

Queensland



# **ELECTORAL ACT 1992**

**Reprinted as in force on 8 December 2000  
(includes amendments up to Act No. 63 of 2000)**

**Warning—see last endnote for uncommenced amendments**

**Reprint No. 4D**

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## Information about this reprint

This Act is reprinted as at 8 December 2000. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

# Queensland



## ELECTORAL ACT 1992

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# ELECTORAL ACT 1992

[as amended by all amendments that commenced on or before 8 December 2000]

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

## PART 1—PRELIMINARY

### Short title

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

### Definitions

3. In this Act—

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

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

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

“**average number of enrolled electors for electoral districts**” has the meaning given by section 4.

“**candidate**”, in relation to an election, means a person who has become a candidate under section 88(4).

“**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.

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

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

**“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 6 p.m. on the polling day for the election.

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

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

**“electoral paper”** means a ballot paper, declaration envelope or other document issued by the commission for the purposes of this Act.

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



**“electoral visitor voter”** has the meaning given by section 105(4).

**“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.

**“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 114(4).

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

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

**“informal ballot paper”** has the meaning given by section 114(5).

**“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
- (f) a prison or other place of confinement; 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.

**“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 94.

**“nonjudicial appointee”** means the commissioner mentioned in

section 7(2)(c).<sup>1</sup>

**“ordinary polling booth”** has the meaning given by section 94.

**“ordinary postal voter”** has the meaning given by section 105(2).

**“ordinary vote”** means a vote that is not a declaration vote.<sup>2</sup>

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

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

**“parliamentary committee”** means the legal, constitutional and administrative review committee of the Legislative Assembly.

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

**“political party”** means an organisation whose object or activity, or 1 of whose objects or activities, is 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.

**“polling booth”** means an ordinary polling booth or a mobile polling booth.

**“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.

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

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

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

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<sup>1</sup> Section 7 (Establishment of Electoral Commission of Queensland etc.)

<sup>2</sup> Part 6, division 5, subdivision 2 is about the meaning and operation of declaration voting.

- (a) if section 58(4) 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.

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

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

**“register of candidates”** means the register kept under section 96.

**“register of political parties”** means the register kept under section 69.

**“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 72A 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 special postal voters”** means the register kept under section 67A.

**“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 6.

**“scrutineer”** means a person appointed under section 99.

**“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 105(3).

**“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.

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

**4.(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).

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

**5.** 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<sup>3</sup> have been determined and the time for all such appeals and proceedings to be instituted has passed.

### **Related political parties**

**6.** 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.

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<sup>3</sup> Section 57 (Appeals against boundaries of electoral districts)

## **PART 2—ADMINISTRATION**

### *Division 1—The electoral commission*

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

**7.(1)** A commission called the Electoral Commission of Queensland is established.

**(2)** When the commission is performing its functions under part 3,<sup>4</sup> 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

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<sup>4</sup> Part 3 (Electoral districts and electoral redistributions)

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.

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

**8.(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) provide information and advice on electoral matters to the Legislative Assembly, the government, departments and government authorities; and
- (f) conduct and promote research into electoral matters and other matters that relate to its functions; and
- (g) publish material on matters that relate to its functions; and
- (h) 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 (g) 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.

### **Queensland redistribution commission**

9. When performing its functions under part 3,<sup>5</sup> the commission is to be known as the Queensland Redistribution Commission.

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

10.(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 7(6)(b),<sup>6</sup> 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 1996*.

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<sup>5</sup> Part 3 (Electoral districts and electoral redistributions)

<sup>6</sup> Section 7 (Establishment of Electoral Commission of Queensland etc.)

**Leave of absence**

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

**Resignation**

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

**Disclosure of interests**

**13.(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.

**Termination of appointment**

**14.** 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 13<sup>7</sup> without reasonable excuse.

### **Acting appointments**

**15.** 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.

### **Meetings of commission**

**16.(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

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<sup>7</sup> Section 13 (Disclosure of interests)

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 13<sup>8</sup>), 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.<sup>9</sup>

### **Estimates**

**17.(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.

### **Delegation by commission**

**18.(1)** The commission may, by resolution, delegate to a commissioner, a senior electoral officer or a member of the commission's staff its powers

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<sup>8</sup> Section 13 (Disclosure of interests)

<sup>9</sup> Part 3 (Electoral districts and electoral redistributions)

under part 3 (other than under sections 44 to 46 or section 50<sup>10</sup>).

(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 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).

(4) A certificate signed by the electoral commissioner, stating any matter with respect to a delegation of power under subsection (3) is prima facie evidence of the matter.

(5) A document purporting to be a certificate under subsection (2) or (4) is taken to be such a certificate unless the contrary is established.

### **Reports by commission**

**19.(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 6 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.

### **Electoral officer accountable officer**

**20.** For the *Financial Administration and Audit Act 1977*, the electoral commissioner is the accountable officer of the commission.

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<sup>10</sup> Sections 44 (Preparing proposed electoral redistribution), 45 (Proposed electoral redistribution must be within numerical limits), 46 (Matters to be considered in preparing proposed electoral redistribution) or section 50 (Considering objections and comments)

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

**21.** There is to be an electoral commissioner.

**Deputy electoral commissioner**

**22.(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.

**Terms and conditions of appointment etc.**

**23.(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—

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- (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 1996*.

(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.

**Leave of absence**

**24.(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.

### **Resignation**

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

### **Termination of appointment**

26.(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 13<sup>11</sup> without reasonable excuse; or
- (f) engages in paid employment outside the duties of the office without the Minister's approval.

### **Acting electoral commissioner**

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

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<sup>11</sup> Section 13 (Disclosure of interests)

- (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 cannot, for another reason, perform the duties of office.

### **Acting deputy electoral commissioner**

**28.** 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 cannot, for another reason, perform the duties of the office.

### **Notice of appointment**

**29.** 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***

### **Staff**

**30.(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.

**(2)** The staff of the commission are to be employed under the *Public Service Act 1996*.

**(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.

### **Electoral registrars**

**31.(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) The following persons may be appointed as electoral registrars—

- (a) returning officers under the *City of Brisbane Act 1924* or the *Local Government Act 1993*;
- (b) divisional returning officers under the Commonwealth Electoral Act 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.

### **Returning officers**

**32.(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.

### **Assistant returning officers**

**33.(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—

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- (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.

## **PART 3—ELECTORAL DISTRICTS AND ELECTORAL REDISTRIBUTIONS**

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

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

**34.** There are 89 electoral districts for the State.

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

**35.(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 as practicable, redistribute the State into the 89 electoral districts in the way set out in division 3.<sup>12</sup>

(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.

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<sup>12</sup> Division 3 (How electoral redistributions are to be undertaken)

***Division 2—When need for an electoral redistribution arises*****Need for electoral redistribution arises in 3 circumstances**

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

- (a) section 37;<sup>13</sup>
- (b) section 38;<sup>14</sup>
- (c) section 39.<sup>15</sup>

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

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

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

**38.** 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

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<sup>13</sup> Section 37 (Electoral redistribution because of changed number of electoral districts)

<sup>14</sup> Section 38 (Electoral redistribution after certain number of elections and minimum period)

<sup>15</sup> Section 39 (Electoral redistribution because of enrolment changes)

- (ii) an electoral redistribution, or the latest electoral redistribution, under this Act becomes final;

whichever is the later.

### **Electoral redistribution because of enrolment changes**

**39.(1)** The need for an electoral redistribution arises if the requirement set out in section 45<sup>16</sup> 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<sup>17</sup> for each of the months.

**(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.

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

**40.** 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***

#### **Scope of division**

**41.(1)** This division sets out the way in which the commission is to

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<sup>16</sup> Section 45 (Proposed electoral redistribution must be within numerical limits)

<sup>17</sup> Section 63 (Gazettal of enrolment figures)

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).

### **Inviting suggestions**

**42.(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.<sup>18</sup>

(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.

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<sup>18</sup> Section 56 (How notices are to be published)

**Inviting comments on suggestions**

**43.(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 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.

**Preparing proposed electoral redistribution**

**44.(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;<sup>19</sup>
- (ii) section 46.<sup>20</sup>

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

**45.(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 100 000 km<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 100 000 km<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.

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

**46.(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;

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<sup>19</sup> Section 45 (Proposed electoral redistribution must be within numerical limits)

<sup>20</sup> Section 46 (Matters to be considered in preparing proposed electoral redistribution)



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- (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<sup>21</sup> before it does under section 38.<sup>22</sup>

(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
- (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;

cannot be called in question in an appeal under section 57.<sup>23</sup>

### **Publishing proposed electoral redistribution**

**47.(1)** As soon as practicable after the commission has prepared the proposed electoral redistribution, it must comply with this section and section 48.

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<sup>21</sup> Section 39 (Electoral redistribution because of enrolment changes)

<sup>22</sup> Section 38 (Electoral redistribution after certain number of elections and minimum period)

<sup>23</sup> Section 57 (Appeals against boundaries of electoral districts)

(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.

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

**48.(1)** The commission must publish a notice in accordance with section 56<sup>24</sup> 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.

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<sup>24</sup> Section 56 (How notices are to be published)

**Inviting comments on objections**

**49.(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.

**Considering objections and comments**

**50.** 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,<sup>25</sup> 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<sup>26</sup> were being complied with.

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<sup>25</sup> Section 42 (Inviting suggestions) or 43 (Inviting comments on suggestions)

<sup>26</sup> Sections 45 (Proposed electoral redistribution must be within numerical limits) and 46 (Matters to be considered in preparing proposed electoral redistribution)

### **Making electoral redistribution**

**51.(1)** The commission must, within 60 days after the end of the 30 days mentioned to in section 48(1)(b),<sup>27</sup> 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.

### **When redistribution takes effect**

**52.(1)** At the end of 21 days after the publication of the notice, but subject to section 57(6),<sup>28</sup> 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.

### **Advertising electoral redistribution**

**53.(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

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<sup>27</sup> Section 48 (Inviting objections against proposed electoral redistribution)

<sup>28</sup> Section 57 (Appeals against boundaries of electoral districts)

- (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.

### **Tabling all relevant documents**

**54.(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
- (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.

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

**55.** Without limiting its powers under section 8(4),<sup>29</sup> the commission may conduct such public hearings as it considers appropriate for the purposes of this division.

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

**56.** 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.

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

**57.(1)** An elector may appeal to the Court of Appeal against the boundaries set out in the notice under section 51(1)<sup>30</sup> 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

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<sup>29</sup> Section 8 (Functions and powers of commission)

<sup>30</sup> Section 51 (Making electoral redistribution)

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.

**(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) cannot 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.<sup>31</sup>

(12) In this section—

“**decision**” includes a failure to make a decision.

## **PART 4—ELECTORAL ROLLS**

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

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

**58.(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

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<sup>31</sup> *Judicial Review Act 1991*, section 41—

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

**41.(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.



- (d) an identifying number; and
- (e) any other prescribed information.

**(3A)** 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.

**(4)** 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 person or another person, the person’s address must not be set out in the publicly available part of the roll.

**(5)** 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.

### **Preparation of electoral rolls**

**59.(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.

### **Inspection and purchase of publicly available parts of electoral rolls**

**60.(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.

**(3)** The commission must make available copies of the most recent printed version of the publicly available part of each electoral roll for purchase by any person, at a price fixed or determined under a regulation.

**(4)** The commission may also make available copies of the most recent version, in a non-printed form, of the publicly available part of each electoral roll for purchase by any person, at a price fixed or determined under a regulation.

### **Availability of entire electoral rolls**

**61.(1)** The commission must, during each Legislative Assembly, give each member of the Legislative Assembly a reasonable number of free copies of the most recent printed version of the entire electoral roll for the electoral district that the member represents.

**(2)** As soon as practicable after the cut off day for the nomination of candidates for an election, the commission must give a free certified copy of the entire electoral roll for an electoral district, as at the cut off day, to each person who is a candidate for election for the district and requests such a copy.

**(3)** The commission may allow any department or State public authority to have access, without fee, to a copy of the most recent computer disk or

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computer tape version of the entire electoral roll for any electoral district.

(4) The commission must, once during each Legislative Assembly, give each member of the Legislative Assembly a free copy of the most recent computer disk or computer tape version of the entire electoral roll for the electoral district that the member represents.

(5) The commission must make available to a member of the Legislative Assembly, without fee, copies of the changes to the most recent computer disk or computer tape version of the entire electoral roll for the electoral district that the member represents.

(6) The commission must make available a copy of the most recent computer disk or computer tape version of the entire electoral roll for any electoral district wholly or partly within a local government's area for purchase by the local government, at a price fixed or determined under a regulation.

(7) The commission must make available copies of the changes to the most recent computer disk or computer tape version of the entire electoral roll for any electoral district wholly or partly within a local government's area for purchase by the local government, at a price fixed or determined under a regulation.

(8) The commission must make available a copy of the most recent computer disk or computer tape version of the entire electoral roll for any electoral district or all electoral districts for purchase by any registered political party, at a price that reasonably reflects the cost of producing the copy.

(9) The commission must make available copies of the changes to the most recent computer disk or computer tape version of the entire electoral roll for any electoral district or all electoral districts for purchase by any registered political party, at a price that reasonably reflects the cost of producing the copies.

(10) Except as provided in 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.

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

**62.(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.

### **Gazettal of enrolment figures**

**63.** 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*

#### **Entitlement to enrolment**

**64.(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)** In this section—

“**prisoner**” has the meaning given by the *Corrective Services Act 1988*.

#### **Enrolment and transfer of enrolment**

**65.(1)** Subject to any arrangement under section 62,<sup>32</sup> the commission must maintain each electoral roll in accordance with this section.

**(2)** A person who—

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<sup>32</sup> Section 62 (Joint roll arrangement with Commonwealth)

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- (a) is entitled to be enrolled for an electoral district; but
- (b) is not enrolled on the electoral roll for the district;

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.

**Provisional enrolment**

**66.(1)** The commission must enrol a person as an elector for an electoral district if the person—

- (a) is 17; and
- (b) would, if the person were 18, be entitled to be enrolled for the electoral district; and
- (c) the person 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.

## **Objections**

**67.(1)** An elector may object against the enrolment of a person who is enrolled because of section 64(1)(a)(ii).<sup>33</sup>

(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—

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<sup>33</sup> Section 64 (Entitlement to enrolment)

- (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 4A—REGISTER OF SPECIAL POSTAL VOTERS**

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

**67A.** The commission must keep, or arrange to be kept, a register of special postal voters.



## **PART 5—REGISTRATION OF POLITICAL PARTIES**

### **Scope of part**

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

### **Register of political parties**

**69.(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.

### **Applications for registration**

**70.(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.

**(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.

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

**71.(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 70(4)(a) to (c); and
- (b) invite any persons who believe that the application—
  - (i) is not in accordance with section 70; or
  - (ii) should be refused under section 73;<sup>34</sup>

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—

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<sup>34</sup> Section 73 (Refusal of registration)

- (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.

