

# **NORTHERN TERRITORY OF AUSTRALIA**

## **CONSTITUTIONAL CONVENTION (ELECTION) 2011**

As in force at 21 December 2011

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# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 21 December 2011. Any amendments that commence after that date are not included.

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## CONSTITUTIONAL CONVENTION (ELECTION) 2011

An Act to provide for the election of delegates to the Constitutional Convention, and for other purposes

### Part 1 Introduction

#### Division 1 Preliminary matters

##### 1 Short title

This Act may be cited as the *Constitutional Convention (Election) Act 2011*.

##### 2 Object of Act

The object of this Act is to make necessary and other related provisions for the election of delegates to the Constitutional Convention.

#### Division 2 Interpretation

##### 3 Definitions

In this Act:

***approved form***, see section 187.

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

***authorised witness*** means:

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

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

***campaign material***, see section 144.

***candidate*** means a candidate at the election.

***candidate square***, see section 26(2)(c).

***certified list of voters*** means a list of electors prepared and certified under section 28.

***close of polling***, see section 13.

***close of roll***, see section 10.

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

***Commissioner*** means the Electoral Commissioner mentioned in section 314 of the *Electoral Act*.

***Commission's office*** means the Commission's office in Darwin or Alice Springs.

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

***Constitutional Convention*** means the Constitutional Convention for the Territory that is to be held in 2012 and 2013.

***Court of Disputed Returns*** means the Court of Disputed Returns:

- (a) established by section 232 of the *Electoral Act*; and
- (b) constituted in accordance with section 233 of that Act.

***declaration ballot paper***:

- (a) for Part 3, Division 3, Subdivision 1 – see section 38(1); or
- (b) for Part 3, Division 3, Subdivision 2 – see section 40(1) or (2);  
or
- (c) for Part 3, Division 4 – see section 46(1)(b); or
- (d) for Part 3, Division 5 – see section 55(2) or 57(2); or
- (e) for any other provision – means a declaration ballot paper mentioned in paragraph (a), (b), (c) or (d) (as appropriate).

***declaration envelope*** means an envelope in which a declaration ballot paper is placed under section 39(2)(c), 41(2)(c), 51(4)(b), 56(2)(b) or 58(2)(c).

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

**declaration voting papers** means the following:

- (a) a declaration ballot paper issued under section 38(1), 40(1) or (2), 46(1)(b), 55(2) or 57(2);
- (b) a declaration envelope;
- (c) for a declaration ballot paper issued under 40(1) or (2), or 57(2) – a declaration under section 40(1)(c) or (2)(c) or 57(1)(e) (as appropriate).

**delegate** means:

- (a) an ordinary delegate; or
- (b) a reserve delegate.

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

**division** means a division as defined in section 3 of the *Electoral Act*.

**early voting centre** means an early voting centre appointed under section 29(1)(a).

**election** means the election of the delegates to the Constitutional Convention.

**election period** means the period:

- (a) starting at the start of the nomination period; and
- (b) ending on the polling day.

**elector**, see section 14(2).

**electoral advertisement** means an advertisement containing electoral matter (including an advertisement on an electronic billboard, digital road sign or any other similar device), whether or not consideration was given for its publication.

**electoral article**, see section 149(6).

**electoral matter**, see section 143.

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

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

**enrolled division**, for an elector, means the division for which the elector is enrolled as mentioned in section 15(5)(a).

**entitled to be enrolled**, see section 18(6).

**extract** means an extract from the roll prepared under section 16.

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

**informal**, for a ballot paper, means the ballot paper is informal under section 75.

**infringement notice**, see section 178.

**infringement notice offence**, see section 177(1).

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

**misleading information** means information that is misleading in a material particular or because of the omission of a material particular.

**mobile polling period**, see section 12.

**mobile polling place** means a polling place declared under section 61 for a division, and includes a substituted place under section 62.

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

**nomination day**, see section 11(1).

**nomination period**, see section 11(2).

**officer** means an officer appointed under section 185.

**officer in charge**, for a polling place or scrutiny centre, means an officer appointed to be the officer in charge of the polling place or scrutiny centre under section 185(2).

**ordinary delegate**, see section 6(2).

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

**polling day**, see section 9(1).

***polling hours*** means:

- (a) for a polling place other than an early voting centre or mobile polling place – from 8 am until 6 pm on the polling day; or
- (b) for an early voting centre – the hours decided under section 53(1)(b) for voting at early voting centres; or
- (c) for a mobile polling place – the hours specified under section 61(2)(b) for the place, and includes the hours as changed under section 62(1).

***polling place*** means:

- (a) a polling place appointed under section 29(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) an early voting centre.

***postal ballot box*** means a ballot box for a division as mentioned in section 93(2).

***postal ballot paper*** means a declaration ballot paper issued under section 46(1)(b).

***postal vote*** means a declaration vote for which postal voting papers are issued under section 46.

***postal vote certificate*** means the certificate issued under section 46(1)(a).

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

***prescribed amount***, see section 177(2).

***public notice*** means public notice as mentioned in section 192.

***publish*** includes publish or broadcast by radio, television, Internet, telephone or other means.

***region*** means a region declared under section 53(1)(a).

***registered postal voter***, see section 42(4).

**reserve delegate**, see section 6(3).

**roll** means the roll compiled under section 15.

**scrutineer** means a person appointed under section 31 to represent a candidate.

**scrutiny centre** means a place appointed under section 29(1)(c) for scrutiny at the election.

**suppressed**, for a person's address, means the person's address is not included in the extract:

- (a) as provided in section 16(3); or
- (b) because of a regulation made under section 195(2).

**vacancy** means a vacancy in the position of delegate for a division.

**voter's question**, see section 35.

## **Division 3            Application of Act**

### **4                      Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 4*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

## **Part 2                General rules about election**

### **Division 1            Role of Commission**

#### **5                      Commission to conduct election**

The Commission must conduct the election in accordance with this Act.

## Division 2            Key provisions

### Subdivision 1    Delegates to Constitutional Convention

#### 6            Delegates

- (1) Three delegates are to be elected for each division, comprising:
  - (a) two ordinary delegates; and
  - (b) one reserve delegate.
- (2) An **ordinary delegate** is a delegate who is elected as an ordinary delegate.
- (3) A **reserve delegate** is a delegate who is elected as a reserve delegate.

*Note for section 6*

*For the way in which ordinary delegates and reserve delegates are elected, see clause 14(5) of the Schedule. See also sections 24(1) and 109(5) and (6).*

#### 7            Ordinary delegates

An ordinary delegate may vote on a motion in the Constitutional Convention except as otherwise provided by the rules adopted by the Convention.

#### 8            Reserve delegates

- (1) A reserve delegate may participate in the Constitutional Convention as provided by the rules adopted by the Convention.
- (2) A reserve delegate may take the place of an ordinary delegate elected from the reserve delegate's division in the Convention as provided by the rules adopted by the Convention.

### Subdivision 2    Timetable for election

#### 9            Polling day

- (1) The **polling day** is the day declared by the Minister by *Gazette* notice to be the polling day.
- (2) To avoid doubt, the declaration must be made before the start of the nomination period.

**10            Close of roll**

The **close of roll** is 5 pm on the day that is 32 days before the polling day.

**11            Nomination day and nomination period**

- (1) The **nomination day** is the day that is 23 days before the polling day.
- (2) The **nomination period** is the period:
  - (a) starting on the day that is 57 days before the polling day; and
  - (b) ending at 12 noon on the nomination day.

*Note for section 11*

*The nomination of a candidate may be made only during the nomination period (see section 19).*

**12            Mobile polling period**

The **mobile polling period**, for the election, is the period:

- (a) starting on a day declared by the Commission by public notice; and
- (b) ending at 6 pm on the polling day.

**13            Close of polling**

**Close of polling** is the time:

- (a) for a polling place other than a mobile polling place – when the poll at the polling place closes as mentioned in section 67(1)(b); or
- (b) for another purpose – when the poll closes for that purpose as decided by the Commission.

**Subdivision 3   Electors**

**14            Who can vote**

- (1) An elector is entitled to vote at the election for the elector's enrolled division.
- (2) An **elector** is a person whose name is on the roll.

- (3) The inclusion of the name of a person on a certified list of voters is conclusive evidence of the person's right to vote at the election for the person's enrolled division.

*Note for subsection (3)*

*For the certified lists of voters, see section 28.*

- (4) An elector is not disqualified from voting for any of the following reasons:
- (a) the omission of all or part of the elector's name from a certified list of voters;
  - (b) an error in a name of the elector on a certified list of voters;
  - (c) a former name of the elector is entered on a certified list of voters.

## **15        Roll**

- (1) As soon as practicable after the close of roll and before the nomination day, the Commissioner must compile a **roll** for the election.
- (2) The roll must include the names and addresses of all persons whose names:
- (a) appear on the roll under the *Electoral Act* at the close of roll; and
  - (b) if a general election were to be held under that Act on the polling day, would be required to be included in the certified list of voters for a division under section 44(2) of that Act for that election.
- (3) The roll must also include the name and address of each person whose name:
- (a) appears on the Roll for a Subdivision under the Commonwealth Act at the close of roll because of a claim for enrolment under section 100 of that Act; and

- (b) apart from being less than 18 years of age, if a general election were to be held under the *Electoral Act* on the polling day, would be required to be included in the certified list of voters for a division under section 44(2) of that Act for that election.

*Note for subsection (3)(a)*

*A person who is 16 years of age may make a claim for enrolment under section 100 of the Commonwealth Act.*

- (4) Despite any other provision, the roll must include the name and address of a person who is not covered by subsection (2) or (3) in the following circumstances:
  - (a) the person makes an application before the close of roll in the approved form to the Commission for the person's enrolment;
  - (b) when the application is made, if the person were at the age he or she would be on the polling day, the person would be entitled to make a claim for enrolment under section 100 of the Commonwealth Act;
  - (c) the Commission:
    - (i) is satisfied the requirements in paragraphs (a) and (b) are met; and
    - (ii) approves the application.
- (5) The roll must, for each elector:
  - (a) specify the division in which the elector's residential address is located as the division for which the elector is enrolled; and
  - (b) contain the same information about the elector that is required of a roll prepared under the *Electoral Act* for an elector under that Act.

*Note for subsection (5)(b)*

*See section 11 of the Electoral Act for the information required of a roll prepared under that Act.*

- (6) In this section:

**address**, of an elector, includes:

- (a) the residential address of the elector; and
- (b) if the elector's postal address is different from the elector's residential address – the postal address.

**name**, of an elector, includes the surname and each given name of the elector.

## **16       Extract of roll**

- (1) The Commission must:
  - (a) prepare an extract from the roll after it has been compiled; and
  - (b) make the extract available for public inspection free of charge.
- (2) Subject to subsection (3) and any regulation made under section 195(2), the extract must include the following information for each elector:
  - (a) the surname and each given name of the elector;
  - (b) the elector's residential address.

*Note for subsection (2)*

*A regulation made under section 195(2) may provide for the exclusion from the extract of specified information about an elector who is less than 18 years of age on the polling day.*

- (3) If, under section 104 of the Commonwealth Act, an elector's address is not included on a Roll for a Subdivision under that Act, the elector's address must not be included in the extract.

## **Division 3       Nominations**

### **17       Who can be elected**

A person can be elected as a delegate for a division only if the person:

- (a) is an Australian citizen; and
- (b) is an elector enrolled for the division; and
- (c) has been declared to be a candidate for the division under section 23; and
- (d) is not a member of the Legislative Assembly or Australian Parliament; and
- (e) on the polling day, has been resident within the Commonwealth for at least 6 months and within the Territory for at least 3 months; and

- (f) is not, on the polling day:
  - (i) a person who has published a statement about his or her intention to consent to nomination as a candidate at the next general election for the Legislative Assembly; or
  - (ii) a person who has been announced as an endorsed candidate of a registered political party (as defined in the *Electoral Act*) at the next general election for the Legislative Assembly in a statement published by the party with the person's consent.

