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Dated 10 May 2019



TASMANIA

ELECTORAL ACT 2004

No. 51 of 2004

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ELECTORAL ACT 2004

No. 51 of 2004

An Act to provide for the holding of elections to elect persons as members of the Tasmanian Parliament, to regulate the conduct of those elections, to provide for the enrolment of electors for the purposes of those elections, to repeal the *Electoral Act 1985*, to amend the *Constitution Act 1934* and to provide for related matters

[Royal Assent 17 December 2004]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Electoral Act 2004*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

In this Act, unless the contrary intention appears –

approved means approved by the Commission;

Assembly means the House of Assembly of the Parliament of Tasmania;

Assembly by-election means an election to elect a Member in respect of an Assembly division pursuant to a writ issued under section 64;

Assembly division means a division, determined in accordance with the *Constitution Act 1934*, for the return of Members to represent the electors of that division in the Assembly;

Assembly election means an election to elect Members in respect of an Assembly division and includes an Assembly by-election;

Assembly general election means the elections held or to be held contemporaneously to elect Members in respect of all Assembly divisions pursuant to writs issued under section 63;

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ballot material means ballot papers, postal vote applications, declaration vote envelopes and postal vote declaration envelopes;

ballot paper means a ballot paper prepared under section 96 or 101;

ballot paper name means –

- (a) in respect of a registered party, the name appearing in the party register in accordance with section 52(2)(b); and
- (b) in respect of a candidate, the name referred to in section 80;

candidate means a person who has been publicly announced as a candidate under section 87;

candidate roll means the candidate roll prepared under section 39;

close of poll means 6 p.m. on polling day;

close of roll in relation to an election, means 6 p.m. on the day of issue of the writ for the holding of that election;

Commission means the Tasmanian Electoral Commission established under section 6;

Commissioner means the Electoral Commissioner appointed under section 14;

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

Commonwealth roll means the roll of the electors for the State of Tasmania required by section 81 of the Commonwealth Act;

corrupt practice means an offence that is a crime by virtue of this Act;

Council means the Legislative Council of the Parliament of Tasmania;

Council by-election means an election to elect a Member in respect of a Council division pursuant to a writ issued under section 66;

Council division means a division, determined in accordance with the *Constitution Act 1934*, for the return of a member to represent the electors of that division in the Council;

Council election means an election to elect a Member in respect of a Council division and includes a Council by-election;

Council periodic election means an election held or to be held to elect a Member in respect of a Council division pursuant to a writ issued under section 65;

declaration vote means a vote marked on a ballot paper issued under section 118;

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declaration vote envelope means a declaration vote envelope referred to in section 118;

deputy registered officer means a person whose name appears in the party register as the deputy registered officer of a party;

division means an Assembly division or a Council division;

division roll means a division roll prepared and kept under section 37;

election means an Assembly election or a Council election;

election agent means a person appointed under section 158;

election expenditure has the meaning given by section 5;

election official means a person appointed under section 26;

election roll means the election roll prepared under section 39;

elector means a person whose name appears on a roll;

electoral matter has the meaning given by section 4;

existing party means a registered party or a registered political party, within the meaning of the Commonwealth Act;

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expenditure limit means the expenditure limit referred to in section 160;

expenditure period means –

- (a) in the case of a Council periodic election, the period beginning on 1 January in the year in which the election is to be held and ending at the close of poll; or
- (b) in the case of a Council by-election, the period beginning on the day on which the seat of a Member of the Council becomes vacant and ending at the close of poll;

first preference, in relation to a vote recorded for a candidate at an election, means the recording of the number “1” in the box next to the candidate’s name on a ballot paper used at the election;

functions includes duties;

illegal practice means an offence under this Act that is not a corrupt practice or an offence under section 181, and includes aiding, abetting or instigating the commission of, and attempting or conspiring to commit, such an offence;

informal ballot paper means a ballot paper which is informal as specified in section 103;

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intending candidate means a person who has publicly declared his or her intention to seek election as a Member;

Member means a Member of the Council or the Assembly;

mobile polling place means a place referred to in section 92(3);

nomination day, in relation to an election, means the day fixed under section 67(1) or section 73(1)(a) on or before which candidates for election are to be nominated;

nomination form means a form referred to in section 77;

ordinary polling place means a place referred to in section 92(1);

party means a group of persons, whether incorporated or not, that exists for political purposes and includes any branch in Tasmania of such a group that is established outside Tasmania;

party name means the name appearing in the party register in accordance with section 52(2)(a);

party register means the register maintained by the Commission pursuant to section 52;

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party secretary means the secretary or, if there is no position of secretary, the chief administrative officer (however described) of a party;

polling day, in relation to an election, means the day fixed or specified under section 67(1)(b) on which polling for that election is to be held in the event of the election being contested;

polling place means a place referred to in section 91;

postal vote means a vote marked on a ballot paper issued under section 128;

postal vote declaration envelope means a postal vote declaration envelope referred to in section 128;

pre-poll polling place means a place referred to in section 92(2);

prisoner means a person who is serving a sentence of imprisonment for an offence against a law of the State, another State, a Territory or the Commonwealth;

public body name means the name, or an abbreviation or acronym of the name, of a prominent corporation or organisation;

publish means publish by any means including by publication on the internet;

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registered member means a person whose name appears in the party register as a registered member of a party;

registered officer means a person whose name appears in the party register as the registered officer of a party;

registered party means a party, the name of which appears in the party register as a registered party;

returning officer means a person appointed under section 24 or 25;

roll means the State roll, a division roll or an election roll;

scrutineer means a person appointed under section 104;

State roll means the State roll prepared and kept under section 30;

voting screen means a compartment in which a person may mark a ballot paper without any other person seeing how the ballot paper is marked.

4. Electoral matter

(1) For the purposes of this Act –

electoral matter means matter which is intended to, is likely to or has the capacity to affect voting in an election.

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- (2) Without limiting subsection (1), matter is to be taken to be intended or likely to affect voting in an election if it –
- (a) contains an express or implicit reference to, or comment on –
 - (i) the election; or
 - (ii) the Government, the Opposition, a previous Government or a previous Opposition; or
 - (iii) the Government or Opposition, or a previous Government or Opposition, of the Commonwealth or a State or Territory; or
 - (iv) a member or former member of the Parliament of the Commonwealth or a State or of the legislature of a Territory; or
 - (v) a party, a branch or division of a party or a candidate or intending candidate or group of candidates or intending candidates in the election; or
 - (vi) an issue submitted to, or otherwise before, the electors in connection with the election; or
 - (b) contains –

-
- (i) a photograph of a candidate or intending candidate in an election; or
 - (ii) a drawing or printed matter which purports to depict a candidate or intending candidate in an election or which purports to be a likeness or representation of any such candidate or intending candidate.

5. Election expenditure

- (1) For the purposes of this Act –

election expenditure, in relation to a candidate at a Council election means, subject to subsection (2), expenditure that –

- (a) relates to promoting or procuring the election of the candidate; and
- (b) is incurred by or with the authority of the candidate –
 - (i) within the expenditure period; or
 - (ii) before the expenditure period in respect of goods, or goods and services, which are or are to be supplied or provided to, or made use of by or with the authority of, the

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candidate during the
expenditure period.

- (2) Election expenditure does not include expenditure which relates to –
- (a) the personal and reasonable living and travelling expenses of the candidate and of an election agent appointed by him or her; or
 - (b) the purchase of any roll; or
 - (c) the renting or hiring of premises for the purposes of that campaign; or
 - (d) the appointment of scrutineers; or
 - (e) the conveying of electors to and from polling places for the purpose of voting.

PART 2 – ADMINISTRATION

Division 1 – Tasmanian Electoral Commission

6. Establishment

The Tasmanian Electoral Commission is established.

7. Constitution

The Tasmanian Electoral Commission consists of –

- (a) the Commissioner; and
- (b) two other members.

8. Members

- (1) The members of the Commission referred to in section 7(b) are appointed by the Governor.
- (2) Before a person is appointed as a member of the Commission, the Minister is to consult –
 - (a) the Parliamentary leader of each party represented in the Assembly; and
 - (b) the President of the Council.
- (3) A person is not eligible to be appointed as a member of the Commission referred to in section 7(b) if that person is, or has been in the

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period of 5 years immediately preceding the date on which it is proposed to appoint that person –

- (a) a Member of a House of Parliament of the Commonwealth or a State or Territory; or
 - (b) a member of a party that is registered under this Act or under an Act of the Commonwealth or another State or a Territory as a political party or a member of a similar organisation.
- (4) The Governor may appoint a member of the Commission, other than the Commissioner, to be chairperson of the Commission.
 - (5) Schedule 1 has effect with respect to membership of the Commission.
 - (6) Schedule 2 has effect with respect to meetings of the Commission.

9. Functions and powers of Commission

- (1) In addition to the functions conferred on it by any other provisions of this Act or any other Act, the Commission has the following functions:
 - (a) to advise the Minister on matters relating to elections;
 - (b) to consider and report to the Minister on matters referred to it by the Minister;
 - (c) to promote public awareness of electoral and parliamentary topics by means of

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educational and information programs
and by other means;

- (d) to provide information and advice on electoral issues to the Parliament, the Government, Government departments and State authorities, within the meaning of the *State Service Act 2000*;
 - (e) to publish material on matters relating to its functions;
 - (f) to investigate and prosecute illegal practices under this Act.
- (2) The Commission may do all things necessary or convenient to be done, including employing persons, for or in connection with or incidental to the performance of its functions.
- (3) Without limiting subsection (2) and in addition to any power conferred on the Commission by any other provision of this Act or any other Act, the Commission, in addition to conducting Assembly elections or Council elections, may conduct ballots or elections for a person or organisation and may charge fees for that service.

10. Commission not subject to direction or control

The Commission is not subject to the direction or control of the Minister in respect of the performance or exercise of its functions or powers.

11. Delegation

The Commission may, by resolution, delegate to a member of the Commission, a returning officer, an election official, a member of the staff of the Commission or any other person all or any of its functions or powers under this Act or any other Act, other than this power of delegation.

12. Proceedings by or against Commission

The Commission may institute or be a party to proceedings under this or any other Act.

13. Annual and other reports

The Commission, as soon as practicable after 30 June in each year, is to lay before each House of Parliament a report on the performance of its functions and the exercise of its powers during the period of 12 months ending on that date and may, at any time, lay before each House of Parliament a report on any matter arising in connection with the performance of its functions or exercise of its powers.

Division 2 – Electoral Commissioner

14. Appointment of Commissioner

- (1) The Governor may appoint a person to be Electoral Commissioner.
- (2) Before a person is appointed as Electoral Commissioner, the Minister is to consult –

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- (a) the Parliamentary leader of each party represented in the Assembly; and
 - (b) the President of the Council.
 - (3) A person is not eligible to be appointed as Electoral Commissioner if the person is, or has been in the period of 5 years immediately preceding the date on which it is proposed to appoint that person –
 - (a) a Member of a House of Parliament of the Commonwealth or a State or Territory; or
 - (b) a member of a party that is registered under this Act or under an Act of the Commonwealth or another State or a Territory as a political party or a member of a similar organisation.

15. Functions and powers

- (1) The Commissioner is to be the chief executive officer of the Commission.
- (2) In addition to the functions and powers imposed or conferred under this Act, the Commissioner has such other functions and powers as are imposed or conferred on the Commissioner by or under any other Act.
- (3) The Commissioner may give written direction to election officials and members of the staff of the Commission with respect to the performance of

their functions and the exercise of their powers under this Act.

16. Delegation

The Commissioner may, in writing, delegate to a returning officer, an election official or member of the staff of the Commission all or any of the Commissioner's functions or powers under this Act or any other Act, other than this power of delegation.

17. Tenure and conditions

- (1) The Commissioner holds office for the period (not exceeding 7 years) specified in his or her instrument of appointment.
- (2) The Commissioner holds office on such terms and conditions in relation to matters not provided for by this Act as are specified in his or her instrument of appointment.
- (3) The Commissioner is eligible for reappointment.
- (4) The Commissioner may hold any other office that is compatible with the performance of his or her functions as Commissioner.

18. Remuneration

- (1) The Commissioner is to be paid such remuneration and allowances as are specified in the instrument of appointment.

- (2) Remuneration payable under this section is to be paid from the Consolidated Fund without further appropriation than this section.

19. Leave of absence

The Governor may grant the Commissioner leave of absence on such terms and conditions as the Governor determines.

20. Resignation

The Commissioner may resign office by written notice given to the Governor.

21. Suspension or removal of Commissioner

- (1) The Commissioner may, at any time, be removed from office by the Governor on addresses from both Houses of Parliament.
- (2) The Governor may suspend the Commissioner from office if the Governor is satisfied that the Commissioner –
 - (a) is incapable of properly performing the functions of Commissioner; or
 - (b) has shown himself or herself incompetent to properly perform those functions or has neglected to properly perform those functions; or

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- (c) has been absent without leave granted under section 19 from 3 consecutive meetings of the Commission; or
 - (d) is or has become bankrupt or has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his or her creditors or made an assignment of his or her remuneration or estate for their benefit; or
 - (e) has been convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for a term exceeding 12 months; or
 - (f) has contravened clause 8 of Schedule 2; or
 - (g) has been guilty of misconduct.
- (3) If the Commissioner has been suspended from office under subsection (2), the Commissioner is to be restored to office unless –
- (a) a statement of the grounds of the Commissioner's suspension is laid before each House of Parliament during the first 7 sitting-days of the House following the suspension; and
 - (b) each House of Parliament, during the session of the House in which the statement is so laid, and within 30 sitting-days of the statement being so laid, passes an address requesting the

removal of the Commissioner from office.

22. Supplementary provisions relating to Commissioner

- (1) The Commissioner is an employee for the purposes of the *Public Sector Superannuation Reform Act 2016* and the *Long Service Leave (State Employees) Act 1994*.
- (2) If an employee, within the meaning of the *State Service Act 2000*, is appointed to the office of Commissioner, that employee is entitled to retain all the employee's existing and accruing rights as if the employee's service in that office were a continuation of his or her service as an employee within the meaning of that Act.
- (3) Where a person ceases to hold the office of Commissioner and becomes a State Service officer or State Service employee, that person's service in that office is to be regarded as service in the State Service for the purpose of determining his or her rights as an employee, within the meaning of that Act.

23. Deputy Commissioner

- (1) The Governor may appoint a person employed under the *State Service Act 2000* to be Deputy Electoral Commissioner.
- (2) If the Commissioner is unable, for any period, to perform or exercise the functions or powers of the Commissioner, the Deputy Electoral

Commissioner may perform those functions or exercise those powers during that period.

- (3) All acts and things done or omitted to be done by the Deputy Electoral Commissioner pursuant to subsection (2) are as valid, and have the same consequences, as if they had been done or omitted to be done by the Commissioner.

Division 3 – Returning officers and election officials

24. Returning officers

- (1) The Commission is to appoint a returning officer for each division.
- (2) Subject to and in accordance with any directions given by the Commission, the returning officer is responsible for conducting every election in the division for which he or she is appointed.
- (3) The functions and powers of a returning officer appointed under subsection (1) are –
 - (a) the functions and powers specified by or under this Act in respect of a returning officer or an election official; and
 - (b) any other functions and powers not inconsistent with this Act as may be specified by the Commission.
- (4) The Commission may require any person appointed under this section to sign an approved declaration with respect to the performance or exercise of his or her functions or powers.

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- (5) A person holding office as a returning officer is not subject to the *State Service Act 2000*.
 - (6) A State Service officer or State Service employee may hold office as a returning officer in conjunction with his or her employment in the State Service.

25. Acting returning officer

- (1) If a returning officer is unable, for any period, to perform or exercise the functions or powers of that office, the Commission may appoint a person to act as returning officer for that period.
- (2) A person appointed under subsection (1), while acting as returning officer, is to perform or exercise the functions or powers of that office.
- (3) A person holding office as an acting returning officer is not subject to the *State Service Act 2000*.
- (4) A State Service officer or State Service employee may hold office as an acting returning officer in conjunction with his or her employment in the State Service.

25A. Delegation by returning officer

A returning officer may, by instrument in writing, delegate to any election official any of the returning officer's functions or powers that are –

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- (a) specified in Division 11 or 12 of Part 5;
or
- (b) set out in procedures approved by the
Commission under Division 10 of Part 5.

26. Election officials

- (1) The Commission or a returning officer may appoint appropriate persons to be election officials for Assembly or Council elections or any other ballots or elections conducted by the Commission.
- (2) The functions and powers of an election official appointed under this section are –
 - (a) the functions and powers specified by or under this Act in respect of an election official; and
 - (b) any other functions and powers not inconsistent with this Act as may be specified by the Commission.
- (3) The Commission may require any person appointed under this section to sign an approved declaration with respect to the performance or exercise of his or her functions or powers.
- (4) A person holding office as an election official is not subject to the *State Service Act 2000*.
- (5) A State Service officer or State Service employee may hold office as an election official in conjunction with his or her employment in the State Service.

27. Conditions of employment

- (1) A returning officer or an election official is entitled to be paid the remuneration and allowances determined by the Commission.
- (2) The terms and conditions of employment of a returning officer or an election official are to be such as may be determined by the Commission.

28. Returning officer or election official to cease to hold office on becoming a candidate

- (1) If at any time a person who holds office as a returning officer or an election official becomes an intending candidate or is nominated as a candidate, that person, by operation of this section, ceases to hold that office, unless he or she is a person to whom section 2(1) of the *Constitution (State Employees) Act 1944* applies.
- (2) A person who becomes an intending candidate or who has nominated as a candidate is not eligible for appointment as a returning officer or an election official unless the election for which the person became an intending candidate or was nominated has been held and he or she was not returned as a Member at that election.

29. Staff of Commission

Subject to and in accordance with the *State Service Act 2000*, persons may be appointed or employed for the purpose of enabling the functions of the Commission to be carried out.

PART 3 – ENROLMENT

30. State roll

- (1) The Commission must keep a State roll of the persons enrolled in accordance with section 32.
- (2) The State roll may be kept by electronic means or any similar means.
- (3) The State roll must indicate the Assembly division and Council division for which each person is enrolled.
- (4) Each person enrolled on the State roll is to be enrolled –
 - (a) for the Assembly division which relates to the address in respect of which the person is enrolled; and
 - (b) for the Council division which relates to the address in respect of which the person is enrolled.
- (5) A person is not entitled to be enrolled on the State roll more than once at any one time.

31. Entitlement to enrolment

- (1) A person, other than a prisoner, is entitled to be enrolled on the State roll if the person is entitled to be enrolled on the Commonwealth roll.
- (2) A person who, but for the fact of being a prisoner, would be entitled to be enrolled on the

Commonwealth roll is entitled to be enrolled on the State roll if serving a sentence of imprisonment for a term of less than 3 years.

32. Enrolment

- (1) Except in the case of a prisoner, if an arrangement has been made under section 35, a person enrolled on the Commonwealth roll is taken to be enrolled on the State roll.
- (2) If an arrangement has been made under section 35, a prisoner who is enrolled on the Commonwealth roll is taken to be enrolled on the State roll if the prisoner is entitled to be enrolled under section 31(2).
- (3) Notwithstanding that an arrangement has been made under section 35, subsection (4) and section 33 apply to a person who is entitled to be –
 - (a) enrolled under section 31(2), but is not entitled to be enrolled on the Commonwealth roll because he or she is a prisoner; and
 - (b) enrolled under section 31(1), but is not enrolled on the Commonwealth roll because of the operation of section 102(4) of the Commonwealth Act.
- (4) If no arrangement has been made under section 35 –

- (a) a person may be enrolled on the State roll only in accordance with procedures approved under section 33(a); and
- (b) the particulars of an elector shown on the State roll may be amended only in accordance with procedures approved under section 33(b); and
- (c) the name of an elector may be removed from the State roll only in accordance with procedures approved under section 33(c).

33. Enrolment forms and procedures

If no arrangement has been made under section 35, the Commission is to approve forms and procedures to –

- (a) enrol on the State roll a person who is entitled to be so enrolled; and
- (b) amend the particulars of an elector on the State roll; and
- (c) remove from the State roll the name of an elector who is deceased or not entitled to be enrolled.

34. Compulsory enrolment and transfer

(1) If a person –

- (a) is not enrolled on the State roll; and

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- (b) has attained the age of 18 years; and
- (c) is entitled under section 31 to be enrolled on the State roll –

that person must apply to enrol in accordance with the forms and procedures approved under section 33.

(2) If a person –

- (a) is enrolled on the State roll; and
- (b) has changed his or her place of residence; and
- (c) is entitled under section 31 to be enrolled on the State roll in respect of a new address –

that person must apply to enrol in respect of that new address in accordance with the forms and procedures approved under section 33.

- (3) An application required under subsection (1) or (2) must be made within 21 days of being required to do so.
- (4) If an arrangement has been made under section 35, a person is taken to have complied with subsections (1) and (2) if the person has made application to enrol under the Commonwealth Act.

35. Joint roll arrangement with Commonwealth

- (1) The Governor may arrange with the Governor-General of the Commonwealth for, or for the carrying out of a procedure relating to, the preparation, alteration or revision of the State roll, in any manner consistent with the provisions of this Act, jointly by the State and the Commonwealth, for the purpose of the State roll being used for State or Commonwealth elections or for any other purpose.
- (2) The Governor may arrange with the Governor-General of the Commonwealth for the exchange of information necessary for the preparation, alteration or revision of the State roll under this Act and a roll under the Commonwealth Act.

36. Particulars contained on State roll

- (1) Except as provided in subsection (5), the State roll is to contain the following particulars in relation to each elector:
 - (a) surname or family name;
 - (b) Christian or given names;
 - (c) title;
 - (d) place of living or other approved address;
 - (e) such other particulars as may be approved.
- (2) If a person is taken to be enrolled on the State roll under section 32(1), the particulars recorded

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on the Commonwealth roll in respect of that person are, as far as practicable, to be taken to be the particulars contained on the State roll.

- (3) An elector may request that his or her address not be shown on the State roll, on the ground that this would place the personal safety of the elector or members of the elector's family at risk.
- (4) The Commission is to approve forms and procedures to determine if, following a request under subsection (3), there are reasonable grounds for believing that the inclusion of the address of an elector on the State roll would place the personal safety of the elector or members of the elector's family at risk.
- (5) If, in accordance with forms and procedures approved under subsection (4), a determination is made that there are reasonable grounds for believing that the inclusion of the address of an elector on the State roll would place the personal safety of the elector or members of the elector's family at risk, the address of the elector is not to be shown on the roll.