### **Registration**

**72.(1)** If the commission, after considering all statements and replies to the statements under section 71, is satisfied that the application complies with the requirements of section 70, the commission must, subject to subsection (3) and section 73, 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 70(4)(e)); and
- (b) any document accompanying the application as required by section 70(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 70(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 71 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.

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

**72A.(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.

### **Refusal of registration**

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

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

**(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) 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.

### **Amendment of register**

**74.(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.

(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.

**Cancellation of registration**

**75.(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.

**(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.

### **Public access to register**

**76.(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.

## **PART 6—ELECTIONS**

### *Division 1—Calling of elections*

#### **Writs for elections**

**77.(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.

#### **Writs by Governor**

**78.(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 79(3) or 90(3)<sup>35</sup> applies;
- (d) a writ for an election ordered by the Court of Disputed Returns under section 119(14) or 136.<sup>36</sup>

(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.

### **Writs by speaker**

**79.(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 78(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.

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

**80.(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,

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<sup>35</sup> Section 90 (Failure of election)

<sup>36</sup> Section 119 (Official counting of votes) or 136 (Powers of the court)



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<sup>37</sup> does not apply for the purpose of determining, or in relation to a day determined, under subsection (1).

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

**81.** 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.

### **Extension of time limits in writ**

**82.(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 80(1)(a) to (e)—

- (a) subject to subsection (2), specify that a later day is to be substituted for the day either generally or in relation to a specified electoral district; or

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<sup>37</sup> *Acts Interpretation Act 1954*, section 38 (Reckoning of time)

(b) provide for anything to be done to overcome any difficulty that might otherwise affect the election concerned.

(2) 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.

(3) When the notice is gazetted, it has effect accordingly.

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

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

**83.(1)** A person may be nominated as a candidate for election, and may be elected, as a member of the Legislative Assembly for an electoral district if the person is—

- (a) enrolled on an electoral roll for the electoral district or another electoral district; and
- (b) an Australian citizen; and
- (c) an adult; and
- (d) not a disqualified person under subsection (2).

(2) A person is a disqualified person if—

- (a) the person is an undischarged bankrupt under the *Bankruptcy Act 1966* (Cwlth); or
- (b) the person has executed a deed of arrangement under the *Bankruptcy Act 1966* (Cwlth), part X and the terms of the deed have not been fully complied with; or
- (c) the person's creditors have accepted a composition under the *Bankruptcy Act 1966* (Cwlth), part X and a final payment has not been made under that composition; or
- (d) the person is in prison or subject to a periodic detention order; or
- (e) the person is not entitled to be elected as a member of the Legislative Assembly under section 176<sup>38</sup> or under another law;

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<sup>38</sup> Section 176 (Further penalty of disqualification for certain offences)

or

- (f) the person is a member of the Commonwealth parliament.

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

**84.(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 85.

**(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.

**Deposit to accompany nomination**

**85.(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 the candidate's personal representatives.

**(4)** The deposit must be returned to the candidate if—

- (a) the candidate withdraws consent to the nomination under section 87; or
- (b) the candidate is elected; or
- (c) more than 4% 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.

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

**85A.(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.<sup>39</sup>

### **Effect of multiple nominations**

**86.** 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.

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

**87.(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

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<sup>39</sup> For a person’s right to dispute the election, see section 129 (Who may dispute the election).

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.

### **Announcement of nominations**

**88.(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 86 nor 87 applies to the person's nomination.

### **Election of sole candidate**

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

### **Failure of election**

**90.(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.

### **Election to be held**

**91.** Subject to sections 89 and 90, an election must be held in accordance with the writ and the provisions of this part.

### *Division 3—Arrangements for elections*

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

**92.(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.

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

**93.(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 94(6), 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 8 a.m. and 6 p.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 94(4) and (6) and to stay until they have voted.

### **Kinds of polling booths**

**94.(1)** There are 2 kinds of polling booths—

- (a) ordinary polling booths; and
- (b) mobile polling booths.

(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 (6).

(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 6 p.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) 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.

(6) 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 6 p.m. on polling day, for electors in the area to vote at the election.

### **Adjournment of poll**

**95.(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
- (b) such other ways as the commission considers appropriate.

### **Register of candidates**

**96.(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 84(3).<sup>40</sup>

**(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.

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

**97.(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 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—

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<sup>40</sup> Section 84 (How and when nomination takes place)

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- (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 98; 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 84(1)(a)—contain, printed adjacent to the candidate’s name—
- (i) if the application for registration of the political party did not contain an abbreviation under section 70(4)(b)<sup>41</sup>—the name of the political party as set out in the application; or
  - (ii) if the application for registration of the political party contained an abbreviation under section 70(4)(b)—the abbreviation.
- (3)** The ballot papers 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.

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<sup>41</sup> Section 70 (Applications for registration)

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

**98.(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.

**Scrutineers**

**99.(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, and each 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 6 p.m. the day before polling day; and

(b) afterwards at polling places and elsewhere to observe the examination of declaration envelopes and the counting of votes.

(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, 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.

### **Correction of errors**

**100.(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***

##### **Who may vote**

**101.(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);<sup>42</sup>
- (c) persons whose names are not on the electoral roll for the district because of official error.

**(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.

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

##### ***Subdivision 1—Ordinary voting***

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

**102.(1)** An elector (other than one who makes or must make a declaration vote under subdivision 2) 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 is to request a ballot paper from an issuing officer.

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<sup>42</sup> Section 64 (Entitlement to enrolment)

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**(4)** If—

- (a) the elector has a ballot paper and declaration envelope for the election; and
- (b) does not intend to make a declaration vote under subdivision 2;

the elector must give the papers to the issuing officer.

**(5)** The issuing officer must issue a ballot paper to a person requesting one only if the issuing officer is satisfied that 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)** If, after the issuing officer has asked questions under subsection (6), the issuing officer suspects that a person claiming to be a particular elector is not the elector, the issuing officer must comply with section 112.<sup>43</sup>

**(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 113;<sup>44</sup> 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.

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<sup>43</sup> Section 112 (Making a declaration vote in cases of uncertain identity)

<sup>44</sup> Section 113 (How electors must vote)

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

**103.(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 113<sup>45</sup> 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

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<sup>45</sup> Section 113 (How electors must vote)



inside the polling booth in the presence of any scrutineers and put the folded ballot paper in a ballot box.

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

**104.(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 102<sup>46</sup> is complied with when the patient votes.

### ***Subdivision 2—Declaration voting***

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

**105.(1)** The following electors may make a declaration vote—

(a) an elector who is an ordinary postal voter under subsection (2);

(b) an elector who is a special postal voter under subsection (3);

(c) an elector who is an electoral visitor voter under subsection (4).

**(2)** The following electors are ordinary postal voters for the purposes of this Act—

(a) an elector who will not, throughout ordinary voting hours on polling day, be within 8 km, by the nearest practicable route, from a polling booth;

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<sup>46</sup> Section 102 (Procedure for voting)

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- (b) an elector who will, throughout ordinary voting hours on polling day, be working or travelling under conditions that prevent voting at a polling booth;
- (c) an elector who will, because of illness, disability or advanced pregnancy, be prevented from voting at a polling booth;
- (d) 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;
- (e) an elector who will, because of membership of a religious order or because of religious beliefs, be prevented from voting at a polling booth for all, or the majority, of ordinary voting hours on polling day;
- (f) an elector who will be serving a sentence of imprisonment, or otherwise under detention, on polling day.

**(3)** 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 the person's registered address as shown on the electoral roll is more than 15 km by the nearest practicable route from a polling booth;
- (b) an elector whose address has been excluded from the electoral roll under an arrangement under section 62<sup>47</sup> because of the Commonwealth Electoral Act, section 104.

**(4)** 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.

**(5)** The commissioner must, not later than 2 years after the return of the

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<sup>47</sup> Section 62 (Joint roll arrangement with Commonwealth)

writ for an election, review the continuing eligibility to make a declaration vote of electors who are special postal voters.

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

**106.** 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 94(4) or (6)<sup>48</sup> 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 101(1)(b)<sup>49</sup> 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 112.<sup>50</sup>

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

**107.** Subject to section 112, 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 103(3);<sup>51</sup> or
- (b) going during voting hours to a polling booth in an electoral district

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<sup>48</sup> Section 94 (Kinds of polling booths)

<sup>49</sup> Section 101 (Who may vote)

<sup>50</sup> Section 112 (Making a declaration vote in cases of uncertain identity)

<sup>51</sup> Section 103 (Help to enable electors to vote at polling booths)

- and following the procedures set out in section 108;<sup>52</sup> 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 109;<sup>53</sup> 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 110<sup>54</sup> 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 111.<sup>55</sup>

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

**108.(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

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<sup>52</sup> Section 108 (Making a declaration vote at a polling booth)

<sup>53</sup> Section 109 (Making a declaration vote at a commission office)

<sup>54</sup> Section 110 (Making a declaration vote using posted voting papers)

<sup>55</sup> Section 111 (Electoral visitor voting)

- (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 113;<sup>56</sup> 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 103 and 104<sup>57</sup> 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 102.<sup>58</sup>

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

**109.(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 6 p.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 113; and
- (c) place the ballot paper in the envelope and seal the envelope; and
- (d) give the envelope to the officer; and

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<sup>56</sup> Section 113 (How electors must vote)

<sup>57</sup> Sections 103 (Help to enable electors to vote at polling booths) and 104 (Help to enable electors to vote at hospitals)

<sup>58</sup> Section 102 (Procedure for voting)

(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 113 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.

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

**110.(1)** An elector who is an ordinary postal voter may, by writing signed by the elector and posted, faxed or delivered (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.

(1A) The request must state the address to which the ballot paper and declaration envelope is to be posted, delivered or sent.

(2) If the request is received not later than 6 p.m. on the Thursday before polling day, the commission or returning officer must post, deliver or send a ballot paper and declaration envelope to the elector.

(3) 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.

(4) Returning officers and the commission must keep a record of all ballot papers and declaration envelopes posted, delivered or sent under this section.

(5) Subject to subsection (7), 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 113;<sup>59</sup> 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.

**(6)** If the elector is unable to vote without help, another person may help by doing any of the things mentioned in subsection (5)(b) to (d) on behalf of the elector.

**(7)** A member of the commission's staff who is given an envelope under subsection (5)(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.

### **Electoral visitor voting**

**111.(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.

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<sup>59</sup> Section 113 (How electors must vote)

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**(1A)** The request must state the address the electoral visitor is to visit.

**(2)** If the request is received not later than 6 p.m. on the Thursday 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.

**(3)** The issuing officer must visit the elector at a reasonable hour—

- (a) before polling day; or
- (b) before 6 p.m. on polling day.

**(4)** 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.

**(5)** 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.

**(6)** The issuing officer must comply with the requirement under subsection (5).

**(7)** The issuing officer must ensure, as far as practicable, section 102<sup>60</sup> is complied with when the elector votes.

**(8)** 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 113<sup>61</sup>

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<sup>60</sup> Section 102 (Procedure for voting)

<sup>61</sup> Section 113 (How electors must vote)



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.
- (9) The elector may make an ordinary vote or declaration vote.

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

**112.(1)** If an issuing officer suspects, as mentioned in section 102(7),<sup>62</sup> that a person claiming to be a particular elector is not the elector, this section applies.

(2) The issuing officer must give the person a declaration envelope.

(3) 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?

(4) The person must write answers to the questions on the envelope, sign the envelope and have the signature witnessed by the issuing officer.

(5) 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 (3)(a); or
- (b) in the affirmative to the question in subsection (3)(b);

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

(6) The person must then leave the polling place.

(7) If subsection (5) does not apply, the issuing officer must give the person a ballot paper.

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<sup>62</sup> Section 102 (Procedure for voting)

**(8)** 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 113; 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.

**(9)** Sections 103 and 104<sup>63</sup> 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 102.<sup>64</sup>

### ***Subdivision 3—Marking of ballot papers***

#### **How electors must vote**

**113.(1)** An elector must vote in accordance with 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 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;

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<sup>63</sup> Sections 103 (Help to enable electors to vote at polling booths) and 104 (Help to enable electors to vote at hospitals)

<sup>64</sup> Section 102 (Procedure for voting)

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

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

**114.(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 113 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 by the elector 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*

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

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

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

**116.(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 signature on the envelope corresponds with that in the request and the requirements of section 110(5)(d)<sup>65</sup> were complied with; and
- (d) if the ballot paper is in a declaration envelope received by post—the envelope was received before 6 p.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

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<sup>65</sup> Section 110 (Making a declaration vote using posted voting papers)

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.

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

**117.** The commission must arrange for votes to be counted—

- (a) on polling day—in accordance with section 118; and
- (b) after polling day—in accordance with section 119.

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

**118.(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 (4).

(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
- (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

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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 116<sup>66</sup> 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)** 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.

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<sup>66</sup> Section 116 (Preliminary processing of declaration envelopes and ballot papers)

**Official counting of votes**

**119.(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 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 118; 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 116(3);<sup>67</sup> 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

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<sup>67</sup> Section 116 (Preliminary processing of declaration envelopes and ballot papers)

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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 116(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<sup>68</sup> in relation to the disputing of an election.

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<sup>68</sup> Part 8 (Court of Disputed Returns)

**Objections by scrutineers**

**120.(1)** If, while a member of the commission's staff is complying with section 118 or 119, 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 118 or 119, 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.

**Recounting of votes**

**121.(1)** At any time before—

- (a) a returning officer notifies the election of a candidate under section 122; or
- (b) the commission refers a matter to the Court of Disputed Returns under section 119(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 119 are complied with.

**(4)** This section does not limit by implication section 32(4) or 33(10).<sup>69</sup>

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<sup>69</sup> Section 32 (Returning officers) or 33 (Assistant returning officers)

***Division 7—Notifying the results of elections etc.*****Notifying the results of an election**

**122.(1)** As soon as practicable after a candidate is elected under section 89 or 119<sup>70</sup> (including that section as applied under section 121), 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.

**Return of writ for election**

**123.(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 122(1) from the returning officers for all electoral districts; and
- (b) in any other case—the copy of the notification under section 122(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.

**Counting for information purposes**

**124.** After a candidate is elected for an electoral district under

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<sup>70</sup> Section 89 (Election of sole candidate) or 119 (Official counting of votes)

section 119<sup>71</sup> (including that section as applied under section 121<sup>72</sup>), 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.

