

# NORTHERN TERRITORY OF AUSTRALIA

## ELECTORAL ACT

As in force at 11 March 2008

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**Schedule 1**

**Schedule 2**

**ENDNOTES**





# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 11 March 2008

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## ELECTORAL ACT

An Act to provide for elections of members of the legislative assembly and for related purposes

### Part 1 Preliminary

#### 1 Short title

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

#### 2 Commencement

The provisions of this Act come into operation on the date, or respective dates, fixed by the Administrator by notice in the *Gazette*.

### Part 2 Interpretation

#### 3 Definitions

In this Act, unless the contrary intention appears:

***affected person*** has the meaning in section 225.

***amount***, for Part 10, has the meaning in section 176.

***appealable decision*** has the meaning in section 225.

***appeal details*** has the meaning in section 227.

***appointed member*** has the meaning in section 336(1).

***approved form*** means a form approved under section 318.

***associated entity***, for Part 10, has the meaning in section 176.

***Augmented Redistribution Committee*** means the Augmented Redistribution Committee established by section 334.

**authorised officer** means an officer authorised by the Commission for the provision in which the expression occurs.

**authorised witness** means:

- (a) in Australia or an external Territory – an officer or person enrolled on a roll kept under the Commonwealth Act; or
- (b) in another place – a person who is at least 18 years old.

**available for public inspection** has the meaning in section 6.

**ballot paper** includes a declaration ballot paper.

**broadcast**, for Part 10, has the meaning in section 176.

**broadcaster**, for Part 10, has the meaning in section 176.

**candidate square** has the meaning in section 40(2)(c).

**certified list of voters**, for an election, means a list of electors prepared and certified under section 44 for the election.

**closed**, for a roll, means closed in accordance with section 8.

**commencement date**, for Part 18, has the meaning in section 348.

**Commission** means the Northern Territory Electoral Commission established by section 307.

**Commissioner** means the person holding office as the Electoral Commissioner under an appointment under section 314.

**Commission's office** means the Commission's office in Darwin.

**Commonwealth Act** means the *Commonwealth Electoral Act 1918* of the Commonwealth.

**contravene** includes fail to comply with.

**corporation**, for Part 10, has the meaning in section 176.

**Court of Disputed Returns** means the Court of Disputed Returns established by section 232.

**credit card**, for Part 10, has the meaning in section 176.

**declaration ballot paper** for:

- (a) Part 6, Division 3, Subdivision 1 – has the meaning in section 54(1);

- (b) Part 6, Division 3, Subdivision 2 – has the meaning in section 56(1) or (2);
- (c) Part 6, Division 4 – has the meaning in section 62(1)(b);
- (d) Part 6, Division 5 – has the meaning in section 71(2) or 73(2); or
- (e) other provisions – means a declaration ballot paper mentioned in paragraph (a), (b), (c) or (d).

**declaration envelope** means the envelope in which a declaration ballot paper is placed under section 55(2)(c), 57(2)(c), 72(2)(b) or 74(2)(c).

**declaration vote** means a vote cast under Part 6, Division 3, 4 or 5.

**declaration voting papers** means:

- (a) a declaration ballot paper issued under section 54(1), 56(1), 56(2), 71(2) or 73(2);
- (b) a declaration envelope; and
- (c) for a declaration ballot paper issued under section 56(1), 56(2) or 73(2) – a declaration under section 56(1)(c), 56(2)(c) or 73(1)(e).

**defined details**, for Part 10, Division 3, has the meaning in section 189.

**defined particulars**, for Part 10, Division 5, has the meaning in section 204.

**disclosure period**, for Part 10, has the meaning in section 182.

**disposition of property**, for Part 10, has the meaning in section 176.

**distribute**, for Part 13, Division 1, Subdivision 2, has the meaning in section 268.

**division** means an electoral division for the election for an MLA.

**election** has the meaning in section 4(1).

**election period**, for an election, means the period:

- (a) starting on the date the writ for the election is issued; and

(b) ending on the date the writ is returned.

**elector** means a person whose name is on a roll.

**electoral advertisement**, for Part 10, Division 4, has the meaning in section 199.

**electoral expenditure**, for Part 10, Division 4, has the meaning in section 199.

**electoral matter** has the meaning in section 7.

**electoral paper** means a document provided for or required under this Act.

**eligible political party** means a political party that:

- (a) is registered under the Commonwealth Act; or
- (b) is established on the basis of a written constitution (however described) that states the party's aims and has at least 200 members who are:
  - (i) electors;
  - (ii) members under the party's constitution; and
  - (iii) not members of a registered party or another political party applying for registration.

**enrolled**, for a person, means the person's name is on a roll.

**enrolled division**, for an elector, means the division for which the person is enrolled.

**entity**, for Part 10, has the meaning in section 176.

**executive officer**, of a body corporate, means a person who is concerned with, or takes part in, the management of the body corporate, (whether or not the person is a director or the person's position is given the name of executive officer), and includes a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth or a State or Territory.

**external Territory**, of Australia, has the meaning in the *Acts Interpretation Act 1901* of the Commonwealth.

**extract** means an extract from a roll prepared under section 12.

**fails**, for an election, has the meaning in section 135.

**false or misleading** includes false or misleading because of the omission of a statement.

**financial controller**, for Part 10, has the meaning in section 176.

**formal**, for a ballot paper, means the ballot paper is not informal, spoilt or been discarded.

**former division**, for Part 18, has the meaning in section 350.

**general election** has the meaning in section 4(3).

**gift**, for Part 10, has the meaning in section 176.

**informal**, for a ballot paper, has the meaning in section 94.

**information notice** has the meaning in section 226.

**infringement notice** has the meaning in section 300.

**infringement offence** means an offence against:

- (a) section 279(1); or
- (b) another provision of this Act prescribed by the Regulations.

**investigation notice**, for Part 10, Division 6, has the meaning in section 214.

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

**loan**, for Part 10, has the meaning in section 176.

**Master** means the Master of the Supreme Court.

**minimum term**, for Part 5, Division 1, has the meaning in section 23.

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

**mobile polling period**, for an election, means the period starting on the day that is 9 days after the date of the issue of the writ for the election and ending at 6 pm on polling day for the election.

**mobile polling place** means a polling place authorised under section 78 for mobile polling.

**new division**, for Part 18, has the meaning in section 350.

**newspaper**, for Part 13, Division 1, Subdivision 2, has the meaning in section 268.

**nomination** means a nomination as a candidate for an election made under Part 5, Division 3.

**nomination day** means the date fixed by the writ for an election or general election as the date for the nomination of candidates.

**nomination deposit** has the meaning in section 32(1)(g).

**nominee** means a person nominated under Part 5, Division 3 as a candidate for an election.

**officer** means an officer appointed under section 330.

**ordinary vote** means a vote other than a declaration vote.

**participant**, for Part 10, Division 4, has the meaning in section 199.

**party candidate** means:

- (a) a candidate at an election nominated by the registered officer of a registered party; or
- (b) in relation to a registered party – a candidate nominated by the registered officer of the party.

**party's name**, for a registered party, means the name under which the party is registered.

**political party** means an organisation (whether incorporated or unincorporated) an object or activity of which is the promotion of the election to the Legislative Assembly of a candidate or candidates endorsed by it.

**polling hours** means:

- (a) for a polling place other than a pre-election voting centre or mobile polling place – from 8 am until 6 pm on polling day;
- (b) for a pre-poll voting centre – the hours decided under section 69(1)(b) for voting at pre-election voting centres; or
- (c) for a mobile polling place – the hours stated in the authorisation under section 78 authorising polling at the place.

**polling day** means the date fixed by a writ as polling day for an election or general election, and includes a day to which polling is adjourned under section 91.

***polling place*** means:

- (a) a polling place appointed under section 42(1)(b), and includes:
  - (i) the area adjacent to a polling place designated by a notice erected by the officer in charge of the polling place during the period the notice is displayed; and
  - (ii) the area designated by a notice erected by an authorised officer at a mobile polling place during the period the notice is displayed; or
- (b) a pre-election voting centre.

***Postal Ballot Box*** means the ballot box mentioned in section 111(3).

***postal ballot paper*** means a declaration ballot paper issued under section 62.

***postal vote*** means a declaration vote for which postal voting papers are issued under section 62.

***postal vote certificate*** means the certificate issued under section 62(1)(a).

***postal voting papers*** means a postal vote certificate and postal ballot paper.

***pre-election voting centre*** means a place decided under section 42(1)(a) for declaration voting under Part 6, Division 5.

***pre-polling period***, for an election, means the period starting on the day that is 13 days after the date of the issue of the writ for the election and ending at 6 pm on the day before polling day for the election.

***prescribed amount***, for an infringement offence, means the amount prescribed by the Regulations for the offence.

***property***, for Part 10, has the meaning in section 176.

***public notice*** has the meaning in section 5.

***publish***, for Part 13, Division 1, Subdivision 2, has the meaning in section 268.

***reasonably believes*** means believes on grounds that are reasonable in the circumstances.

**redistribution** means a redistribution of the Territory into divisions under Part 8.

**Redistribution Committee** means the Redistribution Committee established by section 331.

**redistribution declaration notice** has the meaning in section 147(1).

**region** means a region declared under section 69.

**registered industrial organisation**, for Part 10, has the meaning in section 176.

**registered officer**, of a registered party, means the person shown in the register of registered parties as the party's registered officer.

**registered party** means a political party registered under Part 9.

**registered postal voter** means a person whose name is included in the register of postal voters.

**register of postal voters** means register of postal voters kept under section 58.

**register of registered parties** means the register of registered parties kept under section 167.

**register of reporting agents** means the register of reporting agents kept under section 186.

**Regulations** means the Regulations made under this Act.

**related bodies corporate**, for Part 10, has the meaning in section 176.

**repealed Act**, for Part 18, has the meaning in section 348.

**reporting agent**, for Part 10, has the meaning in section 176.

**return**, for Part 10, Division 6, has the meaning in section 214.

**roll** means a roll of electors under this Act.

**scrutineer** means a person appointed under section 46 to represent a candidate.

**scrutiny centre** means a place decided under section 42(1)(c) for the conduct of scrutiny for an election under Part 7.



**Self-Government Act** means the *Northern Territory (Self-Government) Act 1978* of the Commonwealth.

**sitting day**, for the Legislative Assembly, means a day on which the Assembly actually sits.

**suppressed**, for a person's address, means the person's address is not included in a roll extract under section 12(3).

**this Act** includes the Regulations made under this Act.

**voter's question**, for Part 6, has the meaning in section 51.

**writ** means a writ for an election or general election issued under section 27.

#### **4 Election and general election**

- (1) An election is an election for an MLA.
- (2) An election may be held alone, at the same time as another election or as part of a general election.
- (3) A general election is an election for all MLAs.

#### **5 Public notice**

- (1) If a provision of this Act requires the Commission to give public notice about a matter, the Commission must publish notice about the matter in a newspaper circulating generally throughout the Territory or, if the matter relates only to a particular division, in the division.
- (2) The Commission may also give notice about the matter in another way the Commission considers appropriate, including for example, by radio or television broadcast.
- (3) However, if under a provision of this Act, a stated period after publication of a notice is required or allowed for a matter, the period starts on the date the notice is first published under subsection (1).

#### **6 Available for public inspection**

- (1) If a provision of this Act requires an entity to make a document or copy of a document available for public inspection, the entity must make the document or copy available for inspection by members of the public during ordinary business hours at the Commission's office.

- (2) The entity may also make the document or copy available for public inspection at the other places in the Territory the entity considers appropriate.
- (3) The right of inspection does not give any right to copy the document or a part of it unless otherwise expressly provided.

## **7 Electoral matter**

- (1) Electoral matter is matter, in printed or electronic form, that is intended or likely to affect voting at an election.
- (2) Without limiting subsection (1), matter is taken to be intended or likely to affect voting at an election if it contains an express or implicit reference to or comment on:
  - (a) the election;
  - (b) the performance of the Government or opposition or a previous Government or opposition;
  - (c) the performance of an MLA or former MLA;
  - (d) the performance of a political party in the election; or
  - (e) an issue submitted to, or otherwise before, the electors in relation to the election.

## **8 Closed roll**

The roll for a division is closed during the period:

- (a) starting at 8 pm on the day that is 2 days after the date of the issue of a writ for an election for the division; and
- (b) ending at the close of polling for the election.

# **Part 3 Constitution of Legislative Assembly**

## **9 Number of MLAs**

The Legislative Assembly consists of 25 members.

## **Part 4            Electoral rolls and enrolment**

### **Division 1       Electoral rolls**

#### **10            Commission to keep rolls**

The Commission must keep a roll for each division.

#### **11            Contents of roll**

- (1) Each roll must contain the following information for each elector for the division:
  - (a) surname;
  - (b) each given name;
  - (c) residential address and postal address if not the same as the residential address;
  - (d) sex;
  - (e) occupation;
  - (f) date of birth;
  - (g) information prescribed by the Regulations.
- (2) A roll may contain the following information for each elector for the division:
  - (a) salutation;
  - (b) any former surname or given name;
  - (c) any previous address;
  - (d) information prescribed by the Regulations.

#### **12            Roll extracts to be available for public inspection**

- (1) The Commission must make available for public inspection by any person, without fee, the most recent extract from each roll.
- (2) The roll extract must contain the following information for each elector enrolled at the time the extract is prepared:
  - (a) surname;
  - (b) each given name;

(c) residential address.

- (3) However, if, under section 104 of the Commonwealth Act, the person's address is not included on a roll for a Subdivision under that Act, the person's address must not be included in the roll extract.
- (4) For subsection (1), the Commission must prepare an extract of each roll at least once each month.

### **13        Supply of roll extract to MLA and registered party**

- (1) At least once each month, the Commission must, on request:
- (a) give an extract from the roll for a division to the MLA for the division; and
  - (b) give an extract from the roll for all divisions to the registered officer of each registered party.
- (2) In addition to the information mentioned in section 12(2), the extract must contain the following information for each elector enrolled at the time the extract is prepared:
- (a) postal address;
  - (b) sex;
  - (c) occupation;
  - (d) date of birth;
  - (e) salutation;
  - (f) information prescribed by the Regulations.
- (3) If practicable, the Commission must give the person the roll extract in electronic form.

### **14        Use of roll extracts**

- (1) A person must not use protected information for:
- (a) a commercial purpose; or

(b) any other purpose other than an approved purpose.

Penalty:        If the offender is a natural person – 400 penalty units  
                     or imprisonment for 2 years.

                     If the offender is a body corporate – 2 000 penalty  
                     units.

(2) A person must not directly or indirectly disclose or communicate protected information to someone else for a purpose other than an approved purpose.

Penalty:        If the offender is a natural person – 400 penalty units  
                     or imprisonment for 2 years.

                     If the offender is a body corporate – 2 000 penalty  
                     units.

(3) In this section:

***approved purpose*** means any of the following:

- (a) for an MLA – the exercise of the MLA's functions;
- (b) for the registered officer of a registered party – the exercise by an MLA who is a member of the party of the MLA's functions;
- (c) for an MLA or the registered officer of a registered party:
  - (i) a purpose connected with an election; or
  - (ii) monitoring the accuracy of information in the roll;
- (d) for anyone – a purpose prescribed by the Regulations.

***protected information***, in relation to a person, means information (other than information available for public inspection under section 12) the person knows, or reasonably believes, was obtained from a roll extract given to the person or someone else under section 13.

## **15        Providing roll information to certain entities for medical research and health screening programs**

(1) The Commission may, under this section, give a copy of a roll or information contained on a roll (***electoral information***) to an entity for conducting medical research or providing a health screening program if satisfied:

- (a) giving the information is in the public interest; and

- (b) the public interest in giving the information outweighs the public interest in protecting the privacy of personal information in the particular circumstances.
- (2) The Commission may include in the electoral information the age ranges of electors in a way decided by the Commission.
- (3) However, the electoral information must not include the address of a person whose address is suppressed.
- (4) The electoral information may be given to the entity in printed or electronic form.
- (5) The Commission must obtain from the entity an undertaking that the entity will:
  - (a) only use the electoral information for a stated purpose;
  - (b) not copy the information or give it to anyone else; and
  - (c) return the information to the Commission or destroy it after using it for the stated purpose.
- (6) A person must not use electoral information obtained under subsection (1) other than in accordance with the undertaking.

Penalty for an offence against subsection (6):

If the offender is a natural person – 400 penalty units or imprisonment for 2 years.

If the offender is a body corporate – 2 000 penalty units.

## **16            Providing roll information to Sheriff**

- (1) For the Juries Act, the Commission must, on request by the Sheriff, give the Sheriff a copy of all rolls.
- (2) The rolls may be given to the Sheriff in printed or electronic form.

## **17            Maintenance of rolls**

- (1) The Commission must, as far as practicable, keep the rolls up to date.
- (2) The Commission may alter a roll at any time as follows:
  - (a) to register any change of name;
  - (b) to bring up to date any particulars appearing on the roll;

- (c) to correct any mistake or omission;
  - (d) to remove the name of a deceased elector;
  - (e) for a person who is enrolled on the Commonwealth roll – to reflect an alteration under section 105 of the Commonwealth Act.
- (3) However, the Commission must not alter a roll for a division to give effect to a claim for enrolment or transfer of enrolment received by the Commission while the rolls are closed for an election for the division.

## **18            Power to require information**

- (1) The Commission may, by written notice, require a person to give the Commission or a stated officer stated information required for the preparation, maintenance or revision of a roll within a stated reasonable time.
- (2) The person must comply with the notice unless the person has a reasonable excuse.

Penalty:        If the offender is a natural person – 20 penalty units.

                  If the offender is a body corporate – 100 penalty units.

- (3) Subsection (2) does not apply if compliance with the requirement would involve the disclosure of information in contravention of another law.

## **19            Disclosure of roll information**

- (1) This section applies to a person who is or has been:
- (a) the Commissioner;
  - (b) an officer; or
  - (c) a member of the staff of the Commission.
- (2) The person must not directly or indirectly do any of the following:
- (a) make a record of, or communicate to another person, information acquired by the person because of the person's involvement in the administration of this Act;

- (b) give another person, or permit another person to have access to a copy of a roll, a roll extract, information contained on a roll or another document given to the person for the administration of this Act.

Penalty:        400 penalty units or imprisonment for 2 years.

- (3) Subsection (2) does not apply:
  - (a) to the extent it is necessary for the person to do the thing:
    - (i) for this Act; or
    - (ii) for the proper conduct of an election under the *Local Government Act*; or
  - (b) if the person is authorised or required by law to do the thing.

## **20        Arrangement with Commonwealth for keeping rolls**

- (1) The Administrator may arrange with the Governor-General of the Commonwealth for, or for carrying out a procedure relating to, the preparation, alteration or revision of the rolls jointly by the Territory and the Commonwealth.
- (2) The arrangement may be made for the use of the rolls as electoral rolls for Commonwealth or Territory elections or for another purpose.
- (3) The arrangement must be consistent with this Act.
- (4) The rolls prepared under the arrangement may contain the following information for the purposes of Commonwealth elections:
  - (a) the names and descriptions of persons who are not entitled to be enrolled as electors for Territory elections if the rolls clearly indicate the persons are not enrolled as electors for Territory elections;
  - (b) distinguishing marks against the names of persons enrolled as electors showing the persons are or are not also enrolled as Commonwealth electors;
  - (c) any other particulars.
- (5) For this Act, the names, descriptions, marks and particulars mentioned in subsection (4) are taken not to be part of the rolls.



## **Division 2                Enrolment**

### **21                      Entitlement**

- (1) A person is entitled to be enrolled for a division if:
  - (a) the person is qualified, under section 14 of the Self-Government Act, to vote at an election for MLAs; and
  - (b) under the Commonwealth Act, the person's residential address is in the division or the person is treated as having a real place of living in the division.
- (2) However, an MLA may be enrolled for the division the MLA represents or proposes to stand for election at the next general election even if the MLA's residential address under the Commonwealth Act is in another division.
- (3) An MLA enrolled under subsection (2) may vote as an elector of the division for which the MLA is enrolled.
- (4) A person is not entitled to be enrolled for more than one division.

### **22                      Claim for, or transfer of, enrolment**

A claim for enrolment on, or transfer of enrolment from, a roll for a division must be in accordance with the arrangement made under section 20 between the Administrator and the Governor-General.

## **Part 5                      Timing and arrangements for general elections**

### **Division 1                Timing of elections**

#### **23                      Time for holding general elections**

A general election must not be held within 3 years after the first meeting of the Legislative Assembly after the previous general election (the *minimum term*) other than in accordance with a writ issued under this Division.

#### **24                      Extraordinary general election – motion of no confidence**

- (1) The Administrator may issue a writ for a general election before the end of the minimum term if:
  - (a) a motion of no confidence in the Government is passed by the Legislative Assembly (being a motion of which not less than 3 clear days notice has been given in the Legislative Assembly); and

- (b) during the period of no confidence, the Legislative Assembly has not passed a motion of confidence in the Government.
- (2) After the motion of no confidence is passed, the Legislative Assembly may not be prorogued before the end of the period of no confidence and may not be adjourned for a period extending beyond that period unless a motion of confidence has been passed.
- (3) In this section:

***period of no confidence***, for a motion of no confidence in the Government, means the period starting on the day the motion is passed and ending 8 clear days after it is passed.

## **25                      Extraordinary general election – non-passing of appropriation Bill**

- (1) The Administrator may issue a writ for a general election before the end of the minimum term if the Legislative Assembly:
  - (a) rejects an appropriation Bill; or
  - (b) fails to pass an appropriation Bill before the time the Administrator considers the appropriation is required.
- (2) In this section:

***appropriation Bill*** means a Bill for an annual *Appropriation Act* for all Agencies.

## **26                      Criteria for deciding whether to issue writs**

In deciding whether a writ for a general election should be issued under this Division, the Administrator must consider whether a viable alternative Government can be formed without a general election and, in so doing, must have regard to any motion passed by the Legislative Assembly expressing confidence in an alternative Government in which a named person would be Chief Minister.

## **Division 2                      Writs for elections**

### **27                      Form of writ**

- (1) A writ for an election or general election must be issued by the Administrator in the form in Schedule 1.
- (2) The writ authorises the Commission to conduct the election in accordance with this Act.

**28                      Limitation of dates**

For the election:

- (a) nomination day must be 6 days after the date of the issue of the writ; and
- (b) polling day must be 18 days after the date of the issue of the writ.

**29                      Endorsement of writ**

On receiving the writ, the Commission must:

- (a) endorse on it the date of its receipt; and
- (b) give public notice of its issue and details of dates relating to the election.

**Division 3                Nominations**

**30                      Eligibility**

A person is eligible for election as an MLA only if the person is nominated as a candidate for the election in accordance with this Division.

**31                      Who may nominate candidate**

A person may be nominated as a candidate for election only by:

- (a) the registered officer of the registered party nominating the person as a party candidate in the election for the division for which the person is being nominated; or
- (b) 6 electors entitled to vote at the election in the division for which the person is being nominated.

**32                      Nomination form**

(1) The nomination must:

- (a) be in the approved form;
- (b) state the name, residential address and occupation of the nominee;
- (c) if the nomination is made by 6 electors entitled to vote at the election – state whether the word "Independent" is to be printed on the ballot paper;

- (d) contain a statement that the nominee consents to be nominated under this Division and to act as an MLA if elected;
  - (e) contain a declaration signed by the nominee that the nominee is qualified in accordance with Part III, Division 2 of the Self-Government Act to be a candidate for election as an MLA;
  - (f) be accompanied by a photograph of the nominee complying with the requirements prescribed by the Regulations;
  - (g) be accompanied by a deposit of \$200 (the ***nomination deposit***) in cash or an ADI cheque; and
  - (h) be signed by the nominee and the nominator or each nominator.
- (2) For subsection (1)(b), the name stated in the nomination must be:
- (a) the surname and the given name, or one or more of the given names, under which the nominee is enrolled; or
  - (b) if the candidate is not enrolled, the surname and the given name, or one or more of the given names, under which the nominee is entitled to be enrolled.
- (3) However, a given name may be stated by an initial standing for the name or a commonly accepted variation of the name, including an abbreviation, truncation or alternative form.
- (4) If the address of a nominee is suppressed, the nomination need not state the address but the nominee must give written notice to the Commission of an address for correspondence.