37. Division rolls

- (1) There is to be a division roll for each division which is to contain the details of each elector shown on the State roll as being enrolled for that division.
- (2) Subject to subsection (3), the Commission is to print each division roll at least once a year.

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- (3) A print of a division roll is to specify only the name and address of each elector shown on that roll but is not to include the address of any elector whose address, pursuant to section 36(5), does not appear on the State roll.
- (4) A print of a division roll may be provided to a person only in accordance with section 38 or 40.

38. Public inspection of roll

- (1) The Commission may make the name and address of each elector, other than an elector whose address, pursuant to section 36(5), does not appear on the State roll, available for inspection by members of the public without fee in such printed or electronic means as are approved and at such places as the Commission may determine.
- (2) The Commission may make the details of an elector, other than an elector whose address, pursuant to section 36(5), does not appear on the State roll, available for verification by members of the public without fee in such printed or electronic means as are approved and at such places as the Commission may determine.

39. Preparation of election and candidate rolls

- (1) The Commission is to prepare, as soon as practicable after the close of roll for an election, the election roll and candidate roll for that election.

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- (2) The election roll and candidate roll are to be in approved forms and, subject to subsection (4), are to include only the name and address of all electors who –
 - (a) are on the relevant division roll as at the close of roll for the election; and
 - (b) have attained the age of 18 years on polling day.
 - (3) An election roll or candidate roll is not to include the address of any elector whose address, pursuant to section 36(5), does not appear on the State roll.
 - (4) An election roll may include approved numbers or markings for administrative purposes.

40. Supply of rolls

- (1) The Commission is to prepare, at least once per year, an electronic edition of the State roll and of each division roll for the purposes of this section.
- (2) On written request, in an approved form, by the registered officer of a registered party, the Commission is to provide the registered officer with any of the following:
 - (a) the latest electronic edition of the State roll and such future editions as may be requested;
 - (b) a copy of the latest print of each division roll, printed under section 37, and such

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future prints of each division roll as may be requested.

- (3) On written request, in an approved form, by a Member, the Commission is to provide the Member with any of the following:
 - (a) the latest electronic edition of the division roll for the division which he or she represents and such future editions as may be requested;
 - (b) a copy of the latest print of the division roll, printed under section 37, for the division which he or she represents and such future prints of that division roll as may be requested.
- (4) For the purposes of subsections (2) and (3) –
 - (a) an electronic edition of a roll is to specify only the names, titles, residential addresses and postal addresses of electors but is not to include the address of any elector whose address, pursuant to section 36(5), does not appear on the State roll; and
 - (b) an electronic edition of a roll is, if practicable, to clearly indicate the variations between that edition and the previous edition.
- (5) On request, in an approved form, by a person who has nominated as a candidate for an election, the Commission is to provide that

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person with a printed copy of the relevant candidate roll.

- (6) The Commission may provide to any other person, body or organisation, as it may approve, a copy of the State roll or any part of that roll in printed or electronic form.
- (7) For the purposes of subsection (6) –
 - (a) an approval by the Commission is to be in writing and is to specify the purpose for which information contained in the roll may be used; and
 - (b) a copy of the roll may include the names, residential addresses, postal addresses and such other particulars relating to the electors as the Commission considers relevant to the purpose for which the roll may be used.

41. Permitted use of rolls

- (1) A person provided with a roll under section 40(2), (3) or (5) is permitted to use that roll only for the following purposes:
 - (a) any purpose connected with an election or referendum;
 - (b) monitoring the accuracy of information on the roll;
 - (c) the performance by a Member of his or her functions as a Member.

- (2) A person, body or organisation provided with a roll or part of a roll under section 40(6) is permitted to use that roll only for the purpose specified by the Commission in the approval granted under that section.

42. Persons to provide information

- (1) Every State employee, every employee of a local authority, and every elector and person entitled to be enrolled on the State roll is to, on being requested to do so by an election official, provide all such information as may be required in connection with the preparation, alteration or revision of a roll.
- (2) In subsection (1), a reference to a State employee is a reference to an employee within the meaning of the *Long Service Leave (State Employees) Act 1994*.
- (3) A police officer is to assist the Commission by making such inquiries and collecting such information as the Commission may specify and in so assisting the Commission has the powers of an election official.
- (4) Without limiting subsection (1) –
 - (a) the Registrar of Births, Deaths and Marriages is to provide to the Commission, on request, particulars entered in the register of deaths in respect of the death of persons aged 17 years or older; and

- (b) the Director of Corrective Services is to provide to the Commission, on request, particulars in respect of a person who has attained the age of 17 years and who is in prison by reason of that person being sentenced to a term of imprisonment.

43. Power of Commission to amend election roll

If the Commission is satisfied that, due to an administrative error or other cause –

- (a) a name appears on an election roll and should not appear on that roll; or
- (b) a name does not appear on an election roll and should appear on that roll; or
- (c) the details of an elector shown on an election roll are not correct –

the Commission may amend that election roll accordingly.

PART 4 – REGISTRATION OF POLITICAL PARTIES

44. Application to register party

- (1) An application for registration of a party under this Part is to be in writing in accordance with the approved form and is to –
- (a) be signed by the party secretary; and
 - (b) set out the name of the party, which –
 - (i) is not to be the name of an existing party, unless the party to be registered has obtained the written consent of the existing party; and
 - (ii) is not to include the word “independent”; and
 - (c) set out the ballot paper name, which is the form of the name of the party to appear on ballot papers and –
 - (i) is not to be the name of an existing party, unless the party to be registered has obtained the written consent of the existing party; and
 - (ii) is not to include the word “independent”; and
 - (iii) is not to consist of more than 6 words; and

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- (d) set out the name and address of the person who is to be the registered officer of the party and be signed by that person; and
 - (e) set out the name and address of the person who is to be the deputy registered officer of the party and be signed by that person; and
 - (f) set out the names and addresses of at least 100 members of the party who are to be the registered members; and
 - (g) be accompanied by the statutory declarations referred to in subsection (3); and
 - (h) be lodged with the Commission.
- (2) A person is not eligible to be a registered officer, deputy registered officer or registered member unless that person is an elector.
- (3) Each of the persons listed in accordance with subsection (1)(f) is to make a statutory declaration in an approved form that he or she –
- (a) is a member of the party in relation to which the application is made; and
 - (b) supports the application for registration of that party.

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45. Publication of application for registration

- (1) As soon as practicable after an application is received by the Commission, the Commission is to, if that application complies with section 44, publish a notice of the application –
 - (a) in the *Gazette*; and
 - (b) in 3 daily newspapers circulating generally in the State; and
 - (c) by any other means determined by the Commission.
- (2) The notice is to –
 - (a) include the particulars referred to in section 44(1)(a), (b), (c), (d), (e) and (f); and
 - (b) state that objections to the registration of the party, in accordance with section 46, may be lodged with the Commission.
- (3) If the Commission determines that any of the particulars referred to in subsection (2)(a) are obscene or may cause offence it may, in the notice referred to in subsection (1), omit or amend those particulars and include in the notice advice that some particulars have been omitted or amended and that the original application may be inspected at the office of the Commission.

46. Objections to registration of party

- (1) A person may, not later than 30 days after the publication of the notice referred to in section 45, lodge with the Commission an objection against the registration of the party.
- (2) An objection lodged under subsection (1) is to be only on a ground specified in section 47.

47. Grounds for rejecting application for registration

- (1) The Commission may reject an application to register a party –
 - (a) if the application does not comply with the requirements of section 44; or
 - (b) if the Commission believes on reasonable grounds that information set out in the application, or in documents required to accompany the application, is incorrect.
- (2) The Commission is to reject an application to register a party if the Commission considers that –
 - (a) the name of the party or the ballot paper name is obscene, offensive or frivolous; or
 - (b) the name of the party or the ballot paper name so nearly resembles an existing party name that it is likely to be confused with or mistaken for that party name; or

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- (c) the name of the party or the ballot paper name would otherwise be likely to cause confusion if registered.
- (3) The Commission may reject an application to register a party if the name of the party or the ballot paper name –
 - (a) is a public body name; or
 - (b) so nearly resembles a public body name that it is likely to be confused with or mistaken for the public body name.

48. Commission to accept or reject application for registration

- (1) The Commission, not later than 21 days after the last day on which objections may be lodged under section 46(1) in respect of an application for registration of a party, is to consider that application and –
 - (a) accept that application; or
 - (b) reject that application in accordance with section 47.
- (2) In considering an application for registration of a party, the Commission is to take into account any objection in respect of that application which has been lodged under section 46(1), and may take into account any other information.
- (3) As soon as practicable after the Commission decides to accept or reject an application, it must give the party secretary, and any person who

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lodged an objection in respect of that application, written notice of –

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) any right to appeal the decision under section 49.

49. Right of appeal to Supreme Court

- (1) If the Commission decides to reject an application to register a party under section 48, the party secretary may appeal that decision to the Supreme Court.
- (2) If the Commission decides to accept an application to register a party under section 48, any person who lodged an objection under section 46 may appeal that decision to the Supreme Court.
- (3) An appeal to the Supreme Court may be lodged in accordance with the *Supreme Court Rules 2000* not later than the eighth day after the day on which the Commission decides to accept or reject the application to register a party.
- (4) An appeal is to be heard and determined by a Judge or the Associate Judge of the Supreme Court as soon as practicable.
- (5) On an appeal, an order for costs may not be made against the appellant unless the Judge or Associate Judge of the Supreme Court is satisfied that the appeal is frivolous or vexatious.

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- (6) No action or proceeding may be brought in respect of a decision of the Commission under section 48 except as provided by this section.

50. Registration of political parties

- (1) The Commission is to register a party as soon as practicable after its decision to accept an application in accordance with section 48(1) if no objection in relation to that application has been lodged with the Commission under section 46.
- (2) The Commission is to register a party if –
- (a) in accordance with section 48(1), the Commission accepts an application to register the party; and
 - (b) an objection was lodged with the Commission under section 46; and
 - (c) no appeal was lodged in accordance with section 49 –

as soon as practicable after the time by which appeals may be lodged has expired.

- (3) The Commission is to register a party if –
- (a) an appeal was lodged in accordance with section 49; and
 - (b) the effect of the decision of the Supreme Court is that the application to register the party should be accepted –

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as soon as practicable after that decision.

51. Publication of decision

The Commission is to publish, in the *Gazette* and 3 daily newspapers circulating generally in the State –

- (a) notice of the registration of a party, as soon as practicable after that registration; or
- (b) notice of the decision to reject an application to register a party, as soon as practicable after completion of the appeal process, if any.

52. Party register

- (1) The Commission is to prepare and maintain the party register.
- (2) The party register is to contain the following particulars in respect of each registered party:
 - (a) the name of the party;
 - (b) the ballot paper name;
 - (c) the name and address of the registered officer of the party;
 - (d) the name and address of the deputy registered officer of the party;
 - (e) the names and addresses of the registered members of the party.

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- (3) If the Commission is satisfied that particulars in the party register in relation to a registered member or the registered officer are no longer correct, the Commission may correct those particulars.
- (4) Subsection (3) does not authorise the Commission to add or delete the name of a registered member or the registered officer.
- (5) The party register may be kept electronically.
- (6) The Commission is to ensure that –
 - (a) the party register is available for inspection, without the payment of a fee, by members of the public at the office of the Commission; and
 - (b) a copy of all or part of the party register is available on request without the payment of a fee.

53. Performance or exercise of registered officer's functions and powers by deputy registered officer

If the registered officer of a party is unable to perform or exercise his or her functions or powers under this Act, the deputy registered officer of the party may perform those functions or exercise those powers.

54. Adding to list of registered members

- (1) An application to add the name of an elector to the list of registered members of a party in the

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party register is to be in writing, in accordance with the approved form, and lodged with the Commission.

- (2) An application under subsection (1) is to be signed by the registered officer and accompanied by the statutory declaration referred to in subsection (3).
- (3) The person whose name is proposed to be added to the register is to make a statutory declaration that he or she –
 - (a) is a member of the party; and
 - (b) agrees to become a registered member in relation to that party.
- (4) On receiving an application that complies with this section, the Commission is to amend the party register accordingly and give notice in writing of the change to the registered officer.

55. Deleting registered member

- (1) An application to delete the name of a registered member of a party from the party register is to be in writing, in accordance with the approved form, and lodged with the Commission.
- (2) An application under subsection (1) is to be –
 - (a) if the registered member is no longer a member of the party, signed by the registered officer; or

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- (b) if the registered member no longer wishes to be a registered member of the party, signed by the registered member.
- (3) On receiving an application that complies with this section, the Commission is to amend the party register accordingly and give notice in writing of the change to the registered officer and, if practicable, to the person whose name has been deleted.

56. Change of registered officer

- (1) An application to change the registered officer of a registered party or the deputy registered officer of a registered party is to be in writing, in accordance with the approved form, and lodged with the Commission.
- (2) An application under subsection (1) is to be signed by the party secretary, 3 registered members of the party and the person who is to be the registered officer or deputy registered officer.
- (3) On receiving an application that complies with this section, the Commission is to amend the party register accordingly and give notice in writing of the change to the party secretary.

57. Change of party name or ballot paper name

- (1) An application to change the name or ballot paper name of a party is to be in writing, in

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accordance with the approved form, and lodged with the Commission.

- (2) An application under subsection (1) is to be signed by the registered officer and 3 registered members of the party and is to include a statement that the change of name has been approved by the executive or other controlling body of the party.
- (3) This Part applies to an application under this section, subject to any necessary changes, as if it were an application for registration of a party under section 44.

58. Review of party register

- (1) Subject to subsection (3), the Commission may review a registered party.
- (2) Before conducting a review of a registered party, the Commission is to give notice in writing to the registered officer of the party that the party is to be reviewed and include with that notice an approved review of party registration form –
 - (a) setting out the names and addresses of the registered members; and
 - (b) indicating if any registered member is not currently an elector; and
 - (c) setting out the name and address of the registered officer.
- (3) The Commission may not review a party more than once in any year unless –

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- (a) the Commission believes for any reason that less than 100 registered members of the party remain eligible to be registered members of that party; or
 - (b) an objection to the cancellation of registration of the party has been received in accordance with section 61(6).
 - (4) The registered officer is to indicate on the review of party registration form –
 - (a) next to the name of each registered member –
 - (i) whether or not the member is a current member of the registered party; and
 - (ii) the new address for the member if he or she has changed his or her address; and
 - (b) the new address for the registered officer if he or she has changed his or her address –
- and return it to the Commission within 30 days of the date of the notice.
- (5) If the registered officer indicates on the review of party registration form that a registered member is not a current member of the party, the registered officer must provide to the Commission, with that form, an application to

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delete the name of that member in accordance with section 55.

- (6) The registered officer may also provide to the Commission, together with the review of party registration form, an application to add the name of an elector in accordance with section 54.
- (7) On the return of a review of party registration form and any accompanying application to delete from or add to the list of registered members, the Commission is to –
 - (a) amend the party register accordingly; and
 - (b) delete from the party register the name and address of any registered member who is not an elector.

59. Cancellation of registration of party: failure to return review of party registration form

- (1) If the registered officer of a party has not completed and returned a review of party registration form in accordance with section 58(4), the Commission is to give notice in an approved form to that officer that, if the review of party registration form is not received before the expiration of 30 days from the date of the notice, the Commission will cancel the registration of that party.
- (2) A copy of the notice given under subsection (1) is to be published in the *Gazette* and in 3 daily newspapers circulating generally in the State.

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- (3) If a review of party registration form is not returned within the period specified in the notice given under subsection (1), the Commission is to cancel the registration of the party and delete all particulars in relation to that party from the party register and give notice in writing of the cancellation and deletion to the former registered officer.

60. Cancellation of registration of party: less than 100 registered members

- (1) If after the Commission has amended the party register in accordance with section 58(7) there are less than 100 registered members of a party, the Commission is to give notice in an approved form to the registered officer of that party –
 - (a) that if, after the expiration of 30 days from the date of the notice, there are not at least 100 registered members of the party, the Commission will cancel the registration of the party; and
 - (b) inviting the registered officer to lodge an application to add the names of further electors to the list of registered members under section 54.
- (2) A copy of the notice given under subsection (1) is to be published in the *Gazette* and in 3 daily newspapers circulating generally in the State.
- (3) If –

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- (a) after the period specified in the notice given under subsection (1); and
- (b) after processing any applications under section 54 or 55 received during that period –

there are not at least 100 registered members of the party, the Commission is to cancel the registration of the party, delete all particulars in relation to that party from the party register and give notice in writing of the cancellation and deletion to the former registered officer.

61. Cancellation of registration of party on application

- (1) An application to cancel the registration of a registered party is to be in writing, in accordance with the approved form, and lodged with the Commission.
- (2) An application under subsection (1) is to be signed by 3 registered members and accompanied by the statutory declarations referred to in subsection (3).
- (3) Each of the registered members referred to in subsection (2) is to make a statutory declaration that –
 - (a) the registered party has ceased to exist; or
 - (b) the application is in consequence of the proper action of the executive or other controlling body of the party.

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- (4) As soon as practicable after receiving an application that complies with this section, the Commission is to give notice of the application in an approved form to the registered officer stating that objections may be lodged in accordance with subsection (6).
- (5) A copy of the notice given under subsection (4) is to be published in the *Gazette* and in 3 daily newspapers circulating generally in the State.
- (6) A registered member of the party or the registered officer of the party may, within 30 days of the publication of the notice under subsection (5), lodge with the Commission an objection to the cancellation of the registration of the party.
- (7) If the Commission receives an application that complies with this section and no objection is lodged in accordance with subsection (6), the Commission is to, as soon as practicable, cancel the registration of the party and delete all particulars in relation to that party from the party register and give notice in writing of the cancellation and deletion to the former registered officer and the 3 registered members referred to in subsection (2).
- (8) If an objection is received in accordance with subsection (6), the Commission is to review the registered party in accordance with section 58.

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62. Operation of Part suspended on issue of writ for election

- (1) During the period commencing with the issue of a writ for an election and ending with the return of that writ no action is to be taken under this Part.
- (2) Notwithstanding subsection (1), an application to change the registered officer of a registered party or the deputy registered officer of a registered party may be made during the period specified in that subsection.

PART 5 – CONDUCT OF ELECTIONS

Division 1 – Writs for holding elections

63. Issue of writs for Assembly general election

Whenever –

- (a) a proclamation dissolving the Assembly is published in the *Gazette*; or
- (b) the terms for which Members of the Assembly have been elected expire by effluxion of time –

writs for the holding of an Assembly general election are to be issued by the Governor not less than 5 days and within 10 days after that publication or the expiry of those terms.

64. Issue of writ for Assembly by-election

As soon as practicable after –

- (a) a report under section 232(3) is received by the Governor; or
- (b) the Supreme Court makes an order under section 215 that a by-election is to be held –

a writ for the holding of a by-election to fill the vacancy is to be issued by the Governor.

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65. Issue of writs for Council periodic elections

- (1) Subject to subsection (2), writs are to be issued by the Governor for the holding of the periodical elections of Members of the Council required to be held in a year in accordance with section 19 of the *Constitution Act 1934*.
- (2) The writs referred to in subsection (1) are to be issued not earlier than 51 days nor later than 14 days before the day fixed by or in accordance with section 19(4) of the *Constitution Act 1934*.

66. Issue of writ for Council by-election

- (1) Except as provided by subsection (2), whenever the seat of a Member of the Council becomes vacant otherwise than by reason of the expiry of his or her term of office, a writ for the holding of a by-election to fill the vacancy is to be issued by the Governor within 40 days after the vacancy occurs.
- (2) Subject to subsection (3), in the event of the seat of a Member of the Council becoming vacant at any time during the period –
 - (a) commencing on 1 January immediately preceding polling day for the next Council periodic elections; and
 - (b) ending with the day on which writs for the holding of those elections are issued –

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a writ for the holding of a by-election is not, unless the Governor otherwise determines, required to be issued until the day on which the writs for those Council periodic elections are issued.

(3) If in any year –

- (a) a Council periodic election is required in a division; and
- (b) the seat of the Member for that division becomes vacant between 1 January and polling day for that election –

a writ for the holding of a by-election is not, unless the Governor otherwise determines, required to be issued.

- (4) Where in any year a writ for the holding of a by-election to fill a vacancy occurring in the seat of a Member of the Council is not issued until the date on which the writs for the Council periodic elections for that year are issued, the writ for the by-election is to specify the same dates as the writs for those Council periodic elections.
- (5) The Governor may, by proclamation, extend the period of 40 days referred to in subsection (1).

67. Contents of writ for election

- (1) A writ for the holding of an election is to be in accordance with the prescribed form and is to –
- (a) fix the day on or before which candidates for election are to be nominated; and

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- (b) in the case of –
- (i) an Assembly election, fix the day on which polling for the election is to be held in the event of the election being contested; or
 - (ii) a Council periodic election, specify the day fixed by or in accordance with section 19(4) of the *Constitution Act 1934* on which polling for the election is to be held in the event of the election being contested; or
 - (iii) a Council by-election, fix the day on which polling for the election is to be held in the event of the election being contested; and
- (c) fix the day on or before which the writ is to be returned to the Governor.
- (2) For the purposes of this Act, a writ to which subsection (1) applies is taken to have been issued at 6 p.m. on the date on which the writ was issued.

68. Writ directed to returning officer

A writ for the holding of an election is to be directed to the returning officer for the division concerned.

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69. Nomination day

Nomination day is to be a day which is not less than 7 days, nor more than 21 days, after the date on which the writ for the election was issued, or such later day as the Governor may fix by proclamation.

70. Polling day

- (1) The polling day fixed for –
 - (a) an Assembly election is to be a Saturday which is not less than 22 days, nor more than 30 days, after nomination day; or
 - (b) a Council periodic election is to be the day fixed by or in accordance with section 19(4) of the *Constitution Act 1934*; or
 - (c) a Council by-election is to be a Saturday which is not less than 22 days, nor more than 30 days, after nomination day.
- (2) In the case of an Assembly general election, the same day is to be fixed for polling in each Assembly division.

71. Day for return of writ

The day fixed for the return of a writ for an election is to be a day which is not later than 60 days after the date of the issue of that writ or such later day as the Governor, by proclamation, may direct.

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72. Duties of returning officer on receipt of writ

The returning officer for a division, on receiving a writ for an election in respect of that division, is to –

- (a) endorse on the writ the date of its receipt; and
- (b) fix a place at which and the hours during which he or she will receive nominations; and
- (c) as soon as practicable publish, in at least one newspaper approved for the purpose and circulating generally in the division, a notice of –
 - (i) the receipt of the writ; and
 - (ii) the particulars of the writ; and
 - (iii) the address of the place and hours fixed under paragraph (b).