### **Notice of failure to vote etc.**

**125.(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.

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<sup>71</sup> Section 119 (Official counting of votes)

<sup>72</sup> Section 121 (Recounting of votes)

(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 106(1)(c),<sup>73</sup> but whose ballot paper was not accepted for counting under section 116(1),<sup>74</sup> advising the person why the ballot paper was not accepted for counting.

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

**125A.(1)** If the commission sends a person a notice under section 125(1)<sup>75</sup> 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
- (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*.

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<sup>73</sup> Section 106 (Who must make a declaration vote)

<sup>74</sup> Section 116 (Preliminary processing of declaration envelopes and ballot papers)

<sup>75</sup> Section 125 (Notice of failure to vote etc.)

**Storage of ballot papers and declaration envelopes**

**126.(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 7—ELECTORAL FUNDING AND FINANCIAL DISCLOSURE**

**Purposes of part**

**126A.(1)** The purposes of this part are to provide for—

- (a) electoral funding for registered political parties and candidates other than candidates endorsed by registered political parties; and
- (b) financial disclosure by registered political parties for elections and, on an annual basis, by candidates for elections and by entities involved with the electoral process.

**(2)** However, many of the persons who will be affected by this part receive election funding or are required to disclose financial matters under the Commonwealth Electoral Act, part XX.

**(3)** To reduce the administrative burden on these persons, the law of the State about these matters is based on the Commonwealth Electoral Act.

**Law about electoral funding and financial disclosure**

**126B.(1)** The schedule provides the law about electoral funding and financial disclosure.

(2) The schedule is based on the Commonwealth Electoral Act, part XX, and, for that reason, uses the same numbering as the Commonwealth Electoral Act.

(3) Changes to the text of the Commonwealth Electoral Act in the schedule have been made, or are noted, in italics.

(4) Despite subsection (2), the schedule is not a mere adoption or application of the Commonwealth Electoral Act.

*Example—*

A reference in the schedule to regulations is a reference to regulations made under this Act.

### **Regulations for part**

**126C.** In the schedule, a reference to a prescribed amount or prescribed time that is followed by an amount or time in brackets is to be read as providing that the amount or time may be prescribed under the regulations but, if the regulations do not prescribe the amount or time, the amount or time in brackets applies.

*Example—*

*Section 305(1)(b) provides—*

‘(b) the amount or value of each of which is equal to or *is more than the prescribed amount (\$1 000)*’.

The amount may be prescribed under the regulations. However, if no regulation is made for section 305(1)(b), the paragraph is to be read as ‘equal to or *is more than \$1 000*’.

### **References in the schedule to electoral commission**

**126D.** In the schedule, a reference to the electoral commission is to be read as a reference to the Electoral Commission of Queensland.<sup>76</sup>

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<sup>76</sup> This change has not been made textually to the schedule because the reference appears frequently and the textual change may be disruptive to a user of the legislation.

## **PART 8—COURT OF DISPUTED RETURNS**

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

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

**127.(1)** The Supreme Court is the Court of Disputed Returns for the purposes of this Act and the *Referendums Act 1997*.

**(2)** A single judge may constitute, and exercise all the jurisdiction and powers of, the Court of Disputed Returns.

### *Division 2—Disputing elections*

#### **Election may be disputed under this division**

**128.(1)** The election of a person may be disputed under this part by a petition to the Court of Disputed Returns in accordance with this division.

**(2)** The election may not be disputed in any other way.

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

**129.** 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.<sup>77</sup>

#### **Requirements for a petition to be effective**

**130.(1)** For a petition to have effect for the purposes of this division, the requirements of this section must be complied with.

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<sup>77</sup> See section 85A (Grounds for deciding a person is not properly nominated).



**(2)** The petition must—

- (a) set out the facts relied on to dispute the election; and
- (b) set out the order sought from the Court of Disputed Returns; and
- (c) be signed by—
  - (i) in the case of a petition by the commission—the electoral commissioner; and
  - (ii) in any other case—the petitioner 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 petition with the court within 7 days after the day on which the writ for the election is returned as mentioned in section 123(2)(b);<sup>78</sup> and
- (b) when filing the petition, 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 petition.

**Copies of petition to be given to elected candidate and commission**

**131.** The staff of the Supreme Court must give a copy of the petition to—

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

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

**132.(1)** The petitioner 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.

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<sup>78</sup> Section 123 (Return of writ for election)

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

### **Parties to petition**

**133.(1)** The parties to a petition are the person who filed it and any respondent under this section.

(2) The commission is a respondent to any petition by another person under this division.

(3) The person who was elected is a party to the petition if the person, within 7 days after receiving a copy of the petition under section 131, files a notice with the court stating that the person wishes to be a respondent.

### **How petition is to be dealt with by court**

**134.(1)** The Court of Disputed Returns may conduct hearings and other proceedings in relation to the petition.

(2) The court must not have regard to legal forms and technicalities, and is not required to apply the rules of evidence.

(3) The court must deal with the petition 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 petition 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 petitions, the consequences of the death of petitioners and the substitution of petitioners in such circumstances.

### **Application for dismissal of petition**

**135.(1)** The commission may apply to the Court of Disputed Returns for an order dismissing the petition on the ground that there has been excessive delay by the petitioner in relation to the petition.

**(2)** The court may make such order on the application as it considers appropriate.

### **Powers of the court**

**136.(1)** Subject to sections 137 and 138, the Court of Disputed Returns may make any order or exercise any power in relation to the petition 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 petition 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.

### **Restrictions on certain orders**

**137.(1)** The court must not make an order mentioned in section 136(2) because of a delay in—

- (a) the announcement of nominations under section 88;<sup>79</sup> or
- (b) complying with the requirements of part 6, division 5, 6 or 7.<sup>80</sup>

(1A) Also, the court must not make an order under section 136(2) (other than an order to dismiss the petition)—

- (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.

(2) In determining whether the requirements of subsection (1A) 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.

(3) The court must not make an order mentioned in section 136(2) because—

- (a) the names of the candidates were not set out on a ballot paper in the order required by section 97(2)(d);<sup>81</sup> or
- (b) a name or other word that was required by section 97(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 97(2)(g) was printed on a ballot paper adjacent to a candidate's name.

### **Restriction on certain evidence and inquiries**

**138.(1)** In a proceeding in relation to the petition, 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,

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<sup>79</sup> Section 88 (Announcement of nominations)

<sup>80</sup> Part 6 (Elections), division 5 (How voting takes place), 6 (Counting of votes) or 7 (Notifying the results of elections etc.)

<sup>81</sup> Section 97 (Supply of ballot papers and electoral rolls)

the person did everything required by this Act to enable the person to vote.

(2) In a proceeding in relation to the petition, 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.

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

**139.** The Court of Disputed Returns 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.

### **Costs**

**140.(1)** The Court of Disputed Returns may order an unsuccessful party to the petition to pay the reasonable costs of the other parties to the petition.

(2) If costs are awarded against the person who filed the petition, the amount deposited with the petition must be applied towards payment of the costs.

(3) If not, the deposit must be returned to the person.

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

**141.** A decision of, or order made by, the Court of Disputed Returns in relation to the petition—

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

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

**142.** Unless the Court of Disputed Returns otherwise orders, the filing of

a petition 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*

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

**143.(1)** The Legislative Assembly may, by resolution, refer to the Court of Dispute 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.

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

**144.** 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.

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

**145.(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.

**Powers of court**

**146.** 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.

**Order to be sent to Assembly**

**147.** After the hearing and determination of the reference, the court must arrange for a copy of its order to be given to the Clerk of the Parliament.

**Application of provisions**

**148.** Sections 134(6), 140 and 141<sup>82</sup> apply, subject to any necessary changes, to proceedings on a reference under this division.

**PART 9—ENFORCEMENT***Division 1—Offences in general***Attempts taken to be offences**

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

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<sup>82</sup> Sections 134 (How petition is to be dealt with by court), 140 (Costs) and 141 (Decisions and orders to be final etc.)

**Failure to enrol etc.**

**150.(1)** Subject to this section, a person who contravenes section 65(2) or (3)<sup>83</sup> 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.

**False names etc. on electoral rolls**

**151.** 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.

**Misuse of restricted information**

**152.(1)** If a copy of an electoral roll is made available to a person or body under section 61,<sup>84</sup> a person must use any information obtained from part of the copy that is not a publicly available part only for purposes set out in subsection (2).

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<sup>83</sup> Section 65 (Enrolment and transfer of enrolment)

<sup>84</sup> Section 61 (Availability of entire electoral rolls)



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 Act 1993*; or
  - (iii) the *City of Brisbane Act 1924*; or
  - (iv) the *Community Services (Aborigines) Act 1984*; or
  - (v) the *Community Services (Torres Strait) 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.

### **False or misleading statements**

**153.(1)** A person must not—

- (a) make a statement under or for the purposes of this Act that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made under or for the purposes of this Act anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—20 penalty units or 6 months imprisonment.

(2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it states that the information given was false or misleading to the person's knowledge.

**False, misleading or incomplete documents**

**154.** A person must not give a document under or for the purposes of this Act containing information that the person knows is false, misleading or incomplete in a material particular without—

- (a) indicating that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
- (b) giving the correct information if the person has, or can reasonably obtain, the correct information.

Maximum penalty—20 penalty units or 6 months imprisonment.

**Bribery**

**155.(1)** A person must not—

- (a) ask for or receive; or
- (b) offer, or agree, to ask for or receive;

property or a benefit of any kind (whether for the person or someone else) on the understanding that the person's election conduct (as defined in subsection (3)) will be influenced or affected.

Maximum penalty—85 penalty units or 2 years imprisonment.

**(2)** A person must not, in order to influence or affect another person's election conduct (as defined in subsection (3)), give, or promise or offer to give, property or a benefit of any kind to the other person or a third person.

Maximum penalty—85 penalty units or 2 years imprisonment.

**(3)** In this section—

**“election conduct”** of a person means—

- (a) the way in which the person votes at an election; or
- (b) the person's nominating as a candidate for an election; or
- (c) the person's support of, or opposition to, a candidate or a political party at an election.

**Providing money for illegal payments**

**156.** A person must not knowingly provide money for—

- (a) any payment that is contrary to law relating to elections; or
- (b) replacing any money that has been spent in making such payment.

Maximum penalty—85 penalty units or 2 years imprisonment.

**Improperly influencing commission**

**157.** 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.

**Interfering with election right or duty**

**158.** 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.

**Forging or uttering electoral papers etc.**

**159.(1)** A person must not—

- (a) forge an electoral paper; or
- (b) utter a forged electoral paper knowing it to be forged.

Maximum penalty—20 penalty units or 6 months imprisonment.

**(2)** A person must not make the signature of another person on an electoral paper.

Maximum penalty—20 penalty units.

**Wilful neglect etc. by commission staff**

**160.** 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.*

**Author of election matter must be named**

**161.(1)** Subject to subsection (3), 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.

**Headline to electoral advertisements**

**162.** 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—9 penalty units; or
- (b) in the case of a corporation—40 penalty units.

### **Misleading voters**

**163.(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.

**(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.

**(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—

- (a) in the case of an individual—40 penalty units; or
- (b) in the case of a corporation—200 penalty units.

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

### **Failure to vote etc.**

**164.(1)** An elector must not—

- (a) fail to vote at an election without a valid and sufficient excuse; or
- (b) contravene section 125(2);<sup>85</sup> or
- (c) state anything to the commission or the commission's staff under section 125 the person knows is false or misleading in a material particular; or
- (d) omit from a statement made under section 125 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 125.

**(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 125 on a stated day;
- (d) a form mentioned in section 125(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 125(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 125, statements in the form purporting to be made by—

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<sup>85</sup> Section 125 (Notice of failure to vote etc.)

- (a) the elector are evidence as statements made by the elector; and
- (b) another elector under section 125(3), are evidence as statements made by the other elector.

(7) Subsection (1)(a) does not apply to an Antarctic voter.

### **Leave to vote**

#### **165.(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—9 penalty units; or
- (b) in the case of a corporation—42 penalty units.

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

**166.(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 6 m of the entrance to a building with voting compartments.

Maximum penalty—9 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.

### **Interrupting voting etc.**

**167.** 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—9 penalty units.

### **Influencing voting**

**168.** A person must not, by violence or intimidation, influence the vote of



a person at an election.

Maximum penalty—85 penalty units or 2 years imprisonment.

### **Displaying political statements in certain places**

**169.(1)** A person must not display a political statement—

- (a) inside a room with voting compartments; or
- (b) within 6 m 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.

### **Voting if not entitled etc.**

**170.** A person must not, at an election—

- (a) vote in the name of another person (including a dead or fictitious person); or
- (b) vote more than once; or
- (c) cast a vote that the person knows he or she is not entitled to cast; or
- (d) if the person knows another person is not entitled to vote at the election—procure the other person to vote.

Maximum penalty—20 penalty units or 6 months imprisonment.

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

**171.(1)** A person must not—

- (a) wilfully fail to comply with section 102(10)(c), 108(5)(d),

109(3)(c) or (d) or 110(5)(c) or (d);<sup>86</sup> 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.

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

**172.(1)** A person commits an offence if the person—

- (a) is given a request under section 110 or 111<sup>87</sup> to post, fax or deliver to the commission or a returning officer; and
- (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 110(5)(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.

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<sup>86</sup> Section 102 (Procedure for voting), 108 (Making a declaration vote at a polling booth), 109 (Making a declaration vote at a commission office) or 110 (Making a declaration vote using posted voting papers)

<sup>87</sup> Section 110 deals with declaration voting using posted voting papers. Section 111 deals with electoral visitor voting.

**Secrecy of voting**

**173.** 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.

**Breaking seals on parcels**

**174.** A person must not wilfully open or break the seal of a parcel sealed under section 118(2)(h)<sup>88</sup> 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.

**Duty of witness to signing of declaration voting papers**

**175.** An elector or other person (the “**witness**”) must not sign a declaration envelope as witness under section 110(5)(a)<sup>89</sup> 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

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<sup>88</sup> Section 118 (Preliminary counting of ordinary votes)

<sup>89</sup> Section 110 (Making a declaration vote using posted voting papers)

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—Further penalty of parliamentary disqualification for certain offences***

**Further penalty of disqualification for certain offences**

**176.** If a person is convicted of an offence against section 154, 168 or 170(a) or (b)<sup>90</sup>—

- (a) if the person is a member of the Legislative Assembly—the person’s seat is vacated in accordance with the *Legislative Assembly Act 1867*, section 7(2);<sup>91</sup> and
- (b) in any case—the person is not entitled to be elected, or to sit, as a member of the Legislative Assembly for 3 years after the conviction.

