.

108. (1) Where under section 107 a ballot paper has been given to a person, without leaving the polling place,

- (a) he shall, subject to paragraph (b) of this subsection, take the ballot paper and retire alone to a compartment or other place provided in the polling place where he may mark his vote upon the ballot paper without the manner in which he does so being seen by any other person, and there mark his vote;
- (b) he shall, if his sight is so impaired, or through other cause his ability to read or to write is such that he cannot vote without assistance, inform the presiding officer of his disability and either—
 - (i) request the presiding officer to mark upon the ballot paper the vote which he desires to cast, in which case the

presiding officer shall, in the presence of any scrutineer or scrutineers whom the person requests to be present, give effect to the request and exhibit the ballot paper marked with the vote to that scrutineer or those scrutineers; or

(ii) request that, instead of retiring alone, he be permitted to retire with a person, other than a candidate or a scrutineer, then in attendance upon him, and that that person be permitted to mark the ballot paper for him, in which case the presiding officer shall give the permission requested;

(c) his vote having been so marked on a ballot paper, he, or if he receives the assistance referred to in paragraph (b) of this subsection, the person who marked his vote, shall forthwith deposit the ballot paper in the appropriate ballot box, unless the ballot paper is spoilt by mistake or mishap.

(2) If and as often as the presiding officer is satisfied that a ballot paper is spoilt by mistake or mishap, he may, on recording the facts, cancel and destroy the spoilt ballot paper and give to the voter a replacement ballot paper marked as required by paragraph (b) of subsection (4) of section 107.

(3) The provisions of this section relating to marking votes on ballot papers and the deposit of ballot papers in ballot boxes apply in respect of a replacement ballot paper issued under subsection (2) of this section.

109. The presiding officer at each polling place shall, immediately on the close of the poll, secure the outer lock of each ballot box containing ballot papers received at the polling place, so seal the cover over the opening that on its being opened the seal

Presiding
officers to
transmit
ballot papers
to returning
officers.

will break and shall then, with the least possible delay, deliver each ballot box or cause each ballot box to be delivered to the returning officer at the chief polling place together with the key to each outer lock.

Adjournment
of polling in
case of riot
or other
cause.

110. (1) Where proceedings at an election are substantially interrupted or obstructed by a riot or violence or other cause, the returning officer shall not finally close the poll but shall adjourn the poll until the day following, and, if necessary, shall further adjourn the poll from day to day until the interruption or obstruction ceases, when the returning officer shall again proceed with the taking of the poll.

(2) On an adjournment of a poll under this section, the returning officer or the presiding officer shall, in the presence of the scrutineers and other electoral officers then present—

- (a) secure the outer lock of each ballot box and so seal the cover over the opening that on its being opened the seal will break;
- (b) cause the unused ballot papers and the electoral rolls in use at the poll to be placed in parcels and cause each parcel to be sealed; and
- (c) retain for safe keeping those ballot boxes, ballot papers and rolls and keep them safely sealed and unopened until, in the presence of the scrutineers, if any, and any other electoral officers present, the seals are broken and the ballot boxes are opened at the resumption of the adjourned poll.

(3) If for any sufficient cause the returning officer determines that polling shall not commence on the day appointed for taking the poll—

- (a) the returning officer shall adjourn the poll until the corresponding day of the following week or, at his discretion, until the

corresponding day in 2 weeks time provided that the day to which the poll is adjourned is not a day referred to in subsection (2) of section 73; and

- (b) the returning officer shall give not less than 3 days notice, by advertisement or by affixing placards in public places within the district or by such other means as he thinks fit, of the day to which the taking of the poll is adjourned.

Subdivision I.—Entitlement to Vote of Person Whose Name Does Not Appear on Electoral Roll.

111. (1) A person who applies for an early vote or who applies to vote on polling day but whose name does not appear on the electoral roll shall be permitted to vote if he is otherwise qualified to vote and if—

Vote of
person not
on roll.

- (a) his name was recorded on the annual electoral roll last preceding the current annual electoral roll or on any roll compiled as a supplementary roll to that last preceding annual electoral roll; or
- (b) he has applied for registration as an elector and he produces an acknowledgement card referred to in subsection (1) of section 37 which is dated not less than 50 days prior to the election day.

(2) The person shall make a declaration before an electoral officer in the prescribed form printed on an envelope.

(3) If the person satisfies the electoral officer that he is entitled to vote at the election, the electoral officer shall take a ballot paper, mark his initials on the back of the ballot paper and give the ballot paper and a ballot paper envelope to the person.

(4) The person shall record his vote on the ballot paper and, if he requires assistance to vote, section 108 shall apply *mutatis mutandis*.

Dealing with
ballot
papers.

112. Subject to subsection (2) of section 116, after recording his vote, a person exercising a vote under this Subdivision shall insert the ballot paper in the ballot paper envelope, seal the envelope and hand it to the electoral officer, who shall insert that envelope in the envelope upon which the declaration has been made and seal that envelope, which shall then be placed in the ballot box.

Refusal
of claim.

113. Where the application of any person to vote under this Subdivision is rejected, the electoral officer by whom the application is rejected shall endorse on the declaration or on a paper attached to the declaration his reason for rejecting the application and he shall thereupon sign the endorsement.

Subdivision J.—Voting Other Than on Election Day.

Early voting.

114. An elector may cast an early vote prior to the day of the election at the office of the council or other appointed place in the district in which an election is to be held if—

- (a) he has reason to believe that he will be unable to attend any polling place on the polling day because throughout the hours of polling on that day he will be more than 20 kilometres from any polling place appointed for the election;
- (b) he has reason to believe that on the polling day he will be prevented by illness or infirmity from attending any polling place appointed for the election;

- (c) she has reason to believe that on the polling day she will be prevented by her approaching maternity from attending any polling place appointed for the election; or
- (d) he is a person whose religious beliefs prevent him from casting a vote on the polling day.

Casting an
early vote.

115. (1) An elector wishing to cast an early vote shall present himself to the officer appointed to issue early voting papers at the office of the council or other appointed place in the district in which the election is to be held during the normal office hours of the council within the period commencing on the eleventh day following nomination day and terminating at 4 o'clock in the afternoon of the day prior to the polling day.

(2) The elector shall make a declaration before the electoral officer in the prescribed form printed on an envelope.

(3) If the elector satisfies the electoral officer that he is entitled to vote at the election, the electoral officer shall—

- (a) indicate by a mark against the name of the elector on the electoral roll being used by him for the purpose of the election that he is giving to that elector a ballot paper; and
- (b) take a ballot paper, mark his initials on the back of the ballot paper and give the ballot paper and a ballot paper envelope to the elector.

(4) The elector shall record his vote on the ballot paper and, if he requires assistance to vote, section 108 shall apply *mutatis mutandis*.

Dealing with
early vote.

116. (1) Subject to subsection (2) of this section, after recording an early vote, the elector shall insert the ballot paper in the ballot paper envelope, seal the envelope and hand it to the electoral officer, who shall insert that envelope in the envelope upon which the declaration has been made and seal that envelope, which shall then be placed in the ballot box provided for the purpose.

(2) If a person is permitted to record an early vote pursuant to Subdivision I of this Division, the ballot paper envelope shall be inserted in the envelope upon which the declaration pursuant to subsection (2) of section 111 has been made before being inserted in the envelope upon which the declaration pursuant to subsection (2) of section 115 has been made.

(3) The returning officer shall ensure that the ballot box in which early votes have been placed is supervised or otherwise secure at all times.

Absent voting
at an
annual
election.

