



# Electoral Act 1992

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## **Reprint note**

Sections 304 and 389 were incorrectly omitted from an earlier version of this reprint.

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## Queensland

# Electoral Act 1992

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# Electoral Act 1992

**An Act relating to the parliamentary elections, and for other purposes**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Electoral Act 1992*.

### 2 Definitions

In this Act—

*2013–2014 financial year*, for part 11, division 12, subdivision 2, see section 197.

*agent*, for part 11, see section 197.

*Antarctic elector* has the meaning given by the Commonwealth Electoral Act, section 246(1).

*appointed commissioner* means the chairperson or the nonjudicial appointee.

*approved form* means a form approved under section 389.

*associated entity*, for part 11, see section 197.

*auditor*, for part 11, see section 197.

*Australian parliament* means the parliament of the Commonwealth or a State or Territory.

*authorised officer*, for part 11, means a person who holds office under part 11, division 14 as an authorised officer.

***average number of enrolled electors for electoral districts*** has the meaning given by section 3.

***broadcast*** includes televise.

***broadcaster*** means—

- (a) the Australian Broadcasting Corporation established under the *Australian Broadcasting Corporation Act 1983* (Cwlth); or
- (b) the Special Broadcasting Service Corporation established under the *Special Broadcasting Service Act 1991* (Cwlth), section 5; or
- (c) the holder of a licence under the *Broadcasting Services Act 1992* (Cwlth); or
- (d) the provider of a broadcasting service under a class licence under the *Broadcasting Services Act 1992* (Cwlth).

***by-election***, for part 11, see section 197.

***candidate***, in relation to an election—

- (a) means a person who has become a candidate under section 93(3); and
- (b) for part 11, includes an elected member or other person who has announced or otherwise indicated an intention to be a candidate in the election.

***chairperson*** means the chairperson of the commission.

***commission*** means the Electoral Commission of Queensland.

***commissioner*** means a commissioner of the commission.

***Commonwealth Electoral Act*** means the *Commonwealth Electoral Act 1918* (Cwlth).

***Commonwealth electoral roll*** means an electoral roll under the Commonwealth Electoral Act.

***complying constitution*** see section 76.

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***continuing candidate***, in relation to a counting of votes, means a candidate who has not been excluded at a previous count of votes.

***court***, for part 11, means a Magistrates Court.

***cut-off day for electoral rolls*** means—

- (a) for an election—the day so described in the writ for the election; and
- (b) for a referendum—the day so described in the writ for the referendum.

***cut-off day for the nomination of candidates***, in relation to an election, means the day so described in the writ for the election.

***day for the return of a writ*** means the day so described in the writ.

***declaration envelope*** means—

- (a) a declaration envelope under section 121; or
- (b) another envelope on which there is a declaration to be made by an elector for the purposes of this Act.

***disclosure period***, for part 11, see section 197.

***disposition of property***, for part 11, see section 197.

***disqualifying electoral offence*** means an offence, of which an offender is convicted after the commencement of the *Electoral and Other Acts Amendment Act 2002*, section 5—

- (a) that relates to—
  - (i) an election of a member of an Australian parliament; or
  - (ii) an election to the office of chairperson, mayor, president, councillor or member of a local government, or to an equivalent office in another State; or
  - (iii) a referendum conducted under a law of the State, another State or the Commonwealth; or

- (iv) the enrolment of a person on an electoral roll; and
- (b) for which the penalty imposed included a sentence of imprisonment, other than a sentence of imprisonment for non-payment of a fine, restitution or other amount.

**distribute** a how-to-vote card—

- (a) includes make the card available to other persons; but
- (b) does not include merely display the card.

*Examples—*

- 1 A person ‘distributes’ how-to-vote cards if the person hands the cards to other persons or leaves them at a place for other persons to take away.
- 2 A person does not ‘distribute’ how-to-vote cards if the person attaches the cards to walls and other structures, merely for display.

**document certification requirement** see section 360(6).

**document production requirement** see section 360(2).

**elected member**, for part 11, see section 197.

**election** means an election of a member or members of the Legislative Assembly.

**election matter** means anything able to, or intended to—

- (a) influence an elector in relation to voting at an election; or
- (b) affect the result of an election.

**election period** for an election means the period—

- (a) beginning on the day after the writ for the election is issued; and
- (b) ending at 6p.m. on the polling day for the election.

**elector** means a person entitled to vote under this Act.

**electoral expenditure**, for part 11, see section 197.

**electoral matter** means a matter relating to elections.

**electoral redistribution** means a redistribution of the State into electoral districts in accordance with part 3.

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***electoral visitor voter*** has the meaning given by section 114(4).

***electronic document***, for part 11, means a document of a type under the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

***eligible registered political party*** see section 239.

***exhausted ballot paper***, in relation to a count of votes, means a ballot paper on which there is not recorded a vote for a continuing candidate.

***financial controller***, for part 11, see section 197.

***first preference vote*** means the number 1 or a tick or cross written in a square opposite the name of a candidate on a ballot paper.

***formal ballot paper*** has the meaning given by section 123(4).

***former owner***, for part 11, see section 355(1).

***fundraising contribution***, for part 11, see section 197.

***general election*** means an election for the members of the Legislative Assembly.

***general power***, for part 11, see section 342(1).

***gift***, for part 11, see section 197.

***gift threshold amount***, for the amount or value of a gift or loan, see section 201A.

***help requirement*** see section 343(1).

***how-to-vote card*** means a card, handbill or pamphlet that—

- (a) is or includes—
  - (i) a representation of a ballot paper or part of a ballot paper; or
  - (ii) something apparently intended to represent a ballot paper or part of a ballot paper; or
- (b) lists the names of any or all of the candidates for an election with a number indicating an order of voting

preference against the names of any or all of the candidates; or

- (c) otherwise directs or encourages the making of preference votes, other than first preference votes, in a particular way.

**identity card**, for a provision about authorised officers, means an identity card issued under section 325(1).

**illegal election practice** means any contravention of this Act.

**informal ballot paper** has the meaning given by section 123(5).

**information notice**, about a decision, for part 11, see section 197.

**institution** means—

- (a) a hospital; or  
(b) a convalescent home; or  
(c) a nursing home; or  
(d) a home for the aged; or  
(e) a hostel for the aged or infirm; or  
(g) another place that is declared by a regulation to be an institution; or  
(h) any part of a place to which paragraphs (a) to (g) apply.

**issuing officer** means a member of the commission's staff who is responsible for issuing ballot papers or declaration envelopes under this Act or the *Referendums Act 1997* to electors at an election or referendum.

**journal**, for part 11, see section 197.

**loan**, for part 11, see section 197.

**member** of a political party means a person who is a member of the political party or a related political party.

**mobile polling booth** has the meaning given by section 99.



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***nonjudicial appointee*** means the commissioner mentioned in section 6(2)(c).

***notice***, for part 11, means a written notice.

***occupier***, of a place, for part 11, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

***of***, a place, for part 11, includes at or on the place.

***offence warning***, for a direction or requirement by an authorised officer, for part 11, means a warning that, without a reasonable excuse, it is an offence for the person to whom the direction or requirement is made not to comply with it.

***ordinary polling booth*** has the meaning given by section 99.

***ordinary postal voter*** see section 114(1)(a).

***ordinary vote*** means a vote that is not a declaration vote.

*Note—*

Part 7, division 5, subdivision 3 is about the meaning and operation of declaration voting.

***ordinary voting hours*** means voting hours in relation to ordinary polling booths.

***owner***, of a thing that has been seized under part 11, includes a person who would be entitled to possession of the thing had it not been seized.

***parliament*** of a Territory means the legislature of the Territory.

***parliamentary committee*** means—

- (a) if the Legislative Assembly resolves that a particular committee of the Assembly is to be the parliamentary committee under this Act—that committee; or

- (b) if paragraph (a) does not apply and the standing rules and orders state that the portfolio area of a portfolio committee includes the Electoral Commission of Queensland—that committee; or
- (c) otherwise—the portfolio committee whose portfolio area includes the department, or the part of a department, in which this Act is administered.

***parliamentary party*** means a political party of which at least 1 member is a member of an Australian parliament.

***payment direction***, for part 11, see section 227.

***personal details requirement***, for part 11, see section 358(5).

***person in control***, for part 11—

- (a) of a vehicle, includes—
  - (i) the vehicle’s driver or rider; and
  - (ii) anyone who reasonably appears to be, claims to be, or acts as if he or she is, the vehicle’s driver or rider or the person in control of the vehicle; or
- (b) of another thing, includes anyone who reasonably appears to be, claims to be, or acts as if he or she is, the person in possession or control of the thing.

***place***, for part 11, includes the following—

- (a) premises;
- (b) vacant land;
- (c) a place in Queensland waters;
- (d) a place held under more than 1 title or by more than 1 owner;
- (e) the land or water where a building or structure, or a group of buildings or structures, is situated.

***policy development payment*** see section 197.

***political party*** means an organisation whose object, or 1 of whose objects, is the promotion of the election to the

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Legislative Assembly of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part.

***polling booth*** means an ordinary polling booth, a mobile polling booth or a pre-poll voting office.

***polling day***, in relation to an election, means the day so described in the writ for the election.

***polling place*** means—

- (a) a polling booth; or
- (b) another place where voting takes place.

***portfolio area*** see the *Parliament of Queensland Act 2001*, schedule.

***portfolio committee*** see the *Parliament of Queensland Act 2001*, schedule.

***postal voter*** means an elector who is—

- (a) an ordinary postal voter; or
- (b) a special postal voter.

***premises***, for part 11, includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) a caravan or vehicle; and
- (d) a cave or tent; and
- (e) premises held under more than 1 title or by more than 1 owner.

***pre-poll ordinary vote*** see section 110(2).

***pre-poll voting office***, for an electoral district, see section 111(1)(a).

***preselection ballot***—

- (a) means the process, or that part of the process, of selecting a candidate to be endorsed by a political party for an election, or an election for a local government, in which a member of the party votes in a ballot in his or

her capacity as a member of the party, rather than as a member of a committee (however called) of the party, for the candidate; and

- (b) includes matters preparatory to the ballot and the scrutiny and counting of votes in the ballot.

*Example—*

If the selection of a candidate involves a poll of the party members and the endorsement of the poll result by a party committee, only the poll is a preselection ballot.

***publicly available part of an electoral roll*** means that part of an electoral roll that does not contain—

- (a) if section 58(5) applies in relation to a person whose name is on the roll—the address of the person; and
- (b) in any case—information of a kind declared by regulation to be restricted information.

***public place***, for part 11, means—

- (a) a place, or part of the place—
  - (i) the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or

*Examples of a place that may be a public place under subparagraph (i)—*

a beach, a park, a road

- (ii) the occupier of which allows, whether or not on payment of money, members of the public to enter; or

*Examples of a place that may be a public place under subparagraph (ii)—*

a saleyard, a showground

- (b) a place that is a public place under another Act.

***Queensland parliamentary party*** means a parliamentary party of which at least 1 member is a member of the Legislative Assembly.

***reasonably believes***, for part 11, means believes on grounds that are reasonable in the circumstances.

***reasonably suspects***, for part 11, means suspects on grounds that are reasonable in the circumstances.

***referendum*** means a referendum under the *Referendums Act 1997*.

***registered***, for part 11, see section 197.

***registered officer*** of a registered political party means the person shown in the register of political parties as the party's registered officer, and includes a person nominated under section 74 as deputy of a party's registered officer.

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

***register of agents***, for part 11, see section 197.

***register of candidates*** means the register kept under section 101.

***register of political parties*** means the register kept under section 70.

***register of special postal voters*** means the register kept under section 68.

***registrable political party*** means a political party that—

- (a) either—
  - (i) is a parliamentary party; or
  - (ii) has at least 500 members who are electors; and
- (b) is established on the basis of a written constitution (however described) that sets out the aims of the party.

***related political party*** has the meaning given by section 5.

***relevant election***, for part 11, division 12, subdivision 1, see section 297.

***relevant particulars*** see section 197.

***reporting period***, for part 11, see section 197.

***scrutineer*** means a person appointed under section 104.

***secretary*** of a political party means the person who holds the office (however described) whose duties involve responsibility for carrying out the administration, and dealing with the external correspondence, of the party.

***senior electoral officer*** means the electoral commissioner or the deputy electoral commissioner.

***special postal voter*** has the meaning given by section 114(3).

***special reporting period***, for part 11, division 7, subdivision 3, see section 266A.

***standing rules and orders*** see the *Parliament of Queensland Act 2001*, schedule.

***third party***, for part 11, see section 197.

***vehicle***, for part 11—

- (a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and
- (b) includes a vessel under that Act.

***voting compartment*** means a compartment in a polling place where electors may vote in private.

***voting hours*** of a polling place means the hours during which electors may enter the polling place.

### **3 Average number of enrolled electors for electoral districts**

- (1) In this Act—

***average number of enrolled electors for electoral districts*** means the number worked out by dividing the total number of enrolled electors for all electoral districts by 89.

- (2) If the number includes a fraction, the number must be rounded to the nearest whole number (rounding one-half upwards).

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#### **4 When electoral redistribution etc. becomes final**

For the purpose of this Act, any electoral redistribution undertaken under this Act becomes final when all appeals, and proceedings in relation to appeals, that have been instituted under section 57 have been determined and the time for all such appeals and proceedings to be instituted has passed.

#### **5 Related political parties**

For the purposes of this Act, 2 political parties are related political parties if—

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

## **Part 2 Administration**

### **Division 1 The electoral commission**

#### **6 Establishment of Electoral Commission of Queensland etc.**

- (1) A commission called the Electoral Commission of Queensland is established.
- (2) When the commission is performing its functions under part 3, the commission consists of the following commissioners—
  - (a) the chairperson;
  - (b) the electoral commissioner;
  - (c) 1 other commissioner.
- (3) When the commission is performing its functions other than its functions under part 3, the commission consists solely of the electoral commissioner.

- (4) The chairperson and the nonjudicial appointee—
  - (a) are to be appointed by the Governor in Council; and
  - (b) hold office on a part-time basis.
- (5) The person appointed as chairperson must—
  - (a) be a judge or former judge of a court of the Commonwealth or a State or Territory; and
  - (b) have been a judge for at least 3 years.
- (6) A person appointed as the nonjudicial appointee must be—
  - (a) the chief executive of a department; or
  - (b) the holder of an office established by or under an Act that the Governor in Council considers to be equivalent to the chief executive of a department.
- (7) A person may be appointed as the chairperson or nonjudicial appointee only if the Minister has consulted—
  - (a) with each member of the Legislative Assembly recognised as the leader of a political party represented in the Assembly about the proposed appointment; and
  - (b) with the parliamentary committee about—
    - (i) the process of selection for appointment; and
    - (ii) the appointment of the person as the chairperson or nonjudicial appointee.

## **7 Functions and powers of commission**

- (1) The functions of the commission are to—
  - (a) perform functions that are permitted or required to be performed by or under this Act, other than functions that a specified person or body, or the holder of a specified office, is expressly permitted or required to perform; and
  - (b) conduct a review of the appropriateness of the number of electoral districts whenever the Minister requests it, in writing, to conduct such a review, and report to the Minister the results of the review; and



- (c) consider, and report to the Minister on—
    - (i) electoral matters referred to it by the Minister; and
    - (ii) such other electoral matters as it considers appropriate; and
  - (d) promote public awareness of electoral matters by conducting education and information programs and in other ways; and
  - (e) implement strategies to encourage persons, particularly those belonging to groups with traditionally low enrolment rates, to enrol as electors; and
  - (f) implement strategies to maintain the integrity of the electoral rolls; and
  - (g) provide information and advice on electoral matters to the Legislative Assembly, the government, departments and government authorities; and
  - (h) conduct and promote research into electoral matters and other matters that relate to its functions; and
  - (i) publish material on matters that relate to its functions; and
  - (j) perform any other functions that are conferred on it by or under another Act.
- (2) The commission (the *Queensland commission*) may perform any of its functions under subsection (1)(d) to (i) in conjunction with the Australian Electoral Commission.
- (3) The Governor may arrange with the Governor-General for the performance by the Australian Electoral Commission of any functions on behalf of the Queensland commission.
- (4) The Commission may do all things necessary or convenient to be done for or in connection with the performance of its functions.

## **8 Queensland redistribution commission**

When performing its functions under part 3, the commission is to be known as the Queensland Redistribution Commission.

## **9 Tenure and terms of office**

- (1) An appointed commissioner holds office, subject to this division, for such term (not longer than 7 years) as is specified in the commissioner's instrument of appointment.
- (2) If the nonjudicial appointee was at the time of appointment the chief executive of a department, the person ceases to hold office if the person no longer holds office as chief executive of a department.
- (3) If the nonjudicial appointee was at the time of appointment the holder of an office mentioned in section 6(6)(b), the person ceases to hold office if the person no longer holds that office and does not hold office as chief executive of a department.
- (4) An appointed commissioner holds office on such terms, relating to remuneration and other matters not provided for by this Act, as are determined by the Governor in Council.
- (5) An appointed commissioner is to be appointed under this Act, and not under the *Public Service Act 2008*.

## **10 Leave of absence**

The commission may grant an appointed commissioner leave of absence from a meeting of the commission.

## **11 Resignation**

An appointed commissioner may resign office by signed notice given to the Governor.

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## 12 Disclosure of interests

- (1) A commissioner who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the commission must, as soon as possible after the relevant facts have come to the commissioner's knowledge, disclose the nature of the interest at a meeting of the commission.
- (2) The disclosure must be recorded in the minutes of the meeting of the commission and the commissioner must not, unless the Minister otherwise determines—
  - (a) be present during any deliberation of the commission in relation to the matter; or
  - (b) take part in any decision of the commission in relation to the matter.

## 13 Termination of appointment

The Governor in Council must terminate the appointment of an appointed commissioner if the appointed commissioner—

- (a) accepts nomination for election to an Australian parliament; or
- (b) becomes a member of a political party; or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (d) is absent, without the commission's leave and without reasonable excuse, from 3 consecutive meetings of the commission; or
- (e) contravenes section 12 without reasonable excuse.

## 14 Acting appointments

The Governor in Council may appoint a person to act as an appointed commissioner—

- (a) during a vacancy in the office; or

- (b) during any period, or all periods, when the appointed commissioner is absent from duty or from Australia or is, for another reason, unable to perform the functions of the office.

## **15 Meetings of commission**

- (1) The chairperson may, at any time, convene a meeting of the commission.
- (2) If the chairperson is absent or otherwise unavailable to perform the chairperson's duties and no one is acting as chairperson, the electoral commissioner may convene a meeting of the commission.
- (3) The chairperson must convene such meetings of the commission as, in the chairperson's opinion, are necessary for the efficient performance of its functions.
- (4) At a meeting of the commission, 2 commissioners constitute a quorum.
- (5) The chairperson must preside at all meetings of the commission at which the chairperson is present.
- (6) If the chairperson is not present at a meeting of the commission, the commissioners present must choose 1 of them to preside.
- (7) Questions arising at a meeting of the commission are to be determined by a majority of the votes of the commissioners present and voting.
- (8) The person presiding at a meeting of the commission has a deliberative vote and, if the votes on a question are equal, also has a casting vote.
- (9) If, at a meeting of the commission at which only 2 commissioners are present (other than a meeting from which a commissioner is absent because of section 12), the commissioners differ in opinion on any matter, the determination of the matter must be postponed to a meeting of the commission at which all commissioners are present.

- 
- (10) The commission may regulate the conduct of proceedings at its meetings as it considers appropriate.
  - (11) This section applies to the commission only when it is performing its functions under part 3.

## **16 Estimates**

- (1) The commission must give the Minister a statement in relation to each financial year setting out—
  - (a) estimates of the commission's receipts and expenditure for the financial year; and
  - (b) the purpose of the expenditure; and
  - (c) the commission's receipts and expenditure for the previous financial year; and
  - (d) if the commission has previously given the Minister a statement under this section in relation to the previous financial year—the estimates of receipts and expenditure set out in the statement.
- (2) The commission must comply with any request by the Minister relating to the time when the statement is to be given to the Minister.

## **17 Delegation by commission**

- (1) The commission may, by resolution, delegate to a commissioner, a senior electoral officer or a member of the commission's staff its powers under part 3 (other than under sections 44 to 46 or section 50).
- (2) A certificate signed by the chairperson stating any matter with respect to a delegation of a power under subsection (1) is prima facie evidence of the matter.
- (3) The commission must not delegate its power under section 235(1).
- (4) The electoral commissioner may delegate to the deputy electoral commissioner or a member of the commission's staff

the commission's powers under this Act (other than under part 3 or section 235(1)).

- (5) A certificate signed by the electoral commissioner, stating any matter with respect to a delegation of power under subsection (4) is prima facie evidence of the matter.
- (6) A document purporting to be a certificate under subsection (2) or (5) is taken to be such a certificate unless the contrary is established.

## **18 Reports by commission**

- (1) As soon as practicable after, but not more than 4 months after, the end of each financial year, the commission must give to the Minister a report of the commission's operations during that year.
- (2) The commission must, as soon as practicable after the return of the writ for an election, give to the Minister a report on the operation of part 7 in relation to the election.
- (3) The Minister must cause a copy of each report given to the Minister (whether under this section or otherwise) to be laid before the Legislative Assembly within 3 sitting days after the Minister receives the report.

## **19 Electoral officer accountable officer**

For the *Financial Accountability Act 2009*, the electoral commissioner is the accountable officer of the commission.

## **Division 2 Electoral commissioner and deputy electoral commissioner**

### **20 Electoral commissioner**

There is to be an electoral commissioner.

---

## **21 Deputy electoral commissioner**

- (1) There may be a deputy electoral commissioner.
- (2) Subject to any directions by the commission, the deputy electoral commissioner is to perform such duties as the electoral commissioner directs.
- (3) The deputy electoral commissioner is to act as the electoral commissioner—
  - (a) during vacancies in the office of the electoral commissioner; or
  - (b) during periods when the electoral commissioner is absent from duty or Australia or is, for another reason, unable to perform the functions of the office.
- (4) While the deputy electoral commissioner is acting as electoral commissioner—
  - (a) the deputy electoral commissioner has all the powers and functions of the electoral commissioner; and
  - (b) this Act and other Acts apply to the deputy electoral commissioner as if the deputy electoral commissioner were the electoral commissioner.
- (5) Anything done by or in relation to the deputy electoral commissioner while the deputy electoral commissioner is purporting to act as electoral commissioner is not invalid merely because the occasion for the deputy electoral commissioner to act had not arisen or had ceased.

## **22 Terms and conditions of appointment etc.**

- (1) A senior electoral officer is to be appointed by the Governor in Council.
- (2) A person may be appointed as a senior electoral officer only if—
  - (a) press advertisements have been placed nationally calling for applications from suitably qualified persons to be considered for appointment; and

- (b) the Minister has consulted—
  - (i) with each member of the Legislative Assembly recognised as the leader of a political party represented in the Assembly about the proposed appointment; and
  - (ii) with the parliamentary committee about—
    - (A) the process of selection for appointment; and
    - (B) the appointment of the person as the senior electoral officer.
- (3) Subsection (2)(a) and (b)(i) does not apply to the reappointment of a person as senior electoral officer.
- (4) A person who is a member of a political party is not to be appointed as a senior electoral officer.
- (5) A senior electoral officer holds office, subject to this part, for such term (not longer than 7 years) as is specified in the senior electoral officer's instrument of appointment.
- (6) A senior electoral officer is to be appointed under this Act, and not under the *Public Service Act 2008*.
- (7) If an officer of the public service is appointed as a senior electoral officer, the person retains and is entitled to all rights that have accrued to the person because of employment as an officer of the public service, or that would accrue in the future because of that employment, as if service as a senior electoral officer were a continuation of service as an officer of the public service.
- (8) A senior electoral officer holds office on such terms, relating to remuneration and other matters not provided for by this Act, as are determined by the Governor in Council.

## **23 Leave of absence**

- (1) The Minister may grant leave of absence to the electoral commissioner on such terms as the Minister determines.



- (2) The commission may grant leave of absence to the deputy electoral commissioner on such terms as the commission determines.

## **24 Resignation**

A senior electoral officer may resign office by signed notice given to the Governor.

## **25 Termination of appointment**

- (1) The Governor in Council may terminate the appointment of a senior electoral officer for misbehaviour or physical or mental incapacity.
- (2) The Governor in Council must terminate a senior electoral officer's appointment if the senior electoral officer—
- (a) accepts nomination for election to an Australian parliament; or
  - (b) becomes a member of a political party; or
  - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
  - (d) is absent, without leave of absence and without reasonable excuse, for—
    - (i) 14 consecutive days; or
    - (ii) 28 days in any year; or
  - (e) contravenes section 12 without reasonable excuse; or
  - (f) engages in paid employment outside the duties of the office without the Minister's approval.

## **26 Acting electoral commissioner**

The Governor in Council may appoint a person, who is eligible for appointment as electoral commissioner, to act as electoral commissioner during—

- (a) any vacancy, or all vacancies, in the office; or
- (b) any period, or all periods, when the electoral commissioner is absent from duty, or can not, for another reason, perform the duties of office.

## **27 Acting deputy electoral commissioner**

The Governor in Council may appoint a person, who is eligible for appointment as deputy electoral commissioner, to act as deputy electoral commissioner during—

- (a) any vacancy, or all vacancies, in the office; or
- (b) any period, or all periods, when the deputy electoral commissioner is absent from duty, or can not, for another reason, perform the duties of the office.

## **28 Notice of appointment**

Notice of the appointment of a person as, or to act as, a senior electoral officer must be published in the gazette.

# **Division 3 Staff of the commission**

## **29 Staff**

- (1) The staff of the commission consist of—
  - (a) electoral registrars, returning officers and assistant returning officers appointed under this division; and
  - (b) other staff necessary for the performance of the commission's functions.

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- (2) The staff of the commission are to be employed under the *Public Service Act 2008*.
  - (3) Subsection (2) does not apply to—
    - (a) electoral registrars, returning officers and assistant returning officers; and
    - (b) persons employed on a temporary basis in connection with the conduct of a particular election or referendum.
  - (4) The commission may, on behalf of the State, employ persons on a temporary basis in connection with the conduct of a particular election or referendum.

### **30 Electoral registrars**

- (1) The Governor in Council may, on the recommendation of the commission, appoint 1 or more electoral registrars for an electoral district.
- (2) A person may be appointed as electoral registrar for 2 or more electoral districts.
- (3) Divisional returning officers under the Commonwealth Electoral Act may be appointed as electoral registrars if the appointments are made under an arrangement between the Governor and the Governor-General.
- (4) A person must not be appointed as an electoral registrar if the person is a member of a political party.
- (5) Without limiting the powers of the Governor in Council to terminate the appointment of electoral registrars, the Governor in Council must terminate the appointment of an electoral registrar if the electoral registrar becomes a member of a political party.
- (6) An electoral registrar must act in accordance with any directions given by the commission.

### **31 Returning officers**

- (1) The Governor in Council may, on the recommendation of the commission, appoint an elector as the returning officer for an electoral district.
- (2) A person must not be appointed as a returning officer if the person is—
  - (a) a minor; or
  - (b) a member of a political party.
- (3) Without limiting the powers of the Governor in Council to terminate the appointment of returning officers, the Governor in Council must terminate the appointment of a returning officer if the returning officer becomes a member of a political party.
- (4) A returning officer must act in accordance with any directions given by the commission.

### **32 Assistant returning officers**

- (1) The Governor in Council may, on the recommendation of the commission, appoint an elector as assistant returning officer, or electors as assistant returning officers, for an electoral district.
- (2) A person must not be appointed as an assistant returning officer if the person is—
  - (a) a minor; or
  - (b) a member of a political party.
- (3) Without limiting the powers of the Governor in Council to terminate the appointment of assistant returning officers, the Governor in Council must terminate the appointment of an assistant returning officer if the assistant returning officer becomes a member of a political party.
- (4) An assistant returning officer must assist the returning officer for the electoral district in performing the returning officer's functions under this Act.

- (5) The commission may appoint an assistant returning officer for an electoral district to act as the returning officer for the electoral district—
  - (a) during a vacancy in the office of returning officer; or
  - (b) during any period, or all periods, when the returning officer is absent from duty or Australia or is, for another reason, unable to perform the functions of the office.
- (6) While an assistant returning officer is assisting the returning officer or acting as returning officer—
  - (a) the assistant returning officer has all the powers and functions of the returning officer; and
  - (b) this Act applies to the assistant returning officer as if the assistant returning officer were the returning officer.
- (7) The commission may appoint a person to act as an assistant returning officer during any period, or all periods, when—
  - (a) there is not an assistant returning officer for an electoral district; or
  - (b) the assistant returning officer is absent from duty or Australia or is, for another reason, unable to perform the functions of the office.
- (8) While a person is acting as assistant returning officer—
  - (a) the person has all the powers and functions of the assistant returning officer; and
  - (b) this Act applies to the person as if the person were the assistant returning officer.
- (9) Anything done by or in relation to a person while the person is purporting to act under this section is not invalid merely because the occasion for the person to act had not arisen or had ceased.
- (10) An assistant returning officer must act in accordance with any directions given by the commission.

### **33 Confidentiality of information**

A person who is involved in the administration of this Act who gains information because of the person's involvement in the administration must not disclose the information to anyone else other than—

- (a) for the purposes of this Act; or
- (b) under the authority of another Act; or
- (c) in a proceeding before a court in which the information is relevant to the issue before the court.

Maximum penalty—40 penalty units or 18 months imprisonment.

## **Part 3 Electoral districts and electoral redistributions**

### **Division 1 Distribution etc. of State into electoral districts**

#### **34 Number of electoral districts for the State**

There are 89 electoral districts for the State.

#### **35 Distribution, and redistribution, of State into electoral districts**

- (1) Until the first electoral redistribution under this Act has become final, the State is distributed into electoral districts in accordance with the *Electoral Districts Act 1991*.
- (2) Division 2 describes when the need for electoral redistributions arises.
- (3) Subject to subsections (4) and (5), when the need for an electoral redistribution arises, the commission must, as soon

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as practicable, redistribute the State into the 89 electoral districts in the way set out in division 3.

- (4) If the need for an electoral redistribution arises more than 16 months after the day on which the writ for the previous general election was returned, the commissioner must defer undertaking the electoral redistribution until after the return of the writ for the next general election.
- (5) If—
  - (a) the need for an electoral redistribution arises in the period between the issue and return of a writ for a general election; or
  - (b) a writ for a general election is issued while the commission is undertaking an electoral redistribution;the commission must defer undertaking, or any further action in undertaking, the electoral redistribution until after the return of the writ.
- (6) If the commission is required by subsection (3) to undertake a redistribution, the commission must, as soon as practicable after the requirement arises, publish a gazette notice—
  - (a) stating that the requirement has arisen; and
  - (b) setting out the membership of the commission at the time.

## **Division 2                      When need for an electoral redistribution arises**

### **36            Need for electoral redistribution arises in 3 circumstances**

The need for an electoral redistribution arises if 1 of the following sections applies—

- (a) section 37;
- (b) section 38;

(c) section 39.

**37 Electoral redistribution because of changed number of electoral districts**

The need for an electoral redistribution arises if this Act is amended to change the number of electoral districts for the State.

**38 Electoral redistribution after certain number of elections and minimum period**

The need for an electoral redistribution arises—

- (a) 1 year after the day appointed for the return of writs for the third general election held after—
  - (i) the electoral distribution under the *Electoral Districts Act 1991* became final; or
  - (ii) an electoral redistribution, or the latest electoral redistribution, under this Act becomes final; or
- (b) 7.5 years after—
  - (i) the electoral distribution under the *Electoral Districts Act 1991* became final; or
  - (ii) an electoral redistribution, or the latest electoral redistribution, under this Act becomes final;

whichever is the later.

**39 Electoral redistribution because of enrolment changes**

- (1) The need for an electoral redistribution arises if the requirement set out in section 45 would not be satisfied in respect of one-third or more of electoral districts for 2 months in a row, assuming that it were applied by reference to the number of enrolled electors and the average number of enrolled electors for electoral districts as gazetted under section 63 for each of the months.



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- (2) For the purposes of subsection (1), it is not necessary that the requirement would not be satisfied in respect of the same one-third or more of electoral districts for the 2 months in a row.

#### **40 Situation if need for more than 1 electoral redistribution arises**

If, during the period beginning when the need for an electoral redistribution arises under section 37, 38 or 39 and ending when the electoral redistribution becomes final, the need for another electoral redistribution arises under any of those sections (including the same section)—

- (a) the need for the other electoral redistribution does not arise; and
- (b) for the purposes of any later application of section 39, any month occurring wholly or partly during the period is to be disregarded.

### **Division 3 How electoral redistributions are to be undertaken**

#### **41 Scope of division**

- (1) This division sets out the way in which the commission is to undertake an electoral redistribution.
- (2) The steps involved are—
  - (a) inviting suggestions (section 42); and
  - (b) inviting comments on the suggestions (section 43); and
  - (c) preparing a proposed electoral redistribution (sections 44 to 46); and
  - (d) publishing the proposed electoral redistribution (section 47); and
  - (e) inviting objections against the proposed electoral redistribution (section 48); and

- (f) inviting comments on the objections (section 49); and
  - (g) considering objections and comments (section 50); and
  - (h) making the electoral redistribution (section 51); and
  - (i) advertising the electoral redistribution (section 53); and
  - (j) tabling all relevant documents (section 54).
- (3) The division also contains provisions relating to—
- (a) when the redistribution takes effect (section 52); and
  - (b) appeals against boundaries of electoral districts (section 57).

## **42 Inviting suggestions**

- (1) As soon as practicable after the need for an electoral redistribution arises, the commission must invite suggestions from persons and bodies relating to the redistribution.
- (2) The invitation must be made by notice published in accordance with section 56.
- (3) The notice must state that suggestions are to be given to the commission in writing within 30 days after the notice is published in the gazette in accordance with section 56.

## **43 Inviting comments on suggestions**

- (1) As soon as practicable after the 30 days mentioned in section 42(3), the commission must make available for public inspection, without fee, copies of all suggestions given to it within the 30 days.
- (2) As soon as practicable after the 30 days, the commission must also publish a notice in accordance with section 56 that—
  - (a) advises of the availability for inspection of the copies of the suggestions; and
  - (b) states that any person or body may comment in writing to the commission on the suggestions within 21 days

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after the notice is published in the gazette in accordance with section 56.

- (3) As soon as practicable after the 21 days, the commission must make available for public inspection, without fee, copies of all comments given to it within the 21 days.
- (4) Suggestions and comments must be made available for public inspection at the commission's office and any other places in the State that the commission considers appropriate.

#### **44 Preparing proposed electoral redistribution**

- (1) As soon as practicable after the 21 days mentioned in section 43(2)(b), the commission must prepare a proposed redistribution of the State into electoral districts.
- (2) The proposed redistribution must include proposed names for the proposed electoral districts.
- (3) In preparing the proposed electoral redistribution, the commission must—
  - (a) take into account all suggestions and comments properly made under sections 42 and 43; and
  - (b) comply with the following sections—
    - (i) section 45;
    - (ii) section 46.