***Division 5—Injunctions***

**Injunctions**

**177.(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

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<sup>90</sup> Section 154 (False, misleading or incomplete documents), 168 (Influencing voting) or 170 (Voting if not entitled etc.)

<sup>91</sup> Section 7 (Vacating seats of members of Assembly in certain cases)

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- (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 10—MISCELLANEOUS**

### **How things are to be given to commission**

**178.** A claim, return, form, notice, application, nomination or other document or thing that is required or permitted by this Act to be given to the commission is to be given to the commission by leaving it at, or sending it by post or facsimile or in a similar way, to the commission's office.

### **How things are to be signed**

**179.** 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.

### **Review of certain decisions**

**180.(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(4) 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 72 to register, or under section 73 to refuse to register, a political party	Any person affected by the decision
5. A decision under the Act that a person is a special postal voter	The person.
<b>(2) An application for review of a reviewable decision must—</b>	
(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	
(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.

### **Advertising of office addresses etc.**

**181.** 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.

### **Regulations**

**182.(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.



## SCHEDULE

### ELECTION FUNDING AND FINANCIAL DISCLOSURE BASED ON PART XX OF THE COMMONWEALTH ELECTORAL ACT<sup>92</sup>

*section 126B*

#### *Division 1—Preliminary*

#### **Interpretation**

**287.(1)** In this *Schedule* (*words omitted*)—  
(*definitions omitted*).

“**associated entity**” means an entity that—

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

“**authorised officer**” means a person who is appointed under section 323<sup>93</sup> as an authorised officer.

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

- (a) the allotment of shares in a company; *and*
- (b) the creation of a trust in property; *and*
- (c) the grant or creation of any lease, mortgage, charge, servitude,

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<sup>92</sup> This schedule is based on the Commonwealth Electoral Act, Part XX. Textual changes are indicated by italic script. Citations of Acts and the division headings are also in italics. If a cited Act has changed, the citation is underlined.

<sup>93</sup> Section 323 (Appointment)

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 SCHEDULE (continued)

licence, power, partnership or interest in property; *and*

- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of any debt, contract or chose in action, or of any interest in property; *and*
- (e) the exercise by a person of a general power of appointment of property in favour of any other person; *and*
- (f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of any other person.

(*definitions omitted*).

**“eligible vote”** means a vote *for* which, *under* section 294, a payment under Division 3 may be made.<sup>94</sup>

**“entity”** means—

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

**“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) in other cases—the person responsible for *keeping* the financial records of the entity.

**“gift”** means any 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, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration, but does not include—

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<sup>94</sup> Section 294 (General entitlement to funds)  
Division 3 (Election funding)

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 SCHEDULE (continued)

- (a) a payment under Division 3;<sup>95</sup> or
- (b) an annual subscription paid to a political party (*words omitted*) by a person *for* the person's membership of the party (*words omitted*).

(*definitions omitted*).

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

(*definitions omitted*).

**“occupier”** of a place, in Divisions 9, 10 and 11,<sup>96</sup> includes a person who reasonably appears to be the occupier, or in charge, of the place.

**“place”**, in Divisions 9, 10 and 11, includes land, premises, aircraft, ships and vehicles.

**“registered”**, for an election, means registered, before the day of issue of the writ for the election, under Part 5.<sup>97</sup>

**“registered industrial organisation”** means—

- (a) a body registered as an industrial organisation, or a body whose registration was continued or preserved, under the *Industrial Relations Act 1999*; or
- (b) an organisation registered under the *Workplace Relations Act 1996* (Cwlth) or the law of another State or territory about the registration of industrial organisations or unions.

(*definition omitted*).

(2) (*omitted*).

(3) A reference in this *Schedule* to things done by or for a registered political party (*words omitted*) must, if the party (*words omitted*) is not a body corporate, be read as a reference to things done by or with the

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<sup>95</sup> Division 3 (Election funding)

<sup>96</sup> Divisions 9 (Powers of authorised officers for places), 10 (Authorised officer's power to seize) and 11 (Other enforcement matter)

<sup>97</sup> Part 5 (Registration of political parties)

## SCHEDULE (continued)

authority of members or officers of the party (*words omitted*) for the party (*words omitted*).

(4) A reference in this *Schedule* to a *registered* political party, other than a reference to the endorsement of a candidate (*words omitted*) in an election, *must* be read as not including a reference to a part of the political party.

(4A) (*omitted*).

(5) For the purposes of this *Schedule*, the amount or value of a gift consisting of or including a disposition of property other than money *must*, if the regulations so provide, be *decided under principles stated or mentioned* in the regulations.

(6) For the purposes of this *Schedule*—

- (a) a body corporate and any other body corporate that is related to the first-mentioned body corporate *must be taken* to be the same person; and
- (b) the question whether a body corporate is related to another body corporate *must be decided* in the same manner as the question whether a corporation is related to another corporation is determined under the *Corporations Law*.

(7) For the purposes of this *Schedule*, an advertisement relates to an election if it contains electoral matter, whether or not consideration was given for the publication or broadcasting of the advertisement.

***Meaning of “disclosure period”***

287AA.(1) A “*disclosure period*”, for an election, is the period that starts—

- (a) for a candidate in the election who had been a candidate in a general election or by-election the polling day in which was within the prescribed time (4 years) before polling day in the election—at the end of the prescribed time (30 days) after polling day in the last general election or by-election in which the person was a candidate; or
- (b) for a candidate in the election who had not been a candidate in a

## SCHEDULE (continued)

*general election or by-election the polling day in which was within the prescribed time (4 years) before polling day in the relevant election—on the day on which the person announced that he or she would be a candidate in the election or on the day on which the person nominated as a candidate, whichever was the earlier; or*

(c) *for a person or organisation to which section 305(1)<sup>98</sup> applies—at the end of the prescribed time (30 days) after the polling day in the last general election.*

(2) A “**disclosure period**” for an election ends at the prescribed time (30 days) after the polling day for the election.

(3) *Despite subsection (1), a disclosure period for the first general election after the commencement of this Schedule, or a by-election that happens before the second general election after the commencement of this Schedule, for a candidate for the general election or by-election, or a person or organisation to which section 305(1) applies, is the period that starts on 1 January 1995.*

(4) *Subsection (3) and this subsection expire on 1 January 1999.*

### **Campaign committee to be treated as part of (words omitted) party**

**287A.(1)** Divisions 4, 5 and 5A<sup>99</sup> apply as if a campaign committee of an endorsed candidate were the *registered* political party that endorsed the candidate (words omitted).

(2) In subsection (1)—

“**campaign committee**”, for a candidate (words omitted), means a body of persons appointed or engaged to form a committee to *help* the campaign of the candidate (words omitted) in an election.

<sup>98</sup> Section 305 (Expenditure incurred for political purposes)

<sup>99</sup> Divisions 4 (Disclosure of donations), 5 (Disclosure of electoral expenditure) and 5A (Annual returns by registered political parties and associated entities)

SCHEDULE (continued)

**“endorsed candidate”** means a candidate who is endorsed by a registered political party.

*(definitions omitted).*

***Division 2—Agents***

**Agents of registered political parties**

**288.(1)** A *registered* political party *must* have an agent for the purposes of this *Schedule*.

**(2)** *(omitted).*

**(3)** *(omitted).*

**Appointment of agents by candidates *(words omitted)***

**289.(1)** A candidate in an election *(words omitted)* may appoint a person to be the agent of the candidate, for the purposes of this *Schedule*, for the election.

**(2)** *(omitted).*

**(2A)** *(omitted).*

**(3)** 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 the purposes of this *Schedule*.

**(4)** *(omitted).*

**Requisites for appointment**

**290.(1)** An appointment of an agent under section 288 or 289<sup>100</sup> has no effect unless—

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<sup>100</sup> Section 288 (Agents of *registered* political parties) or 289 (Appointment of agents by candidates *(words omitted)*)

## SCHEDULE (continued)

- (a) the person appointed is *an adult*; and
- (b) written notice of the appointment is given to the Electoral commission—
  - (i) *if* the appointment is made by a *registered* political party (*words omitted*)—by the party (*words omitted*); and
  - (ii) in any other case—by the candidate (*words omitted*) making the appointment; and
- (c) the name and address of the person appointed are *stated* in the notice; and
- (d) the person appointed—
  - (i) has signed a form of consent to the appointment; and
  - (ii) has signed a declaration that he or she is eligible for appointment.

**(1A)** A consent or declaration under subsection (1) may be incorporated in, or written on the same paper as, a notice under that subsection.

**(2)** *If* a person who is the agent of a *registered* political party or a candidate (*words omitted*) is convicted of an offence against this *Schedule* for a particular election, the person is not eligible to be appointed or to hold office as an agent for the purposes of this *Schedule* for the purposes of any subsequent election.

**(3)** An appointment (other than an appointment by a *registered* political party (*words omitted*)) is not effective *for* anything required by this *Schedule* to be done—

- (a) *for* a claim or return under this *Schedule* for an election; or
- (b) during a specified period after polling day in an election;

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

### Register of Party Agents

**291.(1)** The Electoral commission *must* keep a register called the

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 SCHEDULE (continued)

Register of Party 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 for the purposes of this *Schedule*.

**Effect of registration etc.**

**292.(1)** The appointment of an agent by a *registered* political party—

- (a) takes effect on the entry of the name and address of the agent in the Register of Party 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 Electoral commission written notice that he or she has resigned the appointment as agent; *or*
- (b) the *registered* political party (*words omitted*) that appointed the person gives to the Electoral commission written notice that the person has ceased to be an agent of the party and also gives notice under *section 290(1)*<sup>101</sup> of the appointment of *someone else* as agent of the party; or
- (c) the person is convicted of an offence against this *Schedule*.

(3) If a person who is an agent of a *registered* political party dies, the party (*words omitted*) by which the person was appointed *must*, within 28 days after the death of the person, give to the Electoral commission—

- (a) written notice of the death; and
- (b) notice under *section 290(1)* of the appointment of a person as agent in place of the *deceased* person.

(4) *If* a person who is an agent of a *registered* political party is convicted of an offence against this *Schedule*, the party (*words omitted*) that appointed

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<sup>101</sup> Section 290 (Requisites for appointment)



SCHEDULE (continued)

the person *must* give notice under *section 290(1)* of a fresh appointment within 28 days after the conviction or, if an appeal against the conviction is instituted and the conviction is affirmed, within 28 days after the appeal is *decided*.

**Evidence of appointment**

**292A.** An entry in the Register of Party Agents is, for all purposes, (*word omitted*) evidence that the person described in the entry is the agent, for the purposes of this *Schedule*, of the *registered* political party named in the entry.

**Responsibility for action when agent of party (*words omitted*) dead or appointment vacant**

**292B.** *If—*

- (a) Division 4, 5 or 5A<sup>102</sup> imposes an obligation on the agent of a *registered* political party (*words omitted*); and
- (b) there is no agent of the party (*words omitted*);

the obligation rests *on* each member of the executive committee of the party (*words omitted*), and this *Schedule* applies to each such member as if the obligation rested *on* that member alone.

**Revocation of appointment of agent of candidate (*words omitted*)**

**292C.(1)** A candidate (*words omitted*) may, by giving written notice to the Electoral commission, revoke the appointment of a person as the agent of the candidate (*words omitted*).

**(2)** A notice under subsection (1) has no effect unless it is signed by the candidate (*words omitted*).

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<sup>102</sup> Division 4 (Disclosure of donations), 5 (Disclosure of electoral expenditure) or 5A (Annual returns by registered political parties and associated entities)

## SCHEDULE (continued)

**Notice of death or resignation of agent of candidate** (*words omitted*)

**292D.** If the agent of a candidate (*words omitted*) dies or resigns, the candidate (*words omitted*) *must*, without delay, give to the Electoral commission notice in writing of the death or resignation.

**Division 3—Election funding****Interpretation**

**293.(1)** A reference in this Division to electoral expenditure *for* an election *is to* be read as a reference to any expenditure incurred *for* the election campaign (whether or not incurred during the election period).

(2) (*omitted*).

(3) For the purposes of this Division, electoral expenditure *for* an election incurred by or *for* a candidate (*words omitted*) who is endorsed by a registered political party *is taken* to be electoral expenditure *for* the election incurred by the *party*.

(4) (*omitted*).

(5) (*omitted*).

**General entitlement to funds**

**294.(1)** Subject to this Division, *there is* payable for each first preference vote given for a candidate in *an election the election funding reimbursement amount under section 294A*.

(2) (*omitted*).

(4) A reference in this section to a first preference vote *must* be read as not including a reference to a vote that has been rejected as informal in the poll concerned.

**Election funding reimbursement amount**

**294A.(1)** *For section 294(1), the election funding reimbursement amount*

SCHEDULE (continued)

is—

(a) \$1.03531; or

(b) the amount worked out (to 5 decimal places) under subsection (2).

(2) The election funding reimbursement amount is adjusted for each financial year on 1 July using the formula—

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

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

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

(5) In this section—

“A” is the election funding reimbursement 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.

“CPI” means the all groups consumer price index for Brisbane published by the Australian Statistician.

### Claims for payment

**295.(1)** A payment under this Division *must* not be made except on the making of a claim to the Electoral commission for the payment.

(2) If a candidate for whom eligible votes were given in an election was endorsed in the election by a registered political party, a claim for a payment under this Division for the eligible votes given for the candidate may be made only by the agent of (*words omitted*) the registered political party (*words omitted*).

## SCHEDULE (continued)

(3) *If* a candidate for whom eligible votes were given in an election was not endorsed by a registered political party, a claim for a payment under this Division *for* the eligible votes given for the candidate may be made only by the agent of the candidate.

(4) *(omitted)*.

(5) *(omitted)*.

(6) *(omitted)*.

(7) *If (words omitted)* a registered political party was a participant in 2 or more elections that took place on the same day, any claim made by the agent of the *party* for a payment under this Division *must* be made *for* the eligible votes given for—

(a) each candidate who was endorsed in *1* of *the* elections by the party and who stood for election in the State *(words omitted)*; and

(b) *(omitted)*.

(8) A claim for a payment under this Division—

(a) *must* be made in an approved form; and

(b) *must* be accompanied by *the* information *(word omitted)* the Electoral commission requires *about*—

(i) *for* a claim made by the agent of a *(words omitted)* registered political party—the *(word omitted)* electoral expenditure *for* the election or elections to which the claim relates incurred by or *for the party*; and

(ii) *for* a claim made by the agent of a candidate—the electoral expenditure *for* the election to which the claim relates incurred by or *for the candidate*; and

(iii) *(omitted)*;

(ba) *(omitted)*;

(c) *must* be lodged with the Electoral commission before the expiration of the claims period.