## 18        Making nomination

- (1) A person can be nominated as a candidate for a division only in the following circumstances:
  - (a) if the nomination is made before the close of roll:
    - (i) one of the following applies:
      - (A) the person is enrolled under the *Electoral Act*;
      - (B) the person's name appears on the Roll for a Subdivision under the Commonwealth Act because of a claim for enrolment made by the person under section 100 of that Act;
      - (C) the person has made an application under section 15(4)(a) in the circumstances mentioned in section 15(4)(b); and
    - (ii) the person's current residential address is located in the division;
  - (b) otherwise – the person is enrolled for the division under this Act.
- (2) The nomination must:
  - (a) be made in the approved form by at least 6 persons (the ***nominators***) who are, or are entitled to be, enrolled for the division; and
  - (b) state the name, residential address and occupation of the person nominated (the ***nominee***); and
  - (c) contain a statement that the nominee consents to be nominated for the division and to act as a delegate if elected; and

- (d) contain a declaration signed by the nominee that he or she can be nominated as a candidate in the circumstances mentioned in subsection (1) and specifying those circumstances; and
  - (e) be accompanied by a photograph of the nominee complying with the requirements specified in the approved form; and
  - (f) be signed by the nominee and each nominator.
- (3) For subsection (2)(b), the name specified in the nomination must be:
  - (a) if the nomination is made before the close of roll – the surname and given name, or one or more of the given names:
    - (i) under which the nominee is enrolled under the *Electoral Act*; or
    - (ii) that appear on the Roll for a Subdivision under the Commonwealth Act because of a claim for enrolment made by the nominee under section 100 of that Act; or
    - (iii) that are specified in an application made by the nominee under section 15(4)(a); or
  - (b) otherwise – the surname and given name, or one or more of the given names, under which the nominee is enrolled under this Act.
- (4) However, a given name may be specified by an initial standing for the name or a commonly accepted variation of the name, including an abbreviation, truncation or alternative form.
- (5) If the address of a nominee is suppressed, the nomination:
  - (a) is not required to state the nominee's address; but
  - (b) must state another address for the purpose of correspondence with the Commission and other purposes of this Act.
- (6) For this Act, a person is **entitled to be enrolled** if the person is covered by subsection (1)(a)(i).

## 19        **When must nomination form be lodged**

The nomination form for a candidate must be lodged with the Commission during the nomination period.

## **20            Nomination in one division only**

- (1) This section applies if a person has:
  - (a) consented to be nominated as a candidate for a division; and
  - (b) signed a nomination form for the nomination.
- (2) The person must not consent to be nominated or sign a nomination form for his or her nomination as a candidate for another division unless his or her consent to the previous nomination is withdrawn under section 21.

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

A nominee may withdraw his or her consent to the nomination by giving written notice in the approved form to the Commission at any time that is not later than 12 noon on the nomination day.

## **22            Rejection of nomination**

- (1) The Commissioner may reject a nomination if:
  - (a) the nominee is not someone who can be nominated under section 18(1); or
  - (b) the nomination is not substantially in accordance with section 18(2) to (5); or
  - (c) the name of the nominee is obscene, frivolous or has been assumed for a political purpose; or
  - (d) at the close of roll, the nominee:
    - (i) is a member of the Legislative Assembly or Australian Parliament; or
    - (ii) has published a statement about his or her intention to consent to nomination as a candidate at the next general election for the Legislative Assembly; or
    - (iii) has been announced as an endorsed candidate of a registered political party (as defined in the *Electoral Act*) at the next general election for the Legislative Assembly in a statement published by the party with the nominee's consent.
- (2) The Commissioner 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 under Part 5.

## **23 Declaration of candidates**

- (1) As soon as practicable after 12 noon on the nomination day, the Commission must:
  - (a) publicly produce all nomination forms for the persons properly nominated for each division (other than someone who has withdrawn consent to his or her nomination); and
  - (b) declare those nominated persons to be candidates for the division.
- (2) The declaration for a division must be made at one or more of the following:
  - (a) the Commission's offices;
  - (b) places specified by the Commission by public notice.
- (3) The Commission must not disclose the names of persons nominated as candidates before making the declaration.
- (4) As soon as practicable after making the declaration, the Commission must display a notice at the Commission's offices stating the name and address, as specified in the nomination form, of each candidate for each division.
- (5) The Commission may also display the notices at other places in the Territory the Commission considers appropriate.

## **24 No need for poll in some circumstances**

- (1) If only one or 2 candidates are declared under section 23 for a division, the Commission must, on making that declaration:
  - (a) declare each of them returned as ordinary delegates for the division; and
  - (b) state their names in the declaration.
- (2) The declaration has effect as if:
  - (a) it were a declaration under section 111(2); and
  - (b) the candidates were returned as elected for the division.

(3) To avoid doubt:

- (a) a poll must be held for a division if 3 or more candidates are declared under section 23 for the division; and
- (b) a poll is not required for a division if no candidate is declared under section 23 for the division.

## **Division 4            Ballot papers**

### **25            Determination of order of candidates' names**

- (1) As soon as practicable after the candidates have been declared for a division, the Commission must determine the order of their names on the ballot papers to be used for the division.
- (2) The determination must be made by lot in public at the Commission's office or another place in the Territory the Commission considers appropriate.

### **26            Requirements for ballot papers**

- (1) A ballot paper to be used for the election must be in the approved form.
- (2) Without limiting subsection (1), a ballot paper for a division:
  - (a) must include the names of the candidates for the division in the order determined under section 25; and
  - (b) may include a photograph of each candidate adjacent to the candidate's name on the ballot paper; and
  - (c) a square (a ***candidate square***) printed adjacent to:
    - (i) each candidate's name; or
    - (ii) each candidate's photograph if paragraph (b) applies.

## **Division 5            Other pre-voting arrangements**

### **27            Commissioner must give public notice about election**

As soon as practicable after declaring the polling day under section 9, and before the start of the nomination period, the Commissioner must give public notice about:

- (a) the holding of the election; and

- (b) the nomination period, close of roll and dates of the nomination day and polling day; and
- (c) information about nominating a candidate; and
- (d) other information about the election as the Commissioner considers appropriate.

## **28        Certified lists of voters**

- (1) For the conduct of the election, the Commission must prepare and certify:
  - (a) a list of electors for each division; and
  - (b) a list of electors for all divisions.
- (2) If a periodic general election under the *Local Government Act* is to be held on the polling day:
  - (a) the Commission may, on a list under subsection (1), specify:
    - (i) some or all of the persons on the list as an elector both for this Act and the *Local Government Act*; and
    - (ii) the area or ward (as provided in the *Local Government Act*) for which a person is enrolled under that Act; and
  - (b) a certified list of voters mentioned in paragraph (a) may be used for the election under this Act as a certified list of voters; and
  - (c) this Act does not prevent the use of the list for the periodic general election.

## **29        Early voting centres, polling places and scrutiny centres**

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

**30 Limit on appointment of licensed premises as polling place**

A part of licensed premises as defined in the *Liquor Act* (the **relevant area**) may be appointed as a polling place only if the Commission is satisfied that, during polling hours on the polling day:

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

**31 Scrutineers – appointment**

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

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

- (1) A scrutineer representing a candidate during the polling for the election is entitled to be present at a polling place, and to enter or leave the place, when voters are allowed to vote at the place.
- (2) However, for each candidate and polling place, only one scrutineer representing that candidate may enter or remain at the place at any time while voters are allowed to vote at the place.
- (3) A scrutineer representing a candidate during the scrutiny for the election is entitled to be present at a scrutiny centre, and to enter or leave the centre, during the conduct of the scrutiny at the centre.
- (4) However, for each candidate and scrutiny centre, only one scrutineer representing that candidate may enter or remain at the centre at any time while the scrutiny is conducted at the centre.
- (5) Despite subsection (4), if there is more than one counting table at a scrutiny centre for the candidate's division, the candidate is entitled to be represented by one scrutineer at each table for the division at the centre.

- (6) A scrutineer who contravenes this section in relation to a polling place or scrutiny centre ceases to be entitled to be at the place or centre.

## **Part 3            Voting**

### **Division 1       Preliminary matters**

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

- (1) A person may cast a vote at the election in accordance with Divisions 2 to 6.
- (2) Except as otherwise provided in this Act, a person may cast a vote on the polling day at any polling place, whether or not the polling place is in the person's enrolled division.
- (3) Only an ordinary vote or a declaration vote (other than a postal vote or a vote cast before the polling day) may be cast at a mobile polling place.

#### **34            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 preferences until a number is placed in all candidate squares.

*Note for section 34*

*See section 75(2) to (4).*

#### **35            Voter's question**

The **voter's question** to be put to a person who claims to vote at the election is as follows:

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

## **Division 2            Ordinary voting at polling place**

### **36            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 the 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; and
  - (b) the officer is satisfied the certified list of voters for the division:
    - (i) states the person's name; and
    - (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.

### **37            Voting in private**

- (1) On receipt of the ballot paper, the person must, without undue delay:
  - (a) go to an unoccupied voting compartment at the polling place; and
  - (b) there, in private, mark his or her vote on the ballot paper; and
  - (c) fold the ballot paper to conceal the vote; and
  - (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 68.

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

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

#### **38                      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 the 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; and
  - (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.

#### **39                      Casting declaration vote**

- (1) Subject to section 68, this section prescribes the requirements for casting a declaration vote under this Subdivision.
- (2) After the issue of the declaration ballot paper by the authorised officer 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; and

- (b) the person must return the folded ballot paper to the officer; and
  - (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 undue delay.

## **Subdivision 2 Declaration voting by other persons**

### **40 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 the election for the division, 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; and
  - (b) the officer is satisfied the officer's certified list of voters:
    - (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; and
  - (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 38(2) attends before an authorised officer for a division at a polling place during polling hours and claims to vote at the 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; and

- (b) the officer is satisfied the officer's certified list of voters 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; and
  - (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:
    - (i) has complied with Part VIII of the Commonwealth Act before the close of roll; or
    - (ii) has made an application under section 15(4)(a) in the circumstances mentioned in section 15(4)(b) before the close of roll;
  - (b) if paragraph (a)(i) applies – 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.

#### **41            Casting declaration vote**

- (1) Subject to section 68, this section prescribes the requirements for casting a declaration vote under this Subdivision.

- (2) After the issue of a declaration ballot paper by the authorised officer to a 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; and
  - (b) the person must return the folded ballot paper to the officer; and
  - (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 40(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 undue delay.

## **Division 4            Postal voting**

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

#### **42            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 elector who is registered as a general postal voter under the Commonwealth Act.
- (3) The register may also contain other particulars the Commission considers appropriate.
- (4) A **registered postal voter** is a person whose name is on the register kept under subsection (1).

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

If a person is a registered postal voter whose registration covers a period including the polling day:

- (a) the person is taken to be someone who may apply for postal voting papers; and

- (b) the Commission is taken to have received from the person a properly completed application for postal voting papers for the election.

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

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

- (1) A person may apply for postal voting papers for the election if the person:
  - (a) is, or is entitled to be, enrolled for a division; and
  - (b) is an eligible person under subsection (2).
- (2) A person is an ***eligible person*** if:
  - (a) throughout polling hours on the polling day, the person:
    - (i) will not be in the Territory or within 20 km of a polling place (other than a mobile polling place at which the person may vote); or
    - (ii) will be travelling under conditions that preclude voting at a polling place; or
    - (iii) will be unable to attend a polling place because of a physical or other disability, illness, advanced pregnancy or another condition of the person; or
    - (iv) will be unable to attend a polling place because of a reasonable fear for, or a reasonable apprehension about, his or her personal wellbeing or safety; or
    - (v) 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 has a physical or other disability, illness, advanced pregnancy or another condition; or
    - (vi) will be precluded from attending at a polling place because of being a prisoner; or
    - (vii) will be engaged in employment or occupation and either the person is not entitled to leave of absence under section 73 or the person's attending a polling place to vote would be likely to cause the person financial loss; or

- (b) the person will, because of his or her membership of a religious order or religious beliefs, be precluded from attending a polling place during polling hours on the polling day or the greater part of those hours; or
- (c) the person's address has been suppressed.