#### **45 Proposed electoral redistribution must be within numerical limits**

- (1) In preparing the proposed redistribution, the commission must ensure that the following requirement is satisfied, as at the end of the 21 days mentioned in section 43(2)(b), for each proposed electoral district—
  - (a) if the electoral district has an area of less than 100,000km<sup>2</sup>—that the number of enrolled electors does not differ from the average number of enrolled electors for electoral districts by more than 10%;

(b) if the electoral district has an area of 100,000km<sup>2</sup> or more—the sum of the number of enrolled electors and the additional large district number does not differ from the average number of enrolled electors for electoral districts by more than 10%.

(2) In subsection (1)(b)—

*additional large district number* means 2% of the number of km<sup>2</sup> in the area of the electoral district.

#### **46 Matters to be considered in preparing proposed electoral redistribution**

(1) In preparing the proposed redistribution, the commission must consider the following matters—

- (a) the extent to which there is a community of economic, social, regional or other interests within each proposed electoral district;
- (b) the ways of communication and travel within each proposed electoral district;
- (c) the physical features of each proposed electoral district;
- (d) the boundaries of existing electoral districts;
- (e) demographic trends in the State, with a view to ensuring as far as practicable that, on the basis of the trends, the need for another electoral redistribution will not arise under section 39 before it does under section 38.

(2) The commission may also consider the boundaries of local government areas to the extent that it is satisfied that there is a community of economic, social, regional or other interests within each local government area.

(3) The commission may give such weight to each of the matters set out in subsections (1) and (2) as it considers appropriate.

(4) It is the intention of the parliament—

- (a) that the way in which this section is to be applied in preparing the proposed redistribution should be for the commission alone to decide; and

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- (b) that decisions of the commission relating to the application of this section should be final and conclusive.
- (5) Without limiting subsection (4), a decision of the commission about—
- (a) the existence of any matter mentioned in subsection (1) or (2); or
  - (b) the weight (if any) to be given to each such matter;
- can not be called in question in an appeal under section 57.

#### **47 Publishing proposed electoral redistribution**

- (1) As soon as practicable after the commission has prepared the proposed electoral redistribution, it must comply with this section and section 48.
- (2) The commission must—
  - (a) make available for public inspection, without fee, at its office a single map showing, or a number of maps together showing, the names and boundaries of all proposed electoral districts; and
  - (b) make available for public inspection, without fee, at its office and at any other places in the State that the commission considers appropriate—
    - (i) a description of the boundaries of all proposed electoral districts; and
    - (ii) its reasons for redistributing the State in the way proposed (including the reasons of any commissioner who disagrees with the redistribution in that way).
- (3) The commission must display, in a place to which the public has ready access, and at any other place that the commission considers appropriate, in each proposed electoral district a map showing the boundaries of the proposed electoral district.

#### **48 Inviting objections against proposed electoral redistribution**

- (1) The commission must publish a notice in accordance with section 56 that—
  - (a) advises of the availability for inspection, and the display, of the things mentioned in section 47(2) and (3); and
  - (b) states that any person or body may object in writing to the commission against the proposed electoral redistribution within 30 days after publication of the notice in the gazette in accordance with section 56; and
  - (c) is accompanied by a single map showing, or a number of maps together showing, the names and boundaries of all proposed electoral districts.
- (2) At any time before publishing a notice under subsection (1), the commission may make public its proposed electoral redistribution.

#### **49 Inviting comments on objections**

- (1) As soon as practicable after the 30 days mentioned in section 48(1)(b), the commission must make available for public inspection, without fee, copies of all objections given to it within the 30 days.
- (2) As soon as practicable after the 30 days, the commission must also publish a notice in accordance with section 56 that—
  - (a) advises of the availability for inspection of the copies of the objections; and
  - (b) states that any person or body may comment in writing to the commission on the objections within 10 days after the notice is published in the gazette in accordance with section 56.
- (3) As soon as practicable after the 10 days, the commission must make available for public inspection, without fee, copies of all comments given to it within the 10 days.

- (4) Objections and comments must be made available for public inspection at the commission's office and any other places in the State that the commission considers appropriate.

## **50 Considering objections and comments**

If an objection or comment given to the commission within the period allowed under section 48 or 49 raises a matter that has not already been raised, or substantially raised, in a suggestion or comment under section 42 or 43, the commission must—

- (a) consider the objection or comment; and
- (b) make any changes to the proposed electoral redistribution that it considers would be necessary if sections 45 and 46 were being complied with.

## **51 Making electoral redistribution**

- (1) The commission must, within 60 days after the end of the 30 days mentioned in section 48(1)(b), publish a gazette notice stating that the State is redistributed into the electoral districts whose names and boundaries are set out in the notice.
- (2) The names and boundaries set out in the notice are to be the same as those for the proposed electoral redistribution, incorporating any changes made under section 50.
- (3) The commission may, at any time before publishing the notice, make public anything that it intends to publish in the notice.

## **52 When redistribution takes effect**

- (1) At the end of 21 days after the publication of the notice, but subject to section 57(6), the State is redistributed into the electoral districts, and those districts have the names, set out in the notice.
- (2) The State remains so redistributed until the next electoral redistribution becomes final.

### **53 Advertising electoral redistribution**

- (1) As soon as practicable after publishing the notice under section 51(1), the commission must comply with this section.
- (2) The commission must—
  - (a) make available for public inspection, without fee, at its office a single map showing, or a number of maps together showing, the names and boundaries of all electoral districts; and
  - (b) make available for public inspection, without fee, at its office and at any other places in the State that the commission considers appropriate—
    - (i) a description of the boundaries of all electoral districts in the State; and
    - (ii) its reasons for redistributing the State in that way (including the reasons of any commissioner who disagrees with the redistribution in that way).
- (3) The commission must display, in a place to which the public has ready access, and at any other place that the commission considers appropriate, in each electoral district a map showing the boundaries of the electoral district.
- (4) The commission must publish a notice advising of the availability for inspection, and the display, of the things mentioned in subsections (2) and (3) in—
  - (a) a newspaper circulating generally in the State; and
  - (b) any regional newspapers, circulating in any parts of the State, that the commission considers appropriate.

### **54 Tabling all relevant documents**

- (1) As soon as practicable after publishing the notice under section 51(1), the commission must give the Minister a copy of—
  - (a) all suggestions properly made to it under section 42; and
  - (b) all comments properly made to it under section 43; and



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- (c) the things made available for public inspection under section 47(2); and
  - (d) all objections properly made to it under section 48; and
  - (e) all comments properly made to it under section 49; and
  - (f) the notice published under section 51(1); and
  - (g) the commission's reasons for distributing the State in the way set out in the notice, together with the reasons of any commissioner who disagrees with the redistribution in that way.
- (2) The Minister must cause a copy of the things given to the Minister under subsection (1) to be laid before the Legislative Assembly within 5 sitting days after the Minister receives them.

## **55 Commission may hold public hearings**

Without limiting its powers under section 7(4), the commission may conduct such public hearings as it considers appropriate for the purposes of this division.

## **56 How notices are to be published**

If, under this division, the commission is required to publish a notice in accordance with this section, the commission must publish the notice in—

- (a) the gazette; and
- (b) a newspaper circulating generally in the State; and
- (c) any regional newspaper, circulating in a part of the State, that the commission considers appropriate.

## **57 Appeals against boundaries of electoral districts**

- (1) An elector may appeal to the Court of Appeal against the boundaries set out in the notice under section 51(1) on the

ground that the commission has not complied with this part in making the proposed electoral redistribution.

- (2) The appeal must be made—
  - (a) within 21 days after the publication of the notice; and
  - (b) in accordance with the rules of court of the Court of Appeal.
- (3) The commission is the respondent to the appeal.
- (4) If more than 1 appeal is made against the boundaries, every appeal must be dealt with in the same proceeding.
- (5) Any person having an interest in the appeal may apply to the court to be joined as a party to the appeal.
- (6) If an appeal is made, the notice under section 51(1) does not take effect until the appeal has been disposed of by the court.
- (7) On the hearing of the appeal under this section, the court may—
  - (a) by order—
    - (i) quash the notice, in whole or part, and, subject to such directions as it considers appropriate, order the commission to make a fresh or amended notice under section 51(1); or
    - (ii) dismiss the appeal; and
  - (b) make any ancillary order as to costs or any other matter that it considers appropriate.
- (8) The court may make an order quashing the notice, in whole or part, only if the court is satisfied that—
  - (a) the commission has not complied with this part in making the proposed redistribution; and
  - (b) the noncompliance has had, or may have had, a significant effect on the boundaries of the electoral districts into which the State is to be redistributed under the notice under section 51(1); and
  - (c) the interests of justice require the making of the order.

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- (9) The validity of the electoral redistribution may only be called in question in an appeal under this section.
- (10) An appeal against the boundaries must—
- (a) be set down for hearing by the court as soon as practicable after the end of 21 days from the publication of the notice under section 51(1); and
  - (b) must be heard and determined by the court as a matter of urgency.
- (11) Except as provided in this section, a decision made, or appearing to have been made, by the commission or a commissioner under or for the purposes of this part—
- (a) is final and conclusive; and
  - (b) can not be challenged, appealed against, reviewed, quashed, set aside or otherwise called in question in any court or tribunal on any ground; and
  - (c) is not subject to mandamus, prohibition, certiorari, injunction or any declaratory or other order of any court on any ground.

*Note—*

*Judicial Review Act 1991, section 41—*

#### **41 Certain prerogative writs not to be issued**

- (1) The prerogative writs of mandamus, prohibition or certiorari are no longer to be issued by the court.
- (2) If, before the commencement of this Act, the court had jurisdiction to grant any relief or remedy by way of a writ of mandamus, prohibition or certiorari, the court continues to have the jurisdiction to grant the relief or remedy, but must grant the relief or remedy by making an order, the relief or remedy under which is in the nature of, and to the same effect as, the relief or remedy that could, but for subsection (1), have been granted by way of such a writ.
- (3) In an enactment in force immediately before the commencement of this Act, a reference to a writ of mandamus, prohibition or certiorari is taken to be a reference to an order of a kind that the court is empowered to make under this section.

- (12) In this section—  
*decision* includes a failure to make a decision.

## **Part 4                      Electoral rolls**

### **Division 1                      Commission to keep electoral rolls**

#### **58                      Commission to keep electoral rolls**

- (1) The commission must keep an electoral roll for each electoral district.
- (2) Each electoral roll must, in accordance with this part, contain information in relation to the persons entitled to be enrolled for the electoral district.
- (3) Each electoral roll must also set out, in relation to each person—
  - (a) the person’s surname and given names; and
  - (b) the person’s address; and
  - (c) the person’s sex, occupation and date of birth; and
  - (d) an identifying number; and
  - (e) any other prescribed information.
- (4) Each electoral roll may also set out, for each person who holds office—
  - (a) as a justice of the peace—the initials ‘JP’ after the person’s name; or
  - (b) as a commissioner for declarations—the initials ‘Cd’ after the person’s name.
- (5) If the commission is satisfied that the inclusion on a roll of a person’s address would place at risk the personal safety of the

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person or another person, the person's address must not be set out in the publicly available part of the roll.

- (6) For the purposes of subsection (3)(b), a person's address may, in the case of a roll prepared otherwise than in a printed form, be stated as a post office box number, mail service number or in another appropriate way in addition to the person's residential address.
- (7) For the purposes of this Act, the commission may ask a government entity prescribed under a regulation to give the commission information of the kind mentioned in subsection (3)(a) to (c) as shown in any records kept by the entity.

*Example—*

The commission may ask a local government for the names of all ratepayers living in a particular local government area.

- (8) Also, to enable the commission to decide the persons who are not entitled to vote because of section 106(3), the commission may ask the chief executive (corrective services) to give the commission information about persons who are serving sentences of imprisonment for offences against the law of the Commonwealth or of a State or Territory.
- (9) The entity or chief executive (corrective services) must give the commission the information as soon as practicable after receiving the request.
- (10) The chief executive officer of the entity may, before giving the information, require payment of a fee decided by the chief executive officer that reasonably reflects the cost of extracting the information from the entity's records.
- (11) The entity need not give the information about a person if the entity reasonably suspects that disclosing the information would be likely to endanger the person's safety.
- (12) Subsection (9) has effect despite the provisions of any other Act that would otherwise permit or require the entity to refuse the commission's request.
- (13) In this section—

*government entity* includes—

- (a) a local government; and
- (b) a department, service, agency, authority, commission, corporation, instrumentality, board, office or other entity established for a State government purpose; and
- (c) a part of an entity mentioned in paragraph (b);

but does not include the police service or the Crime and Corruption Commission.

## **59 Preparation of electoral rolls**

- (1) The commission must prepare all electoral rolls as soon as practicable after—
  - (a) an electoral redistribution becomes final; or
  - (b) the cut-off day for electoral rolls for an election or referendum; or
  - (c) 2 years pass after the day on which the writ for the last general election was returned.
- (2) The commission may also prepare all or any of the electoral rolls at any other time that it considers appropriate.
- (3) Subject to subsection (4), the electoral rolls may be prepared—
  - (a) in a printed form; or
  - (b) on microfiche, computer disk or computer tape; or
  - (c) in another form determined by the commission.
- (4) If subsection (1)(c) applies, the rolls—
  - (a) must be prepared in a printed form; but
  - (b) may be prepared in another form determined by the commission.

## 60 Inspection of publicly available parts of electoral rolls

- (1) The commission must make available for inspection by any person, without fee, a copy of the most recent printed version of the publicly available part of all electoral rolls—
  - (a) at the office of the commission; and
  - (b) at the office (if any) of each returning officer.
- (2) The commission may also make available for inspection by any person, without fee, a copy of the most recent version, in a non-printed form, of the publicly available part of any electoral roll at any place that the commission considers appropriate.

## 61 Information on electoral rolls to be provided to particular people and organisations

- (1) The following table sets out persons and organisations to whom the commission must give stated information about electoral rolls and states the information to be given and the circumstances in which it is to be given.

### Mandatory provision of information on electoral rolls

Item	Person or organisation	Information to be given	Circumstances in which information is to be given
1	a candidate for an election	a certified copy, in a form decided by the commissioner, of the entire electoral roll for the electoral district for which the candidate is seeking election	<ol style="list-style-type: none"><li>(a) on request by the candidate; and</li><li>(b) as soon as practicable after the cut-off day for the nomination of candidates; and</li><li>(c) without charge</li></ol>

[s 61]

Item	Person or organisation	Information to be given	Circumstances in which information is to be given
2	a registered political party	a copy, in electronic form, of the most recent version of the entire electoral roll for any electoral district or all electoral districts	(a) on request by the party; and (b) at a price which reasonably reflects the cost of producing that copy
3	a registered political party	a copy, in electronic form, of the changes to the most recent version of the entire electoral roll for any electoral district or all electoral districts	(a) on request by the party; and (b) at a price which reasonably reflects the cost of producing that copy
4	a member of the Legislative Assembly	a reasonable number of copies, in printed form, of the most recent version of the entire electoral roll for the electoral district the member represents	(a) as soon as practicable after each of the following happens— (i) the member is declared elected; (ii) the roll is prepared under section 59(1)(c); and (b) without charge
5	a member of the Legislative Assembly	a copy, in electronic form, of the most recent version of the entire electoral roll for the electoral district the member represents	(a) once during each Legislative Assembly; and (b) without charge



<b>Item</b>	<b>Person or organisation</b>	<b>Information to be given</b>	<b>Circumstances in which information is to be given</b>
6	a member of the Legislative Assembly	a copy, in electronic form, of the changes to the most recent version of the entire electoral roll for the electoral district the member represents	without charge
7	local government	a copy, in electronic form, of the most recent version of the entire electoral roll for any electoral district wholly or partly within the local government's area	(a) on request by the local government; and (b) at a price fixed or decided under a regulation
8	local government	a copy, in electronic form, of the changes to the most recent version of the entire electoral roll for any electoral district wholly or partly within the local government's area	(a) on request by the local government; and (b) at a price fixed or decided under a regulation

(2) The following table sets out persons and organisations to whom the commission may give a copy, in any form, of information in relation to electoral rolls and states the information that may be given and the circumstances in which it may be given.

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**Discretionary provision of information on electoral rolls**

Item	Person or organisation	Information to be given	Circumstances in which information is to be given
1	an entity prescribed under a regulation that is a department or State public authority	a copy, in electronic form, of the most recent version of the entire, or part of the, electoral roll for any electoral district	(a) on request by the department or State public authority; and (b) without charge; and (c) for a purpose prescribed under a regulation

- (3) Subsection (2) does not prevent an entity other than the commission, when providing a person or organisation with services for accessing information given by the commission, charging the person or organisation for the services.
- (4) Other than as provided by this section, the commission must not provide a copy of any part of an electoral roll, other than the publicly available part, to a person other than—
- (a) a senior electoral officer; or
  - (b) a member of the commission’s staff; or
  - (c) a person performing functions under an arrangement mentioned in section 62.

## **62 Joint roll arrangement with Commonwealth**

- (1) The Governor may arrange with the Governor-General for—
- (a) the preparation, alteration or revision of the electoral rolls; or
  - (b) the carrying out of any procedure relating to the preparation, alteration or revision of the electoral rolls;
- in any way consistent with this Act, jointly by the State and the Commonwealth, whether for the purpose of the rolls being used as electoral rolls for Legislative Assembly elections as well as for Commonwealth elections or for any other purpose.

- (2) If an arrangement is made, the electoral rolls may contain—
  - (a) names and other information in relation to persons who are not entitled to be enrolled as electors for Legislative Assembly elections, provided that it is indicated as prescribed that the persons are not enrolled as electors for the Legislative Assembly; and
  - (b) distinguishing marks against the names of the persons to show that they are not also enrolled as electors for Commonwealth elections; and
  - (c) other information in addition to that required under this division.
- (3) For the purposes of this Act, the marks and other information do not form part of the electoral rolls.

### **63      Gazettal of enrolment figures**

The commission must, in relation to each month, arrange for the gazettal of—

- (a) the number of enrolled electors for each electoral district; and
- (b) the average number of enrolled electors for electoral districts; and
- (c) the extent to which the number of enrolled electors for each electoral district differs from the average number of enrolled electors for electoral districts.

## **Division 2                      Enrolment**

### **64      Entitlement to enrolment**

- (1) A person is entitled to be enrolled for an electoral district if the person—
  - (a) either—

- (i) is entitled to be enrolled under the Commonwealth Electoral Act for the purposes of that Act in its application in relation to an election within the meaning of that Act; or
    - (ii) is not so entitled, but was entitled to be enrolled under the *Elections Act 1983* on 31 December 1991; and
  - (b) lives in the electoral district and has lived in it for the last month.
- (2) However, subsection (1)(b) does not deny a person the entitlement to be enrolled for an electoral district if the person did not live in the electoral district for the last month merely because the person was imprisoned.
- (3) In addition, if a member of the Legislative Assembly gives notice to the commission, in the form and way approved by the commission, that the member wishes to be enrolled for the electoral district that the member represents, the member is entitled to be enrolled for that electoral district instead of the one applicable under subsection (1).
- (4) Also, a member of the Legislative Assembly may be enrolled for an electoral district (the *other district*) other than the district that the member represents (the *member's district*) if, because of an electoral redistribution, the other district contains at least half of the electors who were enrolled for the member's district when the commission calculated the average number of enrolled electors for electoral districts for section 45(1).

## 65 Enrolment and transfer of enrolment

- (1) Subject to any arrangement under section 62, the commission must maintain each electoral roll in accordance with this section.
- (2) A person who—
- (a) is entitled to be enrolled for an electoral district; but
  - (b) is not enrolled on the electoral roll for the district;

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must give notice to an electoral registrar for the district in the form and way approved by the commission.

- (3) If a person who is enrolled on an electoral roll for an electoral district changes address within the electoral district, the person must, within 21 days, give notice to an electoral registrar for the district in the form and way approved by the commission.
- (4) Subject to subsection (5), if a notice under this section is received by an electoral registrar, the commission must, if satisfied that the person concerned is entitled to be enrolled for an electoral district, make appropriate amendments of the electoral rolls.
- (5) The commission must not amend the electoral rolls during the period from the end of the cut-off day for electoral rolls for an election or referendum until the end of the polling day for the election or referendum except to correct—
  - (a) a mistake; or
  - (b) the wrongful removal of a person from an electoral roll.
- (6) If the commission does not (except because of subsection (5)) amend an electoral roll to give effect to a notice by a person under subsection (2) or (3), the commission must notify the person in writing of—
  - (a) its decision not to amend the roll; and
  - (b) the reasons for its decision; and
  - (c) the person's rights under this Act to have the decision reviewed.
- (7) Subsection (8) applies if—
  - (a) a person is required to give notice under subsection (2) or (3); and
  - (b) the person gives notice—
    - (i) after the cut-off day for electoral rolls for an election or referendum and no later than 6p.m. on the day before the polling day for the election or referendum; and

- (ii) to the commission but otherwise in compliance with subsection (2) or (3).
- (8) The person is taken to have given notice to the electoral registrar in compliance with subsection (2) or (3).

## **66 Provisional enrolment**

- (1) The commission must enrol a person as an elector for an electoral district if the person—
  - (a) is 16 or 17; and
  - (b) would, if the person were 18, be entitled to be enrolled for the electoral district; and
  - (c) makes a request to be enrolled in the form and way approved by the commission.
- (2) The enrolment does not have effect for the purposes of this Act until the person turns 18.

## **67 Objections**

- (1) An elector may object against the enrolment of a person who is enrolled because of section 64(1)(a)(ii).
- (2) The objection must—
  - (a) set out the grounds on which it is made; and
  - (b) be made in a form and way approved by the commission; and
  - (c) be accompanied by a deposit of—
    - (i) \$2; or
    - (ii) if a greater amount is prescribed for the purposes of this section—that amount.
- (3) If—
  - (a) an objection is made against the enrolment of a person; or

- (b) the commission decides that any person enrolled on an electoral roll, because of section 64(1)(a)(ii), should not have been enrolled;

the commission must, subject to subsection (4), give the person concerned a reasonable opportunity to answer the objection or respond to the decision.

- (4) If the commission considers that the objection is frivolous or vexatious, it must take no further action on the objection.
- (5) After considering any answer to the objection or response to the decision, the commission must take such action (if any) as it considers necessary to amend the electoral rolls.
- (6) The commission must—
- (a) give written notice of the action taken by it and its reasons for taking the action to—
- (i) the person objected against or to whom the decision relates; and
- (ii) in the case of an objection—the objector; and
- (b) if the name of the person objected against or to whom the decision relates was removed from an electoral roll—include in the notice advice of the person’s right to have the decision to take the action reviewed.
- (7) If, because of an objection, the name of the person objected against is removed from an electoral roll, the commission must repay the deposit that accompanied the objection.
- (8) For the purpose of ensuring that only persons who are properly entitled to be enrolled under the Commonwealth Electoral Act are enrolled on an electoral roll because of section 64(1)(a)(i), the electoral commissioner, or member of the commission’s staff authorised for the purpose by the electoral commissioner, may take any action that the person is permitted to take under the Commonwealth Electoral Act, including making an objection under that Act to the enrolment.

## **Part 5**                      **Register of special postal voters**

### **68**      **Commission to keep register of special postal voters**

The commission must keep, or arrange to be kept, a register of special postal voters.

## **Part 6**                      **Registration of political parties**

### **69**      **Scope of part**

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

### **70**      **Register of political parties**

- (1) The commission must, in accordance with this part, keep a register containing the names of, and other information and documents related to, political parties registered under this part.
- (2) The commission must keep the register in the form and way that the commission considers appropriate.
- (3) The register is called the register of political parties.

### **71**      **Applications for registration**

- (1) An application for registration of a political party is to be made in accordance with this section.
- (2) The application must only be made for the registration of a registrable political party.
- (3) The application must be made by the secretary of the party.



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- (4) The application must be made to the commission in a form approved by the commission for the purposes of this section, and must—
- (a) state a name for the political party; and
  - (b) if the political party wishes to use an abbreviation of its name on ballot papers for elections—set out the abbreviation; and
  - (c) set out the name and address of the person who is to be the political party’s registered officer for the purposes of this Act; and
  - (d) if the application is for a Queensland parliamentary party—set out the name of 1 member of the party who is a member of the Legislative Assembly; and
  - (e) if the application is for a party that is not a Queensland parliamentary party—set out the names and addresses of 500 members of the party who are electors; and
  - (f) be accompanied by a copy of the party’s constitution; and
  - (g) set out any other prescribed information and be accompanied by a copy of any other prescribed document.

## **72 Publication of notice of application**

- (1) As soon as practicable after an application is made to the commission, the commission must publish a notice in relation to the application in—
- (a) the gazette; and
  - (b) a newspaper circulating generally in the State.
- (2) The notice must—
- (a) set out the information included in the application under section 71(4)(a) to (c); and
  - (b) invite any persons who believe that the application—
    - (i) is not in accordance with section 71; or

- (ii) should be refused under section 75;
- to submit to the commission, within 1 month after the day of publication of the gazette notice, a statement under subsection (3).
- (3) The statement must—
- (a) set out in detail the grounds for the belief; and
  - (b) set out the address of the person; and
  - (c) be signed by the person.
- (4) The commission must make the statement available at its office for public inspection, without fee.
- (5) The commission must give the person who is to be the party's registered officer—
- (a) a copy of the statement; and
  - (b) a notice inviting the person to give the commission a reply to the statement within such reasonable period as is specified in the notice.
- (6) If the person gives the commission a reply within the period, the commission must, as soon as practicable, make the reply available at its office for public inspection, without fee.

## **73 Registration**

- (1) If the commission, after considering all statements and replies to the statements under section 72, is satisfied that the application complies with the requirements of section 71, the commission must, subject to subsection (3) and section 75, register the political party.
- (2) Registration is effected by entering or otherwise including in the register of political parties—
- (a) the information set out in the application (other than under section 71(4)(e)); and
  - (b) any document accompanying the application as required by section 71(4)(f) and (g).

- (3) The commission must not take any action in relation to the application during the election period in relation to an election.
- (4) The commission must not register a political party other than in accordance with this section.
- (5) On registration of the political party, the person whose name was set out in the application under section 71(4)(c) becomes the party's registered officer for the purposes of this Act.
- (6) As soon as possible after it registers the political party, the commission must—
  - (a) give written notice to the registered officer that it has done so; and
  - (b) if any person made a statement to the commission under section 72 in relation to the application—give written notice to the person stating that it has registered the party and setting out why the reasons in the person's statement were rejected; and
  - (c) notify the party's registration by gazette notice.

#### **74 Registered officer's deputy**

- (1) A registered officer may nominate a person as a deputy of the registered officer for the purposes of this Act.
- (2) The nomination—
  - (a) must be in writing, signed by the registered officer and lodged with the commission; and
  - (b) must be signed by, and state the name and address of, the person nominated; and
  - (c) may be revoked by the registered officer by written notice given to the commission.

#### **75 Refusal of registration**

- (1) In this section—

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

***party name*** means the name, or an abbreviation or acronym of the name, of a parliamentary party or registered political party.

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

- (2) The commission may refuse to register a political party if the commission believes on reasonable grounds that information set out in, or documents required to accompany, the application are incorrect.
- (3) The commission must refuse to register a political party if the party's application name—
  - (a) has more than 6 words; or
  - (b) is obscene or offensive; or
  - (c) is a party name; or
  - (d) so nearly resembles a party name that it is likely to be confused with or mistaken for the party name; or
  - (e) includes the word 'independent'; or
  - (f) would otherwise be likely to cause confusion if registered.
- (4) The commission may refuse to register a political party if the party's application name—
  - (a) is a public body name; or
  - (b) so nearly resembles a public body name that it is likely to be confused with or mistaken for the public body name.
- (5) The commission must refuse to register a political party if the party's constitution is not a complying constitution.
- (6) If the commission decides to refuse an application, it must give the person who was to be the registered officer of the political party written notice of—

- (a) the refusal; and
- (b) the reasons for the refusal; and
- (c) the rights of the person to have the refusal decision reviewed.

## 76 Complying constitution

- (1) A political party's constitution is a *complying constitution* if it contains the following—
- (a) the party's objects, 1 of which must be the promotion of the election to the Legislative Assembly of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part;
  - (b) the procedure for amending the constitution;
  - (c) the rules for membership of the party, which must include the following rules—
    - (i) a rule stating the procedure for accepting a person as a member;
    - (ii) a rule stating the procedure for ending a person's membership;
    - (iii) a rule prohibiting a person from becoming a member of the party if the person has been convicted of a disqualifying electoral offence within 10 years before the person applies to become a member;
    - (iv) a rule prohibiting a person from continuing as a member of the party if the person is convicted of a disqualifying electoral offence;
  - (d) a statement about how the party manages its internal affairs, including a statement about—
    - (i) the party structure; and
    - (ii) the process for dispute resolution;
  - (e) the rules for selecting—

- (i) a person to hold an office in the party; and
  - (ii) a candidate to be endorsed by the party for an election or an election for a local government;
- (f) a rule requiring that a preselection ballot must satisfy the general principles of free and democratic elections.
- (2) The general principles of free and democratic elections as applied to a preselection ballot are as follows—
  - (a) only members of the party who are electors may vote;
  - (b) only members of the party who are eligible to vote in the ballot under the party's constitution may vote;
  - (c) each member has only 1 vote;
  - (d) voting must be done by secret ballot;
  - (e) a member must not be improperly influenced in voting;
  - (f) a member's ballot paper must be counted if the member's intention is clear;
  - (g) members' votes must be accurately counted;
  - (h) each person who is seeking selection may be present personally, or may be represented by another person, at the ballot and for the scrutiny, and counting, of votes.

## **77 Amendment of register**

- (1) An application may be made under this section to the commission for the amendment of the information, or the replacement of documents, in the register of political parties in relation to a registered political party.
- (2) The application must be made in the form and way approved by the commission.
- (3) The application must be made by—
  - (a) the party's registered officer; or
  - (b) if the application is to change the party's registered officer—the party's secretary.

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- (4) This part applies to an application under this section, subject to any necessary changes, as if it were an application for registration of a political party.

## **78 Cancellation of registration**

- (1) The commission may cancel the registration of a party at the written request of the party's registered officer.
- (2) The commission may cancel the registration of a political party if the commission is satisfied on reasonable grounds that—
- (a) the party no longer exists; or
  - (b) the party is not a Queensland parliamentary party and does not have at least 500 members who are electors; or
  - (c) the candidates at the next 2 general elections held after the registration of the party did not include at least 1 candidate endorsed by the party; or
  - (d) the registration was obtained by fraud or misrepresentation; or
  - (e) the party's constitution is not a complying constitution; or
  - (f) the party's registered officer has failed to comply with section 80(1) or (2), including, for example, by giving false or misleading information under the provision.
- (3) If the commission proposes to cancel the registration of a party, other than because of subsection (2)(d), the commission must—
- (a) give written notice of its proposed action to the party's registered officer; and
  - (b) give notice of its proposed action in—
    - (i) the gazette; and
    - (ii) a newspaper circulating generally in the State; and
  - (c) include in the notice under paragraph (b) a statement that persons may, within 14 days after the gazette notice

is given, object to the commission in writing against the proposed cancellation.

- (4) The commission must consider any objection made under subsection (3) before taking any further action in relation to the cancellation.
- (5) If the commission decides to cancel the registration of a party, the commission must—
  - (a) give notice of the cancellation and the reasons for it to the person who was the party's registered officer immediately before the cancellation; and
  - (b) give notice of the cancellation in the gazette; and
  - (c) cancel the information in, and remove the documents from, the register of political parties relating to the political party; and
  - (d) retain the documents in the commission's records.

## **79 Public access to register**

- (1) The commission must ensure that the register of political parties is made available for public inspection, without fee, at its office.
- (2) As soon as practicable after the issue of a writ for an election, the commission must publish in the gazette—
  - (a) a list of the names of all political parties included in the register; and
  - (b) a list of the names of the registered officers of the political parties.

## **80 Party constitution**

- (1) The registered officer of a registered political party must, within 7 days after each report date, notify the commission in the approved form whether or not an amendment has been made to the party's constitution since the last report date.



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- (2) If an amendment has been made, the registered officer must also give the commission—
- (a) a copy of the amended constitution; and
  - (b) a summary of the amendments.
- (3) In this section—

*report date* means 31 March, 30 June, 30 September and 31 December in each year.

*Note—*

See section 78(2)(f) for the effect of noncompliance with subsection (1) or (2).

## **Part 7                      Elections**

### **Division 1                Calling of elections**

#### **81            Writs for elections**

- (1) The commission must conduct an election of a member or members of the Legislative Assembly if the Governor or the Speaker of the Legislative Assembly issues a writ to the commission in accordance with this division.
- (2) The commission must conduct the election in accordance with the writ and the provisions of this part.

#### **82            Writs by Governor**

- (1) The Governor is to issue writs of the following kinds—
  - (a) a writ for a general election;
  - (b) a writ for an election to fill a vacancy arising after a general election and before the first meeting of the Legislative Assembly after the election;

- (c) a writ for an election to which section 83(3) or 95(3) applies;
  - (d) a writ for an election ordered by the Court of Disputed Returns under section 128(14) or 146.
- (2) The Governor must issue a writ under subsection (1)(a) not later than 4 days after the day on which the Legislative Assembly is dissolved or expires by the passage of time.

### **83 Writs by Speaker**

- (1) Subject to this section, the Speaker of the Legislative Assembly must issue a writ for an election to fill a vacancy in the membership of the Legislative Assembly if—
- (a) the vacancy is not one mentioned in section 82(1)(b); and
  - (b) the Legislative Assembly passes a resolution declaring that the vacancy exists and stating its cause.
- (2) Subsection (1) does not apply if—
- (a) the vacancy is caused by death or resignation; and
  - (b) when the vacancy arises, the Legislative Assembly is not sitting.
- (3) If subsection (1) does not apply to the vacancy because of subsection (2), the Governor must issue the writ.

### **84 Form and content of writs**

- (1) A writ must set out the following—
- (a) the day of issue of the writ;
  - (b) the cut-off day for electoral rolls for the election, which must be not less than 5 days, nor more than 7 days, after the issue of the writ;
  - (c) the cut-off day for the nomination of candidates for the election, which must be not less than 8 days, nor more than 18 days, after the issue of the writ;

- (d) the polling day, which must be a Saturday not less than 26 days, nor more than 56 days, after the issue of the writ;
  - (e) the day for the return of the writ, which must be not more than 84 days after the issue of the writ.
- (2) For the purpose of determining under subsection (1) a cut-off day, the polling day or the day for the return of the writ (the *relevant day*)—
- (a) the day of issue of the writ; and
  - (b) the relevant day itself;
- are both to be included in any specified number of days.
- (3) The *Acts Interpretation Act 1954*, section 38 does not apply for the purpose of determining, or in relation to a day determined, under subsection (1).

## **85 Commission to publish writ and prepare for election**

On receiving a writ, the commission must—

- (a) arrange for a copy of the writ to be published in the gazette; and
- (b) advertise the days specified in the writ in such other ways as the commission considers appropriate; and
- (c) make appropriate arrangements, in accordance with this part, for the conduct of the election or elections concerned.

## **86 Change of time limits in writ**

- (1) Despite anything in this Act, the Governor or Speaker, as the case requires, may by gazette notice either before, on or after a day specified in the writ under section 84(1)(a) to (e)—
- (a) for a day mentioned in section 84(1)(a) to (d)— substitute a later day for the day stated in the writ; or

- (b) for the day mentioned in section 84(1)(e)—substitute an earlier or later day for the day stated in the writ; or
  - (c) provide for anything to be done to overcome any difficulty that might otherwise affect the election concerned.
- (2) A substitution may be made under this section either generally or for a stated electoral district.
  - (3) The Governor or Speaker must not substitute a day for polling day that is more than 21 days after the day specified in the writ.
  - (4) When the notice is gazetted, it has effect accordingly.