(9) The claims period, *for* a particular claim is—

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 SCHEDULE (continued)

- (a) the period of 20 weeks after the polling day in the election or elections to which the claim relates; or
- (b) *a longer period (word omitted) the Electoral commission, before the end of the period specified in paragraph (a), fixes.*

(10) The Electoral commission *must* not fix a longer period for the purpose of *subsection* (9)(b) unless it is satisfied that the circumstances of the case justify the fixing of a longer period.

### Determination of claims

296. The Electoral commission *must*, subject to this Division, *decide* claims for payments under this Division.

### Payment not to be made in certain circumstances

297.(1) A payment under this Division *must* not be made *for* votes given in an election for a candidate unless the total number of eligible votes polled in the candidate's favour is *more than* 4% of the total number of eligible votes polled in favour of all of the candidates in the election.

(2) *(omitted).*

### Amount of payment not to exceed electoral expenditure

298. The amount of a payment under this Division made *for* a claim under section 295<sup>103</sup> *must* not exceed—

- (a) *if* the claim is made by the agent of a *(words omitted)* registered political party and relates to 1 election—the electoral expenditure *for* the election incurred by *or for* the party; *or*
- (b) *if* the claim is made by the agent of a *(words omitted)* registered political party and relates to 2 or more elections—the electoral expenditure *for the* elections incurred by *or for* the party; *or*
- (c) *if* the claim is made by the agent of a candidate—the electoral

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<sup>103</sup> Section 295 (Claims for payment)

## SCHEDULE (continued)

expenditure *for* the election to which the claim relates incurred by or *for* the candidate; or

(d) *(omitted)*.

**Making of payments**

**299.(1)** *If* the Electoral commission is satisfied, *for* a claim under section 295(2), that an amount is payable under this Division *for* votes given in an election or elections for a candidate or candidates endorsed by a registered political party, the Electoral commission *must* make the payment to the agent of (*words omitted*) the party (*words omitted*).

(2) *If* the Electoral commission is satisfied, *for* a claim under section 295(3), that an amount is payable under this Division *for* votes given in an election for a candidate, the Electoral commission *must* make the payment to the agent of the candidate.

(3) *(omitted)*.

(4) *(omitted)*.

(4A) *(omitted)*.

(5) *(omitted)*.

(6) *If* a payment is made under this Division and the recipient is not entitled to receive the whole or a part of the amount paid, whether because of a false statement in a claim or otherwise, *the* amount or *the* part of *the* amount may be recovered by the *State* as a debt due to the *State* by action against the person (*words omitted*).

**Revocation of *decision* regarding payment**

**299A.(1)** *If* the Electoral commission is satisfied that the amount of a payment *decided* under section 296<sup>104</sup> *is more than*, or is less than, the amount payable to the claimant, the commission may revoke the *decision* and make a fresh *decision*.

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<sup>104</sup> Section 296 (Determination of claims)

SCHEDULE (continued)

(2) *If—*

- (a) the amount payable under the revoked *decision* was paid to 1 person; and
- (b) the amount payable under the fresh *decision* is less than the amount paid under the revoked *decision*;

the difference between the amounts fixed by the *decisions* is a debt due to the *State* by the person (*words omitted*).

(3) (*omitted*).

**Death of candidate**

**300.** *If a candidate for whom eligible votes were given in an election dies, a payment under this Division for the eligible votes given for the candidate may be made even though the candidate died and, if the candidate was not endorsed in the election by a registered political party and was his or her own agent for the purposes of this Schedule, a claim for the payment may be made by, and the payment may be made to, the legal personal representative of the candidate.*

**Death of member of group**

**301.** (*omitted*).

**Appropriation**

**302.** (*omitted*).

***Division 4—Disclosure of donations***

**Interpretation**

**303.** (*omitted*).

## SCHEDULE (continued)

**Disclosure of gifts****304.**

(2) The agent of each person (*words omitted*) who was a candidate in an election or by-election *must*, within *the prescribed time (15 weeks)* after the polling day in the election, *give* to the Electoral commission a return, in an approved form, *stating* the total amount or value of all gifts, the number of persons who made gifts, and the relevant details of each gift, received by the person during the disclosure period for the election.

(3) (*omitted*).

(3A) (*omitted*).

(4) For the purposes of this section, a reference to the relevant details, *of a gift*, *must* be read as a reference to the amount or value of the gift, the date on which the gift was made and—

- (a) *for a gift made for the members of an unincorporated association, other than a registered industrial organisation—*
  - (i) the name of the association; and
  - (ii) the names and addresses of the members of the executive committee (however described) of the association; *and*
- (b) *for a gift purportedly made out of a trust fund or out of the funds of a foundation—*
  - (i) the names and addresses of the trustees of the fund or of the funds of the foundation; and
  - (ii) the title or other description of the trust fund or the name of the foundation (*words omitted*); and
- (c) *in any other case—the name and address of the person who made the gift.*

(5) *Despite subsection (2) (words omitted), the agent of a candidate (words omitted) is not required, in a return under subsection (2) (words omitted), to state the relevant details of a gift if—*

- (b) *for a gift made to a candidate (words omitted)—*
  - (i) the gift was made in a private capacity to the candidate for



## SCHEDULE (continued)

his or her personal use and the candidate has not used, and will not use, the gift solely or substantially for a purpose related to an election or a by-election; or

(ii) the amount or value of the gift is less than *the prescribed amount* (\$200); or

(c) *(omitted)*.

(6) *Subsection (5)(b)(ii) (words omitted) does not apply to a return under subsection (2) (words omitted) for a gift made by a person if—*

(b) *for a gift made to a candidate (words omitted)—the sum of the amount or value of the gift and of all other gifts (other than gifts of the kind mentioned in subsection (5)(b)(i)) made by the person to the candidate during the period to which the return relates is equal to or is more than the prescribed amount (\$200); or*

(c) *(omitted)*.

(8) *Despite subsection (2), the agent of a person is not required, in a return under subsection (2), to state the total amount or value of, or the number of persons who made, gifts of the kind mentioned in subsection (5)(b)(i).*

**Expenditure incurred for political purposes**

**305.(1)** *If a person (other than a registered political party, (words omitted) an associated entity or a candidate (words omitted)), during the disclosure period for an election, incurs expenditure for a political purpose, the person must, before the expiration of 15 weeks after the polling day in the election, give to the Electoral commission a return, in an approved form, stating the relevant details of all gifts received by the person during the disclosure period, being gifts—*

(a) *the whole or a part of each of which was used by the person to enable the person to incur expenditure for a political purpose or to reimburse the person for incurring expenditure for a political purpose; and*

(b) *the amount or value of each of which is equal to or more than the prescribed amount (\$1 000).*

## SCHEDULE (continued)

(2) Subsection (1) does not apply to a person *for* the disclosure period *for* an election if the total amount of expenditure incurred by the person for political purposes during the disclosure period is less than *the prescribed amount* (\$1 000).

(2A) For the purposes of this section, a person is taken to have incurred expenditure for a political purpose if, during the disclosure period *for* an election, the person incurs the expenditure *for the* election or any other election.

(3) In this section—

- (a) a reference to the incurring of expenditure for a political purpose *must* be read as a reference to the incurring of expenditure *for* or by the way of—
  - (i) publication by any means (including radio or television) of electoral matter; *or*
  - (ii) by any other *ways* publicly expressing views on an issue in an election; *or*
  - (iii) the making of a gift to a political party (*words omitted*); *or*
  - (iv) the making of a gift to a candidate in an election (*words omitted*); *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 reference to the relevant details, *of* a gift, is a reference to the amount or value of the gift, the date on which the gift was made and—
  - (i) *for* a gift made *for* the members of an unincorporated association, other than a registered industrial organisation—
    - (A) the name of the association; and
    - (B) the names and addresses of the members of the executive committee (however described) of the association; *and*

## SCHEDULE (continued)

- (ii) *for* a gift purportedly made out of a trust fund or out of the funds of a foundation—
  - (A) the names and addresses of the trustees of the fund or of the funds of the foundation; and
  - (B) the title or other description of the trust fund or the name of the foundation (*words omitted*); and
- (iii) in any other case—the name and address of the person who made the gift.

(4) For the purposes of subsection (1), 2 or more gifts made, during the disclosure period *for* an election, by the same person to another person are taken to be 1 gift.

(5) (*omitted*).

**Donations to candidates and political parties**

305A. (*omitted*).

**Donations to political parties**

305B. (*omitted*).

**Certain gifts not to be received**

306.(1) It is unlawful for a political party or (*words omitted*) a person acting *for* a political party (*words omitted*) to receive a gift made to or for the benefit of the party (*words omitted*) by another person, being a gift the amount or value of which is equal to or *more than the prescribed amount* (\$1 000), unless—

- (a) the name and address of the person making the gift are known to the person receiving the gift or, at the time when the gift is made, the person making the gift gives to the person receiving the gift his or her name and address and the person receiving the gift has no grounds to believe that the name and address (*word omitted*) given are not the true name and address of the person making the

## SCHEDULE (continued)

gift.

(2) It is unlawful for a candidate (*words omitted*) or a person acting for a candidate (*words omitted*) to receive a gift made to or for the benefit of the candidate (*words omitted*) being a gift the amount or value of which is equal to or exceeds—

- (a) for a gift made to a candidate—the prescribed amount (\$200); and
- (b) (*omitted*);

unless the name and address of the person making the gift are known to the person receiving the gift or, at the time when the gift is made, the person making the gift gives to the person receiving the gift his or her name and address and the person receiving the gift has no grounds to believe that the name and address (*word omitted*) given are not the true name and address of the person making the gift.

(2A) 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.

(2B) A reference in subsection (1) or (2) to the name and address of a person making a gift is—

- (a) for a gift made for the members of an unincorporated association, other than a registered industrial organisation—a reference to—
  - (i) the name of the association; and
  - (ii) the names and addresses of the members of the executive committee (however described) of the association; and
- (b) for a gift purportedly made out of a trust fund or out of the funds of a foundation—a reference to—
  - (i) the names and addresses of the trustees of the fund or of the funds of the foundation; and
  - (ii) the title or other description of the trust fund or the name of the foundation (*words omitted*).

(2C) For the purpose of subsection (2), a person who is a candidate in an election *must* be taken to remain a candidate for *the time prescribed*

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 SCHEDULE (continued)

(30 days after the polling day in the election).

(2D) (omitted).

(3) For the purposes of 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.

(5) 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 by action (words omitted) against—

- (a) for a gift to or for (words omitted) a political party—
  - (i) if the party (words omitted) is a body corporate—the party (words omitted); or
  - (ii) in any other case—the agent of the party (words omitted); or
- (b) in any other case—the candidate (words omitted) or the agent of the candidate (words omitted).

### Nil returns

307.(1) If no details are required to be included in a return under this Division for a candidate, the return must nevertheless be lodged and must include a statement to the effect that no gifts of a kind required to be disclosed were received.

(2) (omitted).

### Division 5—Disclosure of electoral expenditure

#### Interpretation

308.(1) In this Division—

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

- (a) the broadcasting or telecasting, during the election period, of an

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 SCHEDULE (continued)

- advertisement relating to the election; or
- (b) the publishing in a journal, during the election period, of an advertisement relating to the election; or
  - (c) the display, during the election period, at a theatre or other place of entertainment, of an advertisement relating to the election; or
  - (d) the production of an advertisement relating to the election, being an advertisement that is broadcast, published or displayed as mentioned in paragraph (a), (b) or (c); or
  - (e) the production of any material (*other than material mentioned in paragraph (a), (b) or (c)*) that is required under *section 161*<sup>105</sup> to include the name and address of the author of the material or of the person authorising the material and that is used during the election period; or
  - (f) consultant's or advertising agent's fees *for*—
    - (i) services provided during the election period, being services relating to the election; or
    - (ii) material relating to the election that is used during the election period; or
  - (g) the carrying out, during the election period, of an opinion poll, or other research, relating to the election.
- (2)** (*omitted*).
- (3)** A reference in this Division to a participant in an election *must* be read as a reference to—
- (a) a *registered* political party (*words omitted*) or a candidate; or
  - (b) a person (*other than a registered political party (words omitted) or a candidate*) by whom or with the authority of whom electoral expenditure *for* an election was incurred.

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<sup>105</sup> Section 161 (Author of election matter must be named)

## SCHEDULE (continued)

**Returns of electoral expenditure****309.**

**(1A)** *(omitted).*

**(2)** The agent of each person who was a candidate in an election (*words omitted*) must, before the expiration of the prescribed time (15 weeks after the polling day in the election), give to the Electoral commission a return, in an approved form, stating details of all electoral expenditure for the election incurred by or with the authority of the candidate.

**(3)** *(omitted).*

**(4)** If electoral expenditure for an election was incurred by or with the authority of a person and the expenditure was not incurred with the written authority of a registered political party (*words omitted*), an associated entity or a candidate in the election (*words omitted*), the person must, before the expiration of the prescribed time (15 weeks after the polling day in the election), give to the Electoral commission a return, in an approved form, stating details of the electoral expenditure.

**(5)** A person is not required to give a return under subsection (4) for an election if the total amount of the electoral expenditure incurred for the election by or with the authority of the person is not more than the prescribed amount (\$200).

**Returns by broadcasters**

**310.** *(omitted).*

**Returns by publishers**

**311.** *(omitted).*

**Annual returns of income and expenditure of Commonwealth Departments**

**311A.** *(omitted).*

SCHEDULE (continued)

**Nil returns**

**313.(1)** *If no electoral expenditure for an election was incurred by or with the authority of a particular candidate (words omitted), a return under this Division for the candidate (words omitted) 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 (words omitted).*

**Two or more elections on the same day**

**314.(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 5A—Annual returns by registered political parties and associated entities***

**Interpretation**

**314AA.** In this Division—

“**amount**” includes the value of a gift or bequest.



SCHEDULE (continued)

**Annual returns by registered political parties**

**314AB.(1)** Subject to this Division, the agent of each registered political party (*words omitted*) must, *within the prescribed time (16 weeks after the end of each financial year)* give to the Electoral commission a return, in an approved form, *stating—*

- (a) the total amount received by, or *for*, the party during the financial year, together with the details required by section 314AC;<sup>106</sup> and
- (b) the total amount paid by, or *for*, the party during the financial year, together with the details required by section 314AD;<sup>107</sup> and
- (c) the total outstanding amount, as at the end of the financial year, of all debts incurred by, or *for*, the party, together with the details required by section 314AE.<sup>108</sup>

**Amounts received**

**314AC.(1)** If the sum of all amounts received by, or *for*, the party from a person or organisation during a financial year is *the prescribed amount (\$1 500)* or more, the return must include the particulars of *the* sum.

