



# **Local Government Electoral Act 2011**

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Queensland

# Local Government Electoral Act 2011

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# Local Government Electoral Act 2011

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Local Government Electoral Act 2011*.

### 2 Commencement

- (1) Part 12, division 4, other than sections 224, 228 and 236, commences on 1 September 2011.
- (2) The following provisions commence on a day to be fixed by proclamation—
  - part 12, divisions 2, 3, 11, 12, 14 and 16
  - sections 315 and 342.

### 3 Purposes of Act

The purposes of this Act are to—

- (a) ensure the transparent conduct of elections of councillors of Queensland's local governments; and
- (b) ensure and reinforce integrity in Queensland's local governments, including, for example, by minimising the risk of corruption in relation to—
  - (i) the election of councillors; and
  - (ii) the good governance of, and by, local government.

### 4 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

## 5 Particular references in this Act

In a provision of this Act about an election—

- (a) a reference to the returning officer is a reference to the returning officer for the election; and
- (b) a reference to an assistant returning officer is a reference to an assistant returning officer for the election; and
- (c) a reference to an issuing officer is a reference to an issuing officer for the election; and
- (d) a reference to polling day is a reference to polling day for the election; and
- (e) a reference to the nomination day is a reference to the nomination day for the election; and
- (f) a reference to a ballot paper is a reference to a ballot paper for the election; and
- (g) a reference to a candidate is a reference to a candidate for the election; and
- (h) a reference to a nominee is a reference to a nominee for the election; and
- (i) a reference to the mayor or another councillor is a reference to the mayor or other councillor of the local government for which the election is held; and
- (j) a reference to a local government is a reference to the local government for which the election is held.

## 6 References to divisions includes wards

- (1) In a provision of this Act, a reference to a division of a local government area includes a reference to a ward of Brisbane.
- (2) In this section—  
*ward*, of Brisbane, means one of 26 divisions of the local government area of the Brisbane City Council established for the election of councillors or a councillor.

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## 7 Meaning of *conclusion* of local government election

- (1) The *conclusion* of the election of a councillor is—
- (a) if the councillor is elected at an election of all councillors of the local government—the day on which the last declaration of a poll conducted in the election is published on the electoral commission’s website under section 100(2); or
  - (b) if the councillor is elected at a by-election and—
    - (i) a poll is conducted—the day on which the declaration of the poll is published on the electoral commission’s website under section 100(2); or
    - (ii) a poll is not conducted—the day after the nomination day for the by-election; or
  - (c) if, because the number of candidates nominated for election is the same or less than the number of councillors to be elected, the councillor is elected (other than at a by-election) and—
    - (i) 1 or more polls are conducted in the local government area—the day on which the last declaration of a poll conducted in the local government area is published on the electoral commission’s website under section 100(2); or
    - (ii) no poll is conducted in the local government area—6p.m. on the day that a poll would otherwise have been required to be conducted under this Act.
- (2) In this section—
- declaration*, of a poll, means the declaration by the electoral commission of the result of the poll under section 100(1).

## **Part 2 Administration**

### **Division 1 Electoral commission**

#### **8 Additional functions and powers of electoral commission**

For the purpose of this Act, the functions of the electoral commission include conducting quadrennial elections, by-elections or fresh elections for local governments.

### **Division 2 Electoral officers for local government elections**

#### **9 Returning officers**

- (1) The returning officer for an election is responsible for the proper conduct of the election.
- (2) The electoral commission may appoint a person as the returning officer for an election.
- (3) A person must not be appointed under subsection (2) if the person is—
  - (a) a minor; or
  - (b) a member of a political party; or
  - (c) the chief executive officer of the local government for which the election is to be held.
- (4) Despite subsection (3)(c), the electoral commission may appoint the chief executive officer of the local government as the returning officer if—
  - (a) the chief executive officer is not a member of a political party; and
  - (b) the electoral commission considers the chief executive officer is the only person with experience in conducting

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elections who is reasonably available to be appointed as the returning officer.

- (5) The returning officer must comply with a direction given by the electoral commission for the proper conduct of the election.

## **10 Assistant returning officers**

- (1) An assistant returning officer is responsible for helping the returning officer in performing the returning officer's responsibilities under this Act.
- (2) The electoral commission may appoint a person as an assistant returning officer for an election.
- (3) A person must not be appointed under subsection (2) if the person is—
  - (a) a minor; or
  - (b) a member of a political party.
- (4) The electoral commission may appoint 1 or more assistant returning officers for an election.

## **11 Presiding officers**

- (1) A presiding officer at a polling booth is responsible for the proper conduct of a poll at the polling booth and for carrying out the other duties for an election that are required by the returning officer.
- (2) The returning officer—
  - (a) may be presiding officer at a polling booth; and
  - (b) must appoint a person as presiding officer at each polling booth other than the booth at which the returning officer is the presiding officer.
- (3) If a person can not act as presiding officer at a polling booth, the returning officer, or someone else with the returning officer's approval, may appoint another person as presiding officer at the booth while the person can not act.

- (4) An appointment under subsection (2) or (3) must be in the approved form.

## **12 Issuing officers**

- (1) An *issuing officer* is responsible for—
  - (a) giving ballot papers and declaration envelopes to electors; and
  - (b) performing the other duties for an election that are required by the returning officer.
- (2) An issuing officer must be a member of the staff of the electoral commission mentioned in the *Electoral Act 1992*, section 29.

## **13 Removal from office for membership of political party**

- (1) The electoral commission must remove a person from the office of returning officer or assistant returning officer if the person becomes a member of a political party.
- (2) Subsection (1) does not limit the electoral commission's power to remove a person from the office of returning officer or assistant returning officer.
- (3) A person's membership of a political party, or failure to comply with section 14, does not invalidate—
  - (a) anything done by the person while the person is a returning officer or assistant returning officer; or
  - (b) if the person does a thing for an election while the person is a returning officer or assistant returning officer—the election.

## **14 Obligation to notify of membership of a political party**

A returning officer or assistant returning officer must immediately notify the electoral commission if the officer becomes a member of a political party, unless the person has a reasonable excuse.

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Maximum penalty—40 penalty units.

## **15 Returning officer may act through other officers**

If—

- (a) the returning officer may, under this Act, do a thing; and
- (b) the returning officer authorises an assistant returning officer, presiding officer or issuing officer to do the thing; and
- (c) the assistant returning officer, presiding officer or issuing officer does the thing;

the thing is taken to have been done by the returning officer.

*Examples—*

- 1 For an election, if the returning officer authorises an assistant returning officer to conduct the election in a division, and the assistant returning officer does so, the returning officer is taken to have conducted the election in the division.
- 2 For an election, if the returning officer authorises an assistant returning officer to carry out the functions of the returning officer under section 95, and the assistant returning officer carries out the functions, the returning officer is taken to have carried out the functions.
- 3 Under section 72, declaration envelopes are to be posted or given to the returning officer. For an election, the returning officer could authorise an issuing officer to receive declaration envelopes, to remove the declaration envelopes containing the ballot papers from the return address envelopes and place the declaration envelopes in a ballot box.

## **16 Assistant returning officer may act through other officers**

If—

- (a) an assistant returning officer may, under this Act, do a thing; and
- (b) the assistant returning officer authorises a presiding officer or an issuing officer to do the thing; and
- (c) the presiding officer or the issuing officer does the thing;

the thing is taken to have been done by the assistant returning officer.

## **Part 3                      Voters rolls and register of special postal voters**

### **Division 1                Voters rolls**

#### **17            Returning officer must compile voters roll**

- (1) The returning officer for an election must compile a roll of persons entitled to vote at the election (the *voters roll*).
- (2) The voters roll must consist of the persons enrolled on an electoral roll for an electoral district, or a part of an electoral district, included—
  - (a) for an election for all of a local government’s area—in the area; or
  - (b) for an election for a division of a local government’s area—in the division.
- (3) An electoral registrar under the *Electoral Act 1992* must give the returning officer the assistance the officer reasonably requires to compile a voters roll for an election.

#### **18            When voters roll must be compiled**

- (1) A voters roll for a quadrennial election or fresh election must be compiled at least 5 days, but not more than 7 days, after the publication in a newspaper, under section 25(1), of notice of the day of the election.
- (2) However, a regulation may fix a different day for compiling the voters roll for a particular election.
- (3) A voters roll for a by-election must be compiled at least 5 days, but not more than 7 days, after the publication in a

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newspaper, under section 24(3), of notice of the day of the by-election.

## **19 Requirements of voters roll**

- (1) A voters roll for an election must—
  - (a) show the names of all persons entitled to vote at the election; and
  - (b) be in the form of the electoral roll used for elections of the Legislative Assembly.
- (2) The voters roll must not include the address of a silent elector.

## **20 Inspection of voters roll**

- (1) The electoral commission must ensure the most recent version of all voters rolls is available for inspection by members of the public at the commission's public office.
- (2) The electoral commission may also make available, for inspection by any person, a copy of the most recent version of a voters roll at any place that the commission considers appropriate.

## **21 Supply of voters roll to candidates**

- (1) If a poll is to be conducted in an election, the returning officer must give a copy of the voters roll to each candidate as soon as practicable after the nomination day.
- (2) The electoral commission may decide the format in which the voters roll is given to the candidates and direct the returning officer to give the voters roll that format.
- (3) A person must not use, disclose to another person or allow another person to access information in a copy of a voters roll given to a candidate under subsection (1), unless the use, disclosure or giving of access is for a purpose stated in subsection (4).

[s 21A]

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Maximum penalty—20 penalty units or 6 months imprisonment.

- (4) The purposes are—
- (a) any purpose related to an election under this Act; or
  - (b) checking the accuracy of information on the voters roll; or
  - (c) the performance by a councillor of a local government of the councillor's functions in relation to electors enrolled on the voters roll; or
  - (d) the performance by an official or employee of a political party of the person's duties in relation to electors enrolled on the voters roll.

## **Division 2                    Register of special postal voters**

### **21A    Electoral commission to keep register of special postal voters**

- (1) The electoral commission must keep, or arrange to be kept, a register of special postal voters.
- (2) The electoral commissioner must, not less than 18 months but not more than 4 years after the result of a poll for a quadrennial election is declared, review the continuing eligibility of a person to cast a vote as a special postal voter.
- (3) In conducting the review, the electoral commissioner must—
  - (a) require each relevant elector to advise, in the approved form, whether the elector still lives at the address shown on the voters roll; and
  - (b) do a random check of approved forms given to the electoral commission under paragraph (a) to decide whether the signature on each approved form checked is the same as the signature on the elector's application to be a special postal voter mentioned in section 68(5A).
- (4) In this section—

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*relevant elector* means an elector whose name is included in the register of special postal voters because of a circumstance mentioned in section 68(5A)(a)(i) or (ii).

## **Part 4                      Local government elections**

### **Division 1                      Local government elections**

#### **22            Types of elections**

- (1) An election of the mayor of a local government is an election for all of the local government's area.
- (2) A quadrennial or fresh election for a councillor (other than the mayor) of a local government is—
  - (a) if the local government's area does not have divisions—  
an election for all of the area; or
  - (b) if the local government's area has divisions—an election for each division of the area.
- (3) A by-election to fill a vacancy in the office of a councillor (other than the mayor) of a local government is an election for its area, or the division of its area, for which the councillor was elected.

#### **23            Date of quadrennial elections**

- (1) A quadrennial election must be held in, and every fourth year after, 2012.
- (2) A quadrennial election must be held on the last Saturday in March.
- (3) However, a regulation may fix a different day, which must be a Saturday, for a quadrennial election for a particular year.

## **24 Date of by-elections**

- (1) A by-election to fill a vacancy in the office of a councillor is to be held on the day fixed by the returning officer.
- (2) The day fixed must be within 12 weeks after the vacancy happens.
- (3) As soon as practicable after fixing the day for holding a by-election, the returning officer must—
  - (a) publish, on the electoral commission’s website and in the other ways that the officer may consider appropriate, notice of—
    - (i) the day fixed; and
    - (ii) the cut-off day for the voters roll for the by-election under section 18(3); and
  - (b) take the steps required by this Act for holding the by-election.

## **Division 2 Candidates for local government elections**

### **Subdivision 1 Nominations of candidates**

#### **25 Calling for nominations**

- (1) The returning officer must publish notice of an election on the electoral commission’s website, and in other ways the returning officer considers appropriate.
- (2) The notice must—
  - (a) state a day as a nomination day—
    - (i) not less than 8, or more than 18, days after the publication of the notice; and
    - (ii) not less than 18, or more than 42, days before the day on which the election is to be held; and

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- (b) state the nominations must be given to the returning officer; and
  - (c) invite nominations of candidates.
- (3) The place of nomination must be—
- (a) the office of the returning officer; or
  - (b) a place in the local government's area convenient generally to persons in the area.

## 26 Who may be nominated

- (1) A person may be nominated as a candidate, or for appointment, as a councillor only if the person is qualified to be a councillor under the—
- (a) for a councillor of the Brisbane City Council—*City of Brisbane Act 2010*, section 152; or
  - (b) for a councillor of another local government—*Local Government Act 2009*, section 152.
- (2) Also, a person may be nominated as a candidate for an election only if the person has, within 6 months before the nomination day for the election, successfully completed a training course approved by the department's chief executive about—
- (a) the person's obligations as a candidate, including the person's obligations under part 6; and
  - (b) the person's obligations as a councillor, if the person is elected or appointed, including obligations under a Local Government Act within the meaning of the *Local Government Act 2009*.
- (3) However, a person who is a candidate for election as a member of an Australian Parliament, can not be nominated for election or appointment as a councillor until—
- (a) for an election under the *Electoral Act 1992*—the day the electoral commission is notified, under section 131(1) of that Act, of the candidate elected for

- the electoral district for which the person is a candidate;  
or
- (b) for an election under the *Commonwealth Electoral Act 1918* (Cwlth)—
- (i) the day the result of the election and the candidates elected are declared under section 283 of that Act;  
or
- (ii) the day the candidate elected for the division for which the person is a candidate is declared under section 284 of that Act.
- (4) To remove any doubt, it is declared that, a person is not disqualified from being nominated as a candidate, or for appointment, as a councillor only because the person is a member of the Legislative Assembly or a local government employee.

*Example—*

A person who is a member of the Legislative Assembly may nominate as a candidate for election as a councillor but must resign on becoming a candidate.

## **27 Making and certification of nomination**

- (1) A person who wishes to be a candidate in an election may only be nominated by—
- (a) the registered officer of a registered political party that has endorsed the person as a candidate for the election;  
or
- (b) at least 6 electors for the local government area, or division of the local government area, for which the election is to be held.
- (2) A nomination must—
- (a) be in the approved form; and
- (b) contain the following—
- (i) the candidate's name, address and occupation;

- (ii) a signed statement by the candidate consenting to the nomination;
  - (iii) if subsection (1)(a) applies—a signed statement by the registered political party’s registered officer that the party has endorsed the candidate;
  - (iv) information about the account with a financial institution the candidate intends to use as the candidate’s account for section 126;
  - (v) the other matters stated in schedule 1; and
- (c) be given to the returning officer after the nominations are invited for the election but before noon on the nomination day.
- (3) If the returning officer is satisfied a person has been properly nominated, the returning officer must—
- (a) as soon as practicable, certify the nomination in the approved form; and
  - (b) give a copy of the certificate to the person.
- (4) The certificate must state the time, day and place proposed for a draw, if necessary, for the order of listing of candidates’ names on the ballot paper.
- (5) For subsection (3), a person is properly nominated for an election if—
- (a) subsection (2) has been complied with, or substantially complied with apart from a mere formal defect or error in the nomination; and
  - (b) section 29(2) does not apply to the nomination; and
  - (c) section 39 has been complied with; and
  - (d) the nomination has not been withdrawn.
- (6) In deciding whether a person is properly nominated for an election, the returning officer is not required to look beyond—
- (a) the form of nomination and payment of the deposit; and
  - (b) the voters roll; and

- (c) documentary evidence produced by the nominee or nominator that, at the time the voters roll is compiled for the election—
  - (i) the nominator is an elector for the election or the registered officer of a registered political party; or
  - (ii) the nominee is, under the *Electoral Act 1992*, an elector for an electoral district, or part of an electoral district, included in the local government's area.
- (7) If a nomination is wrongly certified by the returning officer, the certification is of no effect.

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

- (1) The returning officer may decide that a person who has changed his or her name is not properly nominated as a candidate in an election because the nomination name—
  - (a) is a party name; or
  - (b) so nearly resembles a party name that it is likely to be confused with or mistaken for the party name; or
  - (c) includes the word 'independent'; or
  - (d) is a public body name; or
  - (e) so nearly resembles a public body name that it is likely to be confused with or mistaken for the public body name; or
  - (f) is obscene or offensive.
- (2) The returning officer may also decide that a person who has changed his or her name is not properly nominated as a candidate in an election if the returning officer considers the name could cause confusion.

*Example of subsection (2)—*

If a person's name is 'Informal', the returning officer may consider that the name could cause confusion to electors.

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- (3) If the returning officer decides under this section that a person is not properly nominated as a candidate in an election, the returning officer must give the person a notice stating—
- (a) the decision; and
  - (b) the reasons for the decision; and
  - (c) the person’s right to apply for an injunction.

*Note—*

For a person’s right to apply for an injunction, see section 200.

- (4) In this section—

***nomination name*** means the name proposed by a candidate to be used on a ballot paper as the candidate’s name under section 55(2).

***parliamentary party*** means an organisation—

- (a) whose object or activity, or 1 of whose objects or activities, is the promotion of the election to an Australian parliament of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part; and
- (b) of which at least 1 member is a member of an Australian parliament.

***party name*** means the name, or an abbreviation or acronym of the name of—

- (a) a parliamentary party; or
- (b) a political party; or
- (c) an organisation or group whose object or activity, or 1 of whose objects or activities, is the promotion of the election of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part to—
  - (i) an Australian parliament; or
  - (ii) an office of councillor of a local government.

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

## **29 Effect of multiple nominations**

- (1) A person can not, at the same time, be a candidate for election as—
  - (a) mayor of a local government and as another councillor of the same local government; or
  - (b) a councillor of a local government for more than 1 division of the local government's area.
- (2) If, at noon on the nomination day, a person is nominated as a candidate in contravention of subsection (1), each of the nominations is of no effect.

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

- (1) A person nominated as a candidate in an election may withdraw the person's agreement to the nomination by signed notice given to the returning officer before noon on the nomination day.
- (2) If a person acts under subsection (1)—
  - (a) the nomination is of no effect; and
  - (b) the person's deposit must be refunded to the person who paid the deposit.

## **32 Announcement of nominations**

- (1) As soon as practicable after the returning officer has certified the nomination of a person for an election under section 27(3)(a), the returning officer must publish the prescribed information for the nomination—
  - (a) on the electoral commission's website; and
  - (b) in other ways the returning officer considers appropriate.
- (2) The publication of the prescribed information must continue until the conclusion of the election.
- (3) In this section—

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*prescribed information*, for a nomination, means information or a statement contained in the nomination prescribed by regulation.

### **33 Death of candidate**

If a person nominated as a candidate in an election dies before noon on the nomination day—

- (a) the nomination is of no effect; and
- (b) the person's deposit must be refunded to—
  - (i) if the deposit was paid by someone other than the person—the other person; or
  - (ii) otherwise—the person's personal representative.

### **34 Procedure if number of candidates not more than number required**

- (1) If the number of candidates properly nominated for an election is only equal to the number required to be elected—
  - (a) the nominees are taken to have been elected; and
  - (b) the returning officer must, as soon as practicable after the nomination day, publish a notice in the approved form in a newspaper circulating generally in the local government area, or division of the local government area, for which the election was to be held, that the nominees are taken to have been elected.
- (2) If—
  - (a) no-one is nominated as a candidate in an election; or
  - (b) the number of candidates nominated is less than the number required to be elected;the proceedings for the election must start again.
- (3) However, if proceedings for the election have previously started again under subsection (2), the Governor in Council may, by gazette notice, appoint as councillors of the local

government, the number of persons necessary to constitute fully the local government.

- (4) Each person appointed under subsection (3) must be qualified to be elected as a councillor of the local government for the local government area, or division of the local government area, for which the election was to be held.
- (5) Persons appointed under subsection (3) are taken to have been properly elected as councillors of the local government for which they are appointed.
- (6) If proceedings for an election are started again under subsection (2)—
  - (a) the deposits of the candidates must be refunded to the persons who paid the deposits; and
  - (b) the electoral commission must, by gazette notice, fix a new polling day for the election.

### **35 Procedure if number of candidates exceeds number required**

- (1) If the number of candidates properly nominated for an election exceeds the number required to be elected, a poll must be conducted under this part.
- (2) The returning officer must give public notice that a poll will be conducted.
- (3) The notice must—
  - (a) be in the approved form; and
  - (b) state—
    - (i) the day the poll will be conducted; and
    - (ii) the names of all candidates properly nominated for election in the order decided under section 57; and
    - (iii) the location of all ordinary polling booths to be used for taking the ballot in the poll; and
    - (iv) that the ordinary voting hours are from 8a.m. to 6p.m; and

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- (c) be published on the electoral commission's website, and in other ways the returning officer considers appropriate.
  - (4) Publication of the notice under subsection (3)(c) must—
    - (a) start as soon as practicable after noon on the nomination day; and
    - (b) continue until the close of the poll.

### **36 Procedure on death of candidate when poll to be conducted**

- (1) If a poll is to be conducted and a candidate dies after noon on the nomination day but before the polling day for an election—
  - (a) for a candidate for mayor—the proceedings for the election of the mayor must start again; and
  - (b) for a candidate for councillor (other than mayor) if the local government's area is undivided—the proceedings for the election of the councillors must start again; and
  - (c) for a candidate for councillor (other than mayor) for a division of a local government's area—the proceedings for the election of councillors for the division must start again.
- (2) Also, the Minister may, by gazette notice, direct that—
  - (a) if subsection (1)(a) applies—all proceedings for the election of councillors of the local government start again; or
  - (b) if subsection (1)(b) applies—proceedings for holding an election of the mayor of the local government start again; or
  - (c) if subsection (1)(c) applies—
    - (i) proceedings for holding an election of the mayor of the local government start again; and

- (ii) proceedings for the election of councillors for the other divisions of the local government start again.
- (3) The deceased candidate's deposit must be refunded to—
  - (a) if the deposit was paid by someone other than the candidate—the other person; or
  - (b) otherwise—the candidate's personal representative.
- (4) The deposits of other candidates must be refunded to the persons who paid the deposits.
- (5) If proceedings for an election are started again, the electoral commission must, by gazette notice, fix a new polling day for the election.

### **37 If successful candidate dies**

If a candidate who is successful at an election dies before the final result of the poll is declared, the candidate must be declared elected to the office for which the person was a candidate.

*Note—*

The effect of this section would be that a new vacancy exists in the office of the councillor.

### **38 Changing nomination day or polling day**

- (1) This section applies if a returning officer publishes—
  - (a) notice of a nomination day under section 25; or
  - (b) notice of the day a poll will be conducted under section 35.
- (2) The electoral commission may, by gazette notice, fix a later day as the nomination day or polling day if the conduct of the election is likely to be affected by—
  - (a) a storm, flood, fire or a similar happening; or
  - (b) a riot or open violence; or
  - (c) another exceptional circumstance.

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- (3) If the electoral commission fixes a later day under subsection (2)—
- (a) the later day must be—
    - (i) for a later nomination day—a day that is as close as practicable to the nomination day mentioned in subsection (1)(a); or
    - (ii) for a later polling day—the Saturday that is as close as practicable to the day the poll would have been conducted under section 35; and
  - (b) the returning officer—
    - (i) may give any necessary directions to candidates, and to electors, about the procedures to be followed; and
    - (ii) must publish a notice detailing the directions on the electoral commission’s website, and in other ways the returning officer considers appropriate.

## **Subdivision 2      Deposits accompanying nomination**

### **39      Deposit to accompany nomination**

- (1) At the same time as a nomination is given to the returning officer under section 27, the nominee, or another person on behalf of the nominee, must deposit \$250 with the returning officer.
- (2) The deposit must be paid—
- (a) in cash; or
  - (b) by a cheque drawn by a financial institution; or
  - (c) by electronic funds transfer.