117. An elector may cast an absent vote at an annual election at the office of a council of a municipality other than that in which he is registered as an elector if he has reason to believe that he will be unable to attend at the office of the council or other appointed place in the district in which he is registered as an elector in order to cast an early vote prior to the annual election and if—

- (a) he has reason to believe that he will be unable to attend any polling place on the polling day because throughout the hours of polling on that day he will be more than 20 kilometres from any polling place appointed for the election;
- (b) he has reason to believe that on the polling day he will be prevented by illness or infirmity from attending any polling place appointed for the election;

- (c) she has reason to believe that on the polling day she will be prevented by her approaching maternity from attending any polling place appointed for the election; or
- (d) he is a person whose religious beliefs prevent him from casting a vote on the polling day.

118. (1) An elector wishing to cast an absent vote shall present himself to an electoral officer at the office of the council at which he wishes to vote during the normal office hours of the council within the period commencing on the eleventh day following nomination day and terminating at 4 o'clock in the afternoon of the third day prior to the polling day.

Casting an
absent vote.

(2) The elector shall make a declaration before the electoral officer in the prescribed form printed on an envelope.

(3) If the elector satisfies the electoral officer that he is entitled to vote at the election, the electoral officer shall take a ballot paper, mark his initials on the back of the ballot paper and give the ballot paper and a ballot paper envelope to the elector.

(4) An elector casting an absent vote shall make his own inquiries as to the names of the candidates and the other relevant details of the election and he shall write on the ballot paper the names of the candidates and, he shall record his vote on the ballot paper and if he requires assistance to vote, section 108 shall apply *mutatis mutandis*.

119. (1) After recording an absent vote, the elector shall insert the ballot paper in the ballot paper envelope, seal the envelope and hand it to the electoral officer, who shall insert that envelope in the envelope upon which the declaration has been made, seal that envelope and forthwith post or cause the envelope to be delivered by an officer of

Dealing with
absent votes.

the council at the office of which the elector has cast an absent vote to the returning officer of the municipality in respect of which the election is being held.

(2) Absent voting papers shall be accepted by the returning officer if received by him at any time up until 8 o'clock in the afternoon of the polling day.

(3) On acceptance of an absent vote, the returning officer shall indicate by a mark against the name of the elector on the electoral roll being used by him for the purpose of the election that an absent vote of that elector has been accepted and place the declaration envelope in the ballot box provided for that purpose.

(4) If the name of the person who has cast an absent vote is not registered on the electoral roll the returning officer shall mark the declaration envelope as having been rejected and place it in the ballot box.

(5) The returning officer shall ensure that the ballot box in which absent votes have been placed is supervised or otherwise secure at all times.

Admission of
absent vote
to count.

120. An absent vote cast under this Subdivision shall not be rejected by reason only of the names of the candidates not being listed in correct order on the ballot paper or of any mistake in the spelling of the names of the candidates if the intention of the elector is clear.

Postal vote.

121. An elector may cast a postal vote if he has reason to believe that he will be unable to cast an early vote or, in relation to an annual election, an absent vote, and if—

- (a) he has reason to believe that he will be unable to attend any polling place on the polling day because throughout the hours

of polling on that day he will be more than 20 kilometres from any polling place appointed for the election;

- (b) he has reason to believe that on the polling day he will be prevented by illness or infirmity from attending any polling place appointed for the election;
- (c) she has reason to believe that on the polling day she will be prevented by her approaching maternity from attending any polling place appointed for the election; or
- (d) he is a person whose religious beliefs prevent him from casting a vote on the polling day.

122. (1) An elector wishing to cast a postal vote shall forward to the returning officer an application in the prescribed form. Casting a postal vote.

(2) The signature of the elector on the application shall be witnessed by an authorized witness who shall, in the place provided for the signature of the witness, sign his name and write legibly his name and address and the date below his signature.

(3) An application for a postal vote may be made to the returning officer at any time after the day being 35 days prior to the polling day and shall be accepted if received by the returning officer by 4 o'clock in the afternoon of the fourth day prior to the polling day.

(4) On receipt of an application for a postal vote, the returning officer or other officer appointed to issue postal voting papers shall satisfy himself that the application has been properly completed, that the person claiming a postal vote is registered as an elector on the electoral roll and that, so far as he can reasonably ascertain, an early or absent vote has not already been cast by or a postal vote has not already been issued to that person and when so satisfied the electoral officer shall complete a postal vote certificate in the prescribed form printed on an

envelope, take a ballot paper, mark his initials on the back of the ballot paper and post to the elector at the address shown on his application the ballot paper, a ballot paper envelope and the postal vote certificate envelope.

(5) At the time of issuing a postal ballot paper, the electoral officer shall indicate by a mark against the name of the elector on the electoral roll being used by him for the purpose of the election that a postal vote has been issued to that elector and he shall also make an appropriate notation to that effect on the application form.

(6) If the returning officer rejects an application for a postal vote he shall forthwith give notice in writing to that effect to the applicant setting out his reason for rejecting the application.

(7) Where an elector casts a postal vote—

- (a) the elector shall exhibit his ballot paper, unmarked, and the postal vote certificate to an authorized witness;
- (b) the elector shall, in the presence of the authorized witness, sign his name on the postal vote certificate in the place provided for the signature of the elector;
- (c) the authorized witness shall, in the place provided for the signature of the witness, sign his name and write legibly his name and address and the date below his signature;
- (d) the elector shall, in the presence of the authorized witness, but so that the witness cannot see the vote, record his vote on the ballot paper, insert the ballot paper in the ballot paper envelope, seal the envelope, insert that envelope in the envelope upon which the certificate has been completed, seal that envelope and post or cause the envelope to be delivered to the returning officer;

- (e) if the elector's sight is so impaired, or through other cause his ability to read or to write is such that he cannot vote without assistance, a person appointed for that purpose by the elector may, in the presence of the authorized witness, mark upon the ballot paper the vote which the elector desires to cast and the person so appointed shall then insert the ballot paper in the ballot paper envelope, seal the envelope, insert that envelope in the envelope upon which the certificate has been completed, seal that envelope and hand it to the elector, who shall post or cause the envelope to be delivered to the returning officer, but if the elector requests the authorized witness to do so, he may take the action authorized by this paragraph to be taken by a person so appointed by the elector;
- (f) the authorized witness shall not, except in accordance with paragraph (e) of this subsection, look at or make himself acquainted with the vote of the elector, or assist the elector in relation to his vote, or permit any other person to do so;
- (g) the authorized witness or a person acting under paragraph (e) of this subsection shall not, unless authorized by law, disclose the elector's vote.

123. An authorized witness and any other person present when an elector is before an authorized witness for the purpose of casting a postal vote, except to the extent permitted by paragraph (e) of subsection (7) of section 122—

Conduct of
persons at
casting of
postal vote.

- (a) shall not make any communication whatever to the elector in relation to the manner of exercise of his vote;
- (b) shall not assist the elector or in any manner interfere with him in relation to his vote; and

- (c) shall not look at the elector's vote or do anything whereby he becomes or is likely to become acquainted with the elector's vote.

Duty of
witness.

124. A person who witnesses the signature of an applicant on an application for a postal vote or on a postal vote certificate—

- (a) without satisfying himself of the identity of the applicant; or
- (b) without seeing the applicant sign the application or certificate in the applicant's own handwriting,

commits an offence.

Dealing with
postal votes.

125. (1) Postal voting papers shall be accepted by the returning officer if received by him at any time up until 8 o'clock in the afternoon of the polling day.

(2) On acceptance of a postal vote, the returning officer shall indicate by a mark against the name of the elector on the electoral roll being used by him for the purpose of the election that a postal vote has been accepted and place the certificate envelope in the ballot box provided for the purpose.

(3) If the postal vote certificate has not been properly completed, the returning officer shall mark the certificate envelope as having been rejected and place it in the ballot box.

