



## NORTHERN TERRITORY OF AUSTRALIA

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No. 36 of 1983

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### AN ACT

To amend the *Electoral Act*

[Assented to 3 October 1983]

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Electoral Amendment Act 1983*.

2. PRINCIPAL ACT

The *Electoral Act* is in this Act referred to as the Principal Act.

3. INTERPRETATION

Section 3(1) of the Principal Act is amended -

(a) by inserting, after the definition of "hours of polling", the following:

"'Master' means the Master of the Supreme Court;";

(b) by inserting, after the definition of "officer", the following:

"'petition' means a petition referred to in section 120(1);"; and

(c) by inserting, after the definition of "Surveyor-General", the following:

"'Tribunal' means the Election Tribunal established by section 119(1);".

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### 4. REPEAL AND SUBSTITUTION

Part XIII of the Principal Act is repealed and the following substituted:

#### "PART XIII - DISPUTED ELECTIONS

##### *"Division 1 - Election Tribunal*

#### "119. ELECTION TRIBUNAL

"(1) There is hereby established a tribunal to be known as the Election Tribunal.

"(2) The Tribunal shall be constituted by a Judge of the Supreme Court.

"(3) The Tribunal shall keep a record of its proceedings under this Part.

#### "120. METHOD OF DISPUTING VALIDITY OF ELECTION

"(1) The validity of an election may be disputed by petition addressed to the Tribunal, but not otherwise.

"(2) The Tribunal shall have jurisdiction to hear and determine a petition.

"(3) A petition shall, in respect of the election to which it relates -

- (a) set out the facts relied on to invalidate the election;
- (b) contain a prayer asking for the relief the petitioner claims to be entitled to;
- (c) be signed by the person making the petition;
- (d) be attested by 2 witnesses whose occupations and addresses are stated; and
- (e) be filed with the Master not later than 21 days after the day fixed for the return of the writ for the election.

"(4) At the time of filing a petition the petitioner shall lodge with the Master the sum of \$500 as security for costs.

"(5) The Master shall deposit moneys lodged under sub-section (4) into a trust account to be known as 'The Election Tribunal Trust Account' and shall not disperse those moneys other than in accordance with section 133.

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### "121. PERSONS TO BE SERVED

"(1) A notice of the lodging of a petition and a copy of the petition shall be served on -

- (a) the Chief Electoral Officer; and
- (b) where the petition claims a seat for a candidate who has not been returned as a member - the candidate, if any, returned as elected at the election,

which persons so served shall be parties to proceedings under this Part.

"(2) Where a person served in accordance with sub-section (1) with a petition proposes to contest the petition, he shall, not later than 7 days after such service or such further time as allowed by the Tribunal, lodge a reply to that petition with the Master and the petitioner.

"(3) A reply referred to in sub-section (2) shall -

- (a) set out the facts upon which the person proposes to reply;
- (b) ask for the relief to which the person claims to be entitled;
- (c) be signed by the person; and
- (d) other than where the reply is by the Chief Electoral Officer, be attested by 2 witnesses whose occupations and addresses are stated.

### "122. NO PROCEEDINGS UNLESS REQUISITES COMPLIED WITH

"The proceedings on a petition shall not be proceeded with unless the requirements of sections 120 and 121 are complied with in respect of the petition.

### "123. HEARINGS OPEN TO PUBLIC, &c.

"The Tribunal shall, when exercising the jurisdiction conferred by this Part -

- (a) be open to the public; and
- (b) not be bound by the rules of evidence.

### "124. POWERS OF TRIBUNAL

"(1) Subject to section 126, the powers of the Tribunal shall include power to -

- (a) adjourn;

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- (b) compel the attendance of witnesses and the production of documents;
- (c) examine witnesses upon oath, affirmation or declaration;
- (d) with the consent of the parties to the proceedings, receive evidence on affidavit or by statutory declaration;
- (e) regulate the form and mode of its proceedings in each case;
- (f) grant to a party to the petition leave to inspect, in the presence of an officer nominated by the Tribunal, the rolls and other documents (except ballot-papers) used at or in connection with the election to which a petition relates and to take, in the presence of the officer, extracts from those rolls and documents;
- (g) permit, at any stage of its proceedings and on such terms as it thinks fit, such amendments to a petition or other pleadings, as the Tribunal thinks fit;
- (h) declare that a person who was returned as elected was not duly elected;
- (j) declare a candidate duly elected who was not returned as elected;
- (k) declare an election void;
- (m) dismiss or uphold a petition, in whole or in part; and
- (n) award costs.

"(2) The Tribunal may exercise all or any of its powers under this section on such grounds as it thinks fit.

"(3) Without limiting the powers conferred by this section, the power of the Tribunal to declare that a person returned as elected was not duly elected or to declare an election void, may be exercised on the ground that illegal practices were committed in connection with the election.

"(4) The Tribunal shall have the power to punish a contempt of its authority as if it were the Supreme Court and as if the contempt were a contempt of the Supreme Court.

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### "125. INQUIRIES BY TRIBUNAL

"(1) The Tribunal shall inquire whether or not the requirements of sections 120 and 121 have been complied with and, so far as voting is concerned, may inquire into the identity of persons and whether their votes were improperly admitted or rejected, and whether the result of the polling was correctly ascertained, but the Tribunal shall not inquire into the correctness of a roll and shall deem the roll conclusive evidence that the persons enrolled were, at the time of the issue of the writ, entitled to be enrolled.