#### **40 Disposal of deposits generally**

- (1) As soon as practicable after the conclusion of an election, each candidate's deposit must be refunded to the person who paid the deposit if—
  - (a) the candidate is elected; or
  - (b) if the system of voting at the election is optional-preferential voting—the number of formal first-preference votes received by the candidate is more than 4% of the total number of formal first-preference votes cast in the election; or
  - (c) if the system of voting at the election is first-past-the-post voting—the number of formal votes received by the candidate is more than 4% of the total number of formal votes cast in the election.
- (2) If a deposit is to be refunded to a person, it may be refunded to someone else with the written authority of the person.
- (3) All other candidates' deposits become the property of the State when the outcome of the election is decided unless section 30, 33 or 36 applies.

### **Subdivision 3 Recording of membership and agents for group of candidates**

#### **41 Record of membership in group of candidates**

- (1) This section applies to a group of candidates in an election.
- (2) The group must give a record of the membership of the group to the returning officer after the candidates in the group are nominated for the election but before noon on the last day for the receipt of nominations for candidates in the election.
- (3) The record must—
  - (a) be in the approved form; and
  - (b) state the name of the group; and

- (c) state the names of the candidates who are the members of the group; and
  - (d) be signed by each of the candidates who are the members of the group.
- (4) As soon as practicable after the returning officer receives the record, the returning officer must ensure a copy of the record is displayed at the office of the returning officer.

## **42 Appointment of agent for group of candidates**

- (1) A group of candidates in an election must appoint an adult as an agent for the group for the election.
- (2) The instrument appointing the agent must—
  - (a) be in the approved form; and
  - (b) state the name and address of the person appointed as agent; and
  - (c) be signed by each of the candidates who are the members of the group; and
  - (d) be signed by the person appointed as agent, and include or be accompanied by—
    - (i) the person's signed agreement to being appointed as the group's agent; and
    - (ii) the person's signed declaration that the person is eligible to be appointed as the group's agent.
- (3) A copy of the instrument appointing the agent must be given to the returning officer at the same time the record is given to the returning officer under section 41.

## **43 Register of group agents**

- (1) The returning officer must keep a register (the *register of group agents*) that records the name and address of each person who is appointed as the agent for a group of candidates in an election.

- (2) The appointment of an agent for a group of candidates—
  - (a) is not effective under this Act until the appointment has been recorded in the register of group agents; and
  - (b) ceases to be effective when the person's name is removed from the register.
- (3) The name of a person may be removed from the register only if—
  - (a) the person gives the returning officer a written notice, signed by the person, stating that he or she has resigned the appointment as agent; or
  - (b) the group of candidates gives the returning officer a written notice, signed by all members of the group, stating that the person has ceased to be the group's agent.
- (4) If the name of a person is removed from the register under subsection (3), the group of candidates may, under section 42, appoint another agent.
- (5) If no agent is currently recorded for a group of candidates in the register of group agents, all obligations under this Act applying to an agent (including liability for any offence) apply to each member of the group of candidates as if each candidate was the agent for the group.

## **Division 3                      Arrangements for local government elections**

### **Subdivision 1                Polls by ballots**

#### **44            Poll by ballot**

A poll must be conducted by ballot taken under this part.

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**45AA Application for direction that poll be conducted by postal ballot**

- (1) A local government may apply to the Minister for a poll to be conducted by postal ballot in—
  - (a) for an election for all of the local government’s area—  
all of the local government’s area or a part or division of the local government’s area; or
  - (b) for an election for a division of the local government’s area—the division or a part of the division.
- (2) The application must be made—
  - (a) for a poll for a quadrennial election—before 1 May in the year preceding the quadrennial election or a later day approved by the Minister; or
  - (b) for a poll for a by-election—before the day for holding the by-election is fixed by the returning officer under section 24.

**45AB Referral of application to electoral commissioner for recommendation**

- (1) The Minister must refer an application made under section 45AA to the electoral commissioner for the commissioner’s recommendation about whether the application should be approved.
- (2) The electoral commissioner must—
  - (a) consider the application; and
  - (b) give the Minister a written recommendation about whether the application should be approved and the reasons for the recommendation.
- (3) Before making the recommendation, the electoral commissioner may ask the local government for further information the electoral commissioner reasonably requires to make the recommendation.
- (4) In making the recommendation, the electoral commissioner must have regard to the following matters—

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- (a) the reasons, stated in the application, why the poll should be conducted by postal ballot;
- (b) the costs of conducting the poll by postal ballot compared to the costs of conducting the poll using polling booths;
- (c) the number of persons enrolled on an electoral roll for an electoral district, or part of an electoral district, included in the area to which the application relates;
- (d) the population density and distribution in the area to which the application relates;
- (e) whether a poll has previously been conducted by postal ballot in the area to which the application relates.

#### **45 Direction that poll be conducted by postal ballot**

- (1) After receiving the electoral commissioner's recommendation about an application under section 45AB, the Minister must consider the application and decide to approve or not to approve the application.
- (2) In deciding whether to approve the application, the Minister must have regard to—
  - (a) the electoral commissioner's recommendation and the reasons for the recommendation; and
  - (b) the matters mentioned in section 45AB(4).
- (3) The approval may be given for—
  - (a) all the local government's area; or
  - (b) 1 or more divisions of its area; or
  - (c) a part of its area marked on a map.
- (4) If the approval is given for a part of a local government's area, the local government must—
  - (a) ensure that the public may inspect the relevant map—
    - (i) at the local government's public office; and
    - (ii) on the local government's website; and

- 
- (b) publish details of the approval in a newspaper circulating generally in the part of the local government's area.

#### **45A Decisions under this subdivision are not subject to appeal**

A decision of the Minister or the electoral commissioner under this subdivision is not subject to appeal.

*Note—*

See the *Judicial Review Act 1991*, section 6 in relation to the making of a recommendation for the purposes of that Act. See also section 158.

## **Subdivision 2 Polling booths**

### **46 Kinds of polling booths**

- (1) There are 3 kinds of polling booths—
- (a) ordinary polling booths; and
  - (b) mobile polling booths; and
  - (c) pre-polling booths.
- (2) An ***ordinary polling booth*** is a building or other structure, or a part of a building or other structure, that the returning officer for an election arranges to be available on polling day for the election to enable electors in general to vote.
- (3) A ***mobile polling booth*** is—
- (a) all or part of an institution made available as a mobile polling booth under section 49(1); or
  - (b) all or part of a place made available as a mobile polling booth under section 49(2).
- (4) A ***pre-polling booth*** means a place arranged under section 50 as a polling booth for electors to cast a pre-poll vote.

## **47 Polling booths—general**

- (1) The returning officer for an election—
  - (a) may arrange for a polling booth within or outside the local government area, or division of the local government area, to be used for the election; and
  - (b) may arrange for 2 or more polling booths at any place if the number of electors likely to vote at the place is greater than could conveniently vote in 1 booth at the place; and
  - (c) must ensure that each polling booth is provided with enough ballot boxes, ballot papers and materials to enable electors to mark the ballot papers.
- (2) A place on or from which liquor may lawfully be sold can not be used as a polling booth.
- (3) However, a civic or cultural centre, community hall or similar place under a local government’s control, may be used as a polling booth if—
  - (a) the floor area for taking the ballot is designated in the polling notice; and
  - (b) the local government ensures that no liquor will be sold or supplied in that area during the taking of the ballot.
- (4) The returning officer may arrange for all polling booths, or only particular polling booths, for an election to be used for any other election conducted at the same time for the one local government area.

## **48 Provision of ordinary polling booths**

- (1) For taking a ballot in an election, the returning officer must arrange for places, or parts of places, to be used on polling day as ordinary polling booths to enable electors in general to vote.
- (2) The returning officer may—
  - (a) less than 3 days before polling day, arrange for an ordinary polling booth to be used; or

- 
- (b) less than 6 days before polling day, cancel arrangements for the use of an ordinary polling booth;
- only if it is necessary because of circumstances beyond the returning officer's control.
- (3) If, after publication of the polling notice, the returning officer arranges for the use of an ordinary polling booth, the officer must also publish notice—
- (a) of the location of the booth; and
- (b) that the ordinary voting hours of the booth are from 8a.m. to 6p.m.
- (4) If the returning officer cancels arrangements for the use of an ordinary polling booth, the officer must also publish notice of the cancellation.
- (5) The notice under subsection (3) or (4) is to be given in the way the returning officer considers is the best way to inform electors generally.

#### **49 Declaration of mobile polling booths**

- (1) If the returning officer is satisfied patients or residents of an institution should be able to vote at the institution in a poll, the returning officer may arrange for all or part of the institution to be available as a mobile polling booth to enable the patients or residents to vote there in the poll.
- (2) If the returning officer is satisfied a part of the local government area or division of the local government area does not have enough electors to justify the use of an ordinary polling booth, the returning officer may arrange for any place in the part to be available as a mobile polling booth to enable electors in the part to vote in the poll.
- (3) If the returning officer acts under subsection (1) or (2), the officer must—
- (a) fix the times, during the period starting 11 days before the polling day and ending at 6p.m. on the polling day,

- when the mobile polling booth may be used for voting;  
and
- (b) publish a notice on the electoral commission's website, and in other ways the returning officer considers appropriate—
    - (i) declaring all or part of the institution or the place as a mobile polling booth for the election; and
    - (ii) stating the times at which votes may be cast at the booth.
- (4) If the returning officer arranges a place to be available as a mobile polling booth under subsection (2), the returning officer may change the arrangements made for the mobile polling booth under subsection (3) at any time.
- (5) If the arrangements are changed under subsection (4), the returning officer must take the steps that are practical and appropriate to give public notice of the changed arrangements.
- (6) The returning officer must give written notice to candidates of the declaration of the mobile polling booth, the times at which votes may be cast at the booth, and any change to the arrangements under subsection (4).
- (7) On the declaration of a mobile polling booth, the patients or residents of the institution who are electors, or electors resident in the part of the local government area in which the mobile polling booth is situated, may vote at the booth during—
- (a) the times stated for the booth in the notice published under subsection (3)(b); or
  - (b) if the times have been changed under subsection (4)—the changed times.

## **50 Declaration of pre-polling booths**

- (1) The returning officer may arrange a place as a polling booth for an election to enable electors to cast a pre-poll vote.

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- (2) A polling booth mentioned in subsection (1) may be located anywhere within or outside the local government area, or division of the local government area, for which the election is to be held.
  - (3) However, the returning officer must ensure a pre-polling booth mentioned in subsection (1) is arranged at 1 of the following places—
    - (a) the public office, or a part of the public office, of the local government for which the election is to be held;
    - (b) another office used by the local government to receive rate payments;
    - (c) another convenient place in the local government's area.
  - (4) Also, the returning officer must—
    - (a) fix the times, during the period starting 14 days before the polling day and ending at 6p.m. on the day immediately before polling day, when the polling booth may be used for voting; and
    - (b) publish a notice on the electoral commission's website, and in other ways the returning officer considers appropriate—
      - (i) declaring the place as a polling booth for the election to enable electors to cast a pre-poll vote; and
      - (ii) stating the times at which votes may be cast at the booth.
  - (5) The returning officer must give written notice to candidates of the declaration of the polling booth and the times at which votes may be cast at the booth.

## **51 Duty of person in charge of institution**

- (1) If the returning officer arranges for all or part of an institution to be used as an ordinary polling booth for an election, the person in charge of the institution must allow electors and

issuing officers to have access to the booth whenever votes may be cast at the booth.

- (2) If the returning officer declares all or part of an institution as a mobile polling booth for an election, the person in charge of the institution must allow patients or residents of the institution and issuing officers to have access to the booth whenever votes may be cast at the booth.

## **52 Privacy for electors casting votes at polling booths**

The returning officer must ensure that each polling booth for an election is provided with enough voting compartments, or other suitable facilities, to allow the casting of votes in private.

### **52A Suspension of poll**

- (1) The returning officer, or the presiding officer for a polling booth, may suspend the poll at a polling booth on polling day for not more than 4 hours if satisfied the taking of the poll is, or is likely to be, temporarily interrupted or obstructed by—
  - (a) a serious threat that a riot or open violence will happen; or
  - (b) circumstances that pose a serious risk to the health or safety of persons at the polling booth; or
  - (c) another emergency.
- (2) The returning officer, or the presiding officer for the polling booth, must ensure an elector who attends the polling booth while the poll is suspended is given information to assist the elector to cast a vote, including—
  - (a) the time the poll is expected to resume at the polling booth; and
  - (b) the location of other polling booths.
- (3) The returning officer or the presiding officer for the polling booth must adjourn the conduct of the poll at the polling booth to another day if—

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- (a) for any reason, taking of the poll at the polling booth can not resume on the polling day; or
  - (b) the returning officer or presiding officer is satisfied that it is unreasonable for an elector who would have otherwise cast a vote at the polling booth while it was suspended to cast a vote at another polling booth.

### **53 Adjournment of poll**

- (1) The returning officer, or the presiding officer for a polling booth, may adjourn the poll at the polling booth to another day if satisfied the taking of the poll at the polling booth is, or is likely to be, interrupted or obstructed by any of the things stated in subsection (2) to the extent the taking of the poll can not start or continue at the polling booth.
- (2) For subsection (1), the things are as follows—
  - (a) a storm, flood, fire or a similar happening;
  - (b) a riot or open violence;
  - (c) a serious threat that a riot or open violence will happen;
  - (d) circumstances that pose a serious risk to the health or safety of persons at the polling booth;
  - (e) another emergency.
- (3) If a poll is adjourned under subsection (1) or section 52A(3), the returning officer must fix a day (no later than 34 days after the day on which the poll is adjourned) for taking, or resuming, the adjourned poll.
- (4) The returning officer must publish notice of the day fixed for taking, or resuming, the adjourned poll on the electoral commission's website, and in other ways the returning officer considers appropriate.
- (5) If an adjourned poll is held, only electors who are enrolled in the electoral district for which the polling booth is established and who have not otherwise voted in the election, are entitled to vote.

- (6) The adjourned poll is taken to have been held on the polling day.

### **Subdivision 3      Ballot boxes, ballot papers and other documents**

#### **54      Ballot boxes generally**

- (1) A ballot box used in a poll must—
- (a) have an opening of a size adequate to allow folded ballot papers and declaration envelopes to be put in the box; and
  - (b) be under the scrutiny and effective control of an issuing officer.
- (2) Issuing officers, candidates and scrutineers for the poll, may inspect a ballot box before the box is locked or sealed for receipt of ballot papers.

#### **55      Ballot papers**

- (1AA) The electoral commission must ensure a sufficient number of ballot papers complying with subsection (1) are printed and available to the returning officer for distribution under section 58.
- (1) A ballot paper, other than a completed ballot paper printed for an electronically assisted vote, must—
- (a) be of material that, when folded, the vote recorded on it is effectively concealed; and
  - (b) for a ballot paper other than a ballot paper reproduced under section 58A—be attached to a butt that—
    - (i) is not part of the ballot paper; and
    - (ii) is perforated to allow the ballot paper to be easily detached from the butt; and

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- (iii) states the local government area, or division of the local government area, for which the poll is conducted; and
  - (c) show the name of each candidate as required by subsection (2); and
  - (d) if the names of 2 or more candidates are so similar as to be likely to cause confusion to electors—contain an appropriate description or addition, in the returning officer’s opinion, to distinguish the persons’ names; and
  - (e) if a candidate endorsed by a political party was nominated under section 27(1)(a)—contain, printed adjacent to the candidate’s name—
    - (i) if the register of political parties includes an abbreviation of the party’s name—the party’s abbreviated name; or
    - (ii) otherwise—the party’s full name included in the register; and
  - (f) if a candidate is a member of a group of candidates—contain, printed adjacent to the candidate’s name, the name of the group.
- (2) The name of a candidate must be shown on a ballot paper to which subsection (1) applies—
- (a) only once by showing first the surname followed by the given name or names of the candidate; and
  - (b) in the order decided under section 57.
- (2A) A completed ballot paper printed for an electronically assisted vote must—
- (a) be of a size or format that enables the elector’s electronically assisted vote to be accurately determined; and
  - (b) state the local government area, or division of the local government area, for which the vote is cast.
- (3) A ballot paper must not contain the name of anyone who is not a candidate.

## **56 Ballot papers for separate polls**

- (1) This section applies if a poll for election of mayor of a local government is to be conducted when a poll for election of another councillor of the local government is conducted.
- (2) The returning officer may decide to use separate ballot papers or combined ballot papers for the poll.

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

- (1) The order the names of candidates in an election are to be listed on ballot papers and polling notices is to be decided under this section.
- (2) The order must be decided by the returning officer as soon as practicable after noon on the nomination day.
- (3) The returning officer must, in the presence of 2 witnesses—
  - (a) write the name of each candidate on a separate sheet of paper; and
  - (b) ensure that each piece of paper is of the same kind, shape, size and colour; and
  - (c) put each separate piece of paper in a separate envelope and, if it is necessary to fold the piece of paper to make it fit in the envelope, fold each piece of paper in the same way to make each the same size and thickness; and
  - (d) ensure that each envelope is opaque and of the same kind, shape, size and colour; and
  - (e) after each piece of paper has been placed in an envelope, seal the envelope; and
  - (f) put all the envelopes in a container and shuffle them; and
  - (g) draw out the envelopes, 1 at a time; and
  - (h) as each envelope is drawn out, open it and note the name of the candidate shown on the piece of paper in the envelope.

- (4) The order in which the names are noted is the order in which the names are to appear on the ballot paper and polling notice.
- (5) The returning officer must allow any candidate, or the representative of a candidate, to be present when the order of candidates' names is decided.

## **58 Distribution of ballot papers and voters roll**

- (1) The returning officer must ensure an adequate number of the following are available at polling booths for an election—
  - (a) ballot papers;
  - (b) certified copies of the voters roll for each electoral district (as at the cut-off day for the voters rolls).
- (1AA) Without limiting subsection (1)(a), a ballot paper is available at a polling booth if a ballot paper can be reproduced at the polling booth under section 58A.
- (2) Without limiting subsection (1)(b), a certified copy of a voters roll for an electoral district is available at a polling booth if—
  - (a) a certified copy of the voters roll can be accessed from the polling booth; and
  - (b) an issuing officer at the polling booth can use the electronic certified copy to make an electronic record of the persons to whom a ballot paper is issued.
- (3) The returning officer must prepare a delivery note, in the approved form, in triplicate for each parcel of ballot papers supplied by the returning officer to presiding officers at polling booths.
- (4) The approved form must—
  - (a) show details of the number of ballot papers supplied; and
  - (b) show the range of numbers of the ballot papers; and
  - (c) include a form of acknowledgement of receipt of the ballot papers.

- (5) Two copies of the delivery note must be included in the parcel of ballot papers.
- (6) As soon as practicable after a presiding officer receives a parcel of ballot papers, the officer must—
  - (a) check the contents against the details shown in the delivery note; and
  - (b) complete the particulars prescribed by the delivery note; and
  - (c) sign the form of acknowledgement included in the delivery note.
- (7) If there is a discrepancy between the details shown in the delivery note and the contents of the parcel, the presiding officer must cause a countercheck to be made by—
  - (a) if an issuing officer is available—the issuing officer; or
  - (b) if an issuing officer is not available—a responsible person.
- (8) A discrepancy confirmed by a countercheck must be noted in the form of acknowledgement and the form must be signed by the presiding officer and person who made the countercheck.
- (9) The presiding officer must return 1 copy of the delivery note to the returning officer and retain the other copy of the delivery note until it is given to the returning officer with the sealed parcels of ballot papers under section 92.

### **58A Ballot papers may be reproduced if required**

- (1) This section applies if a polling booth does not have, or runs out of, ballot papers for an election.
- (2) An issuing officer at the polling booth may reproduce a ballot paper for the election, including, for example, by photocopying, handwriting or printing the ballot paper.
- (3) Section 55(1) applies to a ballot paper reproduced under this section.

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- (4) The issuing officer must keep a record of the number of ballot papers for an election the officer reproduces under this section.

## **Subdivision 4      Scrutineers**

### **59      Scrutineers**

- (1) Each candidate for an election may, by notice given to the returning officer for the election in the approved form, appoint 1 or more adults as scrutineers for the candidate.
- (2) Scrutineers are entitled to be present in each polling booth at times when electors are allowed to vote at the booth.
- (3) Scrutineers are also entitled to be present—
- (a) beforehand at each polling booth to—
    - (i) inspect ballot boxes; and
    - (ii) observe the examination of declaration envelopes received before 6p.m. the day before the polling day for the election; and
  - (b) afterwards at each polling booth and other places to observe the examination of declaration envelopes, the printing of completed ballot papers for electronically assisted votes and the counting of votes; and
  - (c) at a place to observe any part of a procedure for making an electronically assisted vote.
- (4) For subsections (2) and (3), the number of scrutineers each candidate is entitled to have at a polling booth or other place is 1 scrutineer for each issuing officer present at the booth or place.
- (5) A scrutineer may—
- (a) object to an issuing officer's decision on a person's entitlement to vote at the election; and

- (b) object to the acceptance or rejection of a ballot paper by the returning officer or a presiding officer; and
- (c) record the identification details given to an issuing officer at a polling booth by a person who votes at the election at the polling booth; and
- (d) remove from the polling booth the scrutineer's record of identification details mentioned in paragraph (c); and
- (e) do anything else permitted by this Act.

*Note—*

A scrutineer may record the name and address, as given to an issuing officer, of a person voting at an election but may not record details of how the person voted at the election. See section 192(3).

- (6) A scrutineer must carry adequate identification to show that the person is a scrutineer.

## **Subdivision 5      Errors, omissions or delays**

### **63      Correction of errors, omissions or delays**

If there is an error, omission or delay in or relating to the preparation, issue, sending or return of any voters roll, ballot paper or other document relevant to the conduct of an election, it may be corrected by a gazette notice by the electoral commission setting out what is to be done.

## **Division 4              Who may vote**

### **64      Who may vote**

- (1) The following persons are the only persons entitled to vote at an election—
  - (a) persons enrolled on the voters roll for—
    - (i) for an election for all the local government's area—the area; or

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- (ii) for an election for a division of the local government's area—the division;
  - (b) persons whose names are not on the voters roll for the area or division because of official error;
  - (c) persons who—
    - (i) are not on the voters roll for the area or division but are entitled under the *Electoral Act 1992* to be enrolled on the electoral roll for the electoral district under that Act in which the area or division is situated; and
    - (ii) after the cut-off day for the poll and no later than 6p.m. on the day before the polling day, give the electoral commission a notice under the *Electoral Act 1992*, section 65.
  - (2) A person is not entitled to vote—
    - (a) more than once at the same election; or
    - (b) at 2 or more divisions of the same local government area.
  - (3) Also, a person who is serving a sentence of imprisonment of 3 years or longer is not entitled to vote at an election.

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

### **Subdivision 1        System of voting**

#### **65        System of voting**

- (1) The system of voting at an election, other than an election of a mayor of a local government, is—
  - (a) for a local government area divided into single-member divisions—optional-preferential voting; and
  - (b) in any other case—first-past-the-post voting.

- (2) The system of voting at an election of a mayor of a local government is optional-preferential voting.

## **66 Compulsory voting**

Voting at an election is compulsory for electors.

## **Subdivision 2 Casting votes**

### **67 Ways in which to cast votes**

- (1) In an election, other than a postal ballot election, an elector may—
  - (a) cast their vote at an ordinary or mobile polling booth on polling day (an *ordinary vote*); or
  - (b) cast their vote at a pre-polling booth before polling day (a *pre-poll vote*); or
  - (c) cast their vote using posted voting papers (a *postal vote*); or
  - (d) cast an electronically assisted vote.
- (2) In a postal ballot election, an elector must cast a postal vote.