(4) The returning officer shall ensure that the ballot box in which postal votes have been placed is supervised or otherwise secure at all times.

Authorized
witness.

126. For the purposes of this Subdivision an authorized witness in relation to postal voting papers is any person who has attained the age of 18 years and is not a candidate in the election in respect of which the postal vote is being exercised.

Subdivision K.—Voting Other Than on Election Day—
General Provisions.

127. A person present when an elector is casting an early or absent vote shall obey any directions given to him by an electoral officer.

Persons
present to
obey
directions.

128. If on polling day a person delivers to a presiding officer for cancellation a postal vote certificate and a postal ballot paper which has been issued to him in connection with the election, or satisfies a presiding officer that, notwithstanding that his name has been noted on the electoral roll as an elector to whom a postal vote has been issued, he has not received or for some other sufficient reason will not be able to use the postal vote certificate and postal ballot paper, the presiding officer, if satisfied that the person is entitled to vote, shall permit him to vote.

Voting
notwith-
standing
elector
recorded
as having
been issued
with postal
vote.

129. (1) The returning officer may check early, absent and postal voting papers on polling day prior to the close of the poll at a time and place notified in writing to each candidate.

Time and
place for
checking
early, absent
and postal
votes.

(2) As soon as practicable after the close of the poll, the returning officer shall, at the chief polling place, check all early, absent and postal voting papers and votes cast pursuant to Subdivision I of this Division which have been received up to 8 o'clock in the afternoon of the polling day and which he has not previously checked.

130. In checking early, absent and postal voting papers and votes recorded under Subdivision I of this Division, the returning officer—

Checking
early, absent
and postal
votes and
votes
recorded
under
Sub-
division I.

- (a) shall produce the unopened envelopes bearing the declarations or certificates received by him prior to the close of the poll;

- (b) shall compare the signature of the elector on each postal vote certificate with the signature of the same elector on the application for the postal vote and permit any scrutineers present to inspect both signatures;
- (c) if satisfied that the signature on a postal vote certificate is the signature of the person who signed the application for the postal vote, that the certificate or declaration envelope, as the case may be, is completed in accordance with the Act and that, subject to the provisions of section 111, in each case the name of the elector is registered on the electoral roll, shall accept the ballot paper in the ballot paper envelope for further scrutiny, but, if not so satisfied, shall reject the ballot paper without opening the envelope in which it is contained; and
- (d) shall withdraw from the declaration or certificate envelopes the ballot paper envelopes which have been accepted by him for further scrutiny and, without opening the ballot paper envelopes or allowing any other person to do so, shall place them in a ballot box.

Subdivision L.—Ascertaining the Result of the Poll.

Opening of
ballot boxes
and
adjournment
of count.

131. (1) As soon as practicable after the close of the poll, the returning officer shall, at the chief polling place in the presence of such candidates and scrutineers, if any, as are in attendance, open the ballot boxes and examine and count the ballot papers contained in them and ascertain the result of the election.

(2) The count may be adjourned to a time fixed by the returning officer where the count would otherwise extend beyond midnight on the polling day and he may, for reasonable cause, further adjourn the count from time to time.

132. Where a ballot paper has been effectively marked by an elector in accordance with the requirements of section 97, the returning officer shall accept it as valid unless he is required to reject it under section 133.

Acceptance
of validly
marked
ballot
papers.

133. (1) The returning officer shall reject and exclude from the count of votes a ballot paper on which is written anything not authorized by this Act or which does not comply with the requirements of this Act.

Rejection
of ballot
papers.

(2) If a ballot paper envelope contains more than one ballot paper, all the ballot papers contained in the envelope shall be rejected, replaced in the envelope and set aside.

134. When the returning officer rejects a ballot paper he shall endorse on it the word "rejected".

Endorsement
of rejection.

135. Unless a Court of Disputed Returns decides otherwise, the decision of the returning officer relating to the rejection of a ballot paper is final but nothing herein contained shall prevent the returning officer from reviewing his own decision if he sees fit to do so under subsection (8) of section 136.

Decision as
to rejection.

136. (1) The result of an election under the preferential system of voting is ascertained in accordance with the provisions of this section.

Method of
counting
votes.

(2) In this section—

"absolute majority of votes" means the number of votes which is counted at a progressive count in favour of one of the candidates and which is greater than the aggregate resulting from adding together the number

of votes counted at the progressive count in favour of each of the other candidates who is a continuing candidate;

“ballot paper” means a ballot paper which has not been rejected by the returning officer in accordance with this Act;

“continuing candidate”—

(a) in relation to a progressive count made in respect of an election referred to in subsection (4) of this section, means a candidate who has not been declared a defeated candidate following any preceding progressive count made in respect of that election;

(b) in relation to a progressive count made in respect of the filling of one of the vacancies to be filled by an election referred to in subsection (5) of this section, means a candidate who has not been declared—

(i) a defeated candidate following any preceding progressive count made in respect of the filling of that vacancy; or

(ii) an elected candidate in respect of any other of those vacancies;

“progressive count” means the count at any stage in the progress of ascertaining the result of an election in accordance with the provisions of this section;

“retiring member” means a member of the council whose term of office has expired by effluxion of time and thereby created the need for the election.

(3) Where the election is held to fill one vacancy and there are only two candidates, the returning officer shall—

- (a) count each ballot paper on which the numeral “1” appears against a candidate’s name as a vote in the candidate’s favour;

and

- (b) declare the candidate in whose favour the greatest number of votes is counted to be elected to the vacancy.

(4) Where the election is to fill one vacancy and there are more candidates than two—

- (a) the returning officer shall make the first progressive count by counting each ballot paper on which the numeral “1” appears against a candidate’s name as a vote in his favour and if one of the candidates has an absolute majority of the votes so counted the returning officer shall declare him elected;

- (b) if at that stage as a result of the first progressive count none of the candidates has an absolute majority of those votes the returning officer shall make the second progressive count by—

- (i) declaring the candidate who has the least number of those votes a defeated candidate;

- (ii) counting each of the ballot papers on which the numeral, “1” appears against that defeated candidate’s name as a vote in favour of the continuing candidates against whose names the numeral, “2” appears on the ballot papers;

- (iii) ascertaining the total number of votes counted in favour of each continuing candidate at both the first progressive count and the second progressive count,

and if one of the continuing candidates then has an absolute majority of the votes so ascertained, declare that candidate elected;

- (c) if at that stage as a result of the second progressive count or at a subsequent stage as a result of a subsequent progressive count an absolute majority of votes is not established, the returning officer shall make a third and such further progressive counts, in a similar manner to that provided for in paragraph (b) of this subsection, as is necessary to establish an absolute majority of votes by—

- (i) declaring defeated the candidate who, at the particular stage, has the least number of votes;
- (ii) counting each of the ballot papers on which appears the numeral indicating an elector's preference in favour of the defeated candidate at that stage as a vote in favour of the continuing candidate against whose name appears the numeral indicating the elector's next preference for a continuing candidate;
- (iii) ascertaining the total number of votes counted in favour of each continuing candidate by adding together the number of votes counted in his favour at each of the progressive counts made,

and the returning officer shall declare the candidate having an absolute majority of votes elected.

