



# Local Government Electoral Act 2011

**Current as at [Not applicable]**

## **Indicative reprint note**

This is an ***unofficial*** version of a reprint of this Act that incorporates all proposed amendments to the Act included in the Electoral Laws (Restoring Electoral Fairness) Amendment Bill 2025. This indicative reprint has been prepared for information only—***it is not an authorised reprint of the Act.***

Amendments to this Act are also included in the Local Government (Empowering Councils) and Other Legislation Amendment Bill 2025. These proposed amendments are not included in this indicative reprint.

The point-in-time date for this indicative reprint is the introduction date for the Electoral Laws (Restoring Electoral Fairness) Amendment Bill 2025 — 11 December 2025.

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Queensland

# Local Government Electoral Act 2011

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**Not authorised—indicative only**

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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 and reinforce the transparent and equitable conduct of elections of councillors of Queensland's local governments, including, for example, by minimising the risk of unequal participation in the electoral process and ensuring a fair opportunity to participate in the electoral process; 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—

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*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.

## 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.

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- (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;

[s 16A]

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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**

#### **16A**    **Definition for division**

In this division—

*enrolled to vote*, at an election, means enrolled on an electoral roll for an electoral district, or 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.

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

- (1) The returning officer for an election must compile a roll of persons enrolled to vote at the election (the *voters roll*).
- (2) An electoral registrar under the *Electoral Act 1992* must give the returning officer the information and assistance the officer reasonably requires to compile a voters roll for an election.

#### **17A**    **Information about persons serving sentences of imprisonment or detention**

- (1) To enable a returning officer to decide the persons who are not entitled to vote because of section 64(2), the returning officer may ask—

- 
- (a) the chief executive (corrective services) to give the returning officer information about persons who are serving sentences or terms of imprisonment for offences against the law of the Commonwealth or of a State or Territory; or
  - (b) the chief executive (youth justice) to give the returning officer information about persons aged at least 18 years who—
    - (i) are serving a sentence of detention; or
    - (ii) were serving a sentence of detention of 1 year or longer and have been transferred to serve the sentence as a term of imprisonment.
- (2) The chief executive must give the returning officer the information as soon as practicable after receiving the request.
  - (3) Also, if an electoral registrar has received information under the *Electoral Act 1992*, section 58(8), it may be provided to the returning officer.

## **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 notice of the election is published on the electoral commission's website under section 25(1).
- (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 notice of the day of the by-election is published on the electoral commission's website under section 24(3).

## **19 Requirements of voters roll**

- (1) A voters roll for an election must—
  - (a) show the names of all persons enrolled to vote at the election; and

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- (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).

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—

*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 2 months 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
  - (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;

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- (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 31(3) does not apply to the nomination; and
  - (d) section 39 has been complied with; and
  - (e) 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.

- (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.

### **31 Withdrawal of endorsement of candidate**

- (1) This section applies if—
- (a) a registered political party nominates a person as a candidate for an election under section 27(1)(a); and
  - (b) before the election, the party withdraws the party's endorsement of the person as a candidate for the election.

*Note—*

See section 135A for the requirement for a registered political party to notify the commission about—

- (a) the party's endorsement of a person as a candidate for an election; or
- (b) changes to the endorsement.

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- (2) The registered officer of the registered political party must notify the electoral commission, in the approved form, of the withdrawal of the endorsement.

Maximum penalty—40 penalty units.

- (3) If the notification is given to the electoral commission before noon on the nomination day for the election, the nomination of the person is of no effect.

- (4) If the notification is given to the electoral commission on or after noon on the nomination day for the election—

- (a) the nomination of the person is not affected; and  
(b) a ballot paper is taken to comply with section 55 even if the name, or an abbreviation of the name, of the registered political party is printed adjacent to the candidate's name on the ballot paper.

- (5) As soon as practicable after the electoral commission receives the notification, the electoral commission must give the candidate a notice that states—

- (a) the contents of the notification; and  
(b) when the electoral commission received the notification; and  
(c) if subsection (3) or (4) applies in relation to the notification—the effect of the subsection.

## **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—

*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, that the nominees are taken to have been elected—
  - (i) on the electoral commission's website; and
  - (ii) in other ways the returning officer considers appropriate.

(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.

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- (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
  - (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

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- (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—

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- (a) a storm, flood, fire or a similar happening; or
  - (b) a riot or open violence; or
  - (c) another exceptional circumstance.
- (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 Creation and membership of groups of candidates**

#### **41 Purpose of subdivision**

The purpose of this subdivision is—

- (a) to allow candidates to engage in group campaign activities for a particular election by being members of a group of candidates for that election; and
- (b) to treat the group, for certain purposes, as if it were a person.

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## 42 Creation of group of candidates

- (1) If 2 or more candidates in an election propose to engage in group campaign activities for the election, the candidates may—
  - (a) form a group for the purposes of this Act for the election; and
  - (b) give the electoral commission written notice of the membership of the group.
- (2) As soon as practicable after the electoral commission receives the notice, the electoral commission must publish a copy of the notice from which information required under subsection (5)(d) and (e) has been deleted—
  - (a) on the electoral commission’s website; and
  - (b) in other ways the electoral commission considers appropriate.
- (3) The group becomes a *group of candidates* for the election when the electoral commission publishes the notice on the electoral commission’s website under subsection (2).

*Note—*

See also sections 43(3) and 43A(3).

- (4) The notice may only be given during the period that—
  - (a) starts—
    - (i) if the most recent election in relation to the local government’s area was a quadrennial election—30 days after the polling day for the quadrennial election; or
    - (ii) otherwise—the day after the polling day for the most recent election in relation to the local government’s area; and
  - (b) ends immediately before the polling day for the election.
- (5) The notice must—
  - (a) be in the approved form; and

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- (b) state the name of the proposed group of candidates; and
- (c) state the name of each candidate who will be a member of the group of candidates; and
- (d) be signed by each candidate who will be a member of the group of candidates; and
- (e) include information about the account with a financial institution the proposed group of candidates intends to use as its account for section 127; and
- (f) be accompanied by written notice under section 116C(1)(c) of the appointment of a person as the agent of the proposed group of candidates.

#### **43 Changing membership of group of candidates**

- (1) A group of candidates for an election may—
  - (a) change the membership of the group at any time before the polling day for the election; and
  - (b) by its agent, give the electoral commission written notice of the proposed change to the membership of the group.
- (2) As soon as practicable after the electoral commission receives the notice, the electoral commission must publish a copy of the notice from which information required under subsection (5)(f) has been deleted—
  - (a) on the electoral commission’s website; and
  - (b) in other ways the electoral commission considers appropriate.
- (3) Despite section 42(3), when the electoral commission publishes the notice on the electoral commission’s website under subsection (2)—
  - (a) the change to the membership of the group of candidates takes effect; and

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- (b) the group is taken to be comprised of the candidates in accordance with the change to the membership of the group as stated in the notice.
  - (4) The change to the membership of the group of candidates must not result in only 1 candidate being a member of the group.
  - (5) The notice must—
    - (a) be in the approved form; and
    - (b) state the name of the group of candidates and, if the name is proposed to change, the proposed name; and
    - (c) state the name of each candidate who is a member of the group when the notice is given; and
    - (d) if a candidate proposes to become a member of the group—state the name of each candidate who proposes to become a member; and
    - (e) if a candidate proposes to no longer be a member of the group—state the name of each candidate who proposes to no longer be a member; and
    - (f) be signed by each candidate mentioned in paragraphs (c) and (d).

#### **43A Winding up group of candidates**

- (1) The members of a group of candidates for an election may—
  - (a) wind up the group at any time before the polling day for the election; and
  - (b) by its agent, give the electoral commission written notice of the proposed winding up.
- (2) As soon as practicable after the electoral commission receives the notice, the electoral commission must publish a copy of the notice from which information required under subsection (4)(d) has been deleted—
  - (a) on the electoral commission’s website; and

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- (b) in other ways the electoral commission considers appropriate.
- (3) Despite sections 42(3) and 43(3), when the electoral commission publishes the notice on the electoral commission's website under subsection (2), the group of candidates stops being a group of candidates for the election.
- (4) The notice must—
  - (a) be in the approved form; and
  - (b) state the name of the group of candidates; and
  - (c) state the name of each candidate who is a member of the group when the notice is given; and
  - (d) be signed by each candidate mentioned in paragraph (c).

#### **43B Requirements for membership of group of candidates**

- (1) A candidate in an election may be a member of a group of candidates only if—
  - (a) for a quadrennial election for a local government—each other candidate who is a member of the group is a candidate in the quadrennial election for the same local government; and
  - (b) the candidate is not a member of another group of candidates for the election; and
  - (c) the candidate is not endorsed, within the meaning of section 109G, by a registered political party for the election.
- (2) Also, only 1 member of a group of candidates may be a candidate for election as mayor of a local government.
- (3) This section applies despite sections 42 and 43.

#### **43C Application of Act to groups of candidates**

- (1) Part 6 and part 9, division 5 apply in relation to a group of candidates as if it were a person.

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- (2) An obligation or liability that, apart from this subsection, would be imposed under part 6 or part 9, division 5 on a group of candidates, is imposed on each member of the group, but may be discharged by any of the members of the group.
  - (3) An amount that, apart from this subsection, would be payable under part 6 or part 9, division 5 by a group of candidates is jointly and severally payable by the members of the group.
  - (4) An offence against a provision of part 6 or part 9, division 5 that, apart from this subsection, would be committed by a group of candidates is taken to have been committed by each member of the group who—
    - (a) authorised or permitted the conduct that would have constituted the offence; or
    - (b) was, directly or indirectly, knowingly concerned in the conduct that would have constituted the offence.

Maximum penalty—the penalty for a contravention of the provision by an individual.

- (5) This section does not affect the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is a member of a group of candidates, for an offence against part 6 or part 9, division 5.
- (6) A reference in part 6 to a gift or loan made, expenditure incurred or something else done by a person includes a reference to a gift or loan made, expenditure incurred or other thing done by a person acting—
  - (a) on behalf of a group of candidates; and
  - (b) under the group's actual or apparent authority.
- (7) Also, a reference in part 6 to a gift or loan made to a person includes a reference to the gift or loan being made for the benefit of the members of a group of candidates.

#### **43D Validation of ballot paper**

- (1) This section applies if a notice in relation to a group of candidates for an election is given to the electoral commission

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under section 42, 43 or 43A after noon on the nomination day for the election.

- (2) A ballot paper is taken to comply with section 55 whether or not the name of the group of candidates is printed adjacent to a candidate's name on the ballot paper.

**43E Application of return provisions—candidate stops being member of group of candidates**

- (1) This section applies if—
  - (a) a candidate stops being a member of a group of candidates, for an election, because a change to the membership of the group takes effect under section 43(3); and
  - (b) the group has not been wound up under section 43A.
- (2) Sections 118(4) and (7), 120(6), (8) and (9) and 125 apply in relation to the group of candidates as if—
  - (a) a reference in section 118(4) to a member of a group of candidates receiving a gift, or not receiving any gifts, included a reference to the candidate mentioned in subsection (1)(a) receiving a gift, or not receiving any gifts, when the candidate was a member of the group; and
  - (b) a reference in section 118(7) or 120(8) or (9) to a member of a group of candidates included a reference to the candidate mentioned in subsection (1)(a); and
  - (c) a reference in section 120(6) to a group of candidates receiving a loan, or not receiving any loans, included a reference to the candidate mentioned in subsection (1)(a) receiving a loan, or not receiving any loans, when the candidate was a member of the group; and
  - (d) a reference in section 125 to electoral expenditure incurred, or not incurred, by a group of candidates included a reference to electoral expenditure incurred, or not incurred, by the candidate mentioned in

subsection (1)(a) when the candidate was a member of the group.

**43F Application of return provisions—group of candidates that has been wound up**

- (1) This section applies if a group of candidates for an election is wound up under section 43A (a *former group*).
- (2) Sections 118(4) and (7), 120(6), (8) and (9) and 125 apply in relation to the former group as if—
  - (a) a reference in the sections to a group of candidates were a reference to the former group; and
  - (b) a reference in the sections to the disclosure period for a group of candidates were a reference to the disclosure period that applied in relation to the former group before it was wound up; and
  - (c) a reference in section 118(4) to a member of a group of candidates receiving a gift, or not receiving any gifts, were a reference to a candidate who was a member of the former group receiving a gift, or not receiving any gifts, when the candidate was a member of the former group; and
  - (d) a reference in section 118(7) or 120(8) or (9) to a member of a group of candidates were a reference to a candidate who was a member of the former group at any time before the former group was wound up; and
  - (e) a reference in section 120(6) to a group of candidates receiving a loan, or not receiving any loans, included a reference to a candidate who was a member of the former group receiving a loan, or not receiving any loans, when the candidate was a member of the former group; and
  - (f) a reference in section 125 to electoral expenditure incurred, or not incurred, by a group of candidates were a reference to electoral expenditure incurred, or not incurred—

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- (i) by the former group; or
  - (ii) by a candidate who was a member of the former group when the candidate was a member of the former group; and
- (g) a reference in section 125 to the dedicated account of a group of candidates were a reference to the account that was the dedicated account of the former group before the group was wound up.
- (3) Also, section 127(5) to (8) applies in relation to the former group as if—
  - (a) a reference in the provision to a group of candidates were a reference to the former group; and
  - (b) a reference in the provision to a member of a group of candidates were a reference to a candidate who was a member of the former group immediately before it was wound up; and
  - (c) a reference in the provision to the disclosure period for a group of candidates were a reference to the disclosure period that applied in relation to the former group before it was wound up.

## **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 on the local government's website, and in other ways the local government considers appropriate.

#### **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

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- (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.

- (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

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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—

- (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.

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- (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.

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- (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

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- (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 on the voters roll;

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- (b) persons who are not on the voters roll but are entitled under the *Electoral Act 1992*, section 64(1)(a)(ii) to be enrolled to vote at the election;
  - (c) persons who are not on the voters roll because of an official error;
  - (d) persons who—
    - (i) are not on the voters roll but are entitled, under the *Electoral Act 1992*, to be enrolled on the electoral roll for the electoral district in which the area or division is situated; and
    - (ii) after the cut-off day for the voters roll 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) However, a person who is serving a sentence of imprisonment or detention of 1 year or longer is not entitled to vote at an election.
- (3) Also, 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.

## **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.

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- (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—

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- (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 or detention on the cut-off day for the voters roll but is not serving a sentence of imprisonment or detention on the polling day for the election; or
  - (e) the elector is serving a sentence of imprisonment or detention, 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; or

*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

- (h) section 64(1)(b) or (d) applies to the elector.
- (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—

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- (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.

- (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

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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

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- (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;

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- (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
  - (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—

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- (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

- (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—

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- (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;

- (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—

- (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

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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.

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- (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.

- (3) Also, if the ballot paper is sealed in a declaration envelope, the envelope must have been signed, and the signature witnessed, as required under this part.
- (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.

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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) 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.

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- (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) If the presiding officer is a person other than the returning officer, 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

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—

- (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.

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- (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

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

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- (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—

- (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 spoilt 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 member of 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, a member of a group of candidates or a 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.

- (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) the Governor in Council gives effect to a recommendation by the Minister to dissolve a local government under the *Local Government Act 2009*, section 123(3)(b)(i); or  
*Note—*

The dissolution does not take effect until it is ratified by the Legislative Assembly under the *Constitution of Queensland 2001*, section 75(2).
  - (b) a fresh election is required under a regulation implementing a recommendation of the change commission 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—

**agent** means an agent of any of the following who is appointed under division 2 for an election—

- (a) a registered political party that endorses a candidate in the election;
- (b) a candidate in the election;
- (c) a group of candidates for the election;
- (d) a third party for the election.

**associated entity**—

- (a) of a registered political party that endorses a candidate in an election—see section 112C(2) and (3); or
- (b) of a candidate in an election—see section 112D(2), (3), (4) and (5); or
- (c) of a group of candidates for an election—see section 112E(2) and (3).

**auditor** means an individual who—

- (a) has the qualifications or experience prescribed by regulation for this definition; and
- (b) is not, and has never been, a member of a political party.

**bank statement**, for an account with a financial institution—

- (a) means a written record issued by the financial institution of all of the transactions carried out in relation to the account during a stated period; and

- (b) includes a written record of the transactions printed from an online banking facility provided by the financial institution.

**broadcaster** means—

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

**campaign purpose**, for incurring electoral expenditure, see section 109B.

**capped expenditure period**, for an election, see section 123A.

**disclosure deadline**, for a return, means the day or time prescribed by regulation for the giving of the return.

**disclosure period**, for an election—

- (a) for a candidate in the election—see section 106A(1); or
- (b) for a registered political party that endorses a candidate in the election—see section 106A(3); or
- (c) for a group of candidates for the election—see section 106A(4); or
- (d) for a third party for the election—see section 106A(5); or
- (e) for an associated entity of a registered political party that endorses a candidate in the election or of a candidate in the election or a group of candidates for the election—see section 106A(6).

**electoral expenditure** see section 109A.

***endorsed***, in relation to a candidate by a registered political party, see section 109G.

***financial controller***, of an associated entity of a registered political party that endorses a candidate in an election or of a candidate in an election or a group of candidates for an election, means—

- (a) if the entity is a corporation, including a corporation that is the trustee of a trust—the secretary of the corporation; or
- (b) if the entity is the trustee of a trust but is not a corporation—the trustee; or
- (c) otherwise—the person responsible for keeping the financial records of the entity.

***fundraising contribution*** see section 107A.

***gift*** see section 107.

***gifted***, for an amount of electoral expenditure incurred, see section 109C(1).

***individual candidate*** see section 106AA.

***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 a financial institution or use of a credit card—

- (a) an advance of money;
- (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.

***participant***, in an election, see section 106AB.

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

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

***recipient***, of a gift or loan, means the entity to whom, or for the benefit of whom, the gift or loan was made.

***registered***, for a third party in relation to an election, means registered under division 5A for the election.

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

***register of agents*** means the register kept under section 116D.

***register of third parties***, for an election, means the register kept under section 127E(1) for the election.

***related political party*** has the meaning given by section 112A.

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

***relevant material*** means material produced as a result of incurring electoral expenditure, including, for example, an advertisement.