## **Division 2                      Nomination of candidates for election**

### **87            Who may be nominated**

Provisions about who may be nominated as a candidate for election, and may be elected, as a member of the Legislative Assembly for an electoral district are set out in the *Parliament of Queensland Act 2001*, section 64.

### **88            How and when nomination takes place**

- (1) The following persons are the only persons who nominate a candidate—
  - (a) the registered officer of a registered political party that has endorsed the candidate for the election;
  - (b) 6 or more persons who are enrolled on the electoral roll for the electoral district concerned and none of whom has previously nominated a candidate for the election.
- (2) To have effect for the purposes of this Act, the nomination must comply with the requirements set out in this section and section 89.

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- (3) The nomination—
    - (a) must be in a form approved by the commission for the purposes of this section; and
    - (b) must contain the following—
      - (i) the candidate's name, address and occupation;
      - (ii) a signed statement by the candidate consenting to the nomination;
      - (iii) if subsection (1)(a) applies—a signed statement by the party's registered officer that the registered political party has endorsed the candidate.
  - (4) The nomination must be given to—
    - (a) if subsection (1)(a) applies—the commission; or
    - (b) if subsection (1)(b) applies—the commission or the returning officer for the electoral district.
  - (5) The nomination must be given—
    - (a) after the day of issue of the writ for the election; and
    - (b) before noon on the cut-off day for nomination of candidates for the election.

## **89 Deposit to accompany nomination**

- (1) At the same time as a nomination is given to the commission or the returning officer, the candidate (or another person on the candidate's behalf) must deposit, in cash or bank cheque—
  - (a) \$250; or
  - (b) if a greater amount is prescribed for the purposes of this section—that amount.
- (2) Subject to subsection (3), the deposit must be held until the writ for the election has been returned.
- (3) If the candidate dies before the writ is returned, the deposit must be returned to—

- (a) if the deposit was paid by someone other than the candidate—the other person; or
  - (b) otherwise—the candidate’s personal representative.
- (4) The deposit must be returned to the person who paid the deposit, or someone else with the person’s written authority, if—
- (a) the candidate withdraws consent to the nomination under section 92; or
  - (b) the candidate is elected; or
  - (c) at least 6% of the total number of formal first preference votes polled in the election for the electoral district are in favour of the candidate.
- (5) The deposit becomes the property of the State when the outcome of the election is determined unless subsection (3) or (4) applies.

## **90 Grounds for deciding a person is not properly nominated**

- (1) In this section—

*nomination name* means the name used for a nomination under this division.

*party name* means the name, or an abbreviation or acronym of the name, of a parliamentary party or registered political party.

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

- (2) The commission may decide that a person who has changed his or her name is not properly nominated because the nomination name—
- (a) is a party name; or
  - (b) so nearly resembles a party name that it is likely to be confused with or mistaken for the party name; or
  - (c) includes the word ‘independent’; or

- 
- (d) is a public body name; or
  - (e) so nearly resembles a public body name that it is likely to be confused with or mistaken for the public body name; or
  - (f) is obscene or offensive.
- (3) The commission may also decide that a person who has changed his or her name is not properly nominated if the commission considers the name could cause confusion.

*Example—*

If a person's name is 'Informal', the commission may consider that the name could cause confusion to electors.

- (4) If the commission decides a person is not properly nominated for an election, it must give the person—
- (a) the decision; and
  - (b) the reasons for the decision; and
  - (c) a notice stating the person's right to dispute the election.

*Note—*

For a person's right to dispute the election, see section 139.

## **91 Effect of multiple nominations**

If, at noon on the cut-off day for the nomination of candidates for the election, a person nominated as a candidate for election for the electoral district is also nominated for election for another electoral district, each of the nominations is of no effect.

## **92 Withdrawal of consent to nomination**

- (1) A person nominated as a candidate for election may withdraw consent to the nomination by notice signed by the person and given to the commission or the returning officer, as the case requires, before noon on the cut-off day for nomination.
- (2) If this happens, the nomination is of no effect.

### **93 Announcement of nominations**

- (1) As soon as practicable after noon on the cut-off day for nominations, the commission must advise the returning officer for each electoral district of the names of all persons properly nominated to the commission for election for the district.
- (2) As soon as practicable after advice is received from the commission, each returning officer must arrange for a notice stating the names of the persons properly nominated for election to the electoral district to be—
  - (a) displayed in a conspicuous place at the returning officer's office; and
  - (b) published in such ways as the returning officer considers appropriate.
- (3) On the display of the names at the returning officer's office, the persons become candidates for the election for the electoral district.
- (4) A person is properly nominated for election for the purposes of this section if—
  - (a) the provisions of this division relating to nomination have been complied with or, if there is a formal defect or error in the nomination, the provisions have been substantially complied with; and
  - (b) neither section 91 nor 92 applies to the person's nomination.

### **94 Election of sole candidate**

If there is only 1 candidate for election for an electoral district, the candidate is elected.

### **95 Failure of election**

- (1) This section applies if—



- 
- (a) a candidate dies before the polling day for the election;  
or
  - (b) there are no candidates for the election.
- (2) The writ, and everything done in connection with the election for the electoral district because of the writ, are of no effect.
  - (3) The Governor must issue a writ for a fresh election for the electoral district.
  - (4) The deposits of any other candidates for the election for the electoral district are to be returned.

## **96 Election to be held**

Subject to sections 94 and 95, an election must be held in accordance with the writ and the provisions of this part.

## **Division 3 Arrangements for elections**

### **97 Commission to make arrangements for elections**

- (1) The commission has the continuing function of making appropriate administrative arrangements for the conduct of elections.
- (2) The function includes doing the things required by the remainder of this division.
- (3) The commission must arrange for the appointment and employment of appropriate members of staff for the conduct of elections.

### **98 Setting up and operating polling booths**

- (1) The commission must ensure that appropriate polling booths are established for elections.
- (2) In deciding the number, kind and location of polling booths, the commission must take into account, in addition to any other matters that it considers relevant, the desirability of the

booths being the same as polling booths for the purposes of the Commonwealth Electoral Act and of their being accessible to voters with disabilities.

- (3) The commission must ensure that each polling booth is provided with an adequate number of voting compartments and ballot papers.
- (4) In the case only of a mobile polling booth mentioned in section 99(8), the commission must, if requested by a candidate, ensure that 'how to vote' matter supplied by the candidate is distributed at the polling booth.
- (5) The commission must, in relation to each election, advertise the location and hours of opening of all polling booths in such ways as the commission considers appropriate.
- (6) The commission must not—
  - (a) establish a polling booth on polling day; or
  - (b) abolish a previously established ordinary polling booth during the period beginning when the writ for an election is issued and ending on polling day, unless it is necessary to do so for circumstances beyond the commission's control.
- (7) The commission must advertise the establishment and abolition of ordinary polling booths in—
  - (a) the gazette; and
  - (b) such other ways as the commission considers appropriate.
- (8) The commission must ensure that—
  - (a) electors are allowed to enter ordinary polling booths between 8a.m. and 6p.m. on polling day and to stay until they have voted; and
  - (b) appropriate electors are allowed to enter mobile polling booths, at times determined in writing by the commission, during the period referred to in section 99(4) and (8) and to stay until they have voted.

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## 99 Kinds of polling booths

- (1) There are 3 kinds of polling booths—
  - (a) ordinary polling booths; and
  - (b) mobile polling booths; and
  - (c) pre-poll voting offices for electoral districts.
- (2) An ordinary polling booth is a building or other structure, or a part of a building or other structure, that the commission arranges to be available on polling day in relation to an election for the purpose of enabling electors in general to vote.
- (3) A mobile polling booth is—
  - (a) an institution declared under subsection (4) to be a mobile polling booth; or
  - (b) the whole or part of a building, structure, vehicle or place made available as a mobile polling booth under subsection (8).
- (4) If the commission considers that patients, residents or inmates of an institution should be able to vote at the institution at times (determined by the commission) during the period beginning 11 days before polling day and ending at 6p.m. on polling day, the commission may, by gazette notice, declare the institution to be a mobile polling booth for the purposes of the election.
- (5) The commission may require an issuing officer visiting an institution declared under subsection (4) to present how-to-vote cards to electors at the institution and present the cards in a particular way.

*Example—*

The commission may require an issuing officer to give how-to-vote cards to electors at a declared institution or to paste the cards on a manila folder and show it to the electors.

- (6) The issuing officer must comply with the requirement.
- (7) If the commission declares the institution to be a mobile polling booth, the person in charge of the institution must allow access by members of the commission's staff, and by

patients, residents or inmates of the institution, for the purpose of enabling voting to take place at the election.

- (8) If the commission considers that an area is too remote to have enough electors to justify an ordinary polling booth, the commission may arrange for the whole or part of a building, structure, vehicle or place to be available as a mobile polling booth, at times (determined by the commission) during the period beginning 11 days before polling day and ending at 6p.m. on polling day, for electors in the area to vote at the election.
- (9) The commission, a returning officer or an issuing officer may change the arrangements made under subsection (8) at any time.
- (10) If the arrangements are changed, the commission, returning officer or issuing officer must take the steps that are practical and appropriate to give public notice of the changed arrangements.
- (11) The result of the election is not invalidated only because an issuing officer failed to visit a mobile polling booth as arranged.

## **100 Adjourning of poll**

- (1) A returning officer may adjourn the poll at a polling booth if the taking of the poll is, or is likely to be, interrupted or obstructed by—
  - (a) storm, tempest, flood, fire or a similar happening; or
  - (b) riot or open violence.
- (2) If the poll is adjourned, the commission may fix a day (not later than 34 days after the polling day) for the taking of the adjourned poll.
- (3) The commission must give notice of the day fixed for the taking of the adjourned poll in—
  - (a) the gazette; and

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- (b) such other ways as the commission considers appropriate.

## **101 Register of candidates**

- (1) As soon as practicable after the commission advises the returning officer of an electoral district of the names of the candidates for an election for the electoral district, the commission must enter, in a register called the register of candidates, the information, and a summary of the content of any statement, set out in the nomination in relation to each of the candidates under section 88(3).
- (2) The register of candidates is to be kept in such form and way as the commission considers appropriate.
- (3) If elections for other electoral districts have the same polling day, a single register must be used for all of the elections.
- (4) The register of candidates must be open for public inspection, without fee, at the commission's office.
- (5) If any name or address entered in the register of candidates in relation to a candidate ceases to be correct, the candidate may apply to the commission to have the entry corrected.
- (6) The commission must correct the entry.

## **102 Supply of ballot papers and electoral rolls**

- (1) The commission must ensure that a sufficient number of ballot papers, and certified copies of the electoral rolls for each electoral district (as at the cut-off day for electoral rolls), are available at polling places.
- (2) Ballot papers for an election for an electoral district, other than a completed ballot paper printed for an electronically assisted vote, must—
  - (a) be of such material and opacity that, when folded, the way the elector voted is effectively concealed; and
  - (b) be attached to a butt that—

- (i) is not part of the ballot paper; and
    - (ii) is perforated in such a way that the ballot paper may be easily detached from it; and
    - (iii) has the name of the electoral district and is numbered so that each butt for the electoral district has a unique number; and
  - (c) show the name of the State, that the election is for a member of the Legislative Assembly, the name of the electoral district and the day of the election; and
  - (d) contain the names of all candidates for election, set out in the order determined under section 103; and
  - (e) if the commission considers that a similarity in the names of 2 or more candidates is likely to cause confusion—contain a description or addition that the commission considers will sufficiently distinguish the names; and
  - (f) contain a square opposite the name of each candidate; and
  - (g) if a candidate endorsed by a registered political party was nominated under section 88(1)(a)—contain, printed adjacent to the candidate’s name—
    - (i) if the register of political parties includes an abbreviation of the party’s name—the abbreviation; or
    - (ii) otherwise—the party’s full name included in the register of political parties.
- (3) The ballot papers to which subsection (2) applies must contain the following sentences—
- Place the number one (‘1’) in the square opposite the candidate of your choice.
  - You may if you wish indicate your preference for additional candidates by numbering the other squares in your preferred order.

- (4) A completed ballot paper printed for an electronically assisted vote must be of a size or format that enables the elector's electronically assisted vote to be accurately determined.

### **103 Order of candidates' names on ballot papers**

- (1) The order of the names of candidates on ballot papers for an electoral district is to be determined under this section.
- (2) To determine the order, a member of the commission's staff must, in the presence of 2 witnesses—
  - (a) write the name of each candidate on a separate piece of paper; and
  - (b) ensure that each piece of paper is the same kind, shape, size and colour; and
  - (c) place each separate piece of paper in a separate envelope and, if it is necessary to fold the piece of paper to make it fit in the envelope, fold each piece of paper in the same way in order to make each the same size and thickness; and
  - (d) ensure that each envelope is opaque and of the same kind, shape, size and colour; and
  - (e) after each piece of paper has been placed in an envelope, seal the envelope; and
  - (f) place all the envelopes in a container and shuffle them; and
  - (g) draw the envelopes out, 1 at a time; and
  - (h) as each envelope is drawn out, open it and note the name of the candidate on the piece of paper in the envelope.
- (3) The order in which the names are noted is the order in which the names are to appear on the ballot paper.
- (4) The member of the commission's staff must allow any candidate, or representative of a candidate, to be present.

## **104 Scrutineers**

- (1) Each candidate for an election for an electoral district may, by notice sent to the returning officer for the electoral district, appoint adult persons as scrutineers.
- (2) Scrutineers are entitled to be present in each ordinary polling booth, each mobile polling booth, each pre-poll voting office and each other office staffed by an issuing officer, at times when electors are allowed to vote at the place.
- (3) Scrutineers are also entitled to be present—
  - (a) beforehand at polling places for the purpose of—
    - (i) inspecting ballot boxes; and
    - (ii) the examination of declaration envelopes received before 6p.m. the day before polling day; and
  - (b) afterwards at polling places and elsewhere to observe the examination of declaration envelopes, the printing of completed ballot papers for electronically assisted votes and the counting of votes; and
  - (c) at a place to observe any part of a procedure for making an electronically assisted vote.
- (4) At a polling place during times when electors are allowed to vote and beforehand, each candidate is entitled to have 1 scrutineer present for each issuing officer at the place.
- (5) At the examination of declaration envelopes and the counting of votes, including electronically assisted votes, each candidate is entitled to have 1 scrutineer present for each member of the commission's staff at the place.
- (6) A scrutineer may—
  - (a) object to the entitlement of a person to vote at the election; or
  - (b) record details of electors who vote at the election, and take the record out of the polling place; or
  - (c) do anything else permitted by this Act.



- (7) Issuing officers at a polling place must, before voting starts, allow scrutineers for candidates to inspect the ballot boxes that are to be used for voting at the place.
- (8) Each scrutineer must carry adequate identification to show that the person is a scrutineer.

## **105 Correction of errors**

- (1) If there is a delay, error or omission in or in relation to the preparation, issue or return of any writ, it may be corrected by gazette notice by the Governor or the Speaker, as the case requires, setting out what is to be done.
- (2) If there is a delay, error or omission in or in relation to the preparation, issue, sending or return of any electoral roll, ballot paper or other document (apart from a writ), it may be corrected by a gazette notice by the commission setting out what is to be done.

## **Division 4 Who may vote**

### **106 Who may vote**

- (1) The following persons are the only persons who are entitled to vote at an election for an electoral district—
  - (a) persons enrolled on the electoral roll for the district;
  - (b) persons who are not enrolled, but are entitled to be enrolled on the electoral roll for the district because of section 64(1)(a)(ii);
  - (c) persons whose names are not on the electoral roll for the district because of official error;
  - (d) persons who—
    - (i) are not enrolled on the electoral roll for any district but are entitled to be enrolled on the electoral roll for the district; and

- (ii) after the cut-off day for electoral rolls and no later than 6p.m. on the day before the polling day, have given a notice to the commission or an electoral registrar for the district under section 65.
- (2) A person is not entitled to vote—
  - (a) more than once at the same election for an electoral district; or
  - (b) at 2 or more elections for electoral districts held on the same day.
- (3) Also, a person who is serving a sentence of imprisonment is not entitled to vote at an election for an electoral district.
- (4) For subsection (3), a person is serving a sentence of imprisonment only if—
  - (a) the person is in detention on a full-time basis for an offence against a law of the Commonwealth or a State or Territory; and
  - (b) the detention is attributable to the sentence of imprisonment concerned.

## **Division 5                      How voting takes place**

### **Subdivision 1                Ordinary voting**

#### **107      Procedure for voting**

- (1) An elector (other than one who makes a pre-poll ordinary vote under section 112 or who makes or must make a declaration vote under subdivision 3) is to vote by following the procedures set out in this section.
- (2) The elector is, during ordinary voting hours, to enter a polling booth for the electoral district for which the elector is enrolled.

- (3) In the polling booth, the elector must ask the issuing officer for a ballot paper.
- (4) If the elector—
  - (a) has a ballot paper and declaration envelope for the election; and
  - (b) does not intend to make a declaration vote under subdivision 3;the elector must give the papers to the issuing officer.
- (5) The issuing officer must issue a ballot paper to a person if the issuing officer is satisfied the person is entitled to vote at the election for the electoral district.
- (6) The issuing officer may ask of a person requesting a ballot paper questions for the purpose of deciding whether the person is entitled to vote at the election for the electoral district.
- (7) The issuing officer must comply with section 121 if the issuing officer has asked questions under subsection (6) and suspects a person claiming to be a particular elector is not the elector.
- (8) The issuing officer must keep a record of all persons to whom the officer issues ballot papers under this section.
- (9) The issuing officer must, if a scrutineer requests it, keep a record of any objection by the scrutineer to the entitlement of a person to vote.
- (10) On being given the ballot paper, the elector must, without delay—
  - (a) go alone to an unoccupied voting compartment in the polling booth; and
  - (b) there, in private, mark a vote on the ballot paper in accordance with section 122; and
  - (c) fold the ballot paper to conceal the vote and put it in a ballot box in the polling booth; and
  - (d) leave the polling booth.

## **108 Help to enable electors to vote at polling booths**

- (1) Subject to subsection (2), if an elector satisfies an issuing officer that the elector is unable to vote without help, the elector may be accompanied in the polling booth by another person chosen by the elector.
- (2) The other person may help the elector in any of the following ways—
  - (a) acting as an interpreter;
  - (b) explaining the ballot paper and the requirements of section 122 relating to its marking;
  - (c) marking, or helping the elector to mark, the ballot paper in the way the elector wishes;
  - (d) folding the ballot paper and putting it in the ballot box.
- (3) If an elector (including an elector who makes or must make a declaration vote) is unable to enter a polling booth because of illness, disability or advanced pregnancy, but is able to come to a place (the *voting place*) close to the polling booth, then, subject to subsection (4)—
  - (a) the issuing officer may perform the issuing officer's functions; and
  - (b) the voter may vote;  
at the voting place as if it were the polling booth.
- (4) The issuing officer must—
  - (a) before taking any action under subsection (3), inform any scrutineers present of the proposed action; and
  - (b) allow only 1 scrutineer for each candidate to be present at the voting place; and
  - (c) ensure that, after the ballot paper is marked, it is—
    - (i) folded to conceal the vote; and
    - (ii) put into an envelope and sealed; and
  - (d) if the elector has made an ordinary vote—open the envelope inside the polling booth in the presence of any

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scrutineers and put the folded ballot paper in a ballot box.

## **109 Help to enable electors to vote at hospitals**

- (1) If a polling booth is a hospital or part of a hospital, an issuing officer may visit patients in the hospital or the part of the hospital for the purpose of enabling them to vote.
- (2) When visiting a patient, the issuing officer must—
  - (a) take to the patient—
    - (i) a ballot paper or a ballot paper and declaration envelope; and
    - (ii) a ballot box; and
    - (iii) anything else necessary to enable the patient to vote; and
  - (b) if a scrutineer wishes—be accompanied by the scrutineer.
- (3) The issuing officer must ensure that, so far as reasonably practicable, section 107 is complied with when the patient votes.

## **Subdivision 2 Pre-poll ordinary voting**

### **110 Pre-poll ordinary voting**

- (1) This section applies to an elector, other than one who must make a declaration vote under subdivision 3, who—
  - (a) wishes to vote before the polling day for an election; and
  - (b) wishes to do so other than by making a declaration vote under subdivision 3.
- (2) If there is a pre-poll voting office for the electoral district for which the elector is enrolled, the elector may make a vote under section 112 (a *pre-poll ordinary vote*).

## **111 Pre-poll voting offices**

- (1) The commission may declare, by gazette notice, for an election—
  - (a) a stated place to be a place where an elector enrolled in a stated electoral district may make a pre-poll ordinary vote (a *pre-poll voting office* for the electoral district); and
  - (b) the times during which electors are allowed to make a pre-poll ordinary vote at the pre-poll voting office.
- (2) The commission may, in a declaration under subsection (1) or by gazette notice under this subsection, declare that a particular pre-poll voting office located in an electoral district is also a pre-poll voting office for 1 or more other electoral districts.
- (3) If the commission makes a declaration under subsection (1) or (2), the commission may also publish the declaration in any other ways the commission considers appropriate including, for example, on the commission's website.

## **112 Procedure for pre-poll ordinary voting**

- (1) An elector who wishes to vote during the period beginning 3 days after the cut-off day for nominations and ending at 6p.m. on the day before polling day may make a pre-poll ordinary vote by following the procedures set out in this section.
- (2) The elector is to go to a pre-poll voting office for the electoral district for which the elector is enrolled.
- (3) At the pre-poll voting office, the elector must ask the issuing officer for a ballot paper.
- (4) If the elector—
  - (a) has a ballot paper and declaration envelope for the election; and
  - (b) does not intend to make a declaration vote under subdivision 3;the elector must give the papers to the issuing officer.

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- (5) The issuing officer must issue a ballot paper to a person if the issuing officer is satisfied the person is entitled to vote at the election for the electoral district.
  - (6) The issuing officer may ask of a person requesting a ballot paper questions for the purpose of deciding whether the person is entitled to vote at the election for the electoral district.
  - (7) The issuing officer must comply with section 121 if the issuing officer has asked questions under subsection (6) and suspects a person claiming to be a particular elector is not the elector.
  - (8) The issuing officer must keep a record of all persons to whom the officer issues ballot papers under this section.
  - (9) The issuing officer must, if a scrutineer requests it, keep a record of any objection by the scrutineer to the entitlement of a person to vote.
  - (10) On being given the ballot paper, the elector must, without delay—
    - (a) go alone to an unoccupied voting compartment in the pre-poll voting office; and
    - (b) there, in private, mark a vote on the ballot paper in accordance with section 122; and
    - (c) fold the ballot paper to conceal the vote and put it in a ballot box in the pre-poll voting office; and
    - (d) leave the pre-poll voting office.

### **113 Help to enable electors to vote at pre-poll voting offices**

- (1) Subject to subsection (2), if an elector satisfies an issuing officer that the elector is unable to vote without help, the elector may be accompanied in the pre-poll voting office by another person chosen by the elector.
- (2) The other person may help the elector in any of the following ways—

- (a) acting as an interpreter;
  - (b) explaining the ballot paper and the requirements of section 122 relating to its marking;
  - (c) marking, or helping the elector to mark, the ballot paper in the way the elector wishes;
  - (d) folding the ballot paper and putting it in the ballot box.
- (3) If an elector is unable to enter a pre-poll voting office because of illness, disability or advanced pregnancy, but is able to come to a place (the *voting place*) close to the pre-poll voting office, then, subject to subsection (4)—
- (a) the issuing officer may perform the issuing officer's functions; and
  - (b) the voter may vote;
- at the voting place as if it were the pre-poll voting office.
- (4) The issuing officer must—
- (a) before taking any action under subsection (3), inform any scrutineers present of the proposed action; and
  - (b) allow only 1 scrutineer for each candidate to be present at the voting place; and
  - (c) ensure that, after the ballot paper is marked, it is—
    - (i) folded to conceal the vote; and
    - (ii) put into an envelope and sealed; and
  - (d) open the envelope inside the pre-poll voting office in the presence of any scrutineers and put the folded ballot paper in a ballot box.

### **Subdivision 3 Declaration voting**

#### **114 Who may make a declaration vote**

- (1) The following electors may make a declaration vote—



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- (a) an elector who wishes to make a declaration vote before the polling day for an election (an *ordinary postal voter*);
- (b) an elector who is a special postal voter under subsection (2);
- (c) an elector who is an electoral visitor voter under subsection (3).
- (2) The following electors are special postal voters for the purposes of this Act—
- (a) an elector whose name is included in the register of special postal voters because of a written application that satisfies the commission that—
- (i) the elector’s address, as shown on an electoral roll immediately before the commencement of this paragraph, is more than 15km but not more than 20km, by the nearest practicable route, from a polling booth; or
- (ii) the elector’s address is more than 20km, by the nearest practicable route, from a polling booth; or
- (iii) the elector is entitled to be enrolled as a general postal voter under the Commonwealth Electoral Act, section 184A(2)(d) to (k);
- (b) an elector whose address has been excluded from the electoral roll under an arrangement under section 62 because of the Commonwealth Electoral Act, section 104.
- (3) The following electors are electoral visitor voters for the purposes of this Act—
- (a) an elector who will, because of illness, disability or advanced pregnancy, be prevented from voting at a polling booth;
- (b) an elector who will, because the elector is caring for a person who is ill, has a disability or is pregnant, be prevented from voting at a polling booth.

- (4) The commissioner must, not less than 18 months but not more than 3 years after the return of the writ for an election, review the continuing eligibility to make a declaration vote of electors who are special postal voters.
- (5) To do so, the commissioner must require each elector whose name is included in the register of special postal voters because of a circumstance mentioned in subsection (2)(a)(i) or (ii) to advise, in the approved form, whether the elector still lives at the address shown on the electoral roll.
- (6) As part of the review, the commission must do a random check of approved forms given to the commission under subsection (5) to decide whether the signature on each approved form checked is the same as the signature on the approved form's corresponding application for enrolment.

## **115 Who must make a declaration vote**

The following electors must make a declaration vote—

- (a) an elector who wishes to vote by going on a polling day to a polling booth that has not been established for the electoral district for which the elector is enrolled;
- (b) an elector who wishes to vote by going to a polling booth described in section 99(4) or (8) that is outside the electoral district for which the elector is enrolled;
- (c) an elector whose name is not on the electoral roll for an electoral district because of an official error;
- (d) an elector to whom section 106(1)(b) or (d) applies;
- (e) an elector who appears from a record made in error to have already voted in the election for any electoral district;
- (f) an elector who is given a ballot paper and declaration envelope under section 121.

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## **116 Ways in which an elector may make a declaration vote**

Subject to section 121, an elector who may or must make a declaration vote is to do so by—

- (a) if the elector is unable to enter a polling booth because of illness, disability or advanced pregnancy—going to a place close to a polling booth and voting under section 108(3); or
- (b) going during voting hours to a polling booth in an electoral district and following the procedures set out in section 117; or
- (c) going to an office staffed by an issuing officer at a time before polling day for the election and following the procedures set out in section 118; or
- (d) if the person is a postal voter—using the ballot paper and declaration envelope that have been posted to the elector under section 119 and following the procedures set out in that section; or
- (e) if the person is an electoral visitor voter—voting before an electoral visitor following the procedures set out in section 120.

## **117 Making a declaration vote at a polling booth**

- (1) An elector who may or must make a declaration vote may enter a polling booth during voting hours in an electoral district and request a ballot paper and declaration envelope from an issuing officer.
- (2) The issuing officer must comply with the request unless the issuing officer is satisfied that the elector is enrolled for the electoral district in which the polling booth is located.
- (3) The issuing officer must keep a record of all persons to whom the officer gives a ballot paper and declaration envelope under this section.

- (4) The issuing officer must, if a scrutineer requests it, record on the declaration envelope any objection by the scrutineer to the right of the person to vote.
- (5) On being given the ballot paper and declaration envelope, the elector must, without delay—
  - (a) sign the appropriate declaration on the declaration envelope before the issuing officer and have the officer sign the envelope as witness; and
  - (b) go alone to an unoccupied voting compartment in the polling booth; and
  - (c) there, in private, mark a vote on the ballot paper in accordance with section 122; and
  - (d) place the ballot paper in the envelope, seal the envelope and put it in a ballot box in the polling booth; and
  - (e) leave the polling booth.
- (6) Sections 108 and 109 apply to the making of a vote under this section in the same way, subject to any necessary changes, as they apply to the making of a vote under section 107.

## **118 Making a declaration vote at a commission office**

- (1) An elector who wishes to make a declaration vote during the period beginning 3 days after the cut-off day for nominations and ending at 6p.m. on the day before polling day may go to an office staffed by an issuing officer and request a ballot paper and declaration envelope from the officer.
- (2) The officer must comply with the request.
- (3) Subject to subsection (5), on being given the ballot paper and declaration envelope, the elector must without delay—
  - (a) sign the appropriate declaration on the declaration envelope before the issuing officer and have the officer sign the envelope as witness; and
  - (b) mark a vote on the ballot paper in accordance with section 122; and

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- (c) place the ballot paper in the envelope and seal the envelope; and
  - (d) give the envelope to the officer; and
  - (e) leave the office.
- (4) The issuing officer must send the envelope to the appropriate returning officer or put the envelope in a ballot box at the office.
- (5) If the elector satisfies the issuing officer that the elector is unable to vote without help, a person chosen by the elector may help the elector in any of the following ways—
- (a) acting as an interpreter;
  - (b) explaining the ballot paper and the requirements of section 122 relating to its marking;
  - (c) marking, or helping the elector to mark, the ballot paper in the way the elector wishes;
  - (d) placing the ballot paper in the declaration envelope and sealing the ballot envelope;
  - (e) giving the envelope to the officer.

## **119 Making a declaration vote using posted voting papers**

- (1) An elector who is an ordinary postal voter may, in an approved form given (by the elector or someone else) to the commission or returning officer for the electoral district for which the elector is enrolled, request a ballot paper and declaration envelope.
- (2) The request must state the address to which the ballot paper and declaration envelope is to be posted, delivered or sent.
- (3) If the request is received not later than 7p.m. on the Wednesday before polling day, the commission or returning officer must post, deliver or send a ballot paper and declaration envelope to the elector.

- (4) The commission must, as soon as practicable after the issue of the writ for an election, post a ballot paper and declaration envelope to each special postal voter.
- (5) Returning officers and the commission must keep a record of all ballot papers and declaration envelopes posted, delivered or sent under this section.
- (6) Subject to subsection (8), on receiving the ballot paper and declaration envelope, the elector must—
  - (a) sign the appropriate declaration on the declaration envelope before another elector or a person approved by the commission for the purposes of this paragraph and have the other elector or person sign the envelope as witness; and
  - (b) mark a vote on the ballot paper in accordance with section 122; and
  - (c) place the ballot paper in the envelope and seal the envelope; and
  - (d) either—
    - (i) give the envelope to a member of the commission’s staff at an office of the commission before polling day or at a polling booth on polling day; or
    - (ii) post or send the envelope, or give it to another person to post or send, to the commission or the returning officer.
- (7) If the elector is unable to vote without help, another person may help by doing any of the things mentioned in subsection (6)(b) to (d) on behalf of the elector.
- (8) A member of the commission’s staff who is given an envelope under subsection (6)(d)(i) must—
  - (a) if it is given before polling day—send the envelope to the appropriate returning officer or put the envelope in a ballot box at the office; or
  - (b) if it is given on polling day—put the envelope in a ballot box at the office.

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## 120 Electoral visitor voting

- (1) An elector who is an electoral visitor voter may, by writing signed by the elector and posted, faxed or delivered (by the elector or someone else) to the commission or the returning officer for the electoral district for which the elector is enrolled, request to vote as an electoral visitor voter.
- (2) The request must state the address the electoral visitor is to visit.
- (3) If the request is received not later than 7p.m. on the Wednesday before polling day, the commission or the returning officer must ensure that an issuing officer visits the elector for the purpose of enabling the person to vote.
- (4) The issuing officer must visit the elector at a reasonable hour—
  - (a) before polling day; or
  - (b) before 6p.m. on polling day.
- (5) When visiting the elector, the issuing officer must—
  - (a) take to the elector—
    - (i) a ballot paper; and
    - (ii) a ballot box; and
    - (iii) anything else necessary to enable the elector to vote; and
  - (b) if a scrutineer wishes—be accompanied by the scrutineer.
- (6) The commission may require the issuing officer to present ‘how to vote’ material to the elector and present the material in a particular way.

*Example—*

The commission may require the issuing officer to give particular ‘how to vote’ material to the elector or to paste the material on a manila folder and show it to the elector.

- (7) The issuing officer must comply with the requirement under subsection (6).

- (8) The issuing officer must ensure, as far as practicable, section 107 is complied with when the elector votes.
- (9) The elector may ask a person to help the elector in any of the following ways—
  - (a) acting as an interpreter;
  - (b) explaining the ballot paper and the requirements of section 122 about its marking;
  - (c) marking, or helping the elector to mark, the ballot paper in the way the elector wishes;
  - (d) folding the ballot paper and putting it in the ballot box.
- (10) The elector may make an ordinary vote or declaration vote.

## **121 Making a declaration vote in cases of uncertain identity**

- (1) If section 107(7) or 112(7) applies for a person who is an elector or a person claiming to be an elector, the issuing officer must give the person a declaration envelope.
- (2) The declaration envelope must have on it the following questions—
  - (a) Are you the same person whose name appears as [*here the issuing officer must write the name of the particular elector and the number appearing on the electoral roll in relation to the name*]?
  - (b) Have you already voted, either here or elsewhere, at the present election for this electoral district or any other electoral district?
- (3) The person must write answers to the questions on the envelope, sign the envelope and have the signature witnessed by the issuing officer.
- (4) If the person does not answer the questions or answers in either or both of the following ways—
  - (a) in the negative to the question in subsection (2)(a);
  - (b) in the affirmative to the question in subsection (2)(b);



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the issuing officer must retain the envelope and tell the person that he or she is not entitled to vote.

- (5) The person must then leave the polling place.
- (6) If subsection (4) does not apply, the issuing officer must give the person a ballot paper.
- (7) The person must, without delay—
  - (a) go alone to an unoccupied voting compartment at the polling place; and
  - (b) there, in private, mark a vote on the ballot paper in accordance with section 122; and
  - (c) place the ballot paper in the envelope, seal the envelope and put it in a ballot box in the polling place; and
  - (d) leave the polling place.
- (8) Sections 108 and 109 apply to the making of a vote under this section in the same way, subject to any necessary changes, as they apply to the making of a vote under section 107.

## **Subdivision 3A Electronically assisted voting**

### **121A Who may make an electronically assisted vote**

An elector may make an electronically assisted vote if—

- (a) the elector can not vote without assistance because the elector has—
  - (i) an impairment; or
  - (ii) an insufficient level of literacy; or
- (b) the elector can not vote at a polling booth because of an impairment; or
- (c) the elector is a member of a class of elector prescribed under a regulation for this section.