73. Extension of time

- (1) If a writ for an election has been issued and not returned, and the Governor considers it appropriate, the Governor may by proclamation fix –
 - (a) another day on or before which candidates for election are to be nominated; or

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- (b) another day on which polling for the election is to be held in the event of the election being contested; or
 - (c) another day on or before which the writ is to be returned to the Governor.
- (2) Any dates fixed by the Governor under subsection (1) are not subject to section 69, 70 or 71.
- (3) If the Governor issues a proclamation under subsection (1), the returning officer for the relevant division is to, as soon as practicable, publish in at least one newspaper approved for the purpose and circulating generally in the division, a notice of that proclamation.

74. Fresh writ to be issued where election fails or partially fails

If an Assembly election fails or partially fails, or a Council election fails, a writ for the holding of a fresh election in respect of the division concerned is to be issued by the Governor –

- (a) within 10 days after polling day; or
- (b) if the failure or partial failure of the election does not become apparent until after polling day, within 10 days after the day on which that failure or partial failure becomes apparent.

Division 2 – Nominations for election

75. Persons who may be nominated and elected

A person may be nominated as a candidate for election and may be elected as a Member of the Assembly or the Council if the person –

- (a) is qualified under the *Constitution Act 1934* to be elected; and
- (b) is not ineligible under section 76; and
- (c) has attained the age of 18 years.

76. Persons ineligible for nomination

(1) A person is ineligible to be nominated as a candidate for election to represent a division if –

- (a) the person is –
 - (i) the holder of a seat in the other House of the Parliament of Tasmania; or
 - (ii) in the case of a nomination at a Council election, the holder of a seat in another Council division; or
 - (iii) in the case of a nomination at an Assembly by-election, the holder of a seat in another Assembly division; or

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- (b) the person is a candidate for an election in another division of either House for which the writ has not been returned; or
 - (c) the person is a Member of the Parliament of the Commonwealth.
- (2) A person is not ineligible under subsection (1)(a)(ii) to be nominated as a candidate for election to represent a Council division where his or her term of office as a Member is to cease at the election by the operation of a determination under section 29A(1) of the *Legislative Council Electoral Boundaries Act 1995*.

77. How and when nomination takes place

- (1) A nomination of a person as a candidate for election is invalid unless it complies with the requirements of this section.
- (2) Except as provided in subsection (3), (4) or (5), the nomination is to –
 - (a) be in an approved form; and
 - (b) include the name, ballot paper name, address and occupation of the person being nominated; and
 - (ba) include, if the nomination is for a Council election and subsection (5) does not apply to the nomination, a statement by the person being nominated stating whether or not the person wants the word

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- “independent” to appear on the ballot paper under the person’s name; and
- (c) be signed by at least 10 nominators, other than the candidate, who are electors entitled to vote at the election to which the nomination relates; and
 - (d) be consented to in a statement signed by the person being nominated; and
 - (e) include a declaration made by the person being nominated that complies with section 78; and
 - (f) be lodged, posted or sent by an approved electronic means so as to be received by the returning officer for the division after the issue of the writ for the election and, subject to section 90, before noon on nomination day.
- (3) If one or more persons are being nominated to appear on an Assembly ballot paper in a group under a heading of the ballot paper name of a registered party, the nomination is to –
- (a) be in an approved form; and
 - (b) include the name, ballot paper name, address and occupation of each person being nominated; and
 - (c) be signed by the registered officer of the party, as nominator; and

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- (d) include a statement signed by the registered officer that the party has endorsed those persons; and
 - (e) be consented to by each person being nominated, in a statement signed by each such person; and
 - (f) include a declaration made by each person being nominated that complies with section 78; and
 - (g) be lodged, posted or sent by an approved electronic means so as to be received by the returning officer for the division or the Commissioner after the issue of the writ for the election and, subject to section 90, before noon on nomination day.
- (4) If one or more persons are being nominated to appear on an Assembly ballot paper in a group not under a heading of the ballot paper name of a registered party, the nomination is to –
- (a) be in an approved form; and
 - (b) include the name, ballot paper name, address and occupation of each person being nominated; and
 - (c) be signed by at least 100 nominators, other than the candidates, who are electors entitled to vote at the election to which the nomination relates; and

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- (d) be consented to by each person being nominated, in a statement signed by each person being nominated; and
 - (e) include a declaration made by each person being nominated that complies with section 78; and
 - (f) be lodged, posted or sent by an approved electronic means so as to be received by the returning officer for the division after the issue of the writ for the election and, subject to section 90, before noon on nomination day.
- (5) If a person is being nominated to appear on a Council ballot paper together with the name of a registered party, the nomination is to –
- (a) be in an approved form; and
 - (b) include the name, ballot paper name, address and occupation of the person being nominated; and
 - (c) be signed by the registered officer of the party, as nominator; and
 - (d) include a statement signed by the registered officer that the party has endorsed that person; and
 - (e) be consented to in a statement signed by the person being nominated; and

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- (f) include a declaration made by the person being nominated that complies with section 78; and
 - (g) be lodged, posted or sent by an approved electronic means so as to be received by the returning officer for the division or the Commissioner after the issue of the writ for the election and, subject to section 90, before noon on nomination day.
- (6) Any consent or declaration required under subsection (2), (3), (4) or (5) may be provided by another approved method.
 - (7) At the time the nomination is lodged, the nomination deposit is to be lodged with the returning officer or the Commissioner.
 - (8) The nomination deposit is \$400 per person nominated, in legal tender or in a cheque drawn by an authorised deposit-taking institution or other financial institution on itself.
 - (9) A nomination is not invalid by reason of a formal defect or error in it if the returning officer or the Commissioner receiving the nomination is satisfied that the provisions of this Act have been substantially complied with in relation to it.

78. Declaration by candidate

The declaration referred to in section 77(2)(e), (3)(f), (4)(e) or (5)(f) is to be in an approved

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form and is to contain a statement to the effect that the person making the declaration –

- (a) is qualified under section 14 of the *Constitution Act 1934*; and
- (b) is not incapable of being elected as a Member under section 32 or 33 of the *Constitution Act 1934*.

79. Returning officer to endorse nomination

- (1) As soon as practicable after receiving a nomination, the Commissioner or the returning officer is to endorse the nomination form as accepted if he or she is satisfied that –
 - (a) the nomination is in accordance with section 77; and
 - (b) the person being nominated is not known by the Commissioner or the returning officer to be ineligible under section 76 to be nominated.
- (2) The acceptance of a nomination by the Commissioner or the returning officer is conclusive evidence that –
 - (a) if the nomination was lodged under section 77(2), at least 10 of the nominators were nominators eligible under section 77(2)(c); or
 - (b) if the nomination was lodged under section 77(3) or (5), the nominator was

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the registered officer of the relevant registered party; or

- (c) if the nomination was lodged under section 77(4), at least 100 of the nominators were nominators eligible under section 77(4)(c).

80. Ballot paper name of candidate

- (1) A candidate is to specify on the nomination form a ballot paper name which is to be the form in which the person's name is to appear on the ballot papers for the election.
- (2) The Commissioner may approve a ballot paper name, other than a form of the candidate's name, if satisfied that the person is commonly known by that name.

81. Names of registered parties on ballot papers

- (1) If one or more persons are nominated in accordance with section 77(3), the names of those candidates are to appear on the ballot paper in a separate column under a heading of the ballot paper name of the registered party.
- (2) If a person is nominated in accordance with section 77(5), the ballot paper name of the registered party is to appear on the ballot paper under the name of that candidate.
- (3) If a person is nominated in accordance with section 77(2) for a Council election and has stated in accordance with paragraph (ba) of that

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section that he or she wants the word “independent” to appear on the ballot paper under his or her name, the word “independent” is to appear on the ballot paper immediately under the name of that candidate.

82. Multiple nominations

If at noon on nomination day a person is nominated as a candidate for election in more than one division having that nomination day, each nomination of that person is invalid.

83. Withdrawal of nomination of candidate for election

- (1) Subject to subsection (2), a person nominated as a candidate for election in accordance with section 77 may withdraw that nomination by notice signed by the person or by another approved method and lodged with the Commissioner or the returning officer, as appropriate, before noon on nomination day.
- (2) A person nominated as a candidate for election in accordance with section 77(3) or (5) may withdraw that nomination only with the consent, in an approved form, of the registered officer who nominated that person.
- (3) A person nominated as a candidate for election in accordance with section 77(4) may withdraw that nomination only with the consent, in an approved form, of each of the other persons nominated in the same group.

84. Nominations invalid due to name of candidate

(1) In this section –

business day means a day when the place fixed for receiving nominations for the relevant division is open for business.

(2) The Commission may determine that a nomination in respect of a person as a candidate for an election is invalid on the ground that the person has changed his or her name to a name which –

- (a) is a party name; or
- (b) so nearly resembles a party name that it is likely to be confused with, or mistaken for, a party name; or
- (c) includes the word “independent” or a word of similar import; or
- (d) is a public body name; or
- (e) so nearly resembles a public body name that it is likely to be confused with, or mistaken for, the public body name; or
- (f) is obscene or offensive.

(3) The Commission may also determine that a nomination in respect of a person as a candidate for an election is invalid if the person has changed his or her name to a name which the Commission considers could cause confusion.

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- (4) If the Commission determines that a nomination is invalid on a ground mentioned in subsection (2) or (3), it must –
- (a) advise the person nominated in writing of the decision; and
 - (b) state reasons for the decision; and
 - (c) inform the person of any right to appeal to the Supreme Court under section 85; and
 - (d) if the nomination was received before 5 p.m. on the fourth business day before nomination day, make the decision available to the person at the place fixed for receiving nominations for the relevant division before 5 p.m. on the third business day before nomination day.

85. Right of appeal to Supreme Court in relation to invalid name

- (1) In this section –

business day has the same meaning as in section 84.

- (2) A person –

- (a) whose nomination was received before 5 p.m. on the fourth business day before nomination day; and
- (b) who is aggrieved by a determination of the Commission under section 84(2) or

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(3) that the nomination is invalid may, not later than 5 p.m. on the second business day before nomination day, appeal to the Supreme Court against the determination.

- (3) An appeal is to be heard and determined by a Judge or the Associate Judge of the Supreme Court as soon as practicable.
- (4) On an appeal, an order for costs may not be made against the appellant unless the Judge or Associate Judge of the Supreme Court is satisfied that the appeal is frivolous or vexatious.
- (5) No action or proceeding may be brought in respect of a determination of the Commission under section 84(2) or (3) except as provided by this section.

86. Disposal of deposit lodged for election

- (1) The sum deposited with the returning officer or the Commissioner in accordance with section 77(8) is to be held in an approved account until the writ for the election is returned.
- (2) The deposit is to be returned to a candidate if the candidate –
 - (a) withdraws the nomination under section 83; or
 - (b) is elected; or

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- (c) at any stage of the scrutiny, obtained a number of votes which is not less than 20% of –
 - (i) in the case of an Assembly election, a quota as defined in Schedule 4; or
 - (ii) in the case of a Council election, an absolute majority of votes as defined in Schedule 5.
 - (3) If a candidate dies before polling day, the deposit is to be returned to the candidate's personal representatives.
 - (4) If an election fails, the deposit is to be returned to each candidate.
 - (5) The deposit is to be forfeited to the Crown and paid by the returning officer into the Treasury to the credit of the Consolidated Fund unless it is returned to the candidate under subsection (2), (3) or (4).

87. Announcement of candidates

- (1) At noon on the day after nomination day, the returning officer is to publicly produce all nomination forms that have been endorsed as accepted under section 79(1), and not withdrawn under section 83, and –
 - (a) publicly announce –
 - (i) the names of the persons who are candidates at the election; and

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- (ii) in the case of an Assembly election, the group, if any, in which they are included; and
 - (b) display, at the office of the returning officer, a notice containing the details of that announcement.
- (2) Unless the Commission otherwise determines, the Commissioner, a returning officer or an election official is not to disclose any information in relation to a nomination received until the announcement referred to in subsection (1)(a).

88. Election without poll

- (1) If the number of candidates for an election does not exceed the number required to be elected, the returning officer for the division concerned is to –
 - (a) in the case of an Assembly election, as soon as practicable after the announcement of candidates, publicly declare those candidates to be duly elected as Members of the Assembly for that division; and
 - (b) in the case of a Council periodic election, on polling day, publicly declare the candidate to be duly elected as a Member of the Council for that division; and
 - (c) in the case of a Council by-election, as soon as practicable after the

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announcement of candidates, publicly declare the candidate to be duly elected as a Member of the Council for that division.

- (2) The Commissioner is to publish a declaration made under subsection (1) in at least one newspaper approved for the purpose and circulating generally in the division and return the writ to the Governor endorsed according to that declaration.

89. Election with poll

- (1) If the number of candidates for an election exceeds the number required to be elected, the returning officer for the division concerned is to announce that a poll will take place on the day fixed by the writ for that election.
- (2) As soon as practicable after the announcement of candidates under section 87, the returning officer is to –
 - (a) for the purposes of Schedule 3 determine, by an approved method, the random order in which the names of candidates are to appear in each column on the first batch of ballot papers; and
 - (b) in the case of an Assembly election, for the purposes of section 97(6) determine, by an approved method, the random order in which the columns mentioned in section 97(2) and (3), if any, are to appear on the ballot papers.

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- (3) The Commissioner is to, as soon as practicable, publish in at least one newspaper approved for the purpose and circulating generally in the division a notice –
- (a) that a poll will take place on the day fixed by the writ for that election; and
 - (b) in the case of an Assembly election, listing –
 - (i) the groups in the order they are to appear on the ballot paper; and
 - (ii) the names of the candidates in alphabetical order within each group; and
 - (c) in the case of a Council election, listing the names of the candidates in alphabetical order; and
 - (d) including a statement to the effect that the names of the candidates on ballot papers are rotated and may not appear in the order shown in the notice.
- (4) The Commissioner may also publish the notice referred to in subsection (3) in any other approved manner.
- (5) The Commissioner is to, on or before polling day, publish in at least one newspaper approved for the purpose and circulating generally in the division a notice listing the polling places approved for that election.

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90. Death of candidate at election

- (1) If a person nominated as a candidate for an election dies before noon on nomination day –
 - (a) nominations for that election may be lodged until noon on the day after nomination day; and
 - (b) candidates are to be announced as soon as practicable after noon on the day after nomination day.
- (2) If, in relation to an Assembly election, a person nominated as a candidate dies after noon on nomination day and before polling day, and –
 - (a) there are no more than 5 candidates remaining, the election is to proceed in accordance with section 88 as if the remaining candidates were the only candidates nominated; or
 - (b) there are more than 5 candidates remaining, the election is to proceed in accordance with section 89 and the votes cast for the deceased candidate are to be counted as votes cast for the candidate next in order of the elector's preference.
- (3) If, in relation to a Council election, a person nominated as a candidate dies after noon on nomination day and before polling day, the election fails.
- (4) If a candidate dies on or after polling day for an election, the count for that election is to be

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conducted as if the candidate had not died and, if that candidate receives sufficient votes to be elected, a vacancy is taken to have occurred in his or her seat as if he or she had died on the day after the declaration of the poll.

- (5) If, in accordance with subsection (4), a vacancy is taken to have occurred –
- (a) in the case of an Assembly election, that vacancy is to be filled as provided by Part 9; and
 - (b) in the case of a Council election, that vacancy is to be filled as provided by section 74.

Division 3 – Arrangements for polling

91. Polling places

A polling place is a place appointed by the Commission at which electors may vote and may be an ordinary polling place, a pre-poll polling place or a mobile polling place.

92. Ordinary, pre-poll and mobile polling places

- (1) An ordinary polling place is a place appointed by the Commission at which electors may vote on polling day.
- (2) A pre-poll polling place is a place appointed by the Commission at which electors may vote during specified time periods before polling day.

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- (3) A mobile polling place is a mobile unit appointed by the Commission at which electors may vote during specified time periods on or before polling day.
 - (4) The Commission may appoint a hospital, convalescent home, nursing home or other place as a place at which a mobile polling place may be operated.

93. Appointment of polling places

- (1) The Commission is to appoint, in respect of each Assembly division and Council division, such polling places as the Commission considers appropriate for the conduct of an election in relation to that division.
- (2) The Commission may appoint, in respect of an Assembly division or a Council division, a polling place which is located outside the boundaries of that division.
- (3) The Commission may, subject to subsection (4), terminate the appointment of a polling place in respect of an Assembly division or a Council division.
- (4) The Commission is not to terminate the appointment of a polling place in respect of a division between the issue of the writ and the return of the writ for an election in respect of that division, unless it is necessary to do so for circumstances beyond the Commission's control.

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- (5) The Commission is to, as soon as practicable, publish in the *Gazette* notice of an appointment or a termination of an appointment made under this section.

94. Hours of polling

- (1) Each ordinary polling place is to be open for polling from 8 a.m. on polling day until the close of poll.
- (2) The Commissioner is to determine the times during which each pre-poll polling place and mobile polling place is to be open for polling.

95. Commissioner to make arrangements for polling

The Commissioner is to make arrangements for the conduct of a poll in accordance with this Act, and in particular is to –

- (a) provide appropriate numbers of election officials; and
- (b) provide, at each polling place, appropriate numbers of –
- (i) certified copies of the election roll; and
 - (ii) ballot papers; and
 - (iii) declaration voting materials; and
 - (iv) voting screens; and

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- (v) ballot boxes which can be securely fastened.

Division 4 – Ballot papers

96. Preparation and printing of ballot papers

- (1) Ballot papers for use at elections are to be prepared and printed by the Commissioner in an approved form and in accordance with this Division.
- (2) Ballot papers to be issued as postal votes under section 128 are to have the additional word “postal” on them.
- (3) Except as provided by section 101, ballot papers are to be authenticated by an approved mark.

97. Design of Assembly ballot papers

- (1) The ballot paper names of the candidates for Assembly elections are to be printed in columns with a box printed next to each name.
- (2) Each group of candidates nominated under section 77(3) to appear on a ballot paper under a heading of the ballot paper name of a registered party is to be listed in a separate column on the ballot paper under that name.
- (3) Each group of candidates nominated under section 77(4) to appear on a ballot paper as a group is to be listed in a separate column on the ballot paper under a heading “Group” followed

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by a capital letter representing the position of the column.

- (4) The first column on the ballot paper (when reading from left to right) is Column A, and each subsequent column to the right of Column A is designated by a successive letter of the English alphabet.
- (5) If more than 26 columns are required, the Commission is to determine the headings to be used.
- (6) The order in which the columns mentioned in subsections (2) and (3) are to be printed on the ballot paper is to be the order determined under section 89(2)(b).
- (7) Candidates nominated under section 77(2) are to be listed in a column under the heading “ungrouped”, and that column is to be printed on the ballot paper in a position to the right of the columns mentioned in subsections (2) and (3).
- (8) The Commissioner may, if he or she considers it impractical to print the ballot paper names of all candidates nominated under section 77(2) in a single column, print those names in more than one column with –
 - (a) each column headed “ungrouped”; and
 - (b) as close as possible to equal numbers of names in each column; and

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- (c) the names to be included in each column being determined in accordance with Schedule 3; and
 - (d) those columns printed on the ballot paper in positions to the right of the columns mentioned in subsections (2) and (3).
- (9) The ballot paper names of the candidates within each column are to be printed on each batch of ballot papers in the order specified in Schedule 3.
- (10) Ballot papers are to be collated in an approved manner so that each ballot paper is followed by a ballot paper having the ballot paper names in a different order within each column.

98. Design of Council ballot papers

- (1) The ballot paper names of the candidates for Council elections are to be in a single column with a box printed next to each name.
- (1A) If any candidate has stated in accordance with section 77(2)(ba) that he or she wants the word “independent” to appear on the ballot paper under his or her name, the word “independent” is to appear on the ballot paper immediately under the name of that candidate.
- (2) The ballot paper names of the candidates are to be printed on each batch of ballot papers in the order specified in Schedule 3.

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- (3) Ballot papers are to be collated in an approved manner so that each ballot paper is followed by a ballot paper having the ballot paper names in a different order.

99. Printing of names on ballot papers

- (1) The surname or family name of each candidate for election is to be in more conspicuous type than the remaining part of the ballot paper name.
- (2) The surname or family name of each candidate for election may be on a different line to the remaining part of the ballot paper name.
- (3) As far as practicable the ballot paper names of candidates are to be printed in the same fonts and styles.
- (4) As far as practicable the ballot paper names of parties are to be printed in the same fonts and styles.
- (5) If the Commissioner considers that a similarity in the ballot paper names of 2 or more candidates is likely to cause confusion, a description or addition is to be included with each such name to enable them to be distinguished from each other.

100. Instructions on ballot papers

Instructions on the ballot paper are to indicate that –

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- (a) the elector is to number the boxes from 1 to a number (being the number of candidates) in order of choice; and
 - (b) the elector's vote will not count unless the elector numbers –
 - (i) in the case of an Assembly ballot paper, at least five boxes; and
 - (ii) in the case of a Council ballot paper, at least the number of boxes required under section 102(2)(a).

101. Preparation of additional ballot papers

- (1) If a returning officer or the election official in charge of a polling place is unable to provide an elector with a ballot paper printed in accordance with section 96, he or she is to prepare a ballot paper which as far as practicable duplicates the required ballot paper.
- (2) Returning officers and election officials in charge of polling places are to keep a record in an approved manner of the number of ballot papers prepared in accordance with subsection (1).
- (3) A ballot paper prepared under subsection (1) is to be taken to be a ballot paper for the purposes of this Act if it is authenticated by the initials of the election official.

102. Marking of ballot papers

- (1) In respect of an Assembly election, an elector –
 - (a) must mark the ballot paper by placing, without omission or duplication, the numbers 1, 2, 3, 4 and 5 in the boxes next to the names of candidates in order of preference; and
 - (b) may place further consecutive numbers in any or all of the boxes next to the names of the remaining candidates.
- (2) In respect of a Council election, an elector –
 - (a) must mark the ballot paper by placing, without omission or duplication –
 - (i) if there are more than 3 candidates, the numbers 1, 2 and 3 in the boxes next to the names of the candidates in order of preference; or
 - (ii) if there are 3 candidates, the numbers 1 and 2 in the boxes next to the names of the candidates in order of preference; or
 - (iii) if there are 2 candidates, the number 1 in the box next to the name of the candidate of first preference; and

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- (b) may place further consecutive numbers in any or all of the remaining boxes next to the names of the remaining candidates.