### **68 Who may cast votes in particular ways**

- (1) Any elector may cast an ordinary vote in an election, other than a postal ballot election.
- (2) Any elector may cast a pre-poll vote in an election, other than a postal ballot election.
- (3) Any elector may cast an absentee vote in an election, other than a postal ballot election, if the local government is divided into divisions.
- (4) The following electors may cast a postal vote in an election, other than a postal ballot election—

- (a) any elector who wishes to cast a postal vote before the polling day for an election;
  - (b) a special postal voter under subsection (5A).
- (5) All electors must cast a postal vote in a postal ballot election.
- (5A) For subsection (4)(b), an elector is a *special postal voter* if—
- (a) the elector’s name is included in the register of special postal voters kept under section 21A because of a written application that satisfies the electoral commission that—
    - (i) the elector’s address, as shown on the voters roll at the time the application is made, is more than 15km but not more than 20km, by the nearest practicable route, from a polling booth; or
    - (ii) the elector’s address is more than 20km, by the nearest practicable route, from a polling booth; or
    - (iii) the elector is entitled to be enrolled as a general postal voter under the *Commonwealth Electoral Act 1918* (Cwlth), section 184A(2)(d) to (k); or
  - (b) the elector is a silent elector.
- (5B) Subject to section 75D, if a procedure about how an elector may cast an electronically assisted vote has been made under section 75A, an elector may cast an electronically assisted vote if—
- (a) the elector can not vote without assistance because the elector has—
    - (i) an impairment; or
    - (ii) an insufficient level of literacy; or
  - (b) the elector can not vote at a polling booth because of an impairment; or
  - (c) the elector is a member of a class of electors prescribed under a regulation for this section.

*Examples of a class of electors—*

- electors whose addresses shown on the voters roll are more than 20km by the nearest practical route from a polling booth
- electors who will not, throughout ordinary voting hours on polling day, be within Queensland

(6) In this section—

***absentee vote*** means a vote cast by an elector at a polling booth in any division of a local government area other than the division of the local government area for which the elector is enrolled on the voters roll.

## **69 Who must complete a declaration envelope**

- (1) An elector must complete a declaration envelope for an election if—
- (a) the elector is casting a postal vote; or
  - (b) the elector's name is not on the voters roll apparently because of an official error; or
  - (c) the elector appears, from a record apparently made in error, to have already voted in the election; or
  - (d) the elector is serving a sentence of imprisonment on the cut-off day for the voters roll but is not serving a sentence of imprisonment on the polling day for the election; or
  - (e) the elector is serving a sentence of imprisonment, or is otherwise lawfully detained, on the polling day for the election; or
  - (f) the elector is a silent elector; or
  - (g) the elector, who attends a polling booth on the polling day, is not able to make an ordinary vote at the polling booth for a reason beyond the elector's control.

*Example of a reason beyond an elector's control—*

an electronic copy of the voters roll can not be accessed from the polling booth so an issuing officer at the polling booth can not confirm the elector's name is on the voters roll for the election

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- (2) Also, an elector must complete a declaration envelope for an election if an issuing officer suspects, on reasonable grounds, the elector is not entitled to vote at the election.

## **70 Casting an ordinary vote or pre-poll vote**

- (1) To cast an ordinary vote or pre-poll vote in an election, an elector must follow, in order, each of subsections (2) to (7) that applies to the elector.
- (2) The elector must—
- (a) to cast an ordinary vote—attend a polling booth in the local government area during voting hours for the booth; or
  - (b) to cast a pre-poll vote—attend a pre-polling booth in the local government area during voting hours for the booth.
- (3) At the polling booth or pre-polling booth, the elector must give an issuing officer at the booth the elector's full name and address.
- (4) The elector may be asked questions by the issuing officer in order for the issuing officer to decide the following—
- (a) whether the elector is entitled to vote at the election;
  - (b) whether the elector must complete a declaration envelope.
- (6) If the elector must complete a declaration envelope when casting their vote, the elector must sign the appropriate declaration on the declaration envelope before an issuing officer and have the officer sign the envelope as witness.
- (7) On being given the ballot paper and declaration envelope (if any), the elector must, without delay—
- (a) go alone into an unoccupied voting compartment in the polling booth; and
  - (b) there, in private, record a vote on the ballot paper; and
  - (c) fold the ballot paper, concealing the vote, and—

- (i) if the elector completed a declaration envelope—put the folded ballot paper in the envelope, seal the envelope and put the sealed envelope in the appropriate ballot box at the polling booth; or
  - (ii) otherwise—put the folded ballot paper in the appropriate ballot box at the polling booth; and
- (d) leave the polling booth.

## **72 Casting a postal vote by elector other than special postal voter**

- (1) To cast a postal vote in an election, an elector must follow, in order, each of subsections (2) to (5) that applies to the elector.
- (2) The elector must apply to the returning officer for a declaration envelope and a ballot paper with which to cast a postal vote if—
- (a) the election is not a postal ballot election; or
- Note—*  
See section 79 for the relevant application.
- (b) the election is a postal ballot election and the elector has not been given a ballot paper or declaration envelope.
- Note—*  
See section 81 for the relevant application.
- (3) After being given a ballot paper and a declaration envelope, the elector must, before 6p.m. on polling day—
- (a) record a vote on the ballot paper; and
  - (b) fold the ballot paper, put it in the declaration envelope and seal the envelope.
- (4) The elector must sign the declaration on the declaration envelope in the presence of an adult, and have the adult sign the envelope as witness.

*Note—*

For the duty of a witness in signing declaration envelopes, see section 194.

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- (5) The elector must put the sealed declaration envelope in the reply paid post envelope that accompanied the declaration envelope and post or give the envelope to the returning officer.

*Note—*

The ballot paper must be received by the returning officer no later than 10 days after the polling day. See section 86(4) or 87(4).

- (6) If the elector is unable to apply under subsection (2) without help, another person may help the elector apply.
- (7) This section does not apply to a special postal voter.

*Note—*

Ballots are distributed to special postal voters under section 82.

### **73 Voting hours for polling booths**

- (1) The voting hours for an ordinary polling booth are between 8a.m. and 6p.m. on polling day.
- (2) The voting hours for a mobile polling booth are the times fixed for the booth by the returning officer.
- (3) The voting hours for a pre-polling booth are the times, during the pre-polling period, notified by the returning officer under section 50(4).
- (4) If an elector is in a polling booth at the time of close of voting for the booth and for the purpose of casting a vote, the elector must be allowed to vote.
- (5) In this section—

***pre-polling period***, for an election, means the period—

- (a) starting no earlier than—
- (i) 14 days before polling day; or
  - (ii) the longer period that the returning officer fixes and publishes on the electoral commission's website, and in other ways the returning officer considers appropriate; and
- (b) ending no later than the day before polling day.

**74 Particular responsibilities of returning officer when electors cast postal votes**

- (1) This section applies if the returning officer for an election receives a sealed envelope under section 72(5).
- (2) The returning officer must put the sealed envelope in the appropriate ballot box.

**75 Particular responsibilities of issuing officers when electors cast ordinary or pre-poll votes**

- (1) This section applies if an elector attends a polling booth, during voting hours for the booth, to cast an ordinary or pre-poll vote in an election.
- (2) An issuing officer at the polling booth must give the elector a ballot paper if—
  - (a) the elector gives the issuing officer the elector's full name and address; and
  - (b) the issuing officer is satisfied the elector is entitled to vote at the election.
- (3) The issuing officer may ask the elector questions to decide the following—
  - (a) whether the elector is entitled to vote at the election;
  - (b) whether the elector must complete a declaration envelope.
- (4) Subsection (5) applies if, because of the elector's answers to the questions under subsection (3)—
  - (a) the issuing officer suspects, on reasonable grounds, the elector is not entitled to vote at the election; or
  - (b) the issuing officer is satisfied the elector must complete a declaration envelope.
- (5) The issuing officer must—
  - (a) inform the elector that the elector must complete a declaration envelope; and

- (b) give the elector the declaration envelope to complete.
- (6) An issuing officer must—
  - (a) keep a record of the ballot papers and declaration envelopes given to electors under this section; and
  - (b) sign the record.

## **Subdivision 2A Electronically assisted voting**

### **75A Prescribed procedures for electronically assisted voting**

- (1) The electoral commission may make procedures about how an elector may cast an electronically assisted vote for an election.
- (2) The procedures must provide for the following—
  - (a) the registration of electors who may cast an electronically assisted vote for an election under section 68(5B);
  - (b) the authentication of each electronically assisted vote;
  - (c) the recording of each elector who uses electronically assisted voting;
  - (d) ensuring the secrecy of each electronically assisted vote;
  - (e) the secure transmission of each electronically assisted vote to the electoral commissioner, and secure storage of each electronically assisted vote by the commissioner, until printing;
  - (f) the printing, for scrutiny and counting, of a ballot paper for each electronically assisted vote;
  - (g) the secure delivery of each printed ballot paper to the returning officer.
- (3) The procedures—
  - (a) do not take effect until approved by a regulation; and
  - (b) must be tabled in the Legislative Assembly with the regulation approving the procedures; and

[s 75B]

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- (c) must be published on the electoral commission's website.

### **75B Audit of electronically assisted voting for an election**

- (1) The electoral commission must appoint an independent person to audit the information technology used for an election under the procedures for electronically assisted voting made under section 75A.
- (2) The audit must be conducted—
  - (a) at least 7 days before the nomination day for the election; and
  - (b) within 60 days after the polling day for the election.
- (3) A person appointed under subsection (1) must be an individual who is not, and has not ever been, a member of a political party.
- (4) The person appointed to conduct the audit may make recommendations to the electoral commission to reduce or eliminate risks that could affect the security, accuracy or secrecy of electronically assisted voting.
- (5) A regulation may prescribe requirements about the conduct of an audit under this section.

### **75C Protection of information technology**

- (1) A person must not disclose to another person a source code or other computer software relating to electronically assisted voting, unless the disclosure is authorised under—
  - (a) the procedures approved under section 75A(3); or
  - (b) an agreement entered into by the person with the electoral commissioner.

Maximum penalty—40 penalty units or 6 months imprisonment.

- (2) A person must not, without reasonable excuse, destroy or interfere with computer software, a data file or electronic

device used for or in connection with electronically assisted voting.

Maximum penalty—100 penalty units or 2 years imprisonment.

**75D Electoral commissioner may decide electronically assisted voting is not to be used**

- (1) The electoral commissioner may decide that electronically assisted voting is not to be used—
  - (a) at a particular election; or
  - (b) by a class of electors at a particular election.
- (2) The electoral commissioner's decision must be in writing and published on the electoral commission's website.

**75E Review of electronically assisted voting**

- (1) On the request of the Minister following an election, the electoral commissioner must conduct—
  - (a) a review of the use of electronically assisted voting for the election; and
  - (b) an investigation into extending the use of electronically assisted voting to other electors for future elections.
- (2) A report on the review and investigation must be given to the Minister.
- (3) The Minister must, within 14 days after receiving the report, table the report in the Legislative Assembly.

## **Subdivision 3      Special arrangements for particular electors**

### **76      Arrangements for electors at hospitals etc.**

- (1) If a polling booth is a hospital or part of a hospital, an issuing officer may visit patients and residents in the hospital to enable them to vote.
- (2) The electoral commission may direct that declaration envelopes be completed by electors voting under this section if, in the opinion of the electoral commission, the size of the voters roll for an election would be impracticable to be used in a portable way.
- (3) Before taking action under subsection (1), the issuing officer must inform the scrutineers present of the proposed action.
- (4) When visiting patients and residents in a hospital who are electors, the issuing officer must—
  - (a) take to the elector—
    - (i) a ballot paper and, if directed by the electoral commission, a declaration envelope; and
    - (ii) a ballot box; and
    - (iii) anything else necessary to enable the elector to vote; and
  - (b) be accompanied by any scrutineer who wishes to accompany the issuing officer.
- (5) The issuing officer must ensure that, as far as practicable—
  - (a) if the electoral commission has directed that declaration envelopes be completed—the elector completes the declaration envelope when casting their vote, including signing the appropriate declaration on the declaration envelope before the issuing officer and having the officer sign the envelope as witness; and
  - (b) the elector, in private, records a vote on the ballot paper and folds the ballot paper, concealing the vote; and

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- (c) the elector puts the folded ballot paper—
    - (i) if the electoral commission has directed that declaration envelopes be completed—in the declaration envelope, seals the envelope and puts the sealed envelope in the ballot box; or
    - (ii) otherwise—in the ballot box.
  - (6) In this section—

*hospital* includes any of the following—

    - (a) a convalescent home;
    - (b) a nursing home;
    - (c) a home for the aged;
    - (d) a hostel for the aged or infirm.

## **77 Arrangements for electoral visitor voting**

- (1) Each of the following electors is entitled to be a visitor elector—
  - (a) an elector who, because of illness, disability or advanced pregnancy, will be prevented from voting at a polling booth;
  - (b) an elector who, because the elector is caring for a person who is ill, has a disability or is pregnant, will be prevented from voting at a polling booth.
- (2) An elector who is entitled to be a visitor elector may apply to the returning officer to vote as a visitor elector.
- (3) The application must be in the approved form.
- (4) If the application is received no later than 7p.m. on the Wednesday before polling day, the returning officer must direct an issuing officer to visit the elector to enable the elector to vote.
- (5) As soon as practicable after the returning officer has directed an issuing officer to visit electors, the returning officer must inform each candidate of—

- (a) the place from which the issuing officer proposes to start making visits; and
  - (b) the time or times on the day or days when the issuing officer proposes to start making visits.
- (6) The issuing officer must visit an elector at a reasonable hour before 6p.m. on polling day.
- (7) When visiting an elector, the issuing officer must—
- (a) take to the elector—
    - (i) a ballot paper; and
    - (ii) a ballot box; and
    - (iii) anything else necessary to enable the elector to vote; and
  - (b) be accompanied by any scrutineer who wishes to accompany the issuing officer.
- (8) The issuing officer must ensure that, as far as practicable—
- (a) the elector, in private, records a vote on the ballot paper and folds the ballot paper, concealing the vote; and
  - (b) the elector puts the folded ballot paper in the ballot box.
- (9) If the elector is unable to apply under subsection (2) without help, another person may help the person apply.

## **78 Help for electors voting**

- (1) If an elector satisfies an issuing officer that the elector can not vote without help, the elector may be accompanied into an unoccupied voting compartment in a polling booth, be assisted in casting an electronically assisted vote or be otherwise helped, by someone chosen by the elector.
- (2) The person may help the elector in any of the following ways—
- (a) if asked by the elector—stating the names of candidates;
  - (b) acting as interpreter;

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- (c) explaining the following—
    - (i) the ballot paper and the requirements of subdivision 5 about its marking;
    - (ii) for electronically assisted voting—any aspect of the procedure for casting an electronically assisted vote;
  - (d) marking or helping to mark the ballot paper, or helping to cast the electronically assisted vote, in the way the elector wishes;
  - (e) folding the ballot paper and putting it into a ballot box or a declaration envelope;
  - (f) sealing a declaration envelope or putting it into a ballot box.
- (3) Subsections (1) and (2) apply to all types of voting.
- (4) This section applies despite section 70(7)(a) and (b).

## **Subdivision 4      Distribution of ballot papers**

### **79      Applications to cast postal votes in local government elections that are not postal ballot elections**

- (1) An elector may apply to the returning officer to cast a postal vote in an election that is not a postal ballot election.
- (2) The application—
  - (aa) may be made orally or in writing; and
  - (a) if the application is written—must be in the approved form; and
  - (b) must state the address to which the ballot paper and declaration envelope for the elector is to be sent; and
  - (c) may be given to the returning officer by any person; and
  - (d) must be received by the returning officer no later than 7p.m. on the day that is 12 days before the polling day.

*Note—*

The polling day for a quadrennial election is a Saturday—see section 23(2) and (3). The day that is 12 days before the polling day for a quadrennial election will be 2 Mondays before the polling day.

- (3) Subsection (4) applies if—
  - (a) the application complies with subsection (2); and
  - (b) the returning officer is satisfied the elector is entitled to cast a postal vote in the election.
- (4) The returning officer must, as soon as practicable after receiving the application, give the elector—
  - (a) a ballot paper and a declaration envelope; and
  - (b) written instructions on how to cast a postal vote.
- (5) The things given to an elector under subsection (4) must be accompanied by an unsealed reply paid post envelope addressed to the returning officer at the returning officer's postal address and bearing the words 'Ballot Paper'.
- (6) However, the unsealed envelope need not be reply paid post if it is to be sent to an address outside of Australia.
- (7) The returning officer must keep a record of the ballot papers and declaration envelopes posted to electors under this section.
- (8) If the returning officer receives an application after the time mentioned in subsection (2)(d), or is otherwise satisfied the elector is not entitled to cast a postal vote in the election, the returning officer must give the applicant a written notice that states the elector is not entitled to cast a postal vote in the election.

## **80 Distribution of ballot papers to electors for postal ballot elections**

- (1) For a postal ballot election, the returning officer must post the following things to each elector for the election as soon as practicable after the nomination day—

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- (a) a ballot paper;
  - (b) a declaration envelope;
  - (c) written instructions on how a vote may be cast.
- (2) The things given to an elector under subsection (1) must—
- (a) be accompanied by an unsealed reply paid post envelope addressed to the returning officer at the returning officer's postal address and bearing the words 'Ballot Paper'; and
  - (b) be posted to the elector's address stated in the voters roll or an electoral roll mentioned in the *Electoral Act 1992*, section 58(3).
- (3) However, the unsealed envelope need not be reply paid post if it is to be sent to an address outside of Australia.
- (4) The returning officer must keep a record of the ballot papers and declaration envelopes posted to electors under this section.

## **81 Applications to cast postal votes in postal ballot elections**

- (1) This section applies if a person believes they are entitled to vote in a postal ballot election but the person is not given a ballot paper and declaration envelope under section 80(1).
- (2) The person may apply to the returning officer to cast a postal vote in the postal ballot election.
- (2A) The application must be received by the returning officer for the election no later than 7p.m. on the day that is 12 days before the polling day.

*Note—*

The polling day for a quadrennial election is a Saturday—see section 23(2) and (3). The day that is 12 days before the polling day for a quadrennial election will be 2 Mondays before the polling day.

- (3) The application—
  - (a) may be made orally or in writing; and

- (b) if the application is written—must be in the approved form; and
  - (c) must state the address to which the ballot paper and declaration envelope for the person is to be sent; and
  - (d) may be given to the returning officer by any person.
- (4) Subsection (5) applies if—
  - (a) the application complies with subsection (3); and
  - (b) the returning officer is satisfied the person is an elector who is entitled to cast a postal vote in the election.
- (5) The returning officer must, as soon as practicable after receiving the application, give the person—
  - (a) a ballot paper and a declaration envelope; and
  - (b) written instructions on how to cast a postal vote.
- (6) The things given to a person under subsection (5) must be accompanied by an unsealed reply paid post envelope addressed to the returning officer at the returning officer's postal address and bearing the words 'Ballot Paper'.
- (7) However, the unsealed envelope need not be reply paid post if it is to be sent to an address outside of Australia.
- (8) The returning officer must keep a record of the ballot papers and declaration envelopes posted to electors under subsection (5).
- (9) If the elector is unable to apply under subsection (2) without help, another person may help the person apply.
- (10) If the returning officer receives an application after the time mentioned in subsection (2A), or is otherwise satisfied the person is not an elector who is entitled to cast a postal vote in the election, the returning officer must give the person a written notice that states the person is not entitled to cast a postal vote in the election.

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**82 Distribution of ballot papers to silent electors and special postal voters**

- (1) As soon as practicable after the nomination day for an election, the returning officer must post the following things to each silent elector and special postal voter—
  - (a) a ballot paper;
  - (b) a declaration envelope;
  - (c) written instructions on how a vote may be cast;
  - (d) an unsealed reply paid post envelope addressed to the returning officer at the returning officer's postal address and bearing the words 'Ballot Paper'.
- (2) However, the unsealed envelope need not be reply paid post if it is to be posted to an address outside Australia.
- (3) The returning officer must keep a record of the ballot papers and declaration envelopes posted to electors under subsection (1).

**Subdivision 5 Recording a vote on ballot papers**

**83 How electors must record a vote on a ballot paper— optional-preferential voting**

- (1) This section applies if the system of voting at an election is optional-preferential voting.
- (2) An elector must record a vote in accordance with—
  - (a) if the elector votes using electronically assisted voting—the procedures approved under section 75A(3); or
  - (b) otherwise—subsection (3) or (4).
- (3) An elector records a vote on a ballot paper by—
  - (a) to record a first-preference vote—writing on the ballot paper the numeral 1, or a tick or a cross, in the square opposite the name of the candidate for whom the elector wishes to cast a first-preference vote; and

- (b) to record a preference vote—writing the numerals 2, 3, and so on (in regular arithmetical sequence by intervals of 1 whole numeral) in other squares to record the order of the elector’s preferences for the other candidates.
- (4) An elector is only required to record a first-preference vote on a ballot paper but may also record preference votes for 1 or more, but not necessarily all, of the candidates.

**84 How electors must record a vote on a ballot paper—  
first-past-the-post voting**

- (1) This section applies if the system of voting at an election is first-past-the-post voting.
- (1A) An elector must record a vote in accordance with—
  - (a) if the elector votes using electronically assisted voting—the procedures approved under section 75A(3); or
  - (b) otherwise—subsection (2) or (3).
- (2) An elector records a vote on a ballot paper by writing on the ballot paper—
  - (a) if 1 candidate is to be elected—the numeral 1, or a tick or cross, in the square opposite the name of the candidate whom the elector prefers; or
  - (b) if 2 or more candidates are to be elected—
    - (i) the numeral 1, or a tick or a cross, in the square opposite the name of 1 candidate for whom the elector wishes to vote; and
    - (ii) the numerals 2, 3 and so on in the squares opposite the names of the other candidates for whom the elector wishes to vote, up to the number of candidates to be elected.

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**85 Replacement ballot paper issued at polling booth or by visiting issuing officer**

- (1) This section applies if, while voting at a polling booth or when visited by an issuing officer under section 76 or 77, an elector—
  - (a) satisfies an issuing officer that—
    - (i) a ballot paper given to the elector (the *spoilt ballot paper*) is marked, damaged or destroyed to the extent that it can not be used to cast a vote; and
    - (ii) the spoilt ballot paper has not been put in a ballot box in use in the poll; and
    - (iii) the elector has not voted in the election; and
  - (b) gives the spoilt ballot paper, or the remains of the ballot paper, to the issuing officer.
- (2) The issuing officer must give the elector another ballot paper.
- (3) The issuing officer must also—
  - (a) place the spoilt ballot paper in an envelope and seal the envelope; and
  - (b) keep the envelope for separate identification under section 92(9)(b).

**85A Replacement ballot paper issued to postal voter**

- (1) This section applies if a ballot paper for an election and declaration envelope is sent to an elector under subdivision 4 and either—
  - (a) the elector does not receive the ballot paper and declaration envelope; or
  - (b) the ballot paper (the *spoilt ballot paper*) is marked, damaged or destroyed to the extent that it can not be used to cast a postal vote.
- (2) The elector may ask the returning officer for a replacement ballot paper.

- (3) If the replacement ballot paper is to be sent to the elector, the request must state the address to which the ballot paper and a declaration envelope are to be sent.
- (4) The returning officer or an issuing officer must—
  - (a) if the elector makes the request in person—give another ballot paper and declaration envelope to the elector; or
  - (b) if the elector’s request complies with subsection (3)—post, deliver or otherwise send another ballot paper and declaration envelope to the elector as soon as practicable after receiving the request.
- (5) When the elector casts a postal vote, the elector must make the declaration on the declaration envelope that states—
  - (a) the ballot paper sent to the elector has not been received or has been marked, damaged or destroyed; and
  - (b) the elector has not otherwise voted in the election.
- (6) The returning officer must keep a record of all ballot papers and declaration envelopes given or sent under this section.

## **Division 6                      Formal and informal votes**

### **86            Formal and informal ballot papers—optional-preferential voting**

- (1) This section applies to an election if the system of voting is optional-preferential voting.
- (2) A ballot paper has effect as recording a vote in the election only if the ballot paper—
  - (a) is completed under section 83; and
  - (b) does not contain any writing or mark (other than as permitted by this Act) by which the elector can, in the returning officer’s opinion, be identified; and
  - (c) has been put into a ballot box as required by this Act.