#### **45        Application for postal voting papers**

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

#### **46        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, the officer must not send postal voting papers to the applicant before the order of the names of the candidates for the applicant's enrolled division has been determined under section 25.
- (3) The officer must send postal voting papers:
  - (a) if a properly completed application was received before the determination – as soon as practicable after the determination; or
  - (b) subject to subsections (4) and (5), if a properly completed application is received after the determination – as soon as practicable after receiving the application.
- (4) The 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 the polling day and the address to which the 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 the polling day and the address to which the papers are to be sent is in Australia.

(5) However, the officer may send postal voting papers to the applicant whose application is received later than the time mentioned in subsection (4)(a) or (b) if the officer considers doing so is appropriate, having regard to:

- (a) the special circumstances of the applicant; and
- (b) the need to allow sufficient time for the papers to be completed by the applicant by 6 pm on the polling day; and
- (c) any other matters the officer considers relevant.

#### **47        Authorised officer to record applications**

An authorised officer must:

- (a) number in consecutive order all applications for postal voting papers received by the Commission for each division (including applications taken to have been received under section 43); and
- (b) endorse each application with the date of issue of the postal voting papers; and
- (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; and
- (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.

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

The Commission must keep the applications and make them available for public inspection for 14 days from and including the third day after the polling day.

### **Subdivision 3    Casting postal vote**

#### **49        Procedure for postal voting**

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

**50            When postal vote may be cast**

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

**51            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 authorised witness, sign his or her name on the postal vote certificate.
- (3) The authorised 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 authorised witness but so that the authorised 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 illiterate or so physically incapacitated that he or she is unable to mark the ballot paper without assistance, the authorised 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) 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 matters**

**52            Application of Division**

This Division provides for the casting of declaration votes before the polling day.

### **53            Arrangements for voting**

- (1) For this Division, the Commission must:
  - (a) declare regions:
    - (i) each of which comprises one or more divisions; and
    - (ii) to which early voting centres are related; and
  - (b) decide the period during which, and the days and hours when, voting before the polling day may take place at early voting centres.
- (2) The Commission may assign a name to a region.
- (3) The period decided under subsection (1)(b) must not start until the order of the names of all the candidates for the election has been determined under section 25.
- (4) This section does not prevent a declaration under subsection (1)(a) providing for:
  - (a) part of a division being part of a region; or
  - (b) the whole or part of a division being part of more than one region.

### **54            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 period during which, and the days and hours when, voting before the polling day may take place at early voting centres.

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

### **55            Issue of declaration ballot paper**

- (1) This section applies if a person attends before an authorised officer at an early voting centre during the hours of polling on a day decided under section 53(1)(b) and declares he or she is an elector who:
  - (a) is entitled to vote at the election; and
  - (b) expects to be unable to attend at a polling place on the 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; and
  - (b) the officer is satisfied the officer's certified list of voters:
    - (i) states the person's name; and
    - (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.

## **56       Casting declaration vote**

- (1) Subject to section 68, this section prescribes the requirements for the casting of a declaration vote by a person issued a declaration ballot paper under section 55.
- (2) After the issue of the declaration ballot paper by the authorised officer to the person, the person must, without undue delay:
  - (a) go to an unoccupied voting compartment at the early 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; and
  - (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 persons whose names are not on certified list of voters**

#### **57                    Issue of declaration ballot paper**

- (1) This section applies if:
  - (a) a person attends before an authorised officer at an early voting centre during the hours of polling on a day decided under section 53(1)(b); and
  - (b) the person states the person's full name and address; and
  - (c) the officer is satisfied the officer's certified list of voters does not state the person's name and address; and
  - (d) the person answers the voter's question in the affirmative; and
  - (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:
    - (i) has complied with Part VIII of the Commonwealth Act before the close of roll; or
    - (ii) has made an application under section 15(4)(a) in the circumstances mentioned in section 15(4)(b) before the close of roll;
  - (b) if paragraph (a)(i) applies – 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.

## **58            Casting declaration vote**

- (1) Subject to section 68, this section prescribes the requirements for the casting of a declaration vote by a person issued a declaration ballot paper under section 57.
- (2) After the issue of the declaration ballot paper by the authorised officer 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; and
  - (b) the person must return the folded ballot paper to the officer; and
  - (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 57(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 undue delay.

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

### **59            Ballot boxes at early voting centres**

- (1) This section applies to declaration ballot papers issued under Subdivisions 2 and 3 at an early voting centre.
- (2) As soon as practicable after 6 pm on the day before the 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 4.

## **Division 6            Mobile polling**

### **60            Application of Division**

This Division provides for the casting of ordinary votes and declaration votes under Division 2 or 3 during the mobile polling period at mobile polling places for the election.

### **61            Mobile polling places**

- (1) The Commissioner may, in writing, declare a specified polling place in a division to be a mobile polling place where votes may be taken by an authorised officer during the mobile polling period for the division.
- (2) The declaration may specify:
  - (a) classes of electors who may vote at the mobile polling place; and
  - (b) dates and hours during which votes may be cast at the place during the mobile polling period.
- (3) In making the declaration, the Commissioner must have regard to the following:
  - (a) whether or not:
    - (i) there is a distinct community of electors who may be served by the mobile polling place; or
    - (ii) there are special circumstances applying to electors who may be served by the mobile polling place (for example, because of their special needs or other requirements);
  - (b) the practicality for those electors to attend another polling place for the election;
  - (c) the practicality of establishing the mobile polling place for those electors, having regard to their number and resources required for doing so.
- (4) If the declaration specifies a class of electors, only a person in that class may vote at the mobile polling place.
- (5) The Commissioner must:
  - (a) give public notice of the declaration; and

- (b) as far as practicable, notify the community or electors to be served by the mobile polling place in a way that is reasonable in the circumstances.

**62            Change of mobile polling place, dates or hours for voting**

- (1) The Commissioner may substitute another polling place (a ***substituted place***) for the mobile polling place or change the dates or hours specified for the polling place if the Commissioner is satisfied there are special circumstances requiring the substitution or change.
- (2) The Commissioner must give notice to the public of the substitution or change that is reasonable and practicable in the circumstances.

**63            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 officer.

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

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

**65            Failure to visit mobile polling place**

The result of the election is not invalidated merely because an authorised officer did not visit:

- (a) a mobile polling place; or
- (b) a mobile polling place on the dates or during the hours:
  - (i) specified in a declaration under section 61; or
  - (ii) as substituted or changed under section 62.

**66            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 4.

## **Division 7            Other matters relating to voting**

### **67            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 of the polling place must show that each ballot box is 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 an early 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 that ballot box.

**68            Assistance to some voters**

- (1) A voter may be assisted by a person (an **assistant**) 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) otherwise:
    - (i) a nominee of the voter; or
    - (ii) 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 marking the ballot paper;
  - (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.

**69            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 or other disability, illness, advanced pregnancy or another condition of the voter.
- (2) The voter:
  - (a) may vote outside, but close to, the polling place; and

- (b) may be assisted in voting.
- (3) Before allowing the voter to vote outside the polling place, the officer 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; and
  - (b) fold the ballot paper to conceal the names of the candidates; and
  - (c) give the ballot paper to the officer.
- (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 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 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 has effect subject to section 68.

## **70        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; and
  - (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 at the polling place, the officer must place all envelopes mentioned in subsection (2)(b) with unused ballot papers.

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

- (1) At the close of polling at a polling place, the officer in charge of the 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; and
  - (b) parcel and seal all unused ballot papers and the envelopes mentioned in section 70(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 4.
- (3) However, subsections (1)(a) and (2) do not apply to ballot boxes mentioned in subsection (1)(a) 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.

## **72        Adjournment of polling**

- (1) The officer in charge of a polling place may adjourn polling at the place on the polling day if it is not practicable to proceed with polling because of riot, violence, fire, storm, flood or another similar event.
- (2) The officer in charge must, immediately after adjourning polling at the place under subsection (1), notify the Commission of the adjournment.

- (3) The Commission must decide a day (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 notice to the public that is reasonable in the circumstances of the adjournment and any decision under subsection (3) or (4).
- (6) On the resumption of polling, an elector is entitled to vote only if:
  - (a) the elector has not already voted; and
  - (b) the elector was entitled to vote at the polling place in relation to which polling was adjourned.

### **73            Employee wishing to vote**

- (1) On notice by an employee before the 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 commits an offence if the employee:
  - (a) notifies his or her employer under subsection (1) in relation to taking leave for the purposes of voting; and
  - (b) the employee does not intend to vote during the leave.

Maximum penalty:       5 penalty units.

## **Part 4            The Scrutiny**

### **Division 1       Preliminary matters**

#### **74            How scrutiny carried out**

- (1) The result of the election for a division must be determined by scrutiny carried out in accordance with this Part (including the Schedule) if polling for the election is held for the division.

- (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**

### **75            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; or
    - (iii) marked in accordance with section 34; or
  - (b) if an authorised officer is satisfied the voter can be identified because of a mark or other writing on it.
- (2) For section 34(2)(a) and (b), a voter is taken to have indicated his or her order of preferences for all the candidates on a ballot paper in the circumstances mentioned in subsection (3) or (4).
- (3) If there are 3 or more candidates and the voter placed a single "1", "✓" or "X" in one candidate square and placed consecutively increasing whole numbers (starting with a "2") in the remaining candidate squares until a number is placed in each of those candidate squares, then:
  - (a) the candidate whose candidate square is placed with a single "1", "✓" or "X" is taken to be the voter's first preference; and
  - (b) the number placed in each of the other candidate squares is taken to indicate the rest of the voter's order of preferences.
- (4) If there are 3 or more candidates and the voter placed a single "1", "✓" or "X" in one candidate square, left one candidate square blank and placed consecutively increasing whole numbers (starting with a "2") in the remaining candidate squares until a number is placed in each of those candidate squares, then:
  - (a) the candidate whose candidate square is placed with a single "1", "✓" or "X" is taken to be the voter's first preference; and

- (b) the candidate whose candidate square is left blank is taken to be the voter's last preference; and
- (c) each number placed in any other candidate square is taken to indicate the voter's order of preferences between the first and last preferences.

**76 Ballot papers not informal because of mistakes about name of division or candidate**

- (1) A ballot paper is not informal merely because 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.
- (2) A ballot paper is not informal merely because the surname only of a candidate is written on the ballot paper if no other candidate has the same surname.
- (3) A ballot paper is not informal merely because 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.

**77 Some declaration ballot papers not counted**

Despite any other 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 otherwise than in:

- (a) for a postal vote – the envelope bearing the postal vote certificate; or
- (b) for a declaration vote cast under section 41, 56 or 58 – the envelope in which the ballot paper is placed under that section.

**78 Some postal ballot papers not counted**

- (1) Despite any other 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 the polling day; and
  - (b) the ballot paper is either:
    - (i) delivered to an authorised officer before the close of polling on the polling day; or

- (ii) if not delivered to an authorised officer before the close of polling on the polling day, received by the Commission before 6 pm on the Friday next following the 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 at which and date on which the elector's vote was marked on the ballot paper.

## **79            Dealing with some 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 specified in the ballot paper 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 3, 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 specified on the ballot paper.