*Examples of a class of elector—*

- an elector whose address, as shown on an electoral roll, is more than 20km by the nearest practical route from a polling booth
- an elector who will not, throughout ordinary voting hours on polling day, be within Queensland

**121B Prescribed procedures for electronically assisted voting**

- (1) The commission may make procedures about how an elector may make an electronically assisted vote for an election.
- (2) The procedures must provide for the following—
  - (a) the registration of electors who may make an electronically assisted vote for an election under section 121A;
  - (b) the authentication of each electronically assisted vote;
  - (c) the recording of each elector who uses electronically assisted voting;
  - (d) ensuring the secrecy of each electronically assisted vote;
  - (e) the secure transmission of each electronically assisted vote to the commissioner, and secure storage of each electronically assisted vote by the commissioner, until printing;
  - (f) the printing, for scrutiny and counting, of a ballot paper for each electronically assisted vote;
  - (g) the secure delivery of each printed ballot paper to the returning officer for the appropriate electoral district or to the commission.
- (3) The procedures—
  - (a) do not take effect until approved by a regulation; and
  - (b) must be tabled in the Legislative Assembly with the regulation approving the procedures; and
  - (c) must be published on the commission’s website.

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## **121C Audit of electronically assisted voting for an election**

- (1) The commission must appoint an independent person to audit the information technology used under the procedures for electronically assisted voting made under section 121B.
- (2) The audit must be conducted—
  - (a) at least 7 days before the cut-off day for the nomination of candidates; and
  - (b) within 60 days after the polling day for the election.
- (3) A person appointed under subsection (1) must be an individual who is not, and has not ever been, a member of a political party.
- (4) The person appointed to conduct the audit may make recommendations to the commission to reduce or eliminate risks that could affect the security, accuracy or secrecy of electronically assisted voting.
- (5) A regulation may prescribe requirements about the conduct of an audit under this section.

## **121D Protection of information technology**

- (1) A person must not disclose to another person a source code or other computer software relating to electronically assisted voting, unless the person is authorised to do so under—
  - (a) the procedures made under section 121B; or
  - (b) an agreement entered into by the person with the commissioner.

Maximum penalty—40 penalty units or 6 months imprisonment.

- (2) A person must not, without reasonable excuse, destroy or interfere with a computer program, data file or electronic device used for or in connection with electronically assisted voting.

Maximum penalty—100 penalty units or 2 years imprisonment.

**121E Commissioner may decide electronically assisted voting is not to be used**

- (1) The commissioner may decide that electronically assisted voting is not to be used—
  - (a) at a particular election; or
  - (b) by a class of electors at a particular election.
- (2) The commissioner's decision must be in writing and published on the commission's website.

**121F Review of electronically assisted voting**

- (1) On the request of the Minister following a general election, the commissioner must conduct—
  - (a) a review of the use of electronically assisted technology for the general election; and
  - (b) an investigation into extending the use of electronically assisted voting to other electors for elections.
- (2) A report on the review and investigation must be given to the Minister.
- (3) The Minister must, within 14 days after receiving the report, table the report in the Legislative Assembly.

**Subdivision 4 Marking of ballot papers**

**122 How electors must vote**

- (1) An elector must vote in accordance with—
  - (a) if the elector votes using electronically assisted voting—the procedures approved under section 121B(3); or
  - (b) otherwise—subsection (2) or (3).
- (2) An elector may vote by writing on a ballot paper the number 1, a tick, or a cross, in the square opposite the name of only 1

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candidate to indicate the elector's preference for the candidate.

- (3) Instead of voting in accordance with subsection (2), an elector may vote by—
- (a) writing on a ballot paper the number 1, a tick, or a cross, in the square opposite the name of a candidate to indicate the elector's first preference for the candidate; and
  - (b) writing—
    - (i) the number 2 in another square; or
    - (ii) the numbers 2, 3 and so on in other squares;

to indicate the order of the elector's preferences for 1 or more (but not necessarily all) of the other candidates.

## **123 Formal and informal ballot papers**

- (1) Subject to this section, for a ballot paper to have effect to indicate a vote for the purposes of this Act—
- (a) the ballot paper must contain writing that is in accordance with section 122 or other writing or marks that indicate the voter's intended preference or intended order of preferences; and
  - (b) the ballot paper must not contain any writing or mark (other than as authorised by this Act) by which the elector can be identified; and
  - (c) the ballot paper must have been put into a ballot box as required by this Act; and
  - (d) if the ballot paper was put into a declaration envelope as required by this Act—the envelope must have been signed, and the signature must have been witnessed, as required by this Act.
- (2) For the purposes of subsection (1)(a) and other provisions of this Act—

- (a) if a ballot paper contains 2 or more squares in which the same number is written or marked—the numbers and any higher numbers written or marked in other squares are to be disregarded; and
  - (b) if there is a break in the order of the preferences indicated in writing or marks in the squares on a ballot paper—any preference after the break is to be disregarded.
- (3) Subsection (1)(d) does not apply to the witnessing of a signature if—
- (a) the person required to witness the signature was a member of the commission’s staff; and
  - (b) the person certifies in writing to the returning officer that the envelope was signed by the elector concerned.
- (4) If a ballot paper has effect to indicate a vote, it is a formal ballot paper.
- (5) If a ballot paper does not have effect to indicate a vote, it is an informal ballot paper.

## **Division 6                      Counting of votes**

### **124      Votes to be counted in accordance with division**

Votes at an election are to be counted in accordance with this division.

### **125      Preliminary processing of declaration envelopes and ballot papers**

- (1) The commission or the returning officer for each electoral district must ensure that members of the commission’s staff examine all declaration envelopes received by the commission or returning officer to determine whether the ballot papers in them are to be accepted for counting.

- (2) A ballot paper must be accepted for counting only if the person examining the declaration envelope is satisfied that—
  - (a) the elector concerned was entitled to vote at the election; and
  - (b) the declaration was signed and witnessed before the end of voting hours on polling day; and
  - (c) if the declaration on the envelope was witnessed by a person other than a member of the commission’s staff—the requirements of section 119(6)(d) were complied with; and
  - (d) if the ballot paper is in a declaration envelope received by post—the envelope was received before 6p.m. on the 10th day after polling day for the election.
- (3) If the ballot paper is accepted, the person must take it out of the envelope and, without unfolding it or allowing another person to unfold it, put it in—
  - (a) if the envelope was received by the returning officer and not sent to the commission to be dealt with under this section—a sealed ballot box; and
  - (b) if the envelope was received by the commission—a sealed ballot box in which ballot papers for the appropriate electoral district, and no other ballot papers, are placed.
- (4) If a declaration envelope received by a returning officer is for a different electoral district, it must be sent to the commission or the appropriate returning officer without being examined under this section.
- (5) Members of the commission’s staff must also seal up in separate parcels, and keep, all unopened envelopes and all opened envelopes.
- (6) The commission or returning officer must advise all candidates at the election of the times when, and places where, declaration envelopes will be examined under this section.

## **126 Preliminary and official counting of votes**

The commission must arrange for votes to be counted—

- (a) on polling day—in accordance with section 127; and
- (b) after polling day—in accordance with section 128.

## **127 Preliminary counting of ordinary votes**

- (1) As soon as practicable after the end of ordinary voting hours on polling day, the member of the commission's staff in charge of a polling booth must ensure that the commission's staff at the polling place follow the procedures set out in subsections (2) and (5).
- (2) The staff must—
  - (a) open all ballot boxes from the polling booth; and
  - (b) identify and keep in a separate parcel all declaration envelopes and all ballot papers printed for electronically assisted votes; and
  - (c) identify and keep in a separate parcel all informal ballot papers that are not in declaration envelopes; and
  - (d) arrange all formal ballot papers that are not in declaration envelopes under the names of the candidates for the election by placing in a separate parcel all those on which a first preference vote is indicated for the same candidate; and
  - (e) count the first preference votes for each candidate on all of the formal ballot papers; and
  - (f) prepare and sign a statement, in the form approved by the commission for the purposes of this paragraph, setting out—
    - (i) the number of first preference votes for each candidate; and
    - (ii) the number of informal ballot papers; and
  - (g) advise the returning officer for the electoral district concerned of the contents of the statement; and



- (h) seal up each parcel of ballot papers or declaration envelopes separately, write on each a description of its contents, sign the description and permit any scrutineers who wish to do so to countersign the description; and
  - (i) send the parcels and the statements referred to in paragraph (f) to the returning officer for the appropriate electoral district.
- (3) This section applies to votes received by the commission under section 125 for an electoral district in the same way, subject to any prescribed changes and any other necessary changes, as it would apply if the commission's office were a polling booth for the electoral district.
- (4) This section also applies to pre-poll ordinary votes received by the commission for an electoral district in the same way as it would apply if a pre-poll voting office were a polling booth for the electoral district, to the extent to which it is reasonably practicable for pre-poll ordinary votes to be counted on polling day and subject to any prescribed changes and any other necessary changes.
- (5) If the commission considers it appropriate for gaining an indication of the candidate most likely to be elected for an electoral district, the commission may require the commission's staff to—
- (a) count the preference votes in the way required by the commission; and
  - (b) prepare and sign a statement of the number of preference votes (other than first preference votes) for each candidate; and
  - (c) advise the returning officer for the electoral district of the contents of the statement.

## **128 Official counting of votes**

- (1) As soon as practicable after polling day, the returning officer for each electoral district must ensure that the commission's staff follow the procedures set out in this section.

- (2) Firstly, the staff must—
  - (a) open all ballot boxes in relation to the electoral district that have not previously been opened; and
  - (b) identify all declaration envelopes and ballot papers printed for electronically assisted votes and keep those in relation to different electoral districts in separate parcels; and
  - (c) seal up each parcel of envelopes for an electoral district other than the returning officer's electoral district, write on each a description of its contents, sign the description and permit any scrutineers who wish to do so to countersign the description; and
  - (d) send the parcels to the returning officer for the appropriate electoral district.
- (3) Secondly, the staff must—
  - (a) open all sealed parcels of ballot papers sent to the returning officer under section 127; and
  - (b) arrange all formal ballot papers under the names of the candidates for the election by placing in a separate parcel all those on which a first preference vote is indicated for the same candidate; and
  - (c) count the first preference votes for each candidate on all of the formal ballot papers.
- (4) Thirdly, the staff must—
  - (a) open all ballot boxes on hand in which ballot papers from declaration envelopes have been placed under section 125(3); and
  - (b) arrange all formal ballot papers under the names of the candidates for the election by placing in a separate parcel all those on which a first preference vote is indicated for the same candidate; and
  - (c) count the first preference votes for each candidate on all of the formal ballot papers and add the number to that obtained under subsection (3)(c); and

- (d) reapply paragraphs (a) to (c) as more envelopes are placed in ballot boxes under section 125(3), until there are no more envelopes required to be placed in ballot boxes under that section.
- (5) If, because of final counting under subsection (4), a majority of the first preference votes is for 1 candidate, that candidate is elected.
- (6) If not, then a second count must take place.
- (7) On the second count—
  - (a) the candidate who has the fewest first preference votes must be excluded; and
  - (b) each ballot paper recording a first preference vote for that candidate that is not exhausted must be transferred to the candidate next in the order of the voter's preference; and
  - (c) that ballot paper must be counted as a vote for that candidate.
- (8) If, on the second count, a candidate has a majority of the votes remaining in the count, the candidate is elected.
- (9) If not, the process of—
  - (a) excluding the candidate who has the fewest votes; and
  - (b) transferring each ballot paper of that candidate that is not exhausted to the continuing candidate next in the order of the voter's preference; and
  - (c) counting it to that candidate as a vote;must be repeated until 1 candidate has a majority of the votes remaining in the count.
- (10) The candidate who, under subsection (9), has a majority of the votes remaining in the count is elected.
- (11) Despite subsections (7) and (9), the process of transferring to a continuing candidate each of the ballot papers that is not exhausted and counting it to the candidate as a vote must not

be repeated if there is only 1 continuing candidate, but that candidate is elected.

- (12) If, on any count at which the candidate with the fewest number of votes must be excluded, 2 or more candidates have an equal number of votes and that number is fewer than the number of votes of any other candidate—
  - (a) the candidate who had the fewest number of votes at the last count at which the candidates did not have an equal number of votes must be excluded; or
  - (b) if the candidates had an equal number of votes at all earlier counts—the candidate whose name is on a slip chosen under subsection (13) must be excluded.
- (13) For the purposes of subsection (12)(b), the returning officer must—
  - (a) write the names of the candidates who have an equal number of votes on similar slips of paper; and
  - (b) fold the slips to prevent the names being seen; and
  - (c) place the slips in an opaque container; and
  - (d) mix the slips; and
  - (e) raise the container so that its contents are not visible and choose a slip at random.
- (14) If, on any count at which the candidate with the fewest number of votes must be excluded, 2 or more candidates have an equal number of votes and the candidates are the only continuing candidates—
  - (a) the returning officer must refer the matter to the commission, which must refer it to the Court of Disputed Returns; and
  - (b) the court must determine the validity of any disputed ballot papers and recount all of the ballot papers by applying subsection (3)(b) and (c) and subsections (5) to (12); and

- (c) if the determination and recount results in a candidate being elected—the court must declare the candidate elected; and
  - (d) if not—the court must order that a fresh election be held.
- (15) Subsection (14) does not affect the jurisdiction of the court under part 8 in relation to the disputing of an election.

### **129 Objections by scrutineers**

- (1) If, while a member of the commission's staff is complying with section 127 or 128, a scrutineer objects to the member's treatment of a ballot paper as informal, the member must mark on the back of it 'formal' or 'informal' according to whether the member's decision is to treat it as formal or informal.
- (2) If, while a member of the commission's staff is complying with section 127 or 128, a scrutineer objects to the counting of a vote for a particular candidate, the member must mark on the back of the relevant ballot paper the name of the candidate for whom it is counted.

### **130 Recounting of votes**

- (1) At any time before—
  - (a) a returning officer notifies the election of a candidate under section 131; or
  - (b) the commission refers a matter to the Court of Disputed Returns under section 128(14);the commission may direct the returning officer, or another member of the commission's staff, to recount some or all of the ballot papers for the election.
- (2) A returning officer may recount some or all of the ballot papers for an election at any time before the returning officer notifies the election of a candidate.

- (3) A person carrying out a recount of ballot papers must, so far as practicable, ensure that the requirements of section 128 are complied with.
- (4) This section does not limit by implication section 31(4) or 32(10).

## **Division 7                      Notifying the results of elections etc.**

### **131      Notifying the results of an election**

- (1) As soon as practicable after a candidate is elected under section 94 or 128 (including that section as applied under section 130), the returning officer for the electoral district must notify the commission of the name of the candidate elected for the electoral district.
- (2) A returning officer must not delay complying with subsection (1) because ballot papers have not been received if it is clear that the ballot papers could not possibly affect the election of a candidate.

### **132      Return of writ for election**

- (1) As soon as practicable after the commission has received—
  - (a) in the case of a general election—the copies of the notifications under section 131(1) from the returning officers for all electoral districts; and
  - (b) in any other case—the copy of the notification under section 131(1) from the returning officer for the electoral district in relation to which the election was held;

and before the day for the return of the writ, the commission must comply with subsection (2).

- (2) The commission must—

- (a) write on the writ the name of each candidate elected; and
- (b) return the writ to whichever of the Governor or the Speaker of the Legislative Assembly issued the writ; and
- (c) publish in the gazette the name of each candidate elected.

### 133 Counting for information purposes

After a candidate is elected for an electoral district under section 128 (including that section as applied under section 130), the commission may direct the returning officer for the electoral district to examine ballot papers for the purpose of obtaining further information about the preferences of voters.

### 134 Notice of failure to vote etc.

- (1) Subject to subsection (2), the commission may, as soon as practicable after an election, send a notice to each elector who appears to have failed to vote at the election—
  - (a) stating that—
    - (i) the elector appears to have failed to vote at the election; and
    - (ii) it is an offence to fail, without a valid and sufficient reason, to vote at an election; and
    - (iii) the elector may, if the elector considers he or she has committed the offence, pay one-half a penalty unit (the *penalty*) to the commission by a specified day, not earlier than 21 days after the elector received the notice (the *appropriate day*), and, if the commission receives the payment by the appropriate day, no further steps will be taken against the elector about the offence; and
  - (b) requiring the elector—

- (i) if the elector intends paying the penalty by the appropriate day—to sign the appropriate form for payment of the penalty and include payment of the penalty; and
  - (ii) if the elector does not intend paying the penalty by the appropriate day—to state, in a form included in or with the notice, whether the elector voted and, if not, the reason for failing to vote; and
  - (iii) to sign the form and post or give it to the commission so that it is received by the appropriate day.
- (2) The elector must comply with the requirements of the notice.
- (3) If—
  - (a) the elector is absent or unable, because of physical incapacity, to comply with the requirements of the notice; and
  - (b) another elector who has personal knowledge of the facts complies with the requirements and in doing so also has his or her signature on the form witnessed;the first elector is taken to have complied with the requirements.
- (4) As soon as practicable after an election, the commission must send a notice to each person who made a declaration vote under section 115(c), but whose ballot paper was not accepted for counting under section 125(1), advising the person why the ballot paper was not accepted for counting.

### **135 Payments for failure to vote**

- (1) If the commission sends a person a notice under section 134(1) for an election and the person makes payment to the commission under the subsection, the commissioner must—
  - (a) accept the payment; and
  - (b) give the person a receipt for the payment; and



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- (c) not take any proceeding against the person for failing to vote at the election.
- (2) In this section—  
*proceeding* includes serving an infringement notice under the *State Penalties Enforcement Act 1999*.

### **136 Storage of ballot papers and declaration envelopes**

- (1) The commission must keep the following material for an election until the day of issue of the writ for the next general election—
- (a) ballot papers showing a mark by an elector for the election;
  - (b) certified copies of electoral rolls;
  - (c) declaration envelopes.
- (2) However, the commission must comply with any order by a court, or any request by the commissioner of the Queensland Police Service, to hand over, allow access to or provide copies of any ballot papers or declaration envelopes.

## **Part 8 Court of Disputed Returns**

### **Division 1 Court of Disputed Returns**

#### **137 Supreme Court to be Court of Disputed Returns**

- (1) The Supreme Court is the Court of Disputed Returns for the purposes of this Act, the *Local Government Electoral Act 2011* and the *Referendums Act 1997*.
- (2) A single judge may constitute, and exercise all the jurisdiction and powers of, the Court of Disputed Returns.

- (3) For subsection (2), the Chief Justice may be the single judge or appoint another Supreme Court judge to be the single judge.

## **Division 2                    Disputing elections**

### **138    Election may be disputed under this part**

- (1) The election of a person may be disputed by an application to the Court of Disputed Returns under this division or an appeal under division 4.
- (2) The election may not be disputed in any other way.

### **139    Who may dispute the election**

An election may be disputed by—

- (a) a candidate at the election for the electoral district concerned; or
- (b) an elector for the electoral district concerned; or
- (c) the commission; or
- (d) a person who the commission decided was not properly nominated.

*Note—*

See section 90 (Grounds for deciding a person is not properly nominated).

### **140    Requirements for an application to be effective**

- (1) For an application to have effect for the purposes of this division, the requirements of this section must be complied with.
- (2) The application must—
- (a) set out the facts relied on to dispute the election; and

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- (b) set out the order sought from the Court of Disputed Returns; and
  - (c) be signed by—
    - (i) in the case of an application by the commission—the electoral commissioner; and
    - (ii) in any other case—the applicant before a witness; and
  - (d) if paragraph (c)(ii) applies—contain the signature, occupation and address of the witness.
- (3) The person disputing the election must—
- (a) file the application with the Supreme Court registry in Brisbane within 7 days after the day on which the writ for the election is returned as mentioned in section 132(2)(b); and
  - (b) when filing the application, deposit with the court—
    - (i) \$400; or
    - (ii) if a greater amount is prescribed—that amount.
- (4) Subsections (1) and (2) do not, by implication, prevent the amendment of the application.

#### **141 Copies of application to be given to elected candidate and commission**

The registrar of the Supreme Court must give a copy of the application to—

- (a) the candidate who was elected; and
- (b) the commission, unless the commission filed the application.

#### **142 Application to court for order relating to documents etc.**

- (1) The applicant may apply to the Court of Disputed Returns for an order requiring the commission to give the court specified

documents and other things held by the commission in relation to the election.

- (2) The court may make such order in relation to the application as it considers appropriate.

### **143 Parties to application**

- (1) The parties to an application are the person who filed it and any respondent under this section.
- (2) The commission is a respondent to any application by another person under this division.
- (3) The person who was elected is a party to the application if the person, within 7 days after receiving a copy of the application under section 141, files a notice with the Supreme Court registry in Brisbane stating that the person wishes to be a respondent.

### **144 How application is to be dealt with by court**

- (1) The Court of Disputed Returns may conduct hearings and other proceedings in relation to the application.
- (2) The court is not bound by technicalities, legal forms or rules of evidence.
- (3) The court must deal with the application as quickly as is reasonable in the circumstances.
- (4) In giving effect to subsection (3), the court must use its best efforts to ensure that—
  - (a) the proceeding begins within 28 days after the application is lodged; and
  - (b) the court's final orders are given within 14 days after the end of the proceeding.
- (5) Despite subsections (3) and (4), the court must give all parties to the proceeding at least 10 days notice before it begins the proceeding.

- (6) The rules of court of the Supreme Court may include provision, not inconsistent with this division, with respect to the practices and procedures of the Court of Disputed Returns.
- (7) Without limiting subsection (6), the rules of court may make provision regarding the withdrawal of applications, the consequences of the death of applicants and the substitution of applicants in such circumstances.

#### **145 Application for dismissal of application disputing election**

- (1) The commission may apply to the court for an order dismissing the application disputing the election on the ground that there has been excessive delay by the applicant in relation to the application.
- (2) The court may make the order on the application under subsection (1) that the court considers appropriate.

#### **146 Powers of the court**

- (1) Subject to sections 147 and 148, the Court of Disputed Returns may make any order or exercise any power in relation to the application that the court considers just and equitable.
- (2) The orders may include any of the following—
  - (a) an order to the effect that the person elected is taken not to have been elected;
  - (b) an order to the effect that a new election must be held;
  - (c) an order to the effect that a candidate other than the one elected is taken instead to have been elected;
  - (d) an order to dismiss or uphold the application in whole or part.
- (3) To remove doubt, it is declared that the court may order the opening of a sealed declaration vote envelope.
- (4) However, the court must ensure, as far as is reasonably practicable, the secrecy of the ballot is maintained.

## **147 Restrictions on certain orders**

- (1) The court must not make an order mentioned in section 146(2) because of a delay in—
  - (a) the announcement of nominations under section 93; or
  - (b) complying with the requirements of part 7, division 5, 6 or 7.
- (2) Also, the court must not make an order under section 146(2) (other than an order to dismiss the application)—
  - (a) because of an absence or error of, or omission by, any member of the commission's staff that appears unlikely to have had the effect that the person elected would not have been elected; or
  - (b) because incorrect information an elector gives to an issuing officer is written on a declaration envelope the elector signed.
- (3) In determining whether the requirements of subsection (2) are met, the court must not, if it finds that an elector was prevented from voting at the election by absence, error or omission, take into account any evidence of the way in which the elector had intended to vote.
- (4) The court must not make an order mentioned in section 146(2) because—
  - (a) the names of the candidates were not set out on a ballot paper in the order required by section 102(2)(d); or
  - (b) a name or other word that was required by section 102(2)(g) to be printed on a ballot paper adjacent to a candidate's name was not so printed or was misspelt, inaccurate or incorrect; or
  - (c) a name or other word that was not authorised by section 102(2)(g) was printed on a ballot paper adjacent to a candidate's name.

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**148 Restriction on certain evidence and inquiries**

- (1) In a proceeding in relation to the application, the Court of Disputed Returns must not take into account evidence by any person that the person was not permitted to vote during voting hours in relation to a polling place, unless the court is satisfied that, so far as the person was permitted to do so, the person did everything required by this Act to enable the person to vote.
- (2) In a proceeding in relation to the application, the court—
  - (a) may inquire whether persons voting were enrolled on the electoral roll for the electoral district concerned and whether votes were correctly treated as formal or informal during the counting of votes; but
  - (b) must not inquire whether the electoral roll, or any copy used at the election, was in accordance with this Act.

**149 Copy of final court orders to be sent to Clerk of Parliament**

The registrar of the Supreme Court must arrange for a copy of the court's final orders to be sent to the Clerk of the Parliament as soon as possible after they are made.

**150 Costs**

- (1) The Court of Disputed Returns may order an unsuccessful party to the application to pay the reasonable costs of the other parties to the application.
- (2) If costs are awarded against the applicant, the deposit filed with the application must be applied towards payment of the costs.
- (3) If not, the deposit must be returned to the person.

**151 Decisions and orders to be final etc.**

Subject to division 4, a decision of, or order made by, the Court of Disputed Returns in relation to the application—

- (a) is final and conclusive; and
- (b) can not be appealed against or otherwise called in question on any ground.

### **152 Right of commission to have access to documents**

Unless the Court of Disputed Returns otherwise orders, the filing of an application does not deprive the commission of any right to have access to a document for the purpose of performing its functions.

## **Division 3                      Disputing qualifications and vacancies of members**

### **153 Reference of question as to qualification or vacancy**

- (1) The Legislative Assembly may, by resolution, refer to the Court of Disputed Returns any question regarding—
  - (a) the qualification of a person to be, or to continue to be, a member of the Legislative Assembly; or
  - (b) a vacancy in the Legislative Assembly.
- (2) The Court of Disputed Returns has jurisdiction to hear and determine the reference.

### **154 Speaker to state case**

If the Legislative Assembly refers a question to the Court of Disputed Returns, the Speaker must give the court—

- (a) a statement of the question that the court is to hear and determine; and
- (b) any proceedings, papers, reports or documents relating to the reference in the Legislative Assembly's possession.



### **155 Parties to the reference**

- (1) The Court of Disputed Returns may—
  - (a) allow any interested person to be heard when the reference is heard; or
  - (b) direct that notice of its hearing of the reference must be served on a specified person.
- (2) Any person allowed to be heard, or on whom notice is served, becomes a party to the reference.

### **156 Powers of court**

In hearing the reference, the Court of Disputed Returns—

- (a) must sit as an open court; and
- (b) has power to make such orders as it considers just and equitable, including the power—
  - (i) to declare that any person was not qualified to be a member of the Legislative Assembly; and
  - (ii) to declare that there is a vacancy in the Legislative Assembly.

### **157 Order to be sent to Assembly**

After the hearing and determination of the reference, the registrar of the Supreme Court must arrange for a copy of the court's order to be given to the Clerk of the Parliament.

### **158 Application of provisions**

Sections 144(6), 150 and 151 apply, subject to any necessary changes, to proceedings on a reference under this division.

## **Division 4                      Appeals**

### **159      Appeal to Court of Appeal on question of law**

An appeal lies to the Court of Appeal from any decision of, or order made by, the Court of Disputed Returns on a question of law.

### **160      Time for appealing**

The notice of appeal starting the appeal must—

- (a) be filed within 7 days after the date of the decision or order appealed from; and
- (b) be served as soon as practicable on all other parties to the appeal.

### **161      Commission is a party to appeal**

The commission is a party to the appeal, whether or not it is the appellant.

### **162      How appeal is dealt with by Court of Appeal**

- (1) In deciding the appeal, the Court of Appeal—
  - (a) is not bound by technicalities, legal forms or rules of evidence; and
  - (b) may use the procedures, whether usual or otherwise, that it considers necessary to enable the appeal to be decided quickly and properly; and
  - (c) has all the powers given to it by the *Uniform Civil Procedure Rules 1999*.
- (2) The court must use its best efforts to ensure that the appeal is heard, and the court's final decision is made or order is given, as quickly as is reasonable in the circumstances.

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**163 Application for dismissal of appeal**

- (1) A party, other than the appellant, may apply to the Court of Appeal for an order dismissing the appeal on the ground that there has been excessive delay by the appellant in relation to the appeal.
- (2) The court may make an order on the application it considers appropriate.

**164 Copy of final court orders to be sent to Clerk of Parliament**

The registrar of the Supreme Court must arrange for a copy of the Court of Appeal's final orders to be sent to the Clerk of the Parliament as soon as possible after they are made.

**165 Right of commission to have access to documents**

Unless the Court of Appeal otherwise orders, the filing of the notice of appeal does not deprive the commission of any right to have access to a document for the purpose of performing its functions.

## **Part 9 Commission oversight of preselection ballots**

**166 Model procedures for preselection ballots**

The commission must give a copy of the model procedures for the conduct of a preselection ballot, prescribed under a regulation, (the *model procedures*) to the registered officer of each registered political party.

### **167 Notice of preselection ballots to commission**

- (1) The registered officer must give the commission at least 7 days written notice of when voting in a preselection ballot is to be held.

Maximum penalty—40 penalty units.

- (2) The registered officer must give a candidate in the ballot a copy of the model procedures.
- (3) The candidate must give the registered officer written acknowledgement of receipt of the model procedures.

### **168 Inquiry into preselection ballot**

- (1) The commission may inquire into a preselection ballot of a candidate for an election or an election for a local government—
  - (a) on its own initiative; or
  - (b) on receiving a complaint from a candidate, or a party member who is eligible to vote, in the preselection ballot that the ballot has not been, or is not to be, conducted in accordance with—
    - (i) the model procedures; and
    - (ii) the party's constitution.
- (2) A complaint under subsection (1)(b) must—
  - (a) be made within 30 days after the voting in the ballot takes place; and
  - (b) be in writing; and
  - (c) state in detail the grounds on which the complaint is made.
- (3) The commission may refuse to investigate a complaint that does not comply with subsection (2).
- (4) The commission may conduct the inquiry before or after the voting in the ballot takes place.
- (5) The commission may require the registered officer—

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- (a) to give the commission, within a stated reasonable period, a list of the names and addresses of the members of the party who voted, or are eligible to vote, in the ballot; and
  - (b) to certify to the commission, within a stated reasonable period, that each member listed was, at the time of the ballot, or is, eligible to vote in the ballot under the party's constitution.
- (6) The commission may require the registered officer to give the commission, within a stated reasonable period, copies of the records of the party that are reasonably necessary for the commission to ensure the information given by the registered officer is accurate.
- (7) The registered officer must comply with a requirement under subsection (5) or (6), unless the registered officer has a reasonable excuse.

Maximum penalty—400 penalty units.

- (8) The commission must, as soon as practicable, give the Minister a report that—
- (a) identifies the preselection ballot examined under this section; and
  - (b) states whether the ballot was conducted in accordance with—
    - (i) the model procedures; and
    - (ii) the party's constitution.

## **169 Frivolous or vexatious complaint**

- (1) The commission may give a person notice that a complaint made by the person under section 168 will not be investigated, or further investigated, by the commission because it appears—
- (a) to concern a frivolous matter; or
  - (b) to have been made vexatiously.

[s 170]

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- (2) The notice must advise the person that if the person again makes the same or substantially the same complaint to the commission the person commits an offence punishable by a fine of 85 penalty units or 1 year's imprisonment or both.
- (3) If, after receiving a notice mentioned in subsection (2), the person makes the same or substantially the same complaint to the commission again, the person commits an offence.  
Maximum penalty—85 penalty units or 1 year's imprisonment.
- (4) It is a defence to a prosecution for an offence against subsection (3) for the person to prove that the complaint did not concern a frivolous matter and was not made vexatiously.
- (5) In this section—  
*make* a complaint to the commission includes cause a complaint to be referred to the commission.

## **170 Notice of preselection ballot**

The registered officer of a registered political party must, not later than 30 days after the polling day for an election in which the party endorsed a candidate, notify the commission whether the selection of the candidate involved a preselection ballot.

Maximum penalty—40 penalty units.

## **171 Selecting preselection ballots for random audit**

- (1) As soon as practicable after the 30th day after the polling day for an election, the commission must decide how many of the total number of preselection ballots of candidates for each registered political party in an election of which it has been notified it will audit.
- (2) Once the commission has decided the number of ballots it will audit, a member of the commission's staff must, in the presence of at least 2 witnesses—

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- (a) write the name of each of the candidates chosen by preselection ballot on a separate piece of paper; and
  - (b) ensure that each piece of paper is the same kind, shape, size and colour; and
  - (c) put each separate piece of paper in a separate envelope and, if it is necessary to fold the piece of paper to make it fit in the envelope, fold each piece of paper in the same way in order to make each piece of paper the same size and thickness; and
  - (d) ensure that each envelope is opaque and of the same kind, shape, size and colour; and
  - (e) after each piece of paper has been put in an envelope, seal the envelope; and
  - (f) put all the envelopes in a container and mix them up; and
  - (g) draw out, 1 at a time, only the number of envelopes that equal the number decided by the commission under subsection (1); and
  - (h) as each envelope is drawn out, open it and note the name of the candidate written on the piece of paper in the envelope.
- (3) The member of the commission's staff must allow any candidate, or representative of a candidate, to be present during the process mentioned in subsection (2).

## **172 Random audit of preselection ballots**

- (1) The commission must give the registered officer of the political party that endorsed a candidate whose name is noted under section 171(2)(h) written notice that the preselection ballot for the candidate is to be audited to identify whether the ballot was conducted in accordance with—
  - (a) the model procedures; and
  - (b) the party's constitution.

- (2) The registered officer, within 1 month after receiving the notice, must—
- (a) give the commission a list of the names and addresses of the members of the party who voted in the ballot; and
  - (b) certify to the commission that, at the time the ballot took place, each member listed was eligible to vote in the ballot under the party's constitution.

Maximum penalty—400 penalty units.

- (3) The commission may require the registered officer to give the commission, within a stated reasonable period, copies of the records of the party that are reasonably necessary for the commission to ensure the information given by the registered officer is accurate.
- (4) The registered officer must comply with a requirement under subsection (3), unless the registered officer has a reasonable excuse.

Maximum penalty—400 penalty units.

- (5) The commission must, as soon as practicable, give the Minister a report that identifies—
- (a) the preselection ballots examined under this section; and
  - (b) any preselection ballot in which someone voted in contravention of—
    - (i) the model procedures; or
    - (ii) the party's constitution.

### **173 Election not invalidated by irregular preselection ballot**

The election is not invalid only because the commission gave the Minister a report that identified a preselection ballot in which someone voted in contravention of—

- (a) the model procedures; or
- (b) the party's constitution.



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## Part 10                      Enforcement

### Division 1                      Offences in general

#### 174      Attempts taken to be offences

A person who attempts to commit an offence against a provision of this part is taken to have committed the offence.

#### 175      Failure to enrol etc.

- (1) Subject to this section, a person who contravenes section 65(2) or (3) commits an offence punishable on conviction by a penalty of a fine of not more than 1 penalty unit.
- (2) Subject to this section, if a person who is entitled to be enrolled for an electoral district is not enrolled for the electoral district—
  - (a) at the end of 21 days after becoming entitled; or
  - (b) at any later time while the person continues to be entitled to be enrolled for the district;the person commits an offence punishable on conviction by a penalty of a fine of not more than 1 penalty unit.
- (3) If the person admits evidence that the non-enrolment was not because of the person's failure to give notice as required by section 65(2), the person does not commit an offence against subsection (2) unless the prosecution proves the contrary.
- (4) If a person gives notice as required by section 65(2), a proceeding must not be instituted against the person for an offence against subsection (1) for a contravention of section 65(2), or for an offence against subsection (2), committed before the notice was given.

## **176 False names etc. on electoral rolls**

A person must not wilfully insert on any electoral roll a false or fictitious name or address.

Maximum penalty—20 penalty units or 6 months imprisonment.