(5) Where the election is to fill two or more vacancies, the returning officer shall count the votes in accordance with the following provisions—

- (a) the first candidate to secure an absolute majority of the votes by the application of the method provided for in subsection (4) of this section shall be declared elected by the returning officer;
- (b) all the ballot papers shall then be brought into the count again and the method provided for in subsection (4) of this section shall again be applied to them with the following modifications—
 - (i) on the first progressive count any ballot paper on which the numeral, “1” appears against the name of the candidate who has been declared elected under paragraph (a) of this subsection shall be counted as a vote in favour of the candidate against whose name the numeral, “2” appears on that ballot paper;
 - (ii) on the second progressive count any ballot paper on which the numerals, “1” and “2” appear against the names of the defeated candidate and of the candidate who has been declared elected under paragraph (a) of this subsection shall be counted as a vote in favour of the candidate against whose name the numeral, “3” appears on that ballot paper;
 - (iii) on the third progressive count and on any subsequent progressive count any ballot paper that would, under that method, be counted as a vote for the candidate who has been declared elected under paragraph (a) of this subsection shall be counted as a vote in favour of the continuing candidate against whose name appears the

numeral indicating the elector's next preference for a continuing candidate,

and the first candidate to secure an absolute majority by the application of that method as so modified shall be declared elected by the returning officer;

- (c) where the election is to fill more vacancies than two, the third vacancy and any further vacancy shall be filled in a similar manner to that provided for in paragraph (b) of this subsection, that is to say, on each occasion the method provided for in subsection (4) shall be applied to all the ballot papers with the modification that any ballot paper that would, under that method, be counted as a vote for a candidate who has been declared elected under paragraph (a) or (b) of this subsection, or under this paragraph, shall be counted as a vote for the continuing candidate against whose name appears the numeral indicating the elector's next preference for a continuing candidate.

(6) Where the result of a count of the votes whether made under subsection (3), (4) or (5) of this section is that no one candidate has an absolute majority of votes because the aggregate of the votes is equally divided between two or more candidates (in this subsection called "the remaining candidates"), and—

- (a) of the remaining candidates only one is a retiring member, the returning officer shall declare that one to be elected;
- (b) of the remaining candidates two or more are retiring members but one or more are not, the returning officer shall draw lots to ascertain which one of the remaining candidates who are retiring members is to be elected and shall declare the candidate so ascertained to be elected; and

- (c) of the remaining candidates each or none is a retiring member, the returning officer shall draw lots to ascertain who of the remaining candidates is to be elected and shall declare the candidates so ascertained to be elected.

(7) Where as the result of a progressive count under subsection (4) or (5) of this section the returning officer is unable to declare that one candidate has had counted in his favour the least number of votes and is therefore a defeated candidate because each of two or more candidates (in this subsection called the "tied candidates") has the same number of votes counted in his favour, which number is less than the number of votes which any of the other candidates has had counted in his favour, and—

- (a) of the tied candidates each or none is a retiring member, the returning officer shall draw lots to ascertain who of the tied candidates is to be declared a defeated candidate and shall declare the candidate so ascertained to be a defeated candidate;
- (b) of the tied candidates each but one is a retiring member, the returning officer shall declare that one to be a defeated candidate; and
- (c) of the tied candidates one is a retiring member or some are retiring members and the others are not, the returning officer shall draw lots to ascertain which one of the tied candidates who is not a retiring member is to be declared a defeated candidate and shall declare the candidate so ascertained to be a defeated candidate.

(8) At any time and from time to time before he declares publicly the result of the election pursuant to section 137, the returning officer may, if he thinks fit, either of his own motion or at the request of a candidate or scrutineer, recount the ballot papers entirely as if making the original count, or may

make a recount of the ballot papers already counted in an original progressive count as if making the original progressive count and shall rectify a decision which was made during the original count or original progressive count including a decision to admit or reject ballot papers, and which in his opinion is shown by the recount to require rectification.

Subdivision M.—Declaration of Result of Election and Consequential Procedures.

Declaration
by returning
officer of
result of
election.

137. (1) On, or as soon as is reasonably practicable after, the day on which the result of an election is ascertained, the returning officer shall—

- (a) complete a declaration in the prescribed form as to the result of the election;
- (b) publicly declare the names of the persons elected to fill the respective vacancies in the offices of member of the council;
- (c) publicly declare the term of office for which each person is elected in accordance with the provisions of section 139;
- (d) exhibit or cause to be exhibited on the official notice board of the council for a period of not less than 5 days a copy of the declaration completed pursuant to paragraph (a) of this subsection; and
- (e) cause the applications, declarations and certificates with respect to early, absent and postal votes and votes recorded pursuant to Subdivision I of this Division, the envelopes containing ballot papers rejected pursuant to the provisions of subsection (2) of section 133, the ballot papers and the marked electoral rolls used in relation to the election to be placed in parcels, cause each parcel to be sealed and endorsed with a description of its contents and the endorsement to be signed and dated by the person making it and retain them for a

period of 2 years, and all such papers shall be made available for inspection by a Court of Disputed Returns or by a Government Inspector of Municipalities appointed by the Minister or in accordance with any order of a competent court, but shall not be open for inspection by candidates, by members of the council or by the public.

(2) After the expiration of the period of 2 years, the clerk shall cause the papers retained under paragraph (e) of subsection (1) of this section to be destroyed in the presence of two members of the council.

138. (1) Within 7 days of the making of the latter of the declarations mentioned in paragraphs (b) and (c) of subsection (1) of section 137, the clerk shall prepare and send to the Minister a return in the prescribed form.

Returns of
results
to be sent
to Minister.

(2) The Minister shall cause notice of such of the particulars contained in the return as may be prescribed to be published in the *Gazette* as soon after he receives them as is reasonably practicable.

(3) Production of a copy of the *Gazette* in which the particulars are published is evidence of the matters mentioned in the particulars.

Subdivision N.—Terms of Office of Mayors, Presidents
and Councillors.

139. (1) Subject to this section, the term of office for which a member of a council is elected is—

Terms of
office.

(a) to the office of mayor or president, where the mode of election is by the electors, 3 years;

(b) to the office of councillor, 3 years.

(2) The term of office of a member commences—

- (a) where he is elected at an annual election, on the first Sunday after the first Saturday in May in the year of election;
- (b) except where subsection (4) of this section provides otherwise, where he is elected to fill an extraordinary vacancy, other than an extraordinary vacancy arising from the resignation of a member—
 - (i) on the day next following that of his nomination, if he is elected unopposed; or
 - (ii) on the day next following his election, if he is elected by the taking of a poll;
- (c) where he is elected to fill an extraordinary vacancy arising from the resignation of a member—
 - (i) on the effective date of the resignation of that member; or
 - (ii) on the day next following that of his nomination, if he is elected unopposed, or on the day next following his election, if he is elected by the taking of a poll,whichever is the later;
- (d) where he is elected in any other circumstances, on the day next following that on which a poll, if necessary, is held, or on which a poll, if unnecessary, would have been held.

(3) Where an annual election to fill a vacancy is deferred or adjourned under this Act until after the first Saturday in May in any year, a member of a council whose term of office expires on that day is authorized by this subsection to continue to act in the office until the election is held.

(4) Where a person is elected to fill an office of member of a council at an election held to fill a vacancy occurring by operation of section 90 on the death of a candidate for election at the annual election, for the purpose of determining the date on which the person so elected shall retire from the office, the term for which he is so elected shall be deemed to have commenced, although he does not occupy the office in the meantime, on the first Sunday after the first Saturday in May next preceding his election.

(5) Where by an election other than an annual election or an election to fill an extraordinary vacancy a person is elected to an office of member of a council—

(a) 6 months or less than 6 months before the first Saturday in May in any year, for the purpose of determining the date of his retirement from the office, the term of office for which he is elected shall be deemed to have commenced on the first Sunday after the first Saturday in May next succeeding his election; or

(b) less than 6 months after the first Saturday in May in any year, for the purpose of determining the date of his retirement from the office, the term of office for which he is elected shall be deemed to have commenced on the first Sunday after the first Saturday in May next preceding his election.