## **Division 3            Ordinary votes**

### **80            Initial dealing with ballot papers**

- (1) As soon as practicable after the close of polling for the election, the officer in charge of a scrutiny centre must:
  - (a) open the ballot boxes under the officer's control; and
  - (b) set aside all informal ballot papers, count them and place them in a parcel; and

- (c) arrange all formal ballot papers under the names of each candidate for whom the first preference vote on the ballot papers was cast; and
  - (d) count the first preference votes given for each candidate on formal ballot papers; and
  - (e) make and sign a statement stating the number of:
    - (i) votes cast as first preference votes for each candidate; and
    - (ii) informal ballot papers; and
  - (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; and
  - (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).

## **81 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 80(1)(h).
- (2) An authorised officer must:
- (a) open the parcels and remove all the ballot papers; and
  - (b) set aside all informal ballot papers, count them and place them in a parcel; and
  - (c) arrange all formal ballot papers under the names of each candidate for whom the first preference vote on the ballot papers was cast; and
  - (d) count the first preference votes given for each candidate on formal ballot papers; and

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- (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; and
  - (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 80(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).

## **Division 4 Declaration votes cast on polling day or by persons whose names are not on certified list of voters at early voting centres**

### **Subdivision 1 Preliminary matters**

#### **82 Application of Division**

This Division applies to declaration voting papers issued under:

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

#### **83 Initial dealing with some declaration voting papers**

- (1) This section applies to declaration voting papers issued under Part 3, Division 3.
- (2) As soon as practicable after the close of polling 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 declaration voting papers for each division; and
  - (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.

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

### **84 Application of Subdivision**

This Subdivision applies to declaration voting papers:

- (a) issued under Part 3, Division 3, Subdivision 1; and
- (b) sent to the Commission or an authorised officer under section 79(3)(b) or 83(2)(c).

### **85 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) take the ballot paper out of each 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 voting by persons whose names are not on certified list of voters**

### **86 Application of Subdivision**

This Subdivision applies to declaration voting papers:

- (a) issued under:
  - (i) Part 3, Division 3, Subdivision 2 to persons to whom section 40(1)(b)(i) applies; or
  - (ii) Part 3, Division 5, Subdivision 3; and
- (b) sent to the Commission or an authorised officer under section 83(2)(c) or 98(1)(e).

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## **87 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.
- (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; and
  - (b) take the ballot paper out of each 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; 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**

### **88 Application of Subdivision**

This Subdivision applies to declaration voting papers:

- (a) issued under Part 3, Division 3, Subdivision 2 to persons to whom section 40(1)(b)(ii) or (2) applies; and

- (b) sent to the Commission or an authorised officer under section 83(2)(c).

## **89            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 each 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**

### **90            Initial count of declaration votes**

- (1) This section applies to the declaration ballot papers mentioned in sections 85(1)(b), 87(3)(b) and 89(3)(a).
- (2) An authorised officer must:
  - (a) set aside all informal ballot papers, count them and place them in a parcel; and

- (b) arrange all formal ballot papers under the names of each candidate for whom the first preference vote on the ballot papers was cast; and
  - (c) count the first preference votes given for each candidate on formal ballot papers; and
  - (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; and
  - (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 ballot papers.
- (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).

## **91            Check count of declaration votes**

- (1) This section applies to the parcels of declaration ballot papers mentioned in section 90(2)(e).
- (2) An authorised officer must:
- (a) open the parcels and remove all the ballot papers; and
  - (b) set aside all informal ballot papers, count them and place them in a parcel; and
  - (c) arrange all formal ballot papers under the names of each candidate for whom the first preference vote on the ballot papers was cast; and
  - (d) count the first preference votes given for each candidate on formal ballot papers; and
  - (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; and

- (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 90(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**

#### **92            Receipt of postal voting papers**

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

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

#### **93            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 44 for postal voting papers.
- (2) 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; and
  - (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 the polling day;

the officer must place the envelope unopened in a locked or sealed ballot box marked "Postal Ballot Box".

- (3) 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**

### **94            Initial dealing with postal voting papers after close of polling**

- (1) At the times the officer in charge of a scrutiny centre considers practicable after the close of polling for the 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 the polling day; and
  - (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; and
  - (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; and
  - (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.

### **95            Initial count of postal votes**

- (1) This section applies to the declaration ballot papers mentioned in section 94(1)(c).

- (2) An authorised officer must:
- (a) set aside all informal ballot papers, count them and place them in a parcel; and
  - (b) arrange all formal ballot papers under the names of each candidate for whom the first preference vote on the ballot papers was cast; and
  - (c) count the first preference votes given for each candidate on formal ballot papers; and
  - (d) make and sign a statement stating the number of:
    - (i) votes cast as first preference votes for each candidate; and
    - (ii) informal ballot papers; and
  - (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).

## **96            Check count of postal votes**

- (1) This section applies to the parcels of declaration ballot papers mentioned in section 95(2)(f).
- (2) An authorised officer must:
- (a) open the parcels and remove all the ballot papers; and
  - (b) set aside all informal ballot papers, count them and place them in a parcel; and
  - (c) arrange all formal ballot papers under the names of each candidate for whom the first preference vote on the ballot papers was cast; and
  - (d) count the first preference votes given for each candidate on formal ballot papers; and

- (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; and
  - (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 95(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 early voting centres  
before polling day**

**Subdivision 1   Preliminary matters**

**97            Application of Division**

This Division applies to declaration voting papers issued under Part 3, Division 5.

**98            Initial dealing with ballot boxes**

- (1) As soon as practicable after the close of polling 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 59(2)(b) and remove the contents; and
  - (b) sort the contents into:
    - (i) declaration ballot papers completed by electors for each division in the region in which the early voting centre is situated; and
    - (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; and
  - (c) place the envelopes mentioned in paragraph (b)(ii) and (iii) in separate parcels; and

- (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 divisions within regions of early voting centres**

### **99            Application of Subdivision**

This Subdivision applies to the declaration ballot papers mentioned in section 98(1)(b)(i) for a division.

### **100          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; and
  - (b) arrange all formal ballot papers under the names of each candidate for whom the first preference vote on the ballot papers was cast; and
  - (c) count the first preference votes given for each candidate on formal ballot papers; and
  - (d) make and sign a statement stating the number of:
    - (i) votes cast as first preference votes for each candidate; and
    - (ii) informal ballot papers; and
  - (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; and
  - (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).

### **Subdivision 3 Declaration votes cast for divisions in other regions at early voting centres**

#### **101 Application of Subdivision**

This Subdivision applies to the parcels of envelopes mentioned in section 98(1)(b)(ii).

#### **102 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) take the ballot paper out of each 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.

#### **103 Initial count of declaration votes**

- (1) This section applies to the declaration ballot papers mentioned in section 102(1)(b) for each division.
- (2) An authorised officer must:
- (a) set aside all informal ballot papers, count them and place them in a parcel; and
  - (b) arrange all formal ballot papers under the names of each candidate for whom the first preference vote on the ballot papers was cast; and
  - (c) count the first preference votes given for each candidate on formal ballot papers; and
  - (d) make and sign a statement stating the number of:
    - (i) votes cast as first preference votes for each candidate; and
    - (ii) informal ballot papers; and

- (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 early voting centres**

##### **104            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 100 or 103.
- (2) An authorised officer must:
- (a) open the parcels and remove all the ballot papers; and
  - (b) set aside all informal ballot papers, count them and place them in a parcel; and
  - (c) arrange all formal ballot papers under the names of each candidate for whom the first preference vote on the ballot papers was cast; and
  - (d) count the first preference votes given for each candidate on formal ballot papers; and
  - (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; and
  - (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 100(1)(d) or 103(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**

### **Subdivision 1    General rules**

#### **105            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 each 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.

#### **106            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:
  - (a) decide the objection by admitting or rejecting the ballot paper as a formal ballot paper; and
  - (b) 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.

#### **107            Determination of first preference votes**

An authorised officer for a division must, from the statements or amended statements mentioned in sections 81(2)(g), 91(2)(g), 96(2)(g) and 104(2)(g) 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.

## Subdivision 2    Further scrutiny

### 108            Procedures immediately after close of polling

As soon as practicable after the close of polling for a division, an authorised officer for the division must:

- (a) open all parcels containing formal ballot papers for the division; and
- (b) continue the scrutiny for determining the result of the election for the division in accordance with the Schedule and this Subdivision.

### 109            Death of candidate

- (1) If a candidate for a division dies before the end of the polling day, the result of the election for the division must be determined as provided in clause 18 of the Schedule.
- (2) If a candidate for a division dies after the polling day and before the result of the election for the division is declared under section 111 (the **deceased candidate**), the result must be determined under the Schedule as if the candidate had not died.
- (3) If the deceased candidate would have been elected on that determination (the **original determination**), the result of the election for the division must be further determined as follows:
  - (a) if there is only one unelected candidate remaining on the original determination (including an excluded candidate as defined in the Schedule), that candidate is to be determined as elected;
  - (b) otherwise – the votes are to be recounted under the Schedule as provided in clause 18 of the Schedule as if the deceased candidate were a candidate who died as mentioned in that clause.
- (4) The recount must:
  - (a) not take into account the result of the original determination; and
  - (b) cease immediately after a candidate, other than a candidate who was determined to be elected as a delegate on the original determination (a **previously elected candidate**), is determined to be the earliest elected.

- (5) The candidate who is determined as elected under subsection (3)(a), or determined to be the earliest elected as mentioned in subsection (4)(b), is to be elected as the reserve delegate for the division.
- (6) Irrespective of the result of the original determination and the recount, each of the previously elected candidates is to be determined to be elected as an ordinary delegate for the division.
- (7) If more than one candidate has died as mentioned in subsection (2):
  - (a) subsections (2) to (6) operate separately for each death in the order of the deaths; and
  - (b) if 2 or more deaths occur at the same time – an older person is taken to have died earlier than a younger person.
- (8) The regulations may prescribe a matter arising from this section.

#### **110        Recount**

- (1) The Commission may, at any time before a candidate is declared to be elected for a division under section 111, direct an authorised officer for the division to recount any ballot papers placed in a parcel under this Part in relation to the division.
- (2) The Commission may give the direction:
  - (a) on receipt of a written request by a candidate for the division stating the reasons for it; or
  - (b) on the Commission's own initiative.
- (3) If the Commission gives the direction:
  - (a) this Part applies to the recount; and
  - (b) the officer may reverse any decision made earlier in the scrutiny relating to the admission or rejection of a ballot paper as a formal ballot paper.
- (4) In addition:
  - (a) if required by a candidate's scrutineer, the officer must refer any question relating to the formal or informal nature of a ballot paper to the Commission; and
  - (b) the Commission must decide the question.
- (5) This section has effect subject to section 109.

### **Subdivision 3    Declaring and notifying result of election**

#### **111            Declaration of result of election**

- (1) This section applies if:
  - (a) polling for the election has been held for a division; and
  - (b) the result of the election for the division has been determined in accordance with this Part; and
  - (c) one or more candidates are to be elected as delegates for the division on that determination.
- (2) As soon as practicable after that determination, the Commission must:
  - (a) declare those candidates returned as delegates elected for the division; and
  - (b) state in the declaration:
    - (i) each delegate's name; and
    - (ii) whether the delegate is elected as an ordinary delegate or reserve delegate.
- (3) The declaration must be made in public at the Commission's office or another place in the Territory the Commission considers appropriate.
- (4) However, and despite any other provision, if a candidate who would otherwise be declared under subsection (2) dies before the declaration, the Commission must not declare the candidate returned as elected.

#### **112            Notification of result of election**

- (1) The Commission must notify the Minister of the result of the election as soon as practicable after:
  - (a) the result of the election has been determined in accordance with this Part for each division for which polling was held; and
  - (b) the Commission has declared under section 111 for each division for which one or more candidates are returned as elected.

- (2) The notice must:
- (a) for each division for which one or more candidates are returned as elected – include information contained in the declaration made under section 111 for the division; and
  - (b) if, for any reason, there are divisions for which no candidate is returned as elected – state those divisions; and
  - (c) include any other information about the result of the election as the Commission considers appropriate.