## **177 Misuse of restricted information**

- (1) If a copy of an electoral roll is made available to a person or body under section 61, a person must use any information obtained from the copy only for purposes set out in subsection (2).

Maximum penalty—20 penalty units or 6 months imprisonment.

- (2) The purposes are—
- (a) any purpose related to an election under—
    - (i) this Act; or
    - (ii) the *Local Government Electoral Act 2011*; or
    - (iii) the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*; or
  - (b) any purpose related to a referendum; or
  - (c) checking the accuracy of information on the electoral roll; or
  - (d) the performance by a member of—
    - (i) the Legislative Assembly; or
    - (ii) a local authority;of the member's functions in relation to electors enrolled on the electoral roll; or
  - (e) the performance by an official or employee of a political party of the person's duties in relation to electors enrolled on the electoral roll.

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**178 Improperly influencing commissioner**

A person must not improperly influence a commissioner in the performance of the commissioner's duties under this Act.

Maximum penalty—35 penalty units or 1 year's imprisonment.

**179 Interfering with election right or duty**

A person must not hinder or interfere with the free exercise or performance, by another person, of any right or duty under this Act that relates to an election.

Maximum penalty—20 penalty units or 6 months imprisonment.

**180 Wilful neglect etc. by commission staff**

A senior electoral officer or member of the commission's staff must not wilfully neglect or fail to perform any duty under this Act.

Maximum penalty—20 penalty units.

**Division 2                      Offences relating to electoral advertising etc.**

**181 Author of election matter must be named**

(1) A person must not, during the election period for an election—

- (a) print, publish, distribute or broadcast; or
- (b) permit or authorise another person to print, publish, distribute or broadcast;

any advertisement, handbill, pamphlet or notice containing election matter unless there appears, or is stated, at its end the particulars required by subsection (2).

Maximum penalty—

- (a) in the case of an individual—20 penalty units; or
  - (b) in the case of a corporation—85 penalty units.
- (2) The particulars are the name and address (other than a post office box) of the person who authorised the advertisement, handbill, pamphlet or notice.
- (3) Subsection (1) does not apply to an advertisement—
- (a) that is printed, published or distributed on a car sticker, T-shirt, lapel button, lapel badge, pen, pencil or balloon; or
  - (b) that is of a kind prescribed for the purposes of this subsection.
- (4) Also, subsection (1) does not apply to distributing, or permitting or authorising another person to distribute, a how-to-vote card.
- (5) In this section—
- publish* includes publish on the internet, even if the internet site on which the publication is made is located outside Queensland.

## **182 Distribution of how-to-vote cards**

- (1) During the election period for an election, a person must not distribute, or permit or authorise another person to distribute, a how-to-vote card that does not comply with subsections (2) to (4).

Maximum penalty—

- (a) for an individual—20 penalty units; or
  - (b) for a corporation—85 penalty units.
- (2) A how-to-vote card must state the following particulars—
- (a) the name and address of the person who authorised the card;
  - (b) if the card is authorised—

- (i) for a registered political party or a candidate endorsed by a registered political party—the party’s name; or
- (ii) for a candidate who is not endorsed by a registered political party—the candidate’s name and the word ‘candidate’.

*Example for paragraph (b)(i)—*

‘Authorised P. Smith, 100 Green Street Brisbane for [*name of registered political party*]’.

*Example for paragraph (b)(ii)—*

‘Authorised R. Jones, 1 Green Street Brisbane for R. Jones (candidate)’.

- (3) For subsection (2)(a), the address must not be a post office box.
- (4) The particulars mentioned in subsection (2) must appear—
  - (a) at the end of each printed face of the how-to-vote card; and
  - (b) in prominent and legible characters in print no smaller than—
    - (i) if the card is not larger than A6—10 point; or
    - (ii) if the card is larger than A6 but not larger than A3—14 point; or
    - (iii) if the card is larger than A3—20 point.
- (5) During the election period for an election, a person must not distribute, or permit or authorise another person to distribute, a how-to-vote card if the person knows, or ought reasonably to know, that the particulars, or any of the particulars, mentioned in subsection (2) on the card are false.

Maximum penalty—

- (a) for an individual—20 penalty units; or
  - (b) for a corporation—85 penalty units.
- (6) In this section—

***name***, of a registered political party, means—

- (a) if the register of political parties includes an abbreviation of the party's name—the abbreviation; or
- (b) otherwise—the party's full name included in the register of political parties.

### **183 Lodging how-to-vote cards**

- (1) The person who authorised a how-to-vote card for a registered political party, or for a candidate endorsed by a registered political party, for an election must, no later than 5p.m. on the Friday that is 7 days before the polling day for the election, lodge with the commission—
  - (a) the required number of the how-to-vote cards; and
  - (b) a statutory declaration relating to any financial contribution received from another registered political party or another candidate, whether directly or from someone else on behalf of the party or candidate, in relation to the production of the how-to-vote card that states—
    - (i) who the financial contribution was received from or on behalf of; and
    - (ii) the nature and amount of the financial contribution.
- (2) The person who authorised a how-to-vote card for a candidate, other than a candidate endorsed by a registered political party, for an election must, no later than 5p.m. on the Friday that is 7 days before the polling day for the election, lodge with the commission or with the returning officer for the electoral district in which the candidate is nominated—
  - (a) the required number of the how-to-vote cards; and
  - (b) a statutory declaration relating to any financial contribution received from a registered political party or another candidate, whether directly or from someone else on behalf of the party or candidate, in relation to the production of the how-to-vote card that states—

- (i) who the financial contribution was received from or on behalf of; and
- (ii) the nature and amount of the financial contribution.

*Example for subsections (1) and (2)—*

If polling day is Saturday, 15 January, the how-to-vote cards and statutory declaration must be lodged no later than 5p.m. on Friday, 7 January.

- (3) The commission or returning officer must reject a how-to-vote card received under subsection (1) or (2) if—
  - (a) the how-to-vote card does not comply with section 182; or
  - (b) the commission or returning officer is satisfied, on reasonable grounds, the how-to-vote card is likely to mislead or deceive an elector in voting under this Act.
- (4) If the commission or returning officer rejects a how-to-vote card under subsection (3)(b), the commission or returning officer must give the person who authorised the how-to-vote card written reasons for the rejection.
- (5) A person to whom reasons are given under subsection (4) may, no later than 5p.m. on the Wednesday immediately before the polling day for the election—
  - (a) revise the how-to-vote card; and
  - (b) comply with subsections (1)(a) and (b) or (2)(a) and (b) in relation to the how-to-vote card.
- (6) Before polling day, the commission must make a how-to-vote card that it has not rejected available—
  - (a) for public inspection for free at—
    - (i) the commission’s Brisbane office; and
    - (ii) if the how-to-vote card was printed for a candidate—the office of the returning officer for the electoral district being contested by the candidate; and
  - (b) on the commission’s website.

- (7) On polling day, if the how-to-vote card relates to only 1 electoral district, the commission or returning officer for the district must, to the extent that it is reasonably practicable to do so, make the card available for public inspection for free at each polling place in the district.
- (8) An election is not invalid only because the commission does not comply with subsection (6) or (7).
- (9) A person must not distribute, or permit or authorise someone else to distribute, a how-to-vote card to which subsection (1) or (2) applies on polling day unless subsection (1) or (2) has been complied with for the card.

Maximum penalty—20 penalty units.

- (10) If, on polling day, a member of the commission's staff reasonably suspects a person is distributing a how-to-vote card to which subsection (1) or (2) applies and that subsection (1) or (2) has not been complied with for the card, the employee may—
  - (a) require the person to produce the how-to-vote card for inspection; and
  - (b) confiscate any how-to-vote cards that have not been lodged as required by subsection (1) or (2).
- (11) A person must not obstruct the employee in the exercise of the power under subsection (10)(b), unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

- (12) In this section—

***financial contribution*** means a contribution in the form of money, property or other valuable consideration.

***obstruct*** includes hinder and attempt to obstruct.

***required number*** of how-to-vote cards means 12 more than the number of polling places in the electorate in which the cards are to be distributed.



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## 184 **Headline to electoral advertisements**

The proprietor of a newspaper is guilty of an offence if—

- (a) an article, or a paragraph, containing electoral matter is printed in the newspaper; and
- (b) either—
  - (i) the insertion of the article or paragraph is or is to be paid for; or
  - (ii) any reward or compensation, or promise of reward or compensation, is or is to be made for the insertion of the article or paragraph; and
- (c) the proprietor does not cause the word ‘advertisement’ to be printed as a headline to the article or paragraph in letters not smaller than 10 point or long primer.

Maximum penalty—

- (a) in the case of an individual—10 penalty units; or
- (b) in the case of a corporation—40 penalty units.

## 185 **Misleading voters**

- (1) A person must not, during the election period for an election, print, publish, distribute or broadcast anything that is intended or likely to mislead an elector in relation to the way of voting at the election.

Maximum penalty—40 penalty units.

- (2) A person must not for the purpose of affecting the election of a candidate, knowingly publish a false statement of fact regarding the personal character or conduct of the candidate.

Maximum penalty—40 penalty units.

- (3) A person must not, during the election period for an election, print, publish, distribute or broadcast by television any representation or purported representation of a ballot paper for use in the election if it is likely to induce an elector to vote other than in accordance with this Act.

Maximum penalty—40 penalty units.

- (4) In this section—

*publish* includes publish on the internet, even if the internet site on which the publication is made is located outside Queensland.

## **Division 3                      Offences relating to voting etc.**

### **186      Failure to vote etc.**

- (1) An elector must not—

- (a) fail to vote at an election without a valid and sufficient excuse; or
- (b) contravene section 134(2); or
- (c) state anything to the commission or the commission's staff under section 134 the person knows is false or misleading in a material particular; or
- (d) omit from a statement made under section 134 to the commission or the commission's staff anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—1 penalty unit.

- (2) Without limiting subsection (1)(a), if an elector believes it to be part of the elector's religious duty not to vote at an election, that is a valid and sufficient excuse for failing to vote at the election.
- (3) A person may be prosecuted for an offence against subsection (1)(a) only if the person has been sent a notice about the election under section 134.
- (4) In a proceeding for an offence against subsection (1)(a), a certificate purporting to be signed by a member of the commission's staff stating any of the following matters is evidence of the matter—

- (a) an election happened on a stated day;
  - (b) an elector failed to vote at the election;
  - (c) a notice was sent by the commission to the elector under section 134 on a stated day;
  - (d) a form mentioned in section 134(1) was not received by the commission from the elector by the day stated under the subsection.
- (5) If a form is not received by the commission from the elector by the day stated under section 134(1), it is evidence the elector failed to vote at the election without a valid and sufficient excuse.
- (6) If a form is received by the commission about the elector's compliance with section 134, statements in the form purporting to be made by—
- (a) the elector are evidence as statements made by the elector; and
  - (b) another elector under section 134(3) are evidence as statements made by the other elector.
- (7) Subsection (1)(a) does not apply to an Antarctic voter.
- (8) For the *Justices Act 1886*, section 139, the place where an offence against subsection (1)(a) is committed is taken to be the office of the returning officer for the electoral district for which the elector was enrolled for the election.

## **187 Leave to vote**

- (1) If—
- (a) an employee who is an elector asks his or her employer, before polling day in relation to an election, for leave of absence to vote at the election; and
  - (b) the absence is necessary to enable the employee to vote at the election;

then, unless the absence is reasonably likely to cause danger or substantial loss to the employer in relation to the employment concerned, the employer—

- (c) must allow the employee leave of absence for a reasonable period of not more than 2 hours to enable the employee to vote at the election; and
  - (d) must not impose any penalty or disproportionate deduction of pay for the leave of absence.
- (2) An employee must not ask for leave of absence under subsection (1) to vote at an election unless the employee genuinely intends to vote at the election.

Maximum penalty—

- (a) in the case of an individual—10 penalty units; or
- (b) in the case of a corporation—40 penalty units.

## **188 Canvassing etc. in or near polling places**

- (1) A person must not, during the election period for an election, do anything mentioned in subsection (2)—
- (a) inside a room with voting compartments; or
  - (b) within 6m or, in relation to an office mentioned in section 118(1), a lesser distance allowed by the commission, of the entrance to a building with voting compartments.

Maximum penalty—10 penalty units.

- (2) For the purposes of subsection (1), the things are—
- (a) canvassing for votes; or
  - (b) inducing an elector not to—
    - (i) vote in a particular way; or
    - (ii) vote at all at the election; or
  - (c) loitering; or
  - (d) obstructing the free passage of voters.

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**189 Interrupting voting etc.**

A person must not—

- (a) enter or remain in a polling booth otherwise than as authorised by this Act; or
- (b) wilfully interrupt, obstruct or disturb any proceeding at an election; or
- (c) enter a voting compartment otherwise than as authorised by this Act; or
- (d) prevent a scrutineer from entering or leaving a polling place—
  - (i) during voting hours in relation to the polling place; or
  - (ii) while votes are being counted at the polling place; or
- (e) obstruct or wilfully mislead a senior electoral officer or member of the commission's staff in the performance of a duty.

Maximum penalty—10 penalty units.

**190 Displaying political statements in certain places**

- (1) A person must not display a political statement—
  - (a) inside a room with voting compartments; or
  - (b) within 6m of the entrance to a building with voting compartments.

Maximum penalty—1 penalty unit.

- (2) In this section—

*political statement* means a statement or design that a reasonable person would associate with a political organisation, cause or belief.

## **191 Offences relating to ballot papers**

- (1) A person must not—
  - (a) wilfully fail to comply with section 107(10)(c), 117(5)(d), 118(3)(c) or (d) or 119(6)(c) or (d); or
  - (b) take a ballot paper out of a polling place otherwise than as authorised by this Act; or
  - (c) place in a ballot box a ballot paper that has not been—
    - (i) given to an elector under this Act; or
    - (ii) marked by the elector.
- (2) A person must not, without lawful excuse, obtain possession of, or have in the person's possession—
  - (a) a ballot paper that has been marked by another person; or
  - (b) a declaration envelope that has been signed by another person.

Maximum penalty—20 penalty units or 6 months imprisonment.

## **192 Failure to post, fax or deliver documents for someone else**

- (1) A person commits an offence if the person—
  - (a) is given a request under section 119 or 120 to post, fax or deliver to the commission or a returning officer; and

*Note—*

Section 119 deals with declaration voting using posted voting papers. Section 120 deals with electoral visitor voting.

  - (b) fails to promptly post it or fax or deliver it to the commission or returning officer.
- (2) A person commits an offence if the person—
  - (a) is given a declaration envelope under section 119(6)(d)(ii) to post or send to the commission or returning officer; and

- (b) fails to promptly post or send it to the commission or returning officer.

Maximum penalty—20 penalty units or 6 months imprisonment.

### **193 Secrecy of voting**

A person must not—

- (a) unfold a ballot paper that has been marked and folded by an elector under this Act unless ordered by a court or authorised under this Act to do so; or
- (b) if the person is a member of the commission's staff performing duties at a polling place in relation to an election—
  - (i) ascertain or discover how an elector has voted at the election unless the person is authorised to do so under this Act; or
  - (ii) disclose any information as to how an elector has voted at the election unless the person is authorised to do so under this Act or ordered by a court to do so.

Maximum penalty—20 penalty units or 6 months imprisonment.

### **194 Breaking seals on parcels**

A person must not wilfully open or break the seal of a parcel sealed under section 127(2)(h) unless the person is authorised to do so under this Act or ordered by a court to do so.

Maximum penalty—20 penalty units or 6 months imprisonment.

## 195 Duty of witness to signing of declaration voting papers

An elector or other person (the *witness*) must not sign a declaration envelope as witness under section 119(6)(a) unless—

- (a) the witness is satisfied of the identity of the elector who signs the declaration before the witness; and
- (b) the witness has seen the elector sign the declaration; and
- (c) either—
  - (i) the witness knows that the declaration made by the elector on the envelope is true; or
  - (ii) the witness is satisfied, on the basis of inquiries of the elector or otherwise, that the declaration is true.

Maximum penalty—20 penalty units or 6 months imprisonment.

## Division 4 Injunctions

### 196 Injunctions

- (1) If—
  - (a) either—
    - (i) a person (the *offending party*) has engaged, is engaging or is proposing to engage in conduct; or
    - (ii) a person (also the *offending party*) has failed, is failing or is proposing to fail to do anything; and
  - (b) the conduct or failure constituted, constitutes or would constitute a contravention of, or an offence against, this Act;

an application may be made to the Supreme Court for an injunction.

- (2) The application may be made by—



- (a) if the conduct or failure relates to an election—a candidate in the election; or
  - (b) in any case—the commission.
- (3) The court may grant an interim injunction pending determination of the application.
- (4) If the commission makes the application for the injunction, the court must not require it or another person to give any undertakings as to damages as a condition of granting an interim injunction under subsection (3).
- (5) On considering the application for the injunction, the court may—
- (a) in a case to which subsection (1)(a)(i) applies—grant an injunction restraining the offending party from engaging in the conduct concerned and, if in the court’s opinion it is desirable to do so, requiring the offending party to do anything; or
  - (b) in a case to which subsection (1)(a)(ii) applies—grant an injunction requiring the offending party to do the thing concerned.
- (6) The court may grant the injunction—
- (a) if the court is satisfied that the offending party has engaged in the conduct, or failed to do the thing, mentioned in subsection (1)—whether or not it appears to the court that the offending party intends—
    - (i) to engage again or continue to engage in the conduct; or
    - (ii) to fail or continue to fail or do the thing; or
  - (b) if it appears to the court that, if the injunction is not granted, it is likely that the offending party will engage in the conduct, or fail to do the thing, mentioned in subsection (1)—whether or not—
    - (i) the offending party has previously engaged in the conduct or failed to do the thing; and

- (ii) there is an imminent danger of substantial damage to any person if the offending party engages in the conduct or fails to do the thing.
- (7) The court may refuse to grant an injunction if it appears to the court that the application was not made to the court at the earliest possible opportunity.
- (8) The court may discharge or vary the injunction or any interim injunction granted under subsection (3).
- (9) The powers conferred on the court by this section are in addition to, and do not limit, any other powers of the court.

## Part 11 Election funding and financial disclosure

### Division 1 Interpretation

#### 197 Definitions

In this part—

**2013–2014 financial year**, for division 12, subdivision 2, means the financial year ending on 30 June 2014.

**agent** means an agent of a registered political party, candidate or third party appointed under division 2.

**associated entity** means an entity that—

- (a) is controlled by 1 or more registered political parties; or
- (b) operates wholly or to a significant extent for the benefit of 1 or more registered political parties.

**auditor** means an individual who—

- (a) has the qualifications or experience prescribed for this definition; and

- (b) is not, and has not ever been, a member of a political party.

**by-election** means an election of a member of the Legislative Assembly between general elections.

**disclosure period** see section 198.

**disposition of property** means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, and includes—

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

**elected member** means a member of the Legislative Assembly.

**electoral expenditure**—

- (a) for part 11, division 4—see section 222.
- (b) for part 11, division 10—see section 282A.

**eligible registered political party** see section 239.

**financial controller**, of an associated entity, means—

- (a) if the entity is a corporation—the secretary of the corporation; or

- (b) if the entity is the trustee of a trust—the trustee; or
- (c) if the entity is a corporation that is the trustee of a trust—the secretary of the corporation; or
- (d) otherwise—the person responsible for keeping the financial records of the entity.

***fundraising contribution*** see section 200.

***gift*** see section 201.

***information notice***, about a decision, means a notice stating the following—

- (a) the decision;
- (b) the reasons for it;
- (c) that the person to whom the notice is given may apply to the commissioner for a review of the decision within 20 business days after the person receives the notice;
- (d) how to apply for a review.

***journal*** means a newspaper, magazine or other periodical, whether published for sale or for distribution without charge.

***loan*** means any of the following made other than by use of a credit card—

- (a) an advance of money;
- (b) a provision of credit or another form of financial accommodation;
- (c) a payment of an amount for, on account of, on behalf of or at the request of, an entity, if there is an express or implied obligation to repay the amount;
- (d) a transaction (whatever its terms or form) that in substance effects a loan of money.

***payment direction*** see section 227.

***policy development payment*** means a payment made to a registered political party under division 5.

***registered***, for an election, means registered under part 6.

**register of agents** means the register kept under section 211.

**relevant election**, for division 12, subdivision 1, see section 297.

**relevant particulars**, of an entity, means—

- (a) for an unincorporated association—
  - (i) the name of the association; and
  - (ii) the names and addresses of the members of the executive committee (however described) of the association; or
- (b) for a trust fund or foundation—
  - (i) the names and addresses of the trustees of the fund or the foundation; or
  - (ii) the title or other description of the trust fund or the name of the foundation; or
- (c) otherwise—the name and address of the entity.

**reporting period** means—

- (a) the financial year ending on 30 June 2015; or
- (b) for a financial year after 30 June 2015—the first 6 months of the financial year or the full financial year.

**special reporting period**, for division 7, subdivision 3, see section 266A.

**third party** means an entity other than a registered political party, an associated entity or a candidate.

## 198 Meaning of *disclosure period*

- (1) The **disclosure period**, for an election (the **relevant election**), is the period that starts—
  - (a) for a candidate in the relevant election who had been a candidate in a general election or by-election the polling day for which was within the prescribed time before the polling day for the relevant election—at the end of the prescribed time after polling day for the last general

- election or by-election in which the person was a candidate; or
- (b) for a candidate in the relevant election who had not been a candidate in a general election or by-election the polling day for which was within the prescribed time before the polling day for the relevant election, on the earlier of the following days—
    - (i) the day on which the person announced that the person would be a candidate in the relevant election;
    - (ii) on the day on which the person nominated as a candidate; or
  - (c) for a person or organisation to which section 263(1), 264(1) or 298(2) or (4) applies, at the end of the prescribed time after the polling day for the last general election.
- (2) A *disclosure period* for an election ends at the prescribed time after the polling day for the election.

## **200 Meaning of *fundraising contribution***

- (1) A *fundraising contribution* means an amount paid by a person as a contribution, entry fee or other payment to entitle that person or another person to participate in or otherwise obtain a benefit from a fundraising or other venture or function.
- (2) Without limiting subsection (1), a fundraising contribution includes—
  - (a) an amount paid for a ticket in a raffle; and
  - (b) an amount paid for an item at a fundraising auction.
- (3) An amount mentioned in subsection (1) is a fundraising contribution whether or not the venture or function to which the payment relates raises funds for an entity.

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## 201 Meaning of *gift*

- (1) A *gift* means a disposition of property made by a person to someone else, otherwise than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration.
- (2) Also, a gift includes—
  - (a) the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration; and
  - (b) uncharged interest on a loan made by a person to someone else; and
  - (c) any part of a fundraising contribution exceeding \$200.
- (3) For subsection (2)(b), uncharged interest is the additional amount that would have been payable by a person if—
  - (a) the loan had been made on terms requiring the payment of interest at the generally prevailing interest rate for a loan of that kind; and
  - (b) any interest payable had not been waived; and
  - (c) any interest payments were not capitalised.
- (4) A gift does not include—
  - (a) a fundraising contribution of \$200 or less; or
  - (b) if a fundraising contribution is an amount of more than \$200, the first \$200 of the fundraising contribution; or
  - (c) a payment under division 4 or 5; or
  - (d) an annual subscription paid to a political party by a person for the person's membership of the party; or
  - (e) the provision of volunteer labour; or
  - (f) the incidental or ancillary use of—
    - (i) a volunteer's vehicle or equipment; or
    - (ii) a vehicle or equipment that is ordinarily available for the personal use of a volunteer.

- (5) For this part, the amount or value of a gift consisting of or including a disposition of property other than money must, if the regulation provides, be decided under principles stated or mentioned in the regulation.

### **201A Meaning of *gift threshold amount***

The *gift threshold amount*, for the amount or value of a gift or loan, is \$1000.

### **202 References to registered political party**

- (1) A reference in this part to things done by or for a registered political party must, if the party is not a corporation, be read as a reference to things done by or with the authority of a member or officer of the party for the party.
- (2) A reference in this part to a registered political party, other than a reference to the endorsement of a candidate in an election, does not include a reference to a part of the political party.

### **203 Electoral committee to be treated as part of candidate**

- (1) Divisions 3 and 4 apply as if an electoral committee for a registered political party for an electorate were the candidate endorsed by the party for the electorate.
- (2) In this section—  
*electoral committee*, for a registered political party for an electorate, means a committee established by the party to help elect a candidate in the electorate.

### **205 Related corporations**

For this part—

- (a) a corporation and another corporation that is related to the first-mentioned corporation must be taken to be the same person; and



- (b) the question whether a corporation is related to another corporation must be decided in the same way as the question whether a corporation is related to another corporation is decided under the Corporations Act.

## **Division 2                      Agents**

### **206      Agents of registered political parties**

A registered political party must have an agent for this part.

### **207      Appointment of agents by candidates**

- (1) A candidate in an election may appoint a person to be the agent of the candidate, for this part, for the election.
- (2) During any period for which there is no appointment in force under subsection (1) of an agent of a candidate, the candidate is taken to be his or her own agent for this part.

### **210      Requisites for appointment**

- (1) An appointment of an agent has no effect unless—
  - (a) the person appointed is an adult; and
  - (b) written notice of the appointment is given to the commission—
    - (i) by the party if the appointment is made by a registered political party; and
    - (ii) by the candidate if the appointment is made by a candidate; and
  - (c) the name and address of the person appointed are stated in the notice; and
  - (d) the person appointed has signed—
    - (i) a form of consent to the appointment; and

- (ii) a declaration that the person is eligible for appointment.
- (2) A consent or declaration under subsection (1) must be—
    - (a) incorporated in, or written on the same paper as, the notice under subsection (1)(b); or
    - (b) attached to that notice.
  - (3) If a person who is the agent is convicted of an offence against this part for a particular election, the person is not eligible to be appointed or to hold office as an agent for this part for any subsequent election.
  - (4) An appointment by a candidate is not effective for anything required by this part to be done—
    - (a) for a claim or return under this part for an election; or
    - (b) during a specified period after polling day for an election;

if notice of the appointment was given to the commission after the close of nominations for the election.

## **211 Register of agents**

- (1) The commission must keep a register called the register of agents.
- (2) There must be entered in the register the name and address of every person appointed to be an agent of a registered political party or candidate for this part.

## **212 Effect of registration**

- (1) The appointment of an agent—
  - (a) takes effect on the entry of the name and address of the agent in the register of agents; and
  - (b) ceases to have effect if the name and address of the agent are removed from the register.

- (2) The name and address of a person must not be removed from the register unless—
  - (a) the person gives to the commission written notice that the person has resigned the appointment as agent; or
  - (b) the entity that appointed the person gives to the commission—
    - (i) written notice that states the person has ceased to be an agent of the entity; and
    - (ii) if the entity is required under this division to have an agent, written notice under section 210 of a person as agent in place of the agent who resigned; or
  - (c) the person is convicted of an offence against this part; or
  - (d) the party's registration is cancelled.
- (3) If a person who is an agent dies, the entity by which the person was appointed must, within 28 days after the death of the person, give to the commission—
  - (a) written notice of the death; and
  - (b) if the entity is required under this division to have an agent, written notice under section 210 of the appointment of a person as agent in place of the deceased person.
- (4) If a person who is an agent is convicted of an offence against this part and the entity that appointed the agent is required under this division to have an agent—
  - (a) the person ceases to be the agent of the entity on—
    - (i) the day the person is convicted of the offence; or
    - (ii) if an appeal against the conviction is instituted and the conviction is affirmed, the day the appeal is decided; and
  - (b) the entity must, within 28 days after the person ceases to be the entity's agent—

- (i) give to the commission written notice that the person has ceased to be the entity's agent; and
- (ii) if the entity is required under this division to have an agent, written notice under section 210 of the appointment of a person as agent in place of the person who ceased to be the agent.

### **213 Evidence of appointment**

An entry in the register of agents is, for all purposes, evidence that the person described in the entry is the agent, for this part, of the entity named in the entry.

### **214 Responsibility for action when agent of party dead or appointment vacant**

- (1) This section applies if—
  - (a) division 4, 7, 8, 10 or 11 imposes an obligation on the agent of a registered political party; and
  - (b) there is no agent of the party.
- (2) The obligation rests on each member of the executive committee of the party, and this part applies to each member of the committee as if the obligation rested on that member alone.

### **216 Revocation of appointment of agent**

- (1) A candidate may, by written notice given to the commission, revoke the appointment of a person as the agent of the candidate.
- (2) A notice under subsection (1) has no effect unless it is signed by the candidate.

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**217 Notice of death or resignation of agent of candidate**

If the agent of a candidate dies or resigns, the candidate must, without delay, give to the commission a written notice of the death or resignation.

**Division 4 Election funding**

**Subdivision 1 Preliminary**

**222 Interpretation**

- (1) In this division, *electoral expenditure*, by a registered political party or a candidate for an election, means expenditure incurred by the political party or candidate for the purposes of a campaign for the election, whether or not the expenditure is incurred during the election period for the election.
- (2) For this division, if a registered political party and a candidate endorsed by the registered political party both claim to have incurred the same item of electoral expenditure, the electoral expenditure is taken to be electoral expenditure incurred by the party.

**Subdivision 2 Entitlement to election funding**

**223 Entitlement to election funding—registered political parties**

- (1) A registered political party is entitled to election funding under this section for all elections held on the same day if, in relation to a candidate whom the party endorses in an election, the total number of formal first preference votes given for the candidate is at least 6% of the total number of formal first preference votes made in the election.

- (2) The amount of election funding to which the registered political party is entitled is the lesser of—
- (a) the election funding amount calculated under section 225 for each formal first preference vote given for a candidate mentioned in subsection (1); and
  - (b) the amount of electoral expenditure—
    - (i) claimed in relation to the registered political party for all elections held that day; and
    - (ii) accepted by the commission under section 231.

## **224 Entitlement to election funding—candidates**

- (1) A candidate in an election is entitled to election funding under this section if the total number of formal first preference votes given for the candidate in the election is at least 6% of the total number of formal first preference votes made in the election.
- (2) The amount of election funding to which the candidate is entitled is the lesser of—
- (a) the election funding amount calculated under section 225 for each formal first preference vote given for the candidate in the election; and
  - (b) the amount of electoral expenditure—
    - (i) claimed in relation to the candidate for the election; and
    - (ii) accepted by the commission under section 231.

## **225 Election funding amount**

- (1) For section 223(2)(a) or 224(2)(a), the election funding amount is—
- (a) for the financial year ending on 30 June 2014—
    - (i) if the entity entitled to the funding is a registered political party—\$2.90; or

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- (ii) if the entity entitled to the funding is a candidate—  
\$1.45; or
- (b) for each subsequent financial year, the amount worked out (to 3 decimal places) under subsection (2).
- (2) The election funding amount is adjusted for each financial year on 1 July using the formula—
- $$\frac{A \times B}{C}$$
- where—
- A* is the election funding amount immediately before 1 July in a year.
- B* is the CPI number published for the March quarter in the year.
- C* is the CPI number published for the March quarter in the previous year.
- (3) However, if, for a particular financial year, adjustment of the election funding amount would reduce the amount, the amount is not to be adjusted for the year.
- (4) If an amount would, if calculated to 4 decimal places, end with a number more than 4, the amount is taken to be the amount calculated to 3 decimal places and increased by 0.001.
- (5) In this section—
- CPI* means the all groups consumer price index for Brisbane published by the Australian Statistician.

### **Subdivision 3      Claims for election funding**

#### **226      Making a claim**

- (1) A claim for election funding may be made by—
- (a) a candidate; or
- (b) the agent of a registered political party or candidate.

- (2) A claim must state all electoral expenditure for which election funding is sought.

## **227 Candidate may give direction about payment of election funding**

- (1) A candidate or the candidate's agent may, at any time, give the commission a direction (a *payment direction*) that election funding to which the candidate is, or may be, entitled for an election should be paid to a registered party that endorsed the candidate in the election.
- (2) A payment direction—
  - (a) must be in writing; and
  - (b) may be revoked by the candidate or agent, by written notice given to the commission, with the consent of the agent of the registered political party.

## **228 Electoral expenditure incurred**

- (1) A claim for election funding made by the agent of a registered political party must state electoral expenditure—
  - (a) incurred by the party for all elections held on the same day; and
  - (b) for which election funding is sought.
- (2) A claim for election funding made by a candidate or the candidate's agent must state electoral expenditure—
  - (a) incurred by the candidate for the election; and
  - (b) for which election funding is sought.

## **229 Form of claim**

- (1) A claim must be in the approved form.
- (2) The approved form must, if the form requires, be verified by statutory declaration.



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### **230 Lodging of claim**

- (1) A claim for election funding for an election or elections must be lodged with the commission—
  - (a) during the period of 20 weeks after the polling day for the election or elections to which the claim relates; or
  - (b) within a longer period the commission, before the end of the period specified in paragraph (a), fixes.
- (2) The commission must not fix a longer period under subsection (1)(b) unless it is satisfied it is justified in the circumstances.

### **231 Deciding claim**

- (1) The commission must, after receiving a claim—
  - (a) decide whether to accept or refuse the claim, in whole or in part; and
  - (b) to the extent the commission accepts the claim, pay the amount required by section 232.
- (2) In deciding whether to accept or refuse a claim for election funding for an election in whole or in part, the commission must only consider—
  - (a) whether expenditure claimed is electoral expenditure; and
  - (b) if expenditure claimed is electoral expenditure—
    - (i) whether the electoral expenditure was incurred for the election; and
    - (ii) whether the registered political party or candidate is entitled under section 223 or 224 to the amount claimed.
- (3) The commission may, by written notice, require the candidate or agent of the registered political party or candidate to provide further information the commission reasonably requires to decide whether to accept or refuse the claim.

### **232 Accepting a claim**

- (1) This section applies if—
  - (a) a claim is made by the candidate or agent of a registered political party or candidate in relation to an election or elections; and
  - (b) the commission accepts the claim, in whole or in part.
- (2) The commission must pay the amount under section 223(2) or 224(2) as applicable.

### **233 Refusing a claim**

If a claim is refused, in whole or in part, the commission must give the candidate or agent who made the claim a notice that states—

- (a) that the claim has been refused, in whole or in part; and
- (b) the reasons for the refusal.

### **234 Application for reconsideration of decision refusing a claim**

- (1) If a claim is refused, in whole or in part, the candidate or agent who made the claim may apply to the commission for the commission to reconsider the decision.
- (2) The application must—
  - (a) be in writing; and
  - (b) set out the reasons for the application.
- (3) The application must be made within—
  - (a) 28 days after the day on which the candidate or relevant agent is notified of the refusal; or
  - (b) if, either before or after the end of that period of 28 days, the commission extends the period within which the application may be made—the extended period for making the application.

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## **235 Reconsideration by commission**

- (1) On receiving an application under section 234, the commission must—
  - (a) reconsider the decision; and
  - (b) decide to—
    - (i) affirm the decision; or
    - (ii) vary the decision; or
    - (iii) set aside the decision and make another decision.
- (2) The commission must give the candidate or agent who made the application a notice stating the decision on the reconsideration together with a statement of the reasons for the decision.
- (3) If the commission's decision on the reconsideration would require an amount, or an additional amount, of election funding to be paid, the commission must pay the amount within 20 days after the day of its decision.