### **33                      Nomination in one division only**

- (1) This section applies if a person has consented and signed a nomination form to be nominated as a candidate for a division at a general election.
- (2) The person must not consent or sign a nomination form to be nominated as a candidate for another division unless the person has, under section 35, withdrawn his or her consent to the previous nomination.

### **34                      Time for lodging nomination**

The nomination form must be lodged with the Commission after the close of the roll for the election and before 12 noon on nomination day.

**35                      Withdrawal of consent to nomination etc.**

- (1) A nominee may withdraw consent to the nomination by giving written notice in the approved form to the Commission before 12 noon on nomination day.
- (2) The registered officer of a registered party may withdraw a nomination made by the officer by giving written notice in the approved form to the Commission before 12 noon on nomination day.
- (3) On receipt of a notice under subsection (1) or (2), the Commission must return the nomination deposit to the person who lodged it.

**36                      Rejection of nomination**

- (1) The Commission may reject a nomination only if:
  - (a) the nomination is not substantially in accordance with section 32;
  - (b) the nominee is not enrolled, or entitled to be enrolled, at the close of the roll for the election;
  - (c) the name of the nominee is not that under which the nominee is enrolled or entitled to be enrolled; or
  - (d) the name of the nominee is obscene, frivolous or has been assumed for a political purpose.
- (2) The Commission must give a nominee whose nomination is rejected written notice of:
  - (a) the rejection and the reasons for it; and
  - (b) the nominee's right to dispute the validity of the election.

**37                      Declaration of candidates**

- (1) As soon as practicable after 12 noon on nomination day, the Commission must:
  - (a) publicly produce all nomination forms for the persons properly nominated other than a form for a person who has withdrawn consent to the person's nomination under section 35(1) or whose nomination has been withdrawn under section 35(2); and
  - (b) declare each of the persons to be a candidate.

- (2) The declaration must:
  - (a) be made at the Commission's office or other place decided by the Commission and notified in the *Gazette*; and
  - (b) state each candidate's name and, if endorsed by a registered party, the name of the party.
- (3) The Commission must not disclose the names of persons nominated as candidates before making the declaration.
- (4) As soon as practicable after the declaration, the Commission must display a notice at the Commission's office stating the name and address, as stated in the nomination form, of each candidate.
- (5) The Commission may also display notices at the other places in the Territory the Commission considers appropriate.

### **38            Need for poll**

- (1) If one candidate only is declared under section 37 for a division, the Commission must declare the candidate elected for the division.
- (2) Otherwise, a poll must be held under this Act.

### **39            Nomination deposit to be returned or forfeited**

- (1) If a candidate is elected or polls more than 20% of the total number of first preference votes cast for the candidate returned as elected, the Commission must return the nomination deposit for the candidate to the person who lodged it.
- (2) If subsection (1) does not apply to a candidate for an election, the deposit is forfeited to the Territory.
- (3) If an election fails, the Commission must return the nomination deposit for a candidate to the person who lodged it.

## **Division 4            Ballot papers**

### **40            Requirements for ballot papers**

- (1) A ballot paper to be used in an election must be in the form prescribed by the Regulations.
- (2) A ballot paper must have:
  - (a) the names of the candidates for the division for which the ballot paper is to be used and in the order determined under section 41;

- (b) a photograph of each candidate adjacent to the candidate's name on the ballot paper;
  - (c) a square (a ***candidate square***) printed adjacent to the candidate's photograph; and
  - (d) under the name of the candidate:
    - (i) for a party candidate – the name of the registered party endorsing the candidate; or
    - (ii) for another candidate – the word "Independent" if the nomination form so indicated.
- (3) However, a declaration ballot paper need not comply with subsection (2)(b).

**41                      Determination of order of candidates names**

- (1) As soon as practicable after the candidates have been declared for an election for a division, the Commission must determine the order of the names of candidates on ballot papers for the division.
- (2) The determination must be made by lot in public at the Commission's office.

**Division 5                      Miscellaneous provisions**

**42                      Pre-polling voting centres, polling places and scrutiny centres**

- (1) The Commission may, in writing:
  - (a) appoint a stated place to be a pre-polling voting centre for an election;
  - (b) appoint a stated place to be a polling place for an election for a division; and
  - (c) appoint a stated place to be a scrutiny centre for scrutiny at an election.
- (2) The Commission must give public notice stating particulars of each pre-polling voting centre and polling place for the election.

#### **43 Limit on appointment of licensed premises as polling place**

A part of licensed premises within the meaning of the *Liquor Act* may be appointed as a polling place only if the Commission is satisfied that, during polling hours on polling day:

- (a) liquor will not be available for sale or consumption on the part of the premises;
- (b) the part of the premises will be segregated from the part of the premises where liquor will be available for sale or consumption; and
- (c) access to the part of the premises will not involve passing through a part of the premises where liquor will be available for sale or consumption.

#### **44 Certified lists of voters**

- (1) For the conduct of an election for a division, the Commission must prepare and certify lists of electors on the roll for the division.
- (2) For the conduct of a general election, the Commission must prepare and certify:
  - (a) lists of electors on the roll for each division; and
  - (b) lists of electors on the rolls for all divisions.

#### **45 Administrative arrangements**

The Commission must make appropriate administrative arrangements for the conduct of an election and, in particular, must ensure each polling place is properly equipped with:

- (a) separate voting compartments constructed to screen voters from observation while marking ballot papers;
- (b) ballot boxes capable of being securely sealed; and
- (c) certified lists of voters, ballot papers and other documents and stationery.

#### **46 Scrutineers – appointment**

- (1) A candidate for election may appoint a scrutineer to represent the candidate during the polling or scrutiny for the election or both.
- (2) The appointment must be made by giving notice in the approved form to the officer in charge of a polling place or scrutiny centre.



**47                      Scrutineers – presence at polling place and scrutiny centre**

- (1) A scrutineer representing a candidate during the polling for an election is entitled to be present at a polling place, and to enter or leave a polling place, when voters are allowed to vote at the place.
- (2) However, only one scrutineer representing a particular candidate may enter or remain at a particular polling place at any time while voters are allowed to vote at the place.
- (3) A scrutineer representing a candidate during the scrutiny for an election is entitled to be present at a scrutiny centre, and to enter or leave a scrutiny centre, during the conduct of the scrutiny at the centre.
- (4) However, only one scrutineer representing a particular candidate may enter or remain at a particular scrutiny centre at any time while the scrutiny is conducted at the centre unless there is more than one counting table for the division at the scrutiny centre in which case the candidate is entitled to be represented by a scrutineer at each table.
- (5) A scrutineer who contravenes this section is no longer entitled to be at the polling place or scrutiny centre.

**Part 6                      Voting**

**Division 1                Entitlement to vote and other preliminary matters**

**48                      Entitlement to vote**

- (1) An elector for a division is entitled to vote at an election for the division.
- (2) The inclusion of the name of a person on a certified list of voters for an election is conclusive evidence of the person's right to vote at the election.
- (3) The omission of the name of a person from a certified list of voters because of official error does not disqualify the person from voting.
- (4) In a certified list of voters, an omission of a given name or an error in a name does not disqualify an elector from voting.
- (5) An elector whose surname has changed is not disqualified from voting under a former name entered for the person on a certified list of voters.

**49                      Procedure for voting**

- (1) At an election, a person may:
  - (a) cast a vote in accordance with Divisions 2 to 5 (inclusive); or
  - (b) cast an ordinary or declaration vote at a mobile polling place.
- (2) A person may cast a vote on polling day at any polling place in the Territory, whether or not the polling place is in the division for which the person is enrolled.

**50                      Method of voting**

- (1) A person's vote on a ballot paper must be marked in accordance with subsection (2).
- (2) The person must:
  - (a) place the number "1" in the candidate square for the candidate of the person's first preference; and
  - (b) place consecutively increasing whole numbers in the candidate squares for the other candidates in the order of the person's preference until a number is placed in all candidate squares.

**51                      Voter's question**

For this Part, the voter's question to be put to a person who claims to vote at an election is as follows:

***Is this the first time you have voted at this election?***

**Division 2                      Ordinary voting at polling place**

**52                      Issue of ballot paper**

- (1) If a person attends before an authorised officer for a division at a polling place during polling hours and claims to vote at an election, the officer must issue a ballot paper to the person for the division if:
  - (a) the person states the person's full name and, unless the person's address is suppressed, the person's address;
  - (b) the officer is satisfied the officer's certified list of voters for the division:
    - (i) states the person's name;

- (ii) states an address for the person or indicates the person's address is suppressed; and
  - (iii) has not been marked to indicate a ballot paper has already been issued to the person; and
- (c) the person answers the voter's question in the affirmative.
- (2) The officer must, immediately before issuing the ballot paper to the person:
  - (a) record the issue on the certified list of voters; and
  - (b) initial the back of the ballot paper.

### **53 Voting in private**

- (1) On receipt of the ballot paper, the person must, without delay:
  - (a) go to an unoccupied voting compartment at the polling place;
  - (b) there, in private, mark his or her vote on the ballot paper;
  - (c) fold the ballot paper to conceal the vote;
  - (d) show the ballot paper to an officer and, without unfolding it, place it in a ballot box at the polling place; and
  - (e) leave the polling place.
- (2) This section has effect subject to section 87.

## **Division 3 Declaration voting on polling day at polling places**

### **Subdivision 1 Declaration voting by certain persons absent from division**

#### **54 Issue of declaration ballot paper**

- (1) If a person attends before an authorised officer for a division at a polling place during polling hours and claims to vote at an election for another division, the officer must issue a ballot paper (a ***declaration ballot paper***) to the person for the person's enrolled division if:
  - (a) the person states the person's full name and, unless the person's address is suppressed, the person's address;

- (b) the officer is satisfied the officer's certified list of voters for all divisions has not been marked to indicate a declaration ballot paper has already been issued to the person; and
  - (c) the person answers the voter's question in the affirmative.
- (2) However, if the officer's certified list of voters has been marked to indicate a declaration ballot paper has already been issued to the person but the person claims not to have voted already at the election, Subdivision 2 applies to the issue of a declaration ballot paper to the person.
- (3) The officer must, immediately before issuing the ballot paper to the person:
  - (a) record the issue on the certified list of voters; and
  - (b) initial the back of the ballot paper.

## **55            Casting declaration vote**

- (1) Subject to section 87, this section prescribes the requirements for casting a declaration vote under this Subdivision.
- (2) After the issue of the declaration ballot paper to the person:
  - (a) the person must go to an unoccupied voting compartment at the polling place and there, in private:
    - (i) mark his or her vote on the ballot paper; and
    - (ii) fold the ballot paper to conceal the vote;
  - (b) the person must return the folded ballot paper to the officer;
  - (c) the officer must, in the presence of the person, without unfolding the ballot paper, place it in an envelope bearing the name of the person's enrolled division and the name of the polling place, seal the envelope and place it in a ballot box at the polling place; and
  - (d) the person must then leave the polling place.
- (3) The person must act under subsection (2) without delay.

## Subdivision 2    Declaration voting by other persons

### 56                      Issue of declaration ballot paper

- (1) If a person attends before an authorised officer for a division at a polling place during polling hours and claims to vote at an election, the officer must issue a ballot paper (a ***declaration ballot paper***) to the person for the division if:
  - (a) the person states the person's full name and, unless the person's address is suppressed, the person's address;
  - (b) the officer is satisfied the officer's certified list of voters for the division:
    - (i) does not state the person's name and address; or
    - (ii) has been marked to indicate a ballot paper has already been issued to the person but the person declares the person has not already voted at the election;
  - (c) the person completes and signs a declaration in the approved form in the presence of the officer; and
  - (d) the officer signs the declaration as witness.
- (2) In addition, if a person mentioned in section 54(2) attends before an authorised officer for a division at a polling place during polling hours and claims to vote at an election, the officer must issue a ballot paper (also a ***declaration ballot paper***) to the person for the person's enrolled division if:
  - (a) the person states the person's full name and, unless the person's address is suppressed, the person's address;
  - (b) the officer is satisfied the officer's certified list of voters for the person's enrolled division used by the officer has been marked to indicate a ballot paper has already been issued to the person but the person declares the person has not already voted at the election;
  - (c) the person completes and signs a declaration in the approved form in the presence of the officer; and
  - (d) the officer signs the declaration as witness.
- (3) The officer must:
  - (a) immediately before issuing the ballot paper to the person, initial the back of the ballot paper; and

- (b) immediately after issuing the ballot paper to the person, make a record of its issue.
- (4) The declaration by a person to whom subsection (1)(b)(i) applies must state the following:
  - (a) the person has complied with Part VIII of the Commonwealth Act before the close of the roll;
  - (b) to the best of the person's knowledge no objection has been upheld in relation to the inclusion of the person's name on the roll;
  - (c) the person is not qualified for enrolment in a division other than the division for which the person claims to vote;
  - (d) the person has not already voted at the election.
- (5) The declaration by a person to whom subsection (1)(b)(ii) or (2) applies must state the person has not already voted at the election.

## **57            Casting declaration vote**

- (1) Subject to section 87, this section prescribes the requirements for casting a declaration vote under this Subdivision.
- (2) After the issue of a declaration ballot paper to the person:
  - (a) the person must go to an unoccupied voting compartment at the polling place and there, in private:
    - (i) mark his or her vote on the ballot paper; and
    - (ii) fold the ballot paper to conceal the vote;
  - (b) the person must return the folded ballot paper to the officer;
  - (c) the officer must, in the presence of the person, without unfolding the ballot paper, place it in the envelope on which the declaration mentioned in section 56(1)(c) or (2)(c) appears, seal the envelope and place it in a ballot box at the polling place; and
  - (d) the person must then leave the polling place.
- (3) The person must act under subsection (2) without delay.

## **Division 4            Postal voting**

### **Subdivision 1    Registered postal voters**

#### **58            Register of postal voters**

- (1) For this Subdivision, the Commission must keep a register of postal voters for each division.
- (2) The register must contain the name of each person who is registered as a general postal voter under the Commonwealth Act.
- (3) The register may also contain the other particulars the Commission considers appropriate.

#### **59            Registered postal voters taken to have applied for postal voting papers**

If an election at which a registered postal voter is entitled to vote is to be held at any time during the period the person is registered, the Commission is taken to have received from the voter a properly completed application for postal voting papers for the election.

### **Subdivision 2    Applications for, and issue of, postal voting papers**

#### **60            Who may apply for postal voting papers**

- (1) A person may apply for postal voting papers for an election if the person:
  - (a) is entitled to vote at the election; and
  - (b) is an eligible person for the election.
- (2) For subsection (1)(a), a person is an eligible person if the person:
  - (a) throughout polling hours will not be in the Territory or within 20 km of a polling place;
  - (b) throughout polling hours will be travelling under conditions that preclude voting at a polling place;
  - (c) will be precluded from attending at a polling place because of illness, infirmity or approaching maternity;
  - (d) throughout polling hours will be unable to attend a polling place because the person will be at a place (other than a mobile polling place at which the person may vote) caring for another person who is seriously ill or infirm or who is expected shortly to give birth;

- (e) because of membership of a religious order or religious beliefs is:
  - (i) precluded from attending a polling place; or
  - (ii) precluded from attending a polling place throughout polling hours or throughout the greater part of those hours;
- (f) will be precluded from attending at a polling place because of being a prisoner;
- (g) is a person whose address has been suppressed; or
- (h) throughout polling hours will be engaged in employment or occupation and either of the following apply:
  - (i) the person is not entitled to leave of absence under section 92;
  - (ii) the person's attending a polling place to vote would be likely to cause the person financial loss.

## **61        Application for postal voting papers**

Application for postal voting papers for an election must be made to the Commission in the approved form within 3 months before the election is to be held.

## **62        Issue of postal voting papers**

- (1) On receipt of the properly completed application, an authorised officer must issue and send to the applicant:
  - (a) a postal vote certificate printed on an envelope addressed to the Commission; and
  - (b) a ballot paper (a ***declaration ballot paper***).
- (2) However, an authorised officer must not send postal voting papers to the applicant earlier than the day that is 9 days after the date of the issue of the writ for the election.
- (3) In addition, an authorised officer must not send postal voting papers to the applicant if:
  - (a) the application is received after 6 pm on the day that is 4 days before polling day and the address to which the ballot papers are to be sent is outside Australia; or



- (b) the application is received after 6 pm on the day that is 2 days before polling day and the address to which the ballot papers are to be sent is in Australia.

### **63        Authorised officer to record applications**

An authorised officer must:

- (a) number in consecutive order all applications for postal voting papers received by the officer for each division;
- (b) endorse each application with the date of issue of the postal voting papers;
- (c) number each postal vote certificate issued by the officer with the number corresponding to the number on the application for the postal voting papers;
- (d) initial the back of the declaration ballot paper issued by the officer; and
- (e) record the issue of the postal voting papers to the person on the officer's certified list of voters.

### **64        Applications to be available for public inspection**

- (1) As soon as practicable after the day mentioned in section 62(3)(b), each authorised officer must send to the Commission all applications for postal voting papers received by the officer.
- (2) The Commission must keep the applications and make them available for public inspection for 14 days from and including the third day after polling day.

## **Subdivision 3   Casting postal vote**

### **65        Procedure for postal voting**

An elector may cast a postal vote only in accordance with this Subdivision.

### **66        When postal vote may be cast**

The elector may cast a postal vote at any time before 6 pm on polling day.

### **67        Casting postal vote**

- (1) The elector must show the elector's unmarked postal voting papers to an authorised witness.

- (2) The elector must, in the presence of the witness, sign his or her name on the postal vote certificate.
- (3) The witness must:
  - (a) sign his or her name on the postal vote certificate; and
  - (b) insert the date and time.
- (4) The elector must, in the presence of the witness but so that the witness cannot see the vote:
  - (a) mark his or her vote on the declaration ballot paper; and
  - (b) fold the ballot paper and place it in the envelope bearing the postal vote certificate and seal the envelope.
- (5) However, if the elector is so physically incapacitated that the elector is unable to mark the ballot paper without assistance or is illiterate, the witness must:
  - (a) mark the elector's ballot paper in accordance with the elector's instructions; and
  - (b) fold the ballot paper and place it in the envelope bearing the postal vote certificate and seal the envelope.
- (6) Section 87 applies, with the necessary changes, in relation to the elector as if a reference in the section to an officer were a reference to the authorised witness.
- (7) As soon as practicable after subsection (4) or (5) is complied with, the elector must send the envelope to the Commission.

## **Division 5            Declaration voting before polling day**

### **Subdivision 1   Preliminary**

#### **68            Application of Division**

This Division provides for the casting of declaration votes during the pre-polling period for an election.

#### **69            Arrangements for voting**

- (1) For this Division, the Commission must:
  - (a) declare regions comprising one or more divisions; and

- (b) decide the days and hours of polling during the pre-polling period for voting at pre-election voting centres.

- (2) The Commission may assign a name to a region.

## **70            Public notice of arrangements**

- (1) The Commission must give public notice of the arrangements for voting under this Division.
- (2) The notice must state the days and hours of polling during the pre-polling period for voting at pre-election voting centres.

## **Subdivision 2   Declaration voting by electors**

### **71            Issue of declaration ballot paper**

- (1) This section applies if a person attends before an authorised officer at a pre-election voting centre during the hours of polling on a day decided under section 69(1)(b) and declares the person is an elector who:
  - (a) is entitled to vote at an election; and
  - (b) expects to be unable to attend at a polling place on polling day for the election.
- (2) The officer must issue a ballot paper (a ***declaration ballot paper***) to the person for the person's enrolled division if:
  - (a) the person states the person's full name and, unless the person's address is suppressed, the person's address;
  - (b) the officer is satisfied the officer's certified list of voters:
    - (i) states the person's name;
    - (ii) states an address for the person or indicates the person's address is suppressed; and
    - (iii) has not been marked to indicate a ballot paper has already been issued to the person; and
  - (c) the person answers the voter's question in the affirmative.
- (3) The officer must, immediately before issuing the ballot paper to the person:
  - (a) record the issue on the certified list of voters; and

- (b) initial the back of the ballot paper.

## **72            Casting declaration vote**

- (1) Subject to section 87, this section prescribes the requirements for the casting of a declaration vote by an elector issued a declaration ballot paper under section 71.
- (2) After the issue of the declaration ballot paper to the person, the person must, without delay:
  - (a) go to an unoccupied voting compartment at the pre-election voting centre and there, in private:
    - (i) mark his or her vote on the ballot paper; and
    - (ii) fold the ballot paper to conceal the vote;
  - (b) place the ballot paper in a ballot box at the centre or, if the centre is not in the region in which the person's enrolled division is situated, place it in an envelope bearing the name of the division and the centre, seal the envelope and place it in a ballot box at the centre; and
  - (c) leave the centre.

## **Subdivision 3    Declaration voting by unenrolled persons**

### **73            Issue of declaration ballot paper**

- (1) This section applies if:
  - (a) a person attends before an authorised officer at a pre-election voting centre during the hours of polling on a day decided under section 69(1)(b);
  - (b) the person states the person's full name and address;
  - (c) the officer is satisfied the officer's certified list of voters does not state the person's name and address;
  - (d) the person answers the voter's question in the affirmative;
  - (e) the person completes and signs a declaration in the approved form in the presence of the officer; and
  - (f) the officer signs the declaration as witness.
- (2) The officer must issue a ballot paper (a ***declaration ballot paper***) to the person.

- (3) The officer must:
  - (a) immediately before issuing the ballot paper to the person, initial the back of the ballot paper; and
  - (b) immediately after issuing the ballot paper to the person, make a record of its issue.
- (4) The declaration by the person must state the following:
  - (a) the person has complied with Part VIII of the Commonwealth Act before the close of the roll;
  - (b) to the best of the person's knowledge no objection has been upheld in relation to the inclusion of the person's name on the roll;
  - (c) the person is not qualified for enrolment in a division other than the division for which the person claims to vote;
  - (d) the person has not already voted at the election.

#### **74            Casting declaration vote**

- (1) Subject to section 87, this section prescribes the requirements for the casting of a declaration vote by a person issued a declaration ballot paper under section 73.
- (2) After the issue of a declaration ballot paper to the person:
  - (a) the person must go to an unoccupied voting compartment at the polling place and there, in private:
    - (i) mark his or her vote on the ballot paper; and
    - (ii) fold the ballot paper to conceal the vote;
  - (b) the person must return the folded ballot paper to the officer;
  - (c) the officer must, in the presence of the person, without unfolding the ballot paper, place it in the envelope on which the declaration mentioned in section 73(1)(e) appears, seal the envelope and place it in a ballot box at the polling place; and
  - (d) the person must then leave the polling place.
- (3) The person must act under subsection (2) without delay.

## **Subdivision 4    Dealing with ballot boxes**

### **75            Ballot boxes at pre-election voting centres in Territory**

- (1) This section applies to declaration ballot papers issued under Subdivisions 2 and 3 at a pre-election voting centre in the Territory.
- (2) As soon as practicable after 6 pm on the day before polling day, an authorised officer must:
  - (a) seal the ballot boxes containing the declaration ballot papers; and
  - (b) send the sealed boxes to the Commission or, if directed by the Commission, the officer in charge of a scrutiny centre for scrutiny under Part 7.

### **76            Ballot boxes at pre-election voting centres outside Territory**

- (1) This section applies to declaration ballot papers issued under Subdivisions 2 and 3 at a pre-election voting centre outside the Territory.
- (2) As soon as practicable after 6 pm on the day before polling day, an authorised officer must:
  - (a) open the ballot boxes;
  - (b) remove the envelopes containing the declaration ballot papers;
  - (c) without opening the envelopes, sort them into ballot papers issued under Subdivisions 2 and 3;
  - (d) place them in separate parcels;
  - (e) seal the parcels; and
  - (f) send them to the Commission.

## **Division 6            Mobile polling**

### **77            Application of Division**

This Division provides for the casting of ordinary votes and declaration votes under Division 2 or 3 in the Territory by electors during the mobile polling period for the election.