## **Division 8            Other matters**

### **113            Extension of time**

- (1) If the Minister is satisfied there is good reason to do so, the Minister may, by *Gazette* notice, extend the time for holding the election for a division.
- (2) The Commission must give public notice of the extension in the division to which the extension relates.

## **Part 5            Disputed elections**

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

#### **114            Jurisdiction**

The Court of Disputed Returns has jurisdiction to decide applications made under Division 2.

#### **115            Record of proceedings**

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

### **Division 2            Disputed elections**

#### **116            Validity of election may be disputed after election**

- (1) A person may dispute the validity of the election in relation to a division only by making an application in accordance with this Division after the result of the election is notified under section 112.

- (2) Without limiting subsection (1), the validity of the election in relation to a division may be disputed because of any of the following:
- (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.

#### **117 Who may dispute election**

The following persons are entitled to dispute the validity of the election in relation to a division:

- (a) an elector enrolled for the division;
- (b) a candidate for the division;
- (c) a person whose nomination as a candidate for the division was rejected by the Commission;
- (d) the Commission.

#### **118 Making application**

- (1) The application must be made to the Master not later than 21 days after the day on which the result of the election is notified under section 112.
- (2) The application must:
- (a) be addressed to the Court of Disputed Returns; and
  - (b) state the facts relied on to invalidate the election; and
  - (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; and
  - (d) ask for the relief to which the applicant claims to be entitled; and
  - (e) be signed by the applicant; and

- (f) be signed by 2 witnesses whose occupations and addresses are specified.

**119        Lodgement of security for costs**

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

**120        Notice of application**

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 if the Commission is not the applicant; and
- (b) the candidates returned as elected for the division if:
  - (i) the application claims a candidate who has not been returned as elected for the division was entitled to be so returned; or
  - (ii) the application claims a candidate who has been returned as a reserve delegate for the division was entitled to be returned as an ordinary delegate for the division.

**121        Parties to proceeding**

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

**122        Reply to application**

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

- (c) be signed by the person; and
- (d) for a reply by a person other than the Commission – be signed by 2 witnesses whose occupations and addresses are specified.

### **123        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:
  - (a) not inquire into the correctness of the roll; and
  - (b) take the roll to be conclusive evidence that the persons enrolled were, at the close of roll, entitled to be enrolled.
- (3) In addition, the qualification of a person enrolled cannot be questioned.

### **124        Certain evidence not admissible**

The Court of Disputed Returns must not, in deciding whether the actions of an officer affected the result of the election, admit evidence of the way in which a person would have voted if the person claims to have been wrongly prevented by the officer from voting at the election.

### **125        Court may have regard to 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.

### **126        Decision on application**

- (1) In making its decision on the application, the Court of Disputed Returns may:
  - (a) dismiss the application; or
  - (b) uphold the application in whole or part.

- (2) For subsection (1), the Court may:
- (a) declare that a candidate who was returned as elected was not properly elected; or
  - (b) declare that a candidate who was not returned as elected to be properly elected; or
  - (c) declare that a candidate:
    - (i) who was elected as an ordinary delegate to be returned as a reserve delegate; or
    - (ii) who was elected as a reserve delegate to be returned as an ordinary delegate; or
  - (d) declare the election void in relation to the division.
- (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, committed or attempted to commit an offence against Part IV, Division 3 of the Criminal Code.
- (4) Without limiting subsection (2)(a) or (d), the Court may make a declaration under subsection (2)(a) or (d) on the ground that an unlawful act was committed in relation to the election.
- (5) However, the Court may make a declaration under subsection (2)(a) or (d) because of an action occurring without an elected candidate's knowledge, or because of an offence against this Act committed by an elected candidate, only if it is satisfied:
- (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.
- (6) To avoid doubt, subsection (5) does not require the Court to be satisfied about the matters mentioned in subsection (5)(a) and (b) for a declaration that the Court is required to make under subsection (3).
- (7) In addition, the Court must not make a declaration under subsection (2)(d):
- (a) merely because of a delay in the declaration of nominations, the polling or the determination of the result of the election; 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 entitled to be enrolled for the division.

(8) Subsection (3) does not prevent a prosecution for:

- (a) an offence mentioned in that subsection; or
- (b) an offence against another law in force in the Territory.

## **127 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.

## **128 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:
  - (a) apply the security toward the costs of the person to whom they are awarded; and
  - (b) refund any balance to the payer.

## **129 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.

## **Division 3 Hearings of applications**

### **130 Application of Division**

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

### **131        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; and
  - (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 its practice and procedure.

### **132        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; or
  - (b) examine witnesses on oath; 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 roll 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 roll 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.

### **133        Hearing open to public**

The hearing must be open to the public.

**134           Representation at hearing**

- (1) A party to the proceeding may not be represented at the hearing by an agent or legal practitioner otherwise than:
  - (a) with the consent of the other parties; or
  - (b) 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.

**135           Contempt**

The Court of Disputed Returns may punish a contempt of its authority as if:

- (a) it were the Supreme Court; and
- (b) the contempt were a contempt of the Supreme Court.

**136           Decision final**

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

- (a) is final and conclusive; and
- (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 4           Other matters**

**137           Rules of Court**

The Judges of the Supreme Court (other than acting or additional Judges under the *Supreme Court Act*) or a majority of its 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 of Disputed Returns 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 of Disputed Returns.

## **Part 6            Electoral Offences and legal proceedings**

### **Division 1       Electoral offences**

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

##### **138            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 the election.

Maximum Penalty:      50 penalty units or imprisonment for 6 months.

##### **139            Making false statements about entitlement to vote**

- (1) A person commits an offence if:

- (a) the person informs another person that the other person is not an elector; and
- (b) the other person is an elector.

Maximum penalty:      50 penalty units or imprisonment for 6 months.

- (2) A person commits an offence if:

- (a) the person informs another person that the other person is not an elector for a particular division; and
- (b) the other person is an elector for the division.

Maximum penalty:      50 penalty units or imprisonment for 6 months.

##### **140            Improperly influencing voters**

- (1) A person commits an offence if the person, by violence or intimidation, interferes with, influences or attempts to influence, the vote of another person at the election.

Maximum penalty:      200 penalty units or imprisonment for 12 months.

(2) An officer commits an offence if the officer:

- (a) is exercising a power or performing a function under this Act;  
and
- (b) while doing so, engages in conduct with the intention of interfering with, influencing or attempting to influence, the vote of another person at the election.

Maximum penalty:      200 penalty units or imprisonment for  
12 months.

#### **141        Secrecy of vote**

(1) A person commits an offence if:

- (a) the person is present when a voter votes; and
- (b) the person:
  - (i) ascertains, or discloses by word, act or in another way, the voter's vote; or
  - (ii) directly or indirectly requires, induces or attempts to induce the voter to show how the voter intends to vote; or
  - (iii) communicates with or assists the voter while voting or looks at the voter's ballot paper; or
  - (iv) interferes with the voter's casting of a vote.

Maximum penalty:      200 penalty units or imprisonment for  
12 months.

(2) Subsection (1) does not apply to the extent to which the person acts:

- (a) for the voter in accordance with section 51 or 68; or
- (b) at the voter's request.

### **Subdivision 2    Campaigning offences**

#### **142        Definitions**

In this Subdivision:

***campaign material***, see section 144.

***electoral matter***, see section 143.

**143            Meaning of *electoral matter***

- (1) ***Electoral matter*** is matter, in printed or electronic form, that is intended or likely to affect voting at the election.
- (2) Without limiting subsection (1), a matter is taken to be intended or likely to affect voting at the election if it contains an express or implicit reference to, or comment on:
  - (a) the election; or
  - (b) an issue submitted to, or otherwise before, the electors at the election.

**144            Meaning of *campaign material***

- (1) ***Campaign material*** is an advertisement, document or any other thing that is intended to promote the electoral prospect of a particular candidate or group of candidates for the election.
- (2) Without limiting subsection (1), ***campaign material*** includes any of the following:
  - (a) an electoral advertisement;
  - (b) a printed document containing an electoral matter (for example, a handbill, pamphlet or how-to-vote card);
  - (c) a message containing an electoral matter that is sent by telephone or otherwise broadcast by electronic means;
  - (d) material containing an electoral matter that is published.
- (3) The Commissioner may, in writing, declare a thing mentioned in subsection (1) or (2) is not campaign material.
- (4) The Commissioner may do so only if the Commissioner is satisfied the declaration is warranted having regard to all of the following:
  - (a) any information contained in the thing and the way in which the information is presented;
  - (b) the person for whom the thing is created;
  - (c) the way in which the thing is intended to be used or distributed;
  - (d) any other matters as the Commissioner considers appropriate.

**145            Application of Subdivision**

This Subdivision applies to the publication or distribution of advertisements, newspapers, electoral articles and other documents and things (including campaign material) during the election period.

**146            Offences relating to campaign material**

- (1) A person commits an offence if:
- (a) the person publishes or distributes campaign material; and
  - (b) any of the following applies:
    - (i) the material does not clearly state the name and address of the person authorising the publication or distribution;
    - (ii) if the material is a printed document – the material does not include the name and address of the printer who printed the document;
    - (iii) if the material is intended to be viewed from 2 sides – the information mentioned in subparagraphs (i) and (ii) is not included on both sides.

Maximum penalty:        100 penalty units.

- (2) Subsection (1) does not apply to the announcement by advertisement in a newspaper of the holding of a meeting.
- (3) A person commits an offence if:
- (a) the person publishes or distributes campaign material; and
  - (b) the campaign material:
    - (i) is likely to mislead or deceive an elector; or
    - (ii) contains an untrue or incorrect statement.

Maximum penalty:        100 penalty units.

**147            Offence relating to push-polling**

- (1) A person must, before conducting any push-polling, state clearly the name and address of the person authorising the push-polling:
- (a) for push-polling conducted by a telephone call – to the receiver of the call; or

- (b) for push-polling conducted in a meeting with another person – to the other person.

(2) The person authorising the push-polling commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct results in a contravention of subsection (1).

Maximum penalty:        100 penalty units.

(3) In this section:

***push-polling*** means any activity conducted as part of a telephone call made, or a meeting held, during the election period, that:

- (a) is, or appears to be, a survey (for example, a telephone opinion call or telemarketing call); and
- (b) is intended to influence an elector in deciding his or her vote.

#### **148        Heading of advertisements**

(1) The word "advertisement" must be printed as a headline, in letters not smaller than 10 point, to an advertisement published in a newspaper if any payment, reward, compensation or promise is, or is to be, made for the publication.

(2) The proprietor of the newspaper commits an offence if:

- (a) the proprietor engages in conduct; and
- (b) the conduct results in a contravention of subsection (1).

Maximum penalty:        100 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.

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

(1) A person commits an offence if:

- (a) the person distributes a circular, pamphlet or handbill containing an electoral article; and

(b) either of the following applies:

- (i) the article is not signed by its author;
- (ii) the true name and address of its author is not specified at the end of the article.

Maximum penalty:        100 penalty units.

- (2) Subsection (1) does not apply to a publication of an Agency, or a business or visiting card promoting a person's candidacy, unless the publication or card includes a representation of a ballot paper.
- (3) An electoral article published in a newspaper must contain the true name and address of its author at the end of the article.
- (4) The proprietor of a newspaper commits an offence if:
  - (a) the proprietor engages in conduct; and
  - (b) the conduct results in a contravention of subsection (3).

Maximum penalty:        100 penalty units.

- (5) Subsections (1) and (4) do not apply to the publication in a newspaper of:
  - (a) a leading article; or
  - (b) an article that:
    - (i) consists solely of a report of a meeting; and
    - (ii) does not contain any comment (other than comment made by a speaker at the meeting).