***relevant third party***, for an election, means—

- (a) a registered third party for the election; or
- (b) another third party that is required, under section 127D, to be registered for the election.

**reporting period** means each of the following periods in a year—

- (a) the period that starts on 1 January and ends on 30 June in the year;
- (b) the period that starts on 1 July and ends on 31 December in the year.

**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.

**restricted donation** means a gift or loan that—

- (a) is made by a prohibited donor to a political party; and
- (b) is accompanied by a restricted donation statement.

**source**—

- (a) of a gift—see section 121A(1); or
- (b) of a loan—see section 121A(2).

**sponsorship arrangement** see section 107B.

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

- (a) a registered political party that endorses a candidate in the election; or
- (b) a candidate in the election; or
- (c) a group of candidates for the election; or
- (d) an associated entity of an entity mentioned in paragraph (a), (b) or (c); or
- (e) a person who is a member of a committee for the election of a candidate endorsed by a registered political party, if the committee is part of the political party; or
- (f) a person who is a member of a committee for the election of—
  - (i) a candidate in the election; or
  - (ii) members of a group of candidates for the election.

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

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### **106AA When candidate is *individual candidate***

- (1) A candidate in an election is an *individual candidate* for any part of the capped expenditure period for the election during which the candidate—
  - (a) is not a member of a group of candidates for the election; and
  - (b) is not endorsed by a registered political party for the election.
- (2) Without limiting subsection (1), a candidate in an election may be an individual candidate during 1 or more parts, but not all, of the capped expenditure period for the election.

### **106AB Meaning of *participant* in an election**

For this part, each of the following is a *participant* in an election—

- (a) a candidate in the election;
- (b) a group of candidates for the election;
- (c) a registered political party that endorses a candidate in the election;
- (d) a registered third party for the election;
- (e) a third party that—
  - (i) is not registered for the election; and
  - (ii) incurs electoral expenditure for the election.

### **106A Meaning of *disclosure period***

- (1) The *disclosure period* for an election, for a candidate in the election, is the period that—
  - (a) starts—
    - (i) if the candidate was a candidate in an election held within 5 years before the polling day for the

- election—30 days after the polling day for the earlier election; or
- (ii) otherwise—on the day that applies for the candidate under subsection (2); and
- (b) ends 30 days after the polling day for the election.
- (2) For subsection (1)(a)(ii), the day that applies for the candidate for the election is the earlier of the following days—
- (a) the day the person announces or otherwise publicly indicates the person’s intention to be a candidate in the election;
- (b) the day the person nominates as a candidate in the election;
- (c) the day the person otherwise indicates the person’s intention to be a candidate in the election, including, for example, by accepting a gift made for the purpose of the election.
- (3) The **disclosure period** for an election, for a registered political party that endorses a candidate in the election, is the period that—
- (a) starts—
- (i) if the party endorsed a candidate in a by-election or fresh election held after the last quadrennial election—30 days after the polling day for the last by-election or fresh election in which the party endorsed a candidate; or
- (ii) if subparagraph (i) does not apply and the party endorsed a candidate in the last quadrennial election—30 days after the polling day for the last quadrennial election; or
- (iii) otherwise—on the day the party first incurs electoral expenditure for the election; and
- (b) ends 30 days after the polling day for the election.
- (4) The **disclosure period** for an election, for a group of candidates for the election, is the period that—

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- (a) starts—
- (i) if the most recent election was not a quadrennial election and the group of candidates was also a group of candidates for the most recent election—30 days after the polling day for the last election; or
  - (ii) otherwise—30 days after the polling day for the last quadrennial election; and
- (b) ends 30 days after the polling day for the election.
- (5) The ***disclosure period*** for an election, for a third party for the election, is the period that—
- (a) for sections 118A and 118B—
    - (i) starts 30 days after the polling day for the last quadrennial election; and
    - (ii) ends 30 days after the polling day for the election; or
  - (b) for sections 125B and 125C—
    - (i) starts on the day the capped expenditure period for the election starts; and
    - (ii) ends 30 days after the polling day for the election; or
  - (c) for section 127AB—
    - (i) starts on the day the third party is registered, or was first required under section 127D to have been registered, for the election; and
    - (ii) ends 30 days after the polling day for the election.
- (6) The ***disclosure period*** for an election, for an associated entity of a registered political party that endorses a candidate in the election or of a candidate in the election or a group of candidates for the election, is the period that—
- (a) starts on the earlier of the following days—

[s 107]

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- (i) the day the associated entity first incurs electoral expenditure for the election;
    - (ii) the day the capped expenditure period for the elections starts; and
  - (b) ends 30 days after the polling day for the election.
- (7) However, a regulation may prescribe another day on which a disclosure period mentioned in this section starts or ends.

### 107 Meaning of *gift*

- (1) A *gift* made by a person to another person is the disposition of property, or provision of a service, by the person to the other person, for no consideration or inadequate consideration.
- (2) Also, a *gift* includes—

- (a) an amount of electoral expenditure a person gifted to a participant in an election; and

*Note—*

For when an amount of electoral expenditure incurred by a person is gifted to a participant in an election, see section 109C.

- (b) an amount, other than the amount of a loan, paid to or for the benefit of, or an amount of electoral expenditure gifted to, a registered political party that endorses a candidate in an election by—
  - (i) if the party is a part of another entity—a federal or interstate branch or division of the other entity; or
  - (ii) a related political party of the party; and
- (c) in relation to a loan made by a person to another person—
  - (i) an amount of uncharged interest on the loan; or
  - (ii) an amount forgiven on the loan; and
- (d) the part of a fundraising contribution made by a person to another person that exceeds \$200; and

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- (e) an amount paid, or service provided, by a person to a registered political party that endorses a candidate in an election under a sponsorship arrangement.
- (3) A *gift* does not include—
- (a) the disposition of property under a will; or
  - (b) a fundraising contribution of \$200 or less, or the first \$200 of a fundraising contribution that exceeds \$200; or
  - (c) the following amounts paid to a political party—
    - (i) an amount for a person’s subscription for membership of the party;
    - (ii) an amount for a person’s affiliation with the party, other than an amount paid under a sponsorship arrangement mentioned in subsection (2)(e);
    - (iii) an amount that is a compulsory levy imposed on councillors by the party under its constitution; or
  - (d) an amount transferred to an individual from funds the individual holds jointly with the individual’s spouse; or
  - (e) the provision of voluntary labour; or
  - (f) the incidental or ancillary use of—
    - (i) a volunteer’s vehicle or equipment; or
    - (ii) a vehicle or equipment that is ordinarily available for the personal use of a volunteer.
- (4) A reference in this part to a gift does not include a reference to a gift made by a person to an individual (the *recipient*) if, when the gift is made—
- (a) it is made in a private capacity for the recipient’s personal use; and
  - (b) the recipient does not intend to use the gift for an electoral purpose.
- (5) However, if a gift, or part of a gift, mentioned in subsection (4) is used for an electoral purpose—
- (a) the gift, or that part of the gift, is a gift for this part; and

- (b) the recipient is taken to accept the gift, or that part of the gift, at the time it is used for an electoral purpose.
- (6) If the recipient is a councillor, a reference in subsection (4) or (5) to using a gift for an *electoral purpose* includes using the gift directly or indirectly for the recipient's duties as a councillor.
- (7) In this section—
  - uncharged interest*, on a loan, means an amount that would have been payable on the loan if—
    - (a) for a loan made on terms requiring the payment of interest at less than the official cash rate plus 3% a year—the loan had been made on terms requiring the payment of interest at a rate that is at least at the official cash rate plus 3% a year; or
    - (b) for a loan for which interest payable is waived—the interest payable had not been waived; or
    - (c) for a loan for which interest payments are not capitalised—the interest payments were capitalised.

### 107A Meaning of *fundraising contribution*

- (1) A *fundraising contribution* is an amount paid by a person as a contribution, entry fee or other payment to entitle the person or another person to participate in, or otherwise obtain a benefit from, a fundraising or other venture or function.
- (2) Without limiting subsection (1), a *fundraising contribution* includes—
  - (a) an amount paid for a raffle ticket; and
  - (b) an amount paid for an item at a fundraising auction.
- (3) An amount mentioned in subsection (1) is a fundraising contribution whether or not the venture or function to which the payment relates raises funds for an entity.

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- (4) A *fundraising contribution* does not include an amount relating to the venture or function that is paid under a sponsorship arrangement.

**107B Meaning of *sponsorship arrangement***

- (1) A *sponsorship arrangement*, between a person (the *sponsor*) and a registered political party that endorses a candidate in an election, is an arrangement—
- (a) that establishes a relationship of sponsorship, approval or association between the sponsor and the party, whether or not for commercial gain; or
  - (b) that confers a right on the sponsor to associate the sponsor, or the sponsor's goods or services, with—
    - (i) the party; or
    - (ii) a fundraising or other venture or event; or
    - (iii) a program or event associated with a venture or event mentioned in subparagraph (ii).
- (2) It does not matter whether or not the sponsor is entitled, under the arrangement—
- (a) to be acknowledged as a sponsor; or
  - (b) to advertising or marketing rights; or
  - (c) to supply the sponsor's goods or services; or
  - (d) to another benefit, including, for example, entry to a particular event or function.

**108 Meaning of *value of gift***

- (1) The *value* of a gift is the amount stated in, or worked out under, this section.
- (2) The value of a gift of money is the amount of money given.
- (3) The value of a gift of property other than money is—
- (a) the market value of the property; or

- (b) if a regulation prescribes principles under which the value of the property is to be decided—the value decided under the principles.
- (4) The value of a gift of the provision of a service is—
  - (a) the amount that would reasonably be charged for providing the service if the service were provided on a commercial basis; or
  - (b) 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.
- (5) The value of a gift of an amount of electoral expenditure incurred is the amount of the expenditure.
- (6) The value of a gift that is a fundraising contribution is the gross amount of the contribution, regardless of the value of anything received in consideration for the contribution.
- (7) The value of a gift provided by a person to a registered political party that endorses a candidate in an election under a sponsorship arrangement is worked out—
  - (a) as the amount paid, or value of the service provided, under the arrangement; and

*Note—*

  - See subsection (4) for working out the value of a service provided.
  - (b) regardless of the value of the goods, services or other benefits provided to the person under the arrangement.
- (8) The value of a gift of an amount of uncharged interest on a loan is the amount of interest that would have been payable on the loan if interest on the loan were calculated annually, as simple interest, and at the official cash rate for the day the loan was made plus 3% a year, less any amount of interest paid on the loan.
- (9) The value of a gift of an amount forgiven on a loan is the total amount the debtor is no longer required to pay under the loan because the amount has been forgiven, including, for example,

amounts of principal, interest, fees or other charges, whether or not—

- (a) the loan is legally enforceable; and
  - (b) the forgiveness of the amount is legally enforceable.
- (10) If consideration is given for a gift made, other than a gift mentioned in subsection (6) or (7), the value of the gift is reduced by the amount or value of the consideration given.
- (11) In this section—  
*uncharged interest*, on a loan, see section 107(7).

### 109 Meaning of *relevant details* for a gift or loan

- (1) All of the following are *relevant details* for a gift or loan—
- (a) the value of the gift or loan;
  - (b) when the gift or loan was made;
  - (c) for a loan—the terms of the loan;
  - (d) if the person making the gift or loan has an interest in a local government matter that is greater than that of other persons in the local government area—
    - (i) that fact; and
    - (ii) the nature of the person’s interest;
  - (e) for a gift or loan made by an individual—
    - (i) the individual’s name and residential or business address; and
    - (ii) the individual’s occupation; and
    - (iii) if the individual is employed, carries on a business or is otherwise engaged in an industry—the industry in which the individual is employed, carries on a business or is otherwise engaged;
  - (f) for a gift or loan made by a corporation—
    - (i) the corporation’s name; and

- (ii) the names and residential or business addresses of the directors or members of the executive committee (however described) of the corporation; and
    - (iii) if the corporation has a holding company—the names and residential or business addresses of the directors or members of the executive committee (however described) of the holding company; and
    - (iv) a description of the type of business the corporation carries on;
  - (g) for a gift or loan made on behalf of the members of an unincorporated association—
    - (i) the association’s name; and
    - (ii) unless the organisation is a registered industrial organisation—the names and residential or business addresses of the members of the executive committee (however described) of the association;
  - (h) for a gift or loan 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 name or other description of the trust fund or foundation; and
    - (iii) if the gift is given, or loan 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 or lender—the name and residential or business address of the person;
  - (i) for a gift or loan not mentioned in paragraph (e), (f), (g) or (h)—the name and residential or business address of the person who made the gift or loan.
- (2) If a gift or loan is made by an entity that is not the source of the gift or loan, the *relevant details* for the gift or loan include—

- (a) that fact; and
  - (b) the details mentioned in subsection (1)(d) to (i) for the entity that is the source of the gift or loan.
- (3) In this section—
- holding company**, of a corporation, see the Corporations Act, section 9.
- local government matter**, in relation to a local government, means—
- (a) a transaction, contract or other arrangement entered into by the local government; or
  - (b) another matter to be decided or otherwise dealt with by the local government.

### 109A Meaning of *electoral expenditure*

- (1) **Electoral expenditure** is expenditure of a kind mentioned in subsection (2) incurred for a campaign purpose.
- (2) For subsection (1), the kind of expenditure is—
  - (a) expenditure for designing, producing, printing, broadcasting or publishing material for an election, including, for example—
    - (i) an advertisement for broadcast on radio or television, at a cinema, or using the internet, email or SMS; and
    - (ii) material for publication in newspapers or magazines, on billboards, or as brochures, flyers, signs, how-to-vote cards or information sheets; and
    - (iii) material for distribution in letters; or
  - (b) expenditure for the cost of distributing material for an election, including, for example, the cost of postage, sending SMS messages or couriers; or
  - (c) expenditure for carrying out an opinion poll or research; or

- (d) expenditure for contracted services related to an activity mentioned in paragraph (a), (b) or (c), including, for example, fees for consultants or the provision of data; or
  - (e) expenditure of another kind prescribed by regulation to be a kind of electoral expenditure.
- (3) For subsection (2)(a) and (b), it does not matter whether section 177 applies to the material.
- (4) However, *electoral expenditure* does not include—
- (a) expenditure incurred substantially for or related to the election of—
    - (i) members of the Parliament of the State or another State or the Commonwealth; or
    - (ii) councillors (however described) of a local government of another State; or
  - (b) expenditure on factual advertising about a matter that relates mainly to the administration of a registered political party that endorses a candidate in an election, including, for example, a meeting of a branch, division or committee of the party—
    - (i) for an organisational purpose; or
    - (ii) to select a candidate to nominate for election; or
  - (c) expenditure on employing staff for a campaign purpose; or
  - (d) expenditure of a kind prescribed by regulation not to be a kind of electoral expenditure.
- (5) Expenditure incurred by a third party for an election is *electoral expenditure* if the dominant purpose for which the expenditure is incurred is a campaign purpose.
- (6) However, expenditure incurred by a third party for an election is not *electoral expenditure* if the dominant purpose for which the expenditure is incurred is another purpose, even if the expenditure is also incurred for, or achieves, a campaign purpose.

*Example of other purposes for incurring expenditure—*

to educate or raise awareness about an issue of public policy

- (7) Also, ***electoral expenditure*** incurred by or for a councillor of a local government does not include expenditure of a kind for which the councillor is entitled to receive an allowance or entitlement.
- (8) An amount of electoral expenditure is inclusive of GST.
- (9) In this section—

***allowance or entitlement***, for a councillor of a local government, means an allowance or entitlement the councillor is entitled to under the local government's expenses reimbursement policy.

***expenses reimbursement policy***, in relation to a local government, means a policy—

- (a) that the local government is required to adopt under the *Local Government Act 2009* or the *City of Brisbane Act 2010*; and
- (b) about the payment of expenses incurred or to be incurred by, and the provision of facilities to, councillors of the local government relating to the discharge of their duties and responsibilities as councillors.

### **109B Meaning of *campaign purpose***

- (1) Expenditure is incurred for a ***campaign purpose*** if the expenditure is incurred—
  - (a) to promote or oppose a political party or group of candidates in relation to an election; or
  - (b) to promote or oppose the election of a candidate; or
  - (c) to otherwise influence voting at an election.
- (2) Without limiting subsection (1), expenditure is incurred for a purpose mentioned in subsection (1)(a), (b) or (c) if material produced as a result of the expenditure does any of the following in relation to an election—

- (a) expressly promotes or opposes—
  - (i) political parties, candidates or groups of candidates who advocate, or do not advocate, a particular policy or issue; or
  - (ii) political parties, candidates or groups of candidates who have, or do not have, a particular position on a policy or issue; or
  - (iii) candidates who express a particular opinion;
- (b) expressly or impliedly comments—
  - (i) about a political party, a candidate in the election or a group of candidates for the election; or
  - (ii) in relation to a local government’s area or a division of a local government’s area;
- (c) expresses a particular position on a policy, issue or opinion—
  - (i) if the position is publicly associated with a political party, candidate or group of candidates; and
  - (ii) whether or not, in expressing the position, the party, candidate or group is mentioned.

### **109C Meaning of *gifted* for electoral expenditure**

- (1) An amount of electoral expenditure incurred by a person is *gifted* to a participant in an election if—
  - (a) the expenditure benefits the participant; and
  - (b) any of the following applies—
    - (i) the expenditure is incurred with the authority or consent of the participant;
    - (ii) relevant material resulting from the expenditure is accepted by the participant;
    - (iii) another circumstance prescribed by regulation happens in relation to the expenditure; and

- 
- (c) the person does not, within 7 days after the circumstances mentioned in paragraphs (a) and (b) happen—
- (i) receive consideration, or adequate consideration, from the participant incurring the expenditure; or
  - (ii) invoice the participant for payment of the amount.
- (2) If an amount of electoral expenditure mentioned in subsection (1) (the *total amount*) is incurred under an arrangement between 2 or more participants in the election, the amount gifted to any 1 of the participants is the amount equal to the total amount divided by the number of participants who are parties to the arrangement.
- (3) A gift of electoral expenditure is made when subsection (1) applies to the expenditure, regardless of when the expenditure is incurred.