**(2)** In calculating the sum, an amount of less than *the prescribed amount (\$500)* 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) if the sum was received from an unincorporated association, other than a registered industrial organisation—
  - (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) if the sum was purportedly paid out of a trust fund or out of the

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<sup>106</sup> Section 314AC (Amounts received)

<sup>107</sup> Section 314AD (Amounts paid)

<sup>108</sup> Section 314AE (Outstanding amounts)

SCHEDULE (continued)

funds of a foundation—

- (i) the names and addresses of the trustees of the fund or of the foundation; and
  - (ii) the title or other description of the trust fund, or the name of the foundation (*words omitted*); or
- (c) in any other case—the name and address of the person or organisation.

**Amounts paid**

**314AD.(1)** If the sum of all amounts paid by, or *for*, the party to a person or an organisation during a financial year is *the prescribed amount* (\$1 500) or more, the return must include the particulars of *the* sum.

**(2)** In calculating the sum—

- (a) an amount of less than *the prescribed amount* (\$500); or
- (b) an amount paid under a contract of employment or an award specifying terms and conditions of employment;

need not be counted.

**(3)** The particulars of a sum required to be *given* under subsection (1) are the amount of the sum and—

- (a) if the sum was paid to an unincorporated association, other than a registered industrial organisation—
  - (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) if the sum was purportedly paid into a trust fund or into the funds of a foundation—
  - (i) the names and addresses of the trustees of the fund or of the foundation; and
  - (ii) the title or other description of the trust fund, or the name of the foundation (*words omitted*); or

## SCHEDULE (continued)

- (c) in any other case—the name and address of the person or organisation.

**Outstanding amounts**

**314AE.(1)** If the sum of all outstanding debts incurred by, or *for*, the party to a person or an organisation during a financial year is *the prescribed amount* (\$1 500) or more, the return must include the particulars of *the* sum.

**(2)** The particulars of a sum required to be *given* under subsection (1) are the amount of the sum and—

- (a) if the sum was owed to an unincorporated association, other than a registered industrial organisation—
- (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) if the sum was purportedly incurred as a debt to a trust fund or to a foundation—
- (i) the names and addresses of the trustees of the fund or of the foundation; and
  - (ii) the title or other description of the trust fund, or the name of the foundation (*words omitted*); or
- (c) in any other case—the name and address of the person or organisation.

**Annual returns by associated entities**

**314AEA.(1)** If an entity is an associated entity at any time during a financial year, the entity's financial controller must *give* a return to the Electoral commission, in the approved form, within *the prescribed time* (16 weeks after the end of the financial year), setting out—

- (a) the total amount received by, or *for*, the entity during the financial

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 SCHEDULE (continued)

year, together with the details required by section 314AC;<sup>109</sup> and

- (b) the total amount paid by, or *for*, the entity during the financial year, together with the details required by section 314AD;<sup>110</sup> and
- (c) if the entity is an associated entity at the end of the financial year—the total outstanding amount, as at the end of the financial year, of all debts incurred by or *for* the entity, together with the details required by section 314AE.<sup>111</sup>

(2) Amounts received or paid at a time when the entity was not an associated entity are not to be counted for the purposes of *subsection* (1)(a) and (b).

(3) If any amount required to be set out under *subsection* (1)(b)—

- (a) was paid to or for (*words omitted*) 1 or more registered political parties; and
- (b) was paid out of funds generated from capital of the associated entity;

the return must also set out the following details about each person who contributed to *the capital at any time*—

- (c) the name and address of the person;
- (d) the total amount of the person's contributions to *the capital*, up to the end of the financial year.

(4) Subsection (3) does not apply to contributions that have been set out in a previous return under this section.

(5) Sections 314AC, 314AD and 314AE apply for the purposes of *subsection* (1)(a), (b) and (c) (*words omitted*) to a return for an associated entity in the same way as they apply for the purposes of

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<sup>109</sup> Section 314AC (Amounts received)

<sup>110</sup> Section 314AD (Amounts paid)

<sup>111</sup> Section 314AE (Outstanding amounts)

SCHEDULE (continued)

*section* 314AB(1)(a), (b) and (c)<sup>112</sup> to a return for a registered political party.

**Returns not to include lists of party membership**

**314AF.** Returns *given under* this Division are not to include lists of party membership.

**Regulations**

**314AG.(1)** The regulations may require greater detail to be provided in returns than is required by this Division.

**(2)** Without limiting subsection (1), the regulations may require that the total amounts *mentioned* in *section* 314AB<sup>113</sup> be broken down in the way specified in the regulations.

**(3)** The regulations may reduce the amount of information to be provided in returns under *section* 314AEA.<sup>114</sup>

***Division 6—Miscellaneous***

**Interpretation**

**314A.** Except in *section* 318,<sup>115</sup> a reference in this Division to a return under Division 4, 5 or 5A<sup>116</sup> or to a return under this *Schedule* includes a reference to particulars under *section* 318(2).

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<sup>112</sup> *Section* 314AB (Annual returns by registered political parties)

<sup>113</sup> *Section* 314AB (Annual returns by registered political parties)

<sup>114</sup> *Section* 314AEA (Annual returns by associated entities)

<sup>115</sup> *Section* 318 (Inability to complete returns)

<sup>116</sup> Division 4 (Disclosure of donations), 5 (Disclosure of electoral expenditure) or 5A (Annual returns by registered political parties and associated entities)

## SCHEDULE (continued)

**Offences**

**315.(1)** *If a person fails to give a return that the person is required to give under Division 4, 5 or 5A within the time required by this Schedule, the person is guilty of an offence punishable, on conviction, by a fine not exceeding—*

- (a) *for a return required to be given by the agent of a registered political party (words omitted)—100 penalty units; or*
- (b) *in any other case—20 penalty units.*

**(2)** *If a person—*

- (a) *gives a return that is incomplete, being a return that the person is required to give under Division 4, 5 or 5A; or*
- (b) *fails to keep records in accordance with section 317;<sup>117</sup>*

*the person is guilty of an offence punishable, on conviction, by a fine not exceeding 20 penalty units.*

**(3)** *If the agent of a political party (words omitted) lodges a claim under Division 3,<sup>118</sup> or gives a return that the agent is required to give under Division 4, 5 or 5A, that contains particulars that are, to the knowledge of the agent, false or misleading in a material particular, the agent is guilty of an offence punishable, on conviction, by a fine not exceeding 200 penalty units.*

**(3A)** *If the agent of a candidate lodges a claim under Division 3, or gives a return that the agent is required to give under Division 4, 5 or 5A, that contains particulars that are, to the knowledge of the agent, false or misleading in a material particular, the agent is guilty of an offence punishable, on conviction, by a fine not exceeding 100 penalty units.*

**(4)** *If a person (other than an agent) lodges a claim under Division 3, or gives a return that the person is required to give under Division 4 or 5, that contains particulars that are, to the knowledge of the person, false or misleading in a material particular, the person is guilty of an offence*

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<sup>117</sup> Section 317 (Records to be kept)

<sup>118</sup> Division 3 (Election funding)

SCHEDULE (continued)

*punishable, on conviction, by a fine not exceeding 50 penalty units.*

**(4A)** *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.*

**(5)** *If a person is convicted of an offence against subsection (3), (3A) or (4), the court may, as well as imposing a penalty under the subsection, order the person to refund to the State the amount of any payment wrongfully obtained by the person under Division 3.<sup>119</sup>*

**(6)** *If a court has made an order under subsection (5), 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 thereupon enforceable in all respects as a final judgment of the court.*

**(6A)** *A person must not give to another person, for the purpose of the making by the other person of a claim under Division 3, information that is, to the knowledge of the first-mentioned person, false or misleading in a material particular.*

*Maximum penalty—20 penalty units.*

**(7)** *A person must not give to another person who is required to give a return under Division 4, 5 or 5A 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.*

**(8)** *(omitted).*

**(9)** *(omitted).*

**(10)** *(omitted).*

**(11)** *A prosecution for an offence against a provision of this section (words omitted) may be started at any time within 3 years after the offence was committed.*

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<sup>119</sup> Division 3 (Election funding)

SCHEDULE (continued)

***Attempts to commit offences***

**315AA.(1)** *A person who attempts to commit an offence against this Schedule commits an offence.*

*Maximum penalty—1/2 the maximum penalty for committing the offence.*

**(2)** *Section 4 of the Criminal Code applies to subsection (1).*<sup>120</sup>

**Recovery of payments**

**315A.(1)** An action in a court to recover an amount due to the *State* under section 299(6) or 306(5)<sup>121</sup> 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.

**(3)** *(omitted).*

**Investigation etc.**

**316.** *(omitted).*<sup>122</sup>

**Records to be kept**

**317.** *If (words omitted) 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 Schedule about an election, other than a record that, in the normal course of business or administration, would be transferred to another person, the first-mentioned person must keep the record for a period of at least 3 years commencing on the polling day in the election.*

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<sup>120</sup> Section 4 of the Criminal Code (Attempts to commit offences)

<sup>121</sup> Section 299 (Making of payments) or 306 (Certain gifts not to be received)

<sup>122</sup> The matters covered by section 316 of the Commonwealth Electoral Act are included in divisions 7 to 11 of this schedule.



## SCHEDULE (continued)

**Inability to complete returns**

**318.(1)** *If a person who is required to give a return under Division 4, 5 or 5A<sup>123</sup> considers that it is impossible to complete the return because he or she 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*
- (c) *give to the Electoral commission notice in writing—*
  - (i) *identifying the return; and*
  - (ii) *stating that the return is incomplete because he or she is unable to obtain certain particulars; and*
  - (iii) *identifying the particulars; and*
  - (iv) *stating the reasons why he or she is unable to obtain the particulars; and*
  - (v) *if the person believes, on reasonable grounds, that another person whose name and address he or she 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 the omission of the particulars, be taken, for the purposes of section 315(2),<sup>124</sup> to have given a return that is incomplete.*

**(2)** *If the Electoral commission has been informed under subsection (1)(c) or (3)(c) that a person can supply particulars that have not been included in a return, the Electoral commission may, by notice in writing served on that person, require the person to give to the Electoral commission, within the period stated in the notice and in writing, those particulars and, subject to subsection (3), the person must comply with the*

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<sup>123</sup> Division 4 (Disclosure of donations), 5 (Disclosure of electoral expenditure) or 5A (Annual returns by registered political parties and associated entities)

<sup>124</sup> Section 315 (Offences)

SCHEDULE (continued)

requirement.

(3) If a person who is required to *give* particulars under subsection (2) considers that he or she is unable to obtain some or all of the particulars, the person *must* give to the Electoral 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 why the person considers he or she is unable to obtain *the* particulars; and
- (e) if the person believes, on reasonable grounds, that another person whose name and address he or she knows can give *the* particulars—*stating* the name and address of *the* other person and the reasons why he or she believes that *the* other person is able to give *the* particulars.

(3A) A person who complies with subsection (3) *must* not, because of the omission of particulars required under subsection (2), be taken, for the purpose of *section* 315(2), to have *given* a return that is incomplete.

**Application of *sections* 305(1) and 309(4) in certain cases**

**318A.** (*omitted*).

**Non-compliance with *Schedule* does not affect election**

**319.(1)** A failure of a person to comply with a provision of this *Schedule* for an election does not invalidate *the* election.

(2) Without limiting the generality of 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 (*words omitted*) to comply with a provision of this *Schedule* for the election does not invalidate the election

SCHEDULE (continued)

of the candidate.

(3) Without limiting the generality of subsection (1), if the agent of a candidate who is elected at an election fails to comply with a provision of this *Schedule* for the election, that failure does not invalidate the election of the candidate.

(4) (*omitted*).

**Amendment of claims and returns**

**319A.(1)** *If* the Electoral commissioner is satisfied that a claim or return under this *Schedule* 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 *Schedule* may *ask* the permission of the Electoral commission to make a specified amendment of the claim or return for the purpose of correcting an error or omission.

(2A) 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.

(3) A request under subsection (2) *must*—

- (a) be by written notice (*words omitted*) signed by the person making the request; and
- (b) be *given to* the Electoral commission.

(4) *If*—

- (a) a request has been made under subsection (2); and
- (b) the Electoral commission is satisfied that there is an error in, or omission from, the claim or return to which the request relates;

## SCHEDULE (continued)

the commission *must* permit the person making the request to amend the claim or return in accordance with the request.

(5) *If* the Electoral 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.

(6) An officer authorised for the purpose by the Electoral commission may exercise the power of the commission under subsection (4).

(7) *If* an officer acting under subsection (6) decides to refuse a request under subsection (2)—

- (a) subsection (5) applies as if the officer were the Electoral commission; and
- (b) the person who made the request may, by *written* notice (*words omitted*) lodged with the commission within 28 days after notice of the refusal was given, *ask* the commission to review the decision.

(8) *If* a request is made under subsection (7), the Electoral commission *must* review the decision to which the request relates and make a fresh decision.

(9) 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* 315(2), (3) or (4) arising out of the lodging of the claim or the *giving* of the return.<sup>125</sup>

**Inspection and supply of copies of claims and returns**

**320.(1)** The Electoral commission *must* keep, *at its office*, a copy of—

- (a) each *notice and* claim under Division 3; and
- (b) each return under Division 4 or 5; and

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<sup>125</sup> Section 315 (Offences)

SCHEDULE (continued)

(c) each return under Division 5A.<sup>126</sup>

(2) Any person *may* peruse, at the (*word omitted*) office of the Electoral commission (*words omitted*), a copy of a *notice*, claim or return *mentioned* in subsection (1).

(2A) (*omitted*).

(3) A person *may*, on payment of a fee *decided* by the Electoral commission to cover the cost of copying, (*word omitted*) obtain a copy of a *notice*, 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 3; or

(b) a return under Division 4 or 5 (*words omitted*);

until after the end of 24 weeks after the polling day in the election to which the claim or return relates.

(5) A person is not entitled under this section to peruse, or obtain a copy of—

(a) (*omitted*); or

(b) a return under Division 5A;

until February in the calendar year after the return is *given*.