**78            Authorisation for mobile polling**

- (1) The Commission may, in writing, authorise an officer to visit a polling place in a division for the purpose of taking votes during the mobile polling period.
- (2) The authorisation may be limited to the voting needs of a stated class of voters, including for example, the in-patients of a hospital or inmates of an institution.
- (3) The authorisation must state the day and hours during which the mobile polling place will be used for voting.

**79            Notice of authorisation**

The Commission must give public notice about the authorisation for the mobile polling place and, as far as practicable, notify the community to be served by the mobile polling place in the way that is reasonable in the circumstances.

**80            Voting limited to class of voters**

If the authorisation is limited to a stated class of voters, only a person in that class may vote at the mobile polling place.

**81            Change of mobile polling place, day or hours for voting**

- (1) The Commission may substitute another place for the mobile polling place or change the day or hours authorised for the place if:
  - (a) an officer is unable to be at the place on the day or during the hours; or
  - (b) the Commission is satisfied the exigencies of the election require the substitution or change.
- (2) The Commission must give the public notice of the substitution or change that is reasonable and practicable in the circumstances.

**82            Obligations of authorised officer**

When visiting a mobile polling place, an authorised officer must:

- (a) take a ballot box, ballot papers, certified lists of voters and anything else necessary to enable a person to vote; and
- (b) be accompanied by at least one other officer.

**83                  Application of Act for voting at mobile polling place**

While an authorised officer is with a person in a room or other place for taking the person's vote, as far as practicable this Act has effect as if the authorised officer were the officer in charge of the polling place.

**84                  Failure to visit mobile polling place**

The result of an election is not invalidated merely because an authorised officer did not visit a mobile polling place or did not visit a mobile polling place on the day or during the hours stated in a notice of authorisation under section 79 or the place, day or hours substituted or changed under section 81.

**85                  Dealing with ballot boxes**

- (1) After an authorised officer has finished all visits to mobile polling places for which the officer is authorised, the officer must, in the presence of any scrutineers, close and seal the ballot boxes containing ballot papers.
- (2) The authorised officer must send the ballot boxes containing the ballot papers to the Commission or, if directed by the Commission, the officer in charge of a scrutiny centre for scrutiny under Part 7.

**Division 7                  Miscellaneous provisions**

**86                  Arrangements at polling places**

- (1) At each polling place (other than a mobile polling place), polling must be conducted as follows:
  - (a) before any vote is taken the officer in charge must show each ballot box empty and then securely seal it closed;
  - (b) the poll must open at 8 am and not close until all electors present in the polling place at 6 pm and desiring to vote have voted;
  - (c) the polling place must be closed at 6 pm and no person is to be admitted after that time for voting.
- (2) However, the officer in charge of a pre-election voting centre need only comply with subsection (1)(a).
- (3) Subsections (4) and (5) apply to the conduct of polling at mobile polling places.



- (4) At the first mobile polling place visited by an authorised officer, the officer must:
  - (a) before any vote is taken, show the ballot box empty and then securely seal it closed; and
  - (b) at the close of polling at that place, seal the cleft of the ballot box.
- (5) At mobile polling places later visited by the officer:
  - (a) the officer must:
    - (i) before any vote is taken, open the cleft of the ballot box; and
    - (ii) at the close of polling at that place, seal the cleft of the ballot box; and
  - (b) if it is necessary to use another ballot box – subsection (4) and paragraph (a) apply to the ballot box.

## **87            Assistance to certain voters**

- (1) A voter who is unable to vote may be assisted in voting if the voter would otherwise be unable to vote.
- (2) An assistant must be:
  - (a) if the voter is a postal voter – an authorised witness; or
  - (b) if paragraph (a) does not apply – a nominee of the voter or, if there is no nominee, an officer.
- (3) An assistant may enter a voting compartment to assist a voter to vote, but an officer must not do so except in the presence of:
  - (a) a scrutineer; or
  - (b) if no scrutineer is present – another officer.
- (4) Subject to subsection (3), an assistant may assist a voter in any of the following ways:
  - (a) by acting as an interpreter;
  - (b) for a declaration vote – by completing, or assisting the voter to complete, the declaration;
  - (c) by explaining the ballot paper and the requirements of this Act relating to its marking;

- (d) by marking, or assisting the voter to mark, the ballot paper at the voter's direction;
- (e) by folding the ballot paper and placing it in a ballot box or declaration envelope, or giving it to an officer, as required by this Act.

**88            Assistance to voters unable to enter polling place**

- (1) This section applies if the officer in charge of a polling place is satisfied a voter cannot enter the polling place because of a physical disability, illness, advanced pregnancy or another condition.
- (2) The voter may vote outside the polling place, but close to the polling place, and may be assisted in voting.
- (3) Before allowing the voter to vote outside the polling place, the officer in charge must:
  - (a) tell any scrutineers at the polling place that the voter is to vote outside the polling place; and
  - (b) allow, from the scrutineers present, one scrutineer for each candidate to be present when the voter votes.
- (4) The voter must:
  - (a) mark his or her vote on the ballot paper in the presence of the officer in charge;
  - (b) fold the ballot paper to conceal the names of the candidates; and
  - (c) give the ballot paper to the officer in charge.
- (5) The voter must be allowed to mark his or her vote on the ballot paper in private.
- (6) If the voter is casting an ordinary vote, the officer in charge must ensure the folded ballot paper is placed in the ballot box at the polling place in the presence of any scrutineers who were present when the voter voted.
- (7) If the voter is casting a declaration vote, the officer in charge must:
  - (a) in the presence of the voter, without unfolding the ballot paper, place the ballot paper in the declaration envelope and seal the envelope; and

(b) place the envelope in a ballot box at the polling place.

(8) This section is subject to section 87.

## **89       Spoilt or discarded ballot paper**

(1) Subsection (2) applies if an authorised officer at a polling place:

(a) is satisfied a ballot paper given to the officer by a person has been spoilt by mistake or accident; or

(b) finds a ballot paper discarded at the polling place.

(2) The officer must:

(a) cancel the ballot paper by writing "spoilt" or "discarded" on it;

(b) place the ballot paper in an envelope, seal the envelope and endorse the envelope with a statement of its contents; and

(c) for a spoilt ballot paper – issue to the person an unused ballot paper.

(3) As soon as practicable after the close of polling, the officer must place all envelopes mentioned in subsection (2)(b) with unused ballot papers.

## **90       Dealing with ballot boxes and electoral papers**

(1) At the close of polling, the officer in charge of a polling place must, in the presence of any scrutineers:

(a) close and seal the ballot boxes containing ballot papers for ordinary voting or declaration voting;

(b) parcel and seal all unused ballot papers and the envelopes mentioned in section 89(3); and

(c) parcel and seal all other electoral papers used at the polling place.

(2) The officer must send the things mentioned in subsection (1) to the Commission or, if directed by the Commission, to the officer in charge of a scrutiny centre for scrutiny under Part 7.

(3) However, subsections (1)(a) and (2) do not apply to ballot boxes if the polling place is a scrutiny centre and scrutiny of the poll is proceeded with immediately after the close of polling at the polling place.

**91            Adjournment of polling**

- (1) The officer in charge of a polling place may adjourn polling at the place on polling day if because of riot, violence, fire, storm, flood or another similar event it is not practicable to proceed with polling.
- (2) If, under subsection (1), the officer in charge of a polling place adjourns polling at the place, the officer must immediately notify the Commission.
- (3) The Commission must decide a day (that is as soon as practicable, but no later than 21 days, after the adjournment) as the day when polling is to resume if the Commission reasonably believes it is not reasonably practicable for an elector affected by the adjournment to cast a vote at another polling place.
- (4) If it is impracticable to resume the polling at the same polling place, the Commission must decide the polling place where polling may be resumed.
- (5) The Commission must, as soon as practicable, give the public notice that is reasonable in the circumstances of the adjournment and any decision under subsection (3) or (4).
- (6) On the resumption of polling, only an elector who was entitled to vote on the day when the poll for the election for the division was required to be held and who has not already voted is entitled to vote.

**92            Employee wishing to vote**

- (1) On notice by an employee before a polling day, the employee's employer must allow the employee, without penalty or any disproportionate deduction of pay, to take any necessary leave (not exceeding 2 hours) for the purpose of voting.
- (2) However, subsection (1) does not apply if the employee's absence may cause danger or substantial loss.
- (3) An employee must not notify an employer under subsection (1) unless the employee genuinely intends to vote during the leave to be granted for the purpose of voting.

Penalty:       5 penalty units.

## **Part 7            The scrutiny**

### **Division 1        Preliminary**

#### **93            How scrutiny carried out**

- (1) The result of polling at an election must be determined by scrutiny in accordance with this Part.
- (2) Proceedings at the scrutiny must be open to the inspection of scrutineers and other persons approved by the officer in charge of a scrutiny centre.
- (3) The officer in charge of a scrutiny centre may from time to time adjourn the scrutiny at the centre.

### **Division 2        Formality of ballot papers and related matters**

#### **94            Informal ballot paper**

- (1) A ballot paper is informal:
  - (a) unless it is:
    - (i) printed by the Government Printer; or
    - (ii) created for this Act by an officer and initialled by an officer;
  - (b) unless it is marked in accordance with section 50; or
  - (c) if an authorised officer is satisfied the voter can be identified because of a mark or other writing on it.
- (2) However, a voter is taken to have indicated the voter's order of preference for all candidates if:
  - (a) the voter has placed consecutively increasing whole numbers in candidate squares indicating the voter's first preference for one candidate and other preferences for all remaining candidates except one whose candidate square has been left blank; or
  - (b) there are 2 candidates only and the voter has placed the number "1" in one candidate square and left the other candidate square blank.
- (3) For subsection (2), the candidate whose candidate square has been left blank is taken to be the voter's last preference.

- (4) A ballot paper is not informal merely because:
- (a) the name of the division appearing on the ballot paper is wrong or has been omitted from the ballot paper if the names of all candidates for the division are on the ballot paper;
  - (b) the surname only of a candidate is written on the ballot paper if no other candidate has the same surname;
  - (c) a mistake is made in the spelling of a candidate's name if an authorised officer is satisfied there is no doubt about the identity of the candidate; or
  - (d) the name of a registered party is omitted from the ballot paper or is wrong or a mistake is made in the spelling of the name.

**95            Certain declaration ballot papers not counted**

Despite another provision of this Part, a declaration ballot paper must not be counted and must be treated as a discarded ballot paper if it is received by the Commission other than in:

- (a) for a postal vote – the envelope bearing the postal vote certificate; or
- (b) for a declaration vote cast under section 57, 72 or 74 – the envelope in which the ballot paper is placed under that section.

**96            Certain postal ballot papers not counted**

- (1) Despite another provision of this Part, a postal ballot paper must not be counted unless:
- (a) the vote marked on the ballot paper is marked before 6 pm on polling day; and
  - (b) the ballot paper is either:
    - (i) delivered to an authorised officer before the close of polling on polling day; or
    - (ii) if not delivered to an authorised officer before the close of polling on polling day, received by the Commission before 6 pm on the Friday next following polling day.
- (2) In the absence of evidence to the contrary, the time and date appearing in the postal vote certificate on an envelope containing an elector's postal ballot paper is taken to be the time and date on which the elector's vote was marked on the ballot paper.

**97            Dealing with certain declaration votes for absent voters**

- (1) This section applies if the officer in charge of a scrutiny centre finds an unenclosed absent ballot paper in a ballot box at a polling place.
- (2) The officer must not reject the ballot paper from scrutiny merely because it is unenclosed.
- (3) The officer must:
  - (a) place the ballot paper in an envelope bearing the name of the division and the name of the polling place; and
  - (b) send it to the Commission or the authorised officer directed by the Commission.
- (4) In this section:

***absent ballot paper*** means a declaration ballot paper issued under Part 6, Division 3, Subdivision 1.

***unenclosed***, for an absent ballot paper, means the ballot paper is not contained in an envelope bearing the name of the division stated on the ballot paper.

**Division 3            Ordinary votes**

**98            Initial dealing with ballot papers**

- (1) As soon as practicable after the close of the poll for an election, the officer in charge of a scrutiny centre must:
  - (a) open the ballot boxes under the officer's control;
  - (b) set aside all informal ballot papers, count them and place them in a parcel;
  - (c) arrange all formal ballot papers under the names of each candidate for whom the first preference vote on the ballot papers was cast;
  - (d) count the first preference votes given for each candidate on formal ballot papers;
  - (e) make and sign a statement stating the number of:
    - (i) votes cast as first preference votes for each candidate; and
    - (ii) informal votes;

- (f) place all formal ballot papers mentioned in paragraph (c) in separate parcels according to the candidate for whom the first preference vote was cast;
  - (g) seal the parcels mentioned in paragraphs (b) and (f) and endorse on each parcel a statement of its contents; and
  - (h) send all the parcels and the statement to the Commission or the authorised officer directed by the Commission.
- (2) A candidate's scrutineer may sign any of the following:
- (a) the statement mentioned in subsection (1)(e);
  - (b) a sealed parcel mentioned in subsection (1)(g).

## **99       Check count of ordinary votes**

- (1) This section applies to the parcels of ballot papers sent to the Commission or an authorised officer under section 98(1)(h).
- (2) An authorised officer must:
- (a) open the parcels and remove all the ballot papers;
  - (b) set aside all informal ballot papers, count them and place them in a parcel;
  - (c) arrange all formal ballot papers under the names of each candidate for whom the first preference vote on the ballot papers was cast;
  - (d) count the first preference votes given for each candidate on formal ballot papers;
  - (e) place all formal ballot papers mentioned in paragraph (c) in separate parcels according to the candidate for whom the first preference vote was cast;
  - (f) seal the parcels mentioned in paragraphs (b) and (e) and endorse on each parcel a statement of its contents; and
  - (g) make any necessary amendments to the statement mentioned in section 98(1)(e).
- (3) A candidate's scrutineer may sign any of the following:
- (a) a sealed parcel mentioned in subsection (2)(f);
  - (b) the amended statement mentioned in subsection (2)(g).



Part 7	The scrutiny
Division 4	Declaration votes cast on polling day and by unenrolled voters at pre-election voting centres
Subdivision 2	Declaration votes cast by certain persons absent from division

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## **Division 4          Declaration votes cast on polling day and by unenrolled voters at pre-election voting centres**

### **Subdivision 1   Preliminary**

#### **100          Application of Division**

This Division applies to declaration voting papers issued under:

- (a) Part 6, Division 3; or
- (b) Part 6, Division 5, Subdivision 3.

#### **101          Initial dealing with certain declaration voting papers**

- (1) This section applies to declaration voting papers issued under Part 6, Division 3.
- (2) As soon as practicable after the close of the poll for the election, the officer in charge of a scrutiny centre must:
  - (a) sort the declaration voting papers from the ballot boxes at the centre into each division;
  - (b) place the declaration voting papers in a parcel, seal the parcel and endorse on it a statement of its contents; and
  - (c) send the parcel to the Commission or the authorised officer directed by the Commission.
- (3) A candidate's scrutineer may sign the sealed parcel.

### **Subdivision 2   Declaration votes cast by certain persons absent from division**

#### **102          Application of Subdivision**

This Subdivision applies to declaration voting papers:

- (a) issued under Part 6, Division 3, Subdivision 1; and
- (b) sent to the Commission or an authorised officer under section 97(3)(b) or 101(1)(c).

**103            Examination of declaration ballot papers**

- (1) For each division, an authorised officer must:
  - (a) open the parcels and remove the unopened envelopes containing declaration ballot papers;
  - (b) take the ballot paper out of the envelope; and
  - (c) place the envelope in a parcel with all other envelopes from which ballot papers have been taken under paragraph (b).
- (2) The officer must seal the parcel mentioned in subsection (1)(c) and endorse on it a statement of its contents.
- (3) A candidate's scrutineer may sign the sealed parcel.

**Subdivision 3    Declaration votes cast by unenrolled voters**

**104            Application of Subdivision**

This Subdivision applies to declaration voting papers:

- (a) issued under:
  - (i) Part 6, Division 3, Subdivision 2 to persons to whom section 56(1)(b)(i) applies; or
  - (ii) Part 6, Division 5, Subdivision 3; and
- (b) sent to the Commission or an authorised officer under section 76(2)(f), 101(1)(c) or 116(e).

**105            Examination of declaration ballot papers**

- (1) For each division, an authorised officer must:
  - (a) open the parcels and remove the unopened envelopes containing declaration ballot papers; and
  - (b) examine each envelope.
- (2) Subsection (3) applies if the officer is satisfied:
  - (a) the declaration on the envelope is properly signed and witnessed; and
  - (b) the person who made the declaration is entitled to vote.

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- (3) The officer must:
  - (a) if the person's name is on the officer's certified list of voters for the division – place a mark against the person's name on the list;
  - (b) take the ballot paper out of the envelope; and
  - (c) place the envelope in a parcel with all other envelopes from which ballot papers have been taken under paragraph (b).
- (4) If the officer is not satisfied of the matters mentioned in subsection (2), the officer must:
  - (a) exclude the ballot paper from further scrutiny without opening the envelope in which it is contained; and
  - (b) place the unopened envelopes in a parcel.
- (5) The officer must seal the parcels mentioned in subsections (3)(c) and (4)(b) and endorse on each parcel a statement of its contents.
- (6) A candidate's scrutineer may sign a sealed parcel.

#### **Subdivision 4 Declaration votes cast by voters marked on roll as already voted**

##### **106 Application of Subdivision**

This Subdivision applies to declaration voting papers:

- (a) issued under Part 6, Division 3, Subdivision 2 to persons to whom section 56(1)(b)(ii) or (2) applies; and
- (b) sent to the Commission or an authorised officer under section 101(1)(c).

##### **107 Examination of declaration ballot papers**

- (1) For each division, an authorised officer must:
  - (a) open the parcels and remove the unopened envelopes containing declaration ballot papers; and
  - (b) examine each envelope.

- (2) Subsection (3) applies if the officer:
  - (a) is satisfied the declaration on the envelope is properly signed and witnessed; and
  - (b) accepts the declaration.
- (3) The officer must:
  - (a) take the ballot paper out of the envelope; and
  - (b) place the envelope in a parcel with all other envelopes from which ballot papers have been taken under paragraph (a).
- (4) If the officer is not satisfied of the matters mentioned in subsection (2), the officer must:
  - (a) exclude the ballot paper from further scrutiny without opening the envelope in which it is contained; and
  - (b) place the unopened envelopes in a parcel.
- (5) The officer must seal the parcels mentioned in subsections (3)(b) and (4)(b) and endorse on each parcel a statement of its contents.
- (6) A candidate's scrutineer may sign a sealed parcel.

## **Subdivision 5   Counting declaration votes**

### **108        Initial count of declaration votes**

- (1) This section applies to the declaration ballot papers mentioned in sections 103(1)(b), 105(3)(b) and 107(3)(a).
- (2) An authorised officer must:
  - (a) set aside all informal ballot papers, count them and place them in a parcel;
  - (b) arrange all formal ballot papers under the names of each candidate for whom the first preference vote on the ballot papers was cast;
  - (c) count the first preference votes given for each candidate on formal ballot papers;
  - (d) place all formal ballot papers mentioned in paragraph (b) in separate parcels according to the candidate for whom the first preference vote was cast;

- (e) seal the parcels mentioned in paragraphs (a) and (d) and endorse on each parcel a statement of its contents; and
  - (f) make and sign a statement stating the number of:
    - (i) votes cast as first preference votes for each candidate; and
    - (ii) informal votes.
- (3) A candidate's scrutineer may sign any of the following:
- (a) a sealed parcel mentioned in subsection (2)(e);
  - (b) the statement mentioned in subsection (2)(f).

## **109       Check count of declaration votes**

- (1) This section applies to the parcels of declaration ballot papers mentioned section 108(2)(e).
- (2) An authorised officer must:
- (a) open the parcels and remove all the ballot papers;
  - (b) set aside all informal ballot papers, count them and place them in a parcel;
  - (c) arrange all formal ballot papers under the names of each candidate for whom the first preference vote on the ballot papers was cast;
  - (d) count the first preference votes given for each candidate on formal ballot papers;
  - (e) place all formal ballot papers mentioned in paragraph (c) in separate parcels according to the candidate for whom the first preference vote was cast;
  - (f) seal the parcels mentioned in paragraphs (b) and (e) and endorse on each parcel a statement of its contents; and
  - (g) make any necessary amendments to the statement mentioned in section 108(2)(f).
- (3) A candidate's scrutineer may sign any of the following:
- (a) a sealed parcel mentioned in subsection (2)(f);
  - (b) the amended statement mentioned in subsection (2)(g).

## **Division 5            Postal votes**

### **Subdivision 1    Dealing with postal voting papers before the end of polling day**

#### **110            Receipt of postal voting papers**

On receipt of postal voting papers for a division, the Commission must:

- (a) note on the envelope bearing the elector's postal vote certificate and containing the declaration ballot paper for the division, the day and time of receipt; and
- (b) give the ballot papers to an authorised officer for the division.

#### **111            Checking postal voting papers**

- (1) An authorised officer for the division must compare the signature of the elector on the elector's postal vote certificate with the signature of the elector on the elector's application:
  - (a) under the Commonwealth Act for registration as a general postal voter; or
  - (b) under section 60 for postal voting papers.
- (2) Subsection (3) applies if the officer is satisfied:
  - (a) the elector's signature on the elector's postal vote certificate is that of the elector who signed the application;
  - (b) the signature purports to be witnessed by an authorised witness; and
  - (c) the vote marked on the declaration ballot paper contained in the envelope purports to have been cast before 6 pm on polling day.
- (3) The officer must place the envelope unopened in a locked or sealed ballot box marked "Postal Ballot Box".
- (4) If the officer is not satisfied of the matters mentioned in subsection (2), the officer must mark the unopened envelope with the word "rejected" before placing it in the Postal Ballot Box.

## **Subdivision 2   Scrutiny of postal voting papers**

### **112        Initial dealing with postal voting papers after close of poll**

- (1) At the times the officer in charge of a scrutiny centre considers practicable after the close of the poll for an election, the officer must:
  - (a) open the Postal Ballot Box and remove the unopened envelopes containing declaration ballot papers received not later than 6 pm on the Friday next following polling day;
  - (b) allow candidates' scrutineers to inspect each envelope bearing an elector's postal vote certificate marked "rejected" and then:
    - (i) exclude the declaration ballot papers contained in those envelopes from further scrutiny; and
    - (ii) place the envelopes, unopened, in a parcel;
  - (c) take the declaration ballot paper from the envelope admitted to scrutiny without inspecting or unfolding it or allowing any other person to do so;
  - (d) place the envelope in a parcel with all other envelopes from which ballot papers have been taken under paragraph (c); and
  - (e) seal the parcels mentioned in paragraphs (b)(ii) and (d) and endorse on each parcel a statement of its contents.
- (2) A candidate's scrutineer may sign a sealed parcel.

### **113        Initial count of postal votes**

- (1) This section applies to the declaration ballot papers mentioned in section 112(1)(c).
- (2) An authorised officer must:
  - (a) set aside all informal ballot papers, count them and place them in a parcel;
  - (b) arrange all formal ballot papers under the names of each candidate for whom the first preference vote on the ballot papers was cast;
  - (c) count the first preference votes given for each candidate on formal ballot papers;

- (d) make and sign a statement stating the number of:
    - (i) votes cast as first preference votes for each candidate; and
    - (ii) informal votes;
  - (e) place all formal ballot papers mentioned in paragraph (b) in separate parcels according to the candidate for whom the first preference vote was cast; and
  - (f) seal the parcels mentioned in paragraphs (a) and (e) and endorse on each parcel a statement of its contents.
- (3) A candidate's scrutineer may sign any of the following:
- (a) the statement mentioned in subsection (2)(d);
  - (b) a sealed parcel mentioned in subsection (2)(f).