103. Informal ballot papers

- (1) A ballot paper is informal if –
 - (a) it is not authenticated by –
 - (i) the initials of an election official;
or
 - (ii) an approved mark; or
 - (b) there is no vote recorded on the ballot paper; or
 - (c) the vote is recorded on the ballot paper otherwise than in accordance with section 102; or
 - (d) there is on the ballot paper a mark or writing which identifies the elector who marked that ballot paper.
- (2) If an Assembly ballot paper has preferences above the number 5 marked on it and –
 - (a) one or more of those numbers is omitted or duplicated; and
 - (b) the ballot paper would otherwise be formal –

the numbers including and above such, or the first such, omission or duplication are to be

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disregarded and the ballot paper is to be treated as being formal.

- (3) If a Council ballot paper having more than 3 candidates has preferences above the number 3 marked on it and –
 - (a) one or more of those numbers is omitted or duplicated; and
 - (b) the ballot paper would otherwise be formal –

the numbers including and above such, or the first such, omission or duplication are to be disregarded and the ballot paper is to be treated as being formal.

- (4) A ballot paper is not to be treated as informal or rejected at the counting of votes if, in the opinion of the returning officer, the elector's intention is clearly indicated on the ballot paper.

Division 5 – Scrutineers

104. Appointment of scrutineers

- (1) A candidate at an election, or a person nominated to contest a recount under Part 9, may appoint one or more persons who are not candidates at that election to be scrutineers on his or her behalf.
- (2) The appointment of a scrutineer is to be in an approved form signed by the candidate.

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- (3) Before commencing his or her functions as a scrutineer, a scrutineer –
- (a) is to produce to an election official his or her appointment as a scrutineer; and
 - (b) is to sign a declaration, in an approved form, that he or she will perform the functions in accordance with this Division and preserve the secrecy of the voting.

105. Presence of scrutineers

- (1) Subject to subsection (2) or (3), a candidate is entitled to be represented by one or more scrutineers at any polling place or other place where ballot material is sorted, checked or counted.
- (2) The number of scrutineers representing a candidate at a polling place which is open for polling is not to exceed the number of election officials issuing ballot papers at that polling place.
- (3) The number of scrutineers representing a candidate at a polling place or other place when ballot material is sorted, checked or counted is not to exceed the number of election officials sorting, checking or counting at that place.
- (4) An election official is to supply a scrutineer with an identity badge to be worn or displayed by the scrutineer while scrutineering.

106. Scrutineering

- (1) A scrutineer may observe the issuing, sorting, checking and counting of ballot material.
- (2) A scrutineer may bring to the attention of an election official any matter the scrutineer believes may not be in accordance with the provisions of this Act.
- (3) If, under subsection (2), a scrutineer brings a matter to the attention of an election official, that official is to –
 - (a) consider the request; and
 - (b) take any action he or she considers appropriate; and
 - (c) if requested by the scrutineer, record details of the request and the action taken.

Division 6 – Entitlement to vote

107. Entitlement to vote

- (1) An elector whose name appears on the election roll for an election is entitled to vote at that election.
- (2) A person whose name does not appear on the election roll for an election is entitled to vote at that election if –
 - (a) the person's name has been on the division roll for the relevant division at

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some time during the 4-year period ending on the day of the close of roll for that election; and

- (b) the person has continuously resided within the current boundaries of the relevant division since that person's name was removed from that division roll.
- (3) A person whose name does not appear on the election roll for an election is entitled to vote at that election if the returning officer is satisfied that the omission of the person's name from the election roll was due to an administrative error.
- (4) A person is not entitled to vote more than once at any election.

Division 7 – Voting at ordinary, pre-poll and mobile polling places

108. Entitlement to vote within division

- (1) A person who is entitled to vote at an election in a division, may vote –
 - (a) on polling day at an ordinary polling place appointed in respect of that division; or
 - (b) before polling day at a pre-poll polling place if he or she –
 - (i) expects to be unable to attend a polling place on polling day; or

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- (ii) is a person whose address is not included on the roll pursuant to section 36(5); or
- (c) on or before polling day at a mobile polling place if he or she –
 - (i) is a resident of an institution appointed as a place at which a mobile polling place may be operated; or
 - (ii) such other person as may be approved.
- (2) When requesting a ballot paper before polling day, a person entitled to do so under subsection (1)(b)(i) is to make a declaration in an approved form that he or she is unable to attend a polling place on polling day.

109. Requesting ballot paper

A person may request a ballot paper from an election official at a polling place by –

- (a) stating his or her name and address; and
- (b) answering any questions asked by the election official in accordance with section 110(2); and
- (c) if the person is requesting a ballot paper at a pre-poll polling place, signing the declaration required under section 108(2).

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110. Election official to issue ballot paper

- (1) An election official is to issue a ballot paper, which has been initialled by the election official, to a person requesting a ballot paper if –
 - (a) the election official is satisfied that –
 - (i) the person is entitled under section 107(1) to vote at the election; and
 - (ii) the name of the person has not been marked on the certified copy of the election roll provided to the election official as having already been issued a ballot paper; and
 - (b) the person states that he or she has not already voted at the election; and
 - (c) at a pre-poll polling place, the person has made the declaration required under section 108(2).
- (2) An election official may ask a person requesting a ballot paper questions for the purpose of deciding whether to issue a ballot paper under subsection (1).

111. Issue of ballot paper to be recorded on certified copy of election roll

At the time of issuing a ballot paper to an elector, the election official is to mark, in an

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approved manner, the name of that elector on a certified copy of the election roll.

112. Vote to be marked in private

Subject to section 113, an elector who has been issued with a ballot paper is to, without delay –

- (a) go to an unoccupied voting screen in the polling place; and
- (b) mark his or her vote on the ballot paper in accordance with the directions on that ballot paper; and
- (c) fold the ballot paper so as to conceal the vote and place it in a ballot box in the polling place; and
- (d) leave the polling place.

113. Assistance to certain electors at polling places

- (1) The Commission may approve any procedures that are reasonable and appropriate to assist an elector at an ordinary, pre-poll or mobile polling place who is unable to vote without assistance.
- (2) If an elector is to be assisted in voting, an election official at the polling place is to advise any scrutineers present of the approved procedure by which the elector will be voting.

114. Mobile polling not to take place on medical grounds

If the person in charge of an institution which is appointed as a place at which a mobile polling place may be operated, or his or her delegate, informs an election official that a visit to a resident is forbidden on medical grounds, election officials are not to visit that resident.

115. Entitlement to vote – absent from division

- (1) On polling day, a person who is entitled to vote at an election in a division may, if he or she is absent from that division, lodge a declaration vote at an ordinary polling place or mobile polling place appointed for another division.
- (2) Before polling day, a person who is entitled to vote at an election in a division may, if he or she will be unable to attend a polling place on polling day, lodge a declaration vote at a pre-poll polling place or mobile polling place appointed for another division.
- (3) When requesting a declaration vote under subsection (1) or (2), a person is to make a declaration that he or she is entitled to vote at the election in the specified division.

116. Entitlement to vote – not on roll

- (1) If an election official does not issue a ballot paper to a person requesting a ballot paper, because the election official is not satisfied that the person meets the requirements of

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section 110(1)(a)(i), the election official is to advise that person of his or her entitlement to request a declaration vote.

- (2) When requesting a declaration vote under subsection (1), a person is to make a declaration that he or she is entitled to vote under section 107(2) or (3) for the division in which the election is being conducted.

117. Entitlement to vote – already marked off roll

- (1) If an election official does not issue a ballot paper to a person requesting a ballot paper, because the election official is not satisfied that the person meets the requirements of section 110(1)(a)(ii), the election official is to advise that person of his or her entitlement to request a declaration vote.
- (2) When requesting a declaration vote under subsection (1), a person is to make a declaration that he or she has not already voted at the election.

118. Issuing declaration vote

- (1) If a person referred to in section 115, 116 or 117 requests a declaration vote and the person indicates that he or she has not already voted at the election, an election official appointed for the purpose of issuing declaration votes is to provide that person with an approved declaration vote envelope.

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- (2) The person is to make the declaration required under section 115, 116 or 117 on the declaration vote envelope.
- (3) The person is to provide, on the declaration vote envelope, such details in respect of the person as may be approved for the purposes of –
- (a) deciding whether to admit the vote; or
 - (b) amending the enrolment details in respect of that person; or
 - (c) enrolling the person on the electoral roll.
- (4) The election official is to –
- (a) witness the person make the declaration required under subsection (2); and
 - (b) issue the person with a ballot paper, which has been initialled by the election official; and
 - (c) instruct the person as to the approved procedure by which he or she is to –
 - (i) mark his or her vote on the ballot paper; and
 - (ii) place the ballot paper in the declaration vote envelope; and
 - (iii) place the declaration vote envelope in a ballot box; and

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- (d) keep a record, in an approved manner, of all persons issued with a ballot paper by the election official under this section.

Division 8 – General provisions at polling places and other places where ballot papers are sorted, checked or counted

119. Powers of returning officer, election official and police officer at polling place or place where ballot material is sorted, checked or counted

- (1) A returning officer, an election official or a police officer has and may exercise such powers as may be necessary to maintain order and keep the peace at or in the immediate vicinity of a polling place or a place where ballot material is being sorted, checked or counted.
- (2) Without limiting any other powers conferred on him or her by law, a returning officer, an election official or a police officer may remove or cause to be removed from –
 - (a) a polling place or its immediate vicinity;
or
 - (b) a place where ballot material is being sorted, checked or counted or its immediate vicinity –

a person who he or she believes on reasonable grounds is committing, has committed or is attempting to commit an offence under this Act.

- (3) Without limiting any other powers conferred on him or her by law, a police officer may without

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warrant arrest or cause to be arrested a person who he or she believes on reasonable grounds is committing, has committed or is attempting to commit an offence under this Act at or in the immediate vicinity of a polling place or a place where ballot material is being sorted, checked or counted.

120. Persons entitled to be present at polling place or place where ballot material is sorted, checked or counted

- (1) Except as provided in subsection (2), the only persons who are entitled to be present at a polling place or other place where ballot material is sorted, checked or counted are –
 - (a) the election officials appointed to work at that place; and
 - (b) scrutineers appointed in accordance with section 104; and
 - (c) any other person authorised by the Commissioner, the returning officer for the division or the election official in charge of that place.
- (2) Electors who are voting or are about to vote are entitled to be present at a polling place.

121. Ballot box to be exhibited and sealed

- (1) At the commencement of polling at a polling place the empty ballot box is to be exhibited and securely fastened in the approved manner.

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- (2) In the case of a ballot box used for mobile polling, the empty ballot box is to be exhibited and securely fastened at the commencement of the first mobile polling place at which it is to be used.

122. Close of polling – electors present may vote

If an elector is in a polling place at a time at which polling is to close at that polling place, and desires to vote, he or she is to be allowed reasonable time to vote and the ballot paper is to be included in the poll.

123. Spoilt ballot papers

If an elector returns a ballot paper, which he or she has spoilt, to an election official, the election official is to, in the approved manner –

- (a) issue the elector with a new ballot paper; and
- (b) cancel and preserve the spoilt ballot paper.

124. Adjournment of polling

- (1) The Commissioner may adjourn the polling at a polling place on polling day if for any reason it is not practicable to proceed.
- (2) If polling is adjourned and the Commission believes that it is not reasonably practicable for an elector affected by the adjournment to cast a

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vote at another polling place, the Commission is to –

- (a) arrange for the adjourned polling to resume as soon as practicable but no later than 21 days after polling day; and
 - (b) fix a place at which and the hours during which the adjourned polling is to occur; and
 - (c) as soon as practicable publish, in at least one newspaper approved for the purpose and circulating generally in the division, a notice of the arrangements for the adjourned polling including the place and hours fixed under paragraph (b).
- (3) Where polling at a polling place in a division has been adjourned, only an elector who was entitled to vote on polling day at the election in that division and who has not already voted is entitled to vote at the adjourned polling.
- (4) In this Act, where appropriate, a reference to polling day for an election is taken to include a day on which adjourned polling occurs.

Division 9 – Postal voting

125. Entitlement to postal vote

- (1) An elector who is entitled to vote at an election in a division may vote by postal vote if he or she –

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- (a) expects to be unable to attend a polling place on polling day; or
 - (b) is an elector whose address is not included on the roll pursuant to section 36(5).
- (2) When applying for a postal vote, an elector entitled to do so under subsection (1)(a) is to make a declaration that he or she is unable to attend a polling place on polling day.

126. Application for postal vote

- (1) An application for a postal vote is to –
- (a) be in accordance with the approved form; and
 - (b) include such details in respect of the applicant as may be approved for the purpose of identifying the applicant; and
 - (c) include the address for which the person claims to be enrolled; and
 - (d) include the address to which the ballot paper is to be sent; and
 - (e) if required by section 125(2), include the declaration referred to in that subsection; and
 - (f) be signed by the applicant or authenticated by another approved method; and

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- (g) be lodged with a returning officer or a person approved for the purpose, before –
 - (i) if the postal vote is to be sent within Australia, 6.00 p.m. on the second day before polling day; or
 - (ii) if the postal vote is to be sent outside Australia, 6.00 p.m. on the fourth day before polling day.
 - (2) An application for a postal vote is to be made available for public inspection at the office of the returning officer from and including the third day after polling day until the expiration of the relevant period specified in section 150(1).
 - (3) Before making an application available for inspection under subsection (2), the returning officer is to remove any information other than the elector's name from an application lodged by an elector whose address, pursuant to section 36(5), does not appear on the roll.

127. General postal voters

- (1) The Commission may approve arrangements to obtain details of electors registered under the Commonwealth Act as general postal voters.
- (2) If the details of an elector are obtained under an arrangement made under subsection (1), that elector is to be issued with a postal vote in accordance with section 128 as if an application

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for a postal vote that complies with section 126 had been received.

- (3) Subject to subsection (4), the name and address of electors issued with a postal vote under subsection (2) are to be made available for public inspection at the office of the Commission from and including the third day after polling day until the expiration of the relevant period specified in section 150(1).
- (4) The address of an elector is not to be made available for public inspection under subsection (3) if that elector's address does not appear on the roll pursuant to section 36(5).

128. Issue of postal votes

- (1) If a returning officer, or a person approved for the purpose, receives an application that complies with section 126, an election official is to –
 - (a) issue a ballot paper to the applicant by posting, or delivering by an approved method, to the address specified for this purpose on the application, the following postal vote material:
 - (i) a ballot paper which complies with section 96(2), and which has been initialled by the election official;

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- (ii) approved instructions for the completion and return of the postal ballot paper;
 - (iii) a postal vote declaration envelope and any other envelope to be used for the return of the postal ballot paper; and
 - (b) keep a record, in an approved manner, of all persons issued with a postal ballot paper by the election official under this section.
- (2) The postal ballot paper to be issued under subsection (1) is to be –
- (a) for the division in respect of which the person is enrolled; or
 - (b) if it appears to the election official that the person is not enrolled, for the division applicable to the address for which the person claims to be enrolled.
- (3) Any envelopes used for the issue or return of postal ballot papers are to –
- (a) be approved; and
 - (b) make provision on the postal vote declaration envelope for the voter to sign the required declaration; and
 - (c) be designed to protect the secrecy of the vote.

129. Issue of replacement postal votes

- (1) If an election official is satisfied that a person who has been issued with postal vote material in accordance with section 128(1)(a) has not received, or has spoiled, any of that postal vote material, the election official is to issue replacement postal vote material to that person.
- (2) Replacement postal vote material is to be issued in accordance with the procedures in section 128.
- (3) An election official is to keep a record, in an approved manner, of all persons issued with replacement postal vote material by the election official under this section.

130. Postal voting procedure

- (1) Before the close of poll, the voter, in accordance with the approved instructions, is to –
 - (a) mark the ballot paper; and
 - (b) place it in the postal vote declaration envelope provided; and
 - (c) make and date the declaration on that envelope; and
 - (d) return the envelope containing the ballot paper by –
 - (i) delivering it to a polling place before the close of poll; or

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- (ii) posting it to the returning officer before the close of poll.
 - (2) The voter's declaration required under subsection (1)(c) is that he or she voted on the ballot paper contained in that envelope.
 - (3) The Commission may approve any procedures that are reasonable and appropriate to assist an elector, who is unable to vote without assistance, to vote under subsection (1).

Division 10 – Polling in Antarctica, remote areas and outside Tasmania

131. Commission to approve procedures for voting in Antarctica and remote areas

- (1) The Commission is to approve procedures to enable –
 - (a) any elector, where practicable, to vote at an election while in –
 - (i) the Australian Antarctic Territory, including Macquarie Island and the Territory of Heard Island and McDonald Islands; and
 - (ii) a ship in transit to or from a place mentioned in subparagraph (i) that has been declared by the Commission to be an Antarctic ship; and

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- (b) any elector, where practicable, to vote at an election while in an area that has been declared by the Commission to be a remote area; and
 - (c) any vote cast in accordance with procedures approved under this section to be transmitted to the Commission.
- (2) The Commission may declare an area to be a remote area if it is satisfied that electors in that area do not have reasonable opportunity to vote at an election under other provisions of this Act.

132. Commission to approve procedures for voting while outside Tasmania

The Commission may approve procedures to enable –

- (a) an elector, where practicable, to vote at an election while outside Tasmania but within Australia; and
- (b) an elector, where practicable, to vote at an election while outside Australia; and
- (c) a vote cast in accordance with procedures approved under paragraph (a) or (b) to be transmitted to the Commission.

133. Entitlement to vote in Antarctica, remote areas or outside Tasmania

Any elector enabled to vote under procedures approved under section 131 or 132 is entitled to vote in accordance with those procedures.

134. Votes from Antarctica, remote areas or outside Tasmania to be counted with postal votes

Any vote cast by an elector and transmitted to the Commission in accordance with procedures approved under section 131 or 132 is to be counted with the postal votes for that election.

135. Requirements for voting procedures in Antarctica, remote areas or outside Tasmania

Procedures approved under section 131 or 132 are, as far as practicable, to provide for authentication of the vote of an elector and the preservation of the secrecy of that vote.

136. Votes from Antarctica, remote areas or outside Tasmania not to be disclosed

Any person who becomes aware of how an elector, voting in accordance with procedures approved under section 131 or 132, voted is not to disclose this information to any other person except in accordance with an approved procedure.

Division 11 – Preliminary scrutiny of declaration votes and postal votes

137. Commission to approve procedures for managing declaration votes and postal votes

- (1) The Commission is to approve procedures for the conduct of –
 - (a) the preliminary scrutinies of declaration vote envelopes and postal vote declaration envelopes under section 138 or 139; and
 - (b) the counting of votes under section 143.
- (2) The preliminary scrutinies referred to in subsection (1)(a) are as far as practicable to –
 - (a) protect the secrecy of the vote; and
 - (b) ensure the security of all declaration votes; and
 - (c) keep separate –
 - (i) declaration votes issued to persons entitled under section 115; and
 - (ii) declaration votes issued to persons entitled under section 116 or 117; and
 - (iii) postal votes.

138. Preliminary scrutiny of declaration votes other than postal votes

- (1) The returning officer, in conducting a preliminary scrutiny in accordance with procedures approved under section 137, is to admit a declaration vote envelope for further scrutiny at an election if he or she is satisfied that –
 - (a) the envelope was provided and returned in accordance with section 118; and
 - (b) the appropriate declaration on the envelope is signed and witnessed; and
 - (c) the voter is entitled to vote at that election.
- (2) Notwithstanding subsection (1)(b), if a declaration is not witnessed, the returning officer may admit the declaration vote envelope if he or she is satisfied that the declaration vote was otherwise issued in accordance with section 118.
- (3) The returning officer is to keep a record, in an approved manner, of whether each declaration vote envelope is admitted to further scrutiny or not.

139. Preliminary scrutiny of postal votes

- (1) The returning officer, in conducting a preliminary scrutiny in accordance with procedures approved under section 137, is to admit a postal vote declaration envelope for

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further scrutiny at an election if he or she is satisfied that –

- (a) the declaration on the envelope is signed and dated before the close of poll; and
 - (b) if the voter's postal vote application is authenticated by the signature of the applicant, the signature on the postal vote declaration envelope is the same as the signature on the application; and
 - (c) the envelope was received –
 - (i) at a polling place that is open for polling at that election; or
 - (ii) by the returning officer by post or other approved method no later than 10.00 a.m. on the second Tuesday after polling day; and
 - (d) the voter is entitled to vote at that election.
- (2) The returning officer is to keep a record, in an approved manner, of all persons who have returned a postal vote declaration envelope and whether that envelope is admitted to further scrutiny or not.

Division 12 – Counting votes

140. Certain polling places may be combined for counting

In order to ensure the secrecy of the votes, the Commission may approve combining the ballot papers received at a polling place with the ballot papers received at another polling place.

141. Procedure at conclusion of polling at ordinary polling place

At the conclusion of polling at an ordinary polling place an election official is to, in the approved manner –

- (a) count any unused and spoilt ballot papers; and
- (b) verify the security of each ballot box; and
- (c) open each ballot box and remove the ballot papers; and
- (d) reject and count all informal ballot papers; and
- (e) count the number of first preference votes recorded for each candidate on ballot papers not rejected under paragraph (d); and
- (f) transmit the results of the count to the returning officer; and

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- (g) reconcile all declaration envelopes issued or received; and
- (h) complete polling place management documents; and
- (i) parcel and forward all material specified by the Commission to the returning officer.

142. Procedure at conclusion of pre-poll or mobile polling

- (1) At the conclusion of polling at a pre-poll polling place or mobile polling place an election official is to, in the approved manner –
 - (a) count any unused and spoilt ballot papers; and
 - (b) verify the security of each ballot box; and
 - (c) complete polling place management documents; and
 - (d) parcel and forward all material specified by the Commission to the returning officer.
- (2) After the close of poll, the returning officer is to, in the approved manner –
 - (a) open each ballot box received under subsection (1) and remove the ballot papers; and

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- (b) reconcile all declaration envelopes issued or received; and
 - (c) reject and count all informal ballot papers; and
 - (d) count the number of first preference votes recorded for each candidate on ballot papers not rejected under paragraph (c); and
 - (e) record the results of the count.

143. Admitted declaration votes to be counted

After the close of poll, the returning officer, in accordance with procedures approved under section 137, is to –

- (a) open declaration vote envelopes admitted for further scrutiny under section 138; and
- (b) open postal vote declaration envelopes admitted for further scrutiny under section 139; and
- (c) remove the ballot papers; and
- (d) reject and count all informal ballot papers; and
- (e) count the number of first preference votes recorded for each candidate on all ballot papers not rejected under paragraph (d); and

- (f) record the results of the count.