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- (3) Also, if the ballot paper is sealed in a declaration envelope, as required by this Act, the envelope must have been signed, and the signature witnessed, as required by section 72.
  - (4) Also, if the ballot paper is sealed in a declaration envelope as a postal vote—
    - (a) the ballot paper must be received by the returning officer no later than 10 days after polling day; and
    - (b) for an elector who made a signed application under section 79 or 81 to cast a postal vote in the election—the signature on the declaration envelope must match the elector’s signature on the application.
  - (5) If a ballot paper shows 2 or more squares in which the same numeral is marked, those numerals and any higher numerals marked in other squares must be disregarded.
  - (6) If a ballot paper shows a break in the sequence of numerals marked in the squares on the ballot paper to indicate preferences, the numeral that breaks the sequence and any higher numerals marked in other squares must be disregarded.
  - (7) A ballot paper that has effect to record a vote under this section is a formal ballot paper.
  - (8) A ballot paper that has no effect to record a vote under this section is an informal ballot paper.

## **87 Formal and informal ballot papers—first-past-the-post voting**

- (1) This section applies to an election if the system of voting is first-past-the-post voting.
- (2) A ballot paper has effect as recording a vote in the election only if the ballot paper—
  - (a) is completed under section 84; and
  - (b) does not contain any writing or mark (other than as permitted by this Act) by which the elector can, in the returning officer’s opinion, be identified; and
  - (c) has been put into a ballot box as required by this Act.

- (3) Also, if the ballot paper is sealed in a declaration envelope, as required by this Act, the envelope must have been signed, and the signature witnessed, as required by section 72.
- (4) Also, if the ballot paper is sealed in a declaration envelope as a postal vote—
  - (a) the ballot paper must be received by the returning officer no later than 10 days after polling day; and
  - (b) for an elector who made a signed application under section 79 or 81 to cast a postal vote in the election—the signature on the declaration envelope must match the elector’s signature on the application.
- (5) A ballot paper that complies with section 84 must not be rejected merely because it indicates the elector’s intention to vote for a number of candidates greater than the number to be elected.
- (6) A ballot paper that has effect to record a vote under this section is a formal ballot paper.
- (7) A ballot paper that has no effect to record a vote under this section is an informal ballot paper.

## **88 Ballot paper partly formal and partly informal**

- (1) This section applies if—
  - (a) an election for mayor of a local government and an election for the other councillors of the local government are held at the same time and 1 ballot paper is used for both elections; and
  - (b) the ballot paper, as completed for 1 of the elections, is informal but, as completed for the other election, is formal.
- (2) The informal part of the ballot paper must be rejected and the formal part of the ballot paper must be counted under division 7.

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## **Division 7                      Counting of votes**

### **Subdivision 1                  Processing declaration envelopes**

#### **89                      Preliminary processing of declaration envelopes**

- (1) For a postal ballot election, before, on or after the polling day, the returning officer may open all ballot boxes and examine the declaration envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.
- (2) For an election other than a postal ballot election, before or after the polling day, the returning officer may open all ballot boxes containing only sealed declaration envelopes and examine the envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.
- (3) As soon as practicable after 6p.m. on polling day, the returning officer may open all other ballot boxes containing sealed declaration envelopes and examine the envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.
- (4) As soon as practicable after receipt by the returning officer of a parcel of sealed declaration envelopes from a polling booth, the returning officer may open the parcel and examine the envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.

#### **91                      Procedure for processing declaration envelopes**

- (1) The returning officer must—
  - (a) inform all candidates for election of the times when, and the places where, declaration envelopes will be examined by the returning officer; and
  - (b) allow the candidates, or their scrutineers, to attend at the processing of declaration envelopes.

- (2) On examining the declaration envelopes, if the returning officer is satisfied the declaration has been properly completed, the envelope is sealed and the declarant on the envelope is entitled to cast a vote, the returning officer must—
  - (a) record on the voters roll, in a way approved by the returning officer, that the declarant has voted; and
  - (b) place the envelope containing the ballot paper (the *accepted envelope*) in a locked or sealed ballot box; and
  - (c) keep the accepted envelope in the ballot box until dealt with under subsection (3) and section 95.
- (3) The returning officer may take the accepted envelopes from the locked or sealed ballot box and remove the ballot papers from the envelopes, without unfolding them, or allowing anyone else to unfold them, and keep them in a locked or sealed ballot box until dealt with under section 95.
- (4) The returning officer must—
  - (a) put all ballot papers (not in declaration envelopes) that are in a ballot box opened under section 89(3) into a locked or sealed ballot box, without unfolding them, or allowing anyone else to unfold them; and
  - (b) keep them there until they are dealt with in the official counting of votes.
- (5) If a declaration envelope is rejected, the returning officer must set it aside in the officer's custody for separate identification.
- (6) The returning officer must seal up in separate parcels, and keep in the officer's custody for separate identification—
  - (a) all accepted declaration envelopes from which ballot papers have been removed; and
  - (b) all rejected declaration envelopes.

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## **Subdivision 2 Preliminary counts**

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

- (1) The presiding officer of a polling booth must follow, in order, the procedures stated in subsections (3) to (11)—
  - (a) as soon as practicable after the end of ordinary voting hours for the polling booth; and
  - (b) at a place nominated by the officer; and
  - (c) in the presence of issuing officers and any candidates and scrutineers who wish to attend.
- (2) However, the presiding officer may do anything required under subsections (3) to (10) through an issuing officer authorised by the presiding officer for that purpose.
- (3) Open all ballot boxes used at the polling booth.
- (4) Identify, and keep in a separate parcel, all declaration envelopes.
- (5) Examine all ballot papers that are not in declaration envelopes, including ballot papers printed for electronically assisted votes, and—
  - (a) identify, and keep in a separate parcel, all informal ballot papers; and
  - (b) if the system of voting is first-past-the-post voting—count the number of votes for each candidate marked on all formal ballot papers, and keep the ballot papers in a separate parcel; and
  - (c) if the system of voting is optional-preferential voting—arrange all formal ballot papers under the names of the candidates by putting in a separate parcel all formal ballot papers on which a first-preference vote is recorded for the same candidate.
- (6) Prepare a written statement in the approved form.
- (7) Seal up in separate parcels all formal and informal ballot papers (including ballot papers printed for electronically

- assisted votes), declaration envelopes and unused ballot papers.
- (8) Endorse on each parcel a description of its contents, sign the endorsement and allow any scrutineers, who wish to do so, to countersign the endorsement.
  - (9) Put the following into separate parcels and endorse on each parcel a description of its contents—
    - (a) the voters roll and all books and papers used by the presiding officer in the poll with 1 copy of the statement prepared under subsection (6);
    - (b) all ballot papers or remains of ballot papers set aside, under section 85(3)(b), for separate identification.
  - (10) Endorse the following on each parcel, and sign each endorsement—
    - (a) the name of the local government area, or division of the local government area, for which the election was held;
    - (b) the name of the polling booth from which the parcel has come.
  - (11) The presiding officer must, as soon as practicable, give each of the following things to the returning officer or a person nominated by the returning officer—
    - (a) the parcels mentioned in subsections (3) to (10);
    - (b) a copy of the statement prepared under subsection (6), other than the copy mentioned in subsection (9)(a);
    - (c) a reconciliation statement, in the approved form, for all ballot papers given out at the polling booth and all votes put in ballot boxes at the booth.

### **93 Objections by scrutineers during preliminary count**

- (1) If, while a presiding officer is complying with section 92(5), a candidate or scrutineer objects to the treatment of a particular ballot paper as informal, the officer must mark on the back of

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it ‘formal’ or ‘informal’ according to whether the officer’s decision is to treat it as formal or informal.

- (2) If, while a presiding officer is complying with section 92(5), a candidate or scrutineer objects to the counting of a vote for a particular candidate, the officer must mark on the back of the relevant ballot paper the name of the candidate for whom it is counted.

### **Subdivision 3      Official count**

#### **95      Official counting of votes**

- (1) The returning officer must follow, in order, the procedures stated in subsections (2) to (6)—
  - (a) as soon as practicable after close of the poll in an election; and
  - (b) in the presence of the candidates or scrutineers who wish to attend.
- (2) The returning officer must work out from the statements of presiding officers under section 92(6)—
  - (a) if the system of voting is first-past-the-post voting—the number of votes cast for each candidate; or
  - (b) if the system of voting is optional-preferential voting—the number of first-preference votes cast for each candidate.
- (3) The returning officer must—
  - (a) open all sealed parcels of ballot papers given to the returning officer under section 92(11) or sealed by the returning officer if the returning officer conducted the preliminary count under section 92; and
  - (b) examine all ballot papers that are not in declaration envelopes, including ballot papers printed for electronically assisted votes, and—

- (i) if the system of voting is first-past-the-post voting—count the number of votes cast for each candidate on formal ballot papers, and keep the ballot papers in a separate parcel; or
  - (ii) if the system of voting is optional-preferential voting—arrange all formal ballot papers under the names of the candidates by putting in a separate parcel the formal ballot papers on which a first-preference vote is indicated for the same candidate, and count the number of first-preference votes for each candidate on the formal ballot papers.
- (4) The returning officer must—
  - (a) open all other ballot boxes on hand; and
  - (b) open all accepted envelopes mentioned in section 91(2)(c) that have not yet been opened and remove the ballot papers; and
  - (c) identify, and keep in a separate parcel, all informal ballot papers, including ballot papers printed for electronically assisted votes; and
  - (d) examine all formal ballot papers, including ballot papers printed for electronically assisted votes, and—
    - (i) if the system of voting is first-past-the-post voting—count the number of votes cast for each candidate on the ballot papers, and keep the ballot papers in a separate parcel; or
    - (ii) if the system of voting is optional-preferential voting—arrange the ballot papers under the names of the candidates by putting in a separate parcel the ballot papers on which a first-preference vote is recorded for the same candidate, and count the number of first-preference votes for each candidate on the ballot papers.
- (5) The returning officer must add together—

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- (a) if the system of voting is first-past-the-post voting—the number counted under subsections (3)(b)(i) and (4)(d)(i); or
  - (b) if the system of voting is optional-preferential voting—the number counted under subsections (3)(b)(ii) and (4)(d)(ii).
- (6) The returning officer must reapply subsections (4) and (5) as more declaration envelopes are received by the returning officer under section 72 after close of the poll.

## **96 Objections by scrutineers during official count**

- (1) If, while the returning officer is complying with section 95, a candidate or scrutineer objects to the treatment of a particular ballot paper as informal, the officer must mark on the back of it ‘formal’ or ‘informal’ according to whether the officer’s decision is to treat it as formal or informal.
- (2) If, while the returning officer is complying with section 95, a candidate or scrutineer objects to the counting of a vote for a particular candidate, the officer must mark on the back of the relevant ballot paper the name of the candidate for whom it is counted.

## **96A Re-counting of votes**

- (1) At any time before the following happens, the electoral commission may direct the returning officer, or another member of the electoral commission’s staff, to re-count some or all of the ballot papers for an election—
  - (a) the result of the poll for the election is notified by the electoral commission under section 100;
  - (b) the electoral commission refers a matter to the Court of Disputed Returns under part 7.
- (2) The returning officer may re-count some or all of the ballot papers for the election at any time before the results of the election are notified.

- (3) A person carrying out a re-count of ballot papers must, so far as practicable, ensure that the requirements of section 95 are complied with.
- (4) This section does not limit by implication section 9(5).

## **Subdivision 4      Deciding results of local government elections**

### **97      Counting of votes for optional-preferential system**

- (1) This section applies for counting votes in an election in which the system of voting is optional-preferential voting.
- (2) If, after final counting under section 95, an absolute majority of formal first-preference votes are for 1 candidate, that candidate is elected.
- (3) Alternatively, if there is no absolute majority of the formal first-preference votes for 1 candidate, a further count assigning preference votes must be conducted and, if necessary, repeated until an absolute majority of the remaining votes are for 1 candidate.
- (4) For subsection (3), a further count assigning preference votes is conducted by—
  - (a) excluding the candidate with the fewest votes in a previous count; and
  - (b) excluding all ballot papers on which there is not recorded a preference vote for a candidate who has not been excluded for the count or a previous count; and
  - (c) assigning each preference vote recorded on the remaining ballot papers to the candidate who—
    - (i) is next in the order of an elector's preference on the ballot paper; and
    - (ii) has not been excluded; and
  - (d) counting the number of votes (first-preference votes for a candidate together with any preference votes assigned

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to the candidate) for each candidate who has not been excluded.

- (5) If, after final counting under subsection (4), an absolute majority of the votes remaining in the count are for 1 candidate, that candidate is elected.
- (6) If subsection (4)(a) can not be applied because 2 or more candidates (1 of whom must be excluded) have an equal number of votes, the candidate to be excluded is—
  - (a) if there has been an earlier count—the candidate who had the fewest votes at the last count at which the candidates did not have an equal number of votes; or
  - (b) if there has not been an earlier count or the candidates had an equal number of votes at all earlier counts—the candidate whose name is on a slip chosen under subsection (7).
- (7) For subsection (6)(b), the returning officer must, in the presence of any candidates, or their representative, who wish to attend—
  - (a) write the names of the candidates who have an equal number of votes on similar slips of paper; and
  - (b) fold the slips, concealing the names; and
  - (c) put the slips in an opaque container and shuffle them; and
  - (d) raise the container so that its contents can not be seen and choose a slip at random.
- (8) If, under subsection (6), the candidates who have an equal number of votes are the only candidates remaining in the count, then, despite subsection (6), the candidate whose name is recorded under subsection (9)(g) is elected.
- (9) The returning officer must, in the presence of 2 witnesses—
  - (a) prepare a list of the candidates; and
  - (b) assign a different number or colour to each candidate; and

- (c) place only the marbles, balls or other similar things (*marbles*), complying with subsection (10), in an opaque container large enough to allow the marbles in it to move about freely when it is rotated; and
  - (d) rotate the container and permit another person present who wishes to do so to rotate it; and
  - (e) raise the container so that its contents can not be seen; and
  - (f) while the container is raised, take 1 of the marbles out of it or allow 1 of the marbles to come out of it; and
  - (g) record the name of the candidate assigned the numbered or coloured marble that, under paragraph (f), is taken or allowed to come out of the container.
- (10) For subsection (9)(c), the marbles must be—
- (a) the same size and weight; and
  - (b) the same colours or numbers as the colours or numbers assigned under subsection (9)(b) to the candidates.
- (11) The returning officer must allow each of the 2 candidates, or their representative, to be present for the process mentioned in subsection (9).
- (12) In this section—
- absolute majority* means more than 50% of votes.

## **98 Counting of votes for first-past-the-post system**

- (1) This section applies for counting votes in an election in which the system of voting is first-past-the-post voting.
- (2) If only 1 person is to be elected, the candidate who receives the majority of votes is elected.
- (3) If subsection (2) can not be applied because 2 or more candidates have an equal number of votes, the candidate whose name is recorded under subsection (7)(g) is elected.
- (4) If 2 or more persons are to be elected (as councillors)—the candidates elected are—

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- (a) the candidate who receives the majority of votes; and
  - (b) the candidates who receive the next highest number of votes, up to the number of persons to be elected.

*Note—*

A candidate who receives no votes has a number of votes that is 0.

- (5) If—
  - (a) subsection (4) can not be applied because 2 or more candidates (the *tied candidates*) have an equal number of votes; and
  - (b) the number of tied candidates, together with any candidates already elected under subsection (4), is more than the number of persons to be elected;

the candidate whose name is recorded under subsection (7)(g) is elected.

*Note—*

A candidate who receives no votes has a number of votes that is 0.

- (6) To remove any doubt, it is declared that, if—
  - (a) subsection (4) can not be applied there are tied candidates; and
  - (b) the number of tied candidates, together with any candidates already elected under subsection (4), is not more than the number of persons to be elected;

the tied candidates are elected.

*Example for subsection (6)—*

If three persons remain to be elected and the 2 candidates with the highest number of votes have an equal number of votes, the candidates are elected and then only 1 person would remain to be elected.

- (7) The returning officer must, in the presence of 2 witnesses—
  - (a) prepare a list of the candidates; and
  - (b) assign a different number or colour to each candidate; and
  - (c) place only the marbles, balls or other similar things (*marbles*), complying with subsection (8), in an opaque

- container large enough to allow the marbles in it to move about freely when it is rotated; and
- (d) rotate the container and permit another person present who wishes to do so to rotate it; and
  - (e) raise the container so that its contents can not be seen; and
  - (f) while the container is raised, take 1 of the marbles out of it or allow 1 of the marbles to come out of it; and
  - (g) record the name of the candidate assigned the numbered or coloured marble that, under paragraph (f), is taken or allowed to come out of the container.
- (8) For subsection (7)(c), the marbles must be—
- (a) the same size and weight; and
  - (b) the same colours or numbers as the colours or numbers assigned under subsection (7)(b) to the candidates.
- (9) The returning officer must allow each of the candidates, or their representative, to be present for the process mentioned in subsection (7).

## **99 Returning officer's duty after counting votes**

When the result of the poll for the election is known, the returning officer must—

- (a) seal the following in separate parcels—
  - (i) all formal ballot papers, including ballot papers printed for electronically assisted votes;
  - (ii) all informal ballot papers, including ballot papers printed for electronically assisted votes;
  - (iii) all accepted declaration envelopes from which ballot papers have been removed;
  - (iv) all rejected declaration envelopes;
  - (v) all spoiled ballot papers in sealed envelopes;
  - (vi) all unused ballot papers;

- (vii) all of the books and papers (other than the voters roll) used in the poll by each presiding officer; and
- (b) endorse on each parcel a description of its contents and sign the endorsement; and
- (c) allow any scrutineers, who wish to do so, to countersign the endorsement.

## **Division 8                      Notifying the results of local government elections etc.**

### **100      Notifying the results of an election**

- (1) As soon as practicable after the result of a poll for an election is known, the electoral commission must, by notice in the approved form, declare—
  - (a) the result of the poll; and
  - (b) for a poll for the election of a mayor, the name of the mayor who has been elected; and
  - (c) the names of each candidate who has been elected.
- (2) The electoral commission must ensure the notice is published on the electoral commission’s website, and in other ways the electoral commission considers appropriate.
- (3) The returning officer must ensure the notice is published on the website of the local government for which the election was held.
- (4) The electoral commission must not delay complying with subsection (1) or (2) merely because some ballot papers have not been received by the returning officer, if it is clear the votes recorded on the ballot papers could not affect the result of the election.

## 101 Notice of results of poll to candidates

The electoral commission must give notice of the final result of the poll to each candidate as soon as practicable after—

- (a) all ballot papers used in the poll have been examined; and
- (b) all votes cast in the poll on ballot papers that appear to be formal have been counted.

## 101A Election and elector information

- (1) This section applies if the electoral commission has given notice of the final result of a poll for an election under section 101.
- (2) As soon as practicable after giving the notice, the electoral commission must publish on the commission's website—
  - (a) the number of formal first preference votes cast for each candidate in the poll; and
  - (b) information about the distribution of formal preference votes, other than first preference votes, for the candidates in the poll.
- (3) Also, the following (each a *requester*) may ask the electoral commission for elector information for the election—
  - (a) a registered political party;
  - (b) a group of candidates for the election, if at least 1 member of the group was elected at the election;
  - (c) a councillor who—
    - (i) was elected at the election; and
    - (ii) as a candidate for the election, was not a member of a group of candidates or endorsed by a registered political party.
- (4) The electoral commission must comply with a request under subsection (3) by giving the requester the elector information about each elector who—

- (a) was enrolled on the relevant voters roll for the election;  
and
  - (b) voted in the election.
- (5) The **relevant voters roll** for the election is—
- (a) for a request made by a registered political party—the voters roll for each local government area; or
  - (b) for a request made by a group of candidates—the voters roll for the local government area, or division of a local government area, for each member of the group that was elected; or
  - (c) for a request made by a councillor mentioned in subsection (3)(c)—the voters roll for the local government area, or division of a local government area, for which the councillor was elected.
- (6) The **elector information** about an elector who voted in an election is—
- (a) the elector’s name and address; and
  - (b) whether the elector voted in person, by post or in another way; and
  - (c) if the elector voted in person at a polling booth in the local government area—the location of the polling booth.
- (7) However, the commission must not give the requester the elector information about a silent elector.
- (8) A person must not use, disclose to another person or allow another person to access elector information given to a registered political party, group of candidates or councillor under this section, unless the use, disclosure or access is for a purpose related to an election.

Maximum penalty for subsection (8)—200 penalty units.

## **102 Storage and disposal of material resulting from election**

- (1) As soon as practicable after the electoral commission gives notice of the final result of a poll for an election under section 101, the returning officer for the election must—
  - (a) destroy all unused ballot papers; and
  - (b) seal up in packets all other parcels sealed up under section 99; and
  - (c) endorse the following on each packet and sign the endorsement—
    - (i) a description of its contents;
    - (ii) the name of the local government area, or division of a local government area, for which the election was held;
    - (iii) the polling day; and
  - (d) give each packet to the electoral commission.
- (2) The electoral commission must keep the packets in safe custody until the next quadrennial election.
- (3) At the end of the period under subsection (2), the electoral commission must—
  - (a) destroy all ballot papers contained in the packets; and
  - (b) dispose of the other contents of the packets in the way the commission considers appropriate.

## **103 Notice to electors whose ballot papers are not accepted**

- (1) This section applies if—
  - (a) in an election, a person casts a vote in the election and completes a declaration envelope for the vote; and
  - (b) the person's ballot paper is not accepted for counting under section 91 because the returning officer is not satisfied that the declarant on the declaration envelope is entitled to cast a vote in the election.

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- (2) As soon as practicable after the election, the electoral commission must send a notice to the person advising the person why the ballot paper was not accepted for counting.

#### **104 Notice to electoral commission of error in electoral roll**

As soon as practicable after an election, the returning officer must give to the electoral commission notice of the names and addresses of all persons permitted to vote at the election whose names are not on the voters roll, apparently because of official error, if the error relates to the keeping of an electoral roll under the *Electoral Act 1992*.

## **Part 5 Fresh elections**

#### **105 Arrangements for fresh election**

- (1) This section applies if—
- (a) under the *Local Government Act 2009*, section 123(3) a regulation directs that a fresh election of councillors of a local government be held; or
- Note—*
- The direction under the *Local Government Act 2009*, section 123(3) may be given only after the ratification of the dissolution of the local government by the Legislative Assembly.
- (b) a regulation directs that a fresh election of councillors of a local government, or a division of a local government, be held to implement a local government change under the *Local Government Act 2009*, chapter 2, part 3.
- (2) The day on which a fresh election is to be held must be a Saturday.
- (3) The provisions of part 4 apply, with all necessary changes and any changes prescribed by regulation, to the fresh election as if the election were a quadrennial election.

## Part 6                      Electoral funding and financial disclosure

### Division 1                  Preliminary

#### 106      Definitions for part

In this part—

*candidate's disclosure period* means the disclosure period applying to the candidate under division 2, subdivision 1.

*disclosure date*, for a return, means the day prescribed by regulation for the return.

*electoral expenditure* means expenditure incurred for the purposes of a campaign for an election, whether or not the expenditure is incurred during the election period for the election.

*gift* see section 107(1) and (2).

*gifts register* see section 128(1).

*group's disclosure period* means the disclosure period for the group of candidates under section 116.

*information notice*, about a decision, means a notice that states—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the person to whom the notice is given may apply to the electoral commissioner for a review of the decision within 20 business days after the person receives the notice; and
- (d) how to apply for a review.

*loan* means any of the following made other than by use of a credit card—

- (a) an advance of money;

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

***person acting on behalf of a candidate*** see section 111(1).

***person acting on behalf of a group of candidates*** see section 111(2).

***political activity*** means any of the following—

- (a) publication by any means (including radio or television) of election material;
- (b) public expression of views on an issue in an election;
- (c) a gift to a political party;
- (d) a gift to a candidate in an election;
- (e) a gift to a person on the understanding that the person or someone else will apply, either directly or indirectly, the whole or a part of the gift for a purpose mentioned in paragraph (a), (b), (c) or (d).

***political donation***, for division 1A, see section 113A.

***prohibited donor***, for division 1A, see section 113(1).

***registered industrial organisation*** means an organisation registered under a law of the State, another State or the Commonwealth about the registration of industrial organisations.