#### **114       Check count of postal votes**

- (1) This section applies to the parcels of declaration ballot papers mentioned section 113(2)(f).
- (2) An authorised officer must:
- (a) open the parcels and remove all the ballot papers;
  - (b) set aside all informal ballot papers, count them and place them in a parcel;
  - (c) arrange all formal ballot papers under the names of each candidate for whom the first preference vote on the ballot papers was cast;
  - (d) count the first preference votes given for each candidate on formal ballot papers;
  - (e) place all formal ballot papers mentioned in paragraph (c) in separate parcels according to the candidate for whom the first preference vote was cast;
  - (f) seal the parcels mentioned in paragraphs (a) and (e) and endorse on each parcel a statement of its contents; and
  - (g) make any necessary amendments to the statement mentioned in section 113(2)(d).



- (3) A candidate's scrutineer may sign any of the following:
- (a) a sealed parcel mentioned in subsection (2)(f);
  - (b) the amended statement mentioned in subsection (2)(g).

## **Division 6 Declaration votes cast at pre-election voting centres before polling day**

### **Subdivision 1 Preliminary**

#### **115 Application of Division**

This Division applies to declaration voting papers issued under Part 6, Division 5.

#### **116 Initial dealing with ballot boxes**

- (1) As soon as practicable after the close of the poll for the election, an authorised officer must:
- (a) open the ballot boxes sent to the Commission or officer in charge of a scrutiny centre under section 75(2)(b) and remove the contents;
  - (b) sort the contents into:
    - (i) declaration ballot papers completed by electors for each division in the region in which the pre-election voting centre is situated;
    - (ii) envelopes containing declaration ballot papers by electors for each division in other regions; and
    - (iii) envelopes containing declaration ballot papers completed by unenrolled persons;
  - (c) place the envelopes mentioned in paragraphs (b)(ii) and (iii) in separate parcels;
  - (d) seal the parcels and endorse on them a statement of their contents; and
  - (e) if the scrutiny centre is not at the Commission's office – send the sealed parcels to the Commission.
- (2) A candidate's scrutineer may sign a sealed parcel.

## **Subdivision 2 Declaration votes cast for enrolled divisions at pre-election voting centres**

### **117 Application of Subdivision**

This Subdivision applies to the declaration ballot papers mentioned in section 116(1)(b)(i).

### **118 Initial count of declaration votes**

- (1) An authorised officer for the division must:
  - (a) set aside all informal ballot papers, count them and place them in a parcel;
  - (b) arrange all formal ballot papers under the names of each candidate for whom the first preference vote on the ballot papers was cast;
  - (c) count the first preference votes given for each candidate on formal ballot papers;
  - (d) make and sign a statement stating the number of:
    - (i) votes cast as first preference votes for each candidate; and
    - (ii) informal votes;
  - (e) place all formal ballot papers mentioned in paragraph (b) in separate parcels according to the candidate for whom the first preference vote was cast;
  - (f) seal the parcels mentioned in paragraphs (a) and (e) and endorse on each parcel a statement of its contents;
  - (g) send all the parcels and statements to the Commission or the authorised officer directed by the Commission.
- (2) A candidate's scrutineer may sign any of the following:
  - (a) the statement mentioned in subsection (1)(d);
  - (b) a sealed parcel mentioned in subsection (1)(f).

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Subdivision 3	Declaration votes cast for divisions in other regions at pre-election voting centres

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### **Subdivision 3 Declaration votes cast for divisions in other regions at pre-election voting centres**

#### **119 Application of Subdivision**

This Subdivision applies to:

- (a) the parcels of envelopes containing declaration ballot papers issued under Part 6, Division 5, Subdivision 2 and sent to the Commission or an authorised officer under section 76(2)(f); and
- (b) the parcels of envelopes mentioned in section 116(1)(b)(ii).

#### **120 Examination of declaration ballot papers**

- (1) For each division, an authorised officer must:
  - (a) open the parcels and remove the unopened envelopes containing declaration ballot papers;
  - (b) take the ballot paper out of the envelope; and
  - (c) place the envelope in a parcel with all other envelopes from which ballot papers have been taken under paragraph (b).
- (2) The officer must seal the parcel mentioned in subsection (1)(c) and endorse on it a statement of its contents.
- (3) A candidate's scrutineer may sign the sealed parcel.

#### **121 Initial count of declaration votes**

- (1) This section applies to the declaration ballot papers mentioned in section 120(1)(b).
- (2) An authorised officer must:
  - (a) set aside all informal ballot papers, count them and place them in a parcel;
  - (b) arrange all formal ballot papers under the names of each candidate for whom the first preference vote on the ballot papers was cast;
  - (c) count the first preference votes given for each candidate on formal ballot papers;

- (d) make and sign a statement stating the number of:
    - (i) votes cast as first preference votes for each candidate; and
    - (ii) informal votes;
  - (e) place all formal ballot papers mentioned in paragraph (b) in separate parcels according to the candidate for whom the first preference vote was cast; and
  - (f) seal the parcels mentioned in paragraphs (a) and (e) and endorse on each parcel a statement of its contents.
- (3) A candidate's scrutineer may sign any of the following:
- (a) the statement mentioned in subsection (2)(d);
  - (b) a sealed parcel mentioned in subsection (2)(f).

#### **Subdivision 4 Check count of all declaration votes cast at pre-election voting centres**

##### **122 Check count of declaration votes**

- (1) This section applies to the parcels of declaration ballot papers for which an initial count has been conducted under section 118 or 121.
- (2) An authorised officer must:
  - (a) open the parcels and remove all the ballot papers;
  - (b) set aside all informal ballot papers, count them and place them in a parcel;
  - (c) arrange all formal ballot papers under the names of each candidate for whom the first preference vote on the ballot papers was cast;
  - (d) count the first preference votes given for each candidate on formal ballot papers;
  - (e) place all formal ballot papers mentioned in paragraph (c) in separate parcels according to the candidate for whom the first preference vote was cast;
  - (f) seal the parcels mentioned in paragraphs (b) and (e) and endorse on each parcel a statement of its contents; and

- (g) make any necessary amendments to the statement mentioned in section 118(1)(d) or 121(2)(d).
- (3) A candidate's scrutineer may sign any of the following:
  - (a) a sealed parcel mentioned in subsection (2)(f);
  - (b) the amended statement mentioned in subsection (2)(g).

## **Division 7            Determining and declaring result of election**

### **123            Interim distribution of preference votes**

- (1) This section applies if, after 6 pm on polling day, the Commission considers it is appropriate to gain an indication of the candidate most likely to be elected for a division.
- (2) The Commission may arrange for officers to conduct, in the way decided by the Commission, an interim distribution of preference votes in the division.
- (3) The interim distribution is of no effect for declaring the result of the election.

### **124            Part counting of votes**

- (1) It is not necessary for an authorised officer to receive all envelopes containing declaration ballot papers before proceeding to deal with the ballot papers under this Part.
- (2) However, sufficient unopened envelopes containing postal votes must be kept in the Postal Ballot Box to ensure the ballot papers when taken from the envelopes for counting are sufficient in number to ensure the secrecy of the ballot is maintained.

### **125            Objections by candidate's scrutineer**

- (1) A candidate's scrutineer may object to the admission or rejection of a ballot paper as a formal ballot paper.
- (2) The objection must be made to the officer conducting the scrutiny.
- (3) The officer must decide the objection by admitting or rejecting the ballot paper the subject of the objection as a formal ballot paper and must mark the ballot paper "admitted" or "rejected" according to the decision.
- (4) This section does not prevent the officer from rejecting a ballot paper as being informal even though no objection is made to it.

**126                      Determination of first preference votes**

An authorised officer for a division must, from the statements or amended statements mentioned in sections 99, 109, 114 and 122 and the result of the scrutiny of votes counted by officers, determine the number of first preference votes cast for each candidate for the division.

**127                      Declaration of election**

The candidate who receives more than 50% of the first preference votes determined under section 126 must be declared by the Commission to be returned as elected for the division.

**128                      Further scrutiny to be conducted**

- (1) If a declaration cannot be made under section 127, an authorised officer for the division must:
  - (a) open all parcels containing formal ballot papers for the division; and
  - (b) subject to subsection (2), continue the scrutiny in accordance with this Part.
- (2) The officer must:
  - (a) exclude from consideration the candidate for whom the fewest number of first preference votes has been cast and count the votes cast in favour of that candidate to the candidate next in order of the voter's preference; and
  - (b) if no candidate then has more than 50% of the formal votes cast – follow the process of excluding from consideration the candidate who has the fewest number of votes and counting the votes cast in favour of that candidate to the unexcluded candidate next in the order of the voter's preference until one candidate has received more than 50% of the formal votes cast.
- (3) However, if there are 2 or more candidates with the fewest number of votes and one of them is to be excluded from the count, the officer must decide by lot the candidate to be excluded.
- (4) In addition, if there are 2 candidates remaining in the count having the same number of formal votes cast in their favour, the Commission must:
  - (a) under section 130, direct an authorised officer for the division to recount all ballot papers; and

- (b) if, after the recount, the candidates have an equal number of formal votes cast in their favour – decide by lot the successful candidate.
- (5) After complying with subsections (1), (2), (3) and (4), the officer must:
  - (a) make and sign a statement stating the results of the scrutiny to that point;
  - (b) give the statement to the Commission; and
  - (c) keep a copy of the statement.
- (6) The candidate decided under subsection (2) or (4) must be declared by the Commission to be returned as elected.
- (7) The officer must, on completing the scrutiny:
  - (a) place all formal votes in separate parcels;
  - (b) seal the parcels and endorse on each parcel a statement of its contents; and
  - (c) allow any candidate's scrutineers present, if they desire, to sign each parcel.

#### **129        Early declaration of elected candidate**

- (1) The Commission may declare a candidate to be elected for a division if satisfied any uncounted ballot papers cannot, because of the number of them, affect the outcome of the scrutiny.
- (2) For subsection (1), uncounted ballot papers are:
  - (a) ballot papers that have not been received by an authorised officer for the division; or
  - (b) ballot papers for the division that have not been subject to scrutiny under this Part.

#### **130        Recount**

- (1) The Commission may, at any time before a candidate is declared to be elected, direct an authorised officer for a division to recount any ballot papers placed in a parcel under this Part.
- (2) The Commission may give the direction:
  - (a) on receipt of a written request by a candidate stating the reasons for it; or

- (b) on the Commission's own initiative.
- (3) This Part applies to the recount and any decision made earlier in the scrutiny relating to the admission or rejection of a ballot paper as a formal ballot paper may be reversed.
- (4) The officer must, if required by a candidate's scrutineer, refer any question relating to the formal or informal nature of a ballot paper to the Commission.
- (5) The Commission must decide the question.

**131       Declaration of result of election**

- (1) As soon as practicable after the results of an election have been determined, the Commission must publicly declare the results of the election and the name of the candidate returned as elected.
- (2) However, if the successful candidate for election for a division dies after polling day but before the declaration, the Commission must not declare the candidate returned as elected for the division.
- (3) Subsection (2) applies despite sections 127 and 128(6).

**132       Preference distribution for information purposes**

After a candidate is declared as elected for a division, the Commission may require an authorised officer to examine the second and later preferences of candidates, and the distribution of the preferences, for information and research purposes.

**Division 8       Miscellaneous provisions**

**133       Return of writ**

The Commission must, after declaring a candidate returned as elected:

- (a) endorse on the writ for the election the name of the candidate;
- (b) return the writ to the Administrator; and
- (c) keep a copy of the writ.



**134                Extension of time**

- (1) If the Administrator is satisfied a difficulty may arise in an election, the Administrator may, by notice in the *Gazette*, within 15 days before or after polling day:
  - (a) extend the time for holding the election; or
  - (b) extend the time for the return of the writ.
- (2) The Commission must give public notice of the extension of time in the division to which the extension relates.

**135                Failure of election**

An election fails if:

- (a) no candidate is declared under section 37;
- (b) a candidate dies on or before polling day; or
- (c) no candidate is returned as elected.

**136                Issue of writ for failed election**

- (1) If an election fails, the Administrator must, as soon as practicable, issue a new writ for an election.
- (2) The roll prepared for the failed election must be used for the election under the new writ.

**Part 8                Redistributions**

**Division 1           Preliminary**

**137                How notices are to be published**

A notice required under this Part to be published in accordance with this section must be published in:

- (a) the *Gazette*;
- (b) a newspaper circulating generally in the Territory; and
- (c) any regional newspaper, circulating in a part of the Territory, that the Redistribution Committee considers appropriate.

**138            When redistribution to be conducted**

- (1) After each general election, a redistribution must be conducted in accordance with this Part.
- (2) For subsection (1), the redistribution process must:
  - (a) start as soon as practicable after 2 years and 6 months after the polling day for the general election; and
  - (b) be completed as soon as practicable.
- (3) In addition, the Administrator may at any time after the period mentioned in subsection (2)(a), by notice in the *Gazette*, direct a redistribution be conducted in accordance with this Part if the number of electors in a division exceeds, or falls short of, the quota mentioned in section 13(4) of the Self-Government Act by more than one-fifth of the quota.
- (4) Despite subsection (2)(a), the first redistribution conducted after the commencement of this section must start as soon as practicable after the commencement.

**Division 2            Objects of redistribution and related matters**

**139            Objects of redistribution**

The objects of a redistribution are as follows:

- (a) at the time of the next general election, the number of electors in each proposed division should be as near to equal as practicable;
- (b) the physical area of each proposed division containing rural and remote areas should be kept as small as practicable;
- (c) the demographic and geographic nature of each proposed division should be as uniform as practicable;
- (d) identifiable communities should be included in only one proposed division if practicable;
- (e) the names of existing divisions should not be changed unless an existing name is no longer appropriate;
- (f) if a new name is proposed for a division, the use of locality names should be avoided;

- (g) subject to paragraphs (a) to (f) (inclusive), proposed changes to existing divisions should, as far as practicable, minimise the number of electors being transferred from one division to another.

#### **140        Matters to be considered in redistribution**

- (1) For achieving the objects of a redistribution, the Redistribution Committee and Augmented Redistribution Committee must ensure each proposed division contains a number of electors not exceeding, or falling short of, the quota mentioned in section 13(4) of the Self-Government Act by more than one-fifth of the quota.
- (2) In addition, the Committees must give proper consideration to the following matters:
  - (a) community of interests in each proposed division, including economic, social and regional interests;
  - (b) types of communication and travel in each proposed division, with special reference to disabilities arising out of remoteness or distance;
  - (c) the trend of population changes in the Territory;
  - (d) the density of population in each proposed division;
  - (e) the area of each proposed division;
  - (f) the physical features of each proposed division;
  - (g) the existing boundaries of the following:
    - (i) divisions;
    - (ii) municipalities, community government areas and wards under the *Local Government Act* and suburbs and towns;
    - (iii) Divisions and Subdivisions under the Commonwealth Act;
    - (iv) areas of Aboriginal Land Councils established by or under the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth;
    - (v) regions under the *Aboriginal and Torres Strait Islander Commission Act 1989* of the Commonwealth;

- (h) all suggestions and comments given under sections 141 and 142.

### **Division 3                Redistribution process**

#### **141                Inviting suggestions**

- (1) The Redistribution Committee must, by notice published in accordance with section 137, invite suggestions relating to the redistribution.
- (2) The notice must state suggestions are to be given to the Committee in writing within 30 days after the notice is published in the *Gazette*.

#### **142                Inviting comments on suggestions**

As soon as practicable after the 30 days mentioned in section 141(2), the Redistribution Committee must:

- (a) make available for public inspection, without fee, copies of all suggestions given to it within the 30 days; and
- (b) publish a notice in accordance with section 137:
  - (i) advising of the availability for inspection of the copies of the suggestions; and
  - (ii) inviting comment in writing on the suggestions to be given to it within 14 days after the notice is published in the *Gazette*.

#### **143                Preparing proposed redistribution**

- (1) As soon as practicable after the 14 days mentioned in section 142(b)(ii), the Redistribution Committee must prepare a proposed redistribution of the Territory into divisions.
- (2) The proposed redistribution must include proposed names for the proposed divisions.

#### **144                Maps showing proposed redistribution**

As soon as practicable after the Redistribution Committee has prepared the proposed redistribution, it must make available for public inspection, without fee, a map or number of maps together showing the names and boundaries of all proposed divisions.

**145            Inviting objections against proposed redistribution**

The Redistribution Committee must publish a notice in accordance with section 137:

- (a)    advising of the availability for inspection of the map or maps mentioned in section 144; and
- (b)    inviting objections in writing on the proposed redistribution be made to the Augmented Redistribution Committee within 30 days after the notice is published in the *Gazette*.

**146            Considering objections**

In deciding the redistribution, the Augmented Redistribution Committee must give proper consideration to all objections made under section 145(b).

**147            Deciding redistribution**

- (1) As soon as practicable after the end of the 30 days mentioned in section 145(b), the Augmented Redistribution Committee must, by notice published in the *Gazette* (a ***redistribution declaration notice***), redistribute the Territory into divisions.
- (2) The notice must declare:
  - (a)    the Territory is redistributed into divisions; and
  - (b)    the names and boundaries of the divisions.
- (3) This section has effect subject to sections 139 and 140.

**148            Report about redistribution**

- (1) As soon as practicable after publication of the redistribution declaration notice, the Augmented Redistribution Committee must give the Minister a report about the redistribution.
- (2) The report must contain:
  - (a)    details of all suggestions, comments and objections given or made under this Part; and
  - (b)    a map or number of maps together showing the names and boundaries of all divisions.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 5 sitting days after the Minister receives the report.

**149            Report about redistribution and maps to be available for public inspection**

As soon as practicable after the Minister tables the Augmented Redistribution Committee's report about the redistribution, the Commission must make available for public inspection, without fee, copies of the report.

**150            When redistribution takes effect**

- (1) The redistribution in accordance with the redistribution declaration notice takes effect for the next general election after publication of the notice.
- (2) However, subsection (1) does not prevent the preparation of the roll for a division in the notice before the next general election.

**Division 4            Miscellaneous provisions**

**151            Decisions are final**

- (1) Despite any other Act, a decision of the Redistribution Committee or Augmented Redistribution Committee made, or purporting to be made, under this Part:
  - (a) is final and conclusive;
  - (b) cannot be challenged, appealed against, reviewed, quashed, set aside or called into question in any court or tribunal on any ground; and
  - (c) is not subject to any proceeding for an injunction, declaration or order for prohibition or mandamus.
- (2) In this section:

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

**Part 9                      Registration of political parties**

**Division 1                Application process for registration and related matters**

**152            Application**

- (1) An eligible political party may apply for registration under this Part.

- (2) The application must:
- (a) be made to the Commission in the approved form;
  - (b) be signed by the secretary of the party;
  - (c) state the party's name;
  - (d) state the name and address, and contain a specimen signature, of the person nominated to be the registered officer of the party; and
  - (e) be accompanied by:
    - (i) a statutory declaration by the secretary stating the person nominated to be the registered officer of the party is qualified to be an elector;
    - (ii) a copy of the party's constitution; and
    - (iii) the application fee of \$500.
- (3) If the application is made by a political party that is registered under the Commonwealth Act, the application must also be accompanied by a statutory declaration by the secretary stating details of the party's registration under that Act.
- (4) If the application is made by another political party, the application must also be accompanied by:
- (a) a statutory declaration by the secretary stating at least 200 members of the political party are:
    - (i) electors;
    - (ii) members under the party's constitution; and
    - (iii) not members of another registered party or of a political party applying for registration; and
  - (b) a list, in a form decided by the Commission, of the names and postal addresses of at least 200 members of the political party who meet the requirements in paragraph (a).
- (5) The Commission may use information obtained under subsection (4)(b) only to verify the party has at least 200 members who are electors.

**153            Further information about application**

- (1) For this Part, the Commission may, by written notice, require the applicant to give the Commission, within a reasonable stated period, stated information or a stated document relating to the application.
- (2) If the applicant does not comply with the notice, the Commission may refuse the application.

**154            Notification and publication of application**

- (1) The Commission must give public notice of the application.
- (2) However, if the application is made by a political party to which section 152(4) applies, the Commission must not give public notice of the application until the Commission has obtained statements from at least 200 members who are electors stating they are members of the political party.
- (3) The notice must state the following:
  - (a) the political party's name;
  - (b) the name and address of the person nominated to be the registered officer of the party;
  - (c) a copy of the application and the party's constitution are available for public inspection;
  - (d) written objections to the application may be given to the Commission within 14 days after publication of the notice.
- (4) The Commission must make a copy of the application and the party's constitution available for public inspection from the date of the notice until the end of the 14 days mentioned in subsection (3)(d).

**155            Objections to application and responses**

- (1) An objection to the application must:
  - (a) be in writing;
  - (b) state the grounds of the objection;
  - (c) state the objector's name and address;
  - (d) be signed by the objector; and



- (e) be given to the Commission within the 14 days mentioned in section 154(3)(d).
- (2) The Commission must give the person nominated to be the registered officer of the political party:
  - (a) a copy of each objection; and
  - (b) a written notice inviting the person to give any response to the objection to the Commission, in writing, within 14 days after the day the person receives the notice.
- (3) As soon as practicable after the 14 days mentioned in subsection (2)(b), the Commission must make a copy of the following available for public inspection until the application is decided:
  - (a) each objection;
  - (b) each response given to the Commission in accordance with the notice under subsection (2).
- (4) In deciding whether to register the political party, the Commission must consider each objection and response given to the Commission under this section.

## **156            Decision on application**

The Commission must grant or refuse the application.

## **157            Grant of application**

- (1) If the Commission grants the application, the Commission must:
  - (a) register the party;
  - (b) publish notice of the registration in the *Gazette* and in a newspaper circulating generally in the Territory; and
  - (c) give notice of the registration to the applicant.
- (2) In addition, if an objection was made under section 155 to the application, the Commission must give the objector an information notice for the decision to register the political party.

## **158 Refusal of application**

- (1) The Commission must refuse the application if:
  - (a) the person nominated in the application to be the registered officer of the party is not qualified to be an elector or is the registered officer of a registered party; or
  - (b) for a party to which section 152(4) applies – the Commission reasonably believes the party does not have at least 200 members who meet the requirements in section 152(4)(a).
- (2) In addition, the Commission must refuse the application if the Commission reasonably believes the political party's name:
  - (a) consists of more than 6 words;
  - (b) is obscene;
  - (c) is the name or an acronym of the name of a registered party or parliamentary party;
  - (d) so nearly resembles the name or an acronym of the name of registered party or parliamentary party it is likely to be confused with or mistaken for that name or acronym;
  - (e) consists of the word "independent" or "independent party";
  - (f) would otherwise be likely to cause confusion if registered; or
  - (g) includes an MLA's name and the applicant does not have the MLA's written consent to use the name.
- (3) If the Commission refuses the application, the Commission must:
  - (a) give the applicant an information notice for the decision to refuse the application; and
  - (b) if an objection was made under section 155 to the application – give the objector written notice of the refusal.
- (4) In this section:

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

## **159            Amendment of application**

- (1) If the Commission is of the opinion the application must be refused under section 158 but that the application might be amended to prevent the refusal, the Commission must give the applicant written notice to that effect.
- (2) The notice must:
  - (a) state the reasons for the opinion; and
  - (b) describe the effect of subsections (3) to (6) (inclusive).
- (3) The Commission is not required to further consider the application unless a request is made under subsection (4).
- (4) Within 28 days after receiving the notice, the applicant may give the Commission a written request, signed by the applicant, for the Commission:
  - (a) to amend the application in a stated way; or
  - (b) to consider the application in the form in which it was made.
- (5) The Commission must comply with the request.
- (6) If the applicant requests the Commission to amend the application in a stated way, the application as amended in accordance with the request is taken to be a new application for the registration of a political party.

## **Division 2            Cancellation of registration**

### **160            Cancellation on application**

- (1) The Commission must cancel the registration of a registered party if the registered officer of the party asks the Commission to cancel the registration.
- (2) The request must be in the approved form.

### **161            When Commission must cancel registration**

- (1) The Commission must cancel the registration of a registered party if it has not endorsed a candidate at the last 2 general elections.
- (2) However, subsection (1) applies to a registered party only if it was a registered party at the time of each of the general elections.