144. Returning officer to recheck and finalise first preference counts

As soon as practicable the returning officer is to, in accordance with approved procedures –

- (a) recheck all counts under sections 141, 142 and 143; and
- (b) make any necessary amendments to counts resulting from rechecks under paragraph (a); and
- (c) determine and record –
 - (i) the total count of informal ballot papers; and
 - (ii) the total counts of first preference votes recorded for each candidate on ballot papers that are not informal ballot papers.

145. Returning officer to distribute further preference votes

- (1) Except as provided in subsection (2), as soon as practicable after determining the total first preference counts under section 144, the returning officer is to count the further preference votes in accordance with Schedule 4 or Schedule 5 as the case requires.

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- (2) At a Council election, subject to the agreement of the Commissioner, the returning officer may commence the count of further preference votes before all ballot papers are counted.
 - (3) The counting of votes under subsection (1) may be conducted by an approved electronic means.

146. Ballot papers may be recounted

- (1) At any time before declaring the result of an election, the returning officer may choose to recount some or all of the ballot papers.
- (2) At any time before the returning officer declares the result of an election, a candidate may request a returning officer to recount some or all of the ballot papers.
- (3) A returning officer is to consider a request under subsection (2) and decide whether or not to recount some or all of the ballot papers.
- (4) If a returning officer decides under subsection (3) not to conduct a recount, the candidate may, before the returning officer declares the result of the election, request the Commission to review the decision.
- (5) The Commission may direct a returning officer to delay the declaration of the result of an election until a review requested under subsection (4) is concluded.
- (6) The Commission, after concluding a review requested under subsection (4), may –

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- (a) uphold the decision of the returning officer; or
 - (b) direct the returning officer to recount some or all of the ballot papers.
- (7) A request made by a candidate under subsection (2) or (4) must specify the reasons for the request.

147. Ballot papers lost or destroyed

- (1) If any ballot papers that should have been counted at the election have been lost or destroyed and the returning officer and the Commissioner are satisfied that the votes contained on those ballot papers could not have affected the result of the election, the returning officer may complete the counting of votes without those ballot papers and declare the result of the election.
- (2) If any ballot papers that should have been counted at the election have been lost or destroyed and the returning officer is satisfied that those ballot papers could have affected the result of the election, the returning officer is not to declare the result of the election and is to report the matter to the Commission.
- (3) If in accordance with subsection (2) a returning officer does not declare the result of an election and reports the matter to the Commission, the Commission is to review the decision of the returning officer and –

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- (a) instruct the returning officer to declare the result of the election; or
 - (b) make an application to the Supreme Court under section 205.

148. Declaration of poll and return of writ

- (1) Except as provided in section 147(2) or (3) or in subsection (2) of this section, as soon as practicable after completing the count under section 145, the returning officer is to –
 - (a) publicly declare the name of each candidate elected; and
 - (b) endorse on the writ for the election the name of each candidate elected; and
 - (c) forward the writ to the Commissioner who is to return it to the Governor within the period specified.
- (2) If, at a Council election, the returning officer and the Commissioner are satisfied that the votes contained on any ballot papers not yet returned by post or not yet admitted to the count would not affect the result of the election, the returning officer may, before the counting has been completed, proceed in accordance with subsection (1)(a), (b) and (c).

149. Returning officer to forward results and election material to Commission

As soon as practicable after completing the count under section 145, the returning officer is to, in accordance with approved procedures –

- (a) provide to the Commission details of the counting; and
- (b) parcel all ballot papers, used declaration vote envelopes, used postal vote declaration envelopes and any other material as determined by the Commission; and
- (c) seal the parcels and forward them to the Commission.

Division 13 – Custody of election material

150. Preservation of election material

- (1) Except as provided by subsection (2), the Commission is responsible for the safe custody of parcels forwarded to it under section 149 until –
 - (a) if no application under section 205 has been lodged in respect of the election, the expiration of the period during which the validity of the election may be disputed under this Act; or
 - (b) if an application under section 205 has been lodged in respect of the election, the Supreme Court has determined the

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application and any appeal from that determination has been finalised.

- (2) The Commission is responsible for the safe custody of ballot papers included in the count under section 145 in respect of an Assembly election until the issue of the writ for the next following Assembly general election.
- (3) After the expiration of the relevant period specified in subsection (1) or (2), the Commission may cause the parcels forwarded to it under section 149 to be destroyed.

151. Examination of election material

- (1) The Commission may approve the opening of any sealed parcel forwarded to it under section 149 and the examination of the contents.
- (2) Any approval under subsection (1) is to state the purpose for which the approval is granted.

Division 14 – Compulsory voting

152. Compulsory voting

- (1) Every elector must vote at each election at which he or she is entitled to vote.
- (2) After each election, the Commissioner is to prepare a list of names and addresses of electors who appear to have failed to vote at the election.

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153. Notice of failure to vote

- (1) Subject to subsection (4), as soon as practicable after an election, the Commissioner is to send by post a notice of failure to vote to each elector whose name appears on a list prepared under section 152(2).
- (2) The notice is to be in an approved form, specify the date by which the notice is to be returned, or posted, to the Commissioner (“the return date”), and include a statement to the effect that –
 - (a) the elector appears to have failed to vote at the election; and
 - (b) it is an offence to fail, without valid and sufficient reason, to vote at an election; and
 - (c) if the elector voted at the election he or she may, on or before the return date, provide the Commissioner with, or post to the Commissioner, particulars in writing of when and where he or she voted; and
 - (d) if the elector failed to vote at the election and does not wish to be issued with an infringement notice under section 157A, the elector may, on or before the return date –
 - (i) provide the Commissioner with, or post to the Commissioner, particulars in writing of any valid

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and sufficient reason for the failure; or

- (ii) pay the Commissioner the notice of failure to vote penalty in accordance with section 157.
- (3) The return date is to be a date not less than 21 days after the notice referred to in subsection (1) is posted.
- (4) If the Commissioner is satisfied that an elector whose name appears on a list prepared under section 152(2) had a valid and sufficient reason for failing to vote at the election, a notice is not to be sent to the elector.

154. Second notice – no response

- (1) If a response to a notice referred to in section 153 is not received by the date by which the notice is to be returned to the Commissioner, or, in the case of a response that has been, before that date, posted to the Commissioner in accordance with that section, is not received by the Commissioner within 14 days after that date, the Commissioner is, as soon as practicable, to send a second notice of failure to vote to the elector.
- (2) The second notice is to be in an approved form, specify the date by which the notice is to be returned to, or posted to, the Commissioner (“the return date”) and include –

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- (a) the statement required under section 153(2); and
 - (b) a statement to the effect that a notice was sent by post to the elector under section 153(1) and that a response has not been received; and
 - (c) a statement to the effect that, if a response is not received, or posted to the Commissioner, by the return date, the Commission may issue an infringement notice under section 157A.
- (3) The return date is to be a date not less than 14 days after the second notice is posted.

155. Determination of valid and sufficient reason

- (1) If the Commissioner receives information in relation to an elector's failure to vote at an election, the Commissioner is to determine whether, in his or her opinion, the elector has a valid and sufficient reason for failing to vote at the election.
- (2) If the Commissioner determines that an elector has a valid and sufficient reason for failing to vote at the election, the Commissioner is to take no further action under this Division.

156. Determination notice – reason not accepted

- (1) If an elector has been sent a notice in accordance with section 153 or 154 and –

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- (a) the elector provides the Commissioner with particulars in writing of the reason for the failure to vote; and
 - (b) the Commissioner determines under section 155 that the reason is not valid and sufficient –

the Commissioner is to, as soon as practicable, send a determination notice to the elector.

- (2) The determination notice is to be in an approved form, specify the date by which the determination notice is to be returned to the Commissioner (“the return date”) and include a statement to the effect that –
 - (a) the Commissioner has determined that the reason provided by the elector is not valid and sufficient; and
 - (b) it is an offence to fail, without valid and sufficient reason, to vote at an election; and
 - (c) if the elector does not wish to be issued with an infringement notice under section 157A, he or she may, on or before the return date, pay the Commissioner the notice of failure to vote penalty in accordance with section 157.
- (3) The return date is to be a date not less than 14 days after the determination notice is posted.

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157. Option to pay penalty

If an elector fails to vote at an election and pays a notice of failure to vote penalty of 0.2 penalty units –

- (a) any liability of the elector under section 181 in respect of the failure to vote is discharged; and
- (b) proceedings for an offence against that section are not to be instituted against the elector in respect of the failure; and
- (c) an infringement notice in accordance with section 157A is not to be issued against the elector in respect of the failure.

157A. Infringement notice

- (1) If an elector has been sent a second notice of failure to vote in accordance with section 154 or a determination notice in accordance with section 156 and –
 - (a) the elector has failed to respond to the notice by the date specified in the notice; and
 - (b) the Commissioner is of the opinion that, as a result of the elector failing to respond to the notice by the date specified in the notice, the elector has committed an offence under section 181 –

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the Commissioner may issue an infringement notice to the elector.

- (2) The infringement notice is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005* and include either –
 - (a) a statement that the elector has failed to respond to a second notice sent in accordance with section 154; or
 - (b) a statement that the elector has failed to respond to a determination notice sent in accordance with section 156.
- (3) A notice of failure to vote issued under section 153, a second notice of failure to vote issued under section 154 or a determination notice issued under section 156 is not an infringement notice for the purposes of the *Monetary Penalties Enforcement Act 2005*.

157B. Penalty in respect of infringement notice

For the purposes of an infringement notice issued under section 157A, the penalty is 0.4 penalty units.

**PART 6 – ELECTORAL EXPENDITURE IN RESPECT
OF COUNCIL ELECTIONS**

***Division 1 – Candidate's or intending candidate's
expenditure***

158. Election agent

- (1) A candidate or intending candidate at a Council election may appoint a person to be his or her election agent.
- (2) An appointment under subsection (1) is to be in writing and signed by the candidate or intending candidate.
- (3) Only one person may hold an appointment as the election agent for a particular candidate or intending candidate at any one time.
- (4) The election agent of a candidate or intending candidate may incur or authorise expenditure on behalf of that candidate or intending candidate.

159. Who may incur expenditure

- (1) Subject to subsection (2), a person, other than a candidate or intending candidate or the election agent of a candidate or intending candidate, must not incur any expenditure with a view to promoting or procuring the election of the candidate or intending candidate as a Member of the Council.
- (2) Subsection (1) does not preclude the payment or giving of any money, security or equivalent of

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money directly to a candidate or intending candidate or his or her election agent with a view to promoting or procuring the election of the candidate or intending candidate as a Member of the Council.

- (3) A candidate or intending candidate at a Council election must not authorise a person other than his or her election agent to incur on his or her behalf expenditure with a view to promoting or procuring the candidate's or intending candidate's election.

160. Candidate's expenditure limit

- (1) A candidate at a Council election must not, in respect of his or her campaign for that election, incur election expenditure exceeding the expenditure limit.
- (2) The expenditure limit is \$10 000 in the year 2005 and increases by an additional \$500 each subsequent year.
- (3) If a court convicts a candidate of an offence against subsection (1) it is to, at the time of conviction, make a finding of the amount by which the candidate's election expenditure exceeded the expenditure limit.
- (4) For the purposes of subsection (1), expenditure incurred by the election agent of a candidate is taken to have been incurred by the candidate.

161. Lodgment of candidate's election expenditure return

Every candidate at a Council election must complete an election expenditure return which is to –

- (a) be in an approved form; and
- (b) include particulars of –
 - (i) all election expenditure that has been paid by the candidate or paid on behalf of the candidate by his or her election agent; and
 - (ii) all disputed claims and all unpaid claims against the candidate in respect of any election expenditure; and
- (c) be accompanied by any invoice account or receipt in respect of each item of election expenditure that exceeds \$20; and
- (d) be signed and declared before a justice or a commissioner for declarations; and
- (e) be lodged with the Commission within 60 days after the day on which the result of a Council election is declared, or within such extended period, not exceeding 30 days, as the Commission may allow.

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Division 2 – Party expenditure

162. Party not to incur election expenditure

A person must not incur any expenditure for or on behalf of a party with a view to promoting or procuring the election of a candidate or intending candidate as a Member of the Council, whether or not the candidate or intending candidate is an endorsed candidate or intending candidate of the party.

Division 3 – Provisions relating to candidate's expenditure

163. Commission to check returns

On receiving a return lodged under section 161, the Commission is to satisfy itself as to the authenticity and accuracy of the return and that all particulars required to be included in the return have been included.

164. Return available for public inspection

(1) The Commission is to –

- (a) keep returns for a period of 12 months; and
- (b) during that period make those returns available for inspection, free of charge, by a member of the public.

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- (2) At the expiration of the period referred to in subsection (1), the Commission may cause the returns to be disposed of in an approved manner.

165. Power of Commission to require information

- (1) If the Commission has reason to believe that a person is in possession of information or records relating to election expenditure, the Commission may, by written notice, require –
- (a) the person to provide that information at a specified time and place; or
 - (b) the person to produce for inspection any of those records at a specified time and place; or
 - (c) the person to answer any question relating to that expenditure at a specified time and place; or
 - (d) any person who was a party to the compilation of those records to make a statement providing an explanation of them.
- (2) The Commission may make and retain copies of any records produced under subsection (1)(b) or of any parts of those records.
- (3) Any information provided, answer given or statement made by a person in response to a requirement made under subsection (1) may not be used in any proceedings against that person

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except proceedings under section 199(8) in relation to that information, answer or statement.

- (4) A person is not obliged to provide any information, produce records, answer a question or make a statement under this section unless that person has first been informed by the Commission that he or she is required to do so.
- (5) In any proceedings for an offence under this section, a copy of a record or part of a record made under subsection (2) is admissible in evidence in those proceedings and, in the absence of evidence to the contrary, the contents of the copy are presumed to be the same as those on the original record or part.
- (6) In this section –
 - records* includes books, accounts, minutes, registers, deeds, writings or documents and any other sources of information compiled, recorded or stored in written form, on micro-film or by electronic process, or in any other manner or by any other means.

PART 7 – OFFENCES

Division 1 – General offences

166. Use of roll for other than permitted purpose

A person who, or a body or organisation which, without reasonable excuse, uses information obtained from a roll provided under section 40, except for a purpose permitted under section 41, is guilty of an offence.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

167. Prohibited disclosure or commercial use of rolls

Except for a purpose permitted under section 41, a person, body or organisation must not, without reasonable excuse –

- (a) disclose to another person; or
- (b) use for a commercial purpose –

information that the person knows, or has reasonable grounds for believing, has been obtained from, or by means of, a roll provided under section 40.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

168. Offence to induce elector not to vote

A person must not induce or attempt to induce an elector who is required to vote at an election not to vote at that election.

Penalty: Fine not exceeding 10 penalty units.

169. Unlawfully marking ballot paper

- (1) A person must not mark, or attempt or purport to mark, a vote on a ballot paper issued to an elector under this Act unless he or she is –

- (a) that elector; or
- (b) a person assisting that elector in accordance with a procedure approved under this Act.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

- (2) A person who fails, without reasonable excuse, to mark a ballot paper in accordance with an elector's instructions when assisting that elector in accordance with a procedure approved under section 113 is guilty of an offence.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

170. Possession of forged ballot paper

A person must not, without reasonable excuse, have in his or her possession a forged ballot paper.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

171. Failure to deliver postal vote, &c.

A person to whom an application for a postal vote or a postal vote declaration envelope containing or purporting to contain a ballot paper is entrusted by an elector for the purpose of posting or delivery to a returning officer or delivery to a polling place and who fails to post or deliver immediately the application or envelope is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units.

172. Offences by scrutineers

A scrutineer must not, at any polling place or other place where ballot material is being sorted, checked or counted –

- (a) fail to comply with a reasonable direction given to the scrutineer by an election official; or
- (b) interfere with, or attempt to influence, an elector or other person; or

- (c) communicate with a person except as is necessary in undertaking his or her functions as a scrutineer; or
- (d) without the authority of an election official, touch or interfere with any ballot material; or
- (e) otherwise misconduct himself or herself.

Penalty: Fine not exceeding 10 penalty units.

173. Offences by election official

- (1) An election official must not refuse or deliberately neglect to perform a function which he or she is required to perform by or under this Act.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 9 months, or both.

- (2) An election official must not fail to comply with any direction given by or under the authority of this Act.

Penalty: Fine not exceeding 10 penalty units.

174. Unauthorised access to election material

- (1) Except as approved under section 151, a person must not intentionally break the seal of or intentionally open any parcel sealed under section 149.

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- (2) A person must not use or examine material contained in a sealed parcel referred to in section 151 for a purpose other than a purpose approved under section 151.
- (3) A person who contravenes or fails to comply with subsection (1) or (2) is guilty of a crime, punishable on indictment under the *Criminal Code*.
- (4) Notwithstanding section 389 of the *Criminal Code*, a person who is convicted of a crime under subsection (3) is liable to a penalty of a fine not exceeding 300 penalty units or imprisonment for a term not exceeding 12 months, or both.

Division 2 – Offences relating to polling places

175. Offences within polling place

- (1) Any person present in a polling place –
 - (a) who is not entitled under section 120 to be present; and
 - (b) who refuses to leave the polling place immediately on being required to do so by an election official, or by a police officer acting under the direction or authority of the officer in charge of the polling place –

is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units.

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- (2) A person must not, in a polling place –
- (a) act in a disorderly manner; or
 - (b) refuse or fail to comply with a lawful direction given by the officer in charge of the polling place or a police officer; or
 - (c) display or leave a card or paper which has on it directions or instructions as to how an elector should or might vote at the election.

Penalty: Fine not exceeding 10 penalty units.

- (3) Except in accordance with a procedure approved under section 113, a person must not enter a voting screen at a polling place while another person is occupying that voting screen.

Penalty: Fine not exceeding 10 penalty units.

- (4) A person must not, without lawful authority –
- (a) occupy a voting screen at a polling place for a longer period than is necessary for the purpose of marking his or her ballot paper; or
 - (b) obstruct or unnecessarily delay the proceedings at a polling place; or
 - (c) remove a ballot paper from a polling place.

Penalty: Fine not exceeding 10 penalty units.

176. Persons removed from polling place not to re-enter without permission

A person must not, without the permission of the officer in charge of the polling place, re-enter a polling place which is open for polling after having been removed from the polling place under section 119.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 1 month, or both.

177. Offences within 100 metres of polling place

A person must not, within 100 metres of, or within, a polling place which is open for polling –

- (a) canvass for votes; or
- (b) solicit the vote of an elector; or
- (c) induce or attempt to induce an elector not to vote for a particular candidate or particular candidates.

Penalty: Fine not exceeding 10 penalty units.

178. Offence relating to polling places access

A person must not, while a polling place is open for polling, prevent access, or obstruct the approaches, to that polling place.

Penalty: Fine not exceeding 50 penalty units.

179. Election official not to act improperly

A returning officer or an election official must not –

- (a) influence the vote of an elector at an election or, except by recording his or her own vote, influence the result of an election; or
- (b) disclose any information acquired in the course of performing his or her functions under this Act concerning the way in which a particular elector voted at an election.

Penalty: Fine not exceeding 300 penalty units or imprisonment for a term not exceeding 12 months, or both.

Division 3 – Failure to enrol or vote

180. Offence to fail to enrol

A person who fails to comply with section 34(3) is guilty of an offence.

Penalty: Fine not exceeding 1 penalty unit.

181. Offence to fail to vote

- (1) An elector entitled to vote at an election must not, without a valid and sufficient reason, fail to vote at the election.

Penalty: Fine not exceeding 1 penalty unit.

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- (2) Without limiting subsection (1), it is a valid and sufficient reason for failing to vote if an elector –
 - (a) was incapable of voting at the election; or
 - (b) was ineligible to vote at the election; or
 - (c) believes it to be part of his or her religious duty to abstain from voting.
- (3) Proceedings for an offence under subsection (1) –
 - (a) may be instituted only by the Commission or the Director of Public Prosecutions; and
 - (b) may be instituted within the period of 12 months from the polling day of the election in respect of which the offence occurred.

Division 4 – Corrupt practices

182. Interpretation: Division 4

In this Division –

electoral paper includes any application or declaration made under this Act and any approved form.

183. False or misleading statements or declarations

- (1) A person must not, in giving any information, filing a return or making an application under this Act –
 - (a) make a statement or declaration knowing it to be false or misleading; or
 - (b) omit any matter from a statement or declaration knowing that without that matter the statement or declaration is misleading.
- (2) A person who contravenes or fails to comply with subsection (1) is guilty of a crime, punishable on indictment under the *Criminal Code*.
- (3) Notwithstanding section 389 of the *Criminal Code*, a person who is convicted of a crime under subsection (2) is liable to a penalty of a fine not exceeding 300 penalty units or imprisonment for a term not exceeding 12 months, or both.

184. Signing electoral papers

- (1) Subject to subsection (2), a person, if required by this Act to sign an electoral paper, must not sign it other than with his or her personal signature.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

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(2) Where a person is unable to sign his or her name in writing, the person is to be taken to have signed an electoral paper if the person makes a mark on the paper by way of signature in the presence of a witness who is to sign the electoral paper as a witness.

(3) A person must not sign the name of any other person on an electoral paper.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

(4) Nothing in this section affects the liability of a person to be proceeded against for the crime of forgery, but, if he or she is proceeded against for that crime, he or she is not liable to be punished more than once in respect of the same act.

185. Witnessing electoral papers

A person who –

- (a) signs his or her name as a witness on a blank electoral paper; or
- (b) signs his or her name as a witness on an electoral paper which has been wholly or partly completed unless it has been signed by the person intended to sign it; or
- (c) signs his or her name as a witness on an electoral paper unless he or she has seen

the person, whose signature he or she purports to witness, sign it; or

- (d) writes on an electoral paper as his or her own name –
 - (i) the name of another person; or
 - (ii) any name not being his or her own name –

is guilty of an offence.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

186. Offences relating to voting

- (1) A person must not, at or in connection with an election, directly or indirectly, personally or by any other person on his or her behalf –
 - (a) destroy a nomination form or ballot paper except in accordance with section 150; or
 - (b) forge a ballot paper or utter a ballot paper knowing it to be forged; or
 - (c) forge a declaration required by this Act or utter such a declaration knowing it to be forged; or
 - (d) without authority, remove a ballot paper from a polling place; or

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- (e) fraudulently deposit a ballot paper, or a paper purporting to be a ballot paper, in a ballot box used at the election; or
- (f) without authority, supply a ballot paper to a person to enable a person to vote at the election; or
- (g) without authority, take, open, destroy or interfere with a ballot box, declaration vote envelope, postal vote declaration envelope or ballot paper used or to be used at the election; or
- (h) make a statement, or give an answer to a question, referred to in section 110 which the person knows is false or misleading; or
- (i) impersonate an elector for the purpose of voting at the election; or
- (j) vote more than once at the election; or
- (k) having voted at the election, apply for another ballot paper in respect of the election; or
- (l) apply to vote under this Act in the name of a fictitious person or in the name of any other person, whether living or dead; or
- (m) deposit more than one ballot paper in a ballot box that is being used for the purposes of the election; or

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- (n) vote at the election after having voted at an election in respect of another division held contemporaneously with the first-mentioned election.
 - (2) A person who contravenes or fails to comply with subsection (1) is guilty of a crime, punishable on indictment under the *Criminal Code*.
 - (3) Notwithstanding section 389 of the *Criminal Code*, a person who is convicted of a crime under subsection (2) is liable to a penalty of a fine not exceeding 300 penalty units or imprisonment for a term not exceeding 12 months, or both.