(6) In this section:

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

- (a) if the author is the proprietor of a newspaper or an employee of the proprietor of a newspaper – the proprietor's business address; or
- (b) 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 the issues being submitted to, or otherwise before, the electors at the election.

**150 Canvassing for votes and other acts near polling place**

- (1) A person commits an offence if the person, during polling hours on the polling day, and within 10 m of the entrance of a polling place:
- (a) canvasses for votes; or
  - (b) solicits the vote of a person; or
  - (c) induces a person not to vote for a particular candidate; or
  - (d) induces a person not to vote at the election; or
  - (e) exhibits a notice or sign relating to the election.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if the person, during polling hours on the polling day, uses a loud speaker, public address system, amplifier or other thing to broadcast matter that is:
- (a) audible within 10 m of the entrance of a polling place; and
  - (b) intended or likely to do a thing mentioned in subsection (1)(a) to (d).

Maximum penalty: 20 penalty units.

**151 Badges, emblems etc. at polling places**

- (1) A person must not, at a polling place, wear or display a badge, emblem, poster or other thing associated with a candidate.

Maximum penalty: 5 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

**152 Exhibition of electoral matter at polling places**

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

Maximum penalty: 5 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

**153 Publication of statements regarding candidates**

- (1) A person commits an offence if:
- (a) the person publishes or authorises to be published, on behalf of an entity, a statement; and
  - (b) the statement:
    - (i) expressly or impliedly claims a candidate is associated with, or supports the policy or activities of, the entity; or
    - (ii) expressly or impliedly advocates a candidate should be given the first preference vote at the election.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (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.

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

**154 Compulsory voting**

- (1) An elector who is at least 18 years of age on the polling day must vote at the election.

Maximum penalty: 1 penalty unit.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a valid and sufficient reason for not voting.
- (4) Without limiting subsection (3), an elector is taken to have a valid and sufficient reason for not voting if the elector is precluded from voting because of the elector's religious beliefs.

**155            Person may vote only once**

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

Maximum penalty:        50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

**Subdivision 4    Voting fraud offences**

**156            Offences relating to supplying and obtaining ballot papers**

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

Maximum penalty:        100 penalty units.

- (2) A person commits an offence if the person:

(a) with the intention of obtaining a ballot paper, pretends to be someone else; and

(b) is not entitled to obtain the ballot paper.

Maximum penalty:        200 penalty units or imprisonment for 12 months.

**157            Offences relating to marking ballot papers**

- (1) A person commits an offence if:

(a) the person marks a ballot paper; and

(b) the ballot paper was not issued to the person.

Maximum penalty:        50 penalty units or imprisonment for 6 months.

- (2) Subsection (1) does not apply to a person acting for a voter under section 51 or 68.

- (3) A person commits an offence if the person:

(a) is acting for a voter in accordance with section 51 or 68; and

(b) marks a ballot paper otherwise than in accordance with the voter's instructions.

Maximum penalty:        200 penalty units or imprisonment for 12 months.

(4) A person commits an offence if the person:

- (a) is acting for a voter in accordance with section 51 or 68; and
- (b) causes an officer to mark a ballot paper otherwise than in accordance with the voter's instructions.

Maximum penalty:       200 penalty units or imprisonment for  
   12 months.

## **158        Other offences relating to ballot papers and ballot boxes**

(1) A person must not, with the intention of deceiving another person, place a ballot paper or other paper in a ballot box.

Maximum penalty:       200 penalty units or imprisonment for  
   12 months.

(2) A person must not, with the intention of deceiving another person, take a ballot paper out of a polling place or scrutiny centre.

Maximum penalty:       200 penalty units or imprisonment for  
   12 months.

(3) A person must not, with the intention of deceiving another person, destroy, take or interfere with a ballot paper or ballot box.

Maximum penalty:       200 penalty units or imprisonment for  
   12 months.

(4) A person commits an offence if the person:

- (a) opens a ballot box; and
- (b) is not an officer acting under this Act.

Maximum penalty:       200 penalty units or imprisonment for  
   12 months.

## **Subdivision 5    Other offences relating to electoral papers**

### **159        Offences relating to postal ballot papers**

(1) A person commits an offence if the person:

- (a) engages in conduct that is unlawful; and

- (b) in engaging in the conduct, intends to induce or persuade another person to apply for a postal ballot paper.

Maximum penalty:      50 penalty units or imprisonment for 6 months.

- (2) A person commits an offence if the person:

- (a) is not an authorised officer for a division for which a postal ballot paper has been issued; and
- (b) opens a declaration envelope in which the postal ballot paper has been placed under section 51(4) or (5).

Maximum penalty:      200 penalty units or imprisonment for 12 months.

- (3) A person commits an offence if the person:

- (a) receives or takes possession of a postal ballot paper; and
- (b) does so otherwise than in accordance with this Act.

Maximum penalty:      200 penalty units or imprisonment for 12 months.

## **160      Opening envelopes containing declaration votes**

A person commits an offence if the person:

- (a) opens an envelope that appears to contain a completed declaration ballot paper; and
- (b) is not authorised to do so under this Act.

Maximum penalty:      200 penalty units or imprisonment for 12 months.

## **161      Misleading statements**

- (1) A person commits an offence if:

- (a) the person gives an electoral paper to another person; and
- (b) the electoral paper contains a statement made by the person; and
- (c) the statement contains misleading information; and

- (d) the person knows the statement contains misleading information.

Maximum penalty:       50 penalty units or imprisonment for 6 months.

- (2) Subsection (1) does not apply if the person, when giving the electoral paper:
  - (a) draws the misleading aspect of the statement to the attention of the other person; and
  - (b) to the extent to which the person can reasonably do so – gives the other person the information necessary to remedy the misleading aspect of the statement.

## **162        Defacement etc. of electoral papers**

- (1) A person must not deface, remove, mutilate or destroy an electoral paper.

Maximum penalty:       50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

## **163        Signatures**

- (1) A person commits an offence if the person:
  - (a) is required by this Act to sign an electoral paper; and
  - (b) does not sign it with his or her personal signature.

Maximum penalty:       10 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) For subsection (1), if a person is unable to sign his or her name, the person is taken to have signed an electoral paper if the person makes a mark on the paper by way of a signature.

## **164        Duty of witnesses**

- (1) This section applies to a person who signs an electoral paper as a witness (the **witness**) for another person.

(2) The witness commits an offence if:

- (a) the witness signs the electoral paper for the other person; and
- (b) the witness:
  - (i) fails to take reasonable steps to satisfy himself or herself of the identity of the other person; or
  - (ii) fails to see the other person sign the electoral paper.

Maximum penalty:     50 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

(4) The witness commits an offence if the witness:

- (a) signs the electoral paper for the other person; and
- (b) knows the other person has made a misleading statement in the electoral paper.

Maximum penalty:     200 penalty units or imprisonment for 12 months.

## **165        Sending completed electoral papers**

A person commits an offence if the person:

- (a) accepts an electoral paper for sending it to the Commission; and
- (b) does not immediately post or deliver it to the Commission.

Maximum penalty:     10 penalty units.

## **Subdivision 6    Official functions**

### **166        Influencing Commission, Commissioner or officers**

A person commits an offence if the person:

- (a) engages in conduct that is not authorised or permitted by this Act or another law in force in the Territory; and
- (b) does so with the intention of influencing the Commission, the Commissioner or an officer in exercising a power or performing a function under this Act.

Maximum penalty:     400 penalty units or imprisonment for 2 years.

## **167            Identification of voters and votes**

- (1) An officer commits an offence if:
- (a) the officer makes a mark on a ballot paper; and
  - (b) the mark would enable the identification, directly or indirectly, of the person who votes on the ballot paper.

Maximum penalty:        200 penalty units or imprisonment for 12 months.

- (2) An officer or scrutineer commits an offence if:
- (a) the officer or scrutineer, directly or indirectly, discloses any information acquired in the exercise of a power or performance of a function under this Act; and
  - (b) the disclosure would enable it to be known how an identified voter has voted.

Maximum penalty:        200 penalty units or imprisonment for 12 months.

- (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.

## **168            Responses to official questions**

A person commits an offence if the person:

- (a) in answer to a question asked by an officer at a polling place during the polling hours, makes a statement that contains misleading information; and
- (b) knows the statement contains misleading information.

Maximum penalty:        50 penalty units or imprisonment for 6 months.

## **169            Control of behaviour at polling places and scrutiny centres**

- (1) A person commits an offence if the person:
- (a) enters or remains at a polling place or scrutiny centre; and

- (b) does not have the express or implied permission of the officer in charge of the place or centre to do so.

Maximum penalty:        50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

- (3) Subsection (1) does not apply to:

- (a) an officer; or
- (b) a scrutineer (other than a scrutineer who is, under section 32(6), 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.

Maximum penalty:        100 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.
- (6) It is a defence to a prosecution for an offence against subsection (4) if the defendant establishes a reasonable excuse.
- (7) 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.

- (8) The person must comply with the direction.

Maximum penalty:        100 penalty units.

- (9) An offence against subsection (8) is an offence of strict liability.
- (10) It is a defence to a prosecution for an offence against subsection (8) if the defendant establishes a reasonable excuse.
- (11) A person who does not comply with the direction may be removed from the polling place or scrutiny centre by a police officer.
- (12) A scrutineer must not communicate with any person at a polling place except for performing the scrutineer's functions.

Maximum penalty:        20 penalty units.

- (13) A scrutineer must not, by violence or intimidation, interfere with, influence or attempt to influence, a voter at a polling place.

Maximum penalty:        200 penalty units or imprisonment for  
   12 months.

## **Division 2            Legal proceedings**

### **170            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;
  - (e) a nomination of a person to be a candidate for the election was rejected;
  - (f) the election was properly held;
  - (g) a person was or was not given a ballot paper for the election;
  - (h) a person voted or failed to vote at the election;
  - (i) on a day a person was or was not an authorised officer or officer;
  - (j) on a day a person was or was not a delegate of the Commission or Commissioner;
  - (k) a matter prescribed by regulation.
- (4) In subsection (3), a reference to a person or thing is a reference to a person or thing specified in the certificate.

**171            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 the commission of the offence.

**Division 3            Criminal liability for offences**

**172            Definition**

In this Division:

**representative**, of a person, means an employee or agent of the person.

**173            Liability of representative**

- (1) It is not a defence to a prosecution for an offence against a provision of this Act that the defendant was, at the time of the commission of the offence, another person's representative.
- (2) However, it is a defence if the defendant proves the defendant was, at the time of the commission of the offence:
  - (a) another person's representative; and
  - (b) acting as the other person's representative under the direct or indirect supervision of the other person.

**174            Conduct of representative**

- (1) This section applies to a prosecution for an offence against a provision of this Act.

*Note for subsection (1)*

*This section deals with prosecutions of individuals. Part IIAA, Division 5, of the Criminal Code contains provisions about corporate criminal responsibility.*

- (2) Conduct engaged in by a representative of a person within the scope of the representative's actual or apparent authority is taken to have been also engaged in by the person.
- (3) However, subsection (2) does not apply if the person proves the person took reasonable steps to prevent the conduct.

- (4) In deciding whether the person took reasonable steps to prevent the conduct, a court must consider:
  - (a) any action the person took to ensure the representative had a reasonable knowledge and understanding of the requirement to comply with the contravened provision; and
  - (b) the level of management, control or supervision that was appropriate for the person to exercise over the representative.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) If it is relevant to prove a person had a fault element in relation to a physical element of an offence, it is enough to show:
  - (a) the conduct relevant to the physical element 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 the fault element in relation to the physical element.
- (7) A person may rely on section 43AX of the Criminal Code in relation to conduct by a representative that would be an offence by the person only if:
  - (a) the representative was under a mistaken but reasonable belief about the facts that, had they existed, would have meant that the conduct would not have constituted an offence; and
  - (b) the person proves the person exercised due diligence to prevent the conduct.