- (3) Subject to section 162, the Commission must cancel the registration of a registered party if the Commission reasonably believes:
- (a) the party has ceased to exist (whether by amalgamation with another political party or otherwise);
  - (b) the registered officer of the party has not complied with a notice given under section 174;
  - (c) the party does not have a constitution;
  - (d) the registration of the party was obtained by fraud; or
  - (e) for a party registered on an application to which section 152(4) applies – the party has ceased to have at least 200 members who meet the requirements in section 152(4)(a).
- (4) The Commission must cancel the registration of a party registered on an application to which section 152(3) applies if the party ceases to be registered under the Commonwealth Act.

## **162            Notice of proposal to cancel registration**

The Commission may cancel the registration of a registered party under section 161(3) only if the Commission has:

- (a) given public notice stating the following:
  - (i) the Commission proposes to cancel the registration of the party;
  - (ii) written objections to the proposed cancellation may be made to the Commission within 14 days after publication of the notice;
- (b) given the registered officer or last registered officer of the party a written notice stating the following:
  - (i) the Commission proposes to cancel the registration of the party;
  - (ii) the reasons for the proposed cancellation;
  - (iii) written objections to the proposed cancellation may be made to the Commission within the time mentioned in paragraph (a)(ii); and
- (c) considered the objections made in accordance with the notices under paragraphs (a) and (b).

**163                      Notice of decision not to cancel registration**

If, after considering objections made under section 162 to the proposed cancellation of the registration of a registered party, the Commission decides not to cancel the registration, the Commission must give written notice of the decision to:

- (a) the registered officer of the party; and
- (b) for an objection that was not made by or for the party – the objector.

**164                      Cancellation of registration**

The Commission must remove particulars of a registered party from the register of registered parties if:

- (a) the Commission receives a request to cancel the party's registration under section 160; or
- (b) the Commission decides to cancel the party's registration under section 161.

**165                      Notice of cancellation**

If the Commission cancels the registration of a registered party, the Commission must:

- (a) give public notice of the cancellation; and
- (b) if the registration is cancelled under section 161(3) – give an information notice for the decision to the registered officer or last registered officer of the party.

**166                      Use of name after cancellation**

- (1) This section applies if the registration of a registered party (the ***cancelled party***) is cancelled under section 161.
- (2) Each of the following is ineligible for registration until after the next general election after the cancellation:
  - (a) the cancelled party;
  - (b) a political party that has a name that so nearly resembles the name of the cancelled party that it is likely to be confused with or mistaken for the cancelled party.

### **Division 3                Register of political parties**

#### **167                Commission to keep register**

- (1) The Commission must keep a register of registered parties.
- (2) The register must contain the following particulars for each registered party:
  - (a) the name of the party;
  - (b) the name and address of the registered officer of the party.

#### **168                Register to be available for public inspection**

The Commission must make the register of registered parties available for public inspection.

#### **169                Changes to particulars in register**

- (1) The secretary of a registered party may apply to the Commission to change particulars of the party in the register of registered parties.
- (2) Division 1 (other than section 159) applies, with all necessary changes, to the application as if it were an application for registration of the party and any objection to the application were an objection to the registration.
- (3) However, if the application is to change only the name or address of the registered officer of the party:
  - (a) the application need not be accompanied by a copy of the party's constitution;
  - (b) an application fee is not payable; and
  - (c) sections 154 and 155 do not apply.

### **Division 4                Miscellaneous provisions**

#### **170                Who can be registered officer**

A person is entitled to be the registered officer of a registered party only if the person is qualified to be an elector.

#### **171                Constitution to be available for public inspection**

The Commission must make a copy of a registered party's constitution available for public inspection.

**172      Notification of change to constitution**

If a registered party changes its constitution, the registered officer of the party must give the Commission a copy of the changed constitution within 30 days after the change.

Penalty:      20 penalty units.

**173      Review of registration of political parties**

The Commission may at any time review the registration of a political party.

**174      Information about political parties**

- (1) The Commission may, by written notice, require the registered officer of a registered party to give the Commission, within a reasonable stated period, stated information relating to its eligibility to be registered.
- (2) The registered officer must comply with the request.

Penalty:      20 penalty units.

**175      No action under Part during election period**

During an election period for an election, no action may be taken under this Part in relation to the registration of a political party.

**Part 10      Financial disclosure**

**Division 1      Interpretation**

**176      Definitions**

In this Part, unless the contrary intention appears:

***amount*** includes value.

***associated entity*** means an entity that:

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

***broadcast*** includes televise.

**broadcaster** means:

- (a) the Australian Broadcasting Corporation constituted under the *Australian Broadcasting Corporation Act 1983* of the Commonwealth;
- (b) the Special Broadcasting Service Corporation preserved and continued in existence under section 5 of the *Special Broadcasting Service Act 1991* of the Commonwealth; or
- (c) the holder of a licence under the *Broadcasting Services Act 1992* of the Commonwealth or provider of a broadcasting service under a class licence under that Act.

**corporation** has the same meaning as in section 57A of the Corporations Act 2001.

**credit card** includes a debit card.

**disclosure period** has the meaning in section 182.

**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 corporation;
- (b) the creation of a trust in property;
- (c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, partnership or interest in property;
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of any debt, contract or chose in action, or of any interest in property;
- (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 to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

**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;
- (b) if the entity is the trustee of a trust – the trustee; or
- (c) otherwise – the person responsible for keeping the financial records of the entity.

**gift** means any disposition of property made by a person to someone else, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes providing a service (other than volunteer labour) for no consideration or for inadequate consideration, but does not include:

- (a) a disposition of property by will; or
- (b) an annual subscription paid to a registered party by a person for the person's membership of the party.

**loan** means any of the following:

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

**property** includes money.

**registered industrial organisation** means an organisation registered under the *Workplace Relations Act 1996* of the Commonwealth or the law of another State or Territory about the registration of industrial organisations or unions.

**related bodies corporate** has the same meaning as in section 50 of the Corporations Act 2001.

**reporting agent**, for a registered party or candidate, means:

- (a) a person appointed by the party or candidate under section 184 and whose registration has not been removed under section 187; or

- (b) the person taken to be the reporting agent for the party or candidate under section 185.

**177      References to registered party**

In this Part, a reference to a registered party, other than a reference to the endorsement of a candidate in an election, does not include a reference to a part of the political party.

**178      References to things done by registered party**

In this Part, a reference to things done by or for a registered party is, if the party is not a corporation, a reference to things done by or with the authority of members or officers of the party for the party.

**179      Gifts – determination of amounts**

For this Part, the Regulations may prescribe principles determining the amount of a gift consisting of or including a disposition of property other than money.

**180      Related bodies corporate**

For this Part, related bodies corporate are taken to be the same person.

**181      Advertisements containing electoral matter**

For this Part, an advertisement relates to an election if it contains electoral matter, whether or not consideration was given for publishing or broadcasting the advertisement.

**182      Disclosure period**

- (1) The disclosure period for an election (the **relevant election**) is the period that starts:
  - (a) for a candidate who was a candidate in an election the polling day for which was within 4 years before polling day for the relevant election – at the end of 30 days after polling day for the last election before the relevant election in which the person was a candidate;
  - (b) for a candidate to whom paragraph (a) does not apply:
    - (i) if the candidate won party endorsement for the relevant election – on the day on which endorsement was won; or

- (ii) if subparagraph (i) does not apply – on the day on which the person announced the person would be a candidate in the relevant election or the day on which the person nominated as a candidate, whichever was the earlier; or
  - (c) for a person or entity to which section 192 or 193 applies – at the end of 30 days after the polling day for the last general election.
- (2) The disclosure period for an election ends 30 days after the polling day for the election.
  - (3) Subsection (4) applies if, under subsection (1), the disclosure period for an election held after the commencement of this section for a candidate for the election, or a person to which section 192 applies, would start before the commencement.
  - (4) Despite subsection (1), the disclosure period for the election starts on 1 July 2004.

### **183 Campaign committee to be treated as part of party**

- (1) Divisions 3, 4 and 5 apply as if a campaign committee of an endorsed candidate were the registered party endorsing the candidate.
- (2) In subsection (1):

***campaign committee***, for a candidate, means a body of persons appointed or engaged to form a committee to help the campaign of the candidate in an election.

***endorsed candidate*** means a candidate who is endorsed by a registered party.

## **Division 2 Reporting agents of registered parties and candidates**

### **184 Appointment of reporting agent**

- (1) A registered party must appoint a reporting agent for this Part.
- (2) A candidate in an election may appoint a person to be the candidate's reporting agent for this Part.
- (3) The appointment of a reporting agent under subsection (1) or (2) has no effect unless:
  - (a) the person appointed has attained the age of 18 years;

- (b) written notice of the appointment is given to the Commission;
  - (c) the name and address of the person appointed are stated in the notice; and
  - (d) the person appointed has consented in writing to the appointment.
- (4) The notice must be given by:
- (a) if the appointment is made by a registered party – the party's secretary; or
  - (b) if the appointment is made by a candidate – the candidate.

### **185 Non-appointed agents**

- (1) If there is no appointment in force under section 184(1) for a registered party, the registered officer of the party is taken to be its reporting agent.
- (2) If a registered party ceases to be registered under Part 9 and, immediately before it ceased to be registered, a person was its reporting agent, the person is taken to continue to be its reporting agent as if it had continued to be registered.
- (3) If a registered party ceases to be registered under Part 9 and no-one is taken under subsection (2) to be its reporting agent, the person who was its registered officer immediately before it ceased to be registered is taken to be its reporting agent as if it had continued to be registered.
- (4) A person taken to be a reporting agent under subsection (2) or (3) is taken to continue in the position until the person resigns from the position with the Commission's consent.
- (5) If there is no appointment in force under section 184(2) for a candidate, the candidate is taken to be the candidate's own agent.

### **186 Register of reporting agents**

- (1) The Commission must keep a register of reporting agents.
- (2) The Commission must enter in the register the name and address of each reporting agent appointed under section 184.

**187 Effect of registration etc.**

- (1) The appointment of a reporting agent:
  - (a) takes effect on the entry of the name and address of the agent in the register of reporting 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 appointed as a reporting agent must not be removed from the register unless:
  - (a) the person gives the Commission written notice that the person has resigned the appointment;
  - (b) the candidate or secretary of the registered party that appointed the person gives the Commission:
    - (i) written notice that the person has ceased to be the reporting agent; and
    - (ii) notice under section 184 of the appointment of another person as reporting agent of the party;
  - (c) the person is convicted of an offence against this Part; or
  - (d) if the person was appointed by a registered party – the party's registration is cancelled.
- (3) If the reporting agent of a registered party is convicted of an offence against this Part, the secretary of the party must give notice under section 184 of the appointment of another person as reporting agent of the party:
  - (a) within 28 days after the conviction; or
  - (b) if an appeal against the conviction is started within the 28 days mentioned in paragraph (a) and the conviction is affirmed – within 28 days after the appeal is decided.
- (4) If the reporting agent of a registered party dies, the secretary of the party must, within 28 days after the death, give the Commission:
  - (a) written notice of the death; and
  - (b) notice under section 184 of the appointment of another person as reporting agent of the party.

**188      Notice of death or resignation of candidate's reporting agent**

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

**Division 3      Disclosure of donations**

**189      Definition**

In this Division, unless the contrary intention appears:

***defined details***, in relation to a gift, means:

- (a) for a gift made on behalf of 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;
- (b) for a gift out of a trust fund or the funds of a foundation:
  - (i) the names and addresses of the trustees of the fund or foundation; and
  - (ii) the name, title or description of the trust fund or foundation; or
- (c) for another gift – the name and address of the person or entity that made the gift.

**190      Loans to registered party or candidate**

- (1) A registered party or candidate (the ***receiver***) must not receive a loan of \$1 500 or more from a person or entity (the ***lender***) that is not an ADI, unless the receiver complies with this section.
- (2) The receiver of the loan must immediately make a record of the following:
  - (a) the terms of the loan;
  - (b) if the lender is a registered industrial organisation:
    - (i) the name of the organisation; and

- (ii) the names and addresses of the members of the executive committee (however described) of the organisation;
  - (c) if the lender is an unincorporated body (other than a registered industrial organisation):
    - (i) the name of the body; and
    - (ii) the names and addresses of the members of the executive committee (however described) of the body;
  - (d) if the loan was paid out of a trust fund or the funds of a foundation:
    - (i) the names and addresses of the trustees of the fund or foundation; and
    - (ii) the title or other description of the trust fund, or the name of the foundation;
  - (e) if paragraphs (b), (c) and (d) do not apply to the loan – the name and address of the lender.
- (3) For subsection (1), a person who is a candidate in an election is taken to remain a candidate for 30 days after the polling day for the election.
- (4) If the receiver receives a loan to which subsection (1) applies but does not comply with subsection (2), the relevant person must pay to the Territory an amount equal to the amount of the loan.
- (5) The amount payable under subsection (3) may be recovered by the Territory as a debt.
- (6) For this section, if credit is given on a credit card for card transactions, each transaction is taken to be a separate loan.
- (7) In this section:

**relevant person** means:

- (a) for a loan to or for the benefit of a registered party:
  - (i) if the party is a corporation – the party; or
  - (ii) if subparagraph (i) does not apply – the reporting agent of the party; or
- (b) for a loan to or for the benefit of a candidate – the candidate.

**191 Disclosure of gifts – reporting agent of candidate**

- (1) The reporting agent of a candidate in an election must, within 15 weeks after the polling day for the election, give the Commission a return in the approved form.
- (2) The return must state the following for the disclosure period for the election:
  - (a) the total amount of all gifts received by the candidate;
  - (b) the number of persons who made gifts to the candidate;
  - (c) the date each gift was received;
  - (d) the amount of each gift;
  - (e) the defined details of each gift.
- (3) However, the reporting agent is not required to state in the return the information mentioned in subsection (2)(c), (d) and (e) for a gift by a person if the amount of the gift and sum of all other gifts made to the candidate by the person is less than \$200.
- (4) In this section:

**gift** does not include a gift:

  - (a) made in a private capacity to a candidate for the candidate's personal use; and
  - (b) that the candidate has not used, and will not use, solely or substantially for a purpose related to an election.

**192 Disclosure of gifts – persons incurring political expenditure**

- (1) This section applies if a person, other than a registered party, candidate or associated entity, (the **first person**):
  - (a) incurs expenditure for a political purpose during the disclosure period for an election; and
  - (b) receives from someone else one or more gifts:
    - (i) all or a part of each of which was used by the first person to enable the person to incur expenditure during the disclosure period for a political purpose or to reimburse the person for incurring expenditure during the disclosure period for a political purpose; and
    - (ii) the total amount of which is \$1 000 or more.



- (2) Within 15 weeks after polling day for the election, the first person must give the Commission a return in the approved form.
- (3) The return must, for each gift mentioned in subsection (1), state:
  - (a) the amount of the gift;
  - (b) the date it was received; and
  - (c) the defined details.
- (4) Subsection (1) does not apply to a person if the amount of expenditure incurred by the person for political purposes during the disclosure period is less than \$1 000.
- (5) For 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 expenditure in relation to that or another election.
- (6) In this section, a reference to incurring expenditure for a political purpose is a reference to incurring expenditure in relation to:
  - (a) publishing or broadcasting electoral matter;
  - (b) otherwise publishing a view on an issue in an election;
  - (c) making a gift to a registered party;
  - (d) making a gift to a candidate; or
  - (e) making a gift to a person on the understanding that the person or another person will apply, either directly or indirectly, the whole or a part of the gift in a way mentioned in paragraph (a), (b), (c) or (d).
- (7) For subsection (3), 2 or more gifts made by the same person to or for the benefit of a person to whom subsection (1) applies are taken to be a single gift.

### **193 Donations to candidates**

- (1) This section applies if, during the disclosure period for an election, a person (other than a registered party, candidate or associated entity):
  - (a) makes gifts totalling \$200 or more to the same candidate in the election; or
  - (b) makes gifts totalling \$1 000 or more to an entity declared by the Commission, by notice published in the *Gazette*, to be an entity to which this paragraph applies.

- (2) Subsection (1) applies to a person even if at the time the person made the gift the person was outside the Territory.
- (3) Within 15 weeks after the polling day for the election, the person must give the Commission a return in the approved form.
- (4) The return must state for each gift mentioned in subsection (1) made by the person during the disclosure period:
  - (a) the amount of the gift;
  - (b) the date it was made; and
  - (c) the defined details.

#### **194      Donations to registered parties**

- (1) Subsection (2) applies if, in a financial year, a person makes a gift of \$1 500 or more, or gifts totalling \$1 500 or more, to the same registered party.
- (2) Within 20 weeks after the end of the financial year, the person must give the Commission a return in the approved form covering all the gifts the person made to the party during the financial year.
- (3) Subsection (4) applies if, in a financial year:
  - (a) a person receives a gift of \$1 000 or more, or gifts totalling \$1 000 or more; and
  - (b) the person uses all or part of the gift or gifts to make a gift of \$1 500 or more, or gifts totalling \$1 500 or more, to a registered party.
- (4) Within 20 weeks after the end of the financial year, the person must give the Commission a return in the approved form covering all the gifts mentioned in subsection (3)(a).
- (5) For each gift mentioned in subsection (1) or (3)(a), the return must state:
  - (a) the amount of the gift;
  - (b) the date when it was made; and
  - (c) either of the following:
    - (i) for a gift mentioned in subsection (1) – the name of the registered party to which the gift was made;

(ii) for a gift mentioned in subsection (3)(a) – the defined details.

(6) This section applies to a person even if at the time the person made the gift the person was outside the Territory.

(7) If a person makes a gift to any person or entity with the intention of benefiting a registered party, the person is taken for this section to have made the gift to the party.

(8) In this section:

**gift** does not include a gift made by a registered party, candidate or associated entity.

## **195      Returns by persons under Commonwealth Act**

(1) This section applies if:

(a) an organisation has corresponding registration as a political party under this Act and Part XI of the Commonwealth Act, whether by the same or a different name;

(b) a person gives the Australian Electoral Commission, within the period of 20 weeks after the end of the financial year, a return under section 305B of the Commonwealth Act for the financial year; and

(c) the person gives the Commission, within that period, a copy of the return.

(2) The person is not required to give the Commission a return under section 194 for the financial year.

(3) For subsection (1), an organisation has corresponding registration as a political party under this Act and Part XI of the Commonwealth Act if the same person is stated as the registered officer of the party in the register of registered parties kept under section 167 and in the register of political parties kept under section 125 of the Commonwealth Act.

(4) In this section:

**party** includes a Territory branch of a political party registered under Part XI of the Commonwealth Act.

**196      Advice about obligations to make returns**

- (1) This section applies if, in a financial year, a registered party receives a gift of \$1 500 or more, or gifts totalling \$1 500 or more, from the same person.
- (2) Before 1 August after the end of the financial year, the party must, by written notice, tell the person about the requirements of section 194.

Penalty:      If the offender is a natural person – 200 penalty units or imprisonment for 12 months.

                 If the offender is a body corporate – 1 000 penalty units.

- (3) In this section:

**gift** has the meaning in section 194(8).

**197      Anonymous gifts**

- (1) A registered party or candidate (the **receiver**) must not accept a gift of the prescribed amount or more made by someone else (the **donor**) to or for the benefit of the receiver unless:
  - (a) the receiver knows the defined details of the gift; or
  - (b) both the following subparagraphs apply:
    - (i) the donor tells the receiver the defined details of the gift before the gift is made;
    - (ii) when the gift is made, the receiver has no grounds for believing the defined details given by the donor are not true.
- (2) Subsection (1) applies:
  - (a) for a registered party – to gifts received at any time; or
  - (b) for a candidate – to gifts received during the disclosure period.
- (3) For subsection (1), a person who is a candidate in an election must be taken to remain a candidate for 30 days after the polling day for the election.
- (4) For this section, 2 or more gifts made by the same person to or for the benefit of a registered party or candidate are taken to be a single gift.

- (5) If the receiver contravenes subsection (1), the relevant person must pay the Territory an amount equal to the amount of the gift.
- (6) The amount payable under subsection (5) may be recovered by the Territory as a debt.
- (7) In this section:

**gift** includes a gift made on behalf of the members of an unincorporated association.

**prescribed amount** means:

- (a) for a gift made to or for the benefit of a registered party – \$1 000; or
- (b) for a gift made to or for the benefit of a candidate – \$200.

**relevant person** means:

- (a) for a gift to or for the benefit of a registered party:
  - (i) if the party is a corporation – the party; or
  - (ii) otherwise – the reporting agent of the party; or
- (b) for a gift to or for the benefit of a candidate – the candidate.

## **198 Nil returns**

If no details are required to be included in a return under this Division, the return must:

- (a) be given to the Commission; and
- (b) include a statement to the effect that no gifts of a kind required to be disclosed were received.

## **Division 4      Disclosure of electoral expenditure**

### **199 Definitions**

In this Division, unless the contrary intention appears:

**electoral advertisement** means an advertisement containing electoral matter, whether or not consideration was given for its publication or broadcast.

***electoral expenditure***, for an election, means expenditure incurred (whether or not incurred during the election period) on:

- (a) publishing an electoral advertisement during the election period in a journal;
- (b) broadcasting an electoral advertisement during the election period;
- (c) displaying an electoral advertisement during the election period at a theatre or other place of entertainment;
- (d) producing an electoral advertisement that is published, broadcast or displayed as mentioned in paragraph (a), (b) or (c);
- (e) producing any printed electoral matter to which Part 13, Division 1, Subdivision 2 applies (other than material mentioned in paragraph (a), (b) or (c)) that is published during the election period;
- (f) producing and distributing electoral matter that is addressed to particular persons or organisations and is distributed during the election period; or
- (g) carrying out an opinion poll or other research, about the election during the election period.

***participant***, in an election, means:

- (a) a registered party or candidate; or
- (b) another person by whom, or with the authority of whom, electoral expenditure for an election is incurred.

## **200 Returns of electoral expenditure**

- (1) The reporting agent of each person who was a candidate in an election must, before the end of 15 weeks after polling day for the election, give the Commission a return in the approved form stating details of all electoral expenditure for the election incurred by or with the authority of the candidate.
- (2) 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 party, an associated entity or a candidate in the election, the person must, before the end of 15 weeks after polling day for the election, give the Commission a return in the approved form stating details of the expenditure.

- (3) A person is not required to give a return under subsection (2) for an election if the total amount of the electoral expenditure incurred for the election by or with the authority of the person does not exceed \$200.

## **201      Nil returns**

If no electoral expenditure for an election was incurred by or with the authority of a candidate in the election, a return under section 200 for the candidate must:

- (a) be given to the Commission; and
- (b) include a statement to the effect that no expenditure of the kind required to be disclosed has been incurred by or with the authority of the candidate.

## **202      Returns by publishers and broadcasters**

- (1) If an election has taken place, the following persons must give the Commission a return in the approved form before the end of 8 weeks after polling day for the election:
- (a) a publisher who published an electoral advertisement in a journal during the election period with the authority of a participant in the election;
  - (b) a broadcaster who, during the election period, broadcast an electoral advertisement with the authority of a participant in the election.
- (2) Subsection (1) applies to a publisher or broadcaster even if the publisher or broadcaster was outside the Territory when the advertisement was published or broadcast.
- (3) The return must state the following particulars:
- (a) the journal in which the advertisement was published or broadcasting service as part of which the advertisement was broadcast;
  - (b) the person at whose request the advertisement was published or broadcast;
  - (c) the participant in the election with whose authority the advertisement was published or broadcast;

- (d) the date or dates when the advertisement was published or broadcast and the following details:
    - (i) for a published advertisement – the page on which the advertisement was published and the space occupied by it;
    - (ii) for a broadcast advertisement – the times between which the advertisement was broadcast;
  - (e) whether or not, on each occasion when the advertisement was published or broadcast, a charge was made by the publisher or broadcaster for publishing or broadcasting the advertisement;
  - (f) if a charge mentioned in paragraph (e) was made – the amount of the charge.
- (4) If a publisher or broadcaster states in the return the amount of a charge for an advertisement, the publisher or broadcaster must state in the return whether or not the charge is at less than normal commercial rates having regard to:
- (a) for a published advertisement – the space occupied by the advertisement and the nature of the journal; or
  - (b) for a broadcast advertisement – the length of the advertisement and the date or dates when, and the times between which, it was broadcast.
- (5) A publisher is not required to give a return under subsection (1) for an election (the **first election**) if the total amount of the charge made by the publisher for the publication of advertisements to which the subsection applies in relation to the first election and any other election that took place on the same day as the first election does not exceed \$1 000.
- (6) A broadcaster who is required to make a return under this section for an advertisement must keep the record made for the relevant provision until the end of the period of one month starting on the date on which the return is given to the Commission.
- (7) Subsection (6) is in addition to the requirements of the relevant provision for the retention of the record.