187. Electoral bribery

- (1) A person must not directly or indirectly –
 - (a) promise or offer; or
 - (b) give; or
 - (c) ask for or receive –any property or benefit of any kind with the intention of influencing a person's election conduct at an election.
- (1A) Subsection (1) does not apply to any property or benefit if the value of that property or benefit does not exceed three fee units.
- (2) For the purposes of subsection (1) –

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election conduct, in relation to a person,
means –

- (a) whether or not the person votes;
or
 - (b) who the person votes for; or
 - (c) whether or not the person
nominates as a candidate for
election or withdraws his or her
nomination; or
 - (d) whether the person expresses
support for or opposition to a
candidate or group of candidates;
or
 - (e) whether or not the person lodges
an application under section 205
or applies to withdraw an
application under section 214; or
 - (f) the performance or exercise by a
member of the Commission, a
returning officer, an election
official or a member of the staff
of the Commission of his or her
functions or powers under this
Act.
- (3) A person who contravenes or fails to comply
with subsection (1) is guilty of the crime of
electoral bribery, punishable on indictment under
the *Criminal Code*.

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- (4) Notwithstanding section 389 of the *Criminal Code*, a person who is convicted of the crime of electoral bribery is liable to a penalty of a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.
 - (5) The crime of electoral bribery does not include –
 - (a) a declaration of public policy or promise of public action; or
 - (b) transporting electors to or from polling places for the purpose of voting.

188. Electoral treating

- (1) A person must not directly or indirectly –
 - (a) supply food, drink or entertainment; or
 - (b) offer, promise or give a gift, donation or prize to or for any person, club, association or body –with the intention of influencing a person's election conduct at an election.
- (1A) Subsection (1) does not apply to –
 - (a) food, drink or entertainment if the value of the food, drink or entertainment does not exceed three fee units; and
 - (b) a gift, donation or prize if the value of the gift, donation or prize does not exceed three fee units.

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- (2) For the purposes of subsection (1) –

election conduct, in relation to a person, has the same meaning as in section 187.

- (3) A person who contravenes or fails to comply with subsection (1) is guilty of the crime of electoral treating, punishable on indictment under the *Criminal Code*.
- (4) Notwithstanding section 389 of the *Criminal Code*, a person who is convicted of the crime of electoral treating is liable to a penalty of a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.
- (5) In proceedings for an offence under subsection (1)(b) it is a defence for the person charged to show that gifts, donations or prizes similar in nature and in amount or value are regularly given by that person to the specific club, association or body.

189. Electoral intimidation

- (1) A person must not, by violence or intimidation, influence or attempt to influence a person's election conduct at an election.
- (2) For the purposes of subsection (1) –
- election conduct* has the same meaning as in section 187.
- (3) A person who contravenes or fails to comply with subsection (1) is guilty of the crime of

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electoral intimidation, punishable on indictment under the *Criminal Code*.

- (4) Notwithstanding section 389 of the *Criminal Code*, a person who is convicted of a crime of electoral intimidation is liable to a penalty of a fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 5 years, or both.

Division 5 – Offences relating to advertising and other campaigning

190. Interpretation for purposes of Division

In this Division, unless the contrary intention appears –

address means an address, other than a post office box or an electronic address –

- (a) at which the person resides; or
- (b) at or through which the person can be readily contacted;

responsible person means the person taking responsibility for causing electoral matter to be printed, published or distributed.

191. Campaign material to be authorised

- (1) Subject to sections 192, 193 and 194, a person must not, between the issue of the writ for an election and the close of poll at that election –

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- (a) print, publish, keep on display or distribute, or permit or authorise another person to print, publish, keep on display or distribute, any printed electoral matter without the name and address of the responsible person being printed, in legible characters, at the end of the electoral matter; or
- (b) publish, or permit or authorise another person to publish, any electoral matter on the internet without the name and address of the responsible person appearing at the end of the electoral matter.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

- (2) Printed electoral matter is published or kept on display by a person if the publication or display is published or kept on display with that person's consent.

192. Authorisation not required on specified items

Section 191 does not apply to printed electoral matter which is printed on –

- (a) an item of clothing, lapel button or lapel badge; or
- (b) a pen, pencil or balloon; or

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- (c) a business card or visiting card that promotes the candidacy of a person in an election; or
 - (d) a letter or card on which the name and address of the sender appears; or
 - (e) any other approved item.

193. Newspaper and periodical reportage and commentary

- (1) Section 191 does not apply to electoral matter contained in reportage or commentary in an issue of a newspaper or periodical if the issue contains a statement to the effect that the editor or a person whose name and address appears in the statement has authorised the publication of all electoral matter contained in reportage or commentary in that issue.

- (2) In this section –

reportage or commentary, in relation to a newspaper or periodical, means everything in the newspaper or periodical except advertisements and letters to the editor.

194. Letters to the editor

- (1) Section 191 does not apply to a letter to the editor of a newspaper or periodical if –

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- (a) the name of the author and the locality of the author's residence appears at the end; and
 - (b) the editor of the newspaper or periodical –
 - (i) keeps, for 6 months after publication, a written record of the address of the author, as stated in the original of the letter sent to the editor, or as otherwise ascertained by the editor; and
 - (ii) provides, when requested by the Commission, a copy of a record kept under subparagraph (i).
- (2) For the purposes of subsection (1)(a), it is sufficient to identify the locality of an author's residence by reference to –
- (a) the suburb or town including, or nearest to, that residence; and
 - (b) in the case of a locality outside Tasmania, the State, Territory or other country of that residence.

195. Advertisements and advertorials

The proprietor of a newspaper or periodical must, between the issue of the writ for an election and the close of poll at that election, cause the word "advertisement" to be printed as a headline, in letters not smaller than 10 point, to

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each advertisement, article or paragraph in the proprietor's newspaper containing electoral matter –

- (a) the insertion of which is, or is to be, paid for; or
- (b) for which any reward or compensation or promise of reward or compensation is, or is to be, made.

Penalty: Fine not exceeding 50 penalty units.

196. Candidate names not to be used without authority

- (1) A person must not between the issue of the writ for an election and the close of poll at that election print, publish or distribute any advertisement, "how to vote" card, handbill, pamphlet, poster or notice which contains the name, photograph or a likeness of a candidate or intending candidate at that election without the written consent of the candidate.

Penalty: Fine not exceeding 300 penalty units or imprisonment for a term not exceeding 12 months, or both.

- (2) Subsection (1) does not apply to any matter printed, published or distributed by the Commission or the Commissioner in the course of promoting public awareness of elections and parliamentary matters.

197. Misleading and deceptive electoral matter

A person must not –

- (a) print, publish or distribute, or permit or authorise the printing, publishing or distribution of, any printed electoral matter that is intended to, is likely to or has the capacity to mislead or deceive an elector in or in relation to the recording of his or her vote; or
- (b) publish on the internet, or permit or authorise the publishing on the internet of, any electoral matter that is intended to, is likely to or has the capacity to mislead or deceive an elector in or in relation to the recording of his or her vote; or
- (c) broadcast on radio or television, or permit or authorise the broadcasting on radio or television of, any electoral matter that is intended to, is likely to or has the capacity to mislead or deceive an elector in or in relation to the recording of his or her vote.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 6 months, or both.

198. Campaigning on polling day

- (1) A person must not, on the polling day fixed for an election, or on a day to which the polling for

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an election has been adjourned, distribute any advertisement, "how to vote" card, handbill, pamphlet, poster or notice containing any electoral matter.

(a - b)

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term of 3 months, or both.

- (2) Subsection (1) does not apply to any matter printed, published or distributed by the Commission or the Commissioner in the course of promoting public awareness of elections and parliamentary matters.

Division 6 – Offences relating to electoral expenses

199. Offences relating to electoral expenses

- (1) A person who contravenes section 159 or 162 is guilty of an offence.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (2) A candidate at a Council election who contravenes section 160 by incurring any amount not exceeding \$1 000 in excess of the expenditure limit is guilty of an offence.

Penalty: Fine not exceeding 0.05 penalty unit for each \$1 of that first-mentioned amount.

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- (3) A candidate at a Council election who contravenes section 160 by incurring any amount exceeding \$1 000 in excess of the expenditure limit is guilty of an offence.

Penalty: Fine not exceeding 150 penalty units.

- (4) A candidate who, without reasonable excuse, fails to comply with section 161 within the period referred to in that section, or, if the Commission has allowed that period to be extended, within that extended period, is guilty of an offence.

Penalty: Fine not exceeding 200 penalty units.

- (5) If a court finds that a candidate who is successful at a Council election is guilty of –
- (a) an offence under subsection (3) and, in respect of that offence, the court makes a finding that the candidate incurred electoral expenditure that exceeded the expenditure limit by more than \$1 000, the court, if it is satisfied with the correctness of that finding, is to declare that candidate's election void unless the court is satisfied that there are special circumstances that make it undesirable or inappropriate for it to make such a declaration; or
 - (b) an offence under subsection (4), the court is to declare that candidate's election void unless the court is satisfied that there are special circumstances of the kind referred to in paragraph (a).

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- (6) A candidate who, in purported compliance with section 161, files a return, invoice or receipt which is, to his or her knowledge, false or misleading in a material particular is guilty of an offence.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (7) A person must not, without reasonable excuse, fail to comply with a requirement made under section 165(1).

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

- (8) A person who, in purported compliance with a requirement made under section 165(1), provides information, gives an answer or makes a statement which is, or produces records which are, to his or her knowledge, false or misleading in a material particular is guilty of an offence.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

- (9) In any proceedings for an offence under this section, a copy of a record or part of a record made under section 165(2) is admissible in evidence in those proceedings and, in the absence of evidence to the contrary, the contents of the copy are to be presumed to be the same as those on the original record or part.

Division 7 – Continuing offences

200. Continuing offences

(1) If –

- (a) by or under a section, or a subsection of a section, of this Act an act or thing is required or directed to be done within a particular period or before a particular time; and
- (b) failure to do that act or thing within the period, or before the time, referred to in paragraph (a) constitutes an offence; and
- (c) that act or thing is not done within the period, or before the time, referred to in paragraph (a) –

the following provisions of this subsection have effect:

- (d) the obligation to do that act or thing continues, notwithstanding that that period has expired or that time has passed, until that act or thing is done;
- (e) if a person is convicted of an offence that is constituted by failure to do that act or thing within that period or before that time, as the case may be, that person is guilty of a separate and further offence in respect of each day after the day of the conviction during which the failure to do that act or thing continues;

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- (f) the fine applicable to each such separate and further offence is an amount not exceeding 0.5 penalty units.

(2) Where –

- (a) by or under a section, or a subsection of a section, of this Act an act or thing is required or directed to be done but no period within which or time by which that act or thing is to be done is specified; and
- (b) failure to do that act or thing constitutes an offence; and
- (c) a person is convicted of an offence in respect of a failure to do that act or thing –

that person is guilty of a separate and further offence in respect of each day after the day of the conviction during which the failure to do that act or thing continues and the fine applicable to each such separate and further offence is an amount not exceeding 0.5 penalty units.

- (3) Charges against the same person for any number of offences under subsection (1)(e) or subsection (2) may be joined in the same complaint if those offences relate to a failure to do the same act or thing.
- (4) If a person is convicted of more than one offence under subsection (1)(e) or more than one offence under subsection (2), the court may impose one penalty in respect of all the offences of which

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the person is so convicted under that subsection, but that penalty is not to exceed the sum of the maximum penalties that could be imposed if the penalty were imposed in respect of each offence separately.

**PART 8 – DISPUTED ELECTIONS, ELIGIBILITY AND
VACANCIES**

Division 1 – Interpretation

201. Interpretation: Part 8

In this Part, unless the contrary intention appears –

the Full Court means the Full Court of the Supreme Court;

recount means a recount referred to in section 231;

the rules means the Rules of Court made under section 203 and the *Supreme Court Rules 2000* to the extent that they apply under section 204.

Division 2 – Jurisdiction and powers of Supreme Court

202. Jurisdiction of Supreme Court to hear and determine application

- (1) The Supreme Court has jurisdiction to hear and determine an application under section 205 or determine a question referred to it under section 220.
- (2) The Supreme Court is to be constituted by a judge sitting alone for the purpose of exercising the jurisdiction conferred by subsection (1).

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203. Rules of Court

Rules of Court, not inconsistent with this Act, may be made under the *Supreme Court Civil Procedure Act 1932* for the purposes of this Part.

204. Application of Supreme Court Rules

The *Supreme Court Rules 2000* apply to proceedings before the Supreme Court under this Part to the extent that they are not inconsistent with the provisions of this Act or any Rules of Court made under section 203.

Division 3 – Disputed elections

205. Election may be disputed

- (1) The validity of an election, a recount or the return of a person as a Member of the Assembly or the Council may be disputed by an application made to the Supreme Court and not otherwise.
- (2) The Supreme Court is not to determine an application that –
 - (a) is made by a person other than a person referred to in section 206; or
 - (b) does not comply with sections 207, 208 and 209.

206. Entitlement to lodge application

- (1) The following are entitled to make an application under section 205:

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- (a) a candidate at the election or relevant election;
 - (b) an elector entitled to vote at the election or relevant election;
 - (c) the Commission;
 - (d) in the case of a recount, a person whose name was on the roll, for the division in which the recount was held, at the time of the recount.
- (2) For the purposes of subsection (1), in the case of a recount –

relevant election means the election last held to elect all the Members of the division in which the recount was held.

207. Form of application

An application under section 205 is to –

- (a) be in the form prescribed by the rules;
and
- (b) state the matters prescribed by the rules.

208. Application to be accompanied by deposit

Except in the case of an application by the Commission, an application under section 205 is to be accompanied by a deposit of such amount as is prescribed by the rules as security for costs.

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209. Time for lodging application

- (1) Except as provided in subsection (2), an application under section 205 may be lodged with the Registrar of the Supreme Court not later than 90 days after –
 - (a) the return of the writ for the election concerned; or
 - (b) in the case of a recount, the Governor is informed of the name of the elected candidate in accordance with section 230 or section 231(3)(b).
- (2) If a returning officer is unable to decide which candidate or candidates are to be declared elected, the Commission may make an application under section 205 before the return of the writ.

210. Application to be served

The Registrar of the Supreme Court is to, as soon as practicable after an application is made under section 205, serve a sealed copy of the application on –

- (a) the person whose election is being disputed; and
- (b) if the Commission is not the applicant, the Commission.

211. Parties to application

- (1) The following are entitled to appear in a proceeding under this Part:
 - (a) the person who made the application under section 205;
 - (b) the Commission;
 - (c) the person whose election is being disputed;
 - (d) any other person with the leave of the Court.
- (2) A person who appears pursuant to subsection (1)(b), (c) or (d) is taken to be a respondent to the application.

212. Hearing of application

- (1) An application under section 205 is to be heard in open court, without a jury.
- (2) In hearing an application under section 205, the Supreme Court –
 - (a) is to be guided by the substantial merits and good conscience of the case; and
 - (b) is not bound by legal forms or technicalities or by the rules of evidence.
- (3) Notwithstanding that a respondent resigns or Parliament is prorogued, if the respondent has

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been returned as a Member, the hearing is to proceed.

- (4) On the hearing of an application under section 205, a charge of a corrupt or illegal practice may be inquired into, and evidence in relation to the charge may be received.
- (5) On the hearing of an application under section 205 complaining of an invalid election and claiming a seat in the Assembly or the Council for some person, the respondent may give evidence to prove that that person was not duly elected, in the same manner as if he or she had made an application under section 205 in relation to the election of that person.
- (6) If, in relation to an application under section 205, it appears that there is an equality of votes between any candidates at the election and that the addition of a vote would entitle any of those candidates to be declared elected, the Supreme Court is to refer the matter to the Commission.
- (7) On receipt of a matter referred to it under subsection (6), the Commission is to decide between the candidates by lot by an approved method and proceed as if the candidate who was decided by that lot had received an additional vote.

213. Inquiries by Court

- (1) In determining an application under section 205, the Supreme Court may make such inquiries as it

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considers appropriate, including but not limited to –

- (a) an inquiry as to the identity of persons who voted; and
 - (b) an inquiry as to whether or not ballot papers were improperly admitted or rejected.
- (2) The Court is not to inquire into the correctness of any roll.

214. Withdrawal of application made under section 205

- (1) A person who made an application under section 205 may apply to the Supreme Court for leave to withdraw that application.
- (2) An application under subsection (1) is to be –
 - (a) given by the Registrar of the Supreme Court to the Commission and to each of the respondents to the relevant application under section 205; and
 - (b) published by the Commission in at least one newspaper approved for the purpose and circulating generally in the division to which the relevant application under section 205 relates.
- (3) If there is more than one applicant in relation to an application under section 205, all the applicants must consent to the application for the withdrawal of that application.

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- (4) A respondent to an application under section 205 may oppose an application for the withdrawal of that application.
- (5) Before the Supreme Court gives leave for the withdrawal of an application made under section 205, the Court is to inquire into the reasons for the application to withdraw and, in the course of such an inquiry, is to determine whether the application to withdraw –
 - (a) was the result of an agreement, arrangement or understanding; or
 - (b) was in consideration of –
 - (i) the resignation, at any time in the future, of the Member whose election is being disputed; or
 - (ii) the withdrawal of any other application made under section 205; or
 - (iii) any other matters.
- (6) After making a determination under subsection (5), the Supreme Court is to publish its reasons for the determination as if it were giving reasons for a judgment and may give leave to withdraw the application or refuse leave to withdraw the application.

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215. Determination of application under section 205

Subject to section 214, the Supreme Court is to hear and determine an application under section 205, and may make an order that –

- (a) an election is void and a by-election is to be held; or
- (b) a person who has been declared elected was not duly elected; or
- (c) a person who has not been declared elected was duly elected; or
- (d) the application be dismissed in whole or part.

216. Date of effect of orders

- (1) If the Supreme Court makes an order under section 215(b), the Supreme Court is to, if appropriate, determine the date on which the person ceases to be a Member.
- (2) If the Supreme Court makes an order under section 215(c), the Supreme Court is to determine the date on which the person is declared to be elected.

217. Costs of application

- (1) At the hearing of an application under section 205, the Supreme Court may –

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- (a) award costs against an unsuccessful party to the proceedings; and
 - (b) make a recommendation that the costs of any party to the proceedings or any specified part of them be paid by the Crown.
- (2) If costs are awarded to a party to an application under section 205 against the applicant, the deposit paid by the applicant under section 208 is to be applied towards payment of the amount of costs awarded, but otherwise the deposit is to be repaid to the applicant.
- (3) The withdrawal of an application made under section 205 is not to affect the liability of the applicant or any other person for the payment of costs previously incurred.
- (4) All costs awarded in proceedings under this Part are recoverable and enforceable in the same way and to the same extent as costs awarded in an action before the Supreme Court are recoverable and enforceable.

218. Limitation on taking effect of orders under this Part

An order of the Supreme Court under this Part is not to take effect until –

- (a) the time limited for making an appeal against the order has expired; or
- (b) if an appeal is made within the period prescribed by the rules, the appeal is

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finally determined by the Full Court or, if the appeal is withdrawn before being finally determined by the Full Court, the day on which the appeal is withdrawn.

219. Appeals

- (1) Subject to and in accordance with the rules, an appeal against an order of the Supreme Court under this Part may be made to the Full Court not later than 7 days after the day on which that order is made, but only with the special leave of the Supreme Court.
- (2) At the hearing of an appeal under subsection (1), the Full Court may confirm the order appealed against or may quash that order, in which case the Court has and may exercise all the powers that the Supreme Court has and may exercise under this Part in relation to an application under section 205.

Division 4 – Reference to Supreme Court of qualifications, vacancies and eligibility

220. Reference to Supreme Court of questions as to qualification, vacancy or eligibility

- (1) The Assembly may, by resolution, refer to the Supreme Court any question relating to –
 - (a) the qualification of a Member of the Assembly; or
 - (b) a vacancy in the Assembly; or

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- (c) the eligibility of a person to be elected to the Assembly under Part 9.
- (2) The Council may, by resolution, refer to the Supreme Court any question relating to –
 - (a) the qualification of a Member of the Council; or
 - (b) a vacancy in the Council.

221. Speaker or President to state case

Whenever a question is referred to the Supreme Court under section 220, the Speaker of the Assembly or, as the case may be, the President of the Council is to give the Court –

- (a) a statement of the question on which the determination of the Court is desired; and
- (b) any proceedings, papers, reports, documents or other information relating to the reference in the possession of the Assembly or Council, as the case requires.

222. Parties to reference

- (1) The Supreme Court may –
 - (a) allow any interested person to be heard on the hearing of a question referred to it under section 220; or

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- (b) direct notice of a question referred to it under section 220 to be served on a person.
- (2) A person allowed to be heard or directed to be served under subsection (1) becomes a party to the question referred under section 220.

223. Powers of Supreme Court on hearing of reference under section 220

The Supreme Court is to hear and determine a question referred under section 220, and may make one or more of the following orders:

- (a) that a person who is not qualified to be a Member of the Assembly, or, as the case may be, of the Council, is disqualified from continuing to be a Member of the Assembly or the Council;
- (b) that the seat of a Member of the Assembly, or, as the case may be, of the Council, has become vacant;
- (c) that a person is not eligible to be elected to the Assembly under Part 9;
- (d) that a person who is not capable of sitting or voting as a Member of the Assembly, or, as the case may be, of the Council, is no longer capable of sitting as a Member of the Assembly or the Council;
- (e) that the question be dismissed in whole or in part.

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224. Determination, &c., to be sent to House affected

After the hearing and determination of a question referred under section 220, the Registrar of the Supreme Court is to immediately forward to the Speaker of the Assembly or, as the case may be, the President of the Council, a copy of the Court's order.