*Note for subsection (7)*

*Section 43AX of the Criminal Code provides a person is not criminally responsible if the person engaged in conduct under a mistake of fact in relation to an offence of strict liability.*

- (8) A person (the **defendant**) may not rely on section 43BA of the Criminal Code in relation to a physical element of an offence brought about by another person if the other person is a representative of the defendant.

*Note for subsection (8)*

*Section 43BA of the Criminal Code provides a person is not criminally responsible in circumstances of an intervening conduct or event.*

- (9) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (2) or (6).

(10) In this section:

***fault element*** includes intention, knowledge, recklessness, opinion, belief and purpose, but does not include negligence.

***person*** means an individual.

## **175            Criminal liability of executive officer of body corporate**

(1) An executive officer of a body corporate commits an offence if:

- (a) the body corporate commits an offence by contravening the provisions in section 146(1) or (3), 147(2), 148(2), 149(1) or (4) or 153(1) (a ***relevant offence***); and
- (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
- (c) the officer failed to take reasonable steps to prevent the contravention; and
- (d) the officer was reckless about whether the contravention would happen.

Maximum penalty:            The maximum penalty that may be imposed on an individual for the relevant offence.

(2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:

- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
  - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the contravened provision;
  - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
  - (iii) the body corporate's representatives and contractors had a reasonable knowledge and understanding of the requirement to comply with the contravened provision;
- (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.

- (3) Subsection (2) does not limit the matters the court may consider.
- (4) This section does not affect the liability of the body corporate.
- (5) This section applies whether or not the body corporate is prosecuted for, or convicted of, the relevant offence.
- (6) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (7) In this section:

**executive officer**, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

## **176            Criminal liability of managers of unincorporated associations**

- (1) If a person (the **offender**) who is concerned with, or takes part, in the management of an unincorporated association commits an offence against a provision of this Act in the course of the activities of the association, each other person who is concerned with, or takes part in, the management of the unincorporated association is:
  - (a) taken to have committed the offence; and
  - (b) liable to the same penalty for the offence as an individual.
- (2) Subsection (1) does not apply if:
  - (a) the other person was not in a position to influence the conduct of the offender; or
  - (b) the other person, being in a position to influence the conduct of the offender, took reasonable steps and exercised due diligence to prevent the conduct.

*Note for subsection (2)*

*The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).*

- (3) This section does not affect the liability of the offender.
- (4) This section applies whether or not the offender is prosecuted for, or convicted of, the offence.
- (5) This section does not apply if the offender would have a defence to a prosecution for the offence.

## **Division 4                      Infringement notice offences**

### **177                      Infringement notice offence and prescribed amount payable**

- (1) An ***infringement notice offence*** is an offence against section 154(1).
- (2) The ***prescribed amount*** for an infringement notice offence is \$50.

### **178                      When infringement notice may be given**

If the Commission reasonably believes a person has committed an infringement notice offence, the Commission may give a notice (an ***infringement notice***) to the person within 3 months after the result of the election is notified under section 112.

### **179                      Contents of infringement notice**

- (1) The infringement notice must specify the following:
  - (a) the name and address of the person, if known;
  - (b) the date the infringement notice is given to the person;
  - (c) the date, time and place of the infringement notice offence;
  - (d) a description of the offence;
  - (e) the prescribed amount payable for the offence;
  - (f) the enforcement agency, as defined in the *Fines and Penalties (Recovery) Act*, to whom the prescribed amount is payable.
- (2) The infringement notice must include a statement to the effect of the following:
  - (a) the person may expiate the infringement notice offence and avoid any further action in relation to the offence by paying the prescribed amount to the specified enforcement agency within 28 days after the notice is given;
  - (b) the person may elect under section 21 of the *Fines and Penalties (Recovery) Act* to have the matter dealt with by a court instead of under that Act by completing a statement of election and giving it to the specified enforcement agency;

- (c) if the person does nothing in response to the notice, enforcement action may be taken under the *Fines and Penalties (Recovery) Act*, including (but not limited to) action for the following:
  - (i) suspending the person's licence to drive;
  - (ii) seizing personal property of the person;
  - (iii) deducting an amount from the person's wages or salary;
  - (iv) registering a statutory charge on land owned by the person;
  - (v) making a community work order for the person and imprisonment of the person if the person breaches the order.
- (3) Also, the infringement notice must include an appropriate form for making the statement of election mentioned in subsection (2)(b).

#### **180 Payment by cheque**

If the person tenders a cheque in payment of the prescribed amount, the amount is not taken to have been paid unless the cheque is cleared on first presentation.

#### **181 Withdrawal of infringement notice**

- (1) The Commission may withdraw the infringement notice by written notice given to the person.
- (2) The notice must be given:
  - (a) within 28 days after the infringement notice is given to the person; and
  - (b) before payment of the prescribed amount.

#### **182 Application of Division**

- (1) This Division does not prejudice or affect the start or continuation of proceedings for an infringement notice offence for which an infringement notice has been given unless the offence is expiated.
- (2) Also, this Division does not:
  - (a) require an infringement notice to be given; or

- (b) affect the liability of a person to be prosecuted in a court for an offence for which an infringement notice has not been given; or
  - (c) prevent more than one infringement notice for the same offence being given to a person.
- (3) If more than one infringement notice for the same offence has been given to a person, the person may expiate the offence by paying the prescribed amount in accordance with any of the notices.

## **Part 7                      Administrative and other matters**

### **183              Vacant positions of delegates**

- (1) This section applies if one or more positions of delegates are left vacant for a division (whether or not the Constitutional Convention has already started) in any of the following circumstances:
  - (a) no candidate is, or less than 3 candidates are, returned as elected for the division;
  - (b) a delegate for the division dies or is otherwise unable to take up or continue to hold the position of delegate.
- (2) The holding of the Constitutional Convention and any decision made at the Convention are unaffected by a circumstance in which this section applies.
- (3) In addition, this Act does not prevent the Minister from doing one or more of the following:
  - (a) appointing a person to fill a vacant position;
  - (b) making other arrangements to fill a vacant position;
  - (c) appointing a person elected as the reserve delegate for the division to be an ordinary delegate for the division.
- (4) Without limiting subsection (3), an arrangement mentioned in subsection (3)(b) includes an arrangement:
  - (a) made after the Minister has consulted the Commission; or
  - (b) with reference to the votes of, or obtained by, a candidate during the election.

**184 Minister may request information from Commission**

- (1) The Minister may, for administrative purposes relating to holding the Constitutional Convention, request the Commission to provide specified officers in a specified Agency with specified information:
  - (a) held by the Commission; and
  - (b) relating to how a particular delegate may be contacted.
- (2) The Commission must comply with the request.

**185 Officers**

- (1) The Commission may appoint a person to be an officer for this Act.
- (2) Without limiting subsection (1), the Commission may appoint an officer as:
  - (a) the officer in charge of a polling place; or
  - (b) the officer in charge of a scrutiny centre; or
  - (c) an officer for a polling place or scrutiny centre.
- (3) However, a person who is under 18 years must not be appointed as an officer.
- (4) In addition, a candidate or a spouse or de facto partner of a candidate must not be appointed as an officer.

**186 Commissioner's power to approve electronic or other automated system**

- (1) The Commissioner may, in writing, approve the use of a specified electronic or other automated system (the **approved system**) for specified purposes relating to one or more of the following for the election:
  - (a) issuing and returning of ballot papers (including, for example, the confirmation and recording of the issuing of ballot papers);
  - (b) counting and scrutiny of votes and filling of vacancies;
  - (c) voting by a specified group of electors;
  - (d) assisting electors who have a physical or other disability, illness, advanced pregnancy or another condition.

- (2) The Commissioner must not give the approval unless the Commissioner is satisfied:
  - (a) the secrecy of the ballot will, as far as practicable, be maintained by the approved system; and
  - (b) the approval is warranted having regard to the practicality of the approved system and resources required to establish and maintain it; and
  - (c) the approval is consistent with the Commissioner's functions under this Act; and
  - (d) the approved system would be supported by secure facilities; and
  - (e) if subsection (1)(c) applies – there are exceptional circumstances relating to the specified group of electors.
- (3) The Commissioner must give public notice about the approved system as soon as practicable after giving the approval.
- (4) If the approval specifies that a thing covered by subsection (1)(a) to (d) may be done in accordance with the approved system instead of a specified requirement under this Act, a thing done in accordance with the approval has effect as if that requirement had been met.
- (5) However, if the approval relates to the counting or scrutiny of votes or filling of vacancies, the approved system must be consistent with the provisions in the Schedule.

#### **187      Approved form**

- (1) The Commissioner may approve forms for this Act.
- (2) An approved form may be in the form of a statutory declaration.

#### **188      Delegation – Commission**

- (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.

**189 Delegation – Commissioner**

- (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.

**190 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.

*Note for section 190*

*See sections 44(2)(b) and 154(4).*

**191 Storage and destruction of electoral papers**

- (1) The Commission must securely store electoral papers in its possession that were used for the election until they are no longer required for exercising a power or performing a function under this Act.
- (2) The Commission may destroy the electoral papers only after they are no longer so required.

**192 Public notice**

- (1) If a provision of this Act requires public notice to be given by the Commission or Commissioner about a matter, notice about the matter must be published in a newspaper circulating:
  - (a) generally throughout the Territory; or
  - (b) if the provision requires the notice to be given in, or the matter relates only to, a particular division – in the division.
- (2) This section does not prevent the Commission or Commissioner from giving notice about the matter in another way (including for example, by radio or television broadcast).
- (3) However, if under a provision of this Act, a specified 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).

**193 Disclosure of particular information**

- (1) This section applies to a person who is or has been:
- (a) the Commissioner; or
  - (b) an officer; or
  - (c) a member of the Commission's staff, or a consultant of the Commission, mentioned in section 328 of the *Electoral Act*.
- (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, any of the following:
    - (i) the roll or a copy of it;
    - (ii) the extract or a copy of it;
    - (iii) a certified list of voters or a copy of it;
    - (iv) information contained in any of the documents mentioned in subparagraphs (i) to (iii) or another document given to the person for the administration of this Act.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (3) Subsection (2) does not apply:
- (a) to the extent to which it is necessary for the person to do the thing mentioned in that subsection for this or another Act; or
  - (b) if the person is authorised or required by law to do the thing.

**194 Protection from liability**

- (1) A 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 of a power or performance of a function as:
- (a) the Commissioner; or
  - (b) an officer; or

- (c) a member of the Commission's staff, or a consultant of the Commission, mentioned in section 328 of the *Electoral Act*.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) In this section:

**exercise**, of a power, includes the purported exercise of the power.

**performance**, of a function, includes the purported performance of the function.

## **195            Regulations**

- (1) The Administrator may make regulations under this Act.
- (2) The regulations may provide for the exclusion from the extract of specified information about an elector who is less than 18 years of age on the polling day.
- (3) If a periodic general election is to be held under the *Local Government Act* on the polling day and the Commissioner is to be the returning officer for that election, the regulations may provide for any of the following:
  - (a) additional provisions to facilitate the holding of the election under this Act and the periodic general election on that day;
  - (b) modifications of specified provisions in Part 3 or 4 (but not the Schedule) to facilitate the holding of both elections on that day;
  - (c) a matter arising because of the holding of both elections on that day.

## **Part 8                      Consequential amendments**

### **Division 1                Amendment of Electoral Act**

#### **196            Act amended**

This Division amends the *Electoral Act*.

**197            Section 234 amended**

Section 234

*omit*

all the words after "has"

*insert*

the following jurisdiction:

- (a) jurisdiction to decide applications made under Division 2 and questions referred to it under Division 3;
- (b) any other jurisdiction conferred on it by another Act.

**Division 2            Amendment of Local Government Act**

**198            Act amended**

This Division amends the *Local Government Act*.