***relevant details***, for a gift, see section 109.

***required period***, for an election, means 15 weeks after the polling day for the election or, if no poll is conducted, the day a poll would have been conducted if it were required.

***third party*** see section 123.

***value***, of a gift, see section 108.

## 107 Meaning of *gifts*

- (1) A *gift* is—
  - (a) the disposition of property or the provision of a service, without consideration or for a consideration that is less than the market value, but does not include—
    - (i) transmission of property under a will; or
    - (ii) provision of a service by volunteer labour; or
  - (b) payment for attendance at or participation in a fundraising activity.
- (2) However, the disposition of property or provision of a service to a candidate is not a gift if it is made in a private capacity, for the candidate's personal use, and the candidate does not use, and does not intend to use, it solely or substantially for a purpose related to any election.
- (3) In this section—

*disposition of property* means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, including, for example—

  - (a) the allotment of shares in a corporation; and
  - (b) the creation of a trust in property; and
  - (c) the grant or creation of a lease, mortgage, charge, servitude, licence, power, partnership or interest in property; and
  - (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in property; and
  - (e) the exercise by a person of a general power of appointment of property in favour of someone else; and
  - (f) a transaction by a person with intent to diminish, directly or indirectly, the value of the person's own property and to increase the value of someone else's property.

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## 108 Meaning of *value* of gifts

The *value*, of a gift, is—

- (a) if the gift is money—the amount of money; or
- (b) if the gift is property other than money—
  - (i) the market value of the property; or
  - (ii) if a regulation prescribes principles under which the value of the property is to be decided—the value decided under the principles; or
- (c) if the gift is the provision of a service—
  - (i) the amount that would reasonably be charged for providing the service if the service were provided on a commercial basis; or
  - (ii) if a regulation prescribes principles under which the amount that would reasonably be charged for providing the service is to be decided—the amount decided under the principles; or
- (d) if the gift is a payment for attendance at, or participation in, a fundraising activity—the gross amount of the payment, regardless of the value of anything received in consideration for the payment.

## 109 Meaning of *relevant details* for gifts

The *relevant details*, for a gift, are the value of the gift and when the gift was made and—

- (a) for a gift purportedly made on behalf of the members of an unincorporated association—
  - (i) the association's name; and
  - (ii) unless the association is a registered industrial organisation—the names and residential or business addresses of the members of the executive committee, however described, of the association; or

- (b) for a gift purportedly made out of a trust fund or out of the funds of a foundation—
  - (i) the names and residential or business addresses of the trustees of the fund or other persons responsible for the funds of the foundation; and
  - (ii) the title or other description of the trust fund or the name of the foundation; and
  - (iii) if the gift is made out of a trust account of a lawyer or accountant under the instructions of a person who is in substance the giver of the gift—the name and residential or business address of the person; or
- (c) for a gift not mentioned in paragraph (a) or (b)—the name and residential or business address of the person who gave the gift.

## 110 References to candidates

A person who is a candidate in an election is taken, for this part, to remain a candidate for the entire period of the candidate's disclosure period for the election.

## 111 Agents and campaign committees

- (1) A *person acting on behalf of a candidate* includes a committee formed to help the candidate's election campaign in an election but does not include a committee that is recognised by a political party as forming part of the political party.
- (2) A *person acting on behalf of a group of candidates* includes a committee formed to help the election campaign of members of the group in an election.

## 112 Related corporations

For this part—

- (a) a body corporate and any other body corporate related to it are taken to be the 1 body corporate; and
- (b) whether a body corporate is related to another body corporate must be decided in the same way a body corporate is decided to be related to another body corporate under the Corporations Act.

## **Division 1A                      Political donations from property developers**

### **113      Meaning of *prohibited donor***

- (1) For this division, *prohibited donor*—
  - (a) means—
    - (i) a property developer; or
    - (ii) an industry representative organisation, a majority of whose members are property developers; but
  - (b) does not include an entity for whom a determination is in effect under section 113D.

*Note—*

See section 194C(4) in relation to the non-effect of a determination in particular circumstances.

- (2) For subsection (1)(a), each of the following persons is a *property developer*—
  - (a) a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation—
    - (i) in connection with the residential or commercial development of land; and
    - (ii) with the ultimate purpose of the sale or lease of the land for profit;
  - (b) a close associate of a corporation mentioned in paragraph (a).

(3) For deciding whether a corporation is a corporation mentioned in subsection (2)(a), any activity engaged in by the corporation for the dominant purpose of providing commercial premises at which the corporation, or a related body corporate of the corporation, will carry on business is to be disregarded, unless the business involves the sale or leasing of a substantial part of the premises.

(4) In this section—

*close associate*, of a corporation, means any of the following persons—

- (a) a related body corporate of the corporation;
- (b) a director or other officer of the corporation;
- (c) a person with more than 20% of the voting power in the corporation or a related body corporate of the corporation;
- (d) a spouse of an individual mentioned in paragraph (b) or (c);
- (e) if the corporation or a related body corporate of the corporation is a stapled entity in relation to a stapled security—the other stapled entity in relation to the stapled security;
- (f) if the corporation is a trustee, manager or responsible entity in relation to a unit trust—a person who holds more than 20% of the units in the trust;
- (g) if the corporation is a trustee, manager or responsible entity in relation to a discretionary trust—a beneficiary of the trust.

*director*, of a corporation, see the Corporations Act, section 9.

*officer*, of a corporation, see the Corporations Act, section 9.

*related body corporate*, of a corporation, see the Corporations Act, section 9.

*relevant planning application* means—

- (a) an application for, or to change, a development approval under the *Planning Act 2016* or the repealed *Sustainable Planning Act 2009*; or
- (b) a request to the Minister administering the *Planning Act 2016* or the repealed *Sustainable Planning Act 2009* or a local government about the making or amendment of a planning instrument or designation under either Act; or
- (c) an application for, or to change, an SDA approval under the *State Development and Public Works Organisation Act 1971*; or
- (d) a request or application to the Minister who administers the *State Development and Public Works Organisation Act 1971* or the Coordinator-General about any of the following under that Act—
  - (i) the declaration or variation of a coordinated project, prescribed development, prescribed project or State development area;
  - (ii) the imposition of, or change to, conditions on a coordinated project;
  - (iii) the preparation or variation of a development scheme; or
- (e) an application for, or to change, a PDA development approval under the *Economic Development Act 2012*; or
- (f) a request to the Minister who administers the *Economic Development Act 2012* or the MEDQ about the making, declaration or amendment of any of the following under that Act—
  - (i) a priority development area or provisional priority development area;
  - (ii) a development scheme, interim land use plan, or PDA-associated development for a priority development area;
  - (iii) a provisional land use plan or PDA-associated development for a provisional priority development area; or

- (g) an application or request of a type prescribed by regulation to be a relevant planning application.

***stapled entity***—

- (a) means an entity the interests in which are traded along with the interests in another entity as stapled securities; and
- (b) for an entity mentioned in paragraph (a) that is a trust, includes any trustee, manager or responsible entity in relation to the trust.

***voting power*** see the Corporations Act, section 610.

### **113A Meaning of *political donation***

- (1) For this division, each of the following is a ***political donation***—
  - (a) a gift made to or for the benefit of—
    - (i) a political party; or
    - (ii) a councillor of a local government; or
    - (iii) a candidate or group of candidates in an election;
  - (b) a gift made to or for the benefit of another entity—
    - (i) to enable the entity (directly or indirectly) to make a gift mentioned in paragraph (a) or to incur electoral expenditure; or
    - (ii) to reimburse the entity (directly or indirectly) for making a gift mentioned in paragraph (a) or incurring electoral expenditure;
  - (c) a loan from an entity other than a financial institution that, if the loan were a gift, would be a gift mentioned in paragraph (a) or (b).
- (2) If a gift is made by a person in a private capacity to an individual (the ***recipient***) for the recipient's personal use and the recipient does not intend to use the gift for an electoral purpose—

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- (a) the gift is not a political donation when it is made; but
  - (b) if any part of the gift is used for an electoral purpose, then, for the purposes of section 113B(3)—
    - (i) that part of the gift is a political donation; and
    - (ii) the recipient is taken to accept that part of the gift at the time it is used for an electoral purpose.
  - (3) A reference in subsection (2) to using a gift for an ***electoral purpose*** is a reference to using the gift to incur electoral expenditure or for the recipient's duties as a councillor of a local government.
  - (4) In this section—  
***disposition of property*** see section 107(3).

***gift*** means—

- (a) the disposition of property or the provision of a service, without consideration or for a consideration that is less than the market value, but does not include—
  - (i) transmission of property under a will; or
  - (ii) provision of a service by volunteer labour; or
- (b) an amount of interest that would have been payable on a loan if—
  - (i) the loan had been made on terms requiring the payment of interest at the generally prevailing interest rate for a loan of that kind; and
  - (ii) any interest payable had not been waived; and
  - (iii) any interest payments were not capitalised; or
- (c) an amount paid for attendance at or participation in a fundraising activity, to the extent the amount forms part of the proceeds of the fundraising activity to which it relates; or
- (d) any of the following amounts paid by a person to a political party, to the extent the total amount of the person's payments in a calendar year exceeds \$1,000—

- (i) an amount paid as a subscription for a person's membership of the party;
- (ii) an amount paid for a person's affiliation with the party.

### **113B Political donations by prohibited donors**

- (1) It is unlawful for a prohibited donor to make a political donation.
- (2) It is unlawful for a person to make a political donation on behalf of a prohibited donor.
- (3) It is unlawful for a person to accept a political donation that was made (wholly or in part) by or on behalf of a prohibited donor.
- (4) It is unlawful for a prohibited donor to solicit a person to make a political donation.
- (5) It is unlawful for a person to solicit, on behalf of a prohibited donor, another person to make a political donation.

### **113C Recovery of prohibited donations**

- (1) If a person accepts a prohibited donation, the following amount is payable by the person to the State—
  - (a) if the person knew it was unlawful to accept the prohibited donation—an amount equal to twice the amount or value of the prohibited donation;
  - (b) otherwise—an amount equal to the amount or value of the prohibited donation.
- (2) The amount may be recovered by the State as a debt due to the State from—
  - (a) if the recipient is a registered political party that is not a corporation—the party's agent; or
  - (b) if the recipient is a group of candidates—the members of the group or the group's agent; or

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- (c) if the recipient is a candidate—the candidate or the candidate’s agent; or
  - (d) otherwise—the recipient.
- (3) The imposition of liability to pay an amount to the State under this section—
- (a) is not a punishment or sentence for an offence against section 194A or any other offence; and
  - (b) is not a matter to which a court may have regard in sentencing an offender for an offence against section 194A or any other offence.
- (4) An action in a court to recover an amount due to the State under this section may be brought in the name of the electoral commission.
- (5) Any process in the action required to be served on the State may be served on the electoral commission.
- (6) In this section—

*prohibited donation* means a political donation that was unlawfully made or accepted under section 113B.

*recipient* means the entity to whom, or for the benefit of whom, the prohibited donation was made.

### **113D Making of determination that entity is not a prohibited donor**

- (1) A person may apply to the electoral commissioner for a determination that the person, or another entity, is not an entity mentioned in section 113(1)(a)(i) or (ii).
- (2) The application must be written and supported by enough information to enable the electoral commissioner to decide the application.
- (3) If the electoral commissioner is satisfied the entity to whom the application relates is not an entity mentioned in section 113(1)(a)(i) or (ii), the electoral commissioner must make the determination sought by the applicant.

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- (4) Otherwise, the electoral commissioner must—
  - (a) decide not to make the determination; and
  - (b) give the applicant an information notice about the decision.
- (5) A determination has effect for 1 year unless it is earlier revoked.

### **113E Revocation of determination**

- (1) If, at any time, the electoral commissioner ceases to be satisfied the entity to whom a determination relates is not an entity mentioned in section 113(1)(a)(i) or (ii), the electoral commissioner may revoke the determination by giving a written notice of revocation to the entity and, if the entity was not the applicant for the determination, the applicant.
- (2) The notice of revocation given to the entity must include, or be accompanied by, an information notice about the decision to revoke the determination.

### **113F Register of determinations**

- (1) The electoral commissioner must keep a register of determinations made under section 113D.
- (2) The register must include any revocations made under section 113E.
- (3) The electoral commissioner must make the register available for public inspection without fee.

### **113G Review of decisions**

A person who is given, or is entitled to be given, an information notice about a decision under this division has a right to appeal against the decision under the *Electoral Act 1992*, part 11, division 20, as if the decision were a decision to which section 277(4)(b) or 278(2) of that Act applied.

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## Division 2                      Disclosure periods

### Subdivision 1                  Disclosure period for candidates

#### 114      Disclosure period for candidates who were previously candidates in a local government election

- (1) This section applies to a candidate for an election (the *current election*) if, within 5 years before the polling day for the current election, the candidate was a candidate for another election.
- (2) The candidate's disclosure period for the current election is the period—
  - (a) starting—
    - (i) on the day prescribed by regulation for this subparagraph; or
    - (ii) if a day is not prescribed—30 days after the polling day for the most recently held election for which the candidate was also a candidate; and

*Example for subparagraph (ii)—*

If the polling day for the most recently held election was 15 March, the disclosure period starts at the beginning of 15 April.

- (b) ending—
  - (i) on the day prescribed by regulation for this subparagraph; or
  - (ii) if a day is not prescribed—30 days after the polling day for the current election.

*Example for subparagraph (ii)—*

If the polling day for the current election was 31 March, the disclosure period ends at the end of 30 April.

## **115 Disclosure period—other candidates**

- (1) This section applies to a candidate for an election if section 114 does not apply to the candidate.
- (2) The candidate's disclosure period for the election is the period—
  - (a) starting on the day the first of the following happens or, if they happen at the same time, when they happen—
    - (i) the person announces the person is to be a candidate in the election;
    - (ii) the person nominates as a candidate in the election; and
  - (b) ending—
    - (i) on the day prescribed by regulation for this subparagraph; or
    - (ii) if a day is not prescribed—30 days after the polling day for the election.

*Example for subparagraph (ii)—*

If the polling day for the current election was 31 March, the disclosure period ends at the end of 30 April.

## **Subdivision 2 Disclosure period for groups of candidates**

### **116 Disclosure period for groups of candidates**

The disclosure period, for an election (the *current election*), for a group of candidates is the period—

- (a) starting—
  - (i) on the day prescribed by regulation for this subparagraph; or
  - (ii) if a day is not prescribed—30 days after the polling day for the most recently held quadrennial elections; and

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*Example for subparagraph (ii)—*

If the polling day for the most recently held quadrennial election was 15 March, the disclosure period starts at the beginning of 15 April.

- (b) ending—
  - (i) on the day prescribed by regulation for this subparagraph; or
  - (ii) if a day is not prescribed—30 days after the polling day for the current election.

*Example for subparagraph (ii)—*

If the polling day for the current election was 31 March, the disclosure period ends at the end of 30 April.

## **Division 3                      Disclosure by candidates**

### **117      Gifts to candidates**

- (1) Subsection (2) applies if, during a candidate's disclosure period for an election, the candidate receives a gift of a value equal to or more than \$500.
- (2) The candidate must give the electoral commission a return about the gift on or before the disclosure date for the return.
- (3) Each return must—
  - (a) be in the approved form; and
  - (b) state the relevant details for the gift.
- (4) Also, the candidate must, within the required period for the election, give the electoral commission a return in the approved form, stating—
  - (a) if the candidate received gifts during the disclosure period—
    - (i) the total value of all gifts received during the disclosure period; and
    - (ii) the number of entities that gave the gifts; or

- (b) otherwise—that no gifts were received during the disclosure period.
- (5) For subsection (1), the value of a gift is taken to include the value of all other gifts previously given to the candidate by the same entity during the candidate’s disclosure period.
- (6) A candidate need not comply with this section if the candidate—
  - (a) gives a return, in the approved form, to the electoral commission before making the declaration of office under the *Local Government Act 2009*, section 169 and the return states the candidate—
    - (i) does not expect to receive gifts in the candidate’s disclosure period for the election after giving the return; and
    - (ii) will give returns under this section if gifts are received during the candidate’s disclosure period for the election after giving the return; and
  - (b) does not receive gifts during the candidate’s disclosure period for the election after giving the return.
- (7) If the electoral commission receives a return under subsection (2) from a candidate who is successful in an election, the electoral commission must give a copy of the return to the chief executive officer of the local government for which the election was held.
- (8) This section does not apply to a candidate who is a member of a group of candidates.

## **118 Gifts to groups of candidates**

- (1) Subsection (2) applies if, during the disclosure period for an election for a group of candidates, a member of the group, or a person acting on behalf of the group, receives a gift of a value equal to or more than \$500.
- (2) The group’s agent must give the electoral commission a return about the gift on or before the disclosure date for the return.

- (3) Each return must—
- (a) be in the approved form; and
  - (b) state—
    - (i) the names of the candidates forming the group; and
    - (ii) the name, if any, of the group; and
    - (iii) the relevant details for the gift.
- (4) Also, the agent must, within the required period for the election, give the electoral commission a return in the approved form, stating—
- (a) if any members of the group, or a person acting on behalf of the group, received gifts during the disclosure period—
    - (i) the total value of all gifts received during the disclosure period; and
    - (ii) the number of entities that gave the gifts; or
  - (b) otherwise—that no gifts were received by any member of the group, or a person acting on behalf of the group, during the disclosure period.
- (5) For subsection (1), the value of a gift is taken to include the value of all other gifts previously given to any member of the group, or a person acting on behalf of the group, by the same entity during the group's disclosure period.
- (6) The agent need not comply with this section if—
- (a) each candidate who is a member of the group gives a return, in the approved form, to the electoral commission before making the declaration of office under the *Local Government Act 2009*, section 169 and the return states—
    - (i) the candidate does not expect the group to receive further gifts during the group's disclosure period for the election after giving the return; and
    - (ii) the group's agent will give a return under this section if further gifts are received during the

group's disclosure period for the election after giving the return; and

- (b) the group does not receive further gifts during the group's disclosure period for the election after giving the return.
- (7) If the electoral commission receives a return under subsection (2) from the agent of a group of candidates, any of whom are successful in an election, the electoral commission must give a copy of the return to the chief executive officer of the local government for which the election was held.

### **119 Particular gifts not to be received**

- (1) A candidate for an election, or a person acting on behalf of the candidate, must not, during the candidate's disclosure period for the election, receive a prescribed gift made to, or for the benefit of, the candidate unless—
- (a) the relevant details for the gift are known to the person receiving the gift; or
  - (b) when the gift is made—
    - (i) the entity giving the gift gives to the person receiving the gift details of the gift; and
    - (ii) the person receiving the gift has no reasonable grounds to believe that the details given are not the correct relevant details for the gift.
- (2) A group of candidates for an election, or a person acting on behalf of the group, must not, during the group's disclosure period for the election, receive a prescribed gift made to, or for the benefit of, the group of candidates unless—
- (a) the relevant details for the gift are known to the group or person receiving the gift; or
  - (b) when the gift is made—
    - (i) the entity making the gift gives the group or person receiving the gift details of the gift; and

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- (ii) the group or person receiving the gift has no reasonable grounds to believe that the details given are not the correct relevant details for the gift.
  - (3) If a person or group receives a gift in contravention of this section, an amount equal to the value of the gift—
    - (a) is payable by the person or group to the State; and
    - (b) may be recovered by the State as a debt owing to the local government.
  - (4) For this section, the value of a gift is taken to include the value of all other gifts previously received by the candidate, group of candidates or person acting on behalf of the candidate or group, from the same entity during the candidate's or group's disclosure period.
  - (5) In this section—  
*prescribed gift* means a gift with a value of at least \$500.

## **120 Loans to candidates or groups of candidates**

- (1) Subsection (2) applies if, during a candidate's disclosure period for an election, the candidate receives a loan equal to or more than \$500.
- (2) The candidate must give the electoral commission a return about the loan on or before the disclosure date for the return.
- (3) Subsection (4) applies if, during the disclosure period for a group of candidates for an election, the group receives a loan equal to or more than \$500.
- (4) The agent for the group must give the electoral commission a return about the loan on or before the disclosure date for the return.
- (5) However, subsections (1) and (3) do not apply to a loan from a financial institution.
- (6) Each return given under subsection (2) or (4) must—
  - (a) be in the approved form; and
  - (b) state—

- (i) the value of the loan; and
    - (ii) the date on which the loan was made; and
    - (iii) the terms of the loan; and
  - (c) if the loan was made by the members of an unincorporated association, include—
    - (i) the association's name; and
    - (ii) unless the association is a registered industrial organisation—the names and residential or business addresses of the members of the executive committee, however described, of the association; and
  - (d) if the loan was purportedly made out of a trust fund or out of the funds of a foundation, include—
    - (i) the names and residential or business addresses of the trustees of the fund or other persons responsible for the funds of the foundation; and
    - (ii) the title or other description of the trust fund or the name of the foundation; and
    - (iii) if the loan is made out of a trust account of a lawyer or accountant under the instructions of a person who is in substance the lender—the name and residential or business address of the person; and
  - (e) if neither paragraph (c) nor (d) apply—the name and residential or business address of the person who made the loan.
- (7) Also, the candidate or agent must, within the required period for the election, give the electoral commission a return in the approved form, stating—
  - (a) if the candidate or group received loans during the disclosure period—
    - (i) the total value of all loans received during the disclosure period; and

- (ii) the number of entities who made the loans; or
  - (b) otherwise—that no loans were received by the candidate or group during the disclosure period.
- (8) For subsections (1) and (3), the amount of a loan received by the candidate or group is taken to include the value of all other loans previously given to the candidate or group by the same entity during the disclosure period.

## **121 Particular loans not to be received**

- (1) A candidate for an election, or person acting on behalf of the candidate, must not receive a loan of \$500 or more from a person, other than a financial institution, during the candidate's disclosure period for the election unless the candidate or person keeps a record of the loan.
- (2) A group of candidates for an election, or person acting on behalf of the group of candidates, must not receive a loan of \$500 or more from a person, other than a financial institution, during the group's disclosure period for the election unless the group or person keeps a record of the loan.
- (3) The record under subsection (1) or (2) must state the following—
- (a) the terms of the loan;
  - (b) if the loan was received from a registered industrial organisation other than a financial institution—
    - (i) the name of the organisation; and
    - (ii) the names and addresses of the members of the executive committee, however described, of the organisation;
  - (c) if the loan was received from an unincorporated association—
    - (i) the name of the association; and
    - (ii) unless the association is a registered industrial organisation—the names and residential or

- business addresses of the members of the executive committee, however described, of the association;
- (d) if the loan was paid out of a trust fund or out of the funds of a foundation—
    - (i) the names and residential or business addresses of the trustees of the fund or other persons responsible for the funds of the foundation; and
    - (ii) the title or other description of the trust fund, or the name of the foundation; and
    - (iii) if the loan is made out of a trust account of a lawyer or accountant under the instructions of a person who is in substance the lender—the name and residential or business address of the lender;
  - (e) if none of paragraphs (b), (c) and (d) applies—the name and residential or business address of the person.
- (4) If a candidate, group or person receives a loan in contravention of subsection (1) or (2), an amount equal to the amount or value of the loan—
- (a) is payable by the candidate, group or person to the State; and
  - (b) may be recovered by the State from the candidate, group or person as a debt.
- (5) For subsections (1) and (2), the amount of a loan received by the candidate or group is taken to include the value of all other loans previously given to the candidate or group by the same entity during the disclosure period.

## **122 Electoral commission to give reminder notice to candidates**

- (1) The electoral commission must, within 10 weeks after the polling day, or if no poll is conducted, the day a poll would otherwise have been required to be conducted under this Act, for an election, give written notice to a candidate or agent for a group of candidates if—

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- (a) the candidate has not given the return the candidate is required, under section 117(4) or 120(7), to give the electoral commission for the election; or
- (b) the agent has not given the return the agent is required, under section 118(4) or 120(7), to give the electoral commission for the election.
- (2) The notice must state—
- (a) the candidate or agent is required to give the return under section 117, 118 or 120; and
- (b) the following provisions, or a general outline of them, to the extent they may be relevant to the candidate—
- the *Local Government Act 2009*, section 153 and the *City of Brisbane Act 2010*, section 153
  - section 117
  - section 118
  - section 120
  - section 195
  - section 197.
- (3) To remove any doubt, it is declared that—
- (a) this section does not apply because of subsection (1)(a) if, under section 117(6), the candidate is not required to give the return; and
- (b) this section does not apply because of subsection (1)(b) if, under section 118(6), the agent is not required to give the return.