225. Application of certain sections of this Act to reference under section 220

The provisions of sections 203, 204, 212, 217(1) and (4), 218 and 219 apply, in so far as they are capable of applying and with any necessary modifications, to a question referred under section 220 in the same way as they apply to an application under section 205.

PART 9 – CASUAL VACANCIES IN ASSEMBLY

226. Procedure if vacancy occurs in Assembly

(1) If the Governor receives –

- (a) the resignation of a Member of the Assembly pursuant to section 15 of the *Constitution Act 1934*; or
- (b) a notice under subsection (2) informing the Governor that a seat in the Assembly has become vacant; or
- (c) a notice from a returning officer that in accordance with section 90(4) a vacancy has been taken to have occurred –

the Governor is to inform the Commissioner of the vacancy.

(2) If a vacancy occurs in the Assembly otherwise than because of –

- (a) the resignation of the Member; or
- (b) the dissolution of the Assembly or the expiry of the term for which Members of the Assembly were elected at an Assembly general election; or
- (c) the failure or partial failure of an election in respect of an Assembly division –

the Speaker of the Assembly must, by notice signed by him or her, inform the Governor that the seat has become vacant.

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- (3) Subject to section 232, if the Commissioner is informed of a vacancy under subsection (1) he or she is to, if satisfied that it is practicable to fill the vacancy by recount as provided in this Part, publish a notice which is to –
- (a) be in an approved form; and
 - (b) be published as soon as practicable in at least one newspaper approved for the purpose and circulating generally in the relevant division; and
 - (c) give notice of the vacancy; and
 - (d) call for nominations from eligible persons to contest a recount to fill a vacancy in accordance with this Part.

227. Qualifications to contest recount to fill vacancy in Assembly

- (1) A person may nominate to contest a recount to fill a vacancy if the person –
- (a) was a candidate at the election to fill all the seats for that division last held before the vacancy occurred; and
 - (b) was not elected at that election; and
 - (c) is still qualified under the *Constitution Act 1934* to be elected as a Member of the Assembly.
- (2) For the purposes of subsection (1)(c), a person is still qualified under the *Constitution Act 1934* to

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be elected as a Member of the Assembly,
notwithstanding that the person –

- (a) was not living in Tasmania at the time the vacancy occurred; or
- (b) did not live in Tasmania for a period between the date of the election referred to in subsection (1) and the date the vacancy occurred.

228. How and when to nominate to contest recount

- (1) A nomination of a person under section 227(1), to contest a recount to fill a vacancy, is invalid unless it complies with the requirements of this section.
- (2) Subject to subsection (3), a nomination under section 227(1) is to –
 - (a) be in an approved form; and
 - (b) include a statement signed by the candidate consenting to act in the event of his or her election; and
 - (c) include a declaration signed by the candidate that he or she is still qualified under the *Constitution Act 1934* to be elected as a Member of the Assembly; and
 - (d) be lodged, posted or sent by an approved electronic means so as to be received by the Commissioner before noon on the fourteenth day after the day on which the

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notice of the vacancy was published under section 226(3).

- (3) A nomination under section 227(1) may be provided by an approved method.

229. Announcement of nominations to contest recount

As soon as practicable after the close of nominations for a recount, the Commissioner is to publicly produce all nomination forms that he or she is satisfied are in accordance with section 228 and –

- (a) publicly announce the names of the persons who are to contest the recount; and
- (b) display, at the office of the Commission, a notice containing the details of that announcement.

230. Election without recount

Subject to section 232, if the Commissioner receives only one nomination made under section 227(1), a recount is not required and the Commissioner is, as soon as practicable, to –

- (a) publicly declare the candidate to be duly elected as a Member of the Assembly to fill the vacant seat; and
- (b) by notice signed by him or her, inform the Governor that the candidate has been elected.

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231. Election with recount

- (1) Subject to section 232, if the Commissioner receives two or more nominations made under section 227(1), the vacant seat is to be filled by a recount.
- (2) A recount is to be conducted by the Commissioner –
 - (a) as soon as practicable after the close of nominations for that recount; and
 - (b) in accordance with Schedule 6 and any approved procedures.
- (3) As soon as practicable after completing a recount, the Commissioner is to –
 - (a) publicly declare the successful candidate to be duly elected as a Member of the Assembly to fill the vacant seat; and
 - (b) by notice signed by him or her, inform the Governor that the successful candidate has been elected.

232. When by-election to be conducted rather than recount

- (1) If –
 - (a) a vacancy which the Governor would be required to notify the Commissioner of under section 226(1) occurs; and

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- (b) none of the candidates who were included in the same registered party group as the vacating Member are available to contest the vacancy –

the registered officer of that registered party may, by notice in writing to the Commissioner no later than 24 hours after the close of nominations for the recount, request that a by-election be held to fill the vacancy.

- (2) For the purposes of subsection (1)(b) a candidate –

- (a) is taken to be included in the same registered party group if his or her name appeared under the same party name on the ballot paper for the election at which the vacating Member was elected; and

- (b) is taken to be not available if –

- (i) he or she provides the Commissioner with a statutory declaration stating that he or she will not be nominating to contest the recount; or
- (ii) the Commissioner is satisfied that he or she is not eligible to contest the recount; or
- (iii) at the close of nominations, a nomination for that candidate has not been accepted.

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- (3) As soon as practicable after receiving a request under subsection (1), the Commissioner is to –
- (a) report the request to the Governor; and
 - (b) take no further action in relation to the conduct of a recount under this Part.
- (4) Votes cast at an Assembly by-election are to be counted in accordance with Schedule 4, with such modifications as the Commission determines.

PART 10 – MISCELLANEOUS

233. Injunctions

- (1) If a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of this Act, the Supreme Court may, on the application of –

- (a) the Commission; or
- (b) any person whose interests have been, are or would be affected by the conduct –

grant an injunction restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

- (2) If a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that he or she is required by this Act to do, the Supreme Court may, on the application of –

- (a) the Commission; or
- (b) a person whose interests have been, are or would be affected by the refusal or failure to do that act or thing –

grant an injunction requiring the first-mentioned person to do that act or thing.

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- (3) If an application is made to the Supreme Court for an injunction under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) pending the determination of the application.
 - (4) The Court may rescind or vary an injunction or interim injunction granted under subsection (1), (2) or (3).
 - (5) If an application is made to the Supreme Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised –
 - (a) if the Court is satisfied that the person has engaged in conduct of that kind, whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

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- (6) If an application is made to the Supreme Court for the grant of an injunction requiring a person to do a particular act or thing, the power of the Court to grant the injunction may be exercised –
 - (a) if the Court is satisfied that the person has refused or failed to do that act or thing, whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing, whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.
- (7) If the Commission makes an application to the Supreme Court for the grant of an injunction under this section, the Court is not to require the Commission or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (8) If the Supreme Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in

substitution for the grant of the injunction, order that person to pay damages to any other person.

234. Evidentiary provisions

A document purporting to be a certificate by the Commission, Commissioner or a returning officer and stating –

- (a) that an election specified in the certificate was held on the day specified in the certificate; or
- (b) that a person specified in the certificate was a candidate at a specified election; or
- (c) that a person specified in the certificate is an elector and that he or she has failed to record his or her vote at an election that was held on the day specified in the certificate –

is admissible as evidence of its contents in any legal proceedings.

235. Ballot papers, &c., to be evidence

- (1) If any used ballot paper or other document purporting to have been taken from a parcel forwarded to the Commission under section 149 has been certified by the Commission as having been taken from that parcel, the certification by the Commission is admissible in evidence in proceedings before any court that the ballot paper or other document was so taken and that, in the case of a ballot paper, it was deposited in a

ballot box or otherwise received in accordance with this Act and, if another document, that it was used at the election to which the certification relates.

- (2) A used ballot paper certified in accordance with subsection (1) is evidence of a vote recorded at the election concerned.

236. Certain crimes to be tried by justices

- (1) Where a person is brought before justices on a complaint for a crime under –
- (a) section 183; or
 - (b) section 186; or
 - (c) section 188; or
 - (d) any other section of this Act prescribed by the regulations for the purposes of this section –

the justices, instead of asking the person to plead under section 55 or 58 of the *Justices Act 1959*, may ask the person whether he or she is willing to be tried by the justices instead of by a jury.

- (2) Subject to subsection (3), if a person to whom subsection (1) applies, or if he or she is under the age of 16 years his or her parent or guardian, signifies the person's willingness to be tried by the justices, the section creating the offence is taken to have created a simple offence and the complaint is to be dealt with accordingly.

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- (3) If, in a case to which subsection (1) applies, the complainant, before the defendant is asked whether he or she objects to being tried by the justices –
- (a) shows to the justices that the defendant –
 - (i) is under committal to the Supreme Court for trial or sentence; or
 - (ii) has been charged with an offence for which he or she may be so committed, the examination into which is pending or not concluded; and
 - (b) requests that the procedure provided by this section should not apply –

the justices may proceed as if this section had not been enacted.

237. Prosecutions for offences involving corrupt or illegal practices

- (1) Whenever the Director of Public Prosecutions has reason to believe that a person may have engaged in a corrupt practice at an election, whether as a result of a determination under section 215 by the Supreme Court or otherwise, the Director of Public Prosecutions is to consider the matter with a view to determining whether or not there is sufficient evidence to support a prosecution against that person in respect of the

corrupt practice and, if there is such evidence, whether such a prosecution should be instituted.

- (2) Whenever the Commission has reason to believe that a person may have committed an illegal practice, whether as a result of a finding under section 215 by the Supreme Court or otherwise, the Commission is to consider the matter with a view to determining whether or not there is sufficient evidence to support a prosecution against that person in respect of the offence and, if there is such evidence, whether such a prosecution should be instituted.

238. Immaterial errors not to void election

An election may not be declared void merely on account of –

- (a) any irregularity or delay in the declaration of nominations, polling for the election or the return of the writ for the election; or
- (b) the absence of a returning officer or an election official which in the opinion of the Supreme Court did not affect the result of the election; or
- (c) an omission or error by the Commission, the Commissioner, a returning officer or an election official which in the opinion of the Supreme Court did not affect the result of the election.

239. Disqualification from being elected, &c.

- (1) Any candidate or other person who is convicted of a corrupt practice or who is found by the Supreme Court under Part 8 to have engaged in a corrupt practice is, for a period of 4 years from and including the date of the conviction or finding, incapable –
 - (a) of being elected to, and sitting as a Member of, either the Assembly or the Council; and
 - (b) of being enrolled as an elector or of voting at any election under this Act.
- (2) If the return of a person who was a candidate at an election is void by virtue of the operation of section 215 and the Supreme Court makes an order under that section declaring the election to have been void, that person is not qualified to be a candidate at an election that is subsequently held in consequence of the first-mentioned election having been declared void.

240. Costs and expenses of election

The costs and expenses incurred in or in connection with the conduct of an election are a charge on the Consolidated Fund and are payable out of the Consolidated Fund without further appropriation than this section.

241. Disposal of money received by election official or returning officer

All money received by an election official or returning officer under this Act is to be paid to the Treasurer and is taken to have been received on account of the Consolidated Fund.

242. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Commission or Commissioner.

243. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

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244. Savings and transitional

The savings and transitional provisions set out in Schedule 7 have effect.

244A. Application of amendments effected by *Electoral Amendment (Legislative Council Ballot Papers) Act 2015*

The amendments of this Act effected by the *Electoral Amendment (Legislative Council Ballot Papers) Act 2015* do not apply to a Council election in respect of which a writ, for the holding of the election, was issued before the commencement of that Act.

245. *See Schedule 8.*

246. *See Schedule 9.*

SCHEDULE 1 – MEMBERSHIP OF COMMISSION

Section 8(5)

1. Interpretation

In this Schedule –

member means a member of the Commission but does not include the Commissioner.

2. Term of office

A member is appointed for such period, not exceeding 7 years, as is specified in the member's instrument of appointment and, if eligible, may be reappointed.

3. Holding other office

The holder of an office who is required by the terms of his or her employment to devote the whole of his or her time to the functions of that office is not disqualified from –

- (a) holding that office and also the office of a member; or
- (b) accepting any remuneration payable to a member.

4. *State Service Act 2000*

- (1) The *State Service Act 2000* does not apply in relation to a member in his or her capacity as a member.
- (2) A person may hold the office of member in conjunction with State Service employment.

5. Remuneration and conditions of appointment

- (1) A member is entitled to be paid such remuneration and allowances as are specified in the member's instrument of appointment.
- (2) A member who is a State Service officer or State Service employee is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.
- (3) Remuneration payable under this clause is to be paid from the Consolidated Fund without further appropriation than this subclause.
- (4) A member holds office on such terms and conditions in relation to matters not provided for by this Act as are specified in the member's instrument of appointment.

6. Leave of absence

The Governor may grant a member leave of absence on such terms and conditions as the Governor determines.

7. Resignation

A member may resign office by written notice given to the Governor.

8. Suspension or removal of member from office

- (1) A member may, at any time, be removed from office by the Governor on addresses from both Houses of Parliament.
- (2) The Governor may suspend a member from office if the Governor is satisfied that the member –
 - (a) is incapable of properly performing the functions of a member; or
 - (b) has shown himself or herself incompetent to properly perform those functions or has neglected to perform those functions; or
 - (c) has been absent without leave granted under clause 6 from 3 consecutive meetings of the Commission; or
 - (d) is or has become bankrupt or has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with the member's creditors or made an assignment of the member's remuneration or estate for their benefit; or
 - (e) has been convicted, in Tasmania or elsewhere, of a crime or an offence

punishable by imprisonment for a term of 12 months or longer or a fine of 300 penalty units or more; or

(f) has contravened clause 8 of Schedule 2; or

(g) has been guilty of misconduct.

(3) If a member has been suspended from office under subclause (2), the member is to be restored to office unless –

(a) a statement of the grounds of the member's suspension is laid before each House of Parliament during the first 7 sitting-days of the House following the suspension; and

(b) each House of Parliament, during the session of the House in which the statement is so laid, and within 30 sitting-days of the statement being so laid, passes an address requesting the removal of the member from office.

9. Acting members

(1) In the absence of a member, the Governor may appoint a person to act in the place of the member if that person is eligible for appointment as a member.

(2) Anything done by or in relation to a person purporting to act under this section is not invalid on the ground that –

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- (a) the occasion for the person's appointment had not arisen; or
- (b) there is a defect or irregularity in connection with the person's appointment; or
- (c) the person's appointment ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

10. Validation of proceedings, &c.

- (1) An act or proceeding of the Commission or of a person acting under any direction of the Commission is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the office of a member.
- (2) All acts and proceedings of the Commission or of a person acting under a direction of the Commission are, despite the subsequent discovery of a defect in the appointment of a member or that any other person was disqualified from acting as, or incapable of being, a member, as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the Commission had been fully constituted.

11. Presumptions

In any proceeding by or against the Commission, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Commission; or
- (b) the appointment of any member.

SCHEDULE 2 – MEETINGS OF COMMISSION

Section 8(6)

1. Interpretation

In this Schedule –

member means a member of the Commission.

2. Convening of meetings

- (1) Any member may convene a meeting of the Commission.
- (2) The chairperson is to convene such meetings of the Commission as are necessary for the efficient conduct of its functions.

3. Presiding at meetings

- (1) The chairperson of the Commission is to preside at all meetings of the Commission at which he or she is present.
- (2) If the chairperson is not present at a meeting of the Commission, the Commissioner is to preside.

4. Quorum and voting at meetings

- (1) Two members constitute a quorum at a meeting of the Commission.
- (2) A meeting of the Commission at which a quorum is present is competent to transact any business of the Commission.

- (3) The person presiding at a meeting of the Commission has a deliberative vote and, in the event of an equality of votes, also a casting vote.

5. Conduct of meetings

- (1) Subject to this Act, the Commission may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.
- (2) The Commission may permit members to participate in a particular meeting or all meetings by –
 - (a) telephone; or
 - (b) video conference; or
 - (c) any other means of communication approved by the Commission.
- (3) A member who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.
- (4) Without limiting subclause (1), the Commission may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

6. Resolutions without meetings

- (1) If all members appointed sign a document containing a statement that they are in favour of a resolution in the terms set out in the document,

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a resolution in those terms is taken to have been passed at a meeting of the Commission held on the day on which the document is signed or, if the members do not sign it on the same day, on the day on which the last of the members signs the document.

- (2) If a resolution is taken to have been passed under subclause (1), each member is to be –
 - (a) advised immediately of the matter; and
 - (b) given a copy of the terms of the resolution.
- (3) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, is taken to constitute one document.
- (4) The Commission –
 - (a) may, by resolution, determine –
 - (i) an electronic method by which proposed resolutions may be distributed to members; and
 - (ii) an electronic method by which proposed resolutions, distributed to members by the electronic method determined for the purposes of subparagraph (i), may be passed; and

- (b) if a determination is made under paragraph (a), must, by resolution, determine a means, which may be an electronic means, by which the Commission is to keep records of –
 - (i) the distribution to members, in accordance with the electronic method determined under paragraph (a)(i), of proposed resolutions; and
 - (ii) the passing, in accordance with the electronic method determined under paragraph (a)(ii), of proposed resolutions; and
 - (c) if a determination is made under paragraph (a), must, by resolution, determine a means, which may be an electronic means, by which copies of the records kept in accordance with the means determined under paragraph (b) are to be given by the Commission to members.
- (5) If an electronic method by which proposed resolutions may be distributed to members is determined under subclause (4)(a)(i) –
- (a) a proposed resolution may be distributed to members in accordance with that method; and
 - (b) a proposed resolution distributed to members in accordance with that method is to be taken to have been passed at a

meeting of the Commission on the day, if any, by which all members have, in accordance with the electronic method determined under subclause (4)(a)(ii), passed the proposed resolution (being the last day on which a member, in accordance with that method, passes the proposed resolution); and

- (c) the Commission is to keep, in accordance with the means determined under subclause (4)(b), a record of –
 - (i) the distribution to members, in accordance with the electronic method determined under subclause (4)(a)(i), of a proposed resolution; and
 - (ii) the passing, in accordance with the electronic method determined under subclause (4)(a)(ii), of a proposed resolution; and
- (d) the Commission, as soon as practicable after –
 - (i) the distribution to members, in accordance with the electronic method determined under subclause (4)(a)(i), of a proposed resolution; and
 - (ii) the passing of the proposed resolution in accordance with the electronic method determined under subclause (4)(a)(ii) –

is to give to each member, in accordance with the means determined in accordance with subclause (4)(c), a copy of the records referred to in subclause (4)(b) that relate to that resolution.

7. Minutes

The Commission is to keep accurate minutes of its meetings.

8. Disclosure of interests

- (1) If a member has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Commission, the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to the Commission.

Penalty: Fine not exceeding 100 penalty units or a term of imprisonment not exceeding 3 months, or both.

- (2) The disclosure is to be recorded in the minutes of the Commission and, unless the Commission otherwise determines, a member who has made a disclosure under subclause (1) in relation to a matter must not –
 - (a) be present during any deliberation of the Commission in relation to the matter; or
 - (b) take part in any decision of the Commission in relation to the matter.

- (3) For the purpose of making a determination under subclause (2), the member to whom the determination relates must not –
 - (a) be present during any deliberation of the Commission for the purpose of making the determination; or
 - (b) take part in making the determination.
- (4) Subclause (1) does not apply in respect of an interest that arises only because the member is also a State Service officer or State Service employee.

9. General procedure

- (1) Except as provided by this Act, the Commission may regulate its own proceedings.
- (2) The Commission may inform itself on any matter in such manner as it thinks fit.

10. Presumptions

In any proceeding by or against the Commission, unless evidence is given to the contrary, proof is not required of –

- (a) any resolution of the Commission; and
- (b) the presence of a quorum at any meeting of the Commission.

**SCHEDULE 3 – PRINTING AND COLLATION OF
BALLOT PAPERS**

Sections 97 and 98

1. Interpretation

In this Schedule, unless the contrary intention appears –

column, in relation to a ballot paper, means a column of candidates' names printed on the ballot paper in accordance with section 97 or 98;

favoured position, in relation to a column of a ballot paper, means (reading from the top of the column) –

- (a) if the names of 2 candidates are to appear in the column – the first position in the column; and
- (b) if the names of 3 candidates are to appear in the column – the first and third positions in the column; and
- (c) if the names of 4 candidates are to appear in the column – the first and fourth positions in the column; and
- (d) if the names of 5 candidates are to appear in the column – the first, third and fifth positions in the column; and

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- (e) if the names of 6 candidates are to appear in the column – the first, second, fifth and sixth positions in the column; and
- (f) if the names of 7 candidates are to appear in the column – the first, second, sixth and seventh positions in the column; and
- (g) if the names of 8 candidates are to appear in the column – the first, second, seventh and eighth positions in the column; and
- (h) if the names of 9 candidates are to appear in the column – the first, second, eighth and ninth positions in the column; and
- (i) if the names of 10 or more candidates are to appear in the column – the first, second, third and last 3 positions in the column.

1A. Printing and collation of batches of ballot papers

- (1) Ballot papers are to be printed in batches with the ballot papers within each batch having the same order of candidate names.
- (2) There are to be two sets of batches.

- (3) The first set of batches is to be printed in accordance with the provisions of clauses 2, 3 and 4.
- (4) The second set of batches is to be printed so that –
 - (a) there is a batch corresponding to each batch in the first set of batches; and
 - (b) the corresponding batch in the second set of batches has the name of the same candidate in the first position, but the order of the names below that first name is reversed; and

For example, if the order of names on a batch in the first set of batches is ABCDE, the order of names on the corresponding batch in the second set of batches is AEDCB.

 - (c) the number of ballot papers in each batch in the second set of batches is, as far as practicable, to be equal to the number of ballot papers in each batch in the first set of batches.
- (5) All ballot papers are to be collated in accordance with clause 6 and issued in accordance with clause 7.

2. Ballot papers to be printed in equal batches

In relation to each candidate whose name is required to be included in the column or, as the

case may be, one of the columns of a ballot paper in accordance with section 97 or 98 –

- (a) there is to be printed, in respect of each of the favoured positions for that column, a batch of ballot papers on which the name of that candidate appears in such a favoured position; and
- (b) the number of ballot papers in each batch on which the name of that candidate appears in that column in a particular favoured position is, as far as is practicable, to be equal to the number of ballot papers in each of the other batches of ballot papers on which the name of every other candidate whose name is to be included in that column appears in that favoured position.

3. Order of names of candidates on first batch

For the printing of the first batch of ballot papers, the names of the candidates in the column or, as the case may be, in each of the columns are to be listed in the order determined under section 89(2)(a).

4. Order for subsequent batches

Subject to the provisions of this Schedule, the printing order for subsequent batches is to be as prescribed by the regulations.