(6) A person elected to fill an extraordinary vacancy in an office of member of a council shall hold the office for the remainder of the term for which his immediate predecessor in the office would have held it had he remained in the office for the period for which he was elected.

(7) The term of office of a person elected to the office of councillor at any election other than an extraordinary election shall be determined by the returning officer so as to give effect to the provisions of subsection (8) of this section.

(8) The order of retirement from office of councillors of a municipality shall be determined as follows—

- (a) as near as practicable to one-third of the total number of councillors as the returning officer determines shall retire each year;
- (b) subject to paragraph (c) of this subsection, where the district is divided into wards, as near as practicable to one-third of the councillors representing each ward as the returning officer determines shall retire each year;
- (c) where it is not practicable for any reason for paragraph (b) of this subsection to operate consistently with paragraph (a) of this subsection, paragraph (a) shall prevail to the extent of any inconsistency;
- (d) in determining the order of retirement from office under this subsection the returning officer shall, so far as practicable, ensure that each councillor shall have a term of 3 years but in order to apply paragraphs (a), (b) and (c) of this subsection, the returning officer may fix a term of two years or one year;
- (e) where a district is not divided into wards, the retirement from office of councillors shall be in inverse order to that in which they were declared elected by the returning officer, and where there are two or more councillors who were declared elected unopposed, the returning officer shall draw lots to determine the order of their retirement;
- (f) where a district is divided into wards, the retirement of councillors representing each ward shall be in inverse order to that in which they were declared elected by the returning officer, and where there are two or more councillors who were declared elected

unopposed, the returning officer shall draw lots to determine the order of their retirement;

- (g) where it is necessary to determine the order of retirement as between councillors representing different wards, the councillor who receives the highest percentage of primary votes cast on his election shall retire last provided that—

(i) where a councillor has been elected unopposed he shall be deemed to have received 100 per cent of the primary votes; and

(ii) where two or more councillors have an equality of the percentage of primary votes the returning officer shall draw lots to determine the order of their retirement.

(9) Where a question arises as to the order of retirement of persons occupying the office of councillor, the order of retirement as between a person appointed under section 92 and another person or other persons,

(a) so appointed to the office of councillor on the same day, is that determined on the drawing of lots by the returning officer;

(b) so appointed to the office of councillor on different days, is in inverse order of the date of appointment; or

(c) elected to the office of councillor, is such that persons so elected retire after persons so appointed.

140. (1) A person elected to the office of mayor, president or councillor is not entitled to act in the office until he has made and subscribed an oath or affirmation of allegiance and a declaration in the appropriate form in the Fourth Schedule.

Oath or
affirmation
of allegiance.

(2) The person so elected to office shall before acting in the office make and subscribe the oath or affirmation and the declaration—

- (a) if elected as mayor or president, before his predecessor in office or before any person before whom a statutory declaration may be made pursuant to section 2 of the Declarations and Attestations Act 1913; or
- (b) if elected as a councillor, before the mayor or president or before any person before whom a statutory declaration may be made pursuant to section 2 of the Declarations and Attestations Act 1913.

Subdivision O.—Election of Mayor or President or Deputy Mayor or Deputy President by Council.

Election of
Mayor or
President
where
elected by
council.

141. (1) Where the mode of election to the office of mayor or president is by the council—

- (a) the councillors, at the commencement of the first meeting of the council held after the annual election day, or of a meeting of the council held on a day appointed by the Minister pursuant to subsection (3) of this section, or in the case of a council of a newly constituted municipality, of the first meeting of the council, shall by secret ballot elect one of their number to the office of mayor or president, as the case requires;
- (b) the day, time and place of the first meeting of the council held after the annual election day—
 - (i) are such as the outgoing council appoints; or
 - (ii) shall, in the case of a newly constituted municipality, or if an appointment has not been made under subparagraph (i) of this paragraph, be such as the Minister appoints by notice in writing delivered to the clerk;

- (c) the clerk shall act as chairman of the meeting or any adjournment thereof as provided in paragraph (d) of this subsection until the mayor or president is duly elected, and where there is no clerk or the clerk is unable or unwilling to act, the Minister shall appoint in writing a person so to act as chairman, but neither the clerk nor that person, unless he is a member, shall vote at the meeting or any adjournment thereof;
- (d) if, as the first business of the meeting, the councillors, because of an equality of votes, or for any other reason, do not elect one of their number to the office of mayor or president, the meeting shall be adjourned to the corresponding day and time of the next following week at the same place, but if that day is a public holiday the meeting shall be adjourned until the first day which follows that day but is not a public holiday or Sunday;
- (e) if at the adjourned meeting the councillors fail to elect one of their number to the office of mayor or president, the meeting shall be further adjourned and the chairman of the meeting shall report the fact to the Minister;
- (f) when the Minister receives a report under paragraph (e) of this subsection, he may appoint one of the councillors, if he is willing to accept the appointment, to the office of mayor or president and shall appoint the day, time and place for the resumption of the adjourned meeting;
- (g) where none of the councillors is willing to accept the appointment, the Minister may recommend to the Governor and the Governor may, by Order, dismiss the council and subsection (2) of section 156 shall apply to that Order as if it had been made under subsection (1) of section 156;

- (h) subject to this subsection, the term of office of mayor or president elected or appointed in accordance with this section shall be one year;
- (i) a person who holds the office of mayor or president immediately before the first Saturday in May in any year, having been elected or appointed to that office in accordance with this section, shall continue to hold that office after that date (whether or not he ceases to hold the office of councillor) until a person is elected or appointed to the office of mayor or president or until the council is dismissed in accordance with this subsection;
- (j) a person elected or appointed to the office of mayor or president in accordance with this section ceases to hold the office if, by virtue of this Act, his office of councillor becomes vacant or if, by notice in writing under his hand addressed to the clerk, he resigns the office of mayor or president; and
- (k) where a vacancy occurs in the office of mayor or president other than through effluxion of time, the councillors at the commencement of the first ordinary meeting held after the occurrence of the vacancy shall fill the vacancy by electing another councillor to the office for the remainder of the term of the former mayor or president in accordance with subsection (2) of this section.

(2) This subsection applies to and in relation to an election referred to in paragraph (k) of subsection (1) of this section, that is to say—

- (a) the councillors shall by secret ballot elect one of their number to the office of mayor or president, as the case requires;
- (b) where the question of the election of mayor or president is being considered at a meeting of the council, the clerk shall preside, and where there is no clerk or the clerk is unable

or unwilling to preside, the Minister shall appoint in writing a person to so preside, but neither the clerk nor that person, unless he is a councillor, shall vote on that question;

- (c) if the councillors, because of an equality of votes, or for any other reason, do not elect one of their number to the office of mayor or president, the election shall be postponed to the next meeting of the council;
- (d) if at the next meeting the councillors fail to elect one of their number to the office of mayor or president, the clerk shall report the fact to the Minister;
- (e) where the Minister receives a report under paragraph (d) of this subsection he may appoint one of the councillors, if he is willing to accept the appointment, to the office of mayor or president; and
- (f) where none of the councillors is willing to accept the appointment, the Minister may recommend to the Governor and the Governor may, by Order, dismiss the council and subsection (2) of section 156 shall apply to that Order as if it had been made under subsection (1) of section 156.

(3) Where—

- (a) the mode of election to the office of mayor or president is by the council; and
- (b) there is no annual election in a year by reason of the annual election being void by operation of section 90,

the Minister shall appoint a day, time and place for the holding of a meeting of the council to elect a councillor to the office of mayor or president, as the case requires, and subsection (1) of this section shall, *mutatis mutandis*, apply to that election.

Offices of
deputy
mayor
and deputy
president.