## Division 4 Disclosure by third parties

### 123 Definition for division

In this division—

*third party*, for an election, means any entity other than—

- (a) a political party, an associated entity or a candidate; or
- (b) persons appointed to form a committee to help the election campaign of a candidate who has been nominated for election by the registered officer of a registered political party, if the committee is recognised by the political party as forming part of the political party; or
- (c) a person who is a member of a committee for the election of a candidate or members of a group of candidates for the election.

## **124 Third party expenditure for political activity**

- (1) This section applies to a third party for an election if—
  - (a) the third party incurs expenditure for a political activity relating to the election during the disclosure period for the election; and
  - (b) the amount of the expenditure is \$500 or more.
- (2) The third party must, for each amount of expenditure incurred during the disclosure period, give the electoral commission a return on or before the disclosure date for the return.
- (3) Each return must—
  - (a) be in the approved form; and
  - (b) state—
    - (i) the total value of the expenditure to which the return relates; and
    - (ii) when the expenditure was incurred; and
    - (iii) the particular purpose of the expenditure.
- (4) For subsection (1)—
  - (a) each amount of expenditure incurred by the third party is taken to include any amounts previously incurred by the third party for a political activity relating to the election during the disclosure period for the election; and

- (b) an amount of expenditure incurred by the third party for a political activity relating to 2 or more elections is taken to have been incurred by the third party for each of the elections.
- (5) In this section—
- disclosure period*, for an election, means the period—
- (a) starting—
    - (i) on the day prescribed by regulation for this subparagraph; or
    - (ii) if a day is not prescribed—on the day after the day the returning officer publishes notice of the election in a newspaper under section 25; and
  - (b) ending—
    - (i) on the day prescribed by regulation for this subparagraph; or
    - (ii) if a day is not prescribed—at 6p.m. on the polling day for the election.

## **125 Gifts received by third parties to enable expenditure for political activity**

- (1) This section applies—
- (a) to a gift—
    - (i) intended by the person who gives it to be used by the person who receives it (the *receiver*), either wholly or in part, to enable the receiver to incur expenditure for a political purpose or to reimburse the receiver for incurring expenditure for a political purpose; and
    - (ii) the value of which is \$500 or more; and
  - (b) if a third party for an election—
    - (i) receives the gift during the disclosure period for the election; and

- (ii) applies the gift, either wholly or in part, to a political activity relating to the election.
- (2) The third party who receives the gift must give the electoral commission a return about the gift on or before the disclosure date for the return.
- (3) Each return must—
  - (a) be in the approved form; and
  - (b) state the relevant details for the gift.
- (4) For subsection (1)(a)(ii), the value of the gift is taken to include the value of all other gifts previously given to the third party by the same entity during the disclosure period.
- (5) In this section—

*disclosure period*, for an election (the *current election*), means the period—

- (a) starting—
  - (i) on the day prescribed by regulation for this subparagraph; or
  - (ii) if a day is not prescribed—30 days after the polling day for the most recently held quadrennial elections; and

*Example for subparagraph (ii)—*

If the polling day for the most recently held quadrennial election was 15 March, the disclosure period starts at the beginning of 15 April.

- (b) ending—
  - (i) on the day prescribed by regulation for this subparagraph; or
  - (ii) if a day is not prescribed—ending 30 days after the polling day for the current election.

*Example for subparagraph (ii)—*

If the polling day for the current election was 31 March, the disclosure period ends at the end of 30 April.

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## **Division 5                      Operation of accounts**

### **126      Requirement for candidate to operate dedicated account**

- (1) This section applies to a candidate for an election.
- (2) The candidate must operate an account with a financial institution if the candidate receives an amount mentioned in subsection (3) or pays an amount mentioned in subsection (4).
- (3) All amounts received by the candidate, or a person on behalf of the candidate, during the candidate's disclosure period for the election for the conduct of the candidate's election campaign, including all gifts received by the candidate for the election, and all amounts received as loans to the candidate, must be placed in the account.
- (4) All amounts paid by the candidate, or a person on behalf of the candidate, during the candidate's disclosure period for the election for the conduct of the candidate's election campaign must be paid—
  - (a) out of the account; and
  - (b) in a way permitted under section 127A.
- (5) The account must not, during the candidate's disclosure period for the election, be used other than for receiving and paying amounts under subsections (3) and (4).
- (6) If an amount remains in the account at the end of the disclosure period, the amount or part of the amount may—
  - (a) be kept in the account for the conduct of another election campaign by the candidate; or
  - (b) if the candidate was a member of a political party during the disclosure period—be paid to the political party; or
  - (c) be paid to a charity nominated by the candidate.
- (7) An amount mentioned in subsection (6) must not be dealt with other than under that subsection.
- (8) The candidate must take all reasonable steps to ensure the requirements of subsections (2) to (7) are complied with.

Maximum penalty for subsection (8)—100 penalty units.

- (9) Amounts mentioned in subsections (3) and (4) do not include amounts received or paid out by a group of candidates for the election of which the candidate is a member.

## **127 Requirement for group of candidates to operate dedicated account**

- (1) This section applies if a candidate is a member of a group of candidates for an election.
- (2) The group must operate an account with a financial institution if the group receives an amount mentioned in subsection (3) or pays an amount mentioned in subsection (4).
- (3) All amounts received by the group, or a person on behalf of the group, during the group's disclosure period for the election for the conduct of the group's election campaign, including all gifts received by the group for the election, and all amounts received as loans to the group, must be placed in the account.
- (4) All amounts paid by the group, or a person on behalf of the group, during the group's disclosure period for the election for the conduct of the group's election campaign must be paid—
- (a) out of the account; and
  - (b) in a way permitted under section 127A.
- (5) The account must not, during the group's disclosure period for the election, be used other than for receiving and paying amounts under subsections (3) and (4).
- (6) If an amount remains in the account at the end of the group's disclosure period for the election, the amount or part of the amount may—
- (a) be kept in the account for the conduct of another election campaign by the group; or
  - (b) if each member of the group was a member of a political party during the disclosure period—be paid to the political party; or

- (c) be paid to a charity nominated by the group.
- (7) An amount mentioned in subsection (6) must not be dealt with other than under that subsection.
- (8) Each candidate who is a member of the group must take all reasonable steps to ensure the requirements of subsections (2) to (7) are complied with.

Maximum penalty for subsection (8)—100 penalty units.

### **127A Permitted ways to pay amounts from dedicated account**

- (1) An amount paid from an account under section 126(4) or 127(4) may be paid in 1 of the following ways or a combination of the ways—
  - (a) by an electronic funds transfer transaction from the account; or
  - (b) using a debit card that withdraws the payment directly from the account; or
  - (c) in cash withdrawn from the account.
- (2) For subsection (1)(c), the amount of cash withdrawn from the account to pay an amount under section 126(4) or 127(4) must not exceed—
  - (a) the amount to be paid; or
  - (b) if the cash is withdrawn from an ATM—the amount to be paid rounded up to the nearest amount the ATM can dispense.

### **127B Payment of campaign expenses by credit card prohibited**

- (1) A person to whom section 126(8) or 127(8) applies must not—
  - (a) use a credit card to pay an amount for the conduct of the election campaign of a candidate or group of candidates; or

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- (b) pay an amount out of the dedicated account of a candidate or group of candidates to pay a charge incurred using a credit card.

Maximum penalty—100 penalty units.

- (2) For subsection (1)(b), it does not matter whether or not the charge was incurred for the conduct of the election campaign of a candidate or group of candidates.
- (3) This section does not limit section 126, 127 or 127A.

### **127C Time for prosecuting offences**

A prosecution for an offence against this division may be started at any time within 4 years after the offence was committed.

## **Division 6                      Gifts register**

### **128 Register of gifts**

- (1) The electoral commission must keep a register of gifts for an election (the *gifts register*).
- (2) The gifts register must include the following—
  - (a) all returns given to the electoral commission under this part;
  - (b) applications made to the electoral commission under section 132;
  - (c) copies of information given by the electoral commission under section 130(2);
  - (d) statutory declarations given to the electoral commission under section 130(5);
  - (e) copies of notices given by the electoral commission under section 131(3);
  - (f) particulars given to the electoral commission after a request made under section 131(3);

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- (g) notices given to the electoral commission under section 198(2).

### **129 Access to gifts register**

- (1) The electoral commission must ensure that the public may inspect the gifts register—
- (a) at the commission's public office; and
  - (b) on the commission's website.
- (2) A person must not knowingly disclose information obtained from the register if it is not a true copy, or a fair summary, of particulars in the register.

Maximum penalty for subsection (2)—20 penalty units.

### **130 Queries on contents of gifts register**

- (1) A person who suspects or believes, on reasonable grounds, that a return given to the electoral commission under this part has an error or omission may, in writing, inform the electoral commission of the suspicion or belief.
- (2) The electoral commission must immediately, after being informed under subsection (1), take reasonable steps to inform, in writing, the person who gave the return about the suspicion or belief.
- (3) The person who gave the return must, within 30 days after being informed under subsection (2), establish whether the return should be amended to make it a true record of fact.
- (4) If the person establishes that the return should be amended, the person must apply, under section 132, to the electoral commission to amend the return to correct the error or omission.
- (5) If the person establishes the return does not need to be amended, the person must—
- (a) complete a statutory declaration to the effect that the particulars in the return are a true record of fact; and

- (b) give the statutory declaration to the electoral commission.

## **Division 6A                    Authorised officers under pt 6**

### **130A    Functions and powers of authorised officers etc.**

- (1) The purpose of this division is to ensure the electoral commission has available to it suitably qualified persons who can help the electoral commission properly deal with issues about compliance under this part.
- (2) The functions of an authorised officer under the *Electoral Act 1992*, part 11, also include the following functions (the *further functions*)—
  - (a) to investigate and enforce compliance with this part;
  - (b) to investigate whether an occasion has arisen for the exercise of powers under this part;
  - (c) to facilitate the exercise of powers under this part.
- (3) For the performance of the further functions by an authorised officer—
  - (a) the authorised officer may exercise the officer's powers under the *Electoral Act 1992*, part 11, divisions 15 to 18; and
  - (b) on an application by the authorised officer, a magistrate may issue a warrant for a place under section 336 of that Act only if the magistrate is satisfied there are reasonable grounds for suspecting—
    - (i) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this part; and
    - (ii) the evidence is at the place or, within the next 7 days, will be at the place; and
  - (c) the electoral commissioner may decide a seized thing is forfeited to the State under section 354 of that Act; and

- (d) the authorised officer must comply with part 11, division 19, subdivision 1 of that Act; and
  - (e) a person who incurs a loss because of the exercise, or purported exercise, of a power mentioned in paragraph (a) may apply for compensation under section 367 of that Act; and
  - (f) the electoral commissioner, an authorised officer and a person acting under the authority or direction of an authorised officer are each a designated person for section 372 of that Act; and
  - (g) a reference in part 11 of that Act to an offence against that part is taken to be a reference to an offence against this part; and
  - (h) a person who is given an information notice under part 11 of that Act has a right to appeal under section 374 of that Act.
- (4) In this section—

*authorised officer* means a person who holds office under the *Electoral Act 1992*, part 11, division 14, as an authorised officer.

## Division 7                      Miscellaneous

### 131      Inability to complete returns

- (1) If a person who is required to give a return under this part considers it is impossible to complete the return because the person is unable to obtain particulars required for the preparation of the return, the person may—
- (a) prepare the return to the extent it is possible to do so without the particulars; and
  - (b) give the return to the electoral commission; and
  - (c) give the electoral commission a written notice—
    - (i) identifying the return; and

- (ii) stating that the return is incomplete; and
  - (iii) identifying the particulars; and
  - (iv) stating the reasons the person is unable to obtain the particulars; and
  - (v) if the person believes, on reasonable grounds, that another person can give those particulars—stating that belief and reasons for it and, if known, the name and address of that other person.
- (2) A person who complies with subsection (1) must not, merely because of the omission of the particulars, be taken, for section 195(1), to have failed to comply with that section.
- (3) The electoral commission may, by written notice, ask a person stated in a notice given under subsection (1)(c)(v) or (5)(e), to give the particulars mentioned in the notice to the commission, in writing, within a stated period.
- (4) The person must comply with the requirement.
- (5) If a person required to give particulars under subsection (3) is unable to obtain some or all of the particulars, the person must give the commission a written notice—
- (a) stating any particulars the person is able to give; and
  - (b) stating that the person is unable to obtain some or all of the particulars; and
  - (c) identifying the particulars the person is unable to obtain; and
  - (d) stating the reasons the person considers the person is unable to obtain the particulars; and
  - (e) if the person believes, on reasonable grounds, that another person whose name and address the person knows can give the particulars—stating that belief and reasons for it and, if known, the name and address of that other person.

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## **132 Amendment of returns**

- (1) A person who has given a return under this part to the electoral commission may at any time apply to the electoral commission to amend the return to correct an error or omission.
- (2) The application under subsection (1) must—
  - (a) be signed by the applicant; and
  - (b) state the particulars of the amendment.
- (3) The electoral commission must—
  - (a) allow the applicant to amend the return as stated in the application; and
  - (b) record in the gifts register particulars of the date and time of the amendment.
- (4) The amendment of a return under this section does not affect the liability of a person to be convicted of an offence under section 195(2) committed before the amendment.

## **132A Electronic lodgement of returns**

- (1) The electoral commission may make procedures about how a return under this part may be lodged electronically.
- (2) The procedures—
  - (a) do not take effect until approved by a regulation; and
  - (b) must be tabled in the Legislative Assembly with the regulation approving the procedures; and
  - (c) must be published on the commission's website.
- (3) If a return under this part is lodged as provided for under the procedures, the return is taken to have been given to the electoral commission.

### **133 Things taken to be done by political party**

- (1) This section applies to a political party that is not a body corporate.
- (2) For this part, things done by or with the authority of members or officers of the party on behalf of the party are done by or for the political party.

### **134 Noncompliance with part does not affect election**

- (1) A failure of a person to comply with a provision of this part for an election does not invalidate the election.
- (2) Without limiting subsection (1), if a candidate who is elected at an election fails to comply with a provision of this part for the election, the failure does not invalidate the election of the candidate.

## **Part 7 Disputed results**

### **Division 1 Disputing local government elections**

#### **136 Local government election may be disputed under this part**

- (1) The election of a person under this Act may be disputed by an application to the Court of Disputed Returns under this part.
- (2) The election may not be disputed in any other way.

#### **137 Who may dispute an election**

An election may be disputed by—

- (a) a candidate in the division, if any, of the local government for which the election is held; or

- (b) an elector in the division, if any, of the local government for which the election is held; or
- (c) the electoral commission; or
- (d) a person who the returning officer decided, under section 28, was not properly nominated for the election.

### **138 Requirements for an application to be effective**

- (1) An application must—
  - (a) state the facts relied on to dispute the election; and
  - (b) state the order sought from the court; and
  - (c) be signed by—
    - (i) for an application by the electoral commission—the electoral commissioner; or
    - (ii) otherwise—the applicant before a witness; and
  - (d) if paragraph (c)(ii) applies—contain the signature, occupation and address of the witness.
- (2) The applicant must—
  - (a) file the application with the Supreme Court registry in Brisbane within 7 days after the conclusion of the election to which the application relates; and
  - (b) when filing the application, deposit with the court—
    - (i) \$400; or
    - (ii) if a greater amount is prescribed under a regulation—that amount.
- (3) Subsection (1) does not stop the amendment of an application.

### **139 Copies of application to be given to elected candidate and electoral commission**

The registrar of the Supreme Court must give a copy of an application filed under section 138(2) to—

- (a) the successful candidate in the election to which the application relates; and
- (b) the electoral commission, unless the electoral commission filed the application.

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

- (1) An applicant may apply to the Court of Disputed Returns for an order requiring the electoral commission or a returning officer to give the court stated documents or other things held by the electoral commission or a returning officer that relate to an election.
- (2) The court may make the order about an application it considers appropriate.

#### **141 Parties to application**

- (1) The parties to an application are the person who filed it and any respondent under this section.
- (2) The electoral commission is a respondent to any application filed by another person under this division.
- (3) The successful candidate in an election to which an application relates is a party to the application if the candidate, within 7 days after receiving a copy of the application under section 139, files a notice with the Supreme Court registry in Brisbane stating that the candidate wishes to be a respondent.

#### **142 How application is to be dealt with by the court**

- (1) The Court of Disputed Returns may conduct hearings and other proceedings for an application.
- (2) The court is not bound by technicalities, legal forms or rules of evidence.
- (3) The court must deal with an application as quickly as is reasonable in the circumstances.

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- (4) In giving effect to subsection (3), the court must use its best efforts to ensure that—
    - (a) the proceeding begins within 28 days after the application is filed; and
    - (b) the court's final orders are given within 14 days after the end of the proceeding.
  - (5) Despite subsections (3) and (4), the court must give all parties to the proceeding at least 10 days notice before it begins the proceeding.
  - (6) The rules of court of the Supreme Court may include provision, not inconsistent with this division, about the practices and procedures of the Court of Disputed Returns.
  - (7) Without limiting subsection (6), the rules of court may make provision about the withdrawal of applications, the consequences of the death of applicants and the substitution of applicants in these circumstances.

#### **143 Application for dismissal of application disputing election**

- (1) The electoral commission may apply to the Court of Disputed Returns for an order dismissing an application on the ground that there has been excessive delay by the applicant in relation to the application.
- (2) The court may make the order on the application under subsection (1) that the court considers appropriate.

#### **144 Powers of the court**

- (1) Subject to sections 145 and 146, the Court of Disputed Returns may make any order or exercise any power relating to an application that the court considers just and equitable.
- (2) The orders may include any of the following—
  - (a) an order to the effect that a candidate elected at an election is taken not to have been elected;

- (b) an order to the effect that a new election must be held;
  - (c) an order to the effect that a candidate, other than the one elected at an election, is taken instead to have been elected;
  - (d) an order to dismiss or uphold an application in whole or part.
- (3) To remove doubt, it is declared that the court may order the opening of a sealed declaration envelope.
- (4) However, the court must ensure, as far as is reasonably practicable, the secrecy of a ballot is maintained.

#### **145 Restrictions on particular orders**

- (1) The Court of Disputed Returns must not make an order mentioned in section 144(2) because of a delay in—
- (a) the announcement of nominations under section 32; or
  - (b) complying with the requirements of part 4, division 5, 6 or 7.
- (2) Also, the court must not make an order under section 144(2) (other than an order to dismiss the application)—
- (a) because of an absence or error of, or omission by, a member of the electoral commission's staff that appears unlikely to have had the effect that a candidate elected at an election would not have been elected; or
  - (b) because incorrect information an elector gives to an issuing officer is written on a declaration envelope the elector signed.
- (3) In deciding whether the requirements of subsection (2) are met, the court must not, if it finds that an elector was prevented from voting at an election by absence, error or omission, take into account any evidence of the way in which the elector had intended to vote.
- (4) The court must not make an order mentioned in section 144(2) because—

- (a) the names of candidates were not stated on a ballot paper in the order required by section 55(2); or
- (b) a name or other word that was required by section 55(1)(f) to be printed on a ballot paper adjacent to a candidate's name was not so printed or was misspelt, inaccurate or incorrect; or
- (c) a name or other word that was not authorised by section 55(1)(f) was printed on a ballot paper adjacent to a candidate's name.

#### **146 Restriction on particular evidence and inquiries**

- (1) In a proceeding for an application, the Court of Disputed Returns must not take into account evidence by any person that the person was not permitted to vote during voting hours for a polling booth, unless the court is satisfied that, so far as the person was permitted to do so, the person did everything required by this Act to enable the person to vote.
- (2) In a proceeding in relation to an application, the court—
  - (a) may inquire whether persons voting were enrolled on the voters roll for the local government or division of a local government area concerned and whether votes were correctly treated as formal or informal during the counting of votes; but
  - (b) must not inquire whether the voters roll, or any copy used at an election, was in accordance with this Act.

#### **147 Copy of final court orders**

The registrar of the Supreme Court must arrange for a copy of the Court of Disputed Returns's final orders to be sent to the Minister, the electoral commission and the local government to which the appeal relates as soon as practicable after they are made.

## **148 Costs**

- (1) The Court of Disputed Returns may order an unsuccessful party to an application to pay the reasonable costs of the other parties to the application.
- (2) If costs are awarded against an applicant, the deposit filed with the application must be applied towards payment of the costs.
- (3) If not, the deposit must be returned to the applicant.

## **149 Decisions and orders to be final**

A decision of, or order made by, the Court of Disputed Returns that relates to an application is not subject to appeal other than an appeal under division 2.

## **150 Right of electoral commission and returning officer to have access to documents**

Unless the Court of Disputed Returns otherwise orders, the filing of an application does not deprive the electoral commission or a returning officer of any right to have access to a document for the purpose of performing the commission's or officer's functions.

# **Division 2 Appeals**

## **151 Appeal to Court of Appeal on question of law**

An appeal lies to the Court of Appeal from any decision of, or order made by, the Court of Disputed Returns only on a question of law.

## **152 Time for appealing**

The notice of appeal starting the appeal must—

- (a) be filed within 7 days after the date of the decision or order appealed from; and
- (b) be served as soon as practicable on all other parties to the appeal.

### **153 Electoral commission is a party to appeal**

The electoral commission is a party to the appeal, whether or not it is the appellant.

### **154 How appeal is dealt with by Court of Appeal**

- (1) In deciding the appeal, the Court of Appeal—
  - (a) is not bound by technicalities, legal forms or rules of evidence; and
  - (b) may use the procedures, whether usual or otherwise, that it considers necessary to enable the appeal to be decided quickly and properly; and
  - (c) has all the powers given to it by the *Uniform Civil Procedure Rules 1999*.
- (2) The court must use its best efforts to ensure that the appeal is heard, and the court's final decision is made or order is given, as quickly as is reasonable in the circumstances.

### **155 Application for dismissal of appeal**

- (1) A party, other than the appellant, may apply to the Court of Appeal for an order dismissing the appeal on the ground that there has been excessive delay by the appellant in relation to the appeal.
- (2) The court may make an order on the application it considers appropriate.

### **156 Copy of final court orders**

The registrar of the Supreme Court must arrange for a copy of the Court of Appeal's final orders to be sent to the Minister, the electoral commission and the local government to which the appeal relates as soon as practicable after they are made.

### **157 Right of electoral commission and returning officer to have access to documents**

Unless the Court of Appeal otherwise orders, the filing of the notice of appeal does not deprive the electoral commission or a returning officer of any right to have access to a document for the purpose of performing the commission's or officer's functions.

## **Part 8 Legal provisions**

### **158 Decisions not subject to appeal**

- (1) This section applies if a provision of this Act declares a decision to be not subject to appeal.
- (2) Unless the Supreme Court decides the decision is affected by jurisdictional error, the decision—
  - (a) is final and conclusive; and
  - (b) can not be challenged, appealed against, reviewed, quashed, set aside or called into question in another way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and
  - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.
- (3) The *Judicial Review Act 1991*, part 5 applies to the decision to the extent it is affected by jurisdictional error.

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- (4) A person who, but for subsection (2), could have made an application under the *Judicial Review Act 1991* in relation to the decision may apply under part 4 of that Act for a statement of reasons in relation to the decision.
- (5) This section does not limit section 149.
- (6) In this section—  
**decision** includes—
- (a) conduct related to making the decision; and
  - (b) a failure to make a decision.

*Note—*

See also the *Judicial Review Act 1991*, section 6.

### **159 Postal vote presumed valid until contrary proved**

If a declaration envelope and ballot paper to which section 72 applies is received by a returning officer by post, it must be presumed that section 72(3) to (5) has been complied with in relation to the declaration on the envelope until the contrary is proved.

### **161 Ballot papers as evidence**

In a proceeding, a ballot paper apparently used at an election and identified by evidence as 1 of the ballot papers held by the electoral commission under section 102 is evidence of the vote or votes cast in the election as recorded on the ballot paper.