(8) In subsections (6) and (7):

**relevant provision** means:

- (a) for the Australian Broadcasting Corporation – section 79B of the *Australian Broadcasting Corporation Act 1983* of the Commonwealth;
- (b) for the Special Broadcasting Service – section 70B of the *Special Broadcasting Service Act 1991* of the Commonwealth; or
- (c) for another broadcaster – Schedule 2, clause 5 to the *Broadcasting Services Act 1992* of the Commonwealth.

## **203      Two or more elections on same day**

(1) This section applies if:

- (a) the voting at 2 or more elections took place on the same day; and
  - (b) a person would, apart from this subsection, be required to give 2 or more returns under this Division relating to the elections.
- (2) The person may give the Commission a single return in the approved form stating the particulars the person would have been required to state in separate returns.
- (3) 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 5      Annual returns by registered parties and associated entities**

### **204      Definition**

In this Division, unless the contrary intention appears:

**defined particulars**, for a sum, means the following:

- (a) if the sum was received from, paid or 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;
- (b) if the sum was paid out of or into, or incurred as a debt to, a trust fund or the funds of a foundation:
  - (i) the names and addresses of the trustees of the fund or foundation; and
  - (ii) the name, title or description of the trust fund or foundation;
- (c) the name and address of the person or organisation that paid, received or is owed the sum;
- (d) particulars prescribed by the Regulations.

## **205 Annual returns by registered parties**

- (1) The reporting agent of a registered party must, within 16 weeks after the end of each financial year, give the Commission a return in the approved form.
- (2) However, the return may be the audited annual accounts of the party in a form approved in writing by the Commission.
- (3) The return must state:
  - (a) the amount received by or on behalf of the party during the financial year, together with the particulars required by section 210(1);
  - (b) the amount paid by or on behalf of the party during the financial year; and
  - (c) the outstanding amount, at the end of the financial year, of debts incurred by or on behalf of the party, together with the particulars required by section 211(1).
- (4) If a political party ceases to be a registered party during a financial year, this section applies to the party in relation to the year as if a reference to the reporting agent of the party were a reference to the person who was the reporting agent of the party immediately before it ceased to be registered.

## **206 Periods of less than financial year**

- (1) This section applies if, during a financial year, a political party becomes or ceases to be a registered party.

- (2) A return under section 205 for the political party for the financial year need only include particulars for the part of the year when the party was registered.

## **207 Returns by registered parties under Commonwealth Act**

- (1) This section applies if:
  - (a) an organisation has corresponding registration as a political party under this Act and Part XI of the Commonwealth Act, whether by the same or a different name;
  - (b) the reporting agent of the organisation gives the Australian Electoral Commission, within the period of 16 weeks after the end of the financial year, a return under section 314AB of the Commonwealth Act for the financial year; and
  - (c) the agent or organisation gives the Commission, within that period, a copy of the return.
- (2) The organisation is not required to give the Commission a return under section 205 for the financial year.
- (3) For subsection (1), an organisation has corresponding registration as a political party under this Act and Part XI of the Commonwealth Act if the same person is stated as the registered officer of the party in the register of registered parties kept under section 167 and in the register of political parties kept under section 125 of the Commonwealth Act.

- (4) In this section:

**party** includes a Territory branch of a political party registered under Part XI of the Commonwealth Act.

**reporting agent**, for an organisation, means the person appointed under section 288 of the Commonwealth Act to be the agent of the organisation for the Territory.

## **208 Annual returns by associated entities**

- (1) If an entity is an associated entity at any time during a financial year, the entity's financial controller must, within 16 weeks after the end of the year, give the Commission a return in the approved form.
- (2) The return must state:
  - (a) the amount received by or on behalf of the entity during the financial year together with the particulars required by section 210(1);

- (b) the amount paid by or on behalf of the entity during the financial year; and
  - (c) if the entity is an associated entity at the end of the financial year – the outstanding amount, at the end of the year, of debts incurred by or on behalf of the entity together with the particulars required by section 211(2).
- (3) An amount received when the entity was not an associated entity must not be counted for subsection (2)(a) or (b).
- (4) Subsection (5) applies if an amount required to be stated under subsection (2)(b) was:
  - (a) paid to or for the benefit of one or more registered parties; and
  - (b) paid out of funds generated from the entity's capital.
- (5) The return must state the following details of each person who contributed to the entity's capital:
  - (a) the person's name and address;
  - (b) the total of the person's contributions to the capital up to the end of the financial year.
- (6) Subsection (5) does not apply to contributions included in a previous return under this section.

## **209 Returns by associated entities under Commonwealth Act**

- (1) This section applies if an entity was, during a financial year, an associated entity and the financial controller of the entity:
  - (a) gives the Australian Electoral Commission, within the period of 16 weeks after the end of the year, a return under section 314AEA of the Commonwealth Act for the year; and
  - (b) gives the Commission, within that period, a copy of the return.
- (2) The financial controller is not required to give the Commission a return under section 208 in relation to the entity for the financial year.

## **210 Amounts received**

- (1) If the sum of all amounts received by or on behalf of a registered party or associated entity (the **receiver**) from an entity during a financial year is \$1 500 or more, the return by the receiver under section 205 or 208 must state the amount of the sum and the

defined particulars for it.

- (2) In working out the sum, an amount of less than \$1 500 need not be counted.
- (3) If the sum was received as a loan, the return must state the information required to be recorded under section 190(2).

## **211      Outstanding amounts**

- (1) If, at the end of a financial year, the sum of all debts within the meaning of section 205(3)(c) that are owed by a registered party to a particular person or organisation is \$1 500 or more, the return by the party under section 205 for the year must state the sum and include the defined particulars.
- (2) If an entity is an associated entity at the end of a financial year and at the end of the year the sum of all debts within the meaning of section 208(2)(c) that are owed by the entity to a particular person or organisation is \$1 500 or more, the return by the entity under section 208 for the financial year must state the sum and include the defined particulars.

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

A return given under this Division must not include a list of members of a political party.

## **213      Regulations**

- (1) The Regulations may require greater detail to be provided in a return under section 205 or 208 than is required by this Division.
- (2) Without limiting subsection (1), the Regulations may require the amounts mentioned in section 205(3) or 208(2) be broken down in the stated way.
- (3) The Regulations may reduce the amount of information to be provided in a return under section 208.

## **Division 6      Compliance**

### **214      Definitions**

In this Division, unless the contrary intention appears:

***investigation notice*** has the meaning in section 216(2) or 217(2).

***return*** includes a notice under section 221(1)(c) or (4).

## 215      **Offences**

- (1) A person must not, without reasonable excuse, fail to give the Commission a return under this Part within the time required.

Penalty:      If the offender is a natural person – 200 penalty units or imprisonment for 12 months.

                 If the offender is a body corporate – 1 000 penalty units.

- (2) A person must not, without reasonable excuse:

(a) give the Commission an incomplete return under Division 3, 4 or 5; or

(b) fail to keep records in accordance with section 220.

Penalty:      If the offender is a natural person – 200 penalty units or imprisonment for 12 months.

                 If the offender is a body corporate – 1 000 penalty units.

- (3) A person must not give a return under Division 3, 4 or 5 containing particulars that are, to the person's knowledge, false or misleading in a material particular.

Penalty:      If the offender is a natural person – 200 penalty units or imprisonment for 12 months.

                 If the offender is a body corporate – 1 000 penalty units.

- (4) A person (the **provider**) must not provide another person who is required to give a return under Division 3, 4 or 5 information relevant to the return that is, to the provider's knowledge, false or misleading in a material particular.

Penalty:      If the offender is a natural person – 200 penalty units or imprisonment for 12 months.

                 If the offender is a body corporate – 1 000 penalty units.

- (5) It is enough for a complaint against a person for an offence against subsection (3) or (4) to state the particulars or information was, without specifying which, **false or misleading** to the knowledge of the person or provider.

- (6) Despite section 297 and section 52 of the *Justices Act*, a prosecution for an offence against a provision of this section may be started at any time within 3 years after commission of the offence.

## **216      Investigation notices generally**

- (1) The Commission may conduct an investigation into compliance with this Part.
- (2) For the investigation, the Commission may give a notice (an ***investigation notice***) in relation to a reporting agent or prescribed person to:
- (a) the agent or prescribed person;
  - (b) for the reporting agent of a registered party – any officer, employee or representative of the party;
  - (c) for a prescribed person that is a corporation – any of its officers or employees; or
  - (d) anyone else the Commission reasonably believes can produce a document or anything else, or give evidence, about anyone's compliance with this Part.
- (3) The investigation notice must require the person to whom it is given to:
- (a) produce to the Commission, within the time and in the way stated in the notice, a document or something else stated in the notice; or
  - (b) appear, at a time and place stated in the notice, before an officer to do the following:
    - (i) give evidence orally or in writing;
    - (ii) to produce a document or something else stated in the notice.
- (4) The time stated in the investigation notice must be not earlier than 28 days after the person receives the notice.
- (5) If the investigation notice requires an officer, employee or representative of a registered party other than its reporting agent to appear before an officer, the reporting agent of the party is entitled to:
- (a) attend the investigation; or

- (b) nominate someone else to attend on the reporting agent's behalf.
- (6) If the investigation notice requires someone other than the financial controller of an associated entity to appear before an officer in relation to an investigation into the entity, the financial controller is entitled to:
  - (a) attend the investigation; or
  - (b) nominate someone else to attend on the financial controller's behalf.
- (7) Subsection (8) applies if:
  - (a) the investigation notice relates to an investigation into:
    - (i) a return given to the Commission under section 191 by the reporting agent of a candidate; or
    - (ii) a failure of a reporting agent of a candidate to give the Commission a return under this Part within the time required; and
  - (b) the notice requires someone other than the reporting agent to appear before an officer.
- (8) The reporting agent is entitled to:
  - (a) attend the investigation; or
  - (b) nominate someone else to attend on the reporting agent's behalf.
- (9) The Commission may conduct the investigation even though the person to whom the investigation notice was given contravenes the notice.
- (10) The Commission may require the person to whom the investigation notice has been given to give evidence on oath and for that purpose may administer an oath.
- (11) In this section:  
  
***prescribed person*** means a person who, in the Commission's opinion, is or may be required to give the Commission a return under this Part in relation to an election.



## **217 Investigation notices about associated entities**

- (1) This section applies if:
  - (a) the Commission reasonably believes a person can produce a document or anything else, or give evidence, about whether an entity is, or was at a particular time, an associated entity; and
  - (b) the person is or has been the financial controller or an officer or employee of the entity.
- (2) The Commission may give the person a notice (an ***investigation notice***) requiring the person to:
  - (a) produce to the Commission, within the time and in the way stated in the notice, a document or something else stated in the notice; or
  - (b) appear, at a time and place stated in the notice, before an officer to do the following:
    - (i) give evidence orally or in writing;
    - (ii) to produce a document or something else stated in the notice.
- (3) The time stated in the investigation notice must not be earlier than 28 days after the day the person receives the notice.
- (4) If the investigation notice requires someone other than the financial controller of the associated entity to appear before an officer, the financial controller is entitled to:
  - (a) attend the investigation; or
  - (b) nominate someone else to attend on the financial controller's behalf.
- (5) The Commission may conduct the investigation even though the person to whom the investigation notice was given contravenes the notice to attend.
- (6) On giving the investigation notice to the person, the Commission must also give the person an information notice for the decision to give the person the notice.
- (7) The person is taken not to have failed to comply with the investigation notice if the person appeals against the decision under section 229 and the appeal has not been decided.

(8) The Commission may require the person to whom the investigation notice has been given to give evidence on oath and for that purpose may administer an oath.

(9) This section is in addition to, and does not limit, section 216.

## **218      Investigation notice offences**

(1) A person must not, without reasonable excuse, contravene an investigation notice.

Penalty:      If the offender is a natural person – 200 penalty units or imprisonment for 12 months.

                    If the offender is a body corporate – 1 000 penalty units.

(2) A person must not, in response to an investigation notice, give evidence the person knows is false or misleading in a material particular.

Penalty:      If the offender is a natural person – 200 penalty units or imprisonment for 12 months.

                    If the offender is a body corporate – 1 000 penalty units.

## **219      Investigation – search warrants**

(1) An authorised officer may apply to a magistrate, by information on oath, for a search warrant for a place if:

(a) the officer has reasonable grounds for suspecting there may be, at that time or within the next 24 hours, in or on the place, an article that may afford evidence relating to a contravention of section 215 (a **relevant article**); and

(b) the officer has reasonable grounds for believing that, if an investigation notice under section 216 were issued for the production of the relevant article, it might be concealed, lost, mutilated, destroyed or disposed of.

(2) The magistrate must not issue a search warrant unless:

(a) the officer or another person has given the magistrate, either orally or by affidavit, any further information the magistrate requires about the grounds on which the issue of the warrant is being sought; and

- (b) the magistrate is satisfied there are reasonable grounds for issuing the warrant.
- (3) If the magistrate issues a warrant, the magistrate must endorse on the application the grounds relied on to justify the issue of the warrant.
- (4) The warrant authorises the officer or another person named in the warrant, with the assistance the officer or person considers necessary, and if necessary by force:
  - (a) to enter the place;
  - (b) to search the place for relevant articles; and
  - (c) to seize any relevant article found in or on the place.
- (5) The warrant must state:
  - (a) the purpose for which it is issued, including a reference to the alleged offence in relation to which it is issued;
  - (b) the hours during which the entry is authorised or state that the entry is authorised at any time of the day or night;
  - (c) a description of the kind of articles to which it relates; and
  - (d) the date, within 30 days after the warrant's issue, the warrant ceases to have effect.
- (6) The person executing the warrant must, if asked by the occupier of the place or another person on the place, produce the warrant for the person's inspection.
- (7) If an article is seized by a person under the warrant:
  - (a) the person may keep the article for as long as is necessary and reasonable for the investigation to which it is relevant; and
  - (b) when keeping the article ceases to be necessary and reasonable for that purpose, the person must give it to the person who appears to be entitled to possession of it.
- (8) If a document is kept under subsection (7)(a), the Commission must, at the times and places the Commission considers appropriate, permit the person otherwise entitled to possession of it to inspect and, at the person's expense, make copies of or take extracts from it.

(9) In this section:

**place** includes:

- (a) vacant land;
- (b) premises; and
- (c) a vehicle.

**premises** includes:

- (a) a building or structure;
- (b) a part of a building or structure; and
- (c) land on which a building or structure is situated.

**vehicle** means anything used for carrying anything or any person by land, water or air.

## **220 Records**

- (1) If a person makes or obtains an article that is or includes a record relating to a matter particulars of which are, or could be, required to be stated in a return under this Part relating to an election, the person must keep the record for at least 4 years starting on polling day for the election.
- (2) If a registered party or associated entity makes or obtains an article that is or includes a record relating to a matter particulars of which are, or could be, required to be stated in a return under Division 5, the party or entity must keep the record for at least 4 years starting on the day after the last day when the return must be given to the Commission.
- (3) If a person, registered party or associated entity (the **transferor**) would, in the normal course of business or administration, transfer to someone else a record mentioned in subsection (1) or (2):
  - (a) the transferor is taken not to have contravened the subsection by transferring the record; and
  - (b) the person to whom the record is transferred must keep the record for the period for which the transferor would have been required to keep the record if the record had not been transferred.

## **Division 7            Miscellaneous provisions**

### **221            Inability to complete returns**

- (1) If a person who is required to give the Commission a return under Division 3, 4 or 5 considers it is impossible to complete the return because the person is unable to obtain particulars required to prepare the return, the person may:
  - (a) prepare the return to the extent it is possible to do so without the particulars;
  - (b) give the Commission the return so prepared; and
  - (c) give the Commission written notice stating the following:
    - (i) the return is incomplete because the person is unable to obtain certain particulars;
    - (ii) the particulars the person is unable to obtain;
    - (iii) the reasons why the person is unable to obtain the particulars;
    - (iv) if the person reasonably believes another person whose name and address the person knows can give the particulars, that belief, the reasons for it and the name and address of the other person.
- (2) A person who complies with subsection (1) must not, because of the omission of particulars mentioned in subsection (1)(c)(ii), be taken to have given an incomplete return for section 215(2)(a).
- (3) If the Commission has been informed under subsection (1)(c) or (4)(e) that a person can give particulars that have not been included in a return, the Commission may, by written notice, require the person to give the Commission written notice of the particulars within the reasonable period stated in the notice.
- (4) If a person who is required to give the Commission particulars under subsection (3) considers the person is unable to obtain some or all of the particulars, the person must give the Commission a written notice stating:
  - (a) the particulars the person is able to give;
  - (b) the person is unable to obtain certain particulars;
  - (c) the particulars the person is unable to obtain;

- (d) the reasons why the person considers the person is unable to obtain the particulars; and
  - (e) if the person reasonably believes another person whose name and address the person knows can give the particulars, that belief, the reasons for it and the name and address of the other person.
- (5) If:
  - (a) a notice is given to a person under subsection (3); and
  - (b) the person complies with the notice or gives the Commission a notice under subsection (4),

the person must not be taken to have given an incomplete return merely because of the omission of the required particulars.

## **222 Non-compliance with Part**

- (1) The failure of a person to comply with a provision of this Part in relation to an election does not invalidate the election.
- (2) Without limiting subsection (1), if a candidate endorsed by a registered party is elected at an election, a failure by the reporting agent of the party to comply with a provision of this Part for the election does not invalidate the candidate's election.
- (3) In addition, without limiting subsection (1), if the reporting agent of a candidate who is elected at an election does not comply with a provision of this Part for the election, the failure does not invalidate the candidate's election.

## **223 Amendment of returns**

- (1) If the Commission is satisfied a return under this Part contains a formal error or is subject to a formal defect, the Commission may amend the return to the extent necessary to correct the error or remove the defect.
- (2) A person authorised by subsection (3) may, by written notice signed by the person and given to the Commission, request the permission of the Commission to make a stated amendment of a return to correct an error or omission.
- (3) The request may be made by:
  - (a) the person who gave the return;

- (b) if the return was given for a registered party or candidate – the reporting agent of the party or candidate; or
  - (c) if the return was given in relation to an associated entity – the financial controller of the entity.
- (4) If the Commission is satisfied the request is justified, the Commission must permit the person to amend the return.
- (5) If the Commission decides to refuse the request, the Commission must give the person an information notice for the decision.
- (6) The amendment of a return under this section does not affect the liability of a person for an offence against section 215(2) or (4) arising out of the giving of the return.

## **224      Copies of returns to be available for public inspection**

- (1) The Commission must make available for public inspection, in accordance with subsections (2) and (3), a copy of each return given to the Commission under Divisions 3, 4 and 5.
- (2) A copy of a return under Division 3 or 4 (other than a return under section 194) must be made available for public inspection from the start of the twenty-fifth week after polling day for the election to which the return relates.
- (3) A copy of a return under section 194 or Division 5 must be made available for public inspection from the start of March in the next year.
- (4) A person may, on payment of a fee decided by the Commission to cover the cost of copying, obtain a copy of a return if a copy of the return is available for public inspection under this section.

## **Part 11      Appeals**

### **Division 1      Preliminary**

#### **225      Appealable decisions and affected persons**

Each of the Commission's decisions in Schedule 2 is an appealable decision and a person or political party stated opposite the decision is an affected person for the decision.

**226      Information notices**

- (1) An information notice for an appealable decision is a written notice stating the following:
  - (a) the decision;
  - (b) the reasons for the decision;
  - (c) the appeal details.
- (2) The validity of an appealable decision is not affected by a failure:
  - (a) to give an information notice to an affected person for the decision; or
  - (b) to comply with this section.

**227      Appeal details**

The appeal details for an information notice are as follows:

- (a) an affected person may appeal against the appealable decision to which the notice relates;
- (b) the period allowed for applying for starting an appeal;
- (c) how to start an appeal.

**Division 2      Appeals to Supreme Court**

**228      Appeals against appealable decisions**

An affected person for an appealable decision may appeal against the decision to the Supreme Court.

**229      How to start appeal**

- (1) The appeal is started by filing notice of appeal with the Registrar of the Supreme Court.
- (2) The notice must be filed within 28 days after:
  - (a) if the person receives an information notice for the appealable decision – the day the person receives the notice; or
  - (b) if paragraph (a) does not apply – the day the person becomes aware of the decision.



**230            Operation and implementation of appealable decision**

- (1) The appeal does not affect the operation or implementation of the appealable decision.
- (2) However, the Supreme Court may make an order staying or otherwise affecting the operation or implementation of so much of the decision as the Court considers appropriate to effectively hear and decide the appeal.
- (3) The order:
  - (a) is subject to any conditions stated in it; and
  - (b) has effect:
    - (i) for the period stated in it; or
    - (ii) if no period is stated in it – until the Court has decided the appeal.

**231            Decision on appeal**

- (1) In deciding the appeal, the Supreme Court may:
  - (a) confirm or vary the appealable decision;
  - (b) set the decision aside and substitute its own decision; or
  - (c) set the decision aside and remit the matter to the Commission with the directions it considers appropriate.
- (2) For subsection (1), the Court may make the orders and give the directions it considers appropriate.
- (3) If the Court varies the appealable decision or substitutes its own decision for the appealable decision, the varied or substituted decision is, for this Act (other than this Part), taken to be the Commission's decision.

**Part 12            Court of Disputed Returns, disputed elections  
                         and references by Legislative Assembly**

**Division 1        Court of Disputed Returns**

**232            Establishment**

The Court of Disputed Returns is established.

**233        Constitution**

The Court of Disputed Returns is constituted by a Judge of the Supreme Court.

**234        Jurisdiction**

The Court of Disputed Returns has jurisdiction to decide applications made under Division 2 and questions referred to it under Division 3.

**235        Record of proceedings**

The Court of Disputed Returns must keep a record of its proceedings.

**Division 2        Disputed elections**

**236        Validity of election may be disputed after election**

- (1) A person may dispute the validity of an election only by making application in accordance with this Division after the result of the election is declared.
- (2) Without limiting subsection (1), the validity of the election may be disputed if any of the following matters apply to the election:
  - (a) the acceptance or rejection of a nomination of a candidate by the Commission;
  - (b) the eligibility of a person to be nominated as a candidate;
  - (c) any matter connected with the printing or endorsement of ballot papers;
  - (d) any matter connected with the issue or scrutiny of ballot papers by an officer;
  - (e) any matter connected with the admission or rejection of declaration votes by an officer at the preliminary scrutiny.

**237        Who may dispute election**

The following persons are entitled to dispute the validity of an election:

- (a) a candidate in the election;
- (b) an elector entitled to vote at the election;

- (c) the Commission;
- (d) a person whose nomination as a candidate was rejected by the Commission.

### **238 Making application**

- (1) The application must be made to the Master not later than 21 days after the day fixed for the return of the writ for the election.
- (2) The application must:
  - (a) be addressed to the Court of Disputed Returns;
  - (b) state the facts relied on to invalidate the election;
  - (c) state the facts with sufficient particularity to identify the specific matter or matters on which the applicant relies as justifying the grant of relief;
  - (d) ask for the relief to which the applicant claims to be entitled;
  - (e) be signed by the applicant; and
  - (f) be signed by 2 witnesses whose occupations and addresses are stated.

### **239 Lodgment of security for costs**

The applicant must, when making the application, lodge \$500 with the Master as security for costs.