"(2) The qualification of a person enrolled shall not be questioned and an election shall not be declared void on the ground that a person whose name appears on the roll for a division, and who has voted as an elector for the division, was not qualified to be enrolled or to continue to be enrolled as an elector for that division.

### "126. EXERCISE OF POWERS

"(1) The Tribunal shall not exercise the power referred to in section 124(1)(h) or (j) -

- (a) on the ground of an action which occurred without the knowledge of the candidate declared elected at an election; or
- (b) subject to section 127, on the ground of the commission of an offence against this Act by the candidate declared elected at an election,

unless it is satisfied -

- (c) that the result of the election was likely to have been affected by that action or the commission of that offence; and
- (d) that it is just that the Tribunal exercise that power.

"(2) The Tribunal shall not -

- (a) in determining whether the actions of an officer affected the results of an election, admit evidence of the manner in which a person, who was wrongly prevented from voting at an election by an officer, would have voted; or
- (b) admit evidence from a person referred to in paragraph (a) unless the person satisfies the Tribunal that he was wrongly prevented from voting.

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### "127. DECLARATION OF NON-ELECTION

"(1) The Tribunal shall, where it finds that a candidate returned as elected has, in respect of the election at which he was elected, committed or attempted to commit an offence referred to in section 103 or 104 or an offence involving bribery or corruption, declare that that candidate was not duly elected.

"(2) A finding under sub-section (1) of the Tribunal shall not bar or prejudice a prosecution for an offence against a law in force in the Territory.

### "128. REPORTING OF OFFENCES

"Where the Tribunal finds that a person has committed an offence against this Act, the Master shall, as soon as practicable, report that finding to the Attorney-General and the Minister.

### "129. IMMATERIAL ERRORS NOT TO VITIATE ELECTION

"An election shall not be voided on account of a delay in the declaration of nominations, the polling or the return of the writ.

### "130. NO APPEAL

"An appeal or other proceedings shall not lie from or in relation to a decision of the Tribunal.

### "131. CLERK OF LEGISLATIVE ASSEMBLY TO RECEIVE COPY OF PETITION AND DECISION

"The Master shall -

- (a) as soon as practicable after the issue of a petition; and
- (b) after the determination of the petition referred to in paragraph (a),

forward to the Clerk of the Legislative Assembly a copy of the petition and a copy of the order of the Tribunal made after the determination referred to in paragraph (b).

### "132. REPRESENTATION AT HEARING

"(1) A party to an action under this Part shall not, except by consent of all parties, or by leave of the Tribunal, be represented by an agent or legal practitioner.

"(2) Not more than one agent or legal practitioner shall appear at the same time on behalf of a party for an action under this Part.

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"133. COSTS

"(1) The Tribunal may award such costs as it thinks fit in an action under this Part.

"(2) A security paid in accordance with section 120(4) shall -

(a) be returned to the person who paid the security where -

(i) no order as to costs is made; or

(ii) costs are awarded to the person who paid the security; or

(b) be applied toward the costs of the person to whom they are awarded, other than the person referred to in paragraph (a).

"(3) Costs ordered to be paid under this section by the Tribunal may be recovered as if the order of the Tribunal were a judgment of the Supreme Court, and that order shall be entered as a judgment of the Supreme Court and shall be enforced accordingly.

"134. ISSUES OF WRITS WHERE NECESSARY

"The Administrator shall issue such writs as are necessary to hold a supplementary election if the Tribunal declares an election void.

*"Division 2 - Qualifications and Vacancies*

"135. REFERENCE OF QUESTION AS TO QUALIFICATION OR VACANCY

"(1) The Legislative Assembly may, by resolution, refer a question relating to -

(a) the qualification of a member of the Legislative Assembly to be such a member; or

(b) a vacancy in the Legislative Assembly,

to the Tribunal.

"(2) The Speaker of the Legislative Assembly shall, on a resolution being made under sub-section (1), transmit to the Tribunal -

(a) a copy of the question referred by resolution, certified under his hand; and

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- (b) such documents or other material in the possession of the Legislative Assembly relating to the question referred.

"(3) The Tribunal shall hear and determine a question referred to it under sub-section (1).

### "136. PARTIES TO A REFERENCE

"The Tribunal may -

- (a) grant leave to a person interested to appear before it on the determination of a question referred under this Division; and
- (b) order service of a copy of the question referred on such persons as the Tribunal thinks fit.

### "137. POWERS OF TRIBUNAL

"The Tribunal shall, on the hearing of a question referred under this Division -

- (a) be open to the public;
- (b) have the powers referred to in section 124; and
- (c) have power to declare that -
  - (i) a person was not qualified to be a member of the Legislative Assembly; and
  - (ii) there exists a vacancy in the number of members of the Legislative Assembly.

### "137A. ORDER TO BE SENT TO LEGISLATIVE ASSEMBLY

"The Master shall deliver to the Speaker of the Legislative Assembly a copy of an order or declaration made by the Tribunal following the determination of a question referred under this Division.

### "137B. APPLICATION OF CERTAIN SECTIONS

"Sections 130 and 132 apply to and in relation to proceedings under this Division.

### "137C. RULES OF TRIBUNAL

"The Judges who are appointed under section 32(1) of the *Supreme Court Act* and are not additional Judges, or a majority of those Judges, may make rules, not inconsistent with this Act, for -



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- (a) regulating the practice and procedure of the Tribunal;
  - (b) conferring on the Tribunal additional powers necessary or convenient for carrying out its functions; and
  - (c) making any other provision that is necessary or convenient for carrying into effect the provisions of this Part relating to the Tribunal."
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