### **162 Allegations of false or misleading information or document**

In a proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading document, it is enough for a charge to state the information or document was, without specifying which, ‘false or misleading’.

## 163 Evidentiary provisions

In a proceeding for an offence against this Act, a certificate purporting to be signed by a member of the electoral commission and stating any of the following matters is evidence of the matter—

- (a) a stated document is an application, declaration, notice or return given or kept under this Act or the *Electoral Act 1992*, or a copy of it;
- (b) on a stated day, a stated person was given a stated notice, under this Act.

# Part 9 Enforcement

## Division 1 Failure to vote

### 165 Notice about failure to vote

- (1) The electoral commission may, as soon as practicable after an election, send a notice to each elector who appears to have failed to vote at the election stating that—
  - (a) the elector appears to have failed to vote at the election; and
  - (b) it is an offence to fail, without a valid and sufficient excuse, to vote at the conclusion of the election; and
  - (c) the elector may, if the elector considers the elector has committed the offence, pay one-half of a penalty unit (the *penalty*) to the electoral commission by a stated day, not earlier than 21 days after the elector received the notice (the *appropriate day*), and, if the electoral commission receives the payment by the appropriate day, no further steps will be taken against the elector about the offence; and
  - (d) the elector must—

- (i) if the elector intends paying the penalty by the appropriate day—sign the appropriate form for payment of the penalty and include payment of the penalty; and
  - (ii) if the elector does not intend paying the penalty by the appropriate day—state, in a form included in or with the notice, whether the elector voted and, if not, the reason for failing to vote; and
  - (iii) sign the form and post or give it to the electoral commission so it is received by the appropriate day.
- (2) The elector must comply with the requirements of the notice.
- (3) Subsection (4) applies if—
- (a) the elector (the *first elector*) is absent or unable, because of physical incapacity, to comply with the requirements of the notice; and
  - (b) another elector who has personal knowledge of the facts complies with the requirements and in doing so also has his or her signature on the form witnessed.
- (4) The first elector is taken to have complied with the requirements of the notice.

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

- (1) If the electoral commission sends a person a notice under section 165 for an election and the person makes the payment mentioned in section 165(1)(d)(i) to the electoral commission, the electoral commission must—
- (a) accept the payment; and
  - (b) give the person a receipt for the payment; and
  - (c) not take any proceeding against the elector for failing to vote at the election.
- (2) In this section—

*proceeding* includes serving an infringement notice under the *State Penalties Enforcement Act 1999*.

## **168 Failure to vote**

- (1) An elector for an election must not—
  - (a) fail to vote at the election without a valid and sufficient excuse; or
  - (b) fail to comply with the requirements of a notice given to the elector under section 165; or
  - (c) when complying with the requirements of the notice, make a statement the elector knows to be false or misleading in a material particular.

Maximum penalty—1 penalty unit.

- (2) An elector's belief that it is part of the elector's religious duty not to vote at elections is a valid and sufficient excuse for the elector's failure to vote in a particular election.
- (3) An elector may be prosecuted for an offence against subsection (1)(a) only if the elector has been sent a notice about the election under section 165.
- (4) In a proceeding for an offence against subsection (1)(a), a certificate purporting to be signed by a member of the electoral commission's staff stating any of the following matters is evidence of the matter—
  - (a) an elector failed to vote at the election;
  - (b) a notice was sent by the electoral commission to the elector under section 165 on a stated day;
  - (c) a form mentioned in section 165(1) was not received by the electoral commission from the elector by the day stated under the subsection.
- (5) If a form is not received by the electoral commission from the elector by the day stated under section 165(1), it is evidence the elector failed to vote at the election without a valid and sufficient excuse.

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- (6) If a form is received by the electoral commission about the elector's compliance with section 165, statements in the form purporting to be made by—
- (a) the elector are evidence as statements made by the elector; and
  - (b) another elector under section 165(3) are evidence as statements made by the other elector.
- (7) For the *Justices Act 1886*, section 139, the place where an offence against subsection (1)(a) is committed is taken to be the office of the returning officer for the electoral district for which the elector was enrolled for the election.

## **Division 2                      Corrupt and improper practices affecting local government elections**

### **169      False or misleading information**

- (1) A person must not give information under this Act to a returning officer or the electoral commission, including information in a document, that the person knows is false or misleading in a material particular.

Maximum penalty—7 years imprisonment.

- (2) Subsection (1) does not apply to—
- (a) a person giving a document if, when giving the document, the person—
    - (i) informs the returning officer or electoral commission, to the best of the person's ability, how it is false or misleading; and
    - (ii) if the person has, or can reasonably obtain, the correct information—gives the returning officer or electoral commission the correct information; or
  - (b) a return required to be given to the electoral commission under part 6; or

- (c) information given to the electoral commissioner under section 113D.

## 170 Bribery

- (1) A person must not—
  - (a) ask for or receive; or
  - (b) offer, or agree, to ask for or receive;  
a benefit of any kind (whether for the person or someone else) on the understanding that the person’s election conduct will be influenced or affected.

Maximum penalty—7 years imprisonment.

- (2) A person must not, in order to influence or affect another person’s election conduct, give, or promise or offer to give, a benefit of any kind to anyone.

Maximum penalty—7 years imprisonment.

- (3) In this section—  
*election conduct* of a person means—
  - (a) the way in which the person votes at an election; or
  - (b) the person’s nominating as a candidate for an election;  
or
  - (c) the person’s support of, or opposition to, a candidate or a political party at an election.

## 171 Assisting illegal payments

A person must not knowingly give an amount for—

- (a) a benefit to which section 170(1) or (2) applies; or
- (b) the purpose of replacing any amount that has been spent to give a benefit mentioned in paragraph (a).

Maximum penalty—2 years imprisonment.

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**172 Improperly influencing electoral officers**

A person must not improperly influence an electoral officer in the performance of the officer's functions under this Act.

Maximum penalty—35 penalty units or 1 year's imprisonment.

**173 Obstructing persons**

A person must not obstruct the free exercise or performance, by another person, of a right or responsibility under this Act that relates to an election.

Maximum penalty—20 penalty units or 6 months imprisonment.

**174 Obstructing electoral officers etc.**

A person must not—

- (a) wilfully obstruct or disturb any proceeding at an election; or
- (b) prevent a scrutineer from entering or leaving a polling booth—
  - (i) during voting hours for the polling booth; or
  - (ii) while votes are being counted at the polling booth;or
- (c) obstruct, intimidate or wilfully mislead an electoral officer in the performance of a function under this Act.

Maximum penalty—20 penalty units or 6 months imprisonment.

**175 Forged electoral papers**

- (1) A person must not—
  - (a) forge an electoral paper; or
  - (b) use a forged electoral paper knowing it to be forged.

Maximum penalty—10 years imprisonment.

- (2) A person must not make someone else's signature on an electoral paper, unless the person is authorised to do so under this Act.

Maximum penalty—10 years imprisonment.

### **176 Wilful neglect etc. of electoral officers**

An electoral officer must not wilfully neglect or fail to perform the officer's functions under this Act.

Maximum penalty—20 penalty units.

### **176A Confidentiality of information**

- (1) This section applies to a person who—
- (a) is involved in the administration of this Act; and
  - (b) gains information because of the person's involvement in the administration.
- (2) The person must not disclose the information to anyone else other than—
- (a) for the purposes of this Act; or
  - (b) under the authority of another Act; or
  - (c) in a proceeding before a court in which the information is relevant to the issue before the court.

Maximum penalty—100 penalty units.

## **Division 3                      Offences relating to electoral advertising**

### **177 Author of election material must be named**

- (1) A person must not, during the election period for an election—

- (a) print, publish, distribute or broadcast; or
- (b) allow or authorise another person to print, publish, distribute or broadcast;

any advertisement, handbill, pamphlet or notice containing election material unless there appears, or is stated, at its end the particulars required by subsection (2).

Maximum penalty—

- (a) for an individual—20 penalty units; or
  - (b) for a corporation—85 penalty units.
- (2) The particulars are the name and address, other than a post office box, of the person who authorised the advertisement, handbill, pamphlet or notice.
- (3) Subsection (1) does not apply to an advertisement that—
- (a) is printed, published or distributed on a car sticker, T-shirt, lapel button, lapel badge, pen, pencil or balloon; or
  - (b) is of a kind prescribed by regulation.
- (4) Also, subsection (1) does not apply to distributing, or allowing or authorising another person to distribute, a how-to-vote card.
- (5) In this section—

***publish*** includes publish on the internet, even if the internet site on which the publication is made is located outside Queensland.

## 178 Distribution of how-to-vote cards

- (1) During the election period for an election, a person must not distribute, or allow or authorise another person to distribute, a how-to-vote card that does not comply with subsections (2) to (5).

Maximum penalty—

- (a) for an individual—20 penalty units; or

- (b) for a corporation—85 penalty units.
- (2) A how-to-vote card must state the name and address of the person who authorised the card.
- (3) A how-to-vote card must also state—
  - (a) if the card is authorised for a political party or a candidate endorsed by a political party—
    - (i) if the register of political parties includes an abbreviation of the party’s name—the party’s abbreviated name; or
    - (ii) otherwise—the party’s full name included in the register of political parties; or

*Example for paragraph (a)—*

‘Authorised P. Smith, 123 Main Street Brisbane for [name of political party]’

- (b) if paragraph (a) does not apply and the card is authorised for a group of candidates or for a candidate who is a member of a group of candidates—the group’s name; or

*Example for paragraph (b)—*

‘Authorised M. Taylor, 99 King Street Port Douglas for [name of group]’

- (c) otherwise—the candidate’s name and the word ‘candidate’.

*Example for paragraph (c)—*

‘Authorised R. Jones, 88 Queen Street Brisbane for R. Jones (candidate)’

- (4) For subsection (2)—
  - (a) the address must not be a post office box; and
  - (b) if the card is authorised for a group of candidates or for a candidate who is a member of a group of candidates, the authorising person must be a member of the group.
- (5) The particulars mentioned in subsections (2) and (3) must appear—

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- (a) at the end of each side of the how-to-vote card that contains print; and
  - (b) in prominent and legible characters in print no smaller than—
    - (i) if the card is not larger than A6—10 point; or
    - (ii) if the card is larger than A6 but not larger than A3—14 point; or
    - (iii) if the card is larger than A3—20 point.
  - (6) During the election period for an election, a person must not distribute, or allow or authorise another person to distribute, a how-to-vote card if the person knows, or ought reasonably to know, that the particulars, or any of the particulars, mentioned in subsections (2) and (3) on the card are false.

Maximum penalty—

- (a) for an individual—20 penalty units; or
- (b) for a corporation—85 penalty units.

## **179 Giving of how-to-vote cards to electoral commission**

- (1) The person who authorised a how-to-vote card for a political party, or for a candidate endorsed by a political party, for an election must, after the start of the election period and at least 7 business days before the how-to-vote card is to be distributed on a day when votes may be cast for the election, give the electoral commission—
  - (a) the required number of the how-to-vote cards; and
  - (b) a statutory declaration relating to any financial contribution received from another political party or another candidate, whether directly or from someone else on behalf of the party or candidate, in relation to the production of the how-to-vote card that states—
    - (i) who the financial contribution was received from or on behalf of; and
    - (ii) the nature and amount of the financial contribution.

- (2) The person who authorised a how-to-vote card for a candidate or a group of candidates for an election, other than a candidate or group of candidates endorsed by a political party for the election, must, after the start of the election period and at least 7 business days before the how-to-vote card is to be distributed on a day when votes may be cast for the election, give the electoral commission—
  - (a) the required number of the how-to-vote cards; and
  - (b) a statutory declaration relating to any financial contribution received from a political party or another candidate, whether directly or from someone else on behalf of the party or candidate, in relation to the production of the how-to-vote card that states—
    - (i) who the financial contribution was received from or on behalf of; and
    - (ii) the nature and amount of the financial contribution.
- (2A) The electoral commission must, within 5 business days after receiving the things mentioned in subsection (1)(a) and (b) or (2)(a) and (b)—
  - (a) decide to accept or reject the how-to-vote card; and
  - (b) inform the person who authorised the how-to-vote card of the decision.
- (3) The electoral commission must reject a how-to-vote card received under subsection (1) or (2) if—
  - (a) the how-to-vote card does not comply with section 178(2) to (5); or
  - (b) the electoral commission is satisfied, on reasonable grounds, the how-to-vote card is likely to mislead or deceive an elector in voting under this Act.
- (4) If the electoral commission rejects a how-to-vote card under subsection (3)(b), the electoral commission must give the person who authorised the how-to-vote card written reasons for the rejection.

- (5) A person to whom reasons are given under subsection (4) may, at least 2 business days before the polling day for the election—
- (a) revise the how-to-vote card; and
  - (b) give the electoral commission the things mentioned in subsections (1)(a) and (b) or (2)(a) and (b) in relation to the revised how-to-vote card.
- (5A) The electoral commission must, within 2 business days after receiving the things mentioned in subsection (5)(b)—
- (a) decide to accept or reject the revised how-to-vote card; and
  - (b) inform the person who authorised the revised how-to-vote card of the decision; and
  - (c) if the revised how-to-vote card is rejected—give the person who authorised the revised how-to-vote card written reasons for the rejection.
- (6) As soon as practicable after the electoral commission accepts a how-to-vote card, the returning officer must ensure the how-to-vote card is available—
- (a) for public inspection for free at—
    - (i) the place of nomination under section 25; and
    - (ii) if the place of nomination is not also the public office of the local government for which the election is to be held—the local government’s public office; and
  - (b) on the electoral commission’s website.
- (7) The returning officer must, to the extent practicable, make an accepted how-to-vote card available for public inspection at a place where, and on a day when, votes may be cast.
- (8) An election is not invalid only because the returning officer does not comply with subsection (6) or (7).
- (9) In this section—

*financial contribution* means a contribution in the form of money, property or other valuable consideration.

*required number*, of how-to-vote cards, means 12 more than the number of polling booths within the local government's area at which the cards are to be distributed.

## **180    Unauthorised how-to-vote cards**

- (1) A person must not distribute, or authorise someone else to distribute, a how-to-vote card to which section 179(1) or (2) applies on a day when votes may be cast for an election unless section 179(1) or (2) has been complied with for the card.

Maximum penalty—20 penalty units.

- (2) If, on a day when votes may be cast for an election, an electoral officer reasonably suspects a person is distributing a how-to-vote card to which section 179(1) or (2) applies and that section 179(1) or (2) has not been complied with for the card, the electoral officer may—
- (a) require the person to produce the how-to-vote card for inspection; and
  - (b) confiscate any how-to-vote cards that have not been given as required under section 179(1) or (2).
- (3) A person must not obstruct an electoral officer in the exercise of the power under subsection (2)(b), unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

## **181    Headline to electoral advertisements**

The proprietor of a newspaper must not print in the newspaper any article, or a paragraph, containing information that relates to an election or a matter debated in the election if—

- (a) either—
  - (i) the insertion of the article or paragraph is, or is to be, paid for; or

- (ii) any reward or compensation, or promise of reward or compensation, is, or is to be, made for the insertion of the article or paragraph; and
- (b) the proprietor does not cause the word ‘advertisement’ to be printed as a headline to the article or paragraph in letters not smaller than 10 point or long primer.

Maximum penalty—

- (a) for an individual—10 penalty units; or
- (b) for a corporation—40 penalty units.

## 182 Misleading electors

- (1) During an election period for an election, a person must not print, publish, distribute or broadcast anything that is intended or likely to mislead an elector about the ways of voting at the election.

Maximum penalty—40 penalty units.

- (2) A person must not, for the purpose of affecting the election of a candidate, knowingly publish a false statement of fact about the personal character or conduct of the candidate.

Maximum penalty—40 penalty units.

- (3) During an election period for an election, a person must not print, publish, distribute or broadcast by television anything that purports to be a representation of a ballot paper for use in the election, if it is likely to induce an elector to cast an informal vote.

Maximum penalty—40 penalty units.

- (4) In this section—

***publish*** includes publish on the internet, even if the internet site on which the publication is made is located outside Queensland.

**183 Offence for group of candidates to advertise or fundraise if particular requirements not complied with**

- (1) This section applies to a candidate for an election who is a member of a group of candidates.
- (2) The candidate must not, during the candidate's disclosure period for the election, advertise or fundraise for the election unless sections 41 and 42 have been complied with for the group of candidates.

Maximum penalty—100 penalty units.

- (3) The candidate must ensure that, during the candidate's disclosure period for the election, a person does not advertise or fundraise for the election on behalf of the group unless sections 41 and 42 have been complied with for the group of candidates.

Maximum penalty—100 penalty units.

- (4) For subsections (2) and (3), a person advertises for an election if—
  - (a) the person prints, publishes, distributes or broadcasts, or permits or authorises someone else to print, publish, distribute or broadcast, any advertisement, handbill, pamphlet or notice containing election material; and
  - (b) the election material promotes the election of 1 or more of the members of the group.
- (5) For subsections (2) and (3), a person fundraises for an election if the person conducts an activity directed at collecting amounts to be used for promoting the election of 1 or more members of the group.

*Examples of fundraising activities—*

conducting a social function at which persons are charged for admission, or conducting an auction or a raffle

- (6) It is a defence to a prosecution for an offence against subsection (3) for the candidate to prove—
  - (a) the candidate exercised reasonable diligence to ensure no person acted in a way that would cause the candidate to contravene the subsection; or

- (b) the candidate did not know, and could not reasonably have been expected to know, about the fundraising or advertising done on behalf of the group.
- (7) In this section—  
*candidate's disclosure period* see section 116.

## Division 4                      Offences relating to voting

### 184      Leave to vote

- (1) This section applies if—
- (a) an employee who is an elector asks his or her employer, before polling day for an election, for leave of absence to vote at the election; and
  - (b) the absence is necessary to enable the employee to vote at the election.
- (2) The employer must allow the employee leave of absence for a reasonable period, up to 2 hours, to enable the employee to vote at the election, unless the absence is reasonably likely to cause danger or substantial loss to the employer in relation to the employment concerned.

Maximum penalty—

- (a) for an individual—10 penalty units; or
  - (b) for a corporation—40 penalty units.
- (3) The employer must not impose any penalty or disproportionate deduction of pay for the leave of absence.

Maximum penalty—

- (a) for an individual—10 penalty units; or
  - (b) for a corporation—40 penalty units.
- (4) An employee must not ask for leave of absence under subsection (1) to vote at an election unless the employee genuinely intends to vote at the election.

Maximum penalty—10 penalty units.

### **185 Canvassing in or near polling booths**

- (1) Subsection (3) applies to a person, during an election period for an election, at a place that is—
  - (a) inside a polling booth; or
  - (b) within 6m, or a shorter distance approved under subsection (2), of an entrance to a building if—
    - (i) the building is, or is part of, a polling booth; and
    - (ii) a ballot box is in the building for use in the election or a person is in the building to cast a vote in the election.
- (2) The returning officer may approve a shorter distance for a pre-polling booth for the period in which a pre-poll vote may be cast in the election.
- (3) The person must not—
  - (a) canvass for votes; or
  - (b) induce an elector not to—
    - (i) vote in a particular way; or
    - (ii) vote at all in the election; or
  - (c) loiter; or
  - (d) obstruct the free passage of electors.

Maximum penalty—10 penalty units.

- (4) If the returning officer approves a shorter distance under subsection (2), the returning officer must display a notice at the pre-polling booth stating the shorter distance and mentioning the offence under subsection (3).

### **186 Influencing voting by violence or intimidation**

A person must not, by violence or intimidation, influence a person's vote at an election.

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Maximum penalty—2 years imprisonment.

**187 Party badges not to be worn in polling booths**

A person must not wear or display any badge or emblem of a political party in a polling booth.

Maximum penalty—1 penalty unit.

**188 Displaying political statements around polling booths**

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

- (a) inside a polling booth; or
- (b) within 6m of the entrance to a building that is, or is part of, a polling booth.

Maximum penalty—1 penalty unit.

(2) In this section—

*political statement* means a statement or design that a reasonable person would associate with a political organisation, cause or belief.

**189 Voting if not entitled**

A person must not, at an election—

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

Maximum penalty—3 years imprisonment.

## **190 Offences about ballot papers**

- (1) A person must not—
- (a) wilfully fail to comply with section 70 or 72; or
  - (b) take a ballot paper out of a polling booth other than in compliance with this Act; or
  - (c) place in a ballot box a ballot paper that has not been—
    - (i) given to an elector under this Act; or
    - (ii) marked by the elector.

Maximum penalty—20 penalty units or 6 months imprisonment.

- (2) A person must not, without lawful excuse, obtain possession of or have in the person's possession—
- (a) a ballot paper that has been marked by anyone else; or
  - (b) a declaration envelope that has been signed by anyone else.

Maximum penalty—20 penalty units or 6 months imprisonment.

## **191 Failure to give or post documents for someone else**

- (1) If a person is given, to give to the returning officer, an application by another person under section 72, 77 or 81, the person must promptly give, post or otherwise send it to the returning officer, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units or 6 months imprisonment.

- (2) If a person is given, to give or post to the returning officer, a declaration envelope that appears to be completed, the person must give, post or otherwise send it to the returning officer, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units or 6 months imprisonment.

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## 192 Secrecy of voting

- (1) A person must not examine a ballot paper used in an election to find out the candidates for whom an elector has voted unless required by a court or authorised under this Act to do so.

Maximum penalty—20 penalty units or 6 months imprisonment.

- (2) If, in performing a function for an election, a person has found out the candidates for whom an elector has cast a vote, the person must not disclose, or assist in disclosing, that fact, unless the person is required by law to make the disclosure.

Maximum penalty—20 penalty units or 6 months imprisonment.

- (3) An electoral officer, or scrutineer, must not make a mark, memorandum or note on a voters roll or any other list of voters or otherwise—

- (a) that indicates for whom a person has cast a vote; or  
(b) that would enable the officer or scrutineer to know or remember for whom a person has cast a vote.

Maximum penalty—20 penalty units or 6 months imprisonment.

## 193 Breaking seals on parcels

A person must not wilfully open or break the seal of a parcel or packet sealed under this Act unless the person is authorised under this Act or ordered by a court to open or break the seal.

Maximum penalty—20 penalty units or 6 months imprisonment.

## 194 Duty of witness in signing declaration envelopes

A person (the *witness*) must not sign a declaration envelope as witness under section 72 unless—



- (3) An offence against subsection (1) is a crime.
- (4) In this section—
  - participate in*, a scheme, includes—
    - (a) enable, aid or facilitate entry into, or the carrying out of, a scheme; and
    - (b) organise or control a scheme.
  - scheme* includes arrangement, agreement, understanding, course of conduct, promise or undertaking, whether express or implied.

#### **194C False or misleading information relating to determinations**

- (1) A person must not give the electoral commissioner information under section 113D that the person knows is false or misleading in a material particular.  
Maximum penalty—400 penalty units or 2 years imprisonment.
- (2) Subsection (1) does not apply to a person if the person, when giving information in a document—
  - (a) tells the electoral commissioner, to the best of the person's ability, how the document is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.
- (3) An offence against subsection (1) is a misdemeanour.
- (4) In a proceeding against a person for an offence under section 194A, a determination made under section 113D is taken to be of no effect if the person knew, or ought reasonably to have known, at the time of the relevant act or omission that information given to, or used by, the electoral commissioner under section 113D was false or misleading in a material particular.

## 195 Offences about returns

- (1) A person must give a return the person is required to give under a provision of part 6 within the time required by the provision.

Maximum penalty—20 penalty units.

- (2) A person must not give a return the person is required to give under part 6 containing particulars that are, to the knowledge of the person, false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (3) If a candidate is a member of a group of candidates and the group's agent is required under section 118 or 120 to give a return, the candidate must not allow the agent to give the return if it contains particulars that are, to the knowledge of the candidate, false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (4) A person (the *first person*) must not give to another person who is required to give a return under part 6 information to which the return relates that is, to the knowledge of the first person, false or misleading in a material particular.

Maximum penalty—20 penalty units.

- (5) A prosecution for an offence against a provision of this section may be started at any time within 4 years after the offence was committed.