*Notes—*

- 1 See also section 109E for when electoral expenditure is incurred generally.
- 2 See also section 123U in relation to electoral expenditure incurred by a participant in an election that benefits another participant in the election.

**109D Participant taken to have incurred gifted electoral expenditure**

- (1) If electoral expenditure incurred by a person is gifted to a participant in an election, the participant is taken to have incurred the electoral expenditure.
- (2) Section 109E applies for determining when gifted electoral expenditure is incurred.

**109E When electoral expenditure is incurred generally**

- (1) For this part, electoral expenditure is incurred when the goods or services for which the expenditure is incurred are supplied or provided, regardless of when the amount of the expenditure is invoiced or paid.

- (2) Without limiting subsection (1)—
  - (a) expenditure on advertising is incurred when the advertisement is first broadcast or published; and
  - (b) expenditure on the production and distribution of relevant material is incurred when the material is first distributed; and
  - (c) expenditure of another kind is incurred at the time prescribed by regulation.
- (3) Subsection (4) applies if—
  - (a) electoral expenditure is incurred to obtain goods; and
  - (b) the goods are obtained for the dominant purpose of being used for a campaign purpose in relation to 1 or more elections; and
  - (c) the goods are supplied before the capped expenditure period for an election starts.
- (4) Despite subsection (1), the electoral expenditure is taken to have been incurred when the goods are first used for a campaign purpose during the capped expenditure period for an election, regardless of when the amount of the expenditure is invoiced or paid.
- (5) For this section, the electoral expenditure incurred to obtain goods includes electoral expenditure incurred to design, produce, print or distribute the goods.

**109F When electoral expenditure is incurred for particular purposes**

- (1) This section applies in relation to incurring electoral expenditure for the purpose of working out when—
  - (a) a person becomes a candidate in an election; or
  - (b) a registered political party has endorsed a candidate in an election; or
  - (c) another entity becomes a participant in an election; or
  - (d) a disclosure period under section 106A starts.

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- (2) Despite section 109E, the electoral expenditure is taken to be incurred when a transaction to incur the expenditure is entered into, regardless of when—
    - (a) the amount of the expenditure is invoiced or paid; or
    - (b) the obligation to pay for the expenditure arises; or
    - (c) the goods or services for which the expenditure is incurred are supplied or provided.
  - (3) However, this section does not affect the operation of section 109E in relation to the electoral expenditure for any other purpose under this part.

#### **109G When candidate is *endorsed* by registered political party**

For this part, a candidate is *endorsed* by a registered political party for an election if—

- (a) any of the following has happened—
  - (i) the party has publicly announced the party's intention to endorse the candidate in the election;
  - (ii) the party has started to incur electoral expenditure for the benefit of the candidate for the election;
  - (iii) the party has otherwise endorsed the candidate in the election under the party's constitution; and
- (b) the registered officer of the party has not given notice under section 31 or 135A of the withdrawal of the endorsement.

#### **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 Persons acting on behalf of candidates and groups of candidates**

- (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) corporations that are related to each other are taken to be the same person; and
- (b) the question whether a corporation is related to another corporation must be decided in the same way as the question whether a corporation is related to another corporation is decided under the Corporations Act.

**112A Related political parties**

For this part, 2 political parties are related political parties if—

- (a) 1 is a part of the other; or
- (b) both are parts of the same political party.

**112B Application to unincorporated bodies**

- (1) This section applies in relation to any of the following entities that are unincorporated bodies—
  - (a) a registered political party;
  - (b) a third party;
  - (c) an associated entity of—

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- (i) a registered political party that endorses a candidate in an election; or
  - (ii) a candidate in an election; or
  - (iii) a group of candidates for an election.
- (2) This part, and part 9, division 5, apply in relation to the unincorporated body as if it were a person.
- (3) An obligation or liability that, apart from this subsection, would be imposed under this part or part 9, division 5 on the unincorporated body, is imposed on each member of the executive committee (however described) of the body, but may be discharged by any of the members of the executive committee.
- (4) An amount that, apart from this subsection, would be payable under this part or part 9, division 5 by the unincorporated body is jointly and severally payable by the members of the executive committee (however described) of the body.
- (5) An offence against a provision of this part or part 9, division 5 that, apart from this subsection, would be committed by the unincorporated body is taken to have been committed by each member of the executive committee (however described) of the body who—
- (a) authorised or permitted the conduct that would have constituted the offence; or
  - (b) was, directly or indirectly, knowingly concerned in the conduct that would have constituted the offence.
- Maximum penalty—the penalty for a contravention of the provision by an individual.
- (6) This section does not affect the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is a member of the executive committee (however described) of the unincorporated body, for an offence against this part or part 9, division 5.
- (7) A reference in this part to a gift or loan made, expenditure incurred or something else done by a person includes a

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reference to a gift or loan made, expenditure incurred or other thing done by a person acting—

- (a) on behalf of the unincorporated body; and
  - (b) under the body's actual or apparent authority.
- (8) Also, a reference in this part to a gift or loan made to a person includes a reference to the gift or loan being made for the benefit of the members of the unincorporated body.

### **112C Associated entity to be treated as part of registered political party**

- (1) If a registered political party that endorses a candidate in an election has an associated entity, divisions 4 and 5 apply as if—
- (a) the party and the associated entity together constituted the party; and
  - (b) a reference to the party included a reference to the associated entity; and
  - (c) the dedicated account of the party were the dedicated account of the associated entity; and
  - (d) electoral expenditure incurred by or for the associated entity were incurred by or for the party.

*Note—*

See also sections 118AA, 120A, 124 and 125A about disclosure obligations imposed on the associated entity.

- (2) An entity is an *associated entity* of a registered political party that endorses a candidate in an election if the entity—
- (a) is controlled by the party or endorsed candidates of the party; or
  - (b) operates wholly, or to a significant extent, for the benefit of the party or endorsed candidates of the party; or
  - (c) operates for the dominant purpose of—
    - (i) promoting the party in elections; or

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- (ii) promoting endorsed candidates of the party in an election.
- (3) However, an ***associated entity*** of a registered political party that endorses a candidate in an election does not include—
- (a) a candidate endorsed by the party for the election; or
  - (b) another political party that is a related political party of the party; or
  - (c) if the party is part of another entity—a federal or interstate branch or division of the other entity.
- (4) In this section—
- endorsed candidates***, of a registered political party that endorses a candidate in an election, means 2 or more candidates endorsed by the party for the election.

#### **112D Associated entity to be treated as part of candidate**

- (1) If a candidate in an election has an associated entity, divisions 4 and 5 apply as if—
- (a) the associated entity and the candidate together constituted the candidate; and
  - (b) a reference to the candidate included a reference to the associated entity; and
  - (c) a gift or loan made to or for the benefit of, or received by, the associated entity were a gift or loan made to or for the benefit of, or received by, the candidate; and
  - (d) the dedicated account of the candidate were the dedicated account of the associated entity; and
  - (e) electoral expenditure incurred by or for the associated entity were incurred by or for the candidate.

*Note—*

See also sections 118AA, 120A, 124, 125A and 125G about disclosure obligations imposed on the associated entity.

- (2) An entity is an ***associated entity*** of a candidate in an election if the entity—

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- (a) is controlled by the candidate in relation to the election;  
or
  - (b) operates wholly, or to a significant extent, for the benefit of the candidate in relation to the election; or
  - (c) operates for the dominant purpose of promoting the candidate in the election.
- (3) However, an ***associated entity*** of a candidate in an election does not include an entity if—
- (a) the entity is an associated entity of a registered political party that endorses a candidate in the election under section 112C because the entity—
    - (i) is controlled by endorsed candidates of the party;  
or
    - (ii) operates wholly or to a significant extent for the benefit of endorsed candidates of the party; or
    - (iii) operates for the dominant purpose of promoting endorsed candidates of the party; and
  - (b) the candidate is 1 of the candidates endorsed by the party for the election.
- (4) Also, an ***associated entity*** of a candidate in an election does not include an entity if—
- (a) the entity is an associated entity of a group of candidates under section 112E because the entity—
    - (i) is controlled by the group; or
    - (ii) operates wholly or to a significant extent for the benefit of the group; or
    - (iii) operates for the dominant purpose of promoting the group; and
  - (b) the candidate is a member of the group.
- (5) Further, an ***associated entity*** of a candidate in an election does not include—

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- (a) for a candidate who is endorsed by a registered political party for the election—another candidate who is endorsed by the registered political party; or
  - (b) for a candidate who is a member of a group of candidates for the election—another candidate who is a member of the group; or
  - (c) a committee formed to help the candidate’s election campaign in the election.
- (6) In this section—
- endorsed candidates*, of a registered political party that endorses a candidate in an election, see section 112C(4).

**112E Associated entity to be treated as part of group of candidates**

- (1) If a group of candidates for an election has an associated entity, divisions 4 and 5 apply as if—
  - (a) the associated entity and the group together constituted the group; and
  - (b) a reference to the group included a reference to the associated entity; and
  - (c) a gift or loan made to or for the benefit of, or received by, the associated entity were a gift or loan made to or for the benefit of, or received by, the group; and
  - (d) the dedicated account of the group were the dedicated account of the associated entity; and
  - (e) electoral expenditure incurred by or for the associated entity were incurred by or for the group.

*Note—*

See also sections 118AA, 120A, 124, 125A and 125G about disclosure obligations imposed on the associated entity.

- (2) An entity is an *associated entity* of a group of candidates for an election if the entity—
  - (a) is controlled by the group in relation to the election; or

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- (b) operates wholly, or to a significant extent, for the benefit of the group in relation to the election; or
  - (c) operates for the dominant purpose of promoting the group in the election.
- (3) However, an ***associated entity*** of a group of candidates for an election does not include—
- (a) a candidate who is a member of the group; or
  - (b) a committee formed to help the election campaign of members of the group in the election.

## **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

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- (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, other than a restricted donation; or
    - (ii) a candidate in an election; or
    - (iii) a group of candidates for 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;

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- (c) a loan from an entity that, if the loan were a gift, would be a gift mentioned in paragraph (a) or (b).
- (2) Despite section 107(3)(b), a reference in this section to a gift includes a fundraising contribution, to the extent the amount of the contribution forms part of the proceeds of the fundraising venture or function to which the contribution relates.
- (3) Despite section 107(3)(c), a reference in this section to a gift includes 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—
  - (a) an amount paid as a subscription for a person's membership of the party;
  - (b) an amount paid for a person's affiliation with the party.

### **113AB Meaning of *restricted donation statement***

- (1) A restricted donation statement about a gift or loan is a statement about the gift or loan that complies with this section.
- (2) A restricted donation statement about a gift or loan must—
  - (a) be in writing; and
  - (b) be made by the donor of the gift or loan; and
  - (c) state the relevant particulars of the entity that is the donor of the gift or loan; and
  - (d) state that the gift or loan is made with the intention that it is not used for an electoral purpose; and
  - (e) be given to the recipient when the gift or loan is made.
- (3) In this section—  
*relevant particulars*, of an entity, see the *Electoral Act 1992*, section 197.

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**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.

**113BA Use of restricted donations**

It is unlawful for a person to use a restricted donation made by a prohibited donor for an electoral purpose.

**113C Recovery of prohibited donations and amounts used unlawfully**

- (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.
- (1A) If a person uses a restricted donation for an electoral purpose, an amount equal to twice the amount or value of the restricted donation is payable by the person to the State.
- (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

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- (b) if the recipient is a group of candidates—the members of the group or the group’s agent; or
  - (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

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section 113(1)(a)(i) or (ii), the electoral commissioner must make the determination sought by the applicant.

- (4) Otherwise, the electoral commissioner must—
- (a) decide not to make the determination; and
  - (b) give the applicant an information notice about the decision.

*Note—*

For the right to appeal against the decision, see section 113G.

- (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.

*Note—*

For the right to appeal against the decision, see section 113G.

### **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 374 of that Act applied.

## **Division 2 Agents**

### **114 Agent of registered political party**

- (1) A registered political party that endorses a candidate in an election must appoint a person to be the agent of the party, for this part, for the election.
- (2) The registered political party must appoint a person as the party's agent for an election under subsection (1) as soon as practicable after the party becomes a participant in the election by endorsing a candidate in the election.

### **115 Agent of candidate**

- (1) A candidate in an election may appoint a person to be the agent of the candidate, for this part, for the election.
- (2) During any period for which no appointment is in effect under subsection (1), the candidate is taken to be the candidate's own agent for this part for the election.

### **116 Agent of group of candidates**

A group of candidates for an election must appoint a person to be the agent of the group, for this part, for the election.

*Note—*

See also section 42(5)(f).

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**116A Agent of registered third party**

- (1) A registered third party for an election who is not an individual must appoint a person to be the agent of the third party, for this part, for the election.

*Note—*

See also section 127F(2)(c).

- (2) A registered third party for an election who is an individual may appoint a person to be the agent of the third party, for this part, for the election.
- (3) During any period for which no appointment is in effect under subsection (2), the third party is taken to be the third party's own agent for this part for the election.

**116B Agent of unregistered third party**

- (1) A third party that is not registered for an election may appoint a person to be the third party's agent, for this part, for the election.
- (2) If the third party is an individual, during any period for which no appointment is in effect under subsection (1), the third party is taken to be the third party's own agent for this part for the election.

**116C Requirements for registration**

- (1) The appointment of a person as an agent has no effect unless—
  - (a) the person is an adult; and
  - (b) the person has—
    - (i) consented to the appointment in writing; and
    - (ii) signed a declaration that the person is eligible for appointment; and
  - (c) the electoral commission is given written notice of the appointment that—

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- (i) states the person's name and address; and
  - (ii) includes or is accompanied by the consent and declaration mentioned in paragraph (b); and
  - (iii) for the appointment of an agent of a group of candidates—is signed by each candidate who is a member of the group; and
- (d) the person's name is included in the register of agents.
- (2) A person is not eligible to be appointed, or to hold office, as an agent for this part if the person has been convicted of an offence against section 43C(4), this part or part 9, division 5.

### **116D Register of agents**

- (1) The electoral commission must keep a register called the register of agents.

*Note—*

See section 135B for the requirement to make information from the register available for public inspection.

- (2) The register of agents must include the name and address of each person appointed as the agent of the following, for this part, for an election—
- (a) a registered political party that endorses a candidate in the election;
  - (b) a candidate in the election;
  - (c) a group of candidates for the election;
  - (d) a third party for the election.
- (3) The register of agents may be kept in the way, and in the form, the electoral commission considers appropriate.
- (4) An entry in the register of agents about a person appointed as the agent of an entity mentioned in subsection (2), for this part, for an election, is evidence that the person is the agent of the entity for the election.

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## 116E Registration of agent

- (1) The appointment of a person as an agent, for this part, for an election—
  - (a) takes effect when the person's name is entered in the register of agents; and
  - (b) continues until the person's obligations as an agent under this part for the election end, unless the appointment ends sooner under subsection (2).

*Note—*

A person's obligations as a candidate's agent under this part may end after the election to which the appointment relates, whether or not the candidate is elected at the election.

- (2) The appointment of a person as an agent, for this part, for an election, ends when—
  - (a) the person resigns the person's appointment as agent; or
  - (b) the entity that appointed the person revokes the person's appointment; or
  - (c) the person dies; or
  - (d) the person is convicted of an offence against section 43C(4), this part or part 9, division 5.
- (3) A person's name must not be removed from the register of agents unless—
  - (a) the person gives the electoral commission written notice that the person has resigned the person's appointment as agent; or
  - (b) the entity that appointed the person gives the electoral commission written notice that the person's appointment has been revoked; or
  - (c) the person dies; or
  - (d) the person is convicted of an offence against section 43C(4), this part or part 9, division 5; or

- (e) if the entity that appointed the person is a registered political party or registered third party—the entity’s registration is cancelled.
- (4) If a person’s appointment as the agent of an entity ends under subsection (2), the entity must, within 28 days after the person’s appointment ends, give the electoral commission—
  - (a) a written notice that states—
    - (i) the person’s appointment has ended; and
    - (ii) the day the appointment ended; and
    - (iii) the reason the appointment ended; and
  - (b) if the entity is required to have an agent under this division—a written notice under section 116C(1)(c) of the appointment of another person as the entity’s agent.
- (5) A written notice given to the electoral commission under subsection (3)(b) by a group of candidates must be signed by each candidate who is a member of the group.

### **116F Responsibility for action in absence of agent**

- (1) This section applies if—
  - (a) a provision of this part imposes an obligation on the agent of—
    - (i) a registered political party that endorses a candidate in an election; or
    - (ii) a group of candidates for an election; or
    - (iii) a third party who is not an individual, whether or not the third party is registered for an election; and
  - (b) the entity does not have an agent for this part for the election.
- (2) For a registered political party or a third party, each member of the executive committee (however described) of the registered political party or third party is responsible for complying with the obligation as if the provision applied to the member of the committee.

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- (3) For a group of candidates, each member of the group is responsible for complying with the obligation as if the provision applied to the member of the group.

**116G Agent's obligation to ensure compliance**

- (1) The agent of a participant in an election must take all reasonable steps—
- (a) to inform the participant, and each person the participant authorises to act for the participant under divisions 4 and 5, about the obligations that apply to the participant and person under divisions 4 and 5; and
  - (b) to establish and maintain appropriate systems to support the participant and person to comply with the obligations.

Maximum penalty—100 penalty units.

- (2) If a participant in an election has an associated entity, the agent of the participant must take all reasonable steps—
- (a) to inform the associated entity, and each person the associated entity authorises to act for it under divisions 4 and 5, about the obligations that apply to the associated entity and person under divisions 4 and 5; and
  - (b) to establish and maintain appropriate systems to support the associated entity and person to comply with the obligations.

Maximum penalty—100 penalty units.

- (3) In deciding whether steps taken by the agent of a participant in an election to do a thing mentioned in subsection (1) or (2) are reasonable, a court must consider the amount of electoral expenditure incurred, or expected to be incurred, by—
- (a) the participant; and
  - (b) if the participant has an associated entity—the associated entity.