5.

6. Collation of ballot papers

Before ballot papers for an election in respect of an electoral division are distributed to returning officers, the Commissioner is to, as far as is practicable, ensure that each issue of ballot papers is collated in such a way that the ballot paper immediately following another ballot paper in the issue is in a form different from that of the other ballot paper.

7. Issuing of ballot papers

When issuing ballot papers, an election official is to, as far as is practicable, issue an elector with a ballot paper in a different form from the previous ballot paper he or she issued.

**SCHEDULE 4 – METHOD OF COUNTING VOTES
RECORDED AT ASSEMBLY ELECTION**

Sections 145 and 232

1. Interpretation

- (1) In this Schedule, unless the contrary intention appears –

quota means the number of votes sufficient to elect a candidate at an election;

second preference recorded for a candidate means the recording of the number “2” in the box next to the name of a candidate on a ballot paper;

surplus means the number of votes which a candidate has obtained, at any stage of the counting of votes, in excess of the quota;

transfer value means that portion of a vote which is transferred to the candidate next in the order of the elector’s preference because it is unused by –

- (a) an elected candidate who has obtained a surplus; or
 - (b) a candidate excluded on account of his or her having the least number of votes.
- (2) For the purpose of the definition of “transfer value” in subclause (1), the transfer value of a vote is either one or a fraction of one.

2. First preference votes to be counted

The number of first preferences recorded for each candidate, on ballot papers which are not informal ballot papers, is to be counted.

3. Quota

The aggregate number of first preferences so recorded is to be divided by one more than the number of candidates required to be elected, and the quotient increased by one, disregarding any remainder, is to be the quota and (except as provided in clause 11) no candidate is to be elected until he or she obtains a number of votes equal to or greater than the quota.

4. Candidate with quota to be elected

A candidate who has, after the first preferences have been counted, a number of votes equal to or greater than the quota is to be declared elected.

5. Candidate with exact quota

If the number of first preferences obtained by a candidate is equal to the quota, all the ballot papers on which a first preference is recorded for that candidate are to be set aside as finally dealt with.

6. Surplus first preference votes to be distributed

If the number of first preferences obtained by a candidate is in excess of the quota, the surplus is to be transferred to the other candidates not yet declared elected, next in the order of the electors' respective preferences, in the following manner:

- (a) all the ballot papers on which a first preference is recorded for the elected candidate are to be re-examined, and the number of second preferences, or, in the case provided for in clause 13, third or next consecutive preferences, recorded for each unelected candidate are to be counted;
- (b) the surplus of the elected candidate is to be divided by the total number of votes obtained by the candidate on the counting of the first preferences, and the resulting fraction is to be the transfer value;
- (c) the number of second or other preferences, ascertained in paragraph (a) to be recorded for each unelected candidate, is to be multiplied by the transfer value;
- (d) the resulting number, disregarding any fractional remainder, is to be transferred to each unelected candidate, and added to the number of votes obtained by him or

her on the counting of the first preferences.

7. Order of distributing surpluses

- (1) If, on the counting of the first preferences or on a transfer, more than one candidate has a surplus, the largest surplus is to be dealt with first and, if at that stage more than one candidate has a surplus, the then largest surplus is to be dealt with, and so on, but if one candidate has obtained a surplus at a count or transfer previous to that at which another candidate obtains a surplus, the surplus of the former is to be dealt with first.
- (2) If 2 or more surpluses are equal, the surplus of the candidate who was recorded as having the highest number of votes at the last count or transfer at which the candidates had an unequal number of votes is to be dealt with first, and, if the candidates have had an equal number of votes at all preceding counts or transfers, the candidate whose surplus is to be dealt with first is to be determined by an approved method.

8. Method of dealing with surplus votes obtained at transfer of surplus

- (1) If the number of votes obtained by a candidate is increased to a number which is equal to, or exceeds, the quota by a transfer under clause 6, the candidate is to be declared elected.

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- (2) In a case to which subclause (1) applies, notwithstanding the fact that the candidate has reached the quota, the transfer is to be completed, and all the votes to which the candidate is entitled from the transfer are to be transferred to the candidate, but no votes of any other candidate are to be transferred to him or her.
- (3) If the number of votes obtained by a candidate is increased by a transfer under clause 6 to a number which is equal to the quota, all the ballot papers on which such votes are recorded are to be set aside as finally dealt with.
- (4) If the number of votes obtained by a candidate is increased by a transfer under clause 6 to a number which exceeds the quota, his or her surplus is to be transferred to the candidates next in the order of the electors' respective preferences, in the following manner:
 - (a) the ballot papers on which are recorded the votes obtained by the elected candidate in the last transfer are to be re-examined, and the number of third, or, in the case provided for in clause 13, next consecutive preferences recorded for each unelected candidate are to be counted;
 - (b) the surplus of the elected candidate is to be divided by the total number of ballot papers mentioned in paragraph (a), and the resulting fraction is to be the transfer value;

- (c) the number of third or other preferences, ascertained in accordance with paragraph (a) as having been recorded for each unelected candidate, is to be multiplied by the last-mentioned transfer value;
- (d) the resulting number, disregarding any fractional remainder, is to be credited to each unelected candidate and added to the number of votes previously obtained by him or her.

9. Method of transferring votes of excluded candidates

- (1) If, after the first preferences have been counted and all surpluses, if any, have been transferred as provided by this Schedule, no candidate, or less than the number of candidates required to be elected, has or have obtained the quota, the candidate who, at that count or transfer, has the least number of votes is to be excluded, and all the votes obtained by him or her are to be transferred to the candidates next in the order of the electors' respective preferences, in the same manner as provided by clause 6.
- (2) The votes received by the excluded candidate are to be sorted into groups according to their transfer values when received by that candidate.
- (3) The groups are to be transferred, at the transfer value at which they were received, in the following order:

- (a) firstly, the group with the highest transfer value;
 - (b) secondly, the remaining groups in descending order of transfer value.
- (4) Each of the transfers which takes place under subclause (3) is to be taken for all purposes to be a separate transfer.

10. Method of dealing with surplus votes obtained at transfer from excluded candidate

- (1) If the number of votes obtained by a candidate is increased by a transfer under subclause (4), clause 9 or clause 11 to a number which is equal to, or exceeds, the quota, the candidate is to be declared elected.
- (2) In a case to which subclause (1) applies, notwithstanding the fact that the candidate has reached the quota, the transfer is to be completed, and all the votes to which the candidate is entitled from the transfer are to be transferred to him or her, but no other votes are to be transferred to him or her.
- (3) If, by a transfer under subclause (4), clause 9 or clause 11, the number of votes obtained by a candidate is increased to a number of votes which is equal to, but does not exceed, the quota, all the ballot papers on which those votes are recorded are to be set aside as finally dealt with.
- (4) If, by a transfer under this subclause, clause 9 or clause 11, the number of votes obtained by a

candidate is increased to a number which exceeds the quota, his or her surplus is to be transferred to the candidates next in the order of the electors' respective preferences in the same manner as provided by clause 8(4), but, in the case of a transfer of the votes of an excluded candidate under clause 9 or 11, that surplus is not to be dealt with until all the votes of that excluded candidate have been transferred.

- (5) If a surplus exists, it is to be dealt with before any other candidate is excluded.

11. Exclusion of candidates to continue

The process of excluding the candidate who has polled the next lowest number of votes at the election and transferring to other candidates his or her votes, in accordance with clause 9, is to be repeated until all the candidates, except the number required to be elected, have been excluded, and the unexcluded candidates who have not already been so declared are then to be declared elected.

12. Candidates with equal number of votes

If on any count 2 or more candidates have an equal number of votes and one of them is to be excluded, then whichever of those candidates was recorded as having the least number of votes at the last count or transfer at which they had an unequal number of votes is to be excluded, and, if those candidates have had an equal number of votes at all preceding counts or transfers, the

candidate to be excluded is to be determined by an approved method.

13. Next available preferences

In determining which candidate is next in the order of an elector's preference, any candidates who have been declared elected or who have been excluded are not to be considered, and the order of the elector's preference is to be determined as if the names of those candidates had not been on the ballot paper.

14. Ballot paper taken to be exhausted

If on a transfer it is found that on a ballot paper there is no candidate opposite whose name a number is placed, other than a candidate who has been declared elected or excluded, the ballot paper is to be set aside as exhausted.

**SCHEDULE 5 – METHOD OF COUNTING VOTES
RECORDED AT COUNCIL ELECTION**

Section 145

1. Interpretation

In this Schedule, a reference to an absolute majority of votes, in relation to a candidate at an election, is a reference to a number of votes greater than one-half of the total number of ballot papers on which electors have recorded their votes for the candidate at the election, other than exhausted and informal ballot papers.

2. First preference votes to be counted

The number of first preferences recorded for each candidate is to be counted, and all informal ballot papers are to be rejected.

3. Candidate with absolute majority of votes to be elected

If a candidate obtains an absolute majority of votes, he or she is to be elected.

4. Candidate with fewest votes to be excluded

If no candidate has an absolute majority of votes, the candidate who has the least number of votes is to be excluded, and each ballot paper counted to him or her is, unless exhausted, to be counted to the unexcluded candidate next in the order of the elector's preference.

5. Exclusion of candidates to continue

If no candidate then has an absolute majority of votes, the process, as specified in clause 4, of excluding the candidate who has the fewest votes and counting each of the ballot papers counted to him or her, unless exhausted, to the unexcluded candidate next in the order of the elector's preference is to be repeated until one candidate has an absolute majority of votes.

6. Formal ballot papers to be counted until exhausted

Every ballot paper not rejected as informal is to be counted in every count until it becomes exhausted, and then is to be rejected in all further counts.

7. Ballot paper taken to be exhausted

When a candidate is excluded, any ballot paper counted to him or her is to be taken to be exhausted if there is not indicated on it a consecutive preference for one unexcluded candidate.

8. Candidates with equal number of votes

- (1) If on any count 2 or more candidates have an equal number of votes and one of them is to be excluded, then whichever of those candidates was recorded as having the least number of votes at the last count at which they had an unequal number of votes is to be excluded, and if those candidates have had an equal number of votes at

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all preceding counts, the candidate to be excluded is to be determined by an approved method.

- (2) If following the final count a candidate is excluded in accordance with subclause (1) and only one unexcluded candidate remains, that unexcluded candidate is to be elected.

**SCHEDULE 6 – METHOD OF FILLING VACANCY
ARISING IN HOUSE OF ASSEMBLY**

Section 231

1. Interpretation

In this Schedule –

- (a) a reference to a consenting candidate, in relation to a vacant seat in the Assembly, is a reference to a person who nominates himself or herself for the vacant seat as provided in section 227; and
- (b) a reference to the relevant election, in relation to a vacant seat, is a reference to the election last held, whether under this Act or the *Electoral Act 1985*, to fill all of the seats for the Assembly division which the vacating member formerly represented in the Assembly; and
- (c) a reference to the vacating member is a reference to the member whose seat in the Assembly has become vacant; and
- (d) a reference to the vacant seat is a reference to the seat of the vacating member.

2. Case where there is only one consenting candidate

If there is only one consenting candidate, the Commissioner is to immediately –

- (a) declare the candidate to be duly elected as a member of the Assembly to fill the vacant seat; and
- (b) by writing under his or her hand notify the Governor of the election of the candidate.

3. Case where there are 2 or more consenting candidates

If there are 2 or more consenting candidates, the Commissioner is to, within 7 days after the date fixed for the receipt of nominations, proceed to ascertain in the manner provided by clause 4, by an examination of all the completed ballot papers counted at the relevant election for the member whose seat has become vacant and the ballot papers directed to be counted for the vacating member as so provided, which of the consenting candidates is to be elected to fill the vacant seat.

4. Provisions to apply to determine which of 2 or more consenting candidates is to be elected

- (1) In this clause, a reference to the completed ballot papers counted for the vacating member is –
 - (a) if, after the first preferences were counted at the relevant election, the number of first preferences recorded for that member was equal to or exceeded the quota required for election to the Assembly, a reference to all the ballot

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papers on which those first preferences were recorded; and

- (b) in any other case, a reference to all the completed ballot papers counted for that member at the time of his or her election, including ballot papers relating to votes that were transferred to him or her.

(2) If –

- (a) the member whose seat has become vacant was, by virtue of clause 11 of Schedule 4, declared elected at the relevant election after the candidate who was lowest on the poll at that election had been excluded from the counting; and
- (b) the votes obtained by the excluded candidate were not required to be transferred to the candidates next in the order of the electors' respective preferences –

so many of those votes as would have been transferred to that member if the votes of the excluded candidate had been transferred to the candidates next in the order of the electors' respective preferences, are, for the purposes of this clause, to be taken to have been so transferred to, and to be obtained by, that member and the completed ballot papers representing those votes are to be counted for that member.

- (3) The ballot papers counted, or by subclause (2), directed to be counted, for the vacating member are to be examined, and all the votes obtained, or taken to have been obtained, by him or her are to be transferred to and counted for the consenting candidates first or next in the order of the electors' respective preferences.
- (4) The votes obtained as first preferences by the vacating member at the relevant election are to be transferred to the next preferred candidate at that election, with the transfer value of each of those votes determined in accordance with subclause (5), and the other votes (if any) of the vacating member are then to be dealt with in the order of the transfers in which they were obtained and at the transfer value determined in accordance with subclause (6).
- (5) If the votes obtained as first preferences by the vacating member –
 - (a) were sufficient to elect the member, the transfer value of those votes is the fraction determined by dividing the number of votes sufficient to elect the member by the total number of votes obtained by the member; or
 - (b) were insufficient to elect the member, the transfer value of those votes is one.
- (6) If the votes obtained by the vacating member at an individual count, other than the votes obtained as first preferences –

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- (a) did not provide a sufficient number of votes to elect that member, the transfer value of the votes obtained on such a count is that at which they were obtained by the member; or
 - (b) provided a sufficient number of votes to elect the member, the transfer value of the votes received at that count is that which would have provided the number of votes which the member required to be elected immediately prior to that count.
- (7) Each of the transfers which takes place under subclause (4) is to be taken for the purposes of this Schedule to be a separate transfer.
- (8) For the purposes of determining which consenting candidate is first or next in the order of the electors' preferences –
 - (a) the name of, and first choices recorded at the relevant election for, an excluded candidate who is a consenting candidate at the election to fill the vacant seat are, for the purposes of that last-mentioned election, not to be omitted from any completed ballot papers transferred to the vacating member, but are to be counted for that consenting candidate; and
 - (b) any candidates who were declared elected at the relevant election or who are not consenting candidates are to be disregarded and the order of the electors' respective preferences is to be

determined as if the names of those candidates had not been included on the ballot papers.

- (9) If, in relation to a completed ballot paper, it is found that there is no candidate opposite whose name a number has been placed other than a candidate –
- (a) who has already been declared elected; or
 - (b) who is not a consenting candidate; or
 - (c) whose name must, by virtue of section 103(2), be omitted from the ballot paper when determining the order of the electors' respective preferences –

the ballot paper is to be set aside as exhausted.

- (10) After the number of votes in favour of each consenting candidate has been ascertained in accordance with the preceding provisions of this clause, the method of counting votes set out in Schedule 5 where one member only has to be returned for a division is, with any necessary modifications, to be applied and followed, and the Commissioner is to declare the consenting candidate who obtains an absolute majority of the votes within the meaning of that Schedule to be duly elected to fill the vacant seat.

5. Case where vacating member elected under this Schedule

If the seat of a member of the Assembly becomes vacant and the vacating member was himself or herself elected under the provisions of this Schedule or of Schedule 5 to the *Electoral Act 1985* (as in force immediately before the commencement of this Act) –

- (a) the Commissioner, for the purpose of filling the vacancy, is to examine the ballot papers that, at the relevant election, were counted for the member in whose place the vacating member was elected (including ballot papers representing votes transferred to the last-mentioned member); and
- (b) the foregoing provisions of this Schedule are accordingly to be construed subject to paragraph (a).

SCHEDULE 7 – SAVINGS AND TRANSITIONAL

Section 244

1. Definitions

In this Schedule –

repealed Act means the *Electoral Act 1985*.

2. State roll

The State roll in existence immediately before the commencement of this Act is abolished and any person on the Commonwealth roll immediately before that commencement is taken, on that commencement, to be on the State roll.

3. Registered parties

- (1) Any party which, immediately before the commencement of this Act, was registered under Part IV of the repealed Act is, on and after that commencement, taken to be registered under and subject to this Act.
- (2) A person who, immediately before the commencement of this Act, was registered under Part IV of the repealed Act as an endorsement representative of a registered party is, on and after that commencement, taken to be the registered officer of that registered party registered under and subject to this Act.
- (3) A person who, immediately before the commencement of this Act, was registered under

Part IV of the repealed Act as a registered member of a registered party is, on and after that commencement, taken to be a registered member of that registered party registered under and subject to this Act.

4. Chief Electoral Officer

The person who, immediately before the commencement of this Act, held the office of Chief Electoral Officer under the repealed Act is, on that commencement, taken to have been appointed as Electoral Commissioner under this Act and, subject to this Act, is to hold office for the remainder of the period specified in the instrument of his or her appointment under the repealed Act.

5. Deputy Chief Electoral Officer

The person who, immediately before the commencement of this Act, held the office of Deputy Chief Electoral Officer under the repealed Act is, on that commencement, taken to have been appointed as Deputy Electoral Commissioner under this Act and, subject to this Act, is to hold office under the terms specified in the instrument of his or her appointment under the repealed Act.

6. Pending legal proceedings

- (1) If, immediately before the commencement of this Act, a proceeding under the repealed Act has

not been decided, the proceeding may be heard and decided under that Act as if it had not been repealed.

- (2) If, immediately before the commencement of this Act, the Chief Electoral Officer was a party to a legal proceeding pending or existing in any court or tribunal, the Electoral Commissioner is substituted for the Chief Electoral Officer as party to the proceeding and has the same rights and obligations as the Chief Electoral Officer had in the proceeding.

7. Arrangement with the Commonwealth

The arrangement made under section 21 of the repealed Act and in force immediately before the commencement of this Act is taken to be an arrangement made under section 35 of this Act.

8. Contracts, agreements or arrangements

Any contract, agreement, arrangement or undertaking entered into by the Chief Electoral Officer is, if not executed, discharged or otherwise terminated before the commencement of this Act, taken to be a contract, agreement, arrangement or undertaking entered into with the Commission.

9. Acts, &c., done by or to Chief Electoral Officer

All acts, matters and things done or omitted to be done by, or done or suffered in relation to, the Chief Electoral Officer before the

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commencement of this Act are, on and after that commencement, to have the same force and effect as if they had been done or omitted to be done by, or done or suffered in relation to, the Commission.

10. Transitional regulations

- (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) A provision made under subclause (1) may take effect as from the commencement of this Act or a later day.
- (3) A provision made under subclause (1) is to, if the regulations under this clause so provide, have effect notwithstanding the foregoing clauses of this Schedule.

SCHEDULE 8

The amendments effected by Section 245 and this Schedule have been incorporated into the authorised version of the Constitution Act 1934.

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SCHEDULE 9

*The amendments effected by Section 246 and this Schedule
have been incorporated into the authorised version of the
Electoral Act 1985.*

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NOTES

The foregoing text of the *Electoral Act 2004* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 18 April 2019 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Electoral Act 2004</i>	No. 51 of 2004	16.2.2005
<i>Justices Amendment Act 2007</i>	No. 22 of 2007	1.2.2008
<i>Supreme Court Amendment Act 2007</i>	No. 55 of 2007	1.3.2008
<i>Electoral Amendment Act 2009</i>	No. 47 of 2009	6.11.2009
<i>Electoral Amendment Act 2012</i>	No. 47 of 2012	11.2.2013
<i>Electoral Amendment (Legislative Council Ballot Papers) Act 2015</i>	No. 50 of 2015	8.12.2015
<i>Public Sector Superannuation Reform (Consequential and Transitional Provisions) Act 2016</i>	No. 54 of 2016	31.3.2017
<i>Electoral Amendment Act 2019</i>	No. 5 of 2019	18.4.2019 The Act except ss. 7 & 9 1.7.2019 - ss. 7 & 9
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019

TABLE OF AMENDMENTS

Provision affected	How affected
Section 4	Amended by No. 47 of 2012, s. 4
Section 22	Amended by No. 54 of 2016, s. 21
Section 25A	Inserted by No. 5 of 2019, s. 4
Section 28	Amended by No. 47 of 2012, s. 5
Section 32	Amended by No. 47 of 2009, s. 4
Section 49	Amended by No. 55 of 2007, Sched. 1
Section 70	Amended by No. 47 of 2009, s. 5 and No. 5 of 2019, s. 5
Section 75	Amended by No. 47 of 2009, s. 6
Section 77	Amended by No. 50 of 2015, s. 4 and No. 5 of 2019, s. 6
Section 78	Substituted by No. 47 of 2009, s. 7

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Provision affected	How affected
Section 81	Amended by No. 50 of 2015, s. 5
Section 85	Amended by No. 55 of 2007, Sched. 1
Section 98	Amended by No. 50 of 2015, s. 6
Section 115	Amended by No. 47 of 2009, s. 8
Section 127	Amended by No. 5 of 2019, s. 8
Section 130	Amended by No. 47 of 2009, s. 9 and No. 5 of 2019, s. 10
Section 153	Amended by No. 47 of 2009, s. 10 and No. 5 of 2019, s. 11
Section 154	Amended by No. 47 of 2009, s. 11 and No. 5 of 2019, s. 12
Section 156	Amended by No. 47 of 2009, s. 12
Section 157	Substituted by No. 47 of 2009, s. 13
Section 157A	Inserted by No. 47 of 2009, s. 13
Section 157B	Inserted by No. 47 of 2009, s. 13
Section 158	Amended by No. 47 of 2012, s. 7
Section 159	Amended by No. 47 of 2012, s. 8
Section 162	Amended by No. 47 of 2012, s. 9
Section 181	Amended by No. 47 of 2012, s. 10
Section 187	Amended by No. 47 of 2009, s. 14
Section 188	Amended by No. 47 of 2009, s. 15
Section 191	Substituted by No. 47 of 2009, s. 16
Section 195	Amended by No. 47 of 2009, s. 17
Section 198	Amended by No. 5 of 2019, s. 13
Section 228	Amended by No. 5 of 2019, s. 14
Section 236	Amended by No. 22 of 2007, s. 26
Section 244A	Inserted by No. 50 of 2015, s. 7
Schedule 2	Amended by No. 5 of 2019, s. 15
Schedule 3	Amended by No. 47 of 2009, s. 18 and No. 47 of 2012, s.

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