- (6) If a person is found guilty of an offence under subsection (1), a court may, as well as imposing a penalty under the subsection, order the person to give the relevant return within the period stated in the order.

- (7) If a person is found guilty of an offence under subsection (2), a court may, as well as imposing a penalty under the subsection, order the person to pay, within the period stated in the order, to the State an amount equal to the amount of the value of any gifts made to, or for the benefit of, the person and not disclosed in a return.

## 196 Records to be kept

- (1) A person who makes or receives a relevant record for an election must keep the record for at least 5 years after the conclusion of the election unless the record, in the normal course of business or administration, is transferred to someone else.

Maximum penalty—20 penalty units.

- (2) In this section—

*gift* see section 107.

*relevant record*, for an election, is a document or other thing that is or includes a record about a matter the particulars of which—

- (a) are, or could be, required to be stated in a return under part 6 about the election; or
- (b) evidence that the giver of a gift intended the gift to be used by the receiver, either wholly or in part, to enable the receiver to incur expenditure for a political purpose or to reimburse the receiver for incurring expenditure for a political purpose.

## 197 Obtaining information for returns

A person who is required to give a return under part 6 must—

- (a) take all reasonable steps to obtain the particulars required to complete the return; and
- (b) complete the return to the extent practicable with the particulars obtained.

Maximum penalty—20 penalty units.

## 198 Further information for incomplete returns

- (1) This section applies if—
  - (a) at any time within 5 years after the conclusion of an election, a person has, under section 131, made a

statement that a return about the election is not complete; and

- (b) the person obtains information or particulars relevant to the return that the person was not able to obtain before completing the return.
- (2) The person must give the electoral commission a written notice of the information or particulars obtained.

Maximum penalty—20 penalty units.

## Division 6                      Attempts

### 199      Attempts to commit offences

- (1) A person who attempts to commit an offence against this part commits an offence.

Maximum penalty—half the maximum penalty for committing the offence.

- (2) The Criminal Code, section 4 applies to subsection (1).

## Division 7                      Injunctions

### 200      Injunctions

- (1) An application may be made to the Supreme Court for an injunction if—

(a) either—

- (i) a person (the *offending party*) has engaged, is engaging or proposes to engage in conduct; or
- (ii) a person (also the *offending party*) has failed, is failing or proposes to fail to do anything; and

- (b) the conduct or failure constituted, constitutes or would constitute a contravention of, or an offence against, this part.

- (2) The application may be made by—
  - (a) if the conduct or failure relates to an election—a candidate or nominee as a candidate in the election; or
  - (b) in any case—the commission.
- (3) The court may grant an interim injunction pending determination of the application.
- (4) If the electoral commission makes the application, the court must not require the commission or anyone else to give an undertaking about damages as a condition of granting an interim injunction.
- (5) On consideration of the application, the court may—
  - (a) if subsection (1)(a)(i) applies—
    - (i) grant an injunction restraining the offending party from engaging in the conduct concerned; and
    - (ii) also require the offending party to do anything to prevent or remedy the contravention; or
  - (b) if subsection (1)(a)(ii) applies—grant an injunction requiring the offending party to do the thing in question.
- (6) The court may grant the injunction if the court is satisfied—
  - (a) the offending party has engaged in the conduct, or failed to do the thing, mentioned in subsection (1)—whether or not it appears to the court that the offending party intends—
    - (i) to engage again or continue to engage in the conduct; or
    - (ii) to fail or continue to fail to do the thing; or
  - (b) that, if the injunction is not granted, it is likely the offending party will engage in the conduct, or fail to do the thing, mentioned in subsection (1), whether or not—
    - (i) the offending party has previously engaged in the conduct or failed to do the thing; or

- (ii) there is imminent danger of substantial damage to any person if the offending party engages in the conduct or fails to do the thing.
- (7) The court may refuse to grant an injunction if the court is satisfied the application was not made to the court at the earliest possible opportunity.
- (8) The court may discharge or vary the injunction or an interim injunction.
- (9) The powers conferred on the court by this section are in addition to, and do not limit, other powers of the court.

## Part 10 Miscellaneous

### 201 Designated election offences and application of Criminal Code

- (1) An offence (a *designated election offence*) against any of the following provisions is a crime—
- section 169(1)
  - section 170(1) or (2)
  - section 171
  - section 175(1) or (2)
  - section 186
  - section 189.
- (2) The Criminal Code, chapter 58A applies to a designated election offence.
- (3) Without limiting subsection (2), the chapter applies to a designated election offence as if the offence were an offence under chapter 14, chapter division 2 of the code.

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## 201A Proceedings for particular indictable offences

- (1) Proceedings for an indictable offence against this Act, other than a designated election offence under section 201, may be taken, at the election of the prosecution—
  - (a) by way of summary proceeding under the *Justices Act 1886*; or
  - (b) on indictment.
- (2) However, a magistrate must not hear an indictable offence against section 194B summarily if—
  - (a) the magistrate is satisfied, at any stage of the hearing and after hearing any submissions by the prosecution and defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be adequately punished on summary conviction; or
  - (b) the magistrate is satisfied, on an application made by the defence, that because of exceptional circumstances the offence should not be heard and decided summarily.
- (3) If subsection (2) applies—
  - (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
  - (b) a plea of the person charged at the start of the proceeding must be discharged; and
  - (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
  - (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).
- (4) The maximum penalty that may be summarily imposed for an indictable offence is 100 penalty units or 3 years imprisonment.

**202 Local governments responsible for expenditure incurred by electoral commission**

- (1) A local government must pay the costs incurred by the electoral commission for conducting an election in its local government area, including the remuneration, allowances and reasonable expenses paid to members or staff of the electoral commission.
- (2) However, local governments may be required to collectively contribute to the costs of the electoral commission for conducting an election in 2 or more local government areas using a shared and centrally administered service.
- (3) Also, a local government must pay the costs incurred by the electoral commission in carrying out functions relating to conducting elections generally, including, for example—
  - (a) the remuneration, allowances and reasonable expenses paid to members or staff of the electoral commission; and
  - (b) the costs of making appropriate administrative arrangements for the conduct of elections.

**203 Leave to local government employee to contest local government election**

- (1) A local government employee who nominates as a candidate for an election is entitled to a leave of absence, for a period of not more than 2 months, to contest the election.
- (2) A local government employee may use any entitlement to accrued leave with pay as leave to which the employee is entitled under subsection (1).
- (3) A local government employee is not entitled to payment of salary or wages for any period of leave taken under subsection (1) other than any accrued leave with pay that the employee uses during the period.

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## 204 Inspection of documents

- (1) This section applies if a person is authorised under this Act to inspect a document.
- (2) The person may—
  - (a) inspect the document; and
  - (b) make copies of, or take extracts from, the document; free of charge at any time when the office in which the document is held is open for business.
- (3) The entity (the *custodian*) that has custody of the document is not required to supply any facility or service to the person in making a copy of, or taking an extract from, the document.
- (4) If the custodian supplies a facility or service to the person for making a copy of, or taking an extract from, the document, the custodian may charge a fee for the facility or service.
- (5) However, the fee must be no more than the cost to the custodian of making the copy or extract for the person and, if posted to the person, the postage cost.

## 205 Persons serving a sentence of imprisonment

For this Act, a person is serving a sentence of imprisonment only if—

- (a) the person is in detention on a full-time basis for an offence against a law of the Commonwealth or a State or Territory; and
- (b) the detention is attributable to the sentence of imprisonment concerned.

## 206 Office of returning officer

- (1) A returning officer must keep premises for use as a public office for an election.

[s 207]

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- (2) The electoral commission must publish notice of the address of the public office on the electoral commission's website, and in other ways the electoral commission considers appropriate.

## **207 Approved forms**

- (1) The electoral commission may approve forms for use under this Act.
- (2) A form may be approved for use under this Act that is combined with, or is to be used together with, an approved form under another Act.

## **208 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about the principles under which the value of a gift that is property is to be decided under section 108.

# **Part 11 Transitional provisions**

## **Division 1 Transitional provision inserted under Sustainable Planning and Other Legislation Amendment Act 2012**

### **210 Cut-off day for compiling voters roll for quadrennial election for 2012**

Despite section 18(1), a voters roll for the quadrennial election for 2012 must be compiled at 25 February 2012.

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**Division 2**                      **Transitional provision for Local  
Government and Other Legislation  
Amendment Act 2015**

**211**    **By-elections and fresh elections**

- (1) This section applies if there is a CEO returning officer before the commencement for a by-election or fresh election.
- (2) The CEO returning officer continues as the returning officer for the by-election or fresh election.
- (3) A person appointed by a CEO returning officer as an electoral officer before the commencement continues as an electoral officer for the by-election or fresh election.
- (4) This Act as in force before the commencement continues to apply to the conduct of the by-election or fresh election.
- (5) In this section—

*CEO returning officer* means a person who is a CEO returning officer under section 9 as in force before the commencement.

**Division 3**                      **Transitional provision for Local  
Government Electoral  
(Implementing Stage 1 of Belcarra)  
and Other Legislation Amendment  
Act 2018**

**212**    **Obligation to repay particular political donations**

- (1) This section applies if—
  - (a) a donation was made to a person (the *recipient*) on or after 12 October 2017 and before the commencement; and

*Note—*

The Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017 was introduced into the Legislative Assembly on 12 October 2017.

- (b) under section 113B(3), it would have been unlawful for the recipient to accept the donation if it had been made immediately after the commencement.
- (2) The recipient must pay an amount equal to the amount or value of the donation to the person who made the donation within 30 days after the commencement.

Maximum penalty—400 penalty units or 2 years imprisonment.

- (3) An offence against subsection (2) is a misdemeanour.
- (4) Section 113C applies in relation to a contravention of subsection (2) as if—
  - (a) a reference in section 113C to accepting a prohibited donation were a reference to contravening subsection (2); and
  - (b) a reference in section 113C to the amount or value of a prohibited donation were a reference to the amount that was not paid under subsection (2).

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**Division 4**                      **Transitional provisions for Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019**

**Subdivision 1**                **Transitional provisions commencing on assent**

**213**     **Existing applications under s 45**

- (1) This section applies to an application made under section 45 as in force before the commencement that has not been decided before the commencement.
- (2) The application is taken to have been made under section 45AA.

**214**     **Time for making applications under s 45AA for quadrennial election for 2020**

Despite section 45AA(2)(a), an application under section 45AA for a poll for the quadrennial election for 2020 to be conducted by postal ballot must be made before 1 July 2019 or a later day approved by the Minister.

**Subdivision 2**                **Transitional provisions commencing by proclamation**

**219**     **Election and elector information for election before commencement**

Electoral information can be requested and given under section 101A in relation to the 2016 quadrennial election and any subsequent election.

## Schedule 1      Other matters nomination must contain

section 27(2)(b)(v)

### 1      Definitions for schedule

In this schedule—

*close associate* see section 2.

*contractual arrangement* means—

- (a) a contractual arrangement for which the *Local Government Act 2009* or the *City of Brisbane Act 2010* prescribes contracting procedures that the local government must comply with in making the arrangement; or

*Note—*

See the *Local Government Regulation 2012*, chapter 6, parts 2 and 3 and the *City of Brisbane Regulation 2012*, chapter 6, parts 2 and 3.

- (b) an arrangement provided for under the *Local Government Act 2009* or the *City of Brisbane Act 2010* that allows a local government to enter into a contract without first inviting quotes or tenders.

*Note—*

See the *Local Government Regulation 2012*, chapter 6, part 3 and the *City of Brisbane Regulation 2012*, chapter 6, part 3.

*contractual process* means a process provided for under the *Local Government Act 2009* or the *City of Brisbane Act 2010* that is preliminary to the making of a contractual arrangement with a local government.

*Examples—*

a tender process, an expressions of interest process for a list of appropriately qualified suppliers

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## 2 Who is a *close associate*

A person is a *close associate* of a candidate if the person is any of the following in relation to the candidate—

- (a) a spouse;
- (b) a partner in a partnership;
- (c) an entity, other than a government entity, for which the candidate is an executive officer or board member.

## 3 Membership of political party or trade or professional organisation

- (1) If a candidate is, or has been within the previous year, a member of a registered political party or trade or professional organisation, the nomination must contain, for each party or organisation—
  - (a) the name and address of the party or organisation; and
  - (b) the date on which the candidate became a member and, if the candidate is no longer a member, the date the candidate stopped being a member.
- (2) If subsection (1) does not apply, the nomination must contain a statement that the candidate is not, and has not been within the previous year, a member of a registered political party or trade or professional organisation.

## 4 Contractual arrangements

- (1) Subsection (2) applies to a candidate if the candidate, or a close associate of the candidate, is, or has been within the previous year, a party to a contractual arrangement with the local government.
- (2) The nomination must contain, for each contractual arrangement—
  - (a) the nature of the arrangement; and
  - (b) if the arrangement is a medium-sized contractual arrangement or a large-sized contractual arrangement under the *Local Government Regulation 2012* or the

*City of Brisbane Regulation 2012*—a statement about that fact; and

- (c) if a close associate of the candidate is a party to the arrangement—
  - (i) the name and address of the close associate; and
  - (ii) the nature of the candidate’s relationship with the close associate.
- (3) If subsection (2) does not apply to the candidate, the nomination must contain a statement that the candidate, and each close associate of the candidate, is not, and has not been within the previous year, a party to a contractual arrangement with the local government.

## **5 Contractual processes**

- (1) Subsection (2) applies to a candidate if the candidate, or a close associate of the candidate, is engaged in a contractual process with the local government.
- (2) The nomination must contain, for each contractual process—
  - (a) the nature of the process; and
  - (b) if a close associate of the candidate is engaged in the process—
    - (i) the name and address of the close associate; and
    - (ii) the nature of the candidate’s relationship with the close associate.
- (3) If subsection (2) does not apply to the candidate, the nomination must contain a statement that the candidate, and each close associate of the candidate, is not engaged in a contractual process with the local government.

## **6 Particular applications or representations**

- (1) Subsection (2) applies to a candidate if any of the following applications or representations made by the candidate, or a close associate of the candidate, have not been decided before the nomination is made—

- 
- (a) a development application under the *Planning Act 2016* for which the local government is the assessment manager under that Act;
  - (b) a development application under the repealed *Sustainable Planning Act 2009* for which the local government is the assessment manager under that Act;
  - (c) a change representation under the *Planning Act 2016* for which the local government is the assessment manager under that Act;
  - (d) a change application under the *Planning Act 2016* for which the local government is the responsible entity under that Act;
  - (e) an extension application under the *Planning Act 2016* for which the local government is the assessment manager under that Act.
- (2) The nomination must contain, for each application or representation—
- (a) the nature of the application or representation; and
  - (b) if the application or representation was made by a close associate of the candidate—
    - (i) the name and address of the close associate; and
    - (ii) the nature of the candidate’s relationship with the close associate.
- (3) If subsection (1) does not apply to the candidate, the nomination must contain a statement that the candidate, and each close associate of the candidate, has not made an application or representation to which subsection (1) applies.

## **7 Training course approved under Act, s 26**

The nomination must contain a statement that the candidate has, within 6 months before the nomination day for the election, successfully completed a training course approved under section 26(2) of the Act.

## Schedule 2 Dictionary

### section 4

**agent**, for a group of candidates, means the agent for the group recorded in a register of group agents under section 43.

**applicant**, for part 7, means a person who files an application.

**application**, for part 7, means an application about disputing an election under section 138.

**approved form** means a form approved by the electoral commission under section 207.

**assistant returning officer**, for an election, means a person appointed under section 10 as an assistant returning officer for the election.

**associated entity** means an incorporated or unincorporated body, or the trustee of a trust, that—

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

**by-election** means an election to replace a councillor after the councillor's office becomes vacant.

*Note—*

See the *Local Government Act 2009*, chapter 6, part 2, division 3 or the *City of Brisbane Act 2010*, chapter 6, part 2, division 3, for when a vacancy in the office of a councillor must be filled by a by-election.

**candidate** means a person whose nomination for election as a councillor has been certified by the returning officer under section 27(3)(a).

**candidate's disclosure period**, for part 6, see section 106.

**close associate**, for schedule 1, see schedule 1, section 2.

**conclusion**, of an election, see section 7.

***contractual arrangement***, for schedule 1, see schedule 1, section 1.

***contractual process***, for schedule 1, see schedule 1, section 1.

***councillor***, of a local government, includes the mayor.

***Court of Disputed Returns*** see the *Electoral Act 1992*, section 137.

***cut-off day***, for the voters roll for an election, means the day to which the voters roll for the election must be compiled under section 18.

***declaration envelope*** means an envelope—

- (a) on which there is a form of declaration that is to be made by an elector; and
- (b) in which the elector's ballot paper is to be sealed.

***deposit***, in relation to a nomination, means the amount deposited under section 39 for the nomination.

***disclosure date***, for a return, see section 106.

***distribute***, a how-to-vote card—

- (a) includes make the card available to other persons; but
- (b) does not include merely displaying the card.

*Examples—*

- 1 A person *distributes* how-to-vote cards if the person hands the cards to other persons or leaves them at a place for other persons to take away.
- 2 A person does not *distribute* how-to-vote cards if the person attaches the cards to walls and other structures, merely for display.

***division***, of a local government area, means a division of the area established for the election of councillors or a councillor.

***elect*** includes re-elect.

***election*** means a local government election.

***election material*** means anything able to, or intended to—

- (a) influence an elector about voting at an election; or
- (b) affect the result of an election.

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

- (a) starting on the day when public notice of the holding of the election is given under section 25(1); and
- (b) ending on the close of the poll for the election.

***elector*** means a person entitled to vote in an election.

***electoral commission*** means the Electoral Commission of Queensland established under the *Electoral Act 1992*, section 7.

***electoral commissioner*** means the electoral commissioner under the *Electoral Act 1992*.

***electoral district*** means an electoral district under the *Electoral Act 1992*.

***electoral expenditure***, for part 6, see section 106.

***electoral officer*** means the returning officer, an assistant returning officer, presiding officer or issuing officer.

***electoral paper*** means a ballot paper, declaration envelope or other document issued by the electoral commission under this Act.

***electoral roll*** means an electoral roll kept under the *Electoral Act 1992*, section 58.

***first-preference vote***, recorded on a ballot paper, means the number 1, or a tick or cross, written in a square opposite the name of a candidate on the ballot paper.

***formal***, in relation to a vote, means the vote is recorded on a formal ballot paper.

***formal ballot paper*** means a ballot paper that is a formal ballot paper under—

- (a) for optional-preferential voting—section 86(7); or
- (b) for first-past-the-post voting—section 87(6).

***fresh election*** means an election of all the councillors of a local government that is not a quadrennial election.

***gift***, for part 6, see section 107(1) and (2).

*gifts register*, for part 6, see section 106.

*group of candidates*—

- 1 A *group of candidates*, for an election, means a group of individuals, each of whom is a candidate for the election, if the group was formed—
  - (a) to promote the election of the candidates; or
  - (b) to share in the benefits of fundraising to promote the election of the candidates.
- 2 However, a *group of candidates*, for an election, does not include a political party or an associated entity.

*group's disclosure period*, for part 6, see section 106.

*how-to-vote card* means—

- (a) a card, handbill or pamphlet, relating to an election for which optional-preferential voting applies, that—
  - (i) is or includes—
    - (A) a representation of a ballot paper or part of a ballot paper; or
    - (B) something apparently intended to represent a ballot paper or part of a ballot paper; or
  - (ii) lists the names of any or all of the candidates for the election with a number indicating an order of voting preference against the names of any or all of the candidates; or
  - (iii) otherwise directs or encourages the casting of preference votes, other than first-preference votes, in a particular way; or
- (b) a card, handbill or pamphlet, relating to an election for which first-past-the-post voting applies, that—
  - (i) is or includes—
    - (A) a representation of a ballot paper or part of a ballot paper; or
    - (B) something apparently intended to represent a ballot paper or part of a ballot paper; or

- (ii) directs or encourages the casting of a vote for a number of particular candidates equal to the number of candidates to be elected.

***informal***, in relation to a vote, means the vote is recorded on an informal ballot paper.

***informal ballot paper*** means a ballot paper that is an informal ballot paper under—

- (a) for optional-preferential voting—section 86(8); or
- (b) for first-past-the-post voting—section 87(7).

***information notice***, about a decision, for part 6, see section 106.

***institution*** means any of the following—

- (a) a hospital;
- (b) a convalescent home;
- (c) a nursing home;
- (d) a home for the aged;
- (e) a hostel for the aged or infirm;
- (f) another place prescribed by regulation to be an institution.

***issuing officer*** see section 12.

***loan***, for part 6, see section 106.

***local government election*** means—

- (a) a quadrennial election; or
- (b) a by-election; or
- (c) a fresh election.

***local government employee***—

- (a) for the City of Brisbane—means a council employee under the *City of Brisbane Act 2010*, schedule; or
- (b) for another local government—means a local government employee under the *Local Government Act 2009*, schedule 4.

**mobile polling booth** see section 46(3).

**nomination day**, for an election, means the day stated as the nomination day for the election—

- (a) in a notice under section 25; or
- (b) in a gazette notice under section 38.

**nominee**, for an election, means a person who has nominated for election as a councillor at the election.

**obstruct** includes hinder and attempt to obstruct.

**ordinary polling booth** see section 46(2).

**ordinary vote** see section 67(1)(a).

**ordinary voting hours** means the hours between 8a.m. and 6p.m. on a day.

**person acting on behalf of a candidate**, for part 6, see section 106.

**person acting on behalf of a group of candidates**, for part 6, see section 106.

**place** includes a vehicle.

**political activity**, for part 6, see section 106.

**political donation**, for part 6, division 1A, see section 113A.

**political party** means an organisation or group whose object or activity, or 1 of whose objects or activities, is the promotion of the election of a candidate or candidates endorsed by it, or by a body or organisation of which it forms a part, to an office of councillor of a local government.

**polling booth** means—

- (a) an ordinary polling booth; or
- (b) a mobile polling booth; or
- (c) a pre-polling booth.

**polling day**, for an election, means the day—

- (a) stated in a notice under section 35; or
- (b) fixed by notice under section 36; or

(c) fixed by a notice under section 38; or

(d) fixed by a notice under section 53.

***polling notice*** means the public notice given by a returning officer, under section 35, that a poll will be conducted.

***postal ballot election*** means an election for which the Minister has directed, under section 45, that the poll be conducted by postal ballot.

***postal vote*** see section 67(1)(c).

***postal voter*** means an elector who casts a postal vote in an election.

***preference vote***, recorded on a ballot paper, means the number 2, or a higher number, written in a square opposite the name of a candidate on the ballot paper.

***pre-polling booth*** see section 46(4).

***pre-poll vote*** see section 67(1)(b).

***presiding officer***, for a polling booth, means the person who, under section 11, is the presiding officer at the polling booth.

***prohibited donor***, for part 6, division 1A, see section 113(1).

***properly nominated***, for an election, see section 27(5).

***public office***, of a local government, see the *Local Government Act 2009*, schedule 4.

***quadrennial election*** means the election of councillors for local governments that is held in 2012, and every fourth year after 2012.

***registered industrial organisation***, for part 6, see section 106.

***registered officer***, of a registered political party, see the *Electoral Act 1992*, section 2.

***registered political party*** see the *Electoral Act 1992*, section 2.

***register of political parties*** means the register of political parties kept under the *Electoral Act 1992*.

***relevant details***, for a gift, for part 6, see section 109.

***required period***, for part 6, see section 106.

***returning officer***, for an election, means a person who under section 9 is the returning officer for the election.

***silent elector*** means a person—

- (a) to whom the *Electoral Act 1992*, section 58(5) applies; or
- (b) whose address has been excluded from an electoral roll under an arrangement under the *Electoral Act 1992*, section 62 because of the *Commonwealth Electoral Act 1918* (Cwlth), section 104.

***special postal voter*** see section 68(5A).

***spoilt ballot paper*** see sections 85(1)(a)(i) and 85A(1)(b).

***third party***, for part 6, see section 123.

***value***, of a gift, for part 6, see section 106.

***voters roll*** see section 17.

***voting hours***, for a mobile polling booth, means the hours when electors may enter the booth to vote at an election.