**Indexation**

**321.** (*omitted*).

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<sup>126</sup> Division 3 (Election funding)  
Division 4 (Disclosure of donations)  
Division 5 (Disclosure of electoral expenditure)  
Division 5A (Annual returns by registered political parties and associated entities)

SCHEDULE (continued)

***Division 7—Authorised officers***

***Authorised officer under this Schedule***

**322.(1)** *This Schedule includes provision for the appointment of authorised officers, and gives authorised officers certain powers.*

**(2)** *The purpose of these provisions is to ensure that the Electoral commission has available to it suitably qualified persons who can help the Electoral commission properly deal with issues about compliance with the Schedule.*

***Appointment***

**323.(1)** *The Electoral commission may appoint any of the following persons as authorised officers—*

- (a) officers of the Electoral commission;*
- (b) officers or employees of a department;*
- (c) other persons prescribed under the regulations.*

**(2)** *The Electoral commission may appoint a person as an authorised officer only if—*

- (a) in the commission's opinion, the person has the necessary expertise or experience to be an authorised officer; or*
- (b) the person has satisfactorily finished training approved by the Electoral commission.*

***Limitation of authorised officer's powers***

**324.(1)** *The powers of an authorised officer may be limited—*

- (a) under a regulation; or*
- (b) under a condition of appointment; or*
- (c) by written notice of the Electoral commission given to the authorised officer.*

## SCHEDULE (continued)

(2) Notice under subsection (1)(c) may be given orally, but must be confirmed in writing as soon as practicable.

**Authorised officer's conditions of appointment**

**325.(1)** An authorised officer holds office on the conditions stated in the instrument of appointment.

(2) An authorised officer—

- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
- (b) may resign by signed notice of resignation given to the Electoral commission; and
- (c) if the conditions of appointment provide—ceases holding office as an authorised officer on ceasing to hold another office stated in the appointment conditions (the “**main office**”).

(3) However, an authorised officer may not resign from the office of authorised officer (the “**secondary office**”) under subsection (2)(b) if a term of the authorised officer's employment to the main office requires the authorised officer to hold the secondary office.

**Authorised officer's identity card**

**326.(1)** The Electoral commission must give each authorised officer an identity card.

(2) The identity card must—

- (a) contain a recent photograph of the authorised officer; and
- (b) be signed by the authorised officer; and
- (c) include an expiry date; and
- (d) identify the person as an authorised officer under this Schedule.

(3) A person who ceases to be an authorised officer must return the person's identity card to the Electoral commission within 21 days after the person ceases to be an authorised officer, unless the person has a

SCHEDULE (continued)

*reasonable excuse for not returning it.*

*Maximum penalty—20 penalty units.*

*(4) This section does not prevent the giving of a single identity card to a person under this section and for other provisions, Acts or purposes.*

***Production or display of authorised officer's identity card***

*327.(1) An authorised officer may exercise a power under this Schedule in relation to someone else (the “other person”) only if the authorised officer—*

- (a) first produces his or her identity card for the other person's inspection; or*
- (b) has the identity card displayed so it is clearly visible to the other person.*

*(2) However, if for any reason, it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the other person's inspection at the first reasonable opportunity.*

***Division 8—Power of authorised officers to ask questions or require documents***

***Power to require information from certain persons***

*328.(1) This section applies if an authorised officer suspects on reasonable grounds—*

- (a) an offence against this Schedule has been committed; and*
- (b) a person may be able to give information about the offence.*

*(2) The authorised officer may require the person to give information about the offence.*

*(3) When making the requirement, the authorised officer must warn the person it is an offence to fail to give the information, unless the person has a reasonable excuse.*



SCHEDULE (continued)

(4) *The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.*

*Maximum penalty—40 penalty units.*

(5) *It is a reasonable excuse for the person to fail to give information if giving it might tend to incriminate the person.*

(6) *The person does not commit an offence against this section if the information sought by the authorised officer is not in fact relevant to the offence.*

***Power to require production of certain documents***

**329.(1)** *An authorised officer may require a person who holds, claims to hold or should hold, a document to which this Schedule relates to produce the document.*

(2) *When making the requirement, the authorised officer must warn the person it is an offence to fail to produce the document, unless the person has a reasonable excuse.*

(3) *The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.*

*Maximum penalty—40 penalty units.*

(4) *It is a reasonable excuse for the person to fail to produce the document if producing it might tend to incriminate the person.*

(5) *The authorised officer may keep the document to take an extract from it or make a copy of it.*

(6) *The authorised officer must return the document to the person as soon as practicable after taking the extract or making the copy.*

(7) *The person does not commit an offence against this section if the document sought by the authorised officer is not in fact relevant to the offence.*

SCHEDULE (continued)

***Division 9—Powers of authorised officers for places***

***Entry to places***

**330.(1)** *An authorised officer may enter a place under this Schedule if—*

- (a) its occupier agrees to the entry; or*
- (b) the entry is permitted by a warrant.*

**(2)** *An authorised officer, without the occupier’s agreement or a warrant, may—*

- (a) enter a place when the place is open to the public; or*
- (b) enter land to ask for the occupier’s agreement to the authorised officer entering the land or a building or structure on the land.*

**(3)** *Unless an entry under this Schedule is made under the authority of a warrant, the entry must be made at a reasonable time.*

***Warrants for entry***

**331.(1)** *An authorised officer may apply to a Magistrate for a warrant for a place.*

**(2)** *The application must be sworn and must state the grounds on which the warrant is sought.*

**(3)** *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 application be given by statutory declaration.*

**(4)** *The Magistrate may issue a warrant only if the Magistrate is satisfied there are reasonable grounds for suspecting—*

- (a) there is a particular thing or activity (the “evidence”) that may provide evidence of the commission of an offence against this Schedule; and*

SCHEDULE (continued)

(b) *the evidence is at the place, or may be at the place within the next 7 days.*

(5) *The warrant must state—*

(a) *the authorised officer may, with necessary and reasonable help and force, enter the place and exercise the authorised officer's powers under this Schedule; and*

(b) *the evidence for which the warrant is issued; and*

(c) *the hours of the day or night when entry may be made; and*

(d) *the day (within 14 days after the warrant's issue) when the warrant ends.*

(6) *The Magistrate must record the reasons for issuing the warrant.*

***Warrants—applications made other than in person***

**332.(1)** *An authorised officer may apply for a warrant by phone, fax, radio or another form of communication if the authorised officer considers it necessary because of urgent circumstances or other special circumstances, including, for example, the authorised officer's remote location.*

(2) *Before applying for the warrant, the authorised officer must prepare an application stating the grounds on which the warrant is sought.*

(3) *The authorised officer may apply for the warrant before the application is sworn.*

(4) *After issuing a warrant, the Magistrate must immediately fax a copy to the authorised officer if it is reasonably practicable to fax the copy.*

(5) *If it is not reasonably practicable to fax a copy of the warrant to the authorised officer—*

(a) *the Magistrate must—*

(i) *record on the warrant the reasons for issuing the warrant; and*

(ii) *tell the authorised officer the date and time the warrant was*

SCHEDULE (continued)

*signed; and*

*(iii) tell the authorised officer the warrant's terms; and*

*(b) the authorised officer must write on a form of warrant (the "warrant form")—*

*(i) the Magistrate's name; and*

*(ii) the date and time the Magistrate signed the warrant; and*

*(iii) the warrant's terms.*

*(6) The facsimile warrant, or the warrant form properly completed by the authorised officer, authorises the entry and the exercise of the other powers mentioned in the warrant issued by the Magistrate.*

*(7) The authorised officer must, at the first reasonable opportunity, send to the Magistrate—*

*(a) the sworn application; and*

*(b) if a warrant form was completed by the authorised officer—the completed warrant form.*

*(8) On receiving the documents, the Magistrate must attach them to the warrant.*

*(9) Unless the contrary is proved, a court must presume a power exercised by an authorised officer was not authorised by a warrant issued under this section if—*

*(a) a question arises, in a proceeding before the court, whether the exercise of power was authorised by a warrant; and*

*(b) the warrant is not produced in evidence.*

***Authorised officer's general powers for places***

***333.(1) An authorised officer who enters a place under this Schedule may—***

*(a) search any part of the place; or*

*(b) examine, inspect, test, photograph or film anything at the place;  
or*

SCHEDULE (continued)

- (c) *copy a document at the place; or*
- (d) *take into the place any persons, equipment and materials the authorised officer reasonably requires for exercising a power in relation to the place; or*
- (e) *require a person at the place or the occupier of the place, to give the authorised officer reasonable help for the exercise of the powers mentioned in paragraphs (a) to (d).*

(2) *A person who is required by an authorised officer under subsection (1)(e) to give the authorised officer reasonable help for the exercise of a power must comply with the requirement, unless the person has a reasonable excuse for not complying with it.*

*Maximum penalty—20 penalty units.*

(3) *If the help is required to be given by—*

- (a) *answering a question; or*
- (b) *producing a document;*

*it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.*

(4) *This section applies to an authorised officer who enters a place to get the occupier's agreement to enter only if the agreement is given or the entry is otherwise authorised.*

***Division 10—Authorised officer's power to seize***

***Power to seize***

**334.(1)** *An authorised officer who enters a place under the authority of a warrant under this Schedule may seize the evidence for which the warrant was issued.*

(2) *An authorised officer who enters a place with the occupier's agreement under this Schedule may seize the particular thing for which the entry was made, if the officer believes, on reasonable grounds, the thing is*

SCHEDULE (continued)

*evidence of an offence against this Schedule.*

*(3) The authorised officer may also seize another thing if the officer believes, on reasonable grounds—*

- (a) the thing is evidence of an offence against this Schedule; and*
- (b) the seizure is necessary to prevent the thing being—*
  - (i) concealed, lost or destroyed; or*
  - (ii) used to commit, continue or repeat the offence.*

*(4) Having seized a thing, an authorised officer may—*

- (a) move the thing from the place where it was seized (the “**place of seizure**”) to another place; or*
- (b) leave the thing at the place of seizure but restrict access to the thing.*

*Example of subsection (4)(b)—*

*An authorised officer may seal—*

- (a) a thing and mark it to show it has been seized; or*
- (b) the entrance to a room where the seized thing is situated and mark it to show it contains a thing that has been seized.*

*(5) If an authorised officer restricts access to a seized thing, a person must not tamper with it without the approval of the authorised officer or the Electoral commission.*

*Maximum penalty—40 penalty units.*

***Powers in support of seizure***

**335.(1)** *To enable a thing to be seized, an authorised officer may, by written notice given to the person in control of the thing, require the person—*

- (a) to take it to a stated reasonable place by a stated reasonable time; and*
- (b) if necessary, to remain in control of it at the place for a reasonable time.*

SCHEDULE (continued)

(2) *If, for any reason, it is not practicable to make the requirement by written notice, the requirement may be made orally and confirmed by written notice as soon as practicable.*

(3) *A person must comply with a requirement under this section, unless the person has a reasonable excuse for not complying with it.*

*Maximum penalty—40 penalty units.*

***Receipt for seized things***

**336.(1)** *As soon as practicable after an authorised officer seizes a thing, the authorised officer must give a receipt for it to the person from whom it was seized.*

(2) *However, if for any reason it is not practicable to comply with subsection (1), the authorised officer must leave the receipt at the place of seizure, in a reasonably secure way and in a conspicuous position.*

(3) *Subsection (1) does not apply if—*

- (a) *the thing is unattended when seized; and*
- (b) *the thing's owner is unknown; and*
- (c) *the owner cannot be found after reasonable inquiries (given the thing's value) have been made.*

***Access to seized things***

**337.** *Until a seized thing is forfeited, returned, or otherwise finally dealt with, an authorised officer must allow its owner—*

- (a) *to inspect it; or*
- (b) *if it is a document—to make copies of it.*

***Return of seized things***

**338.(1)** *This section does not apply to a thing forfeited to the State.*

(2) *The authorised officer must return a seized thing to its owner at the*

SCHEDULE (continued)

end of—

- (a) 6 months; or
- (b) if a prosecution for an offence involving it is started within 6 months—the prosecution and any appeal from the prosecution.

(3) Despite subsection (2), the authorised officer must return the seized thing to its owner immediately the authorised officer stops being satisfied its retention as evidence is necessary.

***Forfeiture of unclaimed seized things***

**339.** A seized thing is forfeited to, and becomes the property of, the State if the Electoral commission—

- (a) cannot find its owner after reasonable inquiries (given the thing's value) have been made; or
- (b) is unable, after making reasonable efforts, to return it to its owner.

***Division 11—Other enforcement matters***

***False or misleading information***

**340.(1)** A person must not—

- (a) state anything to an authorised officer the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an authorised officer anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—20 penalty units.

(2) It is enough for a complaint for an offence against subsection (1)(a) or (b) to state that the statement made was false or misleading to the person's knowledge.



SCHEDULE (continued)

***False, misleading or incomplete documents***

**341.(1)** *A person must not give an authorised officer a document containing information the person knows is false, misleading or incomplete in a material particular.*

*Maximum penalty—20 penalty units.*

**(2)** *However, the person does not commit an offence against subsection (1) if, when giving the document, the person—*

- (a) informs the authorised officer, to the best of the person’s ability, how it is false, misleading or incomplete; and*
- (b) gives the correct information to the authorised officer if the person has, or can reasonably obtain, the correct information.*

**(3)** *It is enough for a complaint for an offence against subsection (1) to state that the document was false, misleading or incomplete to the person’s knowledge.*

***Authorised officer to give notice of damage***

**342.(1)** *This section applies if—*

- (a) an authorised officer damages anything in the exercise of a power under this Schedule; or*
- (b) a person who is authorised by an authorised officer to take action under this Schedule damages anything in taking the action.*

**(2)** *The authorised officer must promptly give written notice of the particulars of the damage to the person who appears to the authorised officer to be the thing’s owner.*

**(3)** *If the authorised officer believes the damage was caused by a latent defect in the thing or other circumstances beyond the authorised officer’s control, the authorised officer may state this in the notice.*

**(4)** *If, for any reason, it is not practicable to comply with subsection (2), the authorised officer must—*

- (a) leave the notice at the place where the damage happened; and*

SCHEDULE (continued)

(b) *ensure the notice is left in a reasonably secured way in a conspicuous position.*

(5) *This section does not apply to damage the authorised officer believes, on reasonable grounds, is trivial.*

**Compensation**

**343.(1)** *A person may claim compensation if the person incurs loss or expense because of the exercise or purported exercise of a power under this Schedule, including, for example, in complying with a requirement made of the person under this Schedule.*

(2) *Compensation may be claimed and ordered in a proceeding for—*

(a) *compensation brought in a court of competent jurisdiction; or*

(b) *an offence against this Schedule brought against the person making the claim for compensation.*

(3) *A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.*

(4) *The regulations may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.*

**Agreement to entry**

**344.(1)** *This section applies if an authorised officer seeks the agreement of an occupier of a place to an authorised officer entering the place under this Schedule.*

(2) *In seeking the agreement, the authorised officer must inform the occupier—*

(a) *of the purpose of the entry; and*

(b) *that information obtained by the authorised officer may be used in evidence in court; and*

(c) *that the occupier is not required to agree to the entry.*

SCHEDULE (continued)

*(3) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgment of the occupier's agreement.*

*(4) The acknowledgment must state—*

*(a) the occupier was informed—*

*(i) of the purpose of the entry; and*

*(ii) that information obtained by the authorised officer may be used in evidence in court; and*

*(iii) that the occupier was not required to agree to the entry; and*

*(b) the occupier agreed to the authorised officer entering the place and exercising powers under this Schedule; and*

*(c) the time and date the agreement was given.*

*(5) If the occupier signs an acknowledgment of agreement, the authorised officer must immediately give a copy to the occupier.*

***Evidence of agreement***

***345.(1) This section applies to a proceeding if—***

*(a) a question arises whether an occupier of a place agreed to the entry of the place by an authorised officer under this Schedule; and*

*(b) an acknowledgment of the occupier's agreement is not produced in evidence.*

*(2) In a proceeding to which this section applies, the court may presume the occupier did not agree to the entry, unless the contrary is proved.*

***Obstruction of authorised officer***

***346.(1) In this section—***

***“authorised officer”*** includes a person who is authorised by an authorised officer to take action under this Schedule.