## **Subdivision 4 Payments of election funding**

### **236 Making of payments**

- (1) If the commission is satisfied an amount of election funding claimed by the agent of a registered political party is payable to the party, the commission must pay the amount to the agent.
- (2) If the commission is satisfied an amount of election funding claimed by a candidate or the candidate's agent is payable to the candidate, the commission must pay the amount—
  - (a) to the candidate or candidate's agent; or
  - (b) if the candidate has given the commission a payment direction, to the registered political party's agent.
- (3) If a payment is made under this division and the recipient is not entitled to receive the whole or a part of the amount paid, whether because of a false statement in a claim or otherwise,

the amount or the part of the amount may be recovered by the State as a debt due to the State.

## **Subdivision 5      Miscellaneous**

### **237      Death of candidates**

If a candidate who dies would, but for his or her death, have been entitled to election funding under this division, the commission may pay the election funding to—

- (a) if a payment direction was in force in relation to the election funding, the registered political party mentioned in the payment direction; or
- (b) otherwise, the candidate's legal personal representative.

### **238      Varying decisions accepting claims**

- (1) The commission may vary a decision (the *claim decision*) made under section 231 to accept an amount of electoral expenditure stated in a claim if the commission is satisfied—
  - (a) the amount of electoral expenditure should not have been accepted; or
  - (b) only a lesser amount of electoral expenditure should have been accepted.
- (2) If the commission makes a decision (the *variation decision*) to vary the claim decision, sections 233, 234 and 235 apply in relation to the variation decision as if it were, to the extent of the variation, a decision of the commission to refuse the claim.
- (3) If the commission makes a variation decision, and the total amount of election funding that has been paid to a person under the claim decision exceeds the amount that, under the variation decision, should have been paid to the person—
  - (a) the amount of the excess is an overpayment; and

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- (b) the overpayment may be recovered by the State as a debt due to the State.

## Division 5                      Policy development payments

### 239      Eligibility of political party for policy development payment

- (1) A registered political party (an *eligible registered political party*) is eligible for a policy development payment for a financial year if—
  - (a) the political party was a registered political party on the polling day for the last general election and continues to be a registered political party on the day the party's entitlement to a policy development payment is decided; and
  - (b) the registered political party has at least 1 elected member who is—
    - (i) endorsed by the political party for the duration of the financial year for which the policy development payment is payable; and
    - (ii) a member of the political party on the day the entitlement to the policy development payment is decided.
- (2) However, a registered political party is not eligible for a policy development payment if the agent of the political party has requested, in writing to the commission, that no policy development payment is to be made to the political party.
- (3) A request made under subsection (2) continues in effect until the request is withdrawn, in writing to the commission, by the political party's agent.

**240 Amount of policy development payment to which eligible registered political party is entitled**

- (1) The policy development payment to which each eligible registered political party is entitled for a financial year is the amount worked out using the following formula—

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

where—

*A* is the amount prescribed under a regulation for this definition.

*B* is the total number of formal first preference votes given to each relevant candidate endorsed by the political party in the last general election occurring in or before the financial year (the *last election*).

*C* is the total number of formal first preference votes given to all relevant candidates endorsed by eligible registered political parties in the last general election.

- (2) In this section—

*relevant candidate*, endorsed by an eligible registered political party for a financial year, means a candidate who polled at least 6% of the total number of formal first preference votes for the candidate's electoral district in the last general election.

**241 When eligibility is decided and when policy development payment is made**

- (1) The commission must decide the following for a financial year within 3 weeks after the end of the financial year—
- (a) which registered political parties are eligible for a policy development payment for the year;
  - (b) the amount to which an eligible registered political party is entitled for the year under section 240.

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- (2) The commission must make the policy development payment to each eligible registered political party entitled to the payment for a financial year in 2 equal instalments.
  - (3) The instalments must be paid to the political party on or before the following days occurring immediately after the end of the financial year—
    - (a) 31 July;
    - (b) 31 January.

## **242 Application for reconsideration of decision about eligibility**

- (1) The agent of a registered political party may apply to the commission for the commission to reconsider a decision about—
  - (a) whether the registered political party is eligible for a policy development payment for a financial year; or
  - (b) the amount of the policy development payment made to the registered political party for a financial year.
- (2) The application must—
  - (a) be in writing; and
  - (b) set out the reasons for the application.
- (3) The application must be made—
  - (a) on or before 31 August immediately after the end of the financial year for which the decision was made; or
  - (b) if the commission allows a later day—the later day.

## **243 Reconsideration by commission**

- (1) On receiving an application under section 242, the commission must—
  - (a) reconsider the decision; and
  - (b) decide to—

- (i) affirm the decision; or
  - (ii) vary the decision; or
  - (iii) set aside the decision and make another decision.
- (2) The commission must give the agent a notice stating the decision on the reconsideration together with a statement of reasons for the decision.

## **244 Recalculation of policy development payment**

- (1) If the commission varies or sets aside the decision and makes another decision under section 243(1)(b)(ii) or (iii) for a financial year, the commission must recalculate the amount to which each eligible registered political party is entitled for the financial year under section 240.
- (2) If the policy development payment made to a registered political party for the financial year is more than the amount that, following the recalculation, should have been made to the party—
- (a) the amount of the excess is an overpayment; and
  - (b) the party must repay the amount of the overpayment; and
  - (c) the overpayment may be recovered by the State as a debt due to the State.

## **Division 7 Disclosure of gifts**

### **Subdivision 1 Preliminary**

#### **260 How division applies to gifts that are returned etc. within 6 weeks**

- (1) Subject to subsections (2) and (3), this division does not apply to a gift that is returned within 6 weeks after its receipt.



- (2) This division applies to a gift of foreign property within the meaning of division 8, subdivision 1 whether or not the gift is returned within 6 weeks as mentioned in section 268.
- (3) If the gift is returned within 6 weeks after its receipt, any return under this division that includes the amount or value of the gift must also include a statement to the effect that the gift was returned.

## **Subdivision 2 Disclosure of gifts generally**

### **261 Disclosure by candidates of gifts**

- (1) If, during the disclosure period for an election, a candidate in the election receives a gift, other than an exempt gift, equal to or more than the gift threshold amount, the candidate's agent must give the commission a return about the gift.
- (2) The return must—
  - (a) be in the approved form; and
  - (b) state the following—
    - (i) the amount or value of the gift;
    - (ii) the date the gift was made;
    - (iii) the relevant particulars of the entity that made the gift; and
  - (c) be given to the commission by the day, not more than 15 weeks after the polling day for the election, prescribed by a regulation.
- (3) Also, the agent of a candidate in an election must, within 15 weeks after the polling day for the election, give the commission a return, in the approved form, stating—
  - (a) if the candidate received gifts, other than exempt gifts, during the disclosure period for the election—

- (i) the total amount or value of all gifts, other than exempt gifts, received by the candidate during the disclosure period; and
    - (ii) the number of entities who made the gifts; or
  - (b) otherwise—that no gifts of a kind required to be disclosed were received.
- (4) For subsection (1), 2 or more gifts made, during the disclosure period for an election, by the same entity to a particular candidate are taken to be 1 gift.
- (5) In this section—
- exempt gift* means a gift made by an entity in a private capacity to a candidate for an election if—
- (a) the gift is made for the personal use of the candidate; and
  - (b) the candidate has not used, and will not use, the gift solely or substantially for a purpose related to an election.

## **262 Loans to candidates**

- (1) If, during the disclosure period for an election, a candidate in the election receives a loan, other than an exempt loan, with a value equal to or more than the gift threshold amount, the candidate's agent must give the commission a return about the loan.
- (2) The return must—
- (a) be in the approved form; and
  - (b) state the following—
    - (i) the date on which the loan was made;
    - (ii) the relevant particulars of the entity that made the loan;
    - (iii) the terms and conditions of the loan; and

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- (c) be given to the commission by the day, not more than 15 weeks after the polling day for the election, prescribed by a regulation.
  - (3) Also, the agent of a candidate in an election must, within 15 weeks after the polling day for the election, give the commission a return, in the approved form, stating—
    - (a) if the candidate received loans, other than exempt loans, during the disclosure period for the election—
      - (i) the total value of all loans, other than exempt loans, received by the candidate during the disclosure period; and
      - (ii) the number of entities that made the loans; or
    - (b) otherwise—that no loans of a kind required to be disclosed were received.
  - (4) For subsection (1), 2 or more loans made, during the disclosure period for an election, by the same entity to a particular candidate are taken to be 1 loan.
  - (5) In this section—

*exempt loan* means a loan made by a financial institution.

## **263 Disclosure of gifts by third parties that incur expenditure for political purposes**

- (1) This section applies to a third party if, during the disclosure period for an election, the third party incurs expenditure for political purposes equal to or more than the gift threshold amount.
- (2) The third party must give the commission a return stating the relevant details of any gift received by the third party during the disclosure period that—
  - (a) has an amount or value equal to or more than the gift threshold amount; and
  - (b) the third party has used, in whole or part—

- (i) to enable the third party to incur expenditure for a political purpose; or
  - (ii) to reimburse the third party for incurring expenditure for a political purpose.
- (3) The return must—
  - (a) be in the approved form; and
  - (b) be given to the commission by the day, not more than 15 weeks after the polling day for the election, prescribed by a regulation.
- (4) For subsection (1), 2 or more loans made, during the disclosure period for an election, by the same entity to a particular candidate are taken to be 1 loan.
- (5) For this section—
  - (a) a third party incurs expenditure for a political purpose if the third party incurs expenditure for or by the way of—
    - (i) publication in any way (including radio or television) of electoral matter; or
    - (ii) any other ways publicly expressing views on an issue in an election; or
    - (iii) the making of a gift to a political party; or
    - (iv) the making of a gift to a candidate in an election; or
    - (v) the making of a gift to a person on the understanding that the person or someone else will apply, either directly or indirectly, the whole or a part of the gift as mentioned in subparagraph (i), (ii), (iii) or (iv); and
  - (b) the relevant details of a gift are the amount or value of the gift, the date on which the gift was made and the relevant particulars of the entity that made the gift.
- (6) For subsection (2), 2 or more gifts made, during the disclosure period for an election, by the same entity to another entity are taken to be 1 gift.

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**264 Disclosure by third parties of gifts to candidates**

- (1) This section applies to a third party that makes, during the disclosure period for an election, a gift to a candidate in the election.
- (2) The third party must, by the day prescribed by a regulation, give the commission a return, in the approved form, stating the required details of the gift.
- (3) However, subsection (2) applies only if the amount or value of the gift is equal to or more than the gift threshold amount.
- (4) Subsection (5) applies to the third party if—
  - (a) the third party makes, during the disclosure period for the election, more than 1 gift to the candidate; and
  - (b) the total amount or value of the gifts made by the third party to the candidate during the disclosure period is equal to or more than the gift threshold amount; and
  - (c) a return has not been given under subsection (2) for each of the gifts.
- (5) The third party must, by the day prescribed by a regulation, give the commission a return, in the approved form, stating the required details of each gift.
- (6) For subsections (2) and (5), the day prescribed must be no more than 15 weeks after the polling day for the election to which the return relates.
- (7) This section applies to a third party even if, at the time the third party made the gift, the third party was outside Queensland.
- (8) For this section—
  - (a) if a third party makes a gift to an entity with the intention of benefiting a particular candidate, the third party is taken to have made the gift directly to the candidate; and
  - (b) the required details of a gift are—
    - (i) the amount or value of the gift; and

- (ii) the date on which the gift was made; and
  - (iii) the relevant particulars of the entity that made the gift.
- (9) As soon as practicable after receiving a gift requiring a return to be given under this section, a candidate must give the third party who gave the gift notice that the third party is required to give a return under this section.

Maximum penalty for subsection (9)—20 penalty units.

## **265 Gifts to political parties**

- (1) This section applies to an entity that makes a gift, or made a gift before the commencement, to a registered political party (the *recipient party*) in a reporting period.
- (2) If the amount or value of the gift is equal to or more than the gift threshold amount, the entity must, by the day prescribed by a regulation, give the commission a return, in the approved form, stating—
- (a) the amount or value of the gift; and
  - (b) the date on which the entity made the gift; and
  - (c) the name and address of the recipient party.
- (3) Subsection (4) applies to the entity if—
- (a) within the reporting period, the entity makes or made more than 1 gift to the recipient party; and
  - (b) the total amount or value of the gifts made by the entity to the recipient party during the reporting period is equal to or more than the gift threshold amount; and
  - (c) a return has not been given under subsection (2) for each of the gifts.
- (4) The entity must, by the day prescribed by a regulation, give the commission a return, in the approved form, stating—
- (a) the amount or value of each gift; and
  - (b) the date on which the entity made each gift; and

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- (c) the name and address of the recipient party.
- (5) Subsections (2) and (4) apply to an entity even if, at the time the entity made the gifts, the entity was outside Queensland.
- (6) For subsections (2) and (4), the day prescribed must be no more than 8 weeks after the end of the reporting period in which the gifts were made.
- (7) If—
- (a) 2 or more political parties are related to each other; and
  - (b) at least 1 of the parties is a registered political party;
- subsections (1) to (4) apply as if—
- (c) those parties together constituted a single registered political party (rather than being separate political parties); and
  - (d) a gift made by an entity to any of those parties were a gift made by the entity to the recipient party.
- (8) If an entity makes a gift to a person or body with the intention of benefiting a particular political party, the entity is taken for this section (including subsection (7)(d)) to have made that gift directly to the political party.
- (9) If—
- (a) an entity is required to disclose a gift (the *ultimate gift*) in a return under subsection (2) or (4); and
  - (b) the entity received a gift (the *enabling gift*) equal to or more than the gift threshold amount which the entity used to make all or a substantial part of the ultimate gift;
- the entity must also disclose the relevant details of the enabling gift in the return.
- (10) For subsection (9), the relevant details of an enabling gift are—
- (a) its amount or value; and
  - (b) the date on which it was received; and
  - (c) the relevant particulars of the entity that made it.

- (11) This section does not apply to gifts made by any of the following—
- (a) a registered political party;
  - (b) an associated entity;
  - (c) a candidate in an election.
- (12) Subsections (13) to (15) apply to a registered political party that receives, or received before the commencement, a gift from an entity in relation to which a return is required under this section.
- (13) If the gift is received after the commencement, the registered political party must, as soon as practicable after receiving the gift, give the entity notice that the entity is required to give a return under this section.

Maximum penalty—20 penalty units.

- (14) If the gift was received before the commencement, the registered political party must, within 4 weeks after the commencement—
- (a) give the entity notice that the entity is required to give a return under this section; and
  - (b) give the commission a copy of the notice.

Maximum penalty—20 penalty units.

- (15) However, the registered political party does not commit an offence against subsection (14) if—
- (a) the party can not give the entity notice under subsection (14)(a) because the party has not kept records about the gift or the entity that made the gift; and
  - (b) the party's failure to keep the records is not an offence against section 307(2)(b).



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## Subdivision 3 Disclosure of large gifts

### 266 Application of sdiv 3

- (1) This subdivision applies in relation to gifts made by an entity to a registered political party in a special reporting period.
- (2) However, this subdivision does not apply to gifts made by any of the following—
  - (a) a registered political party;
  - (b) an associated entity;
  - (c) a candidate in an election.
- (3) If an entity (the first entity) makes a gift to another entity, including an associated entity of a political party, with the intention of benefiting a particular political party, the first entity is taken for this subdivision to have made the gift directly to the political party.
- (4) For this subdivision, the definition associated entity in section 197 applies as if a reference to registered political parties includes a reference to any political parties whether or not registered.

### 266A Definition for sdiv 3

In this subdivision—

*special reporting period* means each of the following periods in any year—

- (a) the period starting on 1 January and ending on 30 June;
- (b) the period starting on 1 July and ending on 31 December.

### 266B Requirement to disclose large gifts

- (1) For each special reporting event in the special reporting period, each of the following entities must give the commission a separate return disclosing the gifts—

- (a) the entity making the gifts;
  - (b) the registered political party to which the gifts are made;
  - (c) if any part of a gift is made to an associated entity of the registered political party—the associated entity.
- (2) The return must—
- (a) be in the approved form; and
  - (b) state the following for each gift—
    - (i) the amount of the gift;
    - (ii) the date on which the gift was made;
    - (iii) the name and address of the political party that received the gift; and
  - (c) be given to the commission by the day, not more than 14 days after the special reporting event to which the return relates, prescribed by a regulation.
- (3) For this section, there is a ***special reporting event*** on each occasion the amount of the gifts made by the entity to the registered political party reaches the prescribed amount either—
- (a) since the start of the special reporting period; or
  - (b) since the last occasion the prescribed amount was reached during the special reporting period.

*Example for subsection (3)—*

In a special reporting period starting on 1 January, an entity makes gifts reaching the prescribed amount up to and including 10 January. The first special reporting event happens on 10 January. The entity then makes further gifts reaching the prescribed amount after 10 January and up to and including 4 June. The second special reporting event happens on 4 June.

- (4) Subsection (1) does not require an entity to disclose gifts previously disclosed under the subsection.

*Example for subsection (4)—*

Under subsection (1), an entity gives a return for the first special reporting event disclosing gifts made up to and including 10 January. When the entity gives a return for the second special reporting event,

the return need not refer to the gifts made up to and including 10 January.

- (5) The requirement to give a return under subsection (1) is in addition to a requirement to give a return under section 265, 290 or 294.
- (6) However, if an entity gave a return under section 265 for a gift made by the entity—
  - (a) the entity is not required to disclose the gift in a return under subsection (1); and
  - (b) the gift is not to be taken into account in deciding whether or not there has been a special reporting event.
- (7) Subsection (1) applies to an entity even if, at the time the entity makes a gift, the entity was outside Queensland or Australia.
- (8) As soon as practicable after receiving a gift requiring a return to be given under this section, a registered political party must give the entity that made the gift notice that the entity is required to give a return under this section.

Maximum penalty for subsection (8)—20 penalty units.

- (9) In this section—

prescribed amount means \$100,000.

## **266C Related political parties**

- (1) This section applies if—
  - (a) 2 or more political parties are related to each other; and
  - (b) at least 1 of those parties is a registered political party.
- (2) Section 266B applies to the political parties as if—
  - (a) those parties together constituted a single registered political party (rather than being separate political parties); and

- (b) a gift made by an entity to any of those parties were a gift made by the entity to the single registered political party referred to in paragraph (a).

## **266D Associated entities**

If a political party has an associated entity, sections 266B and 266C apply as if—

- (a) the political party and the associated entity together constituted the political party (the *recipient party*); and
- (b) a gift made by an entity to the political party or the associated entity were a gift made by the entity to the recipient party.

# **Division 8 Rules about particular gifts and loans**

## **Subdivision 1 Gifts of foreign property**

### **267 Interpretation**

- (1) In this subdivision—

*Australian property* means—

- (a) money standing to the credit of an account kept in Australia; or
- (b) other money (for example, cash) that is located in Australia; or
- (c) property, other than money, that is located in Australia.

*Note—*

For how this subdivision applies to gifts or transfers made using a credit card, see section 269(4).

*candidacy period*, in relation to a candidate, means the period—

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- (a) starting on the earlier of the day on which the person announces that the person will be a candidate in an election, or the day on which the nomination of the person as a candidate in the election is made; and
  - (b) ending 30 days after the polling day for the election.

***credit card*** means—

- (a) any article of a kind commonly known as a credit card; or
- (b) any similar article intended for use in obtaining cash, goods or services on credit;

and includes any article of a kind that persons carrying on business commonly issue to their customers or prospective customers for use in obtaining goods or services from those persons on credit.

***foreign property*** means property other than Australian property.

*Note—*

For how this subdivision applies to gifts or transfers made using a credit card, see subsection 269(4).

***gift***, in relation to a candidate, has a meaning affected by subsection (2).

- (2) A reference in this subdivision to a gift, in relation to a candidate (or a person acting on behalf of a candidate), does not include a gift made in a private capacity to (or for the benefit of) the candidate if the candidate has not used, and will not use, the gift solely or substantially for a purpose related to an election.
- (3) For this subdivision, a gift or other transfer enables an entity to do a particular thing if all or a substantial part of the gift or transfer enables the entity—
  - (a) to do all or a substantial part of that thing; or
  - (b) to be wholly or substantially reimbursed for having done that thing.

- (4) A reference in this subdivision to a thing done by a person includes a reference to a thing done by a person on behalf of the members of an unincorporated association.

**268 Subdivision does not apply to gifts that are returned within 6 weeks**

This subdivision does not apply to a gift that is returned within 6 weeks after its receipt.

**269 Deciding whether a gift or transfer is of Australian or foreign property**

- (1) For this subdivision (but without limiting the effect of subsections (2) and (3))—
- (a) a gift or transfer of property is a gift or transfer of Australian property if the property was Australian property immediately before the gift or transfer was made; and
  - (b) a gift or transfer of property is a gift or transfer of foreign property if the property was foreign property immediately before the gift or transfer was made.
- (2) For this subdivision, if—
- (a) a person (the *donor*) transfers foreign property (the *primary transfer*) to another person (the *first recipient*); and
  - (b) the donor's main purpose in making the primary transfer is to enable (directly or indirectly) the first recipient, or another person, to make a gift to another entity (the *ultimate recipient*); and
  - (c) the first recipient, or another person, makes a gift (the *ultimate gift*) to the ultimate recipient; and
  - (d) the primary transfer enabled (directly or indirectly) the first recipient, or the other person, to make the ultimate gift;

the ultimate gift is taken to be a gift of foreign property.

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- (3) For this subdivision, a gift or transfer is taken to be a gift or transfer of foreign property if—
- (a) a person—
    - (i) changes the location of property so that it becomes Australian property; or
    - (ii) uses foreign property to acquire Australian property; and
  - (b) the person's main purpose in changing the location of the property, or in acquiring the Australian property, was to enable the person to make a gift or transfer of property that would be Australian property rather than foreign property; and
  - (c) the person makes a gift or transfer of Australian property in accordance with that purpose.
- (4) This subdivision applies to a gift or transfer of money made by use of a credit card as if the gift or transfer were of money standing to the credit of an account kept in the country in which the credit card is based.

## **270 Gifts of foreign property—when unlawful for political party, candidate etc. to receive gift**

- (1) It is unlawful for an entity to receive a gift of foreign property in any of the following circumstances—
- (a) the gift is received by a registered political party (or by a person acting on behalf of a registered political party);
  - (b) the gift is received by a candidate (or by a person acting on behalf of a candidate) during the candidacy period.
- (2) If an entity specified in column 2 of an item in the following table receives a gift that, under subsection (1), it is unlawful for the entity to receive, an amount equal to the amount or value of the gift is payable to the State by the person or persons specified in column 3 of that item.

### Liability for unlawful receipt of gift

Column 1 Item	Column 2 If the recipient is ...	Column 3 the amount is payable by ...
1	a registered political party that is a corporation (or a person acting on behalf of a registered political party that is a corporation)	the registered political party
2	a registered political party that is not a corporation (or a person acting on behalf of a registered political party that is not a corporation)	the agent of the registered political party
3	a candidate (or a person acting on behalf of a candidate)	the candidate and the agent of the candidate
	(3) If, under subsection (2), an amount is payable to the State by 2 or more persons, those persons are jointly and severally liable for the payment of the amount.	
	(4) An amount that, under subsection (2), is payable by a person or persons to the State may be recovered by the State as a debt due to the State.	

## Subdivision 2      Anonymous gifts

### 271      Particular gifts not to be received

- (1) It is unlawful for a political party or a person acting for a political party to receive a gift made to or for the benefit of the party by another entity, being a gift the amount or value of which is equal to or more than the gift threshold amount, unless—
  - (a) the relevant particulars of the entity making the gift are known to the person receiving the gift; or



- (b) at the time the gift is made, the entity making the gift gives to the person receiving the gift his or her relevant particulars and the person receiving the gift has no grounds to believe that the relevant particulars given are not the true relevant particulars of the entity making the gift.
- (2) It is unlawful for a candidate or a person acting for a candidate to receive a gift made to or for the benefit of the candidate being a gift the amount or value of which is equal to or exceeds \$200, unless—
  - (a) the relevant particulars of the entity making the gift are known to the person receiving the gift; or
  - (b) at the time the gift is made, the entity making the gift gives to the person receiving the gift his or her relevant particulars and the person receiving the gift has no grounds to believe the relevant particulars given are not the true relevant particulars of the entity making the gift.
- (3) The references in subsections (1) and (2) to a gift made by a person includes a reference to a gift made for the members of an unincorporated association.
- (4) For subsection (2), a person who is a candidate in an election must be taken to remain a candidate for the time prescribed.
- (5) For this section, 2 or more gifts made by the same person to or for the benefit of a political party, or a candidate, must be taken to be 1 gift.
- (6) If a person receives a gift that, because of this section, it is unlawful for the person to receive, an amount equal to the amount or value of the gift is payable by the person to the State and may be recovered by the State as a debt due to the State from—
  - (a) for a gift to or for a political party—
    - (i) if the party is a corporation, the party; or
    - (ii) otherwise, the agent of the party; or
  - (b) otherwise, the candidate or the agent of the candidate.

## **Subdivision 3      Other gifts and loans**

### **272      Particular loans not to be received**

- (1) It is unlawful for a political party or a person acting for a political party to receive a loan that has a value equal to or more than the gift threshold amount from an entity other than a financial institution unless the loan is made in accordance with subsection (3).
- (2) It is unlawful for a candidate or a person acting for a candidate to receive a loan that has a value equal to or more than the gift threshold amount from an entity other than a financial institution, during the disclosure period in relation to an election, unless the loan is made in accordance with subsection (3).
- (3) The receiver of the loan must keep a record of the following—
  - (a) the terms and conditions of the loan;
  - (b) if the loan was received from a registered industrial organisation other than a financial institution—
    - (i) the name of the organisation; and
    - (ii) the names and addresses of the members of the executive committee (however described) of the organisation;
  - (c) the relevant particulars of the entity that made the loan.
- (4) If a person receives a loan that, because of this section, it is unlawful for the person to receive, an amount equal to the amount or value of the loan is payable by that person to the State and may be recovered by the State as a debt due to the State from—
  - (a) for a loan to or for the benefit of a political party—
    - (i) if the party is a corporation, the party; or
    - (ii) otherwise, the agent of the party; or
  - (b) otherwise, the candidate or the agent of the candidate.

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## Division 10                      Disclosure of expenditure

### 282      Interpretation

A reference in this division to a participant in an election is a reference to—

- (a) a registered political party or a candidate; or
- (b) any other person by whom or with the authority of whom electoral expenditure for an election was incurred.

### 282A    Meaning of *electoral expenditure*

In this part, *electoral expenditure* means expenditure incurred (whether or not incurred during the election period for an election) on, or a gift in kind given that consists of—

- (a) the broadcasting, during the election period for the election, of an advertisement that advocates a vote for or against a candidate or for or against a registered political party; or
- (b) the publishing in a journal, during the election period for the election, of an advertisement that advocates a vote for or against a candidate or for or against a registered political party; or
- (c) the publishing on the internet, during the election period for the election, of an advertisement that advocates a vote for or against a candidate or for or against a registered political party, even if the internet site on which the publication is made is located outside Queensland; or
- (d) the display, during the election period for the election, at a theatre or other place of entertainment, of an advertisement that advocates a vote for or against a candidate or for or against a registered political party; or
- (e) the production of an advertisement that advocates a vote for or against a candidate or for or against a registered

- political party, being an advertisement that is broadcast, published or displayed as mentioned in paragraph (a), (b), (c) or (d); or
- (f) the production of any material (other than material mentioned in paragraph (a), (b), (c) or (d)) that—
    - (i) advocates a vote for or against a candidate or for or against a registered political party; and
    - (ii) is required under section 181 to include the name and address of the author of the material or of the person authorising the material; and
    - (iii) is used during the election period for the election; or
  - (g) the production and distribution of material that—
    - (i) advocates a vote for or against a candidate or for or against a registered political party; and
    - (ii) is addressed to particular entities; and
    - (iii) is distributed during the election period for the election; or
  - (h) the carrying out, during the election period for the election, of an opinion poll or other research relating to the election if the dominant purpose of carrying out the opinion poll or research is—
    - (i) to promote or oppose, directly or indirectly, a registered political party or the election of a candidate; or
    - (ii) to influence, directly or indirectly, voting at the election.

## **283 Returns of electoral expenditure**

The agent of each person who was a candidate in an election must, within 15 weeks after the polling day for the election, give the commission a return in the approved form, stating

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details of all electoral expenditure for the election incurred by or with the authority of the candidate.

## **284 Returns by broadcasters**

- (1) If an election has taken place, each broadcaster who, during the election period for the election, broadcast an advertisement relating to the election with the authority of a participant in the election must, before the end of 8 weeks after the polling day for the election, give the commission a return, in an approved form, stating particulars of the advertisement, being particulars—
  - (a) identifying the broadcasting service as part of which the advertisement was broadcast; and
  - (b) identifying the person at whose request the advertisement was broadcast; and
  - (c) identifying the participant in the election with whose authority the advertisement was broadcast; and
  - (d) stating the date on which, and the times between which, the advertisement was broadcast; and
  - (e) showing whether or not, on each occasion when the advertisement was broadcast, a charge was made by the broadcaster for the broadcasting of the advertisement and, if a charge was made, stating the amount of the charge.
- (2) Subsection (1) applies to a broadcaster even if at the time the broadcaster broadcast the advertisement the broadcaster was outside Queensland.
- (3) If, in a return under subsection (1), the amount of a charge is specified by a broadcaster in relation to an advertisement, the broadcaster must, in the return, state whether or not the charge is a charge at less than normal commercial rates having regard to the length of the advertisement and the day on which, and the times between which, the advertisement was broadcast.
- (4) A broadcaster who is required to make a return under this section for an advertisement must keep the record made for

the relevant provision until the end of the period of 1 month starting on the day on which the return is given to the commission.

- (5) The requirement of subsection (4) is in addition to the requirements of the relevant provision for the retention of the record.
- (6) In subsections (4) and (5)—  
*relevant provision* means—
  - (a) in relation to the Australian Broadcasting Corporation, the *Australian Broadcasting Corporation Act 1983* (Cwlth), section 79B; or
  - (b) in relation to the Special Broadcasting Service, the *Special Broadcasting Service Act 1991* (Cwlth), section 70B; or
  - (c) otherwise, the *Broadcasting Services Act 1992* (Cwlth), section 5.

## **285 Returns by publishers**

- (1) If an election has taken place, each publisher of a journal who, during the election period for the election, published in the journal an advertisement relating to the election with the authority of a participant in the election must, before the end of 8 weeks after the polling day for the election, give the commission a return, in an approved form, stating particulars of the advertisement, being particulars—
  - (a) identifying the journal in which the advertisement was published; and
  - (b) identifying the person at whose request the advertisement was published; and
  - (c) identifying the participant in the election with whose authority the advertisement was published; and
  - (d) stating the date on which the advertisement was published; and

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- (e) identifying the page in the journal on which the advertisement was published and the space in the journal occupied by the advertisement; and
  - (f) showing whether or not a charge was made by the publisher for the publication of the advertisement and, if a charge was made, stating the amount of the charge.
- (2) Subsection (1) applies to a publisher even if at the time the publisher published the advertisement the publisher was outside Queensland.
  - (3) If, in a return under subsection (1), the amount of a charge is specified by a publisher in relation to an advertisement, the publisher must, in the return, state whether or not the charge was a charge at less than normal commercial rates having regard to the space in the journal occupied by the advertisement and the nature of the journal.
  - (4) A publisher is not required to give a return under subsection (1) in relation to an election if the total amount of the charge made by the publisher for the publication of the advertisement referred to in the subsection and any other advertisement relating to an election that took place on the same day as the first-mentioned election does not exceed \$1000.

## **286 Nil returns**

If no electoral expenditure for an election was incurred by or with the authority of a particular candidate, a return under this division for the candidate must nevertheless be lodged and must include a statement to the effect that no expenditure of the kind was incurred by or with the authority of the candidate.

## **287 Two or more elections on the same day**

- (1) If—
  - (a) the polling at 2 or more elections took place on the same day; and

- (b) a person would, but for this subsection, be required to give 2 or more returns under this division relating to the elections;

the person may, instead of giving the returns, give 1 return, in an approved form, stating the particulars that the person would have been required to state in the returns.

- (2) If—
- (a) a return is given by a person under subsection (1); and
- (b) particular electoral expenditure, details of which are required to be stated in the return, relates to more than 1 election;

it is sufficient compliance with this division if the return states details of the expenditure without showing the extent to which it relates to any particular election.

## **Division 11                      Returns by registered political parties and associated entities**

### **288      Interpretation**

In this division—

*amount* includes the value of a gift, loan or bequest.

### **289      How division applies to gifts that are returned etc. within 6 weeks**

- (1) Subject to subsections (2) and (3), this division does not apply to a gift that is returned within 6 weeks after its receipt.
- (2) This division applies to a gift of foreign property within the meaning of division 8, subdivision 1 whether or not the gift is returned within 6 weeks as mentioned in section 268.
- (3) If the gift is so returned, any return under this division that includes the amount or value of the gift must also include a statement to the effect that the gift was so returned.



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## **290 Returns by registered political parties**

- (1) The agent of a registered political party must give the commission a return if, in a reporting period—
  - (a) the party receives, or received before the commencement, a gift from an entity, other than an entity mentioned in section 265(11), and the amount or value of the gift is equal to or more than the gift threshold amount; or
  - (b) the party receives, or received before the commencement, a loan from an entity, other than a financial institution, and the value of the loan is equal to or more than the gift threshold amount.
- (2) The return must—
  - (a) be in the approved form; and
  - (b) for a gift received by the registered political party, state the following—
    - (i) the amount or value of the gift;
    - (ii) the relevant particulars of the entity that gave the gift; and
  - (c) for a loan received by the registered political party, state the information required to be kept under section 272(3); and
  - (d) be given to the commission by the day, not more than 8 weeks after the end of the reporting period in which the gift or loan was received, prescribed by a regulation.
- (3) For subsection (1)—
  - (a) 2 or more gifts made during a reporting period by the same entity to a particular registered political party are taken to be 1 gift; and
  - (b) 2 or more loans made during a reporting period by the same entity to a particular registered political party are taken to be 1 loan.

- (4) Also, the agent of a registered political party must, within 8 weeks after the end of a reporting period, give the commission a return, in the approved form, stating—
- (a) the total amount received by, or for, the party from all entities during the reporting period, including amounts received before the commencement; and
  - (b) the total amount paid by, or for, the party to all entities during the reporting period, including amounts paid before the commencement; and
  - (c) the total outstanding amount, as at the end of the reporting period, of all debts incurred by, or for, the party to all entities, including debts incurred before the commencement.

*Note—*

Additional information may be required to be included in the return under section 291, 292 or 293.

## **291 Amounts received**

- (1) For a return under section 290(4), if the sum of all amounts received by, or for, the registered political party from a particular entity during a reporting period is equal to or more than the gift threshold amount, the particulars of the sum must be included in the return.
- (2) In calculating the sum, an amount less than the gift threshold amount need not be counted.
- (3) The particulars of the sum required to be given under subsection (1) are the amount of the sum and—
- (a) the relevant particulars of the entity that gave the sum; or
  - (b) if the sum was received as a result of a loan, the information required to be kept under section 272(3) or the name of the financial institution that made the loan, as applicable.