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- (4) Subsection (5) applies in relation to the agent of—
- (a) a registered political party that endorses a candidate in an election; or
  - (b) a third party for an election; or
  - (c) any of the following participants that has an associated entity—
    - (i) a registered political party that endorses a candidate in an election;
    - (ii) a candidate in an election;
    - (iii) a group of candidates for an election.
- (5) In deciding whether steps taken by the agent of the participant to do a thing mentioned in subsection (1) or (2) are reasonable, a court must consider—
- (a) the number of members and employees of the registered political party, third party or associated entity; and
  - (b) the number of people authorised to act for the registered political party, candidate, group of candidates or associated entity.

*Note—*

See section 127O about keeping records.

## **Division 3                      Gifts and loans**

### **Subdivision 1                Disclosure of gifts and prohibited gifts**

#### **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.

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- (2) The agent of the candidate must give the electoral commission a return about the gift on or before the disclosure deadline 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 agent of a candidate in an election 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) The agent of a candidate need not comply with subsection (4) if—
    - (a) the agent gives the electoral commission a return, in the approved form, before the candidate makes the declaration of office under the *Local Government Act 2009*, section 169 or the *City of Brisbane Act 2010*, section 169 and the return states—
      - (i) the candidate does not expect to receive gifts during the candidate’s disclosure period for the election after the return is given; and
      - (ii) the agent will give returns under this section if gifts are received during the candidate’s disclosure period for the election after the return is given; and

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- (b) the candidate does not receive gifts during the candidate's disclosure period for the election after the return is given.
- (7) If the electoral commission receives a return under subsection (4) from the agent of 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 in relation 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 deadline for the return.
- (3) Each return must—
  - (a) be in the approved form; and
  - (b) state—
    - (i) the names of the candidates who are members of the group; and
    - (ii) the name, if any, of the group; and
    - (iii) the relevant details for the gift.
- (4) Also, the agent of a group of candidates 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—

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- (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.

*Note—*

See also section 43E in relation to candidates who have stopped being members of a group of candidates and section 43F in relation to groups of candidates that have been wound up.

- (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 subsection (4) 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 or the *City of Brisbane Act 2010*, 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 (4) from the agent of a group of candidates for an election and any of the members of the group are successful in

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the election, the electoral commission must give a copy of the return to—

- (a) the chief executive officer of the local government for which the election was held; and
- (b) each successful candidate who is a member of the group.

### **118AA Gifts to associated entities of candidates or groups of candidates**

- (1) Subsection (2) applies if—
  - (a) an entity receives a gift—
    - (i) during a reporting period; and
    - (ii) when the entity is an associated entity of a candidate in an election or a group of candidates for an election; and
  - (b) the value of the gift is equal to or more than \$500.
- (2) The financial controller of the associated entity must give the electoral commission a return about the gift on or before the disclosure deadline 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), the value of a gift is taken to include the value of all other gifts previously given to the associated entity by the same entity during the reporting period.

### **118A Gifts to third parties to enable political expenditure**

- (1) This section applies to a third party for an election if—
  - (a) the third party receives a gift of a value of \$500 or more from an entity during the disclosure period for an election; and

- 
- (b) the entity that is the source of the gift intended the gift to be used, wholly or in part—
    - (i) by the recipient of the gift to incur political expenditure; or
    - (ii) as reimbursement for political expenditure incurred by the recipient of the gift; and
  - (c) the third party used the gift, wholly or in part—
    - (i) to incur political expenditure for the election; or
    - (ii) as reimbursement for political expenditure for the election incurred by the third party.
- (2) The third party must give the electoral commission a return about the gift by the disclosure deadline for the return.
- (3) The return must—
- (a) be in the approved form; and
  - (b) state the relevant details for the gift.
- (4) Also, the third party must give the electoral commission a return, in the approved form, within the required period for the election that states—
- (a) the total value of all gifts received by the party during the disclosure period; and
  - (b) the number of entities that made the gifts.
- (5) For subsection (1)(a), the value of a gift made to the third party by an entity is taken to include the value of all other gifts made to the third party by the same entity during the disclosure period.
- (6) In this section—
- political expenditure***, for an election, means expenditure that is comprised of—
- (a) electoral expenditure; or
  - (b) a gift made to or for the benefit of—

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- (i) a registered political party that endorses a candidate in the election; or
  - (ii) a candidate in the election; or
  - (iii) a group of candidates for the election, a member of the group or a person acting on behalf of the group; or
- (c) a gift made to another person on the understanding that the person, or another person, uses the gift (directly or indirectly) to incur expenditure mentioned in paragraph (a) or (b).

### **118B Gifts made by third parties**

- (1) This section applies if a third party for an election, during the third party's disclosure period for the election, makes a gift of a value equal to or more than \$500—
- (a) to or for the benefit of—
    - (i) a registered political party that endorses a candidate in the election; or
    - (ii) a candidate in the election; or
    - (iii) a group of candidates for the election, a member of the group or a person acting on behalf of the group; or
  - (b) to another person on the understanding that the person, or another person, uses the gift (directly or indirectly)—
    - (i) to incur electoral expenditure; or
    - (ii) to make a gift to or for the benefit of a person mentioned in paragraph (a)(i), (ii) or (iii).
- (2) The third party must give the electoral commission a return about the gift on or before the disclosure deadline for the return.
- (3) Each return must—
- (a) be in the approved form; and

- (b) state—
  - (i) the value of the gift; and
  - (ii) when the gift was made; and
  - (iii) the name of the entity to whom, or for whose benefit, the gift was made; and
  - (iv) if the third party is not the source of the gift, the relevant details for the gift mentioned in section 109(2).
- (4) Also, the third party must give the electoral commission a return, in the approved form, within the required period for the election about the total value of the gifts made by the third party during the third party's disclosure period for the election.
- (5) For subsection (1), a gift made by the third party for 2 or more elections is taken to have been made by the third party for each of the elections.
- (6) Also, for subsection (1), the value of a gift is taken to include the value of all other gifts previously made by the third party during the third party's disclosure period for the election to or for the benefit of the same entity.

## **119 Receiving anonymous gifts prohibited**

- (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
    - (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) 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.
- (4) In this section—

*prescribed gift* means a gift with a value of at least \$500.

**119A How subdivision applies to gifts that are returned within 6 weeks**

- (1) Subject to subsection (2), this subdivision does not apply to a gift that is returned in full within 6 weeks after its receipt.
- (2) If the gift is returned in full within 6 weeks after its receipt, any return under this subdivision that includes the value of the gift must also include a statement to the effect that the gift was returned.

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**119B How subdivision applies to particular gifts used for electoral purposes**

- (1) This section applies in relation to a gift, to the extent section 107(5) applies to the gift.

*Note—*

Section 107(5) deals with a gift made in a private capacity for the recipient's personal use if the gift, or part of the gift, is later used for an electoral purpose.

- (2) The person who made the gift is not required to comply with a requirement under this subdivision to give the electoral commission a return about the gift.
- (3) A return about the gift given under this subdivision by the person who received the gift must state—
- (a) that, when the gift was made—
    - (i) it was made in a private capacity for the recipient's private use; and
    - (ii) the recipient did not intend to use the gift for an electoral purpose; and
  - (b) the gift was used for the electoral purpose; and
  - (c) the day on which the gift was used for the electoral purpose.
- (4) In this section—  
*electoral purpose* see section 107(6).

**Subdivision 2 Disclosure of loans and prohibited loans**

**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.

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- (2) The agent of the candidate must give the electoral commission a return about the loan on or before the disclosure deadline 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 of the group must give the electoral commission a return about the loan on or before the disclosure deadline for the return.
- (5) Each return given under subsection (2) or (4) must—
  - (a) be in the approved form; and
  - (b) state the relevant details for the loan.
- (6) Also, the agent of a candidate in an election or group of candidates for an election 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.

*Note—*

See also section 43E in relation to candidates who have stopped being members of a group of candidates and section 43F in relation to groups of candidates that have been wound up.

- (7) 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.
- (8) Subsection (9) applies if the electoral commission receives a return under subsection (6) from—

- 
- (a) the agent of a candidate who is successful in the election; or
  - (b) the agent of a group of candidates, any of whose members are successful in the election.
- (9) The electoral commission must give a copy of the return to—
- (a) the chief executive officer of the local government for which the election was held; and
  - (b) if the return is received from the agent of a group of candidates—each successful candidate who is a member of the group.

**120A Loans to associated entities of candidates or groups of candidates**

- (1) This section applies if an entity—
  - (a) receives a loan—
    - (i) during a reporting period; and
    - (ii) when the entity is an associated entity of a candidate in an election or a group of candidates for an election; and
  - (b) the amount of the loan is equal to or more than \$500.
- (2) The financial controller of the associated entity must give the electoral commission a return about the loan on or before the disclosure deadline for the return.
- (3) Each return must—
  - (a) be in the approved form; and
  - (b) state the relevant details for the loan.
- (4) For subsection (1), the amount of a loan is taken to include the amount of all other loans previously given to the associated entity by the same entity during the reporting 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 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 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—
    - (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) 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.

### **Subdivision 3      Other provisions about gifts and loans**

#### **121A    When an entity is the *source* of a gift or loan**

- (1) An entity is the *source* of a gift (the *ultimate gift*) made to another entity (the *ultimate recipient*) if—
  - (a) the entity makes a gift or loan (the *first gift or loan*) to another entity (the *first recipient*); and
  - (b) the entity’s main purpose in making the first gift or loan is to enable (directly or indirectly) the first recipient, or another person, to make the ultimate gift to the ultimate recipient; and
  - (c) the first recipient, or another person, makes the ultimate gift to the ultimate recipient; and
  - (d) the first gift or loan enabled (directly or indirectly) the first recipient, or the other person, to make the ultimate gift.
- (2) An entity is the *source* of a loan (the *ultimate loan*) made to another entity (the *ultimate recipient*) if—
  - (a) the entity makes a gift or loan (the *first gift or loan*) to another entity (the *first recipient*); and

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- (b) the entity's main purpose in making the first gift or loan is to enable (directly or indirectly) the first recipient, or another person, to make the ultimate loan to the ultimate recipient; and
- (c) the first recipient, or another person, makes the ultimate loan to the ultimate recipient; and
- (d) the first gift or loan enabled (directly or indirectly) the first recipient, or the other person, to make the ultimate loan.

### **121B Donor must disclose source of gift or loan**

- (1) This section applies to an entity that—
  - (a) makes a gift of a value of \$500 or more, or a loan of \$500 or more, to—
    - (i) a registered political party that endorses a candidate in an election; or
    - (ii) a candidate in an election; or
    - (iii) a group of candidates for an election; or
    - (iv) an associated entity of a registered political party that endorses a candidate in an election or of a candidate in an election or a group of candidates for an election; or
  - (b) makes a gift mentioned in section 118A(1) to a third party.
- (2) When the entity makes the gift or loan, the entity must give the recipient of the gift or loan a notice that states—
  - (a) the relevant details of the gift or loan in relation to the entity; and
  - (b) if the entity is not the source of the gift or loan—
    - (i) that fact; and
    - (ii) the relevant details of the gift or loan in relation to the entity that is the source of the gift or loan.

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Maximum penalty—20 penalty units.

### **121C Recovery of prohibited gifts or loans**

- (1) If a person receives a gift in contravention of section 119, or a loan in contravention of section 121, an amount equal to the amount or value of the gift or loan is payable by the person to the State.
- (2) The amount may be recovered by the State as a debt due to the State from—
  - (a) if the recipient is a candidate—the candidate or the candidate’s agent; or
  - (b) if the recipient is a group of candidates—the members of the group or the group’s agent; or
  - (c) otherwise—the recipient.
- (3) If, under subsection (2), the amount may be recovered from 2 or more persons, those persons are jointly and severally liable for the amount.
- (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.

## **Subdivision 4 Notification obligations**

### **122 Requirement to notify the public about disclosure obligations**

- (1) This section applies if any of the following persons are required, under this division, to give the electoral commission a return about a gift or loan—
  - (a) the agent of a candidate in an election;
  - (b) the agent of a group of candidates for an election;

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- (c) the financial controller of an associated entity of a candidate in an election or a group of candidates for an election;
  - (d) a third party for an election to whom section 118A applies for the election.
- (2) The person must take reasonable steps to notify the public that the person is required—
- (a) to give the return to the electoral commission; and
  - (b) to state the relevant details for the gift or loan in the return.

*Examples of reasonable steps—*

- publishing a notice on a website
- including a notice in a brochure distributed in the local government area or division of a local government area for which a candidate has been nominated for election

Maximum penalty—1 penalty unit.

- (3) A notification under subsection (2) must include a fair summary of the provisions under which the requirement arises.

### **122A Requirement to notify third party of obligation to give return under s 118B**

- (1) This section applies if—
- (a) a gift is made to or for the benefit of a candidate or group of candidates that is—
    - (i) of a value equal to or more than \$500; and
    - (ii) comprised of a gift mentioned in section 118B(1) made by a third party for an election; or
  - (b) a gift mentioned in section 118A(1)(a) is made to or for the benefit of a third party for the election by another third party for the election.
- (2) Within 7 business days after the gift is received by the recipient, the agent of the candidate or group of candidates, or

the third party to or for whose benefit the gift was made, must give the third party who made the gift a notice that states the third party may be required, under section 118B, to give a return about the gift.

Maximum penalty—20 penalty units.

## Division 4            Caps on electoral expenditure

### Subdivision 1        Preliminary

#### 123    Definitions for division

In this division—

*expenditure cap*, for an election, in relation to a participant in the election, see section 123B.

*maximum amount*, for an election, means the amount worked out by using the following formula and rounding the result to the nearest \$10 (rounding one-half upwards)—

$$M = (A \times B) + (C \times D)$$

where—

*A* is the amount of an individual candidate's expenditure cap for the election under section 123D.

*B* is—

- (a) if the office of mayor is to be filled in the election—1; or
- (b) otherwise—0.

*C* is the amount of an individual candidate's expenditure cap for the election under section 123E.

*D* is the total number of vacant offices of councillors, other than mayor, to be filled in the election.

*M* is the maximum amount for the election.

*number of enrolled electors*, for an election, see section 123S(1).

*relevant day*, for an election, see section 123S(3) and (4).

### **123A Meaning of *capped expenditure period***

- (1) The *capped expenditure period*, for an election, starts—
  - (a) for a quadrennial election—on the first business day after the last Saturday in August that occurs in the year immediately before the year in which the quadrennial election must be held under section 23(1); or
  - (b) for a by-election—on the day notice of the day of the by-election is published on the electoral commission’s website under section 24(3); or
  - (c) for a fresh election—
    - (i) if, when notice of the election is published on the electoral commission’s website under section 25(1), the capped expenditure period for a quadrennial election has started under paragraph (a) or subsection (2)—on the day the capped expenditure period started; or
    - (ii) otherwise—on the day notice of the election is published on the electoral commission’s website under section 25(1).
- (2) However, if before the day mentioned in subsection (1)(a) for a quadrennial election a regulation fixes a day for the quadrennial election under section 23(3), the *capped expenditure period* for the quadrennial election starts on a day prescribed by regulation for this subsection.
- (3) The *capped expenditure period*, for an election, ends at 6p.m. on the later of—
  - (a) the polling day for the election; or
  - (b) if the poll at a polling booth for an election is adjourned under section 52A(3) or 53(1)—the day the adjourned poll is held.

- (4) Subsection (3)(b) applies despite section 53(6).

### **123B Expenditure caps for participants**

A participant's *expenditure cap* for an election is the amount mentioned in subdivision 2, 3, 4 or 5 for the participant for the election.

### **123C How expenditure caps apply in local government areas and divisions**

- (1) This section provides for how an expenditure cap for an election applies or is worked out for this division in relation to a participant in the election other than a third party that is not registered for the election.
- (2) If the election is a quadrennial election, an expenditure cap for the election applies, and is worked out, separately for each local government area.

*Example—*

A registered political party endorses 2 candidates, X and Y, in local government A and 1 candidate, Z, in local government B for a quadrennial election. An expenditure cap would apply and be worked out for the party and candidates X and Y in relation to local government A for the election. Also, an expenditure cap would apply and be worked out for the party and candidate Z in relation to local government B for the election.

- (3) If the election is a fresh election, an expenditure cap for the election applies separately for each local government area.
- (4) If the election is a by-election to fill a vacancy in the office of mayor of a local government, an expenditure cap for the election applies for the local government's area.
- (5) If the election is a by-election to fill a vacancy in the office of a councillor (other than mayor), an expenditure cap for the election applies separately for each local government area or, for a local government area that is divided, each division of the area.

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- (6) An expenditure cap that applies for 1 local government area or a division of a local government area under this section can not be aggregated with an expenditure cap that applies for another local government area or division.

## **Subdivision 2      Amount of expenditure cap—individual candidates**

### **123D Individual candidates for mayor**

- (1) This section applies for an individual candidate for election as mayor of a local government.
- (2) If the local government is the Brisbane City Council, the individual candidate's expenditure cap for the election is \$1.3m.
- (3) For a local government other than the Brisbane City Council, the individual candidate's expenditure cap for the election is—
- (a) if the number of enrolled electors for the election is not more than 30,000—\$30,000; or
  - (b) if the number of enrolled electors for the election is more than 30,000 but not more than 150,000—the amount worked out by—
    - (i) multiplying the number of enrolled electors for the election by \$1; and
    - (ii) rounding the result to the nearest \$10 (rounding one-half upwards); or
  - (c) if the number of enrolled electors for the election is more than 150,000 but not more than 200,000—the amount worked out by using the following formula and rounding the result to the nearest \$10 (rounding one-half upwards)—

$$E = A + (B \times (C - D))$$

where—

*A* is \$150,000.

*B* is \$0.50.

*C* is the number of enrolled electors for the election.

*D* is 150,000.

*E* is the expenditure cap; or

- (d) if the number of enrolled electors for the election is more than 200,000—the amount worked out by using the following formula and rounding the result to the nearest \$10 (rounding one-half upwards)—

$$E = F + (G \times (H - I))$$

where—

*E* is the expenditure cap.

*F* is \$175,000.

*G* is \$0.25.

*H* is the number of enrolled electors for the election.

*I* is 200,000.

- (4) However, if a monetary amount stated in subsection (2) or (3) has been adjusted under section 123Q, the monetary amount is the amount most recently published by the electoral commission under section 123Q(6).