142. (1) For the purposes of this Act, there is created—

- (a) in respect of each city and of each town, the office of deputy mayor; and
- (b) in respect of each shire, the office of deputy president.

(2) The powers and duties of the offices of deputy mayor and deputy president are those prescribed by this Act.

Office of
deputy
mayor and
deputy
president
to be filled
by election
by council.

143. (1) At the first meeting of a council held after the annual election day, and in the case of a newly constituted municipality, at the first meeting of the council, or at any meeting adjourned pursuant to the provisions of section 141, immediately following the election of a mayor or president, the councillors shall, by secret ballot, elect one of their number to the office of deputy mayor or deputy president as the case requires.

(2) The deputy mayor or deputy president shall hold that office until the commencement of the first meeting held by the council after the annual election day next succeeding his election to the office, whether or not he ceases to hold the office of councillor.

(3) Where a vacancy occurs in the office of deputy mayor or deputy president other than through effluxion of time, the councillors, at the commencement of the first ordinary meeting held after the occurrence of the vacancy, shall, by secret ballot, elect one of their number to fill the vacancy for the remainder of the term of the former deputy mayor or deputy president.

(4) If the councillors, because of an equality of votes or for any other reason, do not elect a councillor to the office of deputy mayor or deputy president in accordance with this section, the clerk shall report the fact to the Minister.

(5) Where the Minister receives a report under subsection (4) of this section, he shall cause notice to be given to each member requiring him to attend

a special meeting at the day, time and place specified in the notice in order to elect a deputy mayor or deputy president.

(6) If the councillors at the special meeting fail to elect a deputy mayor or deputy president, the clerk shall report the fact to the Minister, who may thereupon by notice in writing appoint a councillor willing to act as deputy mayor or deputy president and the councillor appointed shall be deputy mayor or deputy president, as the case may require.

(7) A person elected or appointed to the office of deputy mayor or deputy president in accordance with this section ceases to hold the office if, by virtue of this Act, his office of councillor becomes vacant or if, by notice in writing under his hand addressed to the clerk, he resigns the office of deputy mayor or deputy president.

(8) If a deputy mayor or deputy president is elected or appointed to the office of mayor or president, his office of deputy mayor or deputy president becomes vacant.

144. (1) Where there is a vacancy in the office of mayor or president of a municipality, or the mayor or president is absent from the district, or being in the district is unable or not available to carry out the duties or exercise the respective powers of the office of mayor or president, the deputy mayor or deputy president may carry out those duties and exercise those powers.

Circumstances in which deputy mayor or deputy president may act.

(2) Where there are vacancies in the offices of mayor and deputy mayor or president and deputy president or the occupants of both offices are absent from the district, or being in the district neither is able or available to carry out those duties or exercise those powers when it is necessary to do so, the clerk and 2 of the councillors, notwithstanding that they have not been appointed by the council for the purpose, may, except where this Act provides otherwise, carry out those duties and exercise those powers.

Subdivision P.—Miscellaneous Matters Arising from Election.

Errors of
form not to
vitate
election.

145. An election is not void in consequence solely—

- (a) of a delay at any of the stages of the election beyond the time appointed;
- (b) of an error on the part of the returning officer; or
- (c) of an error, defect or impediment of a merely formal nature,
if the delay, error, defect or impediment does not affect the result of the election.

Election
not to be
questioned
for defect
of title.

146. Where in, or in connection with, the preparation for or the conduct of an election, the ascertainment of the result of an election or the declaration and publication of the result of an election, a person, in good faith, exercises a power, carries out an obligation, or discharges a function, by virtue of what purports to be his appointment to an office, or what purports to be any other lawful authorization to do so, including, without affecting the generality of this section, the execution or issue of a document, the making of a declaration, and the publication or the causing of the publication of a notice or other thing, the election is not rendered invalid because of an omission, irregularity or defect in the appointment to the office or in the authorization, or because of a formal omission, error or defect in the document, declaration or publication, or because of the notice or other thing being published otherwise than at the time or for the period prescribed.

Invalidity
of election
no plea to
action.

147. An action or other proceeding by or against a municipality is not affected because what purports to be an election to office of member of the council of the municipality is, or may be, invalid.

Application
of deposit
made on
nomination.

148. (1) As soon as is reasonably practicable after a Court of Disputed Returns may no longer adjudicate upon the declaration of the result of an election to fill a vacancy in an office of member of a

council, whether or not the election is contested, the council shall, unless it has already been forfeited under subsection (3) of section 87 on withdrawal of the nomination, apply money, deposited under section 84 by or on behalf of a candidate on his nomination, in accordance with this section.

(2) The council shall repay to a candidate declared elected, whether at a contested or an uncontested election, the amount so deposited.

(3) Where—

- (a) there is only one vacancy to be filled the council shall repay the amount so deposited to a candidate who has not been elected if the number of votes counted in his favour on the first progressive count is at least one-fifth of the votes counted in favour of the candidate then having the greater, if only 2, or the greatest, if more than 2, number of votes counted in his favour, as the case may be;
- (b) there are more vacancies than one to be filled the council shall repay the amount so deposited to a candidate who has not been elected if the number of votes counted in his favour as first preference is at least one-fifth of the number of votes counted as first preference in favour of the elected candidate in whose favour the least number of votes were counted as first preference;
- (c) a candidate dies prior to the close of the poll, the council shall repay the amounts so deposited to the personal representative of that candidate and to the other candidates.

(4) Where a candidate or his personal representative is not entitled under subsection (2) or (3) of this section to repayment of the amount so deposited, that amount is forfeited to the municipality and shall be paid into the municipal fund.

(5) Where a candidate is entitled to repayment of the amount so deposited the council shall pay that amount—

- (a) to the candidate so entitled to repayment;
- (b) to a person to whom the candidate so entitled, by written authority signed by the candidate, directs the council to pay it;
- (c) to the personal representative of a candidate who dies after having become entitled to payment under this section and before the payment is made to him; or
- (d) to the person lawfully entitled to receive it, if before payment is made the candidate becomes of unsound mind or bankrupt,

and if the council does not repay the amount, the person entitled to payment may recover it in a court of competent jurisdiction.

Payment of
expenses of
returning
officer.

149. The council shall pay out of the municipal fund to the returning officer the expenses incurred by him in or in connection with the preparation for, conduct of, ascertainment of the result of, and declaration and publication of the result of, an election.

Subdivision Q.—Disputed Returns.

Invalid
elections
how
remedied.

150. (1) Where a complaint is made within the time prescribed by subsection (2) of this section to a stipendiary magistrate by a person who was a candidate at an election by the electors held to fill a vacancy in the office of member of a council, or by not less than 6 persons registered as electors and entitled to vote in an election held for that purpose, that an election so held was invalid, or that a person ought to be declared elected as a member

of the council in preference to the person actually declared elected or as to the order of retirement of councillors—

(a) the magistrate may issue a summons summoning—

(i) the returning officer at the election;

(ii) a person declared elected at the election; and

(iii) such other persons as he thinks fit,

to appear before him on a day and at a time and place specified in the summons;

(b) the magistrate, when the matter is called on for hearing, is constituted a Court of Disputed Returns for the purposes of this Act, and on the parties appearing or, in default of their appearance, on it being shown that the summons was duly served, the Court may inquire into and adjudicate upon the matter of the complaint, and for the purpose may exercise any of the powers conferred upon justices by the Justices Act 1902;

(c) if on inquiry it appears to the Court that the election was invalid, or that a person ought to have been declared elected in preference to the person declared elected, or that the returning officer has incorrectly determined the order of retirement of councillors, the Court may declare accordingly and, where appropriate, may amend the order of retirement;

(d) if the Court declares the election to have been invalid, it is null and void, and unless the Governor appoints a commissioner, the returning officer shall prepare for, conduct, ascertain and declare the result of a fresh election to be held on a day fixed by the Court, which fresh election shall, for the purpose of section 139, be deemed to be the election which has been declared invalid;

- (e) if the Court declares that a person ought to have been declared elected in place of another person, the latter shall not act as a member of the council, and the person whom the Court declares ought to have been elected is deemed to have been elected.