**199            Section 89 amended**

(1)            Section 89

*omit*

An

*insert*

(1) An

(2)            After section 89(1)

*insert*

- (2) If a periodic general election under this Act is to be held on the polling day for the election under the *Constitutional Convention (Election) Act*, the regulations may provide for any of the following:
  - (a) additional provisions to facilitate the holding of the election under that Act and the periodic general election on that day;
  - (b) modifications of specified provisions in this Chapter and the regulations to facilitate the holding of both elections on that day;

- (c) a matter arising because of the holding of both elections on that day.

### **Division 3            Amendment of Fines and Penalties (Recovery) Regulations**

#### **200            Regulations amended**

This Division amends the *Fines and Penalties (Recovery) Regulations*.

#### **201            Schedule 1**

Schedule 1, list of Acts

*insert (in alphabetical order)*

*Constitutional Convention (Election) Act*

### **Part 9                Expiry of Act**

#### **202            Expiry of Act**

This Act expires at the end of 31 December 2013.

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## Schedule      Counting of votes and filling of vacancies

section 108

### 1      Definitions

In this Schedule:

***continuing candidate*** means a candidate not already elected or excluded from a count under this Schedule.

***elected***, in relation to a candidate, means the candidate is to be elected as determined under this Schedule.

***excluded candidate*** means a candidate who is excluded under clause 8 or 10.

***quota*** means the quota worked out under clause 5(1)(c).

***surplus***, of an elected candidate, see clause 6(1).

***transfer value***:

- (a) for a transfer of the surplus of an elected candidate – see clause 6(1)(a) (including that clause as affected by clause 7); or
- (b) for a transfer of the votes of an excluded candidate – means the transfer value mentioned in clause 8(3) or (5).

### 2      Interpretation – references to votes for a candidate

A reference to votes of, or obtained or received by, a candidate includes votes obtained or received by the candidate on any transfer under this Schedule.

### 3      Interpretation – what constitutes a separate transfer

For this Schedule, each of the following constitutes a separate transfer:

- (a) a transfer under clause 6 or 9(2) of the surplus of any elected candidate;
- (b) a transfer under clause 8(3) of all first preference votes of an excluded candidate;
- (c) a transfer under clause 8(5) of all the votes of an excluded candidate that were transferred from another candidate.

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**4 Roles of authorised officer, other officers and scrutineers**

The counting of votes for a division must be conducted by an authorised officer with the assistance of any other officers, and in the presence of any scrutineers, under this Schedule.

**5 Determination of quota and election of candidate on first preference votes**

- (1) The authorised officer must:
  - (a) ascertain the number of first preference votes given to each candidate in the division; and
  - (b) ascertain the total number of first preference votes given in the division; and
  - (c) determine the **quota** for the division, which is worked out as follows:
    - (i) work out the amount that is equal to 25% of the total number of first preference votes given in the division (disregarding any fraction);
    - (ii) add 1 to that amount.
- (2) Any candidate who has received a number of first preference votes equal to or greater than the quota is elected.

**6 Transfer of surplus from elected candidates**

- (1) Unless all the vacancies for the division have been filled, the number (if any) of votes in excess of the quota (the **surplus**) of each elected candidate must be transferred to the continuing candidates as follows:
  - (a) the surplus must be divided by the number of first preference votes received by the elected candidate (the resulting fraction is the **transfer value**);
  - (b) the total number of ballot papers of the elected candidate that both express the first preference vote for that candidate and the next available preference for a particular continuing candidate must be multiplied by the transfer value;

- 
- (c) the number so obtained (disregarding any fraction) must be added to the number of first preference votes of the continuing candidate and all those ballot papers must be transferred to the continuing candidate.

*Note for subclause (1)*

*Because of clause 7, the transfer value for an elected candidate's surplus is effectively worked out by dividing the surplus by the total number of ballot papers received by the elected candidate, including those expressing votes that are taken to be first preference votes for the elected candidate under clause 7(a).*

- (2) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any transfer under subclause (1) is elected.
- (3) Unless all the vacancies for the division have been filled:
- (a) the surplus (if any) of any candidate elected under subclause (2), or elected subsequently under this subclause, must be transferred to the continuing candidates in accordance with subclause (1); and
- (b) any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer is elected.

*Note for subclause (3)*

*See clause 7.*

- (4) If a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer of the surplus of a particular elected candidate because of subclause (1) or (3), no votes of any other candidate are to be transferred to the continuing candidate.

## **7 How to deal with ballot papers on transfer of surplus**

For applying clause 6(1) to a transfer of the surplus of an elected candidate because of clause 6(3)(a) or 9(2), each ballot paper of the elected candidate that was obtained on a transfer under this Schedule must be dealt with as if:

- (a) any vote it expressed for the elected candidate were a first preference vote; and
- (b) any other candidate previously elected or excluded had not been a candidate; and
- (c) the subsequent preferences of the voter had been altered accordingly.

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**8            Transfer of ballot papers on exclusion of candidate**

- (1) This clause applies if no candidate has, or less than 3 candidates have, received a number of votes equal to or greater than the quota after:
  - (a) the counting of first preference votes; or
  - (b) the election of a candidate and the transfer of the surplus (if any) of the elected candidate that are capable of being transferred.
- (2) If this clause applies:
  - (a) the candidate who has the fewest votes must be excluded; and
  - (b) the excluded candidate's votes and ballot papers must be transferred to the continuing candidates as provided in subclauses (3) to (5).
- (3) The total number of first preference votes for the excluded candidate contained in ballot papers that express the next available preference for a particular continuing candidate must be transferred (each first preference vote at a transfer value of one) to the continuing candidate.
- (4) The transferred votes must be added to the number of votes of the continuing candidate and all the ballot papers containing those votes must be transferred to the continuing candidate.
- (5) The total number (if any) of other votes obtained by the excluded candidate on transfers under this Schedule must be transferred from the excluded candidate in the order of the transfers on which they were obtained (the votes obtained on the earliest transfer being transferred first) as follows:
  - (a) the total number of ballot papers of the excluded candidate received from a particular candidate that express the next available preference for a particular continuing candidate must be multiplied by the transfer value at which the votes contained in those papers were transferred to the excluded candidate;
  - (b) the number so obtained (disregarding any fraction) must be added to the number of votes of the continuing candidate;
  - (c) all those ballot papers must be transferred to the continuing candidate.

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**9 Election of candidate on transfer of excluded candidate's votes and transfer of surplus of elected candidate**

- (1) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer under clause 8 of votes of an excluded candidate is elected.
- (2) Unless all the vacancies for the division have been filled, the surplus (if any) of the candidate so elected must be transferred in accordance with clause 6.

*Note for subclause (2)*

*See clause 7.*

- (3) However, if the candidate so elected is elected before all the votes of the excluded candidate have been transferred, the surplus (if any) of the candidate so elected must not be transferred until the remaining votes of the excluded candidate have been transferred as provided in clause 8(3) to (5) to continuing candidates.

**10 Further exclusion of candidate**

- (1) If after the exclusion of a candidate and the transfer of the votes (if any) of the excluded candidate that are capable of being transferred, no continuing candidate has received a number of votes greater than the quota:
  - (a) the continuing candidate who has the fewest votes must be excluded; and
  - (b) that continuing candidate's votes and ballot papers must be transferred as provided in clause 8(3) to (5).
- (2) Subclause (1) has effect subject to clause 12.

**11 No further transfer of votes**

- (1) This clause applies if a candidate is elected as a result of:
  - (a) a transfer of the first preference votes of an excluded candidate; or
  - (b) a transfer of all the votes of an excluded candidate that were transferred to the excluded candidate from a particular candidate.
- (2) No other votes of the excluded candidate may be transferred to the candidate so elected.

**12 Election of candidate out of 2 continuing candidates**

- (1) For the last vacancy for which 2 continuing candidates remain, the continuing candidate who has the larger number of votes is elected even if that number is below the quota.
- (2) If those candidates have the same number of votes, the candidate with the larger number of votes at the last preceding count or transfer is taken to be elected.
- (3) If the number of votes at that count or transfer was equal, the authorised officer must, in the presence of any scrutineers who may be present, draw lots to determine which of the candidates is to be elected.

**13 Election of candidates if number of vacancies equal to number of continuing candidates**

Despite any other provision in this Schedule, if on the completion of a transfer of votes under this Schedule the number of continuing candidates is equal to the number of remaining unfilled vacancies, those continuing candidates are elected.

**14 Order of election**

- (1) For this Schedule, the order of election of candidates must be:
  - (a) in accordance with the order of the count or transfer as a result of which they were elected; and
  - (b) on the basis that the candidates (if any) elected on the count of first preference votes are to be the earliest elected.
- (2) If 2 or more candidates are elected as a result of the same count or transfer, the order in which they will be taken to have been elected must be:
  - (a) in accordance with the relative numbers of their votes; and
  - (b) on the basis that the candidate with the largest number of votes is to be the earliest elected.
- (3) However, if 2 or more of those candidates each has the same number of votes, the order in which they are taken to have been elected must be:
  - (a) in accordance with the relative numbers of their votes at the last count or transfer before their election at which each of them had a different number of votes; and

- 
- (b) on the basis that the candidate with the largest number of votes at that count or transfer is to be the earliest elected.
  - (4) Furthermore, if there has been no such count or transfer, the authorised officer must, in the presence of any scrutineers who may be present, draw lots to determine the order in which the candidates are taken to have been elected.
  - (5) Of the 3 delegates elected for each division:
    - (a) the delegate who is last elected is elected as the reserve delegate for the division; and
    - (b) the other 2 delegates are elected as ordinary delegates for the division.

## **15 Order of transfer**

- (1) Subject to subclauses (2) to (4), if after any count or transfer under this Schedule, 2 or more candidates each has a surplus, the order of any transfers of those surpluses must be:
  - (a) in accordance with the relative sizes of the surpluses; and
  - (b) on the basis that the surplus of the candidate having the largest surplus is to be transferred first.
- (2) Subject to subclause (4), if after any count or transfer under this Schedule, 2 or more candidates have equal surpluses, the order of any transfers of those surpluses must be:
  - (a) in accordance with the relative numbers of votes of those candidates at the last count or transfer at which each of those candidates had a different number of votes; and
  - (b) on the basis that the surplus of the candidate with the largest number of votes at that count or transfer is to be transferred first.
- (3) However, if there has been no such count or transfer, an authorised officer must, in the presence of any scrutineers who may be present, draw lots to determine the order in which the surpluses are to be dealt with.
- (4) If a candidate obtains a surplus after any count or transfer under this Schedule, the surplus must not be transferred before the transfer of any surplus obtained by any other candidate on an earlier count or transfer.

**16 Order of exclusion**

- (1) If the candidate who has the fewest votes is required to be excluded and there are 2 or more candidates each having the fewest votes, whichever of those candidates had the fewest votes at the last count or transfer at which each of those candidates had a different number of votes will be excluded.
- (2) However, if there has been no such count or transfer, the authorised officer must, in the presence of any scrutineers who may be present, draw lots to determine which candidate will be excluded.

**17 Setting aside of ballot papers**

- (1) If the total number of votes of an elected candidate is equal to the quota, the ballot papers expressing those votes must be set aside as finally dealt with.
- (2) For subclause (1), the **ballot papers** include:
  - (a) ballot papers expressing first preference votes received by the candidate; and
  - (b) ballot papers obtained by the candidate on transfers under this Schedule.

**18 Death of candidate**

If a candidate dies before the end of the polling day:

- (a) a vote indicated on a ballot paper opposite the name of the candidate must be counted to the candidate next in the order of the voter's preference; and
- (b) the numbers indicating subsequent preferences are taken to have been altered accordingly.

*Note for clause 18*

*See section 109.*

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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

***Constitutional Convention (Election) Act 2011 (Act No. 41, 2011)***

Assent date	21 December 2011
Commenced	21 December 2011