### **123E Individual candidates for councillor (other than mayor)**

- (1) This section applies for an individual candidate for election as a councillor, other than mayor, of a local government.
- (2) If the local government is the Brisbane City Council, the individual candidate's expenditure cap for the election is \$55,000.
- (3) For a local government other than the Brisbane City Council, the individual candidate's expenditure cap for the election is—

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- (a) if the number of enrolled electors for the election is 20,000 or less—\$15,000; or
  - (b) if the number of enrolled electors for the election is more than 20,000 but less than 40,000—the amount worked out by—
    - (i) multiplying the number of enrolled electors for the election by \$0.75; and
    - (ii) rounding the result to the nearest \$10 (rounding one-half upwards); or
  - (c) if the number of enrolled electors for the election is 40,000 or more—\$30,000.
- (4) However, if a monetary amount stated in subsection (2) or (3) has been adjusted under section 123Q, the monetary amount is the amount most recently published by the electoral commission under section 123Q(6).

### **Subdivision 3      Amount of expenditure cap—registered political parties and endorsed candidates**

#### **123F      Amount of expenditure cap—general**

- (1) This section applies to—
  - (a) a registered political party that endorses 1 or more candidates in an election; and
  - (b) each candidate who is, at any time during the capped expenditure period for the election, endorsed by the party for the election (each an *endorsed candidate*).
- (2) The expenditure cap for the registered political party, and each endorsed candidate, for the election is the sum of the individual capped amounts for each of the endorsed candidates, up to the maximum amount for the election.
- (3) The expenditure cap under this section is shared by the registered political party and each endorsed candidate.

- (4) In this section—

*individual capped amount*, for a candidate endorsed by a registered political party for an election, means the amount that would be the candidate's expenditure cap under subdivision 2 if the candidate were an individual candidate.

### 123G New endorsement of candidate

- (1) This section applies if, during the capped expenditure period for an election, a person becomes a candidate who is endorsed by a registered political party for the election.
- (2) For this division, electoral expenditure previously incurred by the person during the capped expenditure period is taken to have been incurred by the person as a candidate endorsed by the registered political party for the election.
- (3) This section applies subject to sections 123H(3) and 123K(3).

### 123H Ending of endorsement of candidate

- (1) This section applies if, during the capped expenditure period for an election, a candidate who is endorsed by a registered political party (the *relevant party*) for the election stops being endorsed by the party for the election.

*Examples—*

- the relevant party withdraws its endorsement of the candidate
  - the candidate withdraws their agreement to the candidate's nomination under section 30
- (2) The ending of the endorsement by the relevant party of the previously endorsed candidate for the election is the *relevant event*.
  - (3) For this division, electoral expenditure that was incurred by the previously endorsed candidate during the capped expenditure period before the relevant event occurred is taken to have been incurred by the relevant party.
  - (4) Despite section 123F, the expenditure cap for the relevant party, and each continuing candidate, for the election is the

amount worked out by using the following formula and rounding the result to the nearest \$10 (rounding one-half upwards)—

$$E = A - B$$

where—

*A* is the greater of—

- (a) the amount of the expenditure cap under section 123F for the relevant party, and each candidate who was endorsed by the party, for the election immediately before the relevant event occurred; or
- (b) the amount that would have been the expenditure cap mentioned in paragraph (a) if the maximum amount for the election had not applied.

*B* is the amount of the previously endorsed candidate's expenditure cap as an individual candidate for the election under subsection (7).

*E* is the expenditure cap.

- (5) However, the expenditure cap for the relevant party, and each continuing candidate for the election, can not be more than the maximum amount for the election.
- (6) The expenditure cap under subsection (4) is shared by the relevant party and each continuing candidate.
- (7) Despite subdivision 2, the previously endorsed candidate's expenditure cap as an individual candidate for the election is the amount worked out by using the following formula and rounding the result to the nearest \$10 (rounding one-half upwards)—

$$B = C - \frac{C}{D} \times F$$

where—

*B* is the expenditure cap.

*C* is the amount that would otherwise be the candidate's expenditure cap for the election under subdivision 2.

*D* is the greater of—

- (a) the amount of the expenditure cap under section 123F for the relevant party, and each candidate who was endorsed by the party, for the election immediately before the relevant event occurred; or
- (b) the amount that would have been the expenditure cap mentioned in paragraph (a) if the maximum amount for the election had not applied.

*F* is the amount of the electoral expenditure incurred, by the relevant party and each candidate who was endorsed by the party, during the capped expenditure period for the election before the relevant event occurred.

- (8) In this section—

*continuing candidate*, in relation to the relevant party, means a candidate who is endorsed by the party for the election immediately after the relevant event occurs.

#### **Subdivision 4      Amount of expenditure cap—groups of candidates and members of groups**

##### **123I    Amount of expenditure cap—general**

- (1) This section applies to—
  - (a) a group of candidates for an election; and
  - (b) each candidate who is, at any time during the capped expenditure period for the election, a member of the group (each a *group member*).
- (2) The expenditure cap for the group of candidates, and each group member, for the election is the sum of the individual capped amounts for each of the group members, up to the maximum amount for the election.
- (3) The expenditure cap under this section is shared by the group members.

- (4) In this section—

*individual capped amount*, for a member of a group of candidates for an election, means the amount that would be the member's expenditure cap under subdivision 2 if the member were an individual candidate.

### **123J Addition of group member**

- (1) This section applies if, during the capped expenditure period for an election, a person becomes a candidate who is a member of a group of candidates under section 42 or 43.
- (2) For this division, electoral expenditure previously incurred by the person during the capped expenditure period is taken to have been incurred by the person as a member of the group of candidates for the election.
- (3) This section applies subject to sections 123H(3) and 123K(3).

### **123K Removal of group member**

- (1) This section applies if, during the capped expenditure period for an election, a candidate who is a member of a group of candidates for the election stops being a member of the group for the election under section 43 or 43A.
- (2) The removal of the candidate (the *previous group member*) from the group of candidates for the election is the *relevant event*.
- (3) For this division, electoral expenditure that was incurred by the previous group member during the capped expenditure period before the relevant event occurred is taken to have been incurred by the group of candidates.
- (4) Despite section 123I, the expenditure cap for the group of candidates, and each continuing group member, for the election is the amount worked out by using the following formula and rounding the result to the nearest \$10 (rounding one-half upwards)—

$$E = A - B$$

where—

*A* is the greater of—

- (a) the amount of the expenditure cap under section 123I for the group of candidates, and each candidate who was a member of the group, for the election immediately before the relevant event occurred; or
- (b) the amount that would have been the expenditure cap mentioned in paragraph (a) if the maximum amount for the election had not applied.

*B* is the amount of the previous group member's expenditure cap as an individual candidate for the election under subsection (7).

*E* is the expenditure cap.

- (5) However, the expenditure cap for the group of candidates, and each continuing group member, for the election can not be more than the maximum amount for the election.
- (6) The expenditure cap under subsection (4) is shared by the continuing group members.
- (7) Despite subdivision 2, the previous group member's expenditure cap as an individual candidate for the election is the amount worked out by using the following formula and rounding the result to the nearest \$10 (rounding one-half upwards)—

$$B = C - \frac{C}{D} \times F$$

where—

*B* is the expenditure cap.

*C* is the amount that would otherwise be the candidate's expenditure cap for the election under subdivision 2.

*D* is the greater of—

- (a) the amount of the expenditure cap under section 123I for the group of candidates, and each candidate who was

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a member of the group, for the election immediately before the relevant event occurred; or

- (b) the amount that would have been the expenditure cap mentioned in paragraph (a) if the maximum amount for the election had not applied.

*F* is the amount of the electoral expenditure incurred, by the group of candidates and each candidate who was a member of the group, during the capped expenditure period for the election before the relevant event occurred.

- (8) In this section—

*continuing group member*, in relation to a group of candidates mentioned in subsection (1), means a candidate who is a member of the group of candidates after the relevant event occurs.

## **Subdivision 5      Amount of expenditure cap—third parties**

### **123L    Registered third parties**

- (1) This section applies for a registered third party for an election.
- (2) The registered third party's expenditure cap for the election is—
  - (a) for a quadrennial election or fresh election—the amount equal to an individual candidate's expenditure cap for the election under section 123D; or
  - (b) for a by-election—the amount equal to an individual candidate's expenditure cap for the election under subdivision 2.

### **123M    Unregistered third parties**

- (1) This section applies for a third party for an election that is not registered for the election.

- (2) The third party's expenditure cap for the election is \$6,000.

## **Subdivision 6 Compliance with expenditure caps**

### **123N Compliance with expenditure cap generally**

- (1) This section applies to the following participants in an election—
- (a) a candidate in the election;
  - (b) each member of a group of candidates for the election;
  - (c) a registered political party that endorses a candidate in the election;
  - (d) a registered third party for the election.
- (2) The participant, or a person acting with the participant's authority, must not incur electoral expenditure during the capped expenditure period for the election if—
- (a) the amount of the expenditure, by itself, exceeds the participant's expenditure cap for the election; or
  - (b) both of the following apply—
    - (i) the amount of the expenditure exceeds the participant's expenditure cap when added to other relevant electoral expenditure for the election;
    - (ii) the participant or person knows, or ought reasonably to know, the amount would result in the cap being exceeded.

Maximum penalty—1,500 penalty units or 10 years imprisonment.

- (3) An offence against subsection (2) is a crime.
- (4) This section applies subject to section 123T(4).
- (5) In this section—

*other relevant electoral expenditure*, in relation to a participant in an election mentioned in subsection (1), means—

- (a) other electoral expenditure incurred for the election by the participant, or with the participant's authority, during the capped expenditure period for the election; or
- (b) if the participant's expenditure cap for the election is shared under subdivision 3 or 4—other electoral expenditure incurred for the election by another participant with whom the expenditure cap is shared, or with the other participant's authority, during the capped expenditure period for the election.

**1230 Compliance with expenditure cap—unregistered third party**

- (1) This section applies to a third party for an election that is not registered for the election.
- (2) The third party, or a person acting with the third party's authority, must not incur electoral expenditure during the capped expenditure period for the election if—
  - (a) the amount of the expenditure, by itself, exceeds the third party's expenditure cap for the election; or
  - (b) both of the following apply—
    - (i) the amount of the expenditure exceeds the third party's expenditure cap when added to other electoral expenditure incurred for the election by the third party, or with the third party's authority, during the capped expenditure period for the election;
    - (ii) the third party or person knows, or ought reasonably to know, the amount would result in the cap being exceeded.

Maximum penalty—the greater of the following amounts—

- 
- (a) the amount that is equal to twice the amount by which the electoral expenditure exceeded the third party's expenditure cap for the election;
  - (b) 200 penalty units.

### **123P Recovery of unlawful electoral expenditure**

- (1) This section applies if a participant in an election, or a person acting with the participant's authority, incurs unlawful electoral expenditure for the election.
- (2) The amount that is twice the amount of the unlawful electoral expenditure is payable to the State.
- (3) The amount may be recovered by the State as a debt due to the State from—
  - (a) if the unlawful electoral expenditure was incurred by or with the authority of a registered political party that endorsed a candidate in the election and is not a corporation—the party's agent; or
  - (b) if the unlawful electoral expenditure was incurred by or with the authority of a candidate—the candidate or the candidate's agent; or
  - (c) if the unlawful electoral expenditure was incurred by or with the authority of a group of candidates—the group's agent; or
  - (d) if the unlawful electoral expenditure was incurred by or with the authority of a third party that is not a corporation—the third party's agent; or
  - (e) if the unlawful electoral expenditure was incurred by or with the authority of another participant—the participant.
- (4) 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 123N or 123O or any other offence; and

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- (b) is not a matter to which a court may have regard in sentencing an offender for an offence against section 123N or 123O or any other offence.
- (5) In this section—  
*unlawful electoral expenditure*, for an election, in relation to a participant in the election, means electoral expenditure incurred for the election in contravention of section 123N or 123O, to the extent the expenditure exceeds the participant's expenditure cap for the election as mentioned in the section.

## Subdivision 7 Other provisions about expenditure caps

### 123Q Adjustment of expenditure caps

- (1) This section applies to a monetary amount stated in section 123D(2) or (3) or 123E(2) or (3) (a *relevant factor*), including a monetary amount stated in the section that has been adjusted by the operation of this section.
- (2) However, a monetary amount stated in section 123D or 123E for the purpose of rounding is not a relevant factor.
- (3) A relevant factor—
- (a) is adjusted under this section 30 days after the polling day for each quadrennial election (the *recent quadrennial election*); and
- (b) as adjusted under this section, applies for each election that is held until the relevant factor is next adjusted under this section.
- (4) A relevant factor is adjusted to the amount worked out by using the following formula and rounding the result as provided under subsection (5)—

$$A = B \times \frac{C}{D}$$

where—

*A* is the relevant factor as adjusted.

*B* is the amount of the relevant factor that applied immediately before its adjustment.

*C* is the CPI number published for the last quarter that ended before the polling day for the recent quadrennial election.

*D* is the CPI number for the last quarter that ended before the polling day for the quadrennial election last held before the recent quadrennial election.

- (5) For subsection (4), the result must be rounded as follows—
- (a) for a relevant factor mentioned in section 123D(2) or (3)(a), (c), definition *A* or (d), definition *F* or 123E(2) or (3)(a) or (c)—to the nearest \$10 (rounding one-half upwards);
  - (b) for another relevant factor—to the nearest cent (rounding one-half upwards).
- (6) As soon as practicable after a relevant factor is adjusted under this section, the electoral commission must publish the amount of the relevant factor as adjusted on the electoral commission's website.
- (7) In this section—

*CPI* means the all groups consumer price index for Brisbane published by the Australian Bureau of Statistics.

*quarter* means the following periods in a year—

- (a) 1 January to 31 March;
- (b) 1 April to 30 June;
- (c) 1 July to 30 September;
- (d) 1 October to 31 December.

### **123R Electoral commission must give notice of expenditure caps**

- (1) For an election, the electoral commission must publish a notice, on the electoral commission's website, that states—

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- (a) the amount of an expenditure cap for an individual candidate for the election; and
  - (b) the amount of an expenditure cap for a registered third party for the election; and
  - (c) a general outline of expenditure caps for other participants in the election.
- (2) The electoral commission must publish the notice—
- (a) for a quadrennial election—as soon as practicable after the relevant day for the election but no later than the day before the capped expenditure period for the election starts; or
  - (b) for a by-election—on the day notice of the day of the by-election is published on the electoral commission’s website under section 24(3); or
  - (c) for a fresh election—on the day notice of the election is published on the electoral commission’s website under section 25(1).
- (3) Also, as soon as practicable after the returning officer has certified the nomination of a person for an election under section 27(3)(a), the electoral commission must give the person a written notice that states—
- (a) the amount of the person’s expenditure cap as if the person were an individual candidate for the election; and
  - (b) a general outline of expenditure caps for participants who are not individual candidates, including how the caps adjust during the capped expenditure period for the election under this division.

**123S Electoral commission to decide number of enrolled electors for election**

- (1) The *number of enrolled electors*, for an election, is the number of persons decided by the electoral commission under

this section to be the number of enrolled electors for the election.

- (2) The number decided by the electoral commission under subsection (1) must be—
- (a) for an election of the mayor of a local government—the number of persons enrolled on an electoral roll for an electoral district, or part of an electoral district, included in the local government’s area as at the relevant day for the election; or
  - (b) for an election for a councillor (other than mayor) of a local government whose local government area is undivided—the number of persons enrolled on an electoral roll for an electoral district, or part of an electoral district, included in the local government’s area as at the relevant day for the election; or
  - (c) for an election for a councillor (other than mayor) of a division of a local government’s area—
    - (i) if the election is a quadrennial election or fresh election—the number of persons worked out by using the following formula and rounding the result to the nearest whole number (rounding one-half upwards)—

$$A = \frac{B}{C} \times D$$

where—

*A* is the number of persons.

*B* is the number of persons enrolled on an electoral roll for an electoral district, or part of an electoral district, included in the local government’s area as at the relevant day for the election.

*C* is the total number of councillors to be elected for the election for the local government’s area.

*D* is the number of councillors to be elected for the division of the local government’s area; or

- (ii) if the election is a by-election—the number of persons enrolled on an electoral roll for an electoral district, or part of an electoral district, included in the division of the local government’s area as at the relevant day for the election.
- (3) The **relevant day**, for an election, is—
  - (a) for a quadrennial election—1 July in the year immediately before the year in which the quadrennial election must be held under section 23(1); or
  - (b) for a by-election—the first day of the month in which notice of the day of the by-election is published on the electoral commission’s website under section 24(3); or
  - (c) for a fresh election—
    - (i) if, when notice of the election is published under section 25(1), the capped expenditure period for a quadrennial election has started—the day the capped expenditure period started; or
    - (ii) otherwise—the first day of the month in which notice of the election is published on the electoral commission’s website under section 25(1).
- (4) However, if the capped expenditure period for a quadrennial election starts on a day prescribed by regulation under section 123A(2), the **relevant day** for the quadrennial election is a day prescribed by regulation for this subsection.
- (5) The electoral commission must publish notice of the number of enrolled electors for an election on the electoral commission’s website—
  - (a) for a quadrennial election—as soon as practicable after the relevant day for the election but no later than the day before the capped expenditure period for the election starts; or
  - (b) for a by-election—on the day notice of the day of the election is published on the electoral commission’s website under section 24(3); or

- (c) for a fresh election—on the day notice of the election is published on the electoral commission’s website under section 25(1).
- (6) This section does not apply in relation to an election for the Brisbane City Council.

**123T Electoral expenditure incurred by particular councillors**

- (1) This section applies if—
  - (a) a councillor of a local government was endorsed by a registered political party for the election for which the councillor was elected; and
  - (b) the councillor—
    - (i) announces or otherwise publicly indicates the councillor’s intention not to be a candidate in an election for a local government before the nomination day for the election; or
    - (ii) does not become a candidate for an election for a local government when the prescribed information for nominations is published on the electoral commission’s website under section 32.
- (2) For section 123N, electoral expenditure incurred by or for the councillor during the capped expenditure period for the election mentioned in subsection (1)(b) is taken to have been incurred by or for the registered political party.
- (3) However, subsection (2) applies only to electoral expenditure incurred by or for the councillor during any part of the capped expenditure period for the election for the local government for which—
  - (a) the councillor is a member of the registered political party; and
  - (b) the party endorses a candidate in the election for the local government.
- (4) The registered political party, a candidate endorsed by the party for the election or a person acting with the authority of

the party or candidate does not commit an offence against section 123N if—

- (a) the party, candidate or person incurs electoral expenditure for the election; and
  - (b) the expenditure exceeds the party's expenditure cap for the election, including any expenditure cap that is shared under subdivision 3, because it is added to aggregated expenditure for the party; and
  - (c) the party, candidate or person did not know, and could not reasonably have known, about the aggregated expenditure being incurred.
- (5) In this section—

*aggregated expenditure*, for a registered political party, means electoral expenditure taken to have been incurred by or for the party under subsection (2).