(2) A complaint may be made only within 21 days of the day of the election out of which the complaint arises.

(3) The Court may make such order as to costs as it thinks just and an order so made may be enforced as an order of a court of summary jurisdiction, but an order shall not be made for the payment of costs by a candidate other than the complainant, unless it is proved to the Court that the candidate has by himself or his agent contravened the provisions of this Part.

(4) There is no appeal from a decision of a Court of Disputed Returns.

Subdivision R.—Electoral Offences.

Breach or
neglect by
officers.

151. (1) An electoral officer who—

- (a) attempts to influence the vote of an elector, or, except by recording that vote, the result of an election;
- (b) discloses, except under compulsion of law, knowledge officially acquired by him concerning the vote of an elector; or
- (c) neglects or refuses to discharge an official duty or contravenes any provision of this Part,

commits an offence.

(2) A person convicted of an offence under this section is liable to a penalty not exceeding \$2 000 or imprisonment not exceeding 2 years.

152. (1) A person who—

Bribery.

- (a) promises, offers or suggests valuable consideration, advantage, recompense, reward or benefit for, or on account of, or to induce—
 - (i) candidature at an election;
 - (ii) withdrawal of candidature from an election;
 - (iii) a vote, or an omission to vote, at an election;
 - (iv) support of, or opposition to, a candidate for election; or
 - (v) a promise of a vote, omission, support, or opposition mentioned in this paragraph; or
- (b) gives or takes valuable consideration, advantage, recompense, reward or benefit for, or on account of, a candidature, withdrawal, vote, omission, support, opposition or promise mentioned in paragraph (a) of this subsection,

commits an offence.

(2) A person convicted of an offence under this section is liable to a penalty not exceeding \$2 000 or imprisonment not exceeding 2 years.

153. (1) A person who—

Undue
influence.

- (a) threatens, offers or suggests violence, injury, punishment, damage, loss or disadvantage for, or on account of, or to induce—
 - (i) candidature at an election;
 - (ii) withdrawal of candidature from an election;
 - (iii) a vote, or an omission to vote, at an election;

- (iv) support of, or opposition to, a candidate for election; or
 - (v) a promise of a vote, omission, support or opposition mentioned in this paragraph; or
 - (b) uses, causes, inflicts or procures, violence, punishment, damage, loss or disadvantage for, or on account of, a candidature, withdrawal, vote, omission, support or opposition mentioned in paragraph (a) of this subsection; or
 - (c) interferes or attempts to interfere with the free exercise of the franchise of an elector,
- commits an offence.

(2) A person convicted of an offence under this section is liable to a penalty not exceeding \$2 000 or imprisonment not exceeding 2 years.

**Illegal
practices.**

154. (1) A person who, within the period from the first day for the receipt of nominations until the close of the poll—

- (a) publishes any electoral advertisement, or any handbill, pamphlet, notice, letter, article, or other material concerning an election, without the name and address of the person authorizing it being shown at the end of it; or
- (b) prints any electoral advertisement, or any handbill, pamphlet, notice, letter, article, or other material concerning an election, or publishes any printed electoral advertisement, or any printed handbill, pamphlet, notice, letter or article, or any other printed material, concerning an election, without the name and place of business of the printer being printed at the end of it,

commits an offence.

(2) Where any electoral advertisement, or any notice, letter, article or other material concerning an election, forms part of a newspaper or other publication it shall be sufficient compliance with paragraph (b) of subsection (1) of this section if the name and place of business of the printer are shown at some place in the publication.

(3) A person convicted of an offence under this section is liable to a penalty not exceeding \$500.

154A. (1) A person who—

- (a) nominates himself or procures or permits himself to be nominated as a candidate for the office of member of a council knowing that under this Act he is disqualified from being elected to or acting in the office; or
- (b) signs a nomination paper nominating or purporting to nominate as a candidate for the office of member of a council another person, knowing that under this Act the person nominated is disqualified from being elected to or acting in the office,

Penalties
in case of
nomination
of persons
incapable
of acting.

commits an offence.

(2) A person convicted of an offence under this section is liable to a penalty not exceeding \$500.

154B. A person who, on polling day, or on a day to which the polling is adjourned, in a polling place or within a distance of 6 metres of a polling place—

Prohibition
of
canvassing
near
polling
places.

- (a) canvasses for votes;
- (b) solicits the vote of an elector;
- (c) induces or attempts to induce an elector not to vote for a particular candidate; or
- (d) induces or attempts to induce an elector not to vote at the election,

commits an offence.

Non-
participation
of candidates
for election.

154C. (1) A person who, in relation to the election for which he is a candidate, in any way assists, communicates with or interferes with an elector whilst he is applying for or casting an early, absent or postal vote or looks at the vote of an elector or posts or delivers to the returning officer an application for a postal vote or delivers postal voting papers to an elector or to the returning officer, commits an offence.

(2) A person convicted of an offence under this section is liable to a penalty not exceeding \$1 000 or imprisonment not exceeding one year.

Improperly
voting.

154D. (1) Where a ballot paper has been issued to an elector any person other than—

(a) the elector; or

(b) a person appointed by the elector, or acting at the elector's request, to assist the elector who by reason of the impairment of his sight, or his inability to read or to write, is unable to vote without assistance,

who marks a vote upon a ballot paper, commits an offence.

(2) A person convicted of an offence under this section is liable to a penalty not exceeding \$1 000 or imprisonment not exceeding one year.

Improperly
interfering
with ballot
papers.

154E. (1) A person, other than an electoral officer, who opens an envelope in which an early, absent or postal vote has been placed, commits an offence.

(2) A person convicted of an offence under this section is liable to a penalty not exceeding \$500.

Penalty for
acting when
disqualified
or before
subscribing
oath etc.

154F. (1) A person who, being disqualified by this Act from being or continuing as a member of a council acts as such, or so acts before he has made and subscribed the oath or

affirmation and declaration required by section 140, commits an offence, except when the disqualification is unsoundness of mind.

(2) A person convicted of an offence under this section is liable to a penalty not exceeding \$1 000.

154G. Any person who, by act or omission, conducts himself in a manner described in the first column of the table hereunder, commits an offence and is liable to the penalty shown in the second column of the table opposite the statement of the offence.

Electoral
offences.

TABLE OF ELECTORAL OFFENCES AND PENALTIES.

<i>First Column.</i>	<i>Second Column.</i>
Offence.	Penalty.
(a) Personating a person whether living or dead for the purpose of obtaining a ballot paper to which the personator is not entitled or personating another person whether living or dead for the purpose of voting.	Fine not exceeding \$2 000 or imprisonment not exceeding 2 years.
(b) Fraudulently destroying or defacing a nomination or ballot paper.	Fine not exceeding \$2 000 or imprisonment not exceeding 2 years.
(c) Fraudulently putting a ballot paper or other paper into a ballot box.	Fine not exceeding \$2 000 or imprisonment not exceeding 2 years.
(d) Fraudulently taking possession of a ballot paper.	Fine not exceeding \$500 or imprisonment not exceeding 6 months.
(e) Forging or, knowing it to be forged, uttering, a nomination or ballot paper.	Fine not exceeding \$2 000 or imprisonment not exceeding 2 years.
(f) In a polling place on polling day misconducting himself or failing to obey the reasonable directions of an electoral officer.	Fine not exceeding \$400.