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## **292 Amounts paid**

- (1) For a return under section 290(4), if the sum of all amounts paid by, or for, the registered political party to a particular entity during a reporting period is equal to or more than the gift threshold amount, the particulars of the sum must be included in the return.
- (2) In calculating the sum, the following amounts need not be counted—
  - (a) an amount less than the gift threshold amount;
  - (b) an amount paid under a contract of employment or an award stating terms and conditions of employment.
- (3) The particulars of the sum required to be given under subsection (1) are—
  - (a) the amount of the sum; and
  - (b) the relevant particulars of the entity to which the sum was paid.

## **293 Outstanding amounts**

For a return under section 290(4), if the sum of all outstanding debts incurred by, or for, the registered political party to a particular entity during a reporting period is equal to or more than the gift threshold amount, the relevant particulars of the entity to which the debts were owed must be included in the return.

## **294 Returns by associated entities**

- (1) An entity's financial controller must give the commission a return if—
  - (a) the entity receives a gift, or received a gift before the commencement, during a reporting period; and
  - (b) the amount or value of the gift is equal to or more than the gift threshold amount; and

- (c) when the entity received the gift, the entity was an associated entity.
- (2) The return must—
- (a) be in the approved form; and
  - (b) state the following—
    - (i) the amount or value of the gift;
    - (ii) the relevant particulars of the entity that made the gift; and
  - (c) be given to the commission by the day, not more than 8 weeks after the end of the reporting period in which the gift was received, prescribed by a regulation.
- (3) For subsection (1), 2 or more gifts made during a reporting period by the same entity to another entity (the second entity) are taken to be 1 gift if, when each of the gifts was received, the second entity was an associated entity.
- (4) Also, if an entity was an associated entity at any time during a reporting period, including before the commencement, the entity's financial controller must, within 8 weeks after the end of the reporting period, give the commission a return, in the approved form, stating—
- (a) the total amount received by, or for, the entity from all other entities during the reporting period, including amounts received before the commencement; and
  - (b) the total amount paid by, or for, the entity to all other entities during the reporting period, including amounts paid before the commencement; and
  - (c) if the entity is an associated entity at the end of the reporting period, the total outstanding amount, as at the end of the reporting period, of all debts incurred by or for the entity to all other entities, including debts incurred before the commencement.

*Note—*

Additional information may be required to be included in the return under section 291, 292 or 293.

- (5) Amounts received or paid at a time when the entity was not an associated entity are not to be counted for subsection (4)(a) and (b).
- (6) Sections 291, 292 and 293 apply for a return for a particular associated entity under subsection (4) in the same way they apply for a return for a particular registered political party under section 290(4).

### **294A Amounts paid from capital**

- (1) This section applies if any amount required to be disclosed under section 294(4)(b)—
  - (a) was paid by an associated entity to, or for, 1 or more registered political parties; and
  - (b) was paid out of funds generated from the capital of the associated entity.
- (2) The return under section 294(4) must also state the following details about each person who contributed to the capital at any time—
  - (a) the name and address of the person;
  - (b) the total amount of the person's contributions to the capital, up to the end of the reporting period.
- (3) Subsection (2) does not apply to contributions that have been set out in a previous return under section 294(4).

### **295 Returns not to include lists of party membership**

Returns given under this division are not to include lists of party membership.

### **296 Regulation**

- (1) The regulation may require greater detail to be provided in returns than is otherwise required under this division.

- (2) Without limiting subsection (1), the regulation may require that the total amounts mentioned in section 290 be broken down in the way specified in the regulation.
- (3) The regulation may reduce the amount of information to be provided in returns under section 294.

## **Division 12            Particular disclosure requirements**

### **Subdivision 1        Disclosure requirements for particular elections**

#### **297    Application of sdiv 1**

This subdivision applies in relation to the following elections (each a *relevant election*)—

- (a) the by-election held on 19 July 2014 for the electoral district of Stafford;
- (b) the general election held on 31 January 2015.

#### **298    Disclosure requirements for relevant elections**

- (1) The agent of each person who was a candidate in a relevant election must give the commission a return under sections 261(3) and 262(3) in relation to the election.
- (2) Subsection (3) applies to a third party if, during the disclosure period for a relevant election, the third party incurred expenditure for political purposes equal to or more than the gift threshold amount.
- (3) The third party must give the commission a return under section 263 in relation to any gifts received by the third party from a particular entity during the disclosure period for the election—
  - (a) that have a total amount or value equal to or more than the gift threshold amount; and

- (b) that the third party has used, in whole or part, for the purposes mentioned in section 263(2)(b).
- (4) Subsection (5) applies to a third party if—
  - (a) during the disclosure period for a relevant election, the third party made 1 or more gifts to, or for the purpose of benefiting, a particular candidate in the election; and
  - (b) the total amount or value of the gifts made to, or for the benefit of, the candidate by the third party is equal to or more than the gift threshold amount.
- (5) The third party must give the commission a return under section 264 in relation to the election.
- (6) A return mentioned in subsection (1), (3) or (5) must be given to the commission within 8 weeks after the commencement.
- (7) Subsection (5) applies to a third party even if, at the time the third party made the gift, the third party was outside Queensland.
- (8) This section applies to an agent or third party even if the agent or third party gave a return to the commission in relation to a relevant election under the Act as in force immediately before the commencement.
- (9) To remove any doubt, it is declared that a reference in this section to section 261, 262, 263 or 264 is a reference to the section as in force on the commencement.

### **298A Failure to notify third party of requirement under s 298(5)**

- (1) This section applies to a candidate in a relevant election who, before the commencement, received from a third party a gift in relation to which a return is required under section 298(5).
- (2) The candidate must, within 4 weeks after the commencement—
  - (a) give the third party notice that the third party is required, under section 298(5), to give a return in relation to the gift; and

(b) give the commission a copy of the notice.

Maximum penalty—20 penalty units.

(3) However, the candidate does not commit an offence against subsection (2) if—

(a) the candidate can not give the third party notice under subsection (2)(a) because the candidate has not kept records about the gift or the entity that made the gift; and

(b) the candidate's failure to keep the records is not an offence against section 307(2)(b).

## **Subdivision 2      Disclosure requirements for 2013–2014 financial year**

### **299      Gifts to political parties in 2013–2014 financial year**

(1) This section applies to an entity, other than an entity mentioned in section 265(11), if—

(a) the entity made 1 or more gifts to, or for the purpose of benefiting, a registered political party in the 2013–2014 financial year; and

(b) the total amount or value of the gifts made by the entity to, or for the benefit of, the party in the financial year was equal to or more than the gift threshold amount.

(2) The entity must, within 8 weeks after the commencement, give the commission a return under section 265 for the 2013–2014 financial year.

(3) This section applies to an entity—

(a) even if the entity gave, or was taken to have given, a return for the 2013–2014 financial year under section 265 as in force immediately before the commencement; and

(b) even if, at the time the entity made the gifts, the entity was outside Queensland.



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- (4) To remove any doubt, it is declared that a reference in subsections (1) and (2) to section 265 is a reference to the section as in force on the commencement.

### **299A Failure to notify entity of requirement under s 299(2)**

- (1) This section applies to a registered political party that, before the commencement, received from an entity a gift in relation to which a return is required under section 299(2).
- (2) The registered political party must, within 4 weeks after the commencement—
- (a) give the entity notice that the entity is required, under section 299(2), to give a return in relation to the gift; and
  - (b) give the commission a copy of the notice.

Maximum penalty—20 penalty units.

- (3) However, the registered political party does not commit an offence against subsection (2) if—
- (a) the party can not give the entity notice under subsection (2)(a) because the party has not kept records about the gift or the entity that made the gift; and
  - (b) the party's failure to keep the records is not an offence against section 307(2)(b).

### **300 Return by registered political parties for 2013–2014 financial year**

- (1) The agent of a registered political party must, within 4 weeks after the commencement, give the commission a return under section 290(4) for the 2013–2014 financial year.
- (2) For subsection (1), division 11 applies as if a reference in the division to a reporting period were a reference to the 2013–2014 financial year.
- (3) This section applies to an agent even if the agent gave, or was taken to have given, the commission a return for the 2013–

2014 financial year under section 290 as in force immediately before the commencement.

- (4) To remove any doubt, it is declared that a reference in subsection (1) to section 290, and a reference in subsection (2) to division 11, is a reference to the provision as in force on the commencement.

### **301 Return by associated entities for 2013–2014 financial year**

- (1) If an entity was an associated entity at any time during the 2013–2014 financial year, the entity’s financial controller must, within 4 weeks after the commencement, give the commission a return under section 294(4) for the 2013–2014 financial year.
- (2) For subsection (1), division 11 applies as if a reference in the division to a reporting period were a reference to the 2013–2014 financial year.
- (3) This section applies to the financial controller for an entity even if the financial controller gave the commission a return under section 294, as in force immediately before the commencement, for the 2013–2014 financial year.
- (4) To remove any doubt, it is declared that a reference in subsection (1) to section 294, and a reference in subsection (2) to division 11, is a reference to the provision as in force on the commencement.

## **Subdivision 3 Miscellaneous**

### **302 References to returns in div 13**

To remove any doubt, it is declared that—

- (a) a reference in division 13 to a return required to be given under division 7 includes a reference to a return required to be given under division 7 because of a requirement in subdivision 1 or section 299; and

- (b) a reference in division 13 to a return required to be given under division 11 includes a reference to a return required to be given under division 11 because of a requirement in section 300 or 301.

### **303 Failure to keep records relating to returns under this division**

A person does not commit an offence against section 307(2)(b) if, before the commencement, the person failed to keep records relating to a matter that—

- (a) did not have to be disclosed in a return under division 7 or 11, as in force immediately before the commencement; but
- (b) has to be disclosed in a return required under this division.

### **304 Expiry of div 12**

This division expires on 30 June 2016.

## **Division 13 Miscellaneous**

### **306 Interpretation**

Except in section 312, a reference in this division to a return under division 7, 8, 10 or 11 or to a return under this part includes a reference to particulars under section 312(2).

### **307 Offences**

- (1) A person who fails to give a return that the person is required to give under division 7, 8, 10 or 11 within the time required under this part commits an offence.

Maximum penalty—

- (a) for a return required to be given by the agent of a registered political party—100 penalty units; or
  - (b) otherwise—20 penalty units.
- (2) A person who—
- (a) gives a return that is incomplete, being a return that the person is required to give under division 7, 10 or 11; or
  - (b) fails to keep records in accordance with section 309;
- is guilty of an offence.

Maximum penalty—20 penalty units.

- (3) A person who is the agent of a political party and who lodges a claim under division 4, or gives a return that the agent is required to give under division 7, 10 or 11, that contains particulars that are, to the knowledge of the agent, false or misleading in a material particular is guilty of an offence.

Maximum penalty—200 penalty units.

- (4) A person who is the agent of a candidate and who lodges a claim under division 4, or gives a return that the agent is required to give under division 7, 10 or 11, that contains particulars that are, to the knowledge of the agent, false or misleading in a material particular is guilty of an offence.

Maximum penalty—100 penalty units.

- (5) A person (other than an agent) who lodges a claim under division 4, or gives a return that the person is required to give under division 7 or 10, that contains particulars that are, to the knowledge of the person, false or misleading in a material particular is guilty of an offence.

Maximum penalty—50 penalty units.

- (6) If a person is convicted of an offence against subsection (1), the court may, as well as imposing a penalty under the subsection, order the person to give the relevant return within a time stated by the court in its order.

- (7) If a person is convicted of an offence against subsection (3), (4) or (5), the court may, as well as imposing a penalty under

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the subsection, order the person to refund to the State the amount of any payment wrongfully obtained by the person under division 4.

- (8) If a court has made an order under subsection (7), a certificate signed by the appropriate officer of the court stating the amount ordered to be refunded and the person by whom the amount is payable may be filed in a court having civil jurisdiction to the extent of that amount and is enforceable as a final judgment of the court having civil jurisdiction.
- (9) A person must not give to another person, for the making by the other person of a claim under division 4, information that is, to the knowledge of the first-mentioned person, false or misleading in a material particular.

Maximum penalty—20 penalty units.

- (10) A person must not give to another person who is required to give a return under division 7, 10 or 11 information that relates to the return and that is, to the knowledge of the first-mentioned person, false or misleading in a material particular.

Maximum penalty—20 penalty units.

- (11) A person is guilty of an offence if—
- (a) the person (or a person acting on behalf of the person) receives a gift and the receipt of the gift is unlawful under section 270(1); and
- (b) the person is—
- (i) a registered political party that is a corporation; or
- (ii) a candidate; or
- (iii) an associated entity that is a corporation.

Maximum penalty—1 year's imprisonment or 240 penalty units.

- (12) A person is guilty of an offence if—
- (a) a gift is received by (or by a person acting on behalf of) either of the following (the *recipient*)—

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- (i) a registered political party that is not a corporation;
- (ii) an associated entity that is not a corporation; and
- (b) the receipt of the gift is unlawful under section 270(1); and
- (c) the recipient is specified in column 2 of an item in the following table, and the person is specified in column 3 of that item.

**Liability for unlawful receipt of gift**

<b>Column 1 Item</b>	<b>Column 2 If the recipient is ...</b>	<b>Column 3 the person is liable for the offence if the person is ...</b>
1	a registered political party	the registered officer of the party, the secretary of the party (as defined in section 2), or the agent of the party
2	an associated entity	the financial controller of the associated entity
Maximum penalty—1 year's imprisonment or 240 penalty units.		
(13)	A person does not commit an offence against subsection (12) if—	
	(a) the person does not know of the circumstances because of which the receipt of the gift is unlawful; or	
	(b) the person takes all reasonable steps to avoid those circumstances occurring.	
(14)	A prosecution for an offence against a provision of this section may be started at any time within 3 years after the offence was committed.	

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### **308 Recovery of payments**

- (1) An action in a court to recover an amount due to the State under section 236(3) or 271(7) may be brought in the name of the commission.
- (2) Any process in the action required to be served on the State may be served on the commission.

### **309 Records to be kept**

- (1) This section applies if a person makes or obtains a document or other thing that is or includes a record about a matter particulars of which are, or could be, required to be stated in a claim or return under this part, other than a record that, in the normal course of business or administration, would be transferred to another person.
- (2) The first-mentioned person must keep the record for a period of at least 3 years commencing on the day on which the claim or return was made.

### **310 Audit certificates**

- (1) This section applies if a person is required under this part to give a return to the commission other than one of the following returns—
  - (a) a return under section 284;
  - (b) a return under section 285;
  - (c) a return given under section 264, 265 or 266B.
- (2) The return must be accompanied by a certificate from an auditor stating—
  - (a) that the auditor was given full and free access at all reasonable times to the accounts and documents of the agent responsible for giving the return and of the party, elected member or candidate relating directly or indirectly to a matter required to be disclosed in the return; and

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- (b) the auditor examined the accounts and documents mentioned in paragraph (a) that the auditor considered material for giving the certificate; and
  - (c) the auditor received all the information and explanations the auditor asked for in relation to any matter required to be stated in the certificate, subject to the qualifications, if any, stated in the certificate; and
  - (d) the auditor has no reason to think any statement in the declaration is not correct.
- (3) The commission may waive compliance with the requirement to give an audit certificate if the commission considers the cost of compliance with the requirement would be unreasonable.
- (4) A return required to be accompanied by a certificate from an auditor is taken not to have been given as required under this part if it is not accompanied by the certificate.

### **311 Auditor to give notice of contravention**

- (1) This section applies if, in carrying out an audit to prepare an audit certificate for this part, an auditor becomes aware of a matter that is reasonably likely to constitute a contravention of this part by a registered political party or candidate.
- (2) The auditor must, within 7 days after becoming aware of the matter, give the commission written notice of the matter.

Maximum penalty—100 penalty units.

### **312 Inability to complete returns**

- (1) If a person who is required to give a return under division 7, 10 or 11 considers that it is impossible to complete the return because the person is unable to obtain particulars that are required for the preparation of the return, the person may—
- (a) prepare the return to the extent that it is possible to do so without the particulars; and
  - (b) give the return so prepared; and



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- (c) give to the commission a written notice—
- (i) identifying the return; and
  - (ii) stating that the return is incomplete because the person is unable to obtain certain particulars; and
  - (iii) identifying the particulars; and
  - (iv) stating the reasons the person is unable to obtain the particulars; and
  - (v) if the person believes, on reasonable grounds, that another person whose name and address the person knows can give those particulars—stating that belief and the reasons for it and the name and address of that other person;

and a person who complies with this subsection must not, merely because of the omission of the particulars, be taken, for section 307(2), to have given a return that is incomplete.

- (2) If the commission has been informed under subsection (1)(c)(v) or (3)(e) that a person can supply particulars that have not been included in a return, the commission may, by written notice given to the person, require the person to give to the commission, within the period stated in the notice and in writing, those particulars and, subject to subsection (3), the person must comply with the requirement.
- (3) If a person who is required to give particulars under subsection (2) considers that the person is unable to obtain some or all of the particulars, the person must give to the commission a written notice—
- (a) stating the particulars (if any) that the person is able to give; and
  - (b) stating that the person is unable to obtain some or all of the particulars; and
  - (c) identifying the particulars the person is unable to obtain; and

- (d) stating the reasons the person considers the person is unable to obtain the particulars; and
  - (e) if the person believes, on reasonable grounds, that another person whose name and address the person knows can give the particulars—stating the name and address of the other person and the reasons the person believes that the other person is able to give the particulars.
- (4) A person who complies with subsection (3) must not, because of the omission of particulars required under subsection (2), be taken, for section 307(2), to have given a return that is incomplete.

### **313 Extension for giving return**

- (1) A person who is required to give a return under this part may, before the day by which the return must be given, apply to the commission for an extension of the day by which the return must be lodged.
- (2) The commission may grant the application if the commission is satisfied it is appropriate to do so in the circumstances.
- (3) However, an extension under this section may not extend the day by which the return is required to be given to a day that is more than 1 month after the day the return would, other than for this section, be required to be lodged.
- (4) The commission may, as a condition of extending the day by which the return must be given, require the person to give a return containing the particulars the person has available at the time.

### **314 Noncompliance with part does not affect election**

- (1) A failure of a person to comply with a provision of this part for an election does not invalidate the election.
- (2) Without limiting subsection (1), if—

- 
- (a) a registered political party endorsed a candidate in an election; and
  - (b) the candidate was elected at the election;
- any failure by the agent of the political party to comply with a provision of this part for the election does not invalidate the election of the candidate.
- (3) Without limiting subsection (1), if the agent of a candidate who is elected at an election fails to comply with a provision of this part for the election, that failure does not invalidate the election of the candidate.

### **315 Amendment of claims and returns**

- (1) If the commissioner is satisfied that a claim or return under this part contains a formal error or is subject to a formal defect, the commissioner may amend the claim or return to the extent necessary to correct the error or remove the defect.
- (2) A person who has lodged a claim or given a return under this part may ask the permission of the commission to make a specified amendment of the claim or return for correcting an error or omission.
- (3) If the claim was lodged, or the return was given, by a person as the agent of a registered political party, the request under subsection (2) may be made either by—
  - (a) the person who lodged the claim or return; or
  - (b) the person who is currently registered as the agent of the political party.
- (4) A request under subsection (2) must—
  - (a) be by written notice signed by the person making the request; and
  - (b) be given to the commission.
- (5) If—
  - (a) a request has been made under subsection (2); and

- (b) the commission is satisfied that there is an error in, or omission from, the claim or return to which the request relates;

the commission must permit the person making the request to amend the claim or return in accordance with the request.

- (6) If the commission decides to refuse a request under subsection (2), the commission must give to the person making the request written notice of the reasons for the decision.
- (7) An officer authorised for the purpose by the commission may exercise the power of the commission under subsection (5).
- (8) If an officer acting under subsection (7) decides to refuse a request under subsection (2)—
  - (a) subsection (6) applies as if the officer were the commission; and
  - (b) the person who made the request may, by written notice lodged with the commission within 28 days after notice of the refusal was given, ask the commission to review the decision.
- (9) If a request is made under subsection (8), the commission must review the decision to which the request relates and make a fresh decision.
- (10) The amendment of a claim or return under this section does not affect the liability of a person to be convicted of an offence against section 307(2), (3) or (5) arising out of the lodging of the claim or the giving of the return.

### **315A Electronic lodgement of returns**

- (1) The commission may make procedures about how a return under division 7 or 11 may be lodged electronically.
- (2) The procedures—
  - (a) do not take effect until approved by a regulation; and

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- (b) must be tabled in the Legislative Assembly with the regulation approving the procedures; and
  - (c) must be published on the commission's website.
- (3) If a return under division 7 or 11 is lodged in accordance with the procedures, the return is taken to have been given to the commission.

### **316 Publishing of returns**

- (1) The commission must publish on its website the following returns given to the commission—
- (a) a return under section 265;
  - (b) a return under section 266B;
  - (c) a return under section 290;
  - (d) a return under section 294.
- (2) A return mentioned in subsection (1) must be published within 5 business days after the return is given to the commission.

### **317 Inspection and supply of copies of claims and returns**

- (1) The commission must keep, at its office, a copy of—
- (a) each claim under division 4; and
  - (b) each return under division 7, 8 or 10; and
  - (c) each return under division 11.
- (2) Any person may peruse, at the office of the commission, a copy of a claim or return mentioned in subsection (1).
- (3) A person may, on payment of a fee decided by the commission to cover the cost of copying, obtain a copy of a claim or return mentioned in subsection (1).
- (4) A person is not entitled under this section to peruse, or obtain a copy of—
- (a) a claim under division 4; or

- (b) a return under division 7 (other than section 265 or 266B) or 10;

until after the end of 24 weeks after the polling day for the election to which the claim or return relates.

- (5) In this section—

*claim* includes the following—

- (a) any documents accompanying the claim;
- (b) any documents relating to the assessment of the claim by the commission.

### **319 Compliance agreements**

- (1) The commission may enter into a written agreement (a *compliance agreement*) with a person on whom an obligation is placed by this part to ensure the person complies with this part or remedies an apparent contravention of this part.
- (2) A compliance agreement may state the measures to be taken by the person to whom it applies to ensure the person complies with this part or remedies an apparent contravention of this part.
- (3) A court may, on application by the commission, make a declaration that a person has contravened a compliance agreement and make ancillary orders to enforce the compliance agreement.
- (4) This section does not affect proceedings for an offence for a contravention of this Act.

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## **Division 14                    General provisions about    authorised officers**

### **Subdivision 1            Appointment**

#### **320      Authorised officer under pt 11**

- (1) This part includes provision for the appointment of authorised officers, and gives authorised officers particular powers.
- (2) The purpose of these provisions is to ensure the commission has available to it suitably qualified persons who can help the commission properly deal with issues about compliance with the part.

#### **321      Appointment and qualifications**

- (1) The commission may, by instrument in writing, appoint any of the following persons as authorised officers—
  - (a) officers of the commission;
  - (b) public service employees;
  - (c) other persons prescribed under a regulation.
- (2) However, the commissioner may appoint a person as an authorised officer only if—
  - (a) the commissioner is satisfied the person is qualified for appointment because the person has the necessary expertise or experience; or
  - (b) the person has satisfactorily finished training approved by the commissioner.

#### **322      Appointment conditions and limit on powers**

- (1) An authorised officer holds office on any conditions stated in—
  - (a) the authorised officer's instrument of appointment; or

- (b) a signed notice given to the authorised officer; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the authorised officer or a regulation may limit the authorised officer's powers.
- (3) In this section—  
*signed notice* means a notice signed by the commissioner.

### **323 When office ends**

- (1) The office of a person as an authorised officer ends if any of the following happens—
- (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the office ends;
  - (c) the authorised officer's resignation under section 324 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an authorised officer ends.
- (3) In this section—  
*condition of office* means a condition under which the authorised officer holds office.

### **324 Resignation**

- (1) An authorised officer may resign by signed notice given to the commissioner.
- (2) However, if holding office as an authorised officer is a condition of the authorised officer holding another office, the authorised officer may not resign as an authorised officer without resigning from the other office.



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## **Subdivision 2      Identity cards**

### **325      Issue of identity card**

- (1) The commissioner must issue an identity card to each authorised officer.
- (2) The identity card must—
  - (a) contain a recent photo of the authorised officer; and
  - (b) contain a copy of the authorised officer’s signature; and
  - (c) identify the person as an authorised officer under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

### **326      Production or display of identity card**

- (1) In exercising a power in relation to a person in the person’s presence, an authorised officer must—
  - (a) produce the authorised officer’s identity card for the person’s inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person’s inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised officer does not exercise a power in relation to a person only because the authorised officer has entered a place as mentioned in section 330(1)(b).

### **327      Return of identity card**

If the office of a person as an authorised officer ends, the person must return the person’s identity card to the

commissioner within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

### **Subdivision 3      Miscellaneous provisions**

#### **328      References to exercise of powers**

If—

- (a) a provision of this part refers to the exercise of a power by an authorised officer; and
- (b) there is no reference to a specific power;

the reference is to the exercise of all or any authorised officer's powers under this part or a warrant, to the extent the powers are relevant.

#### **329      Reference to document includes reference to reproductions from electronic document**

A reference in this part to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or
- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

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## Division 15            Entry of places by authorised officers

### Subdivision 1        Power to enter

#### 330    General power to enter places

- (1) An authorised officer may enter a place if—
  - (a) an occupier at the place consents under subdivision 2 to the entry and section 333 has been complied with for the occupier; or
  - (b) it is a public place and the entry is made when the place is open to the public; or
  - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 340 has been complied with for the occupier; or
  - (d) it is a place of business at which the authorised officer reasonably suspects any of the following documents are kept and the place is open for carrying on the business or otherwise open for entry—
    - (i) a document issued to a person under this part;
    - (ii) a document required to be kept by a person under this part.
- (2) For subsection (1)(d), a *place of business* includes an office or other place at which a political party, elected member or candidate carries out political or administrative activities but does not include a part of a place where a person resides.
- (3) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (4) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

- (5) The consent may provide consent for re-entry and is subject to the conditions of consent.
- (6) If the power to re-enter is under a warrant, the re-entry is subject to the terms of the warrant.

## **Subdivision 2      Entry by consent**

### **331      Application of sdiv 2**

This subdivision applies if an authorised officer intends to ask an occupier of a place to consent to the authorised officer or another authorised officer entering the place under section 330(1)(a).

### **332      Incidental entry to ask for access**

For the purpose of asking the occupier for the consent, an authorised officer may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the authorised officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

### **333      Matters authorised officer must tell occupier**

Before asking for the consent, the authorised officer must give a reasonable explanation to the occupier—

- (a) about the purpose of the entry, including the powers intended to be exercised; and
- (b) that the occupier is not required to consent; and
- (c) that the consent may be given subject to conditions and may be withdrawn at any time.

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**334 Consent acknowledgement**

- (1) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
  - (a) the purpose of the entry, including the powers to be exercised; and
  - (b) the following has been explained to the occupier—
    - (i) the purpose of the entry, including the powers intended to be exercised;
    - (ii) that the occupier is not required to consent;
    - (iii) that the consent may be given subject to conditions and may be withdrawn at any time; and
  - (c) the occupier gives the authorised officer or another authorised officer consent to enter the place and exercise the powers; and
  - (d) the time and day the consent was given; and
  - (e) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the authorised officer must immediately give a copy to the occupier.
- (4) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgement complying with subsection (2) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

## **Subdivision 3      Entry under warrant**

### **335      Application for warrant**

- (1) An authorised officer may apply to a magistrate for a warrant for a place.
- (2) The authorised officer must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the written application to be given by statutory declaration.

### **336      Issue of warrant**

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against this part.
- (2) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated authorised officer or any authorised officer may with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry to the place; and
    - (ii) exercise the authorised officer's powers; and
  - (c) particulars of the offence that the magistrate considers appropriate; and

- (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
- (e) the evidence that may be seized under the warrant; and
- (f) the hours of the day or night when the place may be entered; and
- (g) the magistrate's name; and
- (h) the day and time of the warrant's issue; and
- (i) the day, within 14 days after the warrant's issue, the warrant ends.

### **337 Electronic application**

- (1) An application under section 335 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised officer reasonably considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the authorised officer's remote location.
- (2) The application—
  - (a) may not be made before the authorised officer prepares the written application under section 335(2); but
  - (b) may be made before the written application is sworn.

### **338 Additional procedure if electronic application**

- (1) For an application made under section 337, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under section 337; and

- (b) the way the application was made under section 337 was appropriate.
- (2) After the magistrate issues the original warrant—
- (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised officer; or
  - (b) otherwise—
    - (i) the magistrate must tell the authorised officer the information mentioned in section 336(2); and
    - (ii) the authorised officer must complete a form of warrant, including by writing on it the information mentioned in section 336(2) provided by the magistrate.
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (4) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
- (a) the written application complying with section 335(2) and (3); and
  - (b) if the authorised officer completed a form of warrant under subsection (2)(b)—the completed form of warrant.
- (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—
- (a) attach the documents to the original warrant; and
  - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (6) Despite subsection (3), if—



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- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
- (b) the original warrant is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (7) This section does not limit section 335.
- (8) In this section—
- relevant magistrates court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

### 339 Defect in relation to a warrant

- (1) A warrant is not invalidated by a defect in—
- (a) the warrant; or
- (b) compliance with this subdivision;
- unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—
- warrant* includes a duplicate warrant mentioned in section 338(3).

### 340 Entry procedure

- (1) This section applies if an authorised officer is intending to enter a place under a warrant issued under this subdivision.
- (2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—
- (a) identify himself or herself to a person who is an occupier of the place and is present by producing the authorised officer's identity card or another document evidencing the authorised officer's appointment;

- (b) give the person a copy of the warrant;
  - (c) tell the person the authorised officer is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.
- (3) However, the authorised officer need not comply with subsection (2) if the authorised officer believes on reasonable grounds that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.
- (4) In this section—  
*warrant* includes a duplicate warrant mentioned in section 338(3).

## **Division 16                      General powers of authorised officers after entering places**

### **341      Application of div 16**

- (1) The power under this division may be exercised if an authorised officer enters a place under section 330(1)(a), (c) or (d).
- (2) However, if the authorised officer enters under section 330(1)(a) or (c), the powers under this division are subject to any conditions of the consent or terms of the warrant.

### **342      General powers**

- (1) The authorised officer may do any of the following (each a *general power*)—
  - (a) search any part of the place;
  - (b) inspect, examine or film any part of the place or anything at the place;
  - (c) place an identifying mark in or on anything at the place;

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- (d) take an extract from, or copy, a document at the place, or take the document to another place to copy;
  - (e) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;
  - (f) take to, into or onto the place and use any person, equipment and materials the authorised officer reasonably requires for exercising the authorised officer's powers under this division;
  - (g) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The authorised officer may take a necessary step to allow the exercise of a general power.
  - (3) If the authorised officer takes a document from the place to copy it, the authorised officer must copy and return the document to the place as soon as practicable.
  - (4) If the authorised officer takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the authorised officer must produce the document and return the article or device to the place as soon as practicable.
  - (5) In this section—
    - examine* includes analyse, test, account, measure, weigh, grade, gauge and identify.
    - film* includes photograph, videotape and record an image in another way.
    - inspect*, a thing, includes open the thing and examine its contents.

### 343 Power to require reasonable help

- (1) The authorised officer may make a requirement (a *help requirement*) of an occupier of the place or a person at the

place to give the authorised officer reasonable help to exercise a general power, including, for example, to produce a document or to give information.

- (2) When making the help requirement, the authorised officer must give the person an offence warning for the requirement.

### **344 Offence to contravene help requirement**

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) However, subsection (2) does not apply if a document or information the subject of the help requirement is required to be held or kept by the defendant under this part.

*Note—*

See, however, section 371.

## **Division 17                    Seizure by authorised officers and forfeiture**

### **Subdivision 1            Power to seize**

#### **345    Seizing evidence at a place that may be entered without consent or warrant**

An authorised officer who enters a place the authorised officer may enter under this Act without the consent of an occupier of the place and without a warrant may seize a thing at the place if the authorised officer reasonably believes the thing is evidence of an offence against this part.

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**346 Seizing evidence at a place that may be entered only with consent or warrant**

- (1) This section applies if—
  - (a) an authorised officer is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
  - (b) the authorised officer enters the place after obtaining the consent or under a warrant.
- (2) If the authorised officer enters the place with the occupier's consent, the authorised officer may seize a thing at the place only if—
  - (a) the authorised officer reasonably believes the thing is evidence of an offence against this part; and
  - (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.
- (3) If the authorised officer enters the place under a warrant, the authorised officer may seize the evidence for which the warrant was issued.
- (4) The authorised officer may also seize anything else at the place if the authorised officer reasonably believes—
  - (a) the thing is evidence of an offence against this part; and
  - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.
- (5) The authorised officer may also seize a thing at the place if the authorised officer reasonably believes it has just been used in committing an offence against this part.

**347 Seizure of property subject to security**

- (1) An authorised officer may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.

- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the authorised officer or a person acting for the authorised officer.

## **Subdivision 2 Powers to support seizure**

### **348 Power to secure seized thing**

- (1) Having seized a thing under this division, an authorised officer may—
- (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
  - (b) move it from the place of seizure.
- (2) For subsection (1)(a), the authorised officer may, for example—
- (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
  - (b) require a person the authorised officer reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or anything else an authorised officer could do under subsection (1)(a).

### **349 Offence to contravene other seizure requirement**

A person must comply with a requirement made of the person under section 348(2)(b) unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

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### **350 Offence to interfere**

(1) If access to a seized thing is restricted under section 348, a person must not tamper with the thing or with anything used to restrict access to the thing without—

- (a) an authorised officer's approval; or
- (b) a reasonable excuse.

Maximum penalty—50 penalty units.

(2) If access to a place is restricted under section 348, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—

- (a) an authorised officer's approval; or
- (b) a reasonable excuse.

Maximum penalty—50 penalty units.

## **Subdivision 3 Safeguards for seized things**

### **351 Receipt and information notice for seized thing**

(1) This section applies if an authorised officer seizes anything under this division unless—

- (a) the authorised officer reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or
- (b) because of the condition, nature and value of the thing it would be unreasonable to require the authorised officer to comply with this section.

(2) The authorised officer must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—

- (a) a receipt for the thing that generally describes the thing and its condition; and
- (b) an information notice about the decision to seize it.

- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.
- (4) The receipt and information notice may—
  - (a) be given in the same document; and
  - (b) relate to more than 1 seized thing.
- (5) The authorised officer may delay giving the receipt and information notice if the authorised officer reasonably suspects giving them may frustrate or otherwise hinder an investigation by the authorised officer under this part.
- (6) However, the delay may be only for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

### **352 Access to seized thing**

- (1) Until a seized thing is forfeited or returned, the authorised officer who seized the thing must allow an owner of the thing—
  - (a) to inspect it at any reasonable time and from time to time; and
  - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

### **353 Return of seized thing**

- (1) This section applies if a seized thing has some intrinsic value and is not forfeited or transferred under subdivision 4 or 5.
- (2) The authorised officer must return the seized thing to an owner—



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- (a) generally—at the end of 6 months after the seizure; or
  - (b) if a proceeding for an offence involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.
- (3) Despite subsection (2), if the thing was seized as evidence, the authorised officer must return the thing seized to an owner as soon as practicable after the authorised officer is satisfied—
- (a) its continued retention as evidence is no longer necessary; and
  - (b) it is lawful for the owner to possess it.
- (4) Nothing in this section affects a lien or other security over the seized thing.