### **123U Electoral expenditure incurred for another participant**

- (1) This section applies if a participant in an election (the *first election participant*) incurs electoral expenditure that benefits another participant in the election (the *recipient*).
- (2) For this division, if the first election participant gifts the electoral expenditure to the recipient, the electoral expenditure is incurred by the first election participant.
- (3) However, for this division, the recipient is taken to have incurred the electoral expenditure if—
  - (a) any of the following apply—
    - (i) the expenditure is incurred with the recipient's authority or consent;
    - (ii) the recipient accepts relevant material resulting from the expenditure;
    - (iii) another circumstance prescribed by regulation happens in relation to the expenditure being incurred; and

- (b) the first election participant invoices the recipient for payment for the amount of the expenditure.
- (4) This section applies despite section 109D(1).

*Note—*

See section 109E for when electoral expenditure is incurred.

### **123V Electoral expenditure incurred by registered political party or third party for quadrennial election**

- (1) This section applies in relation to electoral expenditure incurred, for a quadrennial election, by—
  - (a) a registered political party that endorses a candidate in the election; or
  - (b) a registered third party for the election.
- (2) Subsection (3) applies if the electoral expenditure is for advertising or other relevant material that—
  - (a) is communicated to electors in a local government's area; and
  - (b) is not mainly communicated to electors outside the local government's area.
- (3) The electoral expenditure is taken to be incurred by the registered political party or registered third party for the quadrennial election for the local government.
- (4) Subsection (5) applies if the electoral expenditure is for advertising or other relevant material that—
  - (a) is communicated to electors in more than 1 local government area; and
  - (b) is not mainly communicated to electors in any 1 local government area.
- (5) The electoral expenditure is taken to be incurred by the registered political party or registered third party—
  - (a) in relation to a registered political party—for the quadrennial election for each local government—

- (i) in whose area the advertising or other relevant material is communicated; and
    - (ii) for which the party endorsed a candidate; or
  - (b) in relation to a registered third party—for the quadrennial election for each local government in whose area the advertising or other relevant material is communicated.
- (6) If the electoral expenditure is for carrying out an opinion poll or research mainly in relation to 1 local government’s area, the electoral expenditure is taken to be incurred by the registered political party or registered third party for the quadrennial election for the local government.
- (7) Subsection (8) applies if the electoral expenditure is for carrying out an opinion poll or research—
  - (a) in relation to more than 1 local government area; and
  - (b) that is not mainly in relation to any 1 local government area.
- (8) The electoral expenditure is taken to be incurred by the registered political party or registered third party—
  - (a) in relation to a registered political party—for the quadrennial election for each local government—
    - (i) in relation to whose area the opinion poll or research is carried out; and
    - (ii) for which the party endorsed a candidate; or
  - (b) in relation to a registered third party—for the quadrennial election for each local government in relation to whose area the opinion poll or research is carried out.

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

### **124      Expenditure returns—candidates, groups of candidates, registered political parties and associated entities**

- (1) This section applies if any of the following entities incur electoral expenditure in relation to an election, during the entity's disclosure period for the election, that totals \$500 or more—
  - (a) a candidate in the election;
  - (b) a group of candidates for the election, a member of the group or another person acting on behalf of the group;
  - (c) a registered political party that endorses a candidate in the election;
  - (d) an associated entity of—
    - (i) a registered political party that endorses a candidate in the election; or
    - (ii) a candidate in the election; or
    - (iii) a group of candidates for the election.
- (2) A return for each amount of electoral expenditure incurred by the entity must be given to the electoral commission by—
  - (a) for electoral expenditure incurred by a candidate—the agent of the candidate; or
  - (b) for electoral expenditure incurred by or on behalf of a group of candidates—the agent of the group; or
  - (c) for electoral expenditure incurred by a registered political party that endorses a candidate in the election—the agent of the party; or
  - (d) for electoral expenditure incurred by an associated entity—the financial controller of the entity.
- (3) The return must—
  - (a) be in the approved form; and

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- (b) be given to the electoral commission by the disclosure deadline for the return; and
- (c) state the following—
  - (i) the name and business address of the person who supplied the goods or service to which the electoral expenditure relates;
  - (ii) a description of the goods or service;
  - (iii) the amount of the expenditure;
  - (iv) when the expenditure was incurred;
  - (v) the purpose for incurring the expenditure.
- (4) For this section, an amount of electoral expenditure incurred by an entity for 2 or more elections is taken to have been incurred by the entity for each of the elections.
- (5) For subsection (2)(c), a reference to electoral expenditure incurred by a registered political party that endorses a candidate in the election includes electoral expenditure that is taken to have been incurred by the party under section 123T.

**125 Summary expenditure returns—candidates, groups of candidates and registered political parties**

- (1) This section applies to the agent of any of the following participants in an election—
  - (a) a candidate in the election;
  - (b) a group of candidates for the election;
  - (c) a registered political party that endorsed a candidate in the election.
- (2) The agent of the participant must give the electoral commission a return about the total amount of electoral expenditure incurred by the participant, or a person acting with the participant's authority, during the participant's disclosure period for the election.

*Note—*

A return by a registered political party that endorsed a candidate in an election must be accompanied by a certificate from an auditor. See section 135D.

- (3) The return must—
  - (a) be in the approved form; and
  - (b) be given to the electoral commission within the required period for the election.
- (4) Also, the return must be accompanied by a copy of each bank statement for the participant's dedicated account—
  - (a) for the period that—
    - (i) starts when the capped expenditure period for the election starts; and
    - (ii) ends on the day before the return is given to the electoral commission; and
  - (b) for an earlier period that includes a transaction related to electoral expenditure incurred during the participant's disclosure period for the election.
- (5) If the participant did not incur electoral expenditure during the participant's disclosure period for the election, the return must state that fact.
- (6) For subsection (2), a reference to electoral expenditure incurred by a participant, or a person acting with the participant's authority, includes electoral expenditure that is taken to have been incurred by the participant under section 123T.
- (7) Subsection (8) applies if the electoral commission receives a return under subsection (2) from—
  - (a) the agent of a candidate who is successful in the election; or
  - (b) the agent of a group of candidates, any of whose members are successful in the election; or
  - (c) the agent of a registered political party that endorsed a candidate who is successful in the election.

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- (8) The electoral commission must give a copy of the return to—
  - (a) the chief executive officer of the local government for which the election was held; and
  - (b) if the return was received from the agent of a group of candidates for the election, or the agent of a registered political party that endorsed a candidate in the election—each successful candidate who is a member of the group or endorsed by the party.
- (9) For this section, it does not matter whether electoral expenditure for an election is incurred during the capped expenditure period for the election.

#### **125A Summary expenditure returns—associated entities**

- (1) This section applies to the financial controller of an associated entity of—
  - (a) a registered political party that endorsed a candidate in an election; or
  - (b) a candidate in an election; or
  - (c) a group of candidates for an election.
- (2) The financial controller must give the electoral commission a return about the total amount of electoral expenditure incurred by the associated entity, or a person acting with the associated entity's authority, during the associated entity's disclosure period for the election.
- (3) The return must—
  - (a) be in the approved form; and
  - (b) be given to the electoral commission within the required period for the election.
- (4) Also, the return must be accompanied by a copy of each bank statement for the dedicated account of the registered political party, candidate or group of candidates for which the associated entity is an associated entity—
  - (a) for the period that—

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- (i) starts when the capped expenditure period for the election starts; and
  - (ii) ends on the day before the return is given to the electoral commission; and
  - (b) for an earlier period that includes a transaction related to electoral expenditure incurred during the associated entity's disclosure period for the election.
- (5) If the associated entity did not incur electoral expenditure during the associated entity's disclosure period for the election, the return must state that fact.
- (6) For this section, it does not matter whether electoral expenditure for an election is incurred during the capped expenditure period for the election.

### **125B Expenditure returns—relevant third parties**

- (1) This section applies if a relevant third party for an election incurs electoral expenditure, during the third party's disclosure period for the election, that totals \$500 or more.
- (2) The agent of the relevant third party must give the electoral commission a return for each amount of electoral expenditure incurred by the third party during the third party's disclosure period for the election.
- (3) The return must—
  - (a) be in the approved form; and
  - (b) be given to the electoral commission by the disclosure deadline for the return; and
  - (c) state the following—
    - (i) the name and business address of the person who supplied the goods or service to which the electoral expenditure relates;
    - (ii) a description of the goods or service;
    - (iii) the amount of the expenditure;
    - (iv) when the expenditure was incurred;

- (v) the purpose for incurring the expenditure;
  - (vi) if the expenditure was incurred to benefit, support or oppose a particular candidate, group of candidates or political party in the election—that fact and the name of the candidate, group or party;
  - (vii) if the expenditure was incurred to support or oppose a particular issue in the election—that fact and a description of the issue.
- (4) For this section, an amount of electoral expenditure incurred by the relevant third party for 2 or more elections is taken to have been incurred by the third party for each of the elections.

### **125C Summary expenditure returns—relevant third parties**

- (1) This section applies to the agent of a relevant third party for an election.
- (2) The agent of the relevant third party must give the electoral commission a return about the total amount of electoral expenditure incurred by the third party during the third party's disclosure period for the election.
- (3) The return must—
  - (a) be in the approved form; and
  - (b) be given to the electoral commission within the required period for the election.
- (4) Also, the return must be accompanied by a copy of each bank statement for the relevant third party's dedicated account—
  - (a) for the period that—
    - (i) starts when the capped expenditure period for the election starts; and
    - (ii) ends on the day before the return is given to the electoral commission; and
  - (b) for an earlier period that includes a transaction related to electoral expenditure incurred during the third party's disclosure period for the election.

- (5) If the relevant third party did not incur electoral expenditure during the third party's disclosure period for the election, the return must state that fact.
- (6) For this section, an amount of electoral expenditure incurred by the relevant third party for 2 or more elections is taken to have been incurred by the third party for each of the elections.
- (7) For this section, it does not matter whether electoral expenditure for an election is incurred during the capped expenditure period for the election.

### **125D Summary expenditure returns—broadcasters**

- (1) This section applies to a broadcaster—
  - (a) who broadcasts an advertisement relating to an election—
    - (i) with the authority of a participant in the election; and
    - (ii) during the capped expenditure period for the election; and
  - (b) even if the broadcaster is outside Queensland when the advertisement is broadcast.
- (2) The broadcaster must, within 8 weeks after the polling day for the election, give the electoral commission a return, in the approved form, stating particulars of the advertisement, being particulars—
  - (a) identifying the broadcasting service as part of which the advertisement was broadcast; and
  - (b) identifying the person at whose request the advertisement was broadcast; and
  - (c) identifying the participant in the election with whose authority the advertisement was broadcast; and
  - (d) stating the date on which, and the times between which, the advertisement was broadcast; and

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- (e) showing whether or not, on each occasion when the advertisement was broadcast, a charge was made by the broadcaster for the broadcasting of the advertisement and, if a charge was made, stating the amount of the charge.
- (3) If, in a return under subsection (2), the amount of a charge is specified by a broadcaster in relation to an advertisement, the broadcaster must, in the return, state whether or not the charge is a charge at less than normal commercial rates having regard to the length of the advertisement and the day on which, and the times between which, the advertisement was broadcast.
- (4) A broadcaster who is required to make a return under this section for an advertisement must keep the record made for the relevant provision for at least 1 month starting on the day on which the return is given to the electoral commission.
- (5) Subsection (4) applies in addition to the requirements of the relevant provision for the retention of the record.
- (6) In this section—  
*relevant provision* means—
  - (a) in relation to the Australian Broadcasting Corporation—the *Australian Broadcasting Corporation Act 1983* (Cwlth), section 79B; or
  - (b) in relation to the Special Broadcasting Service—the *Special Broadcasting Service Act 1991* (Cwlth), section 70B; or
  - (c) in relation to another broadcaster—the *Broadcasting Services Act 1992* (Cwlth), schedule 2, section 5.

### **125E Summary expenditure returns—publishers**

- (1) This section applies to the publisher of a journal—
  - (a) who publishes an advertisement relating to an election—
    - (i) with the authority of a participant in the election; and

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- (ii) during the capped expenditure period for the election; and
    - (b) even if the publisher is outside Queensland when the advertisement is published.
  - (2) The publisher must, within 8 weeks after the polling day for the election, give the electoral commission a return, in the approved form, stating particulars of the advertisement, being particulars—
    - (a) identifying the journal in which the advertisement was published; and
    - (b) identifying the person at whose request the advertisement was published; and
    - (c) identifying the participant in the election with whose authority the advertisement was published; and
    - (d) stating the date on which the advertisement was published; and
    - (e) identifying the page in the journal on which the advertisement was published and the space in the journal occupied by the advertisement; and
    - (f) showing whether or not a charge was made by the publisher for the publication of the advertisement and, if a charge was made, stating the amount of the charge.
  - (3) If, in a return under subsection (2), the amount of a charge is specified by a publisher in relation to an advertisement, the publisher must, in the return, state whether or not the charge was a charge at less than normal commercial rates having regard to the space in the journal occupied by the advertisement and the nature of the journal.
  - (4) A publisher is not required to give a return under subsection (2) in relation to an election if the total amount of the charges made by the publisher for the publication of the following advertisements does not exceed \$1,000—
    - (a) the advertisement mentioned in the subsection;

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- (b) any other advertisement relating to an election that took place on the same day as the election to which the return relates.
- (5) In this section—
- journal* means a newspaper, magazine or other periodical, whether published for sale or for distribution without charge.

## **Division 4B                    Particular returns by associated entities of candidates and groups of candidates**

### **125F    How division applies to gifts that are returned within 6 weeks**

- (1) Subject to subsection (2), this division does not apply to a gift that is returned in full within 6 weeks after its receipt.
- (2) If the gift is returned in full within 6 weeks after its receipt, any return under this division that includes the value of the gift must also include a statement to the effect that the gift was returned.

### **125G    Disclosure of amounts by associated entities**

- (1) This section applies if, at any time during a reporting period, an entity was an associated entity of—
  - (a) a candidate in an election; or
  - (b) a group of candidates for an election.
- (2) The financial controller of the associated entity must, within 8 weeks after the end of the reporting period, give the electoral commission a return in the approved form stating—
  - (a) the total amount received by or for the associated entity from anyone during the reporting period; and
  - (b) the total amount paid by or for the associated entity to anyone during the reporting period; and

- (c) if the entity is an associated entity of a candidate or of a group of candidates at the end of the reporting period—the total amount outstanding, at the end of the reporting period, of all debts incurred by or for the entity to anyone; and
- (d) any other information prescribed by regulation.

*Note—*

A return under this section must be accompanied by a certificate from an auditor. See section 135D.

- (3) If the total of all amounts received from a particular entity during a reporting period is equal to or more than \$500, a return under subsection (2) must also state—
  - (a) the total amount received; and
  - (b) if all or part of the total was a gift—the relevant details for the gift; and
  - (c) if all or part of the total was an amount borrowed from a financial institution—the name of the financial institution from which the amount was borrowed; and
  - (d) if all or part of the total was a loan from an entity—the relevant details for the loan.
- (4) If the total of all amounts paid to a particular entity during a reporting period is equal to or more than \$500, a return under subsection (2) must also state the following—
  - (a) the total amount paid;
  - (b) if the total was paid to an unincorporated association—
    - (i) the name of the association; and
    - (ii) the names and addresses of the members of the executive committee (however described) of the association;
  - (c) if the total was paid to a trust fund or foundation—
    - (i) the names and addresses of the trustees of the fund or the foundation; or

- (ii) the title or other description of the trust fund or the name of the foundation;
  - (d) if the total was paid to another entity—the name and address of the entity.
- (5) In calculating the total under subsection (3) or (4), an amount paid under a contract of employment or an award stating terms and conditions of employment need not be counted.
- (6) Subsection (7) applies if any amount required to be disclosed under subsection (2)(b) for a reporting period—
  - (a) was paid by the associated entity to, or for, 1 or more registered political parties; and
  - (b) was paid out of funds generated from the capital of the associated entity.
- (7) The return must also state the following details about each person who contributed to the capital at any time—
  - (a) the name and address of the person;
  - (b) the total amount of the person’s contributions to the capital, up to the end of the reporting period to which the return relates.
- (8) A reference in subsection (2)(a) or (b) to an amount received or paid does not include an amount received or paid when the entity was not an associated entity of a candidate in an election or group of candidates for an election.
- (9) Subsection (7) does not apply to contributions that have been set out in a previous return under subsection (2).
- (10) In this section—  
***amount*** includes the value of a gift, loan or bequest.

## **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 acting with the authority 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 acting with the authority of the candidate, during the candidate's disclosure period for the election for the conduct of the candidate's election campaign, including electoral expenditure incurred by the candidate, 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—

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- (a) a registered political party that endorsed the candidate for the election; or
- (b) 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 acting with the authority 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 acting with the authority of the group, during the group's disclosure period for the election for the conduct of the group's election campaign, including electoral expenditure incurred by the group, 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.

### **127AA Requirement for registered political party to operate dedicated account**

- (1) This section applies to a registered political party that endorses a candidate in an election.
- (2) The registered political party must operate an account with a financial institution if the party pays an amount mentioned in subsection (3).
- (3) All amounts paid by the registered political party, or a person acting with the authority of the party, during the party's disclosure period for the election for electoral expenditure incurred by the party must be paid—
- (a) out of the account; and
  - (b) in a way permitted under section 127A.
- (4) The account must not, during the registered political party's disclosure period for the election, be used for paying an amount other than an amount under subsection (3).
- (5) A restricted donation received by the political party must not be paid into the account.
- (6) If an amount remains in the account at the end of the registered political party's disclosure period for the election, the amount or part of the amount may—

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- (a) be kept in the account for incurring electoral expenditure for another election; or
  - (b) be paid to the party; or
  - (c) be paid to a charity nominated by the party.
- (7) An amount mentioned in subsection (6) must not be dealt with other than under that subsection.
- (8) The registered political party 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.