- | | |
|--|--|
| (g) Supplying a ballot paper without authority. | Fine not exceeding \$500 or imprisonment not exceeding 6 months. |
| (h) Voting or obtaining a ballot paper for the purpose of voting at an election more often than entitled to vote, or if not entitled to vote at all. | Fine not exceeding \$400. |
| (i) Unlawfully destroying, taking, opening or otherwise interfering with a ballot box or a ballot paper. | Fine not exceeding \$500 or imprisonment not exceeding 6 months. |
| (j) Wagering on the result of an election. | Fine not exceeding \$400. |
| (k) Wilfully defacing, mutilating, destroying or removing a notice, list or other document exhibited by or by the authority of an electoral officer without his authorization. | Fine not exceeding \$200. |
| (l) Making or inducing a person to make a false statement in an application, return, declaration or certificate or in answer to a question authorized by this Act to be asked. | Fine not exceeding \$400. |
| (m) Wilfully making or inducing a person to make a false statement mentioned in paragraph (l) of this table. | Fine not exceeding \$1 000 or imprisonment not exceeding one year. |
| (n) Distributing an advertisement, handbill, pamphlet, notice, letter, article or material published in contravention of section 154. | Fine not exceeding \$200. |
| (o) Canvassing by an officer or employee of the council at an election in relation to that council. | Fine not exceeding \$400. |
| (p) Re-entering or attempting to re-enter a polling place without permission after being removed therefrom pursuant to the provisions of subsection (1) of section 104. | Fine not exceeding \$400. |

154H. (1) The returning officer may take action against a person for a contravention of this Part, and the council shall pay out of the municipal fund the expenses incurred by the returning officer in so acting. Prosecutions.

(2) The council shall pay out of the municipal fund any costs which may be awarded against the returning officer in connection with any action taken by him against a person for a contravention of this Part.

(3) The returning officer shall pay into the municipal fund any fees or costs paid to him in respect of any action so taken by him.

(4) Notwithstanding subsection (1) of this section, any person, including a candidate, may take action against a person for a contravention of this Part.

154I. A person commits an offence under this Part if he commits the offence himself or if he procures another person to commit the offence. Liability for indirect acts.

154J. An attempt to commit an offence against this Part is an offence punishable as if the offence had been committed. Attempts to commit offence.

154K. In proceedings relating to an offence under this Part, a certificate purporting to have been signed by the returning officer and stating that the election mentioned in the certificate was duly held and that the person named in the certificate was a candidate at the election is evidence of the matter stated. Certificate evidence.

154L. Offences which are mentioned in this Part and which are punishable by imprisonment exceeding one year are misdemeanors. Indictable offences.

Summary
offences.

154M. Offences which are mentioned in this Part and which are not misdemeanours are punishable on summary conviction.

Criminal
Code not
to apply.

154N. Chapter XIV of The Criminal Code does not apply in respect of elections held under this Act, but this section does not affect the application of The Criminal Code to offences which are misdemeanours under section 154L of this Act. ” .

Section 155
amended.

12. Section 155 of the principal Act is amended by repealing subsections (3) and (4).

Section 174A
amended.

13. Section 174A of the principal Act is amended in subsection (1)—

- (a) by deleting “and” after paragraph (c); and
- (b) by deleting “jurisdiction.” at the end of paragraph (d) and inserting the following—

“ jurisdiction; and

- (e) a person shall not be regarded as having an interest in his election to the office of mayor or president by reason only that the mayor or president is or might in the future be in receipt of a mayoral or presidential allowance. ” .

Section 184
amended.

14. Section 184 of the principal Act is amended by deleting “council, a committee,” and substituting the following—

“committee” .

Section 513
amended.

15. Section 513 of the principal Act is amended in subsection (1)—

- (a) by deleting “a revision court,” in paragraph (k); and
- (b) by deleting paragraph (l).

16. Section 533 is amended by repealing subsection (13) and substituting the following subsection—

Section 533
amended.

“ (13) If a poll is demanded under subsection (12) of this section the returning officer shall prepare for, conduct and ascertain the result of the poll. ” .

17. Section 611 of the principal Act is amended—

Section 611
amended.

(a) by repealing subsection (3) and substituting the following subsection—

“ (3) The returning officer shall prepare for conduct and ascertain the result of the poll. ”;

(b) by repealing subsection (4);

(c) in subsection (5) by deleting “registered as ratepayers on the roll and who pay rates in respect of land in that portion or those portions are entitled to vote at the poll, but otherwise all persons who are so registered” and substituting the following—

“ eligible to be registered as electors of the municipality in the capacity of owner, or nominee of the owner, of rateable property in that portion or those portions are entitled to vote at the poll, but otherwise all persons who are eligible to be registered as electors of the municipality in the capacity of owner, or nominee of the owner, of rateable property ”; and

(d) by repealing subsection (6).

18. Section 646 of the principal Act is amended in subsection (2) by deleting “one hundred and fifty-two” and substituting the following—

Section 646
amended.

“ one hundred and fifty-four L ” .

Section 692
amended.

19. Section 692 of the principal Act is amended in subsection (1) by inserting before "loans" the following—

" the mode of election to the office of mayor or president of a municipality, petitions mentioned in section 12, the system of valuation of rateable land, " .

Certain
Schedules
deleted.

20. The Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh and Twenty-sixth Schedules to the principal Act are deleted.

PART III.—SAVING AND TRANSITIONAL PROVISIONS.

Interpreta-
tion.

21. In this Part—

"the amended provisions" means the provisions of the principal Act as amended by this Act;

"the previous provisions" means the provisions of the principal Act as in force before the coming into operation of this Act.

Elections
and polls.

22. (1) If—

(a) an election to fill a vacancy in the office of member of a council; or

(b) a poll,

is held before the first annual election after the coming into operation of this Act it shall be conducted in accordance with the previous provisions and, to that extent those provisions shall be deemed to remain in force.

(2) Notwithstanding subsection (1) of this section if an annual electoral roll has been prepared under the amended provisions that roll shall be used for an election or poll referred to in that subsection.

Electoral
roll.

23. For the purposes of the amended provisions the electoral roll of a municipality as in existence

immediately before the coming into operation of this Act shall be regarded as an annual electoral roll prepared under Division 1 of Part IV of the amended provisions.

24. Any order or nomination in force under section 35 of the previous provisions immediately before the coming into operation of this Act shall subsist and enure for the purposes of section 65 of the amended provisions.

Qualification
of nominees.

25. (1) Subject to the amended provisions a person elected or appointed to the office of a member of the council of a municipality under the previous provisions (including a person so elected or appointed after the coming into operation of this Act) shall hold office for the term for which he would have held office under the previous provisions but expiring on the first Saturday in May of the relevant year.

Members of
councils.

(2) Notwithstanding section 65 of the amended provisions a person referred to in subsection (1) of this section shall not be disqualified from acting or continuing to act in his office for the remainder of his term, as preserved by that subsection, on the grounds that he is not registered as an elector on the electoral roll of the municipality so long as he is an owner of rateable property within the district.

26. (1) A reference in section 141 of the amended provisions to a person elected or appointed to the office of mayor or president in accordance with that section includes a reference to a person so elected or appointed in accordance with section 73 of the previous provisions.

References
to mayor,
president
and
deputies.

(2) A reference in section 143 of the amended provisions to the deputy mayor or deputy president or to a person elected or appointed to that office in accordance with that section includes a reference to a person so elected or appointed in accordance with section 75 of the previous provisions.

Interpreta-
tion Act
1918 not
affected.

27. The provisions of this Part do not prejudice or affect the application of the Interpretation Act 1918 to and in relation to the amendments and repeals effected by this Act.