### **240 Notice of application**

- (1) The Master must, as soon as practicable after the application is made, give a copy of it to the Clerk of the Legislative Assembly.
- (2) Within 2 days after making the application, the applicant must give written notice of the application and a copy of it to:
  - (a) the Commission; and
  - (b) if the application claims a candidate who has not been returned as elected for a division was entitled to be so returned – the candidate, if any, returned as elected for the division.

**241        Parties to proceeding**

The applicant and the persons given notice of the application are parties to a proceeding under this Division.

**242        Reply to application**

- (1) A person given notice of the application may contest the application by filing a reply with the Master and giving a copy of the reply to the applicant.
- (2) The person must comply with subsection (1) not later than 7 days after the person receives the notice or the further time the Court of Disputed Returns allows.
- (3) The reply must:
  - (a) state the facts on which the person proposes to reply;
  - (b) ask for the relief to which the person claims to be entitled;
  - (c) be signed by the person; and
  - (d) if the reply is by a person other than the Commission – be signed by 2 witnesses whose occupations and addresses are stated.

**243        Inquiries by Court**

- (1) For deciding the application, the Court of Disputed Returns may inquire into any of the following:
  - (a) the identity of voters;
  - (b) whether votes were improperly admitted or rejected;
  - (c) whether the result of polling was correctly ascertained.
- (2) However, the Court must not inquire into the correctness of a roll and must take the roll to be conclusive evidence that the persons enrolled were, at the close of the roll, entitled to be enrolled.
- (3) In addition, the qualification of a person enrolled cannot be questioned.

**244      Certain evidence not admissible**

The Court of Disputed Returns must not:

- (a) in deciding whether the actions of an officer affected the results of the election, admit evidence of the way in which a person, who was wrongly prevented from voting at the election by an officer, would have voted; or
- (b) admit evidence from a person mentioned in paragraph (a) unless the person satisfies the Court the person was wrongly prevented from voting.

**245      Court may have regard to certain rejected ballot papers**

In making its decision on the application, the Court of Disputed Returns may have regard to ballot papers rejected during the conduct of the scrutiny of votes if it is satisfied the ballot papers should not have been rejected.

**246      Decision on application**

- (1) In making its decision on the application, the Court of Disputed Returns may dismiss or uphold the application in whole or part.
- (2) For subsection (1), the Court may make a declaration as follows:
  - (a) declare a candidate who was returned as elected was not properly elected;
  - (b) declare a candidate properly elected who was not returned as elected;
  - (c) declare the election void.
- (3) The Court must make a declaration under subsection (2)(a) if it finds the candidate returned as elected has, in relation to the election at which the candidate was elected, committed or attempted to commit an offence against Part IV, Division 3 of the Criminal Code.
- (4) In addition, without limiting subsection (2)(a) or (c), the Court may make a declaration under the provision on the ground that illegal practices were committed in relation to the election.

- (5) However, the Court must not make a declaration under subsection (2)(a) or (c) on one of the following grounds unless it is satisfied of the matters mentioned in subsection (7):
- (a) an action that occurred without the knowledge of the candidate declared elected at the election;
  - (b) the commission of an offence against this Act by the candidate declared elected at the election unless the Court is required to make the declaration under subsection (3).
- (6) In addition, the Court must not make a declaration under subsection (2)(c):
- (a) merely because of a delay in the declaration of nominations, the polling or the return of the writ; or
  - (b) on the ground that a person whose name appears on the roll for a division and who voted as an elector for the division was not qualified to be enrolled or to continue to be enrolled as an elector for the division.
- (7) For subsection (5), the matters are:
- (a) the result of the election was likely to have been affected by the action or commission of the offence; and
  - (b) it is just that the Court make the declaration.
- (8) Subsection (3) does not prevent a prosecution for an offence mentioned in the subsection or another law in force in the Territory.

## **247        Costs**

- (1) The Court of Disputed Returns may, by order, award the costs it considers appropriate in the proceeding.
- (2) The order must be entered as if it were a judgment of the Supreme Court.
- (3) The costs may be recovered and the order enforced accordingly.

## **248        Application of security for costs**

- (1) The security lodged for the application may be applied only under this section.
- (2) If no order for costs is made or costs are awarded to the person who lodged the security for the application (the **payer**), the Master must refund the security to the payer.

- (3) If costs are awarded to a person other than the payer, the Master must apply the security toward the costs of the person to whom they are awarded and refund any balance to the payer.

**249        Reporting of offences**

If the Court of Disputed Returns finds a person has committed an offence against this Act or Part IV, Division 3 of the Criminal Code, the Master must report the finding to the Attorney-General, the Director of Public Prosecutions and the Minister.

**250        Copy of decision and declaration to be given to Clerk of  
Legislative Assembly**

The Master must give the Clerk of the Legislative Assembly a copy of the decision of the Court of Disputed Returns on the application and any declaration made for it by the Court.

**251        Issue of writ if necessary**

If on the hearing the Court of Disputed Returns declares an election void, the Administrator must issue the writ necessary to hold a fresh election.

**Division 3        References by Legislative Assembly**

**252        Question relating to qualification or vacancy**

- (1) The Legislative Assembly may, by resolution, refer to the Court of Disputed Returns, a question relating to:
- (a) the qualification of a person to be an MLA; or
  - (b) a vacancy in the Legislative Assembly.
- (2) Immediately after the resolution is passed, the Speaker of the Legislative Assembly must give the Court:
- (a) a copy of the reference certified by the Speaker; and
  - (b) the documents or other material in the possession of the Legislative Assembly relating to the reference.

**253        Parties to proceeding**

- (1) The Court of Disputed Returns may:
- (a) grant leave to a person interested to appear before it on the decision of the reference; and

- (b) order service of a copy of the reference on the persons the Court considers appropriate.
- (2) The persons mentioned in subsection (1)(a) or (b) are parties to the proceeding for the reference.

#### **254 Decision on reference**

In making its decision on the reference, the Court of Disputed Returns may make a declaration as follows:

- (a) a person was or was not qualified to be an MLA;
- (b) a vacancy does or does not exist in the number of MLAs.

#### **255 Copy of decision and declaration to be given to Speaker**

The Master must give the Speaker of the Legislative Assembly a copy of the decision of the Court of Disputed Returns on the reference and any declaration made for it by the Court.

### **Division 4 Hearings of applications and references**

#### **256 Application of Division**

This Division applies to the hearing of a proceeding for an application under Division 2 or a reference under Division 3.

#### **257 Hearing procedures**

- (1) The Court of Disputed Returns may adjourn the hearing for the period it considers appropriate.
- (2) In conducting the hearing, the Court:
  - (a) is not bound by the rules of evidence;
  - (b) may inform itself on a matter in a way it considers appropriate; and
  - (c) may decide the procedures to be followed for the hearing.
- (3) However, the Court must comply with this Division and any rules regulating the practice and procedure of the Court.



## **258        General powers of Court**

- (1) In conducting the hearing, the Court of Disputed Returns may:
  - (a) compel the attendance of witnesses or the production of documents;
  - (b) examine witnesses on oath, affirmation or declaration; or
  - (c) receive evidence on affidavit or by statutory declaration.
- (2) In addition, in conducting the hearing of an application the Court may:
  - (a) grant to a party to the proceeding leave to:
    - (i) inspect, in the presence of an officer nominated by the Court, the rolls and other documents (except ballot papers) used for the election to which the application relates; and
    - (ii) take, in the presence of the officer, extracts from the rolls and documents; or
  - (b) permit, at any stage of a proceeding and on the terms it considers appropriate, the amendments to the application or other pleadings it considers appropriate.

## **259        Hearing open to public**

The hearing must be open to the public.

## **260        Representation at hearing**

- (1) A party to the proceeding may not be represented at the hearing by an agent or legal practitioner other than with the consent of the other parties or by leave of the Court of Disputed Returns.
- (2) Consent or leave may be given to allow only one agent or legal practitioner to appear for a party at the same time.

## **261        Contempt**

The Court of Disputed Returns may punish a contempt of its authority as if it were the Supreme Court and as if the contempt were a contempt of the Supreme Court.

**262            Decision final**

Despite any other Act, the decision of the Court of Disputed Returns on the hearing:

- (a) is final and conclusive;
- (b) cannot be challenged, appealed against, reviewed, quashed, set aside or called into question in any court or tribunal on any ground; and
- (c) is not subject to any proceedings for an injunction, declaration or order for prohibition or mandamus.

**Division 5            Miscellaneous provisions**

**263            Rules of Court**

The Judges of the Supreme Court (other than acting or additional Judges under that Act) or a majority of the Judges may make rules, not inconsistent with this Act, for any of the following:

- (a) regulating the practice and procedure of the Court of Disputed Returns;
- (b) conferring on the Court additional powers necessary or convenient for carrying out its functions;
- (c) any other provision necessary or convenient for carrying into effect this Part relating to the Court.

**Part 13            Electoral offences and legal proceedings**

**Division 1            Electoral offences**

**Subdivision 1    Protection of election rights and duties**

**264            Interfering with election right or duty**

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

Penalty:            If the offender is a natural person – 400 penalty units or imprisonment for 2 years.

                          If the offender is a body corporate – 2 000 penalty units.

**265            Making false statements about entitlement to vote**

- (1) A person must not inform another person that the other person is not an elector if the other person is an elector.

Penalty:        200 penalty units or imprisonment for 12 months.

- (2) A person must not inform another person that the other person is not an elector for a particular division if the other person is an elector for the division.

Penalty:        200 penalty units or imprisonment for 12 months.

**266            Improperly influencing voters**

- (1) A person must not, by violence or intimidation, influence the vote of another person at an election.

Penalty:        If the offender is a natural person – 200 penalty units or imprisonment for 12 months.

                    If the offender is a body corporate – 1 000 penalty units.

- (2) An officer must not, in exercising a power or performing a function under this Act, do anything to influence the vote of another person at an election.

Penalty:        If the offender is a natural person – 200 penalty units or imprisonment for 12 months.

                    If the offender is a body corporate – 1 000 penalty units.

**267            Secrecy of vote**

- (1) A person who is present when a voter votes must not:

- (a) ascertain or disclose by word, act or in another way the voter's vote;
- (b) directly or indirectly require, induce or attempt to induce the voter to show how the voter intends to vote;
- (c) communicate with or assist the voter while voting or look at the voter's ballot paper; or
- (d) interfere with the voter's casting of a vote.

Penalty:        200 penalty units or imprisonment for 12 months.

- (2) Subsection (1) does not apply to the extent a person acts under section 67 or 87 or at the voter's request.

## **Subdivision 2    Campaigning offences**

### **268        Definitions**

In this Subdivision, unless the contrary intention appears:

***distribute*** means print, publish, produce or disseminate.

***newspaper*** means a newspaper published or distributed in the Territory.

***publish*** includes publish electronically.

### **269        Application of Division**

This Division applies to the publication or distribution of advertisements, newspapers, electoral articles and other documents during the election period for an election.

### **270        Publishing electoral advertisements etc.**

- (1) A person must not publish an electoral advertisement, handbill or pamphlet, or issue an electoral notice, unless the name and address of the person authorising the advertisement, handbill, pamphlet or notice appears at the end of the document.

Penalty:        If the offender is a natural person – 100 penalty units.

                    If the offender is a body corporate – 500 penalty units.

- (2) Subsection (1) does not apply to the announcement by advertisement in a newspaper of the holding of a meeting.

### **271        Distributing electoral advertisements etc.**

- (1) A person must not distribute any of the following that has on it directions that are intended or likely to mislead, or improperly interfere with, a voter casting a vote:

- (a) an electoral advertisement, notice, handbill or pamphlet;

- (b) a card or other document, containing a representation of a ballot paper, or apparently intended to represent a ballot paper.

Penalty:        If the offender is a natural person – 100 penalty units.

                    If the offender is a body corporate – 500 penalty units.

- (2) A person must not distribute a thing mentioned in subsection (1) that contains an untrue or incorrect statement.

Penalty:        If the offender is a natural person – 100 penalty units.

                    If the offender is a body corporate – 500 penalty units.

## **272        Heading of advertisements**

- (1) This section applies to the publication in a newspaper of an advertisement if any payment, reward, compensation or promise is or is to be made for the publication.

- (2) The proprietor of the newspaper must ensure the word "advertisement" is printed as a headline, in letters not smaller than 10 point, to the advertisement.

Penalty:        If the offender is a natural person – 100 penalty units.

                    If the offender is a body corporate – 500 penalty units.

- (3) In this section:

***advertisement*** means:

- (a) an article or paragraph containing electoral matter; or
- (b) a report of a speech of a candidate in an election.

## **273        Electoral articles to be signed or state particulars of author**

- (1) A person must not distribute a circular, pamphlet or handbill containing an electoral article unless:

- (a) the article is signed by the author; or
- (b) the true name and address of the author is stated at the end of the article.

Penalty:        If the offender is a natural person – 100 penalty units.

                    If the offender is a body corporate – 500 penalty units.

- (2) The proprietor of a newspaper must ensure an electoral article published in the newspaper contains the true name and address of the author at the end of the article.

Penalty:        If the offender is a natural person – 100 penalty units.

                  If the offender is a body corporate – 500 penalty units.

- (3) Subsections (1) and (2) do not apply to the publication in a newspaper of:

- (a) a leading article; or
- (b) an article that consists solely of a report of a meeting and does not contain any comment, other than comment made by a speaker at the meeting.

Penalty:        If the offender is a natural person – 100 penalty units.

                  If the offender is a body corporate – 500 penalty units.

- (4) In this section:

**address**, of the author of an electoral article, means:

- (a) if the author is the registered officer of registered party – the party's address;
- (b) if the author is the proprietor of a newspaper or an employee of the proprietor of a newspaper – the proprietor's business address; or
- (c) otherwise – the street name (if any) and locality of the author's residence.

**electoral article** means an article, report, letter or other matter, or part of an article, report, letter or other matter, commenting on a candidate or political party or the issues being submitted to, or otherwise before, the electors at an election.

## **274        Exemptions for distribution of electoral articles**

- (1) Section 273(1) does not apply to electoral matter on any of the following items unless the item includes a representation of a ballot paper:
- (a) a letter from an MLA that includes the name of the MLA and an indication that the person is an MLA;
- (b) a press release published by or for an MLA that includes the name of the MLA and an indication that the person is an MLA;

- (c) an annual report required under an Act or another publication of an Agency;
- (d) a business or visiting card that promotes the candidacy of a person in an election.

(2) In this section:

**publication**, of an Agency, does not include a publication that is published for the first time within 6 months immediately before a general election if the publication includes a picture of an MLA.

## **275        Canvassing for votes etc. near polling place**

- (1) This section applies during polling hours on polling day.
- (2) A person must not do any of the following things within 10 metres of the entrance of a polling place:
  - (a) canvass for votes;
  - (b) solicit the vote of a person;
  - (c) induce a person not to vote for a particular candidate;
  - (d) induce a person not to vote at the election;
  - (e) exhibit a notice or sign relating to the election.

Penalty:        20 penalty units.

- (3) A person must not use a loud speaker, public address system, amplifier or other thing to broadcast matter that is:
  - (a) audible within 10 metres of the entrance of a polling place; and
  - (b) intended or likely to do a thing mentioned in subsection (2)(a) to (d) (inclusive).

Penalty:        20 penalty units.

## **276        Badges, emblems etc. in polling places**

A person must not wear or display in a polling place a badge, emblem, poster or other thing associated with a political party or candidate.

Penalty:        5 penalty units.

**277            Exhibition of electoral matter in polling places**

- (1) A person must not exhibit in a polling place a card or paper containing electoral matter.

Penalty:        5 penalty units.

- (2) An offence against subsection (1) is a regulatory offence.

**278            Publication of statements regarding candidates**

- (1) A person must not publish or authorise to be published, on behalf of an entity, a statement:

- (a) expressly or impliedly claiming a candidate in an election is associated with, or supports the policy or activities of, the entity; or
- (b) expressly or impliedly advocating a candidate should be given the first preference vote in an election.

Penalty:        If the offender is a natural person – 100 penalty units or imprisonment for 12 months.

                    If the offender is a body corporate – 500 penalty units.

- (2) Subsection (1) does not apply if the candidate gives written authority to the publication of the statement.
- (3) In a proceeding for an offence against subsection (1), it must be presumed, unless the contrary is proved, that a statement purported to be made on behalf of an entity was made on behalf of the entity.
- (4) This section does not apply to a statement that:
- (a) is published on behalf of a registered party; and
  - (b) relates to a candidate nominated by the party who has publicly declared his or her candidature to be on behalf of, or in the interests of, the party.



### **Subdivision 3    Offences relating to compulsory voting and entitlement to vote**

#### **279            Compulsory vote**

- (1) An elector who is entitled to vote at an election must vote at the election unless the elector has a valid and sufficient reason for not voting.

Penalty:        1 penalty unit.

- (2) Without limiting subsection (1), an elector is taken to have a valid and sufficient reason for not voting at an election if the elector is precluded from voting because of the elector's religious beliefs.

#### **280            Person may vote only once**

- (1) A person must not vote more than once at an election.

Penalty:        100 penalty units or imprisonment for 6 months.

- (2) An offence against subsection (1) is a regulatory offence.

### **Subdivision 4    Voting fraud offences**

#### **281            Offences relating to supplying and obtaining ballot papers**

- (1) A person must not supply a ballot paper unless authorised to do so for this Act.

Penalty:        100 penalty units.

- (2) A person must not pretend to be someone else to obtain a ballot paper to which the person is not entitled.

Penalty:        400 penalty units or imprisonment for 2 years.

#### **282            Offences relating to marking ballot papers**

- (1) A person, other than a person acting under section 67 or 87, must not mark a ballot paper other than a ballot paper issued to the person.

Penalty:        400 penalty units or imprisonment for 2 years.

- (2) An offence against subsection (1) is a regulatory offence.

- (3) A person acting under section 67 or 87 must not mark a ballot paper other than in accordance with the voter's instructions.

Penalty:        400 penalty units or imprisonment for 2 years.

- (4) A person acting under section 67 or 87 must not cause an officer to mark a ballot paper other than in accordance with the instructions of the voter.

Penalty:        400 penalty units or imprisonment for 2 years.

### **283        Other offences relating to ballot papers and ballot boxes**

- (1) A person must not fraudulently place a ballot paper or other paper in a ballot box.

Penalty:        100 penalty units or imprisonment for 6 months.

- (2) A person must not fraudulently take a ballot paper out of a polling place or scrutiny centre.

Penalty:        200 penalty units or imprisonment for 2 years.

- (3) A person must not destroy, take or interfere with a ballot paper or ballot box unless authorised to do so for this Act.

Penalty:        800 penalty units or imprisonment for 4 years.

- (4) A person, other than an officer acting under this Act, must not open a ballot box.

Penalty:        800 penalty units or imprisonment for 4 years.

### **284        Forgery**

A person must not forge an electoral paper.

Penalty:        If the offender is a natural person – 400 penalty units or imprisonment for 2 years.

                    If the offender is a body corporate – 2 000 penalty units.

## **Subdivision 5    Other offences relating to electoral papers**

### **285            Offences relating to postal ballot papers**

- (1) A person must not unlawfully induce or persuade a person to apply for a postal ballot paper.

Penalty:        If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

                    If the offender is a body corporate – 500 penalty units.

- (2) A person, other than an authorised officer for the division for which a postal ballot paper has been issued, must not open a declaration envelope in which a postal ballot paper has been placed under section 67(4) or (5).

Penalty:        400 penalty units or imprisonment for 2 years.

- (3) An offence against subsection (2) is a regulatory offence.

- (4) A person must not receive or take possession of a postal ballot paper other than in accordance with this Act.

Penalty:        If the offender is a natural person – 400 penalty units or imprisonment for 2 years.

                    If the offender is a body corporate – 2 000 penalty units.

- (5) An offence against subsection (4) is a regulatory offence.

### **286            Opening envelopes containing declaration votes**

A person must not open an envelope that appears to contain a completed declaration ballot paper unless authorised to do so for this Act.

Penalty:        400 penalty units or imprisonment for 2 years.

### **287            False or misleading statements**

- (1) A person must not, in an electoral paper, make a statement that is false or misleading in a material particular.

Penalty:        If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

                    If the offender is a body corporate – 500 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if it is established the defendant did not know, and could not reasonably be expected to have known, that the relevant statement was false or misleading in a material particular.
- (3) It is enough for a complaint against a person for an offence against subsection (1) to state the statement was, without specifying which, "false or misleading" to the person's knowledge.

## **288        Defacement etc. of electoral papers**

A person must not fraudulently deface, remove, mutilate or destroy an electoral paper unless authorised to do so under this Act.

Penalty:        If the offender is a natural person – 400 penalty units or imprisonment for 2 years.

                    If the offender is a body corporate – 2 000 penalty units.

## **289        Signatures**

- (1) If a person is required by this Act to sign an electoral paper, the person must sign it with his or her personal signature.

Penalty:        400 penalty units or imprisonment for 2 years.

- (2) For subsection (1), if a person is unable to sign his or her name in writing, the person must be taken to have signed an electoral paper if the person makes a mark on the paper by way of signature.

## **290        Duty of witnesses**

A person (the **witness**) must not sign an electoral paper as witness unless:

- (a) the witness is satisfied of the identity of the person signing the document;
- (b) the witness has seen the person sign the document; and
- (c) either of the following apply:
  - (i) the witness knows the statements contained in the document are true;
  - (ii) the witness is satisfied, on the basis of inquiries of the person, the statements contained in the document are true.

Penalty:        400 penalty units or imprisonment for 2 years.

## **291        Sending completed electoral papers**

- (1) A person who accepts an electoral paper for sending to the Commission must immediately post or deliver it to the Commission.

Penalty:        100 penalty units or imprisonment for 6 months.

- (2) An offence against subsection (1) is a regulatory offence.

## **Subdivision 6    Official functions**

### **292        Improper influence of officials**

A person must not do anything improper for the purpose of influencing any of the following in the exercise or performance of the person's powers or functions under this Act:

- (a) the Commission;
- (b) a member of the Redistribution Committee or Augmented Redistribution Committee;
- (c) the Commissioner or an officer.

Penalty:        400 penalty units or imprisonment for 2 years.

### **293        Identification of voters and votes**

- (1) An officer must not make a mark on a ballot paper that would be likely to enable the identification, directly or indirectly, of the person who votes on the ballot paper.

Penalty:        400 penalty units or imprisonment for 2 years.

- (2) An officer or scrutineer must not, directly or indirectly, disclose any information acquired in the exercise of functions under this Act that would be likely to enable it to be known how an identified voter has voted.

Penalty:        400 penalty units or imprisonment for 2 years.

- (3) In subsection (2):

**officer** includes a person who has been, but is no longer, an officer.

**scrutineer** includes a person who has been, but is no longer, a scrutineer.

## **294        Responses to official questions**

- (1) A person must not, in answer to an official question, make a statement that is false or misleading in a material particular.

Penalty:        20 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if it is established that the defendant did not know, and could not reasonably be expected to have known, that the relevant statement was false or misleading in a material particular.
- (3) It is enough for a complaint against a person for an offence against subsection (1) to state the statement was, without specifying which, "false or misleading" to the person's knowledge.

## **295        Control of behaviour at polling places and scrutiny centres**

- (1) A person must not enter or remain in a polling place or scrutiny centre except with the permission, express or implied, of the officer in charge of the place or centre.

Penalty:        400 penalty units or imprisonment for 2 years.

- (2) An offence against subsection (1) is a regulatory offence.
- (3) Subsection (1) does not apply to:
- (a) an officer;
  - (b) a scrutineer unless the scrutineer is, under section 47(5), no longer entitled to be at the polling place or scrutiny centre; or
  - (c) for a polling place – a person voting or about to vote.
- (4) A person must not disrupt an activity being carried out under this Act at a polling place or scrutiny centre.

Penalty:        400 penalty units or imprisonment for 2 years.

- (5) If an authorised officer at a polling place or scrutiny centre reasonably believes a person's conduct is likely to disrupt an activity being carried out under this Act at the place or centre, the officer may direct the person to leave and stay away from the place or centre.
- (6) The person must not, without reasonable excuse, disobey the direction.

Penalty:        100 penalty units.

(7) A person who does not comply with the direction may be removed from the place by a member of the Police Force.