**127AB Requirement for relevant third party to operate dedicated account**

- (1) This section applies to a relevant third party.
- (2) The relevant third party must operate an account with a financial institution if the third party pays an amount mentioned in subsection (3).
- (3) All amounts paid by the relevant third party, or a person acting with the authority of the third party, during the third party's disclosure period for the election for electoral expenditure incurred by the third party must be paid—
  - (a) out of the account; and
  - (b) in a way permitted under section 127A.
- (4) The account must not, during the relevant third party's disclosure period for the election, be used for paying an amount other than an amount under subsection (3).
- (5) If an amount remains in the account at the end of the relevant third party's disclosure period for the election, the amount or part of the amount may—
  - (a) be kept in the account for incurring electoral expenditure for another election; or
  - (b) be paid to a charity nominated by the third party.

- (6) An amount mentioned in subsection (5) must not be dealt with other than under that subsection.
- (7) The relevant third party must take all reasonable steps to ensure the requirements of subsections (2) to (6) are complied with.

Maximum penalty for subsection (7)—100 penalty units.

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

- (1) An amount paid from an account under section 126(4), 127(4), 127AA(3) or 127AB(3) 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), 127(4), 127AA(3) or 127AB(3) 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 amount of electoral expenditure by credit card prohibited**

- (1) A person to whom section 126(8), 127(8), 127AA(7) or 127AB(7) applies must not—
  - (a) use a credit card to pay any of the following amounts—
    - (i) an amount of electoral expenditure incurred by, or with the authority of, a candidate, group of candidates, registered political party or relevant third party;

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- (ii) for a person to whom section 126(8) or 127(8) applies—any other amount for the conduct of an election campaign incurred by, or with the authority of, a candidate or group of candidates; or
- (b) pay an amount out of the dedicated account of a candidate, group of candidates, registered political party or relevant third party 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 incurred was for an amount of electoral expenditure incurred by, or with the authority of, a candidate, group of candidates, registered political party or relevant third party.
- (3) This section does not limit section 126, 127, 127AA, 127AB or 127A.

### **127BA Notice of dedicated account**

- (1) This section applies if—
  - (a) an entity becomes a participant in an election, including because any of the following events happen—
    - (i) a registered political party endorses a candidate in the election;
    - (ii) a person becomes a candidate in the election;
    - (iii) a third party is registered for the election;
    - (iv) a third party incurs electoral expenditure for the election to the extent the third party is required, under section 127D, to be registered for the election; or
  - (b) 2 or more candidates become a group of candidates under section 42(3).
- (2) The agent of the participant must give the electoral commission a notice, in the approved form, about the participant's dedicated account for the election within 5

business days after the event happens, unless the agent has a reasonable excuse.

Maximum penalty—20 penalty units.

- (3) If a required detail of a participant's dedicated account changes, the agent of the participant must give the electoral commission a notice about the change, in the approved form, within 5 business days after the change happens, unless the agent has a reasonable excuse.

Maximum penalty—20 penalty units.

- (4) However, the agent of a candidate need not comply with subsection (2) in relation to an election if—
- (a) notice of the candidate's dedicated account for a previous election was given under this section; and
  - (b) the same account is the candidate's dedicated account for the election to which subsection (2) applies; and
  - (c) none of the required details of the account have changed since the notice was given.
- (5) Also, the agent of a candidate or group of candidates need not comply with subsection (2) if—
- (a) for the agent of a candidate—
    - (i) the candidate becomes a participant because the candidate's nomination as a candidate for the election was certified by the returning officer under section 27(3)(a); and
    - (ii) the candidate's nomination included information about the candidate's dedicated account; or
  - (b) for the agent of a group of candidates—the notice of the membership of the group given under section 42 included information about the group's dedicated account.
- (6) In this section—

*required detail*, of a dedicated account, means a detail about the account required to be stated in the approved form mentioned in subsection (2).

### **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 5A Registration of third parties**

### **127D Requirement for registration**

- (1) A third party must be registered under this part for an election if the electoral expenditure incurred by, or with the authority of, the third party during the capped expenditure period for the election exceeds \$6,000.
- (2) To remove any doubt, it is declared that a third party does not commit an offence against this Act or another Act only because the third party fails to register for an election under subsection (1).

*Note—*

Under section 123O, a third party that is not registered for an election commits an offence if it incurs electoral expenditure of more than \$6,000 during the capped expenditure period for the election.

### **127E Register of third parties**

- (1) The electoral commission must, for each election, keep a register of the third parties registered under this part for the election.
- (2) The register—
  - (a) is called the register of third parties for the election for which the register is kept; and
  - (b) must be kept up to date; and

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- (c) may be kept in the way, and in the form, the electoral commission considers appropriate.

*Note—*

See section 135B for the requirement to make information on the register available for public inspection.

### **127F Application for registration**

- (1) A third party that intends to incur electoral expenditure for an election may apply to the electoral commission for registration for the election.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) include the details prescribed by regulation for the application; and
  - (c) if the third party is not an individual—be accompanied by a notice mentioned in section 116C(1)(c) of the appointment of a person as the third party's agent; and
  - (d) be made to the electoral commission before the polling day for the election.

### **127G Deciding application**

- (1) The electoral commission must decide to approve or refuse the application as soon as practicable after receiving it.
- (2) The electoral commission must refuse the application if it was not made before the day required under section 127F(2)(d).
- (3) Otherwise, the electoral commission may refuse the application only if it is incomplete or incorrect.

### **127H Registration**

- (1) This section applies if the electoral commission decides to approve the application.

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- (2) As soon as practicable after making the decision, the electoral commission must—
  - (a) enter the details about the third party stated in the application in the register of third parties kept for the election; and
  - (b) give the third party written notice that the third party has been registered for the election.

### **127I Decision to refuse application**

- (1) If the electoral commission decides to refuse the application, the electoral commission must give the third party written notice of the decision as soon as practicable after making the decision.
- (2) The notice must state—
  - (a) the electoral commission has decided to refuse the application; and
  - (b) the reason for the refusal; and
  - (c) if the reason for the refusal is the application is incomplete or incorrect—that the third party may—
    - (i) amend the application in the way stated in the notice; and
    - (ii) resubmit the application to the electoral commission within 30 days after receiving the notice.
- (3) An application that is amended and resubmitted to the electoral commission as stated in the notice under subsection (2)(c) is taken to have been made on the day the original application was made.

### **127J Obligation to notify electoral commission of change to details**

- (1) If a relevant detail about a registered third party changes, the agent of the third party must give the electoral commission

notice about the change, in the approved form, within 30 days after the change happens.

Maximum penalty—20 penalty units.

(2) A person does not commit an offence against subsection (1) if the person has a reasonable excuse.

(3) In this section—

*relevant detail*, about a registered third party, means—

(a) a detail about the third party stated in the third party's application for registration for an election; or

(b) if a detail mentioned in paragraph (a) has been the subject of a notice under subsection (1)—the changed detail as stated in the notice.

### **127K Cancellation of registration**

(1) The agent of a registered third party may ask the electoral commission, in writing, to cancel the third party's registration for an election.

(2) The electoral commission must cancel the registered third party's registration for the election if the electoral commission is satisfied that the obligations that apply to the third party for the election under this part have ended.

(3) If the electoral commission cancels the registration, the electoral commission must—

(a) record the cancellation and the day of the cancellation in the register of third parties for the election; and

(b) give the third party notice about the cancellation.

(4) The cancellation takes effect on—

(a) the day the third party receives the notice; or

(b) if a later day is stated in the notice—the stated day.

(5) If the electoral commission refuses to cancel the registration, the electoral commission must give the registered third party a

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notice stating the electoral commission's decision and reasons for the decision.

## **Division 5B            Records to be kept**

### **127L    Definitions for division**

In this division—

*prescribed matter*, in relation to a relevant entity for an election, see section 127M.

*relevant entity*, for an election, means—

- (a) a participant in the election; or
- (b) an associated entity of—
  - (i) a registered political party that endorses a candidate in the election; or
  - (ii) a candidate in the election; or
  - (iii) a group of candidates for the election.

### **127M    Meaning of *prescribed matter***

- (1) Each of the following is a *prescribed matter* in relation to a relevant entity for an election, other than a third party for the election—
  - (a) a gift or loan made to, or for the benefit of, the relevant entity;
  - (b) a gift or loan made by the relevant entity to another relevant entity for the election;
  - (c) electoral expenditure incurred by the relevant entity or with the relevant entity's authority;
  - (d) without limiting paragraph (a), (b) or (c), a return given, or required to be given, by or for the relevant entity under division 3, 4A or 4B and the matters required to be stated in the return;

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- (e) for a relevant entity that is a candidate in the election or a group of candidates for the election—an amount paid into or from the relevant entity’s dedicated account;
  - (f) for a relevant entity that is a registered political party that endorses a candidate in the election—an amount paid from the relevant entity’s dedicated account;
  - (g) another matter prescribed by regulation to be a prescribed matter in relation to the relevant entity.
- (2) Also, each of the following is a *prescribed matter* in relation to a relevant entity that is a third party for an election—
- (a) a gift made to the third party about which the third party is required to give the electoral commission a return under section 118A;
  - (b) electoral expenditure incurred by the third party, or with the third party’s authority, during the capped expenditure period for the election;
  - (c) without limiting paragraph (a) or (b), a return given, or required to be given, by or for the third party under division 3 or 4A and the matters required to be stated in the return;
  - (d) if the third party is required to operate a dedicated account under section 127AB for the election—an amount paid from the third party’s dedicated account;
  - (e) another matter prescribed by regulation to be a prescribed matter in relation to the third party.

### **127N Records to be kept by relevant entities**

- (1) A relevant entity for an election must ensure a record about each prescribed matter is made that—
- (a) includes the information necessary to demonstrate, to the greatest extent practicable, the relevant entity’s compliance with this part and part 9, division 5 in relation to the prescribed matter; and

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- (b) without limiting paragraph (a), includes the information required by regulation to be included in the record; and
- (c) complies with section 127R.

Maximum penalty—20 penalty units.

- (2) A relevant entity may transfer a record made by or for the relevant entity under subsection (1) to another person in the ordinary course of the relevant entity's business or administration.
- (3) If a relevant entity transfers a record under subsection (2), the relevant entity must—
  - (a) make a record about the transfer that includes—
    - (i) details sufficient to identify the record transferred, including the date it was made; and
    - (ii) the name and contact details of the person to whom the record is transferred; and
    - (iii) the date the record is transferred; and
  - (b) tell the person to whom the record is transferred about the person's obligations under section 127S in relation to the record.

Maximum penalty—20 penalty units.

- (4) For subsection (1), it does not matter whether a return about the prescribed matter is required to be given to the electoral commission under this part.

### **127O Records to be kept by agents of participants**

The agent of a participant in an election must make a record about the agent's compliance with section 116G that—

- (a) includes the information necessary to demonstrate, to the greatest extent practicable, each step taken by the agent to comply with section 116G; and
- (b) without limiting paragraph (a), includes the information required by regulation to be included in the record; and

(c) complies with section 127R.

Maximum penalty—20 penalty units.

**127P Records to be kept about advertisements or other relevant material**

(1) This section applies if—

- (a) electoral expenditure is incurred to print, publish or broadcast an advertisement or other relevant material; and
- (b) a person is required to give the electoral commission a return about the expenditure under section 125, 125A or 125C in relation to an election.

(2) The person must make a record, that complies with subsection (3) and section 127R, about the printing, publishing or broadcast of the advertisement or other relevant material.

Maximum penalty—20 penalty units.

(3) The record must—

- (a) be accompanied by a copy of the advertisement or other relevant material; and
- (b) contain—
  - (i) a description of the audience to which the advertisement or other relevant material was distributed, published or broadcast; and
  - (ii) other details about the advertisement or other relevant material, or its distribution, publication or broadcast, required by regulation; and
  - (iii) if the election is for all of a local government's area—the name of the local government; and
  - (iv) if the election is for a division of a local government's area—the name of the division.

### **127Q Records to be kept by broadcasters or publishers**

- (1) This section applies to—
  - (a) a broadcaster who is required to give the electoral commission a return under section 125D; or
  - (b) a publisher who is required to give the electoral commission a return under section 125E.
- (2) The broadcaster or publisher must make a record, that complies with section 127R, about the return and the matters required to be stated in the return.

Maximum penalty—20 penalty units.

### **127R Requirements for records**

A record required to be made under this division must—

- (a) be in English; and
- (b) be accurate; and
- (c) be made in—
  - (i) paper or electronic form; or
  - (ii) another form approved by the electoral commission by notice published on the electoral commission's website; and
- (d) be made in a way that allows the record to be—
  - (i) conveniently and properly investigated or examined by an authorised officer under this part; and
  - (ii) for a record made by or for a participant—readily given, under this part, to an auditor appointed to conduct an audit under section 127U.

### **127S Records must be kept for 5 years**

- (1) This section applies to—

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- (a) a person required to make a record under this division other than section 127N; and
  - (b) a person required to make a record under section 127N(1), unless the person has transferred the record under section 127N(2); and
  - (c) a person to whom a record has been transferred under section 127N(2); and
  - (d) a person required to make a record under section 127N(3).
- (2) The person must keep the record, unless the person has a reasonable excuse—
- (a) for 5 years after the day the record is made; and
  - (b) in a way that allows the record to be—
    - (i) conveniently and properly investigated or examined by an authorised officer under this part; and
    - (ii) for a record made by or for a participant—readily given, under this part, to an auditor appointed to conduct an audit under section 127U.

Maximum penalty—20 penalty units.

### **127T Division does not limit other record-keeping provisions**

This division does not limit another provision of this Act about making or keeping a record.

## **Division 5C Audits**

### **127U Electoral commission may appoint auditor**

- (1) The electoral commission may, by instrument, appoint an auditor to conduct an audit of a participant in an election under this division.

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- (2) An auditor may be appointed to audit any of the following matters stated in the instrument of appointment—
  - (a) a return given to the electoral commission under division 3 or 4A by a participant in an election;
  - (b) the dedicated account of a participant in an election;
  - (c) the compliance of a participant in an election with this part generally or part 9, division 5.
- (3) The electoral commission may appoint an auditor to conduct an audit under subsection (1) whether or not the electoral commission suspects the participant has contravened a provision of this part or part 9, division 5.

#### **127V Participant in election must assist appointed auditor**

- (1) This section applies if an auditor is appointed under section 127U to conduct an audit of a participant in an election.
- (2) The participant must give the auditor the assistance the auditor reasonably requires to conduct the audit.  
Maximum penalty—200 penalty units.
- (3) Without limiting subsection (2), the participant must give the auditor—
  - (a) full and free access, at all reasonable times, to all accounts, records and documents reasonably required by the auditor that—
    - (i) are in the possession, or under the control, of the participant; and
    - (ii) relate, directly or indirectly, to a matter being audited; and
  - (b) other information, or an explanation, the auditor reasonably requires about a matter being audited.
- (4) For subsection (3), a matter being audited includes—
  - (a) for an audit about a return given under division 3 or 4A—a matter required to be stated in the return; or

- (b) for an audit of a dedicated account—a transaction on the dedicated account carried out, or required to be carried out, under this part.
- (5) In this section—  
*reasonably requires* means requires on grounds that are reasonable in the circumstances.

### **127W Audit report**

- (1) An auditor who conducts an audit of a participant in an election under this division must prepare a report about the audit.
- (2) The report—
  - (a) must state whether, in the auditor’s opinion—
    - (i) the participant has been truthful and accurate in relation to the matters audited; and
    - (ii) the participant has, or may have, contravened a provision of this part or part 9, division 5; and
  - (b) may suggest ways the practices or systems used by the participant to manage its financial affairs may be improved to assist the participant’s compliance with this part or part 9, division 5.
- (3) The auditor must give a copy of the report to—
  - (a) the electoral commission; and
  - (b) the participant.

## **Division 6 Publication of returns**

### **128 Electoral commission must publish returns and other documents**

- (1) The electoral commission must publish the following returns and other documents on its website—

- (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);
  - (g) notices given to the electoral commission under section 198(2).
- (2) A return or other document must be published within 5 business days after it is given to the commission.
- (3) However, if publishing a return or other document would disclose any of the following information, the electoral commission must publish a copy of the return or document from which the information has been deleted—
- (a) if the electoral commission is informed, by the person giving the return, that an individual identified in the return is a silent elector or an elector whose status is equivalent or similar to a silent elector under a law of the Commonwealth or another State—the address of the individual elector;
  - (b) the street address, but not the suburb, town, city or other locality including the State, of each individual identified in the return;
  - (c) a copy of, or extract from, a bank statement mentioned in section 125(4), 125A(4) or 125C(4) that accompanied a return given under that section;
  - (d) the details of a participant's dedicated account;
  - (e) information prescribed by regulation for this subsection.

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**129 Access to published returns and other documents**

The electoral commission must ensure that the public may inspect a return or other document published under section 128—

- (a) at the commission's public office; and
- (b) on the commission's website.

**130 Queries on contents of return**

- (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.