## Subdivision 4 Forfeiture

### 354 Forfeiture by commissioner decision

- (1) The commissioner may decide a seized thing is forfeited to the State if an authorised officer—
- (a) after making reasonable inquiries, can not find an owner; or
  - (b) after making reasonable efforts, can not return it to an owner.
- (2) However, the authorised officer is not required to—
- (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
  - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.
- Example for paragraph (b)—*
- The owner of the thing has migrated to another country.
- (3) Regard must be had to the thing's condition, nature and value in deciding—
- (a) whether it is reasonable to make inquiries or efforts; and

- (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

### **355 Information notice about forfeiture decision**

- (1) If the commissioner decides under section 354(1) to forfeit a thing, the commissioner must as soon as practicable give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice about the decision.
- (2) The information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.
- (3) The information notice must state that the former owner may apply for a stay of the decision if the person appeals against the decision.
- (4) However, subsections (1) to (3) do not apply if the place where the thing was seized is—
  - (a) a public place; or
  - (b) a place where the notice is unlikely to be read by the former owner.

## **Subdivision 5 Dealing with property forfeited or transferred to State**

### **356 When thing becomes property of the State**

A thing becomes the property of the State if—

- (a) the thing is forfeited to the State under section 354(1);  
or
- (b) the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.

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**357 How property may be dealt with**

- (1) This section applies if, under section 356, a thing becomes the property of the State.
- (2) The commissioner may deal with the thing as the commissioner considers appropriate, including, for example, by destroying it or giving it away.
- (3) The commissioner must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under this part.
- (4) If the commissioner sells the thing, the commissioner may, after deducting the costs of the sale, return the proceeds of the sale to the former owner of the thing.

**Division 18 Other information-obtaining powers of authorised officers**

**358 Power to require name and address**

- (1) This section applies if an authorised officer—
  - (a) finds a person committing an offence against this part; or
  - (b) finds a person in circumstances that lead the authorised officer to reasonably suspect the person has just committed an offence against this part; or
  - (c) has information that leads the authorised officer to reasonably suspect a person has just committed an offence against this part.
- (2) The authorised officer may require the person to state the person's name and residential address.
- (3) The authorised officer may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—

- (a) be in possession of evidence of the correctness of the stated name or address; or
  - (b) otherwise be able to give the evidence.
- (4) When making a personal details requirement, the authorised officer must give the person an offence warning for the requirement.
- (5) A requirement under this section is a *personal details requirement*.

### **359 Offence to contravene personal details requirement**

- (1) A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) A person may not be convicted of an offence under subsection (1) unless the person is found guilty of the offence in relation to which the personal details requirement was made.

### **360 Power to require production of documents**

- (1) An authorised officer may require a person to make available for inspection by an authorised officer, or to produce to the authorised officer for inspection, at a reasonable time and place nominated by the authorised officer—
- (a) a document issued to the person under this part; or
  - (b) a document required to be kept by the person under this part; or
  - (c) if a document or information required to be kept by the person under this part is stored or recorded by means of a device—a document that is a clear written reproduction of the stored or recorded document or information.

- (2) A requirement under subsection (1) is a ***document production requirement***.
- (3) For an electronic document, compliance with the document production requirement requires the making available or production of a clear written reproduction of the electronic document.
- (4) The authorised officer may keep the document to copy it.
- (5) If the authorised officer copies the document, or an entry in the document, the authorised officer may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
- (6) A requirement under subsection (5) is a ***document certification requirement***.
- (7) The authorised officer must return the document to the person as soon as practicable after copying it.
- (8) However, if a document certification requirement is made of a person, the authorised officer may keep the document until the person complies with the requirement.

### **361 Offence to contravene document production requirement**

- (1) A person of whom a document production requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- (2) It is not a reasonable excuse for a person to fail to comply with a document production requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

*Note—*

See, however, section 371.

- (3) The authorised officer must inform the person, in a way that is reasonable in the circumstances—

- (a) that the person must comply with the document production requirement even though complying might tend to incriminate the person or expose the person to a penalty; and
  - (b) that, under section 371, there is a limited immunity against the future use of the information or document given in compliance with the requirement.
- (4) If the person fails to comply with the document production requirement when the authorised officer has failed to comply with subsection (3), the person can not be convicted of the offence against subsection (1).
- (5) If a court convicts a person of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, order the person to comply with the document production requirement.

### **362 Offence to contravene document certification requirement**

- (1) A person of whom a document certification requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- (2) It is not a reasonable excuse for a person to fail to comply with a document certification requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

*Note—*

See, however, section 371.

- (3) The authorised officer must inform the person, in a way that is reasonable in the circumstances—
- (a) that the person must comply with the document certification requirement even though complying might tend to incriminate the person or expose the person to a penalty; and

- (b) that, under section 371, there is a limited immunity against the future use of the information or document given in compliance with the requirement.
- (4) If the person fails to comply with the document certification requirement when the authorised officer has failed to comply with subsection (3), the person can not be convicted of the offence against subsection (1).

### **363 Power to require information**

- (1) This section applies if an authorised officer reasonably believes—
  - (a) an offence against this part has been committed; and
  - (b) a person may be able to give information about the offence.
- (2) The authorised officer may, by notice given to the person, require the person to give the authorised officer information related to the offence at a stated reasonable time and place.
- (3) A requirement under subsection (2) is an *information requirement*.
- (4) For information that is an electronic document, compliance with the information requirement requires the giving of a clear image or written version of the electronic document.
- (5) In this section—  
*information* includes a document.

### **364 Offence to contravene information requirement**

- (1) A person of whom an information requirement is made must comply with the requirement unless the person has a reasonable excuse.  
  
Maximum penalty—200 penalty units or 1 year's imprisonment.
- (2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to

incriminate the individual or expose the individual to a penalty.

## **Division 19            Miscellaneous provisions relating to authorised officers**

### **Subdivision 1        Damage**

#### **365    Duty to avoid inconvenience and minimise damage**

In exercising a power, an authorised officer must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

*Note—*

See also section 367.

#### **366    Notice of damage**

- (1) This section applies if—
  - (a) an authorised officer damages something when exercising, or purporting to exercise, a power; or
  - (b) a person (the *assistant*) acting under the direction or authority of an authorised officer damages something.
- (2) However, this section does not apply to damage the authorised officer reasonably considers is trivial or if the authorised officer reasonably believes—
  - (a) there is no-one apparently in possession of the thing; or
  - (b) the thing has been abandoned.
- (3) The authorised officer must give notice of the damage to the person who appears to the authorised officer to be an owner, or person in control, of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the authorised officer must—



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- (a) leave the notice at the place where the damage happened; and
  - (b) ensure it is left in a conspicuous position and in a reasonably secure way.
- (5) The authorised officer may delay complying with subsection (3) or (4) if the authorised officer reasonably suspects complying with the subsection may frustrate or otherwise hinder an investigation by the authorised officer.
  - (6) The delay may be only for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place.
  - (7) If the authorised officer believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the authorised officer or the assistant, the authorised officer may state the belief in the notice.
  - (8) The notice must state—
    - (a) particulars of the damage; and
    - (b) that the person who suffered the damage may claim compensation under section 367.

## **Subdivision 2 Compensation**

### **367 Compensation**

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an authorised officer including a loss arising from compliance with a requirement made of the person under division 17 or 18.
- (2) However, subsection (1) does not include loss arising from a lawful seizure or a lawful forfeiture.
- (3) The compensation may be claimed and ordered in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an alleged offence against this part the investigation of which gave rise to the claim for compensation.
- (4) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (5) In considering whether it is just to order compensation, the court must have regard to any relevant offence committed by the claimant.
- (6) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
- (7) Section 365 does not provide for a statutory right of compensation other than is provided by this section.
- (8) In this section—  
*loss* includes costs and damage.

### **Subdivision 3      Other offences relating to authorised officers**

#### **368      Giving authorised officer false or misleading information**

- (1) A person must not, in relation to the administration of this part, give an authorised officer information, or a document containing information, that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) Subsection (1) applies to information or a document given in relation to the administration of this part whether or not the information or document was given in response to a specific power under this part.

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**369 Obstructing authorised officer**

- (1) A person must not obstruct an authorised officer, or someone helping an authorised officer, exercising a power unless the person has a reasonable excuse.

Maximum penalty—200 penalty units or 1 year’s imprisonment.

- (2) If a person has obstructed an authorised officer, or someone helping an authorised officer, and the authorised officer decides to proceed with the exercise of the power, the authorised officer must warn the person that—

- (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and  
(b) the authorised officer considers the person’s conduct an obstruction.

- (3) In this section—

*obstruct* includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

**370 Impersonating authorised officer**

A person must not impersonate an authorised officer.

Maximum penalty—80 penalty units.

**Subdivision 4 Other provisions**

**371 Evidential immunity for individuals complying with particular requirements**

- (1) Subsection (2) applies if an individual gives or produces information or a document to an authorised officer under section 343.
- (2) Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any

proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.

- (3) Subsection (2) does not apply to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence.

### **372 Protection from liability for particular persons**

- (1) A designated person does not incur civil liability for an act done, or omission made, honestly and without negligence under this part.
- (2) If subsection (1) prevents a civil liability attaching to a designated person, the liability attaches instead to the State.
- (3) In this section—

*civil liability* includes liability for the payment of costs ordered to be paid in a proceeding for an offence against this part.

*designated person* means—

- (a) the commissioner; or
- (b) an authorised officer; or
- (c) a person acting under the authority or direction of an authorised officer.

### **373 Confidentiality of information**

- (1) An authorised officer must not, whether directly or indirectly, disclose confidential information.

Maximum penalty—100 penalty units.

- (2) However, subsection (1) does not apply if—
  - (a) the confidential information is disclosed—
    - (i) in the performance of functions under this part; or

- (ii) with the written consent of the person to whom the information relates; or
  - (iii) to the person to whom the information relates; or
  - (iv) in a form that could not identify any person; or
- (b) the disclosure of the confidential information is authorised under an Act or another law.
- (3) In this section—

*confidential information* means information that has become known to an authorised officer in the course of performing the authorised officer's functions for this part.

## **Division 20                      Appeals, evidence and legal proceedings**

### **Subdivision 1                  Reviews and appeals**

#### **374      Right of appeal**

A person who has a right to be given an information notice about a decision made under this part has a right to appeal against the decision.

*Note—*

Information notices are given under sections 351 and 355.

#### **375      Appeal process starts with internal review**

- (1) Every appeal against a decision must be, in the first instance, by way of an application for an internal review.
- (2) A person who has a right to appeal against a decision may apply to the commissioner for a review of the decision.

#### **376      How to apply for review**

- (1) An application for review of a decision must be—

- (a) in the approved form; and
  - (b) supported by enough information to enable the commissioner to decide the application.
- (2) The application must be made within 20 business days after—
- (a) the day the person is given the information notice about the decision; or
  - (b) if the person is not given an information notice about the decision—the day the person otherwise becomes aware of the decision.
- (3) The commissioner may extend the period for applying for the review.
- (4) The application must not be dealt with by—
- (a) the person who made the decision; or
  - (b) a person in a less senior office than the person who made the decision.
- (5) Subsection (4)—
- (a) applies despite the *Acts Interpretation Act 1954*, section 27A; and
  - (b) does not apply to a decision made by the commissioner.

### **377 Stay of operation of decision**

- (1) An application for review of a decision does not stay the decision.
- (2) However, the applicant may immediately apply for a stay of the decision to the court.
- (3) The court may stay the decision to secure the effectiveness of the review and a later appeal to the court.
- (4) The stay—
- (a) may be given on conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and

- (c) may be amended or revoked by the court.
- (5) The period of the stay must not extend past the time when the commissioner makes a review decision about the decision and any later period the court allows the applicant to enable the applicant to appeal against the review decision.
- (6) An application for review of a decision affects the decision, or carrying out of the decision, only if the decision is stayed.

### 378 Review decision

- (1) The commissioner must, within 30 business days after receiving the application—
  - (a) review the decision (the *original decision*); and
  - (b) make a decision (the *review decision*) to—
    - (i) confirm the original decision; or
    - (ii) amend the original decision; or
    - (iii) substitute another decision for the original decision; and
  - (c) give the applicant notice (the *review notice*) of the review decision.
- (2) If the review decision is not the decision sought by the applicant, the review notice must state the following—
  - (a) the day the notice is given to the applicant (the *review notice day*);
  - (b) the reasons for the decision;
  - (c) that the applicant may appeal against the decision to the court within 28 days after the review notice day;
  - (d) how to appeal;
  - (e) that the applicant may apply to the court for a stay of the decision.
- (3) If the commissioner does not give the review notice within the 30 days, the commissioner is taken to have made a review decision confirming the original decision.

### **379 Who may appeal**

A person who has applied for review of an original decision and is dissatisfied with the review decision may appeal to the court against the decision.

### **380 Procedure for an appeal to the court**

- (1) An appeal to the court is started by filing a notice of appeal with the clerk of the court.
- (2) A copy of the notice must be served on the commissioner.
- (3) The notice of appeal must be filed within 28 days after the review notice day.
- (4) The court may, whether before or after the time for filing the notice of appeal ends, extend the period for filing the notice of appeal.
- (5) The notice of appeal must state fully the grounds of the appeal.

### **381 Stay of operation of review decision**

- (1) The court may grant a stay of the operation of a review decision appealed against to secure the effectiveness of the appeal.
- (2) A stay—
  - (a) may be granted on conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and
  - (c) may be amended or revoked by the court.
- (3) The period of a stay stated by the court must not extend past the time when the court decides the appeal.
- (4) An appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.



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### **382 Powers of court on appeal**

- (1) In deciding an appeal, the court—
  - (a) has the same powers as the commissioner in making the review decision appealed against; and
  - (b) is not bound by the rules of evidence; and
  - (c) must comply with natural justice.
- (2) An appeal is by way of rehearing.
- (3) The court may—
  - (a) confirm the review decision; or
  - (b) set aside the review decision and substitute another decision; or
  - (c) set aside the review decision and return the matter to the commissioner with directions the court considers appropriate.

### **383 Effect of decision of court on appeal**

- (1) If the court acts to set aside the review decision and return the matter to the commissioner with directions the court considers appropriate, and the commissioner makes a new decision, the new decision is not subject to review or appeal under this subdivision.
- (2) If the court substitutes another decision, the substituted decision is taken to be the decision of the commissioner, and the commissioner may give effect to the decision as if the decision was the original decision of the commissioner and no application for review or appeal had been made.

## **Subdivision 2 Evidence and legal proceedings**

### **384 Evidentiary provisions**

- (1) This section applies to a proceeding under this part.

- (2) The appointment or power of the commissioner or an authorised officer must be presumed unless a party, by reasonable notice, requires proof of—
  - (a) the appointment; or
  - (b) the power to do anything under this part.
- (3) A signature purporting to be the signature of the commissioner or an authorised officer is evidence of the signature it purports to be.
- (4) A certificate purporting to be signed by a person mentioned in subsection (3) and stating any of the following matters is evidence of the matter—
  - (a) that a stated document of any of the following types is a document given, issued, kept or made under this part—
    - (i) an appointment, approval or decision;
    - (ii) a direction or requirement;
    - (iii) a notice or other document given under this part;
  - (b) that a stated document is another document kept under this part;
  - (c) that a stated document is a copy of, or an extract from or part of, a thing mentioned in paragraph (a) or (b);
  - (d) that on a stated day—
    - (i) a stated person was given a stated decision, direction or notice under this part; or
    - (ii) a stated requirement under this part was made of a stated person;
  - (e) that a stated amount is payable under this part by a stated person and has not been paid;
  - (f) anything else prescribed under the regulation.

### **385 Offences under this part are summary**

- (1) An offence against this part is a summary offence.

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- (2) Subject to section 307(14), a proceeding for an offence against this part must start within the later of the following periods to end—
- (a) 1 year after the commission of the offence;
  - (b) 6 months after the offence comes to the complainant's knowledge but within 2 years after the commission of the offence.

### **386 Statement of complainant's knowledge**

In a complaint starting a proceeding for an offence against this part, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence the matter came to the complainant's knowledge on that day.

## **Part 12 Miscellaneous**

### **388 How things are to be signed**

For the purposes of this Act, a person signs a thing—

- (a) by signing the person's name in writing on the thing; or
- (b) if the person is unable to sign as mentioned in paragraph (a)—by making the person's mark on the thing as a signature before another person who signs the thing as witness; or
- (c) if the person is unable to sign as mentioned in paragraph (a) or make a mark as mentioned in paragraph (b)—by having another person (the *other person*) sign the other person's name in writing, and clearly print the other person's name and address and the words 'signed for the elector', on the thing.

### **389 Approval of forms**

The commissioner may approve forms for use under this Act.

### **390 Review of certain decisions**

(1) The decisions set out in the following table are reviewable under this section if an application for review is made under this section by the person set out in the table.

<b>Reviewable decision</b>	<b>Person who may apply for review</b>
1 a decision under section 58(5) regarding the inclusion of a person's address in the publicly available part of an electoral roll	the person
2 a decision under section 65 not to amend an electoral roll to give effect to a notice by a person	the person who gave the notice
3 a decision to take action, or not to take action, under section 67(5) to amend the electoral rolls	the person who objected under section 67 to the enrolment of another person or the other person
4 a decision under section 73 to register, or under section 75 to refuse to register, a political party	any person affected by the decision
5 a decision under the Act that a person is not a special postal voter	the person

(2) An application for review of a reviewable decision must—

- (a) be in writing; and
- (b) be made to—
  - (i) in the case of a reviewable decision mentioned in item 4 in the table—the Supreme Court; and
  - (ii) in any other case—a Magistrates Court; and

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- (c) be made within 1 month after the decision comes to the notice of the applicant or such further period as the court allows; and
  - (d) set out the grounds on which review is sought.
- (3) The court must review the decision and make an order—
- (a) confirming the decision; or
  - (b) varying the decision; or
  - (c) setting aside the decision and making a decision in substitution.
- (4) If an application for review of a decision has been made to a Magistrates Court, a party to the application or the Attorney-General may, before or at any stage during the hearing of the application, apply to a District Court or the Supreme Court for removal of the matter to the court.
- (5) The court may, by order, grant the application.
- (6) If an application for review of a decision is required to be made to a Magistrates Court, a person who may make the application may apply to a District Court or the Supreme Court for leave to make the application to the court instead of a Magistrates Court.
- (7) The court may, by order, grant the leave.
- (8) The Supreme Court or a District Court is to be constituted by a single judge for the purposes of this section.
- (9) The Magistrates Court is to be constituted by a stipendiary magistrate for the purposes of this section.

### **391 Advertising of office addresses etc.**

The commission must advertise the locations and opening hours of its office and offices of returning officers and other members of the commission's staff.

**392 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made—
  - (a) prescribing offences against the regulation; and
  - (b) fixing a maximum penalty of a fine of 20 penalty units for an offence against the regulation.

**Part 13 Transitional provisions**

**Division 1 Transitional provision for Electoral and Other Acts Amendment Act 2001**

**393 Transitional provision—petition disputing election**

- (1) If, immediately before the commencement day, there was a petition filed under section 140 that had not been finally dealt with by the Court of Disputed Returns, the petition is taken to be an application under that section.
- (2) In this section—

*commencement day* means the day that the amendments of this Act in the *Electoral and Other Acts Amendment Act 2001*, schedule 1, commenced.

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## Division 2                      **Transitional provision for Electoral and Other Acts Amendment Act 2002**

### **394      Registered political party constitution**

- (1) This section applies to a political party that, on the commencement of this section, is a registered political party.
- (2) The party's registered officer must, within 6 months after the commencement, give the commission a copy of the party's constitution, which must be a complying constitution.
- (3) Despite the commencement of part 9, part 9 does not apply to the party until subsection (2) has been complied with.
- (4) If the registered officer does not comply with subsection (2), the commission must cancel the registration of the party by—
  - (a) cancelling the information in, and removing the documents from, the register of political parties relating to the party; and
  - (b) giving notice of the cancellation and the reasons for it to the person who was the party's registered officer immediately before the cancellation; and
  - (c) giving notice of the cancellation in the gazette; and
  - (d) keeping the documents in the commission's records.

## Division 3                      **Transitional provisions for Electoral Amendment Act 2008**

### **395      Definitions for div 3**

In this division—

*amending Act* means the *Electoral Amendment Act 2008*.

*assent day* means the day the amending Act receives assent.

*commencement* means 1 July 2008.

*pre-amended Act* means this Act as in force immediately before 1 July 2008.

**396 Reference to election funding amount for sch, s 294A**

For the operation of the schedule, section 294A for the financial year starting 1 July 2008, a reference in the schedule, section 294A(5), definition *A* to ‘election funding amount’ means a reference to ‘election funding reimbursement amount’.

**397 Continuation of decisions under sch, s 299A**

- (1) It is declared that a decision made under pre-amended section 299A before the assent day continues to have effect after the commencement as if the amending Act had not been enacted.
- (2) The pre-amended Act continues to apply in relation to the decision as if the amending Act had not been enacted.
- (3) In this section—

*pre-amended section 299A* means the schedule, section 299A as in force immediately before the commencement.

**398 Decisions about electoral expenditure paid under the pre-amended Act**

- (1) This section applies to a claim for an amount of electoral expenditure accepted, and paid, by the electoral commission before the assent day if, after the assent day, the electoral commission becomes satisfied that—
  - (a) the amount of electoral expenditure should not have been accepted; or
  - (b) only a lesser amount of electoral expenditure should have been accepted.
- (2) The schedule, section 301 applies as if a reference in that section to a claim decision were a reference to a decision



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about the payment of the amount of electoral expenditure and the schedule, division 3 applies in relation to the decision with necessary changes.

**399 Donations made or received on or after 1 July 2008 and before the end of a stated period**

- (1) This section applies if, under a provision of this Act as in force on the commencement, a person or entity is required to disclose, or otherwise deal with, a donation within a period prescribed by this Act ending on or after the commencement but before the day 13 days after the assent day.
- (2) The person or entity does not contravene the provision if the person or entity discloses, or otherwise deals with, the donation as required under this Act within 28 days after the assent day.
- (3) In this section—  
*disclose* includes report and give a return in relation to.  
*donation* includes gift.

**Division 5 Transitional provisions for Electoral Reform and Accountability Amendment Act 2011**

**Subdivision 1 Purposes, definitions and general approach**

**401 Main purpose of div 5**

The main purpose of this division is to provide for provisions of part 11 that are substantially the same as repealed provisions of the previous schedule to be dealt with as replacements of the repealed provisions.

## 402 Definitions for div 5

In this division—

*commencement* means the commencement of the provision in which the term is used.

*corresponding provision*, for a previous provision, means a provision of part 11 that is substantially the same as the previous provision.

*made* includes given and issued.

*obligation* includes duty.

*previous provision* means a provision of the previous schedule, as in force immediately before the commencement.

*previous schedule* means the schedule as in force immediately before the commencement.

*repealed*, in relation to a provision, means as in force before the repeal of the provision by the *Electoral Reform and Accountability Amendment Act 2011*.

## 403 Document, action, obligation or protection under previous provision of primary Act

- (1) This section applies to any of the following—
- (a) a document made or kept under a previous provision (the *relevant previous provision* for the document) if the document continued to have effect or was in force immediately before the commencement;
  - (b) an action done under a previous provision (the *relevant previous provision* for the action) if the action continued to have effect immediately before the commencement;
  - (c) an entity's obligation under a previous provision (the *relevant previous provision* for the obligation) if the obligation applied to the entity immediately before the commencement;
  - (d) an entity's protection under a previous provision (the *relevant previous provision* for the protection) that

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applied to the entity immediately before the commencement.

- (2) Subject to a specific provision of this Act in relation to the document, action, obligation or protection, if there is a corresponding provision for the relevant previous provision for the document, action, obligation or protection, the document, action, obligation or protection—
  - (a) continues in force or to have effect according to its terms; and
  - (b) may be taken to have been made, kept or done under the corresponding provision.
- (3) Subsection (2)(b) applies whether or not the relevant previous provision refers to the document, action, obligation or protection by reference to a previous provision.
- (4) Other provisions of this division include examples of the operation of this section.

#### **404 Terminology in things mentioned in s 403(1)**

- (1) This section applies to a document (the *relevant document*) that is—
  - (a) a document as mentioned in section 403(1); or
  - (b) evidence of a document, action, obligation or protection as mentioned in section 403(1).
- (2) A reference in the relevant document to a document, action, obligation or protection as mentioned in section 403(1) is to be read, if the context permits and with the necessary changes to terminology, as if the document, action, obligation or protection were made, kept or done under part 11.

*Example for subsection (2)—*

An instrument of appointment given under the previous schedule by the electoral commission to an authorised officer limiting the powers of the authorised officer is to be read as if the instrument limited the powers of the authorised officer under part 11.

#### **405 Period stated in previous provision**

- (1) This section applies if, in a previous provision, there is a period for doing something, and the period for doing the thing started but did not finish before the commencement.
- (2) If there is a corresponding provision to the previous provision and both the corresponding provision and the previous provision provide for the same period, the period for doing the thing continues to have started from when the period started under the previous provision but ends under the corresponding provision.

#### **406 Period or date stated in document given under previous provision**

- (1) This section applies if—
  - (a) there was a previous provision that provided for a document to be made under it; and
  - (b) there is a corresponding provision to the previous provision; and
  - (c) under the previous provision and before the commencement, a document was given to a person, whether or not the person had received the document before the commencement.

*Example for paragraph (c)—*

a notice under section 335 of the previous schedule, that states a period within which a person who is in control of a thing to be seized must take the thing to a place stated in the notice

- (2) If the document stated a period for doing something—
  - (a) the stated period continues to apply for doing the thing; and
  - (b) the period continues to have started from when the period started under the previous provision.
- (3) If the document stated a day before which, or by which, a thing is to be done (however expressed), the thing must be done by the stated day.

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**407 Action happening before commencement may be relevant to proceeding for particular acts or omissions**

- (1) An action as mentioned in section 403(1) happening before the commencement may be relevant to a proceeding relating to a contravention of a provision of part 11 involving an act or omission that happened after the commencement.
- (2) This section does not limit the *Acts Interpretation Act 1954*, section 20C.
- (3) In this section—  
*contravention* includes an alleged contravention.

**408 Acts Interpretation Act 1954, s 20 not limited**

This part does not limit the *Acts Interpretation Act 1954*, section 20.

**Subdivision 2 Transitional provisions relating to particular matters**

**409 Amounts held before the commencement**

- (1) This section applies to an amount of money held by a registered political party, an associated entity, a candidate or a third party before the commencement.
- (2) Subject to subsection (4), from the commencement the amount or a part of the amount may be deposited—
  - (a) for an amount held by a registered political party, candidate or third party, in the State campaign account kept by the registered political party, candidate or third party; or
  - (b) for an amount held by an associated entity, in the State campaign account kept by a registered political party by which the associated entity is controlled or for which the associated entity operates beneficially.

- (3) If an amount received as a gift by the registered political party, candidate or third party after 1 January 2011 is deposited in the State campaign account kept by the agent of the party or candidate or the third party, the amount is taken to be a political donation despite section 250.
- (4) An amount of money may not be deposited in a State campaign account under this section if the deposit of the amount would constitute a contravention of an applicable donation cap under part 11, division 6.
- (5) In this section—  
*candidate* includes an elected member or other person who has announced or otherwise indicated an intention to be a candidate in an election.

#### **410 Applicable expenditure cap**

A reference in section 274(1) to the first financial year starting after that section commences is taken to be a reference to—

- (a) if section 274 commences before 1 July 2011, the financial year that commenced on 1 July 2010; or
- (b) if section 274 commences on or after 1 July 2011, the financial year in which the section commences.

#### **411 Existing agents**

- (1) This section applies to a person who, immediately before the commencement, was an agent of a registered political party or candidate under the previous schedule.
- (2) From the commencement, the person continues to be an agent of the registered political party or candidate under part 11.

#### **412 Convictions against previous provision**

Section 210(3) applies to a person convicted of an offence against a previous provision as if the person had been convicted of an offence against part 11.

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**413 Register of agents**

The Register of Party Agents kept by the commission under the previous schedule immediately before the commencement is taken, from the commencement, to be the register of agents kept by the commission under part 11.

**414 Existing authorised officers**

- (1) This section applies to a person who—
  - (a) before the commencement, was appointed under the previous schedule as an authorised officer; and
  - (b) still held the appointment immediately before the commencement.
- (2) On the commencement—
  - (a) the person is taken to hold office under part 11 as an authorised officer on the same conditions as the person held office as an authorised officer before the commencement; and
  - (b) the person's identity card issued under the previous schedule is taken to be an identity card under part 11.

**Division 6**                      **Transitional provisions for  
Guardianship and Administration  
and Other Legislation Amendment  
Act 2012**

**415 Definitions for div 6**

In this division—

*amending Act* means the *Guardianship and Administration and Other Legislation Amendment Act 2012*.

*final funding period* means the period starting on 1 July 2012 and ending on 31 December 2012.

*independent member* means an independent member as defined under section 242 as in force immediately before the commencement of the amending Act, section 15.

*repealed administrative funding provisions* means part 11, division 5 as in force immediately before the commencement of the amending Act, section 15.

**416 Entitlement of registered political party to administrative funding ends**

The last period for which a registered political party is entitled to be paid administrative funding under the repealed administrative funding provisions is the final funding period.

**417 Entitlement of independent member to administrative funding ends**

- (1) The last period for which an independent member is entitled to be paid administrative funding under the repealed administrative funding provisions is the final funding period.
- (2) The repealed administrative funding provisions continue to apply in relation to an independent member until, for each funding period for which the member is entitled to be paid administrative funding, the member has been paid all of the administrative funding payable to the member.

**Division 7 Transitional provisions for Electoral Reform Amendment Act 2014**

**418 Definitions for div 7**

In this division—

*assent day* means the day the *Electoral Reform Amendment Act 2014* receives royal assent.



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*relevant commencement* means the day the *Electoral Reform Amendment Act 2014*, section 38 is taken to have commenced under section 2 of that Act.

**419 Application of previous pt 11, div 4 to claims for advance payment of election funding lodged before relevant commencement**

- (1) This section applies if, before the relevant commencement, a claim for advance payment of election funding by a registered political party or candidate was lodged with the commission under part 11, division 4 but not decided.
- (2) The commission's decision, and any advance payment of election funding under that part as in force immediately before the relevant commencement, is not affected by the commencement of the *Electoral Reform Amendment Act 2014*.
- (3) Part 11, division 4 as in force immediately before the relevant commencement continues to apply to the party or candidate in relation to any advance payment mentioned in subsection (2) made to the party or candidate.

**420 Recovery of advance payments of election funding lodged and paid after relevant commencement**

If a claim for advance payment of election funding lodged after the relevant commencement by a registered political party or candidate under part 11, division 4 as in force immediately before the relevant commencement, is paid before the assent day—

- (a) the amount of the advance payment is taken to be an overpayment; and
- (b) the overpayment may be recovered by the State as a debt due to the State.

**421 Policy development payment for financial year ending on 30 June 2013**

- (1) The commission must pay a policy development payment instalment under part 11, division 5 to each eligible registered political party for the financial year ending on 30 June 2013 (the *2013 financial year*).
- (2) The amount of the instalment must be worked out under that division for the 2013 financial year as if—
  - (a) part 11, division 5 were in effect on and from 1 July 2012; and
  - (b) the first instalment for the 2013 financial year that would have been payable on or before 31 July 2013 if that division were in effect from 1 July 2012 had already been paid.
- (3) The policy development payment must be paid to each eligible registered political party within 60 days after the assent day.
- (4) Despite section 242(3), an agent of a registered political party may apply to the commission for the commission to reconsider a decision under section 242 if the application is made—
  - (a) within 90 days after the assent day; or
  - (b) if the commission allows a later day—the later day.

**422 Application of Act in relation to Redcliffe by-election**

- (1) This section applies in relation to the by-election held on 22 February 2014 for the electoral district of Redcliffe (the *Redcliffe by-election*).
- (2) This Act as in force immediately before the assent day applies to—
  - (a) the Redcliffe by-election; and
  - (b) a person in relation to the Redcliffe by-election;

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even though amendments of this Act by the *Electoral Reform Amendment Act 2014* are taken to have commenced on the relevant commencement.

- (3) This section applies subject to sections 419 to 421.

## **Division 8                      Transitional provisions for Electoral and Other Legislation Amendment Act 2015**

### **423      Definition for div 8**

In this division—

*unamended Act* means this Act as in force before the commencement of the Electoral and Other Legislation Amendment Act 2015.

### **424      Elections held before the commencement**

The unamended Act continues to apply in relation to an election held before the commencement.

*Note—*

However, see also part 11, division 12, subdivision 1.

### **425      Gifts received before the commencement**

- (1) The unamended Act, section 271 applies in relation to a gift received before the commencement by a political party or a person acting for a political party.
- (2) Subsection (3) applies if—
  - (a) a registered political party or person acting for a registered political party received 1 or more gifts from a particular entity after 20 November 2013 but before the commencement; and
  - (b) the total amount or value of the gifts is equal to or more than the gift threshold amount.

- (3) A return given by the agent of the registered political party under section 290(4) for the financial year in which the gifts were received must include the following details for the gifts—
  - (a) the amount or value of the gifts;
  - (b) the date on which the gifts were made.
- (4) If a return is required, under subsection (3), to include the details mentioned in that subsection, the return is, for section 307(2)(a), incomplete if it does not include the details.
- (5) A person does not commit an offence against section 307(2)(b) if, before the commencement, the person failed to keep a record relating to a gift that—
  - (a) under the unamended Act, could be lawfully received; but
  - (b) under section 271(1), could not be lawfully received after the commencement.
- (6) In this section—

*gift* see section 201.

#### **426 Loans received before the commencement**

- (1) The unamended Act, section 272 applies in relation to a loan received before the commencement by any of the following entities—
  - (a) a political party;
  - (b) person acting for a political party;
  - (c) a candidate for an election;
  - (d) a person acting for a candidate for an election.
- (2) Subsection (3) applies if—
  - (a) a person acting for a candidate in a relevant election received, during the disclosure period for the election, a loan from an entity, other than a financial institution; and

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- (b) the value of the loan is equal to or more than the gift threshold amount.
- (3) A return given by the agent of the candidate under section 262 in relation to the election must state for the loan the details mentioned in section 262(2)(b).
- (4) Subsection (5) applies if—
- (a) a registered political party or person acting for a registered political party received, during a relevant period, a loan from an entity other than a financial institution; and
  - (b) the value of the loan received from the entity is equal to or more than the gift threshold amount.
- (5) A return given by the agent of the registered political party under section 290 in relation to a relevant period must state the following details for the loan—
- (a) the amount of the loan;
  - (b) when the loan was received;
  - (c) the relevant particulars of the entity that made the loan.
- (6) If a return is required under subsection (3) or (5) to include the details referred to or mentioned in that subsection, the return is, for section 307(2)(a), incomplete if it does not include the details.
- (7) A person does not commit an offence against section 307(2)(b) if, before the commencement, the person failed to keep a record relating to a loan that—
- (a) under the unamended Act, could be lawfully received; but
  - (b) under section 272, could not be lawfully received after the commencement.
- (8) In this section—
- disclosure period*, for an election, see section 198.
- loan* see section 197.

*relevant election* see section 297.

*relevant particulars* see section 197.

*relevant period* means—

- (a) the period starting on 21 November 2013 and ending on 30 June 2014; or
- (b) the period starting on 1 July 2014 and ending on the commencement.