*(2) A person must not obstruct an authorised officer in the exercise of a*

SCHEDULE (continued)

*power under this Schedule, unless the person has a reasonable excuse.*

*Maximum penalty—50 penalty units.*

*(3) In this section—*

*“obstruct” includes hinder, resist and attempt to obstruct.*

***Impersonation of authorised officer***

*347. A person must not pretend to be an authorised officer.*

*Maximum penalty—80 penalty units.*

***Division 12—Evidence***

***Evidentiary provisions***

*348.(1) This section applies to a proceeding under this Act.*

*(2) The appointment or power of 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 Schedule.*

*(3) A signature purporting to be the signature of the Electoral 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) a stated document is—*
  - (i) an order, direction, requirement or decision, or a copy of an order, direction, requirement or decision, given or made under this Schedule; or*
  - (ii) a notice, or a copy of a notice, given under this Schedule; or*
  - (iii) a record, or a copy of a record, kept under this Schedule; or*

## SCHEDULE (continued)

- (iv) *a document, or a copy of a document, kept under this Schedule;*
- (b) *on a stated day, a stated person was given a stated notice, order, requirement or direction under this Schedule;*
- (c) *anything else prescribed under the regulations.*

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 8 December 2000. Future amendments of the Electoral Act 1992 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	1 September 1992
2	to Act No. 82 of 1994	21 December 1994
3	to Act No. 58 of 1995	18 December 1995
3A	to Act No. 2 of 1996	25 July 1996
3B	to Act No. 79 of 1996	24 January 1997
4	to Act No. 11 of 1997	1 July 1997
4A	to Act No. 82 of 1997	15 December 1997
4B	to Act No. 33 of 1999	28 October 1999
4C	to Act No. 46 of 2000	8 November 2000

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	2
Changed names and titles	2
Corrected minor errors	1, 3
Obsolete and redundant provisions	2
Renumbered provisions	3

## 6 List of legislation

### **Electoral Act 1992 No. 28**

date of assent 1 June 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 19 June 1992 (1992 SL No. 160)

as amended by—

### **Electoral Amendment Act 1994 No. 82**

date of assent 1 December 1994

commenced on date of assent

### **Justice and Attorney-General (Miscellaneous Provisions) Act 1995 No. 24 pts 1, 4**

date of assent 11 April 1995

commenced on date of assent

### **Parliamentary Committees Act 1995 No. 38 ss 1, 35 sch 1**

date of assent 15 September 1995

commenced on date of assent

### **Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

### **Parliamentary Committees Legislation Amendment Act 1996 No. 2 pts 1, 4**

date of assent 24 April 1996

commenced on date of assent

### **Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

### **Justices of the Peace and Commissioners for Declarations Legislation Amendment Act 1996 No. 40 pts 1, 3**

date of assent 1 November 1996

commenced on date of assent



**Justice Legislation (Miscellaneous Provisions) Act 1996 No. 79 pts 1, 12**

date of assent 12 December 1996  
commenced on date of assent

**Electoral Amendment Act 1997 No. 10**

date of assent 15 May 1997  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 1997 (1997 SL No. 134)

**Referendums Act 1997 No. 11 s 102 sch 2**

date of assent 15 May 1997  
commenced on date of assent

**Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997 No. 82  
ss 1–3, sch**

date of assent 5 December 1997  
commenced on date of assent

**Industrial Relations Act 1999 No. 33 ss 1, 2(2), 747 sch 3**

date of assent 18 June 1999  
ss 1–2 commenced on date of assent  
remaining provisions commence 1 July 1999 (1999 SL No.159)

**State Penalties Enforcement Act 1999 No. 70 ss 1–2, 166 sch 1**

date of assent 6 December 1999  
ss 1–2 commenced on date of assent  
remaining provisions commenced 27 November 2000 (2000 SL No. 274)

**Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch**

date of assent 25 October 2000  
commenced on date of assent

**Corrective Services Act 2000 No. 63 ss 1, 2(2), 276 sch 2**

date of assent 24 November 2000  
ss 1–2 commenced on date of assent  
remaining provisions not yet proclaimed into force (see s 2(2))

## 7 List of annotations

### Definitions

- s 3 def “Commonwealth Electoral Act” ins 1994 No. 82 s 2 sch  
def “cut off day for electoral rolls” om 1997 No. 11 s 102 sch 2  
def “cut-off day for electoral rolls” ins 1997 No. 11 s 102 sch 2  
def “institution” amd 2000 No. 63 s 276 sch 2  
def “issuing officer” sub 1997 No. 11 s 102 sch 2  
def “ordinary vote” ins 1994 No. 82 s 3  
def “parliamentary committee” ins 1995 No. 38 s 35 sch 1  
def “referendum” ins 1997 No. 11 s 102 sch 2  
def “register of special postal voters” ins 1996 No. 79 s 38  
def “registered officer” amd 1997 No. 10 s 4

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

s 7            amd 1995 No. 58 s 35 sch 1; 1996 No. 2 s 13

**Tenure and terms of office**

s 10           amd 1996 No. 37 s 147 sch 2

**Electoral officer accountable officer**

s 20           sub 1996 No. 37 s 147 sch 2

**Deputy electoral commissioner**

s 22           amd 1994 No. 82 s 4

**Terms and conditions of appointment etc.**

s 23           amd 1995 No. 38 s 35 sch 1; 1996 No. 2 s 14; 1996 No. 37 s 147 sch 2

**Acting electoral commissioner**

s 27           sub 1994 No. 82 s 2 sch

**Acting deputy electoral commissioner**

s 28           sub 1994 No. 82 s 2 sch

**Staff**

s 30           amd 1996 No. 37 s 147 sch 2; 1997 No. 11 s 102 sch 2

**Commission to keep electoral rolls**

s 58           amd 1996 No. 40 s 11

**Preparation of electoral rolls**

s 59           amd 1997 No. 11 s 102 sch 2

**Availability of entire electoral rolls**

s 61           amd 1997 No. 82 s 3 sch

**Entitlement to enrolment**s 64           amd 1944 No. 82 s 5; 2000 No. 63 s 276 sch 2**Enrolment and transfer of enrolment**

s 65           amd 1997 No. 11 s 102 sch 2

**PART 4A—REGISTER OF SPECIAL POSTAL VOTERS**

pt hdg       ins 1996 No. 79 s 39

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

s 67A        ins 1996 No. 79 s 39

**Applications for registration**

s 70           amd 1994 No. 82 s 2 sch

**Registered officer's deputy**

s 72A        ins 1997 No. 10 s 5

**Refusal of registration**

s 73           amd 1994 No. 82 s 6

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

s 85A        ins 1994 No. 82 s 7

**Scrutineers**

s 99 amd 1997 No. 10 s 6

**Procedure for voting**

s 102 amd 1997 No. 10 s 7

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

s 103 amd 1994 No. 82 s 8

**Who may make a declaration vote**

s 105 amd 1996 No. 79 s 40

**Who must make a declaration vote**

s 106 amd 1994 No. 82 s 9; 1997 No. 10 s 8

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

s 110 amd 1997 No. 10 s 9

**Electoral visitor voting**

s 111 amd 1994 No. 82 s 10; 1995 No. 24 s 12; 1997 No. 10 s 10

**Formal and informal ballot papers**

s 114 amd 1997 No. 10 s 11

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

s 116 amd 1997 No. 10 s 12

**Preliminary counting of ordinary votes**

s 118 amd 1994 No. 82 s 11

**Official counting of votes**

s 119 amd 1994 No. 82 s 2 sch

**Notice of failure to vote etc.**

s 125 amd 1994 No. 82 s 12; 1997 No. 10 s 13

**Payments for failure to vote**s 125A ins 1994 No. 82 s 13  
amd 1999 No. 70 s 166 sch 1**Storage of ballot papers and declaration envelopes**

s 126 amd 1994 No. 82 s 14

**PART 7—ELECTORAL FUNDING AND FINANCIAL DISCLOSURE**pt hdg prev pt 7 renum as pt 8 1994 No. 82 s 2 sch  
pres pt 7 ins 1994 No. 82 s 15**Purposes of part**

s 126A ins 1994 No. 82 s 15

**Law about electoral funding and financial disclosure**

s 126B ins 1994 No. 82 s 15

**Regulations for part**s 126C ins 1994 No. 82 s 15  
amd 1995 No. 58 s 4 sch 1

**References in the schedule to electoral commission**

**s 126D** ins 1994 No. 82 s 15

**PART 8—COURT OF DISPUTED RETURNS**

**pt hdg** prev pt 8 renum as pt 9 1994 No. 82 s 2 sch  
pres pt 8 (prev pt 7) renum 1994 No. 82 s 2 sch

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

**s 127** amd 1997 No. 11 s 102 sch 2

**Who may dispute the election**

**s 129** amd 1994 No. 82 s 16

**Powers of the court**

**s 136** amd 1997 No. 10 s 14

**Restrictions on certain orders**

**s 137** amd 1997 No. 10 s 15

**Costs**

**s 140** amd 1997 No. 82 s 3 sch

**PART 9—ENFORCEMENT**

**pt hdg** prev pt 9 renum as pt 10 1994 No. 82 s 2 sch  
pres pt 9 (prev pt 8) renum 1994 No. 82 s 2 sch

**False names etc. on electoral rolls**

**s 151** amd R2 (see RA s 39)

**Misuse of restricted information**

**s 152** amd R2 (see RA s 39); 1997 No. 11 s 102 sch 2

**False or misleading statements**

**s 153** amd R2 (see RA s 39)

**False, misleading or incomplete documents**

**s 154** amd R2 (see RA s 39)

**Bribery**

**s 155** amd R2 (see RA s 39)

**Providing money for illegal payments**

**s 156** amd R2 (see RA s 39)

**Improperly influencing commission**

**s 157** amd R2 (see RA s 39)

**Interfering with election right or duty**

**s 158** amd R2 (see RA s 39); 2000 No. 46 s 3 sch

**Forging or uttering electoral papers etc.**

**s 159** amd R2 (see RA s 39)

**Author of election matter must be named**

**s 161** amd 1997 No. 10 s 16

**Failure to vote etc.**

**s 164** sub 1994 No. 82 s 17

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

s 166 amd 1994 No. 82 s 18

**Influencing voting**

s 168 amd R2 (see RA s 39)

**Displaying political statements in certain places**

s 169 sub 1994 No. 82 s 19

**Voting if not entitled etc.**

s 170 amd R2 (see RA s 39)

**Offences relating to ballot papers**

s 171 amd R2 (see RA s 39)

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

prov hdg amd 1997 No. 10 s 17(1)

s 172 amd R2 (see RA s 39)  
sub 1995 No. 24 s 13  
amd 1997 No. 10 s 17(2)–(5)**Secrecy of voting**

s 173 amd R2 (see RA s 39)

**Breaking seals on parcels**

s 174 amd R2 (see RA s 39)

**Duty of witness to signing of declaration voting papers**

s 175 amd R2 (see RA s 39)

**PART 10—MISCELLANEOUS**pt hdg prev pt 10 renum as pt 12 1994 No. 82 s 2 sch  
pres pt 10 (prev pt 9) renum 1994 No. 82 s 2 sch**Regulations**

s 182 amd 1995 No. 58 s 4 sch 1

**PART 11—TRANSITIONAL PROVISIONS**pt hdg ins 1994 No. 82 s 20  
om R3 (see RA s 7(1)(k))**References to Commonwealth Electoral Act**s 183 prev s 183 om R1 (see RA s 40)  
pres s 183 ins 1994 No. 82 s 20  
exp 1 June 1995 (see s 183(2))**PART 12—CONSEQUENTIAL REPEALS AND AMENDMENTS OF OTHER ACTS**pt hdg pres pt 12 (prev pt 10) renum 1994 No. 82 s 2 sch  
om 1995 No. 58 s 4 sch 1**Division 1—Repeal of Acts****Continuation of appointment of certain officials appointed under Elections Act 1983**

s 184 om R1 (see RA s 38)

**Continuation of joint roll arrangement with Commonwealth s 185** om 1995 No. 58 s 4 sch 1

**Division 2—Amendment of City of Brisbane Act 1924**  
div 2 (ss 186–195) om R1 (see RA s 40)

**Division 3—Amendment of Criminal Code**  
div 3 (ss 196–197) om R1 (see RA s 40)

**Division 4—Amendment of Legislative Assembly Act 1867**  
div 4 (ss 198–201) om R1 (see RA s 40)

**Division 5—Amendment of Local Government Act 1936**  
div 5 (ss 202–205) om R1 (see RA s 40)

**SCHEDULE—ELECTION FUNDING AND FINANCIAL DISCLOSURE BASED ON PART XX OF THE COMMONWEALTH ELECTORAL ACT**

ins 1994 No. 82 s 21

amd 1997 No. 10 s 18; 1999 No. 33 s 747 sch 3

## **8 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

**Corrective Services Act 2000 No. 63 s 276 sch 2 reads as follows—**

### **ELECTORAL ACT 1992**

#### **1. Section 3, definition “institution”, paragraph (f), ‘prison’—**

*omit, insert—*

‘corrective services facility’.

#### **2. Section 64(4), definition “prisoner”, ‘1988’—**

*omit, insert—*

‘2000’.