(8) A scrutineer must not, without reasonable excuse, communicate with any person in a polling place other than in the exercise of the scrutineer's functions.

Penalty:      20 penalty units.

(9) A scrutineer must not, without reasonable excuse, interfere with or attempt to influence a voter at a polling place.

Penalty:      200 penalty units or imprisonment for 12 months.

## **Division 2      Legal proceedings**

### **296      Evidentiary provisions**

(1) This section applies to a legal proceeding under this Act.

(2) A signature purporting to be the signature of the Commissioner is evidence of the signature it purports to be.

(3) A certificate purporting to be signed by the Commissioner stating any of the following matters is evidence of the matter:

(a) on a day a person was or was not enrolled for a division;

(b) a document is a copy of a notice given under this Act;

(c) on a day a person was given a notice under this Act;

(d) a person was or was not declared to be a candidate for an election;

(e) a nomination of a person to be a candidate in an election was rejected;

(f) an election was properly held;

(g) a person was or was not given a ballot paper for an election;

(h) a person voted or failed to vote in an election;

(i) on a day or during a period a person was or was not registered as the reporting agent of a registered party or candidate;

(j) on a day or during a period no reporting agent was registered for a registered party or candidate;

- (k) on a day a person was or was not an authorised officer or officer;
  - (l) on a day a person was or was not the delegate of the Commission or Commissioner;
  - (m) a matter prescribed by the Regulations.
- (4) In subsection (3), a reference to a person or thing is a reference to a person or thing stated in the certificate.

## **297 Time limit for starting prosecutions**

Despite section 52 of the *Justices Act*, a prosecution for an offence against this Act may be started at any time within 12 months after commission of the offence.

## **298 Conduct of representatives**

- (1) If, in a proceeding for an offence against this Act, it is necessary to establish a person's state of mind in relation to particular conduct, it is sufficient to show:
- (a) the conduct was engaged in by a representative of the person, within the scope of the representative's actual or apparent authority; and
  - (b) the representative had that state of mind.
- (2) For a proceeding for an offence against this Act, conduct engaged in on behalf of a person by a representative within the scope of the representative's actual or apparent authority is taken to have been engaged in also by the person.
- (3) However, a natural person is not liable to be punished by imprisonment for an offence against this Act if the person would not have been found guilty of the offence if subsection (1) or (2) had not been enacted.
- (4) In this section:

***engaging in conduct*** includes failing or refusing to engage in conduct.

***representative*** means:

- (a) of a body corporate – an executive officer, employee or agent of the body corporate; or
- (b) of a natural person – an employee or agent of the person.



**state of mind of a person** includes:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

## **299 Liability of executive officers of body corporate**

- (1) If a body corporate commits an offence against this Act, each of the executive officers of the body corporate are taken to have committed the same offence.
- (2) However, it is a defence for an executive officer to establish:
  - (a) the body corporate would not have been found guilty of the offence because it would have been able to establish a defence;
  - (b) the defendant did not know, and could not reasonably have been expected to know, that the offence was to be or was being committed; or
  - (c) the defendant exercised due diligence to prevent the commission of the offence.
- (3) A proceeding for an offence against this Act may be brought against an executive officer of a body corporate whether or not a proceeding for the offence are brought against the body corporate.
- (4) A person is not liable to be punished by imprisonment for an offence against this Act if the person would not have been found guilty of the offence if subsection (1) had not been enacted.

## **Division 3 Infringement notices for infringement offences**

### **300 When infringement notice may be served**

- (1) If the Commission believes a person has committed an infringement offence, the Commission may serve a notice (an ***infringement notice***) on the person.
- (2) If the infringement offence is an offence against section 279(1), the notice must be served within 3 months after the declaration of the election to which the offence relates.
- (3) However, the Commission must not serve an infringement notice for an offence against section 279(1) on an elector whose name is on the register kept under section 344.

### **301 Particulars to be included in infringement notice**

- (1) An infringement notice must state the following:
- (a) the name and address of the alleged offender;
  - (b) the date, time and place of the offence;
  - (c) the nature of the offence and the prescribed amount payable for the offence;
  - (d) the alleged offender may pay the prescribed amount to the Commission and the Commission's address;
  - (e) the date of the notice and a statement that the prescribed amount may be paid within 28 days after that date;
  - (f) a statement to the effect that, if the alleged offender wishes to pay the prescribed amount, the offender should complete the relevant part of the notice and return the notice with the prescribed amount to the person stated in the notice;
  - (g) a statement to the effect that, if the alleged offender wishes to be dealt with by a court for the offence, the offender should not pay the prescribed amount but should complete the relevant part of the notice and return the notice to the person stated in the notice;
  - (h) a statement that, if the alleged offender does nothing in response to the notice, a summons may be issued requiring the alleged offender to appear before a court of summary jurisdiction to be dealt with for the offence.
- (2) An infringement notice may include other particulars decided by the Commission.

### **302 Expiation of offence**

If the prescribed amount for the infringement offence is paid in accordance with the infringement notice, the alleged offence is expiated and no further proceedings can be taken in relation to the offence unless the notice is withdrawn under section 304.

### **303 Payment by cheque**

If the alleged offender tenders a cheque in payment of the prescribed amount, the amount is not taken to have been paid unless the cheque is cleared on presentation.

**304            Withdrawal of infringement notice**

- (1) The Commission may withdraw the infringement notice by written notice served on the alleged offender.
- (2) The notice must be served within 28 days after service of the infringement notice but before payment of the prescribed amount.

**305            How service effected**

Service of an infringement notice or a notice of withdrawal of an infringement notice must be effected by:

- (a) delivering it to the alleged offender personally;
- (b) posting it to the alleged offender at the alleged offender's last known address; or
- (c) leaving it for the alleged offender at the alleged offender's last known place of residence or business with a person who appears to be at least 16 years old and resident or employed there.

**306            Application of Division**

- (1) Subject to section 302, this Division does not prejudice or affect the start or continuing of proceedings for an infringement offence and does not limit the penalty that may be imposed by a court for the offence.
- (2) In addition, this Division does not prevent more than one infringement notice for the same offence being served on an alleged offender and, for section 302, it is sufficient for the alleged offender to pay the prescribed amount in accordance with any of the notices.
- (3) Also, this Division does not require an infringement notice to be served and does not affect the liability of a person to be prosecuted in a court for an infringement offence for which an infringement notice has not been served.

**Part 14            Electoral Commission**

**Division 1        Establishment, functions and powers**

**307            Establishment**

The Northern Territory Electoral Commission is established.

### **308 Composition**

The Commission consists solely of the Commissioner.

### **309 Functions**

- (1) The Commission's functions are as follows:
- (a) to maintain rolls and conduct elections under this Act;
  - (b) to advise the Minister on matters relating to elections;
  - (c) to consider, and report to the Minister on, matters relating to elections referred to it by the Minister;
  - (d) to promote public awareness of matters relating to elections and the Legislative Assembly by conducting education and information programs and in any other way it chooses;
  - (e) to provide information and advice on matters relating to elections to the Legislative Assembly, an Executive body, the head of an Agency, Territory authorities, political parties, MLAs and candidates at elections;
  - (f) to conduct and promote research into matters relating to elections or other matters relating to its functions;
  - (g) to publish material on matters relating to its functions;
  - (h) to provide, on payment of the fee decided by it, goods and services to persons or organisations, to the extent that it is able to do so by using information or material in its possession or expertise acquired in the exercise of its functions;
  - (i) to conduct ballots for persons and organisations;
  - (j) to perform any other function given to it under this or another Act.

- (2) The Commission may exercise a function under subsection (1)(a) to (f) (inclusive) in conjunction with the Australian Electoral Commission.

- (3) In this section:

***election*** includes a referendum and any other ballot.

***Executive body*** means:

- (a) the Executive Council or a committee of the Executive Council; or

(b) Cabinet or a committee of Cabinet.

**310        Powers**

The Commission may do all things necessary or convenient to be done for or in relation to the performance of its functions.

**311        Delegation**

- (1) The Commission may, in writing, delegate to a person any of its powers or functions under this Act.
- (2) However, the Commission may delegate a power or function only to a person the Commission is satisfied has the appropriate qualifications or experience to exercise the power or perform the function.

**Division 2        Miscellaneous provisions**

**312        Status**

- (1) For the *Public Sector Employment and Management Act*, the Commission is an Agency.
- (2) The Commission is not subject to the direction or control of the Minister in the exercise or performance of its powers or functions.

**313        Reports by commission**

- (1) As soon as practicable after, but not more than 4 months after, the end of each financial year, the Commission must give the Speaker a report of the Commission's operations during the year.
- (2) In addition, the Commission may give the Speaker a report on any matter relating to its functions.
- (3) The Speaker must table a copy of a report given to the Speaker under subsection (1) or (2) in the Legislative Assembly within 3 sitting days after the Speaker receives the report.

## **Part 15            Electoral Commissioner and staff of Commission**

### **Division 1        Electoral Commissioner**

#### **Subdivision 1    Establishment of office, functions and powers**

##### **314            Appointment**

- (1) There is to be an Electoral Commissioner.
- (2) The Administrator must, by notice in the *Gazette*, appoint a person to be the Electoral Commissioner.
- (3) Before a person is appointed to be the Commissioner, the Minister must consult the following persons about the proposed appointment:
  - (a) the leader of each political party represented in the Legislative Assembly;
  - (b) all MLAs who are not also members of a political party represented in the Legislative Assembly.

##### **315            Chief Executive Officer**

For the *Public Sector Employment and Management Act*, the Commissioner is the Chief Executive Officer of the Commission.

##### **316            Functions**

The Commissioner has the functions given to the Commissioner under this or another Act.

##### **317            Powers**

The Commissioner may do all things necessary or convenient to be done for or in relation to the performance of the Commissioner's functions.

##### **318            Approved forms**

- (1) The Commissioner may approve forms for use under this Act.
- (2) An approved form may be a statutory declaration.

##### **319            Delegation**

- (1) The Commissioner may, in writing, delegate to a person any of the Commissioner's powers or functions under this Act.

- (2) However, the Commissioner may delegate a power or function only to a person the Commissioner is satisfied has the appropriate qualifications or experience to exercise the power or perform the function.

## **Subdivision 2   Appointment provisions**

### **320        Term of appointment**

The Commissioner holds office for the period (not exceeding 5 years) stated in the appointment and is eligible for reappointment.

### **321        Conditions of appointment**

The Commissioner holds office on the conditions (including conditions about remuneration, expenses and allowances) determined by the Administrator and stated in the appointment.

### **322        Leave of absence**

The Minister may grant the Commissioner leave of absence on the conditions the Minister decides.

### **323        Termination of appointment**

- (1) The Administrator may suspend the Commissioner from duty for misbehaviour or physical or mental incapacity.
- (2) Within 3 sitting days after the day when the Commissioner is suspended, the Minister must present a statement of the reasons for the suspension to the Legislative Assembly.
- (3) If, within 7 sitting days after the statement is presented, a resolution of the Legislative Assembly is passed by a two-thirds majority of all MLAs requiring the Administrator to terminate the Commissioner's appointment, the Administrator must terminate the Commissioner's appointment.
- (4) The Commissioner must resume duties if:
- (a) the Minister does not present the statement under subsection (2); or
  - (b) the Legislative Assembly does not pass a resolution in accordance with subsection (3).
- (5) The Commissioner is entitled to be paid remuneration and allowances during the period of suspension.

- (6) The Administrator must terminate the appointment of the Commissioner if the Commissioner becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit.

### **324        Resignation**

The Commissioner may resign from office by written notice given to the Minister.

### **325        Acting Commissioner**

- (1) The Minister may, by notice in the *Gazette*, appoint a person to act as the Commissioner:
- (a) during a vacancy in the office, whether or not an appointment has previously been made to the office; or
  - (b) during any period or all periods when the Commissioner is unable to perform the duties of the office.
- (2) A person appointed to act as the Commissioner during a vacancy in the office must not act continuously for more than 6 months.
- (3) The conditions (including conditions about remuneration, expenses and allowances) of an appointment to act as Commissioner must be decided by the Minister.

### **326        Validity of Commissioner's acts and decisions**

Anything done by or in relation to a person purporting to act under an appointment as Commissioner under section 314 or an appointment to act as Commissioner under section 325 is not invalid merely because:

- (a) the appointment was ineffective;
- (b) the appointment had ceased to have effect; or
- (c) if the appointment is to act as Commissioner – the occasion to act had not arisen or had ceased.

### **327        MLA ineligible for appointment**

An MLA is not entitled to be appointed as the Commissioner or to act as the Commissioner.



## **Division 2      Staff of Commission**

### **328      Staff and consultants**

- (1) All members of the Commission's staff are to be employees within the meaning of the *Public Sector Employment and Management Act*.
- (2) A person who assists the Commission under an arrangement mentioned in section 329(1) is, while assisting the Commission, taken to be a member of the Commission's staff.
- (3) The Commission may engage the consultants the Commission considers necessary for the performing the Commission's functions.

### **329      Sharing staff and physical resources**

- (1) The Commission may make arrangements for a person who is:
  - (a) a member of the staff of another statutory office to assist the Commission; or
  - (b) a member of the Commission's staff to assist the holder of another statutory office.
- (2) The Commission may make arrangements for the use by:
  - (a) the Commission's office of the physical resources of another statutory office; or
  - (b) another statutory office of the physical resources of the Commission's office.

### **330      Officers**

- (1) The Commission may appoint a person to be an officer for this Act.
- (2) Without limiting subsection (1), the officers include:
  - (a) the officer in charge of a polling place;
  - (b) the officer in charge of a scrutiny centre; and
  - (c) an officer for a poll or the scrutiny for an election.
- (3) However, a person who is under 18 years must not be appointed an officer.
- (4) In addition, a candidate or a spouse or de facto partner of a candidate must not be appointed an officer.

## **Part 16                    Redistribution Committee and Augmented Redistribution Committee**

### **Division 1                Redistribution Committee**

#### **331                    Establishment**

The Redistribution Committee is established.

#### **332                    Composition**

The Redistribution Committee consists of the following members:

- (a) the Commissioner;
- (b) the Surveyor-General;
- (c) the Auditor-General.

#### **333                    Chairperson**

The Commissioner is the Chairperson of the Redistribution Committee.

### **Division 2                Augmented Redistribution Committee**

#### **334                    Establishment**

For each redistribution, an Augmented Redistribution Committee must be established.

#### **335                    Composition**

The Augmented Redistribution Committee consists of:

- (a) the members of the Redistribution Committee; and
- (b) the appointed member.

#### **336                    Appointment of appointed member**

- (1) The Administrator must, by notice in the *Gazette*, appoint a person as a member of the Augmented Redistribution Committee (the ***appointed member***).

- (2) A person is eligible for appointment as the appointed member of the Committee only if:
  - (a) the person has served as, or is qualified for appointment as, a Judge of the Supreme Court or a magistrate; or
  - (b) the person:
    - (i) has other appropriate qualifications or experience; and
    - (ii) is not a member of a political party.
- (3) Before a person mentioned in subsection (2)(b) is appointed, the Minister must consult the following persons about the proposed appointment:
  - (a) the leader of each political party represented in the Legislative Assembly;
  - (b) all MLAs who are not also members of a political party represented in the Legislative Assembly.

**337 Term of appointed member's appointment**

The appointed member holds office from the date of the member's appointment until the date the Augmented Redistribution Committee is dissolved.

**338 Conditions of appointment**

The appointed member holds office on the conditions (including conditions about remuneration, expenses and allowances) determined by the Administrator and stated in the appointment.

**339 Chairperson**

The appointed member is the Chairperson of the Augmented Redistribution Committee.

**340 Dissolution**

The Augmented Redistribution Committee is dissolved on its giving the Minister a report on the redistribution for which it is established.

### **Division 3      Functions, powers and procedures of Redistribution Committee and Augmented Redistribution Committee**

#### **341      Functions**

- (1) The Redistribution Committee or Augmented Redistribution Committee have functions given to it under Part 8 for conducting redistributions.
- (2) The Commission must give the Redistribution Committee or Augmented Redistribution Committee the information and assistance the Committee requires for performing its functions.

#### **342      Powers**

The Redistribution Committee or Augmented Redistribution Committee may do all things necessary or convenient to be done for or in relation to the performance of its functions.

#### **343      Procedures**

- (1) Subject to subsection (2), the Redistribution Committee or Augmented Redistribution Committee may:
  - (a) regulate the conduct of proceedings at its meetings as it considers appropriate; and
  - (b) inform itself in any way it considers appropriate.
- (2) At a meeting of the Augmented Redistribution Committee, the Chairperson has a casting vote as well as a deliberative vote in the event of an equality of votes.

## **Part 17      Miscellaneous provisions**

#### **344      Register of electors precluded from voting because of religious beliefs**

The Commission must keep a register of electors who give the Commission a statutory declaration stating the elector is precluded from voting because of the elector's religious beliefs.

#### **345      Storage and destruction of electoral papers**

- (1) This section applies to electoral papers in the Commission's possession that were used for an election.

- (2) The Commission must securely store the electoral papers until whichever of the following happens last:
  - (a) the start of the election period for the next general election;
  - (b) the electoral papers are no longer required by the Commission for exercising a power or performing a function under this Act.
- (3) The Commission may destroy the electoral papers only when the last of the matters mentioned in subsection (2) happens.

### **346 Protection from liability**

- (1) This section applies to a person who is or has been:
  - (a) the Commissioner;
  - (b) an officer; or
  - (c) a member of the Commission's staff.
- (2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.
- (3) Subsection (2) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

### **347 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Regulations may provide for any of the following:
  - (a) fees payable, and the refund (wholly or partly) of fees paid, under this Act;
  - (b) the designation of an offence against a regulation as a regulatory offence;
  - (c) penalties for offences against the Regulations not exceeding 100 penalty units for a natural person and 500 penalty units for a body corporate.

- (3) The Regulations may:
- (a) make different provision in relation to:
    - (i) different persons or matters; or
    - (ii) different classes of persons or matters; or
  - (b) apply differently by reference to stated exceptions or factors.

## **Part 18                      Repeal and transitional provisions**

### **348                      Definitions**

In this Part:

**commencement date** means the date on which this Part comes into operation.

**former division** has the meaning in section 350.

**new division** has the meaning in section 350.

**repealed Act** means the *Northern Territory Electoral Act 1995* as in force immediately before the commencement date.

### **349                      Repeal**

The *Northern Territory Electoral Act 1995* (No. 37 of 1995) is repealed.

### **350                      Divisions**

A division under the repealed Act as in force immediately before the commencement date (the **former division**) is a division for this Act with the same boundaries and name (the **new division**).

### **351                      MLAs**

A person who, immediately before the commencement date, was a member of the Legislative Assembly for the former division is taken to be the MLA for the new division.

### **352                      Rolls**

A roll of electors kept under the repealed Act for the former division and in force immediately before the commencement date is taken to be the roll kept under this Act for the new division.

**353 Arrangement with Commonwealth**

The arrangement made under section 27 of the repealed Act and in force immediately before the commencement date is taken to be an arrangement made under section 20 of this Act.

**354 Register of electors not voting because of religious beliefs**

- (1) A religious beliefs register kept under the repealed Act for the former division and in force immediately before the commencement date is taken to be the register required to be kept under section 344 for the new division.
- (2) In this section:

***religious beliefs register*** means a register of the names and addresses of persons who have given the person's religious beliefs as an explanation for not having voted at an election.

**355 Pending election**

- (1) If, immediately before the commencement date, a writ for an election issued under the repealed Act had not been returned under that Act, the repealed Act, other than Part 12, applies to the election as if it had not been repealed.
- (2) For subsection (1), the repealed Act applies as if a reference to an officer under that Act were a reference to the Commissioner or other officer under this Act.
- (3) On the declaration of the results of the election:
  - (a) the candidate returned as elected for the former division is taken to be the MLA for the new division; and
  - (b) Part 12 of this Act applies to the election.

**356 Pending legal proceedings**

- (1) If, immediately before the commencement date, a proceeding under Part 12 of the repealed Act had not been decided, the proceeding may be heard and decided under that Act as if it had not been repealed.
- (2) For subsection (1):
  - (a) the Election Tribunal established under the repealed Act is continued;

- (b) the Judge constituting the Tribunal immediately before the commencement date continues to constitute the Tribunal; and
  - (c) a decision or declaration of the Tribunal is taken to be a decision or declaration of the Court of Disputed Returns under Part 12, Division 2 or 3 of this Act.
- (3) If, immediately before the commencement date, the Chief Electoral Officer was a party to a legal proceeding pending or existing in any court or tribunal, the Commission is substituted for the Chief Electoral Officer as a party to the proceeding and has the same rights and obligations the Chief Electoral Officer had in the proceeding.

### **357 Chief Electoral Officer**

- (1) The person holding office as the Chief Electoral Officer (the **former office**) under the repealed Act immediately before the commencement date holds office as the Commissioner on the conditions on which the person held the former office until the earlier of the following:
- (a) the person's term of appointment to the former office ends;
  - (b) a person is appointed Commissioner under section 314 of this Act.
- (2) In an Act or document, a reference to the Chief Electoral Officer may, if the context permits, be taken to be a reference to the Commission or Commissioner as the case requires.

### **358 Election Tribunal Trust Account**

The Master must close the trust account kept for section 108(5) of the repealed Act and pay the balance of the account to the Central Holding Authority.

### **359 References to repealed Act**

In an Act or document, a reference to the repealed Act or a provision of that Act may, if the context permits, be taken to be a reference to this Act or the corresponding provision of this Act.



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## Schedule 1

### FORM OF WRIT

section 27(1)

#### NORTHERN TERRITORY OF AUSTRALIA

#### *Electoral Act*

#### WRIT

To:

The Electoral Commission

I request that you conduct an election in accordance with this Act for one member of the Legislative Assembly of the Northern Territory of Australia for the division of [insert name of division].\*

I request that you conduct a general election in accordance with this Act for all members of the Legislative Assembly of the Northern Territory of Australia.\*

I fix the following dates for the election:

[insert date] to be nomination day;

[insert date] to be polling day;

[insert date] to be the last day on which this writ may be returned.

Given under my hand and the Public Seal of the Northern Territory of Australia on [insert date].

Administrator

\* Delete whichever is inapplicable.

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**Schedule 2****APPEALABLE DECISIONS AND AFFECTED PERSONS**

section 225

A decision under section 158(1) or (2) to refuse an application for registration of a political party	The party
A decision under section 157(1) to register a political party	A person who objected to registration of the party
A decision under section 158(1) or (2), as applied by section 169(2), to refuse to change the registered particulars of a political party	The party
A decision under section 161(3) to cancel the registration of a political party	The party
A decision to give a notice under section 217	The person given the notice
A decision to refuse a request under section 223(2) to make a stated amendment of a return	The person making the request

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## ENDNOTES

### 1

#### KEY

Key to abbreviations

amd = amended  
app = appendix  
bl = by-law  
ch = Chapter  
cl = clause  
div = Division  
exp = expires/expired  
f = forms  
*Gaz* = *Gazette*  
hdg = heading  
ins = inserted  
lt = long title  
nc = not commenced

od = order  
om = omitted  
pt = Part  
r = regulation/rule  
rem = remainder  
renum = renumbered  
rep = repealed  
s = section  
sch = Schedule  
sdiv = Subdivision  
SL = Subordinate Legislation  
sub = substituted

### 2

#### LIST OF LEGISLATION

***Electoral Act 2004 (Act No. 11, 2004)***

Assent date	1 March 2004
Commenced	15 March 2004 ( <i>Gaz</i> S6, 15 March 2004)

***Statute Law Revision Act 2007 (Act No. 4, 2007)***

Assent date	8 March 2007
Commenced	8 March 2007

***Statute Law Revision Act 2008 (Act No. 6, 2008)***

Assent date	11 March 2008
Commenced	11 March 2008

### 3

#### LIST OF AMENDMENTS

s 176	amd No. 6, 2008, s 3
s 197	amd No. 6, 2008, s 3
s 200	amd No. 4, 2007, s 7
s 358	amd No. 4, 2007, s 7
s 360	exp No. 11, 2004, s 360(4)