## Division 7                      Miscellaneous

### 130B Electoral commission must give reminder notice about requirement for return

- (1) This section applies if—
  - (a) a person is required to give the electoral commission any of the following returns (each a *relevant return*)—
    - (i) an advertising return in relation to an election; or
    - (ii) a periodic return in relation to a reporting period; or
    - (iii) a summary return in relation to an election; and
  - (b) the person has not given the relevant return to the electoral commission by the reminder day for the return.
- (2) As soon as practicable after the reminder day for the relevant return, the electoral commission must give the person a written notice that states—
  - (a) the person is required to give the return; and

- (b) the provision under which the return is required to be given; and
- (c) the following provisions, or a general outline of them, to the extent they are relevant to the requirement to give the return—
  - (i) the *Local Government Act 2009*, sections 153, 162, 172 and 175K and the *City of Brisbane Act 2010*, sections 153, 162, 174 and 186B;
  - (ii) section 117;
  - (iii) section 118;
  - (iv) section 118A;
  - (v) section 118B;
  - (vi) section 120;
  - (vii) section 125;
  - (viii) section 125A;
  - (ix) section 125C;
  - (x) section 125D;
  - (xi) section 125E;
  - (xii) section 125G;
  - (xiii) section 195;
  - (xiv) section 197.
- (3) If the person to whom the notice must be given is the agent of a candidate who is successful in the election, the electoral commission must also give a copy of the notice to the candidate.
- (4) Also, if the person to whom the notice must be given is the agent of a group of candidates for the election, or the agent of a registered political party that endorsed a candidate in the election, the electoral commission must also give a copy of the notice to each candidate who is—
  - (a) a member of the group or endorsed by the party; and

(b) successful in the election.

(5) In this section—

**advertising return**, in relation to an election, means a return required to be given under the following provisions in relation to the election—

(a) section 125D(2);

(b) section 125E(2).

**periodic return**, in relation to a reporting period, means a return required to be given under section 125G(2) in relation to the period.

**reminder day**, for a relevant return, means—

(a) for an advertising return in relation to an election—the day that is 5 weeks after the polling day for the election or, if no poll is conducted for the election, the day a poll would have been conducted if it were required; or

(b) for a periodic return in relation to a reporting period—the day that is 5 weeks after the end of the reporting period; or

(c) for a summary return in relation to an election—the day that is 10 weeks after the polling day for the election or, if no poll is conducted for the election, the day a poll would have been conducted if it were required.

**summary return**, in relation to an election, means a return required to be given under the following provisions in relation to the election—

(a) section 117(4);

(b) section 118(4);

(c) section 118A(4);

(d) section 118B(4);

(e) section 120(6);

(f) section 125(2);

(g) section 125A(2);

- (h) section 125C(2).

**130C Electoral commission must give notice about agent's failure to give return**

- (1) This section applies if—
- (a) an agent of a candidate in an election, group of candidates for an election or registered political party that endorsed a candidate in an election—
    - (i) is required to give the electoral commission a summary return in relation to the election; and
    - (ii) has not given the return to the electoral commission within the required period for the election; and
  - (b) the candidate, or 1 or more of the candidates in the group or endorsed by the party, is elected as a councillor.
- (2) The electoral commission must, as soon as practicable after the end of the required period, give each successful candidate represented by the agent (each the *councillor*) a notice stating—
- (a) that the agent has failed to give the electoral commission the summary return within the required period; and
  - (b) that the councillor is required to give the return and the provision of division 3 or 4A under which the return is required to be given; and
  - (c) the following provisions, or a general outline of them, to the extent they are relevant to the requirement to give the return—
    - (i) the *City of Brisbane Act 2010*, section 174(3) and (4);
    - (ii) the *Local Government Act 2009*, section 172(3) and (4).
- (3) In this section—

*summary return*, in relation to an election, means a return required to be given under the following provisions in relation to the election—

- (a) section 117(4);
- (b) section 118(4);
- (c) section 120(6);
- (d) section 125(2).

### 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.

### **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) publish, under section 128, the amended return and the day and time the amendment was made.

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- (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.

**135 Associated entity to give notice of financial controller**

- (1) As soon as practicable after an entity becomes an associated entity of a registered political party that endorses a candidate in an election or of a candidate in an election or a group of candidates for an election, the associated entity must give the electoral commission written notice of the name of the financial controller of the entity.
- (2) An associated entity of a registered political party that endorses a candidate in an election or of a candidate in an election or a group of candidates for an election must give the electoral commission written notice of any change to the name of the financial controller of the entity as soon as practicable after the change happens.

**135A Registered political party must notify endorsement of candidate**

- (1) This section applies if any of the following events happen—
  - (a) a registered political party endorses a person to be a candidate in an election;
  - (b) if a registered political party notifies the electoral commission under this section about the endorsement of a person to be a candidate in an election—the party’s endorsement of the person changes before the polling day for the election;
  - (c) a councillor who was endorsed by a registered political party for the election for which the councillor was elected stops being a member of the party.
- (2) The registered officer of the registered political party must give the electoral commission written notice, in the approved form, about the event (an *event notice*) within 7 days after the event happens.

Maximum penalty—40 penalty units.
- (3) As soon as practicable after the electoral commission receives the event notice, the electoral commission must give the candidate or councillor a written notice that states—

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- (a) the contents of the event notice; and
  - (b) when the electoral commission received the event notice.
- (4) If a change mentioned in subsection (1)(b) is the withdrawal of a registered political party's endorsement of a person as a candidate for an election, a notice given by the party under section 31 about the withdrawal is taken to be an event notice given about the change under this section.

*Note—*

Section 31 requires a registered political party to notify the electoral commission about the withdrawal of the party's endorsement of a candidate nominated by the party for election.

- (5) The electoral commission may publish an event notice on the electoral commission's website.

### **135B Register of agents and register of third parties to be available for public inspection**

- (1) This section applies if the electoral commission is required to keep a register of agents or register of third parties for an election under this part.
- (2) The electoral commission must make information from the register available for public inspection including by publishing the information on the electoral commission's website.
- (3) However, the electoral commission must not make the following information available for public inspection under subsection (2)—
  - (a) if the electoral commission is informed that an individual identified in the information is a silent elector or enrolled on the electoral roll of the Commonwealth or another State with status equivalent or similar to a silent elector—the address of the individual;
  - (b) the street address, but not the suburb, town, city or other locality, including the State, of another individual;
  - (c) an individual's date of birth;

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- (d) an individual's contact details, including, for example, a telephone number or email address, unless the individual has consented to the contact details being made public;
  - (e) the details of a bank account of an entity, including a participant's dedicated account.
- (4) In this section—
- information*, from a register, includes—
- (a) a copy of a document included in the register; and
  - (b) personal information about an individual.
- personal information* see the *Information Privacy Act 2009*, section 12.

**135C Electoral commission must not publish information about political party membership**

- (1) The electoral commission must not publish, or otherwise make available for public inspection, information about the membership of a political party.
- (2) For subsection (1), it does not matter how the information came to be in the possession or control of the electoral commission.

**135D Audit certificates to accompany particular returns**

- (1) This section applies if a person is required to give the electoral commission—
  - (a) a return about electoral expenditure incurred by a registered political party that endorsed a candidate in an election under section 125; or
  - (b) a return about amounts received, paid and outstanding under section 125G.
- (2) The return must be accompanied by a certificate from an auditor stating—

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- (a) that the auditor was given full and free access at all reasonable times to the records related to a matter required to be disclosed in the return; and
  - (b) the auditor examined the records mentioned in paragraph (a) that the auditor considered material for giving the certificate; and
  - (c) the auditor received all the information and explanations the auditor asked for in relation to any matter required to be stated in the certificate, subject to any qualifications stated in the certificate; and
  - (d) the auditor has no reason to think any statement in the declaration is not correct.
- (3) The electoral commission may waive compliance with the requirement to give an audit certificate if the electoral commission considers the cost of compliance with the requirement would be unreasonable.
- (4) A return required to be accompanied by a certificate from an auditor is taken not to have been given as required under this part if the return is not accompanied by the certificate.

**135E Auditor preparing audit certificate to give notice of contravention**

- (1) This section applies if, in carrying out an audit to prepare an audit certificate mentioned in section 135D(2), an auditor becomes aware of a matter that the auditor considers is reasonably likely to constitute a contravention of this part or part 9, division 5.
- (2) The auditor must, within 7 days after becoming aware of the matter, give the electoral commission written notice of the matter.

Maximum penalty—100 penalty units.

## **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

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- (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.
- (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

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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.

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**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.

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**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.
- (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.

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**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.

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- (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.
- (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.

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**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.

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- (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.

### **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.

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**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—
- (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, that the how-to-vote card—
    - (i) is likely to mislead or deceive an elector in voting under this Act; or
    - (ii) constitutes a group campaign activity relating to a candidate who is not a member of a group of candidates, in contravention of section 183.
- (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.

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- (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 Engaging in group campaign activities

- (1) A person must not engage in a group campaign activity for an election, unless the activity relates to either—
  - (a) candidates who are members of the same group of candidates for the election; or
  - (b) candidates who are endorsed by the same registered political party for the election.

Maximum penalty—100 penalty units.

- (2) A **group campaign activity** is any of the following activities for an election campaign, if the activity is carried out in an intentionally coordinated way by or for 2 or more candidates for the election—
- (a) using a common platform to promote the election of the candidates, including, for example, the same political policies;
  - (b) using any of the following in relation to the candidates—
    - (i) the same advertisements, including pamphlets, billboards and any other media;
    - (ii) the same campaign slogans;
    - (iii) the same brands or images;
    - (iv) the same how-to-vote cards;
    - (v) other election material that promotes the election of the candidates;
  - (c) participating in the same fundraising activities or events;
  - (d) sharing the same resources for election campaigns, including human resources (other than volunteers), between the candidates;
  - (e) giving or sharing gifts or loans between the candidates;
  - (f) another activity prescribed by regulation for this section.

*Examples of group campaign activities—*

- a person erecting electoral signs with the names or images of 2 or more candidates
- a candidate giving a donation to another candidate or group of candidates during a campaign
- a candidate gifting an amount of electoral expenditure incurred by the candidate to another candidate
- a candidate publishing a notice or letter on a website encouraging electors to vote for another candidate or group of candidates

- (3) A proceeding for an offence against subsection (1) must be brought within 4 years after the commission of the offence.

## **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.

Maximum penalty—2 years imprisonment.

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**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

[s 191]

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- (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.

### **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—

- (a) the witness is satisfied of the identity of the elector who signs the declaration before the witness; and
- (b) the witness has seen the elector sign the declaration; and

[s 194A]

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- (c) either—
  - (i) the witness knows that the declaration made by the elector is true; or
  - (ii) the witness is satisfied that the declaration is true because of inquiries of the elector or otherwise.

Maximum penalty—20 penalty units or 6 months imprisonment.

## **Division 5                      Offences relating to electoral funding and financial disclosure**

### **194A    Offence about prohibited donations**

- (1) A person must not do an act or make an omission that is unlawful under section 113B or 113BA if the person knows or ought reasonably to know of the facts that result in the act or omission being unlawful under either of those sections.

Maximum penalty—400 penalty units or 2 years imprisonment.

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

### **194B    Schemes to circumvent prohibition on particular political donations or electoral expenditure**

- (1) A person must not knowingly participate, directly or indirectly, in a scheme to circumvent—
  - (a) a prohibition under part 6, division 1A about political donations; or
  - (b) a prohibition under part 6 or this division related to incurring electoral expenditure.

Maximum penalty—1,500 penalty units or 10 years imprisonment.

- (2) For subsection (1), it does not matter whether the person also participates in the scheme for other purposes.

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- (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.

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### **195A False or misleading information about gift**

- (1) A person must not publish information about a gift made to, or received by, any of the following entities that the person knows is false or misleading in a material particular—
- (a) a candidate in an election;
  - (b) a group of candidates for an election;
  - (c) a registered political party that endorses a candidate in an election;
  - (d) an associated entity of—
    - (i) a registered political party that endorses a candidate in an election; or
    - (ii) a candidate in an election; or
    - (iii) a group of candidates for an election;
  - (e) a third party to which section 118A or 118B applies for an election.

Maximum penalty—20 penalty units.

- (2) A person does not commit an offence against subsection (1) if the information published is a true copy, or fair summary, of information in a return published by the electoral commission under section 128.

### **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—

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- (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

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- (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—

[s 200A]

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- (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 9A Provisions for quadrennial election for 2020**

### **200A Purpose of part**

The purpose of this part is to facilitate the holding of the quadrennial election for 2020 in a timely way that minimises serious risks to the health and safety of persons caused by the public health emergency involving COVID-19.

### **200B Suspension of election**

- (1) This section applies in relation to the notice of election published on 22 February 2020 by the returning officer under section 25.
- (2) If the Minister, in consultation with the electoral commission, is satisfied that having regard to the purpose of this part, it would not be in the public interest for the election to be held on the day stated in the notice, the Minister may withdraw the notice.
- (3) The Minister must publish a notice about the withdrawal on the electoral commission's website.

- (4) The election is suspended from the day the notice is published until the Minister ends the suspension under section 200C or terminates the election under section 200D.
- (5) The *City of Brisbane Act 2010*, chapter 3, part 5 or the *Local Government Act 2009*, chapter 3, part 5 continues to apply to a local government during the period of the suspension.

### **200C Ending suspension**

- (1) This section applies if the election is suspended under section 200B and the Minister is not required to terminate the election under section 200D.
- (2) The Minister must, as soon as practicable after the withdrawal of the notice of election, in consultation with the electoral commission and having regard to the purpose of this part, end the suspension of the election by notice published on the electoral commission's website.
- (3) The notice—
  - (a) must fix a day that is a Saturday for the holding of the election; and
  - (b) may be accompanied by an amended notice of election under section 25 for the election; and
  - (c) may state that any votes cast in the election before it was suspended are to be disregarded.
- (4) The day fixed under subsection (3) must be decided by the Minister, in consultation with the electoral commission and having regard to the purpose of this part.
- (5) If the notice is accompanied by an amended notice of election under subsection (3)(b), a reference in part 4 to the nomination day is taken to be a reference to the nomination day stated in the amended notice of election.
- (6) If the notice states that votes cast in the election before the suspension are to be disregarded, on the publication of the notice under subsection (2), the following must be destroyed—

[s 200D]

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- (a) declaration envelopes;
  - (b) ballot papers in ballot boxes;
  - (c) all books and papers, other than the voters roll, used by each presiding officer.
- (7) The *City of Brisbane Act 2010*, chapter 3, part 5 or the *Local Government Act 2009*, chapter 3, part 5 applies to a local government from the day the Minister publishes the notice under subsection (2).

### **200D Terminating election**

- (1) This section applies if—
- (a) the election is suspended under section 200B; and
  - (b) in consultation with the electoral commission, the Minister is satisfied—
    - (i) the period of the suspension of the election is likely to compromise the outcome of the election; and
    - (ii) it would be practicable to hold a new election.
- (2) The Minister must, by notice published on the electoral commission's website, terminate the election.
- (3) On the publication of the notice—
- (a) nominations for the election are taken to have been withdrawn; and
  - (b) the following items for the election must be destroyed—
    - (i) declaration envelopes;
    - (ii) ballot papers in ballot boxes;
    - (iii) unused ballot papers;
    - (iv) all books and papers, other than the voters roll, used by each presiding officer; and
  - (c) all deposits given to the returning officer under section 39 for the election must be refunded.

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- (4) The Minister must, in consultation with the electoral commission and having regard to the purpose of this part, fix a day that is a Saturday for the holding of the quadrennial election for 2020.

### **200E Conduct of poll by postal ballot**

- (1) This section applies if the Minister is satisfied that, having regard to the purpose of this part, it would be in the public interest for the poll for the election to be conducted by postal ballot in—
- (a) all of a local government’s area; or
  - (b) 1 or more divisions of a local government’s area; or
  - (c) a part of a local government’s area.
- (2) The Minister may direct that the poll for the local government’s area, or the division or part of the local government’s area, be conducted by postal ballot.
- (3) However, before giving the direction, the Minister must consult with the electoral commission.
- (4) A direction under subsection (2) must—
- (a) be published on the electoral commission’s website; and
  - (b) if the direction relates to a part of the local government’s area—be accompanied by a map showing the part of the local government’s area.
- (5) The local government must ensure the public may inspect the map mentioned in subsection (4)(b)—
- (a) at the local government’s public office; and
  - (b) on the local government’s website.
- (6) Subsection (7) applies if—
- (a) the election was suspended under section 200B and not terminated under section 200D; and
  - (b) an elector cast a vote in the election other than by postal vote before the election was suspended.

[s 200F]

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- (7) When the suspension of the election ends, the elector's vote is taken to have been cast by postal vote for section 68(5).

### **200F Electors who may vote electronically**

- (1) This section applies if—
  - (a) the electoral commission is satisfied that, having regard to the purpose of this part, it would be in the public interest to allow a class of electors, other than an elector mentioned in section 68(5B), to cast an electronically assisted vote; and
  - (b) procedures about how an elector may cast an electronically assisted vote have been made under section 75A.
- (2) The electoral commission may, by notice published on the electoral commission's website, declare the class as electors who may vote electronically.
- (3) An elector of the stated class may cast an electronically assisted vote in the election under part 4, division 5.

### **200G Electoral visitor voting**

- (1) This section applies if the electoral commission is satisfied it would pose a risk to the health and safety of an issuing officer to visit, under section 77—
  - (a) an elector who has applied to vote as a visitor elector to the returning officer under section 77; or
  - (b) electors of a particular class; or
  - (c) any electors.
- (2) Section 77 applies to the issuing officer subject to the direction.
- (3) The returning officer may direct the issuing officer not to visit the elector, or electors of the class, or any electors.
- (4) The issuing officer must make alternative arrangements to enable an elector affected by the direction to vote in the

election, including, for example, by casting an electronically assisted vote or postal vote.

**200H Extending time for particular applications to cast postal vote**

- (1) If the Minister is satisfied that, having regard to the purpose of this part, it would be in the public interest, the Minister may extend the time and day mentioned in sections 79(2)(d) and 81(2A) for relevant electors.
- (2) However, before extending the time and day, the Minister must consult with the electoral commission.
- (3) If the Minister extends the time and day under subsection (1)—
  - (a) the Minister must give notice of the extension to the returning officer; and
  - (b) the Minister must ensure a notice about the extension, including the extended time and day, is published on the electoral commission’s website; and
  - (c) section 79 or 81, as the case may be, applies in relation to a relevant elector as if the reference in section 79(2)(d) or 81(2A) to 7p.m. on the day that is 12 days before the polling day were a reference to the extended time and day.
- (4) This section applies in relation to an application even if the application was made before the Minister extends the time and day under subsection (1).
- (5) In this section—

***relevant elector*** means an elector—

  - (a) who is over 65 years; and
  - (b) for whom, as a result of an impairment or condition, the public health emergency involving COVID-19 poses a high risk to the elector’s health and safety.

**200I Distribution or display of how-to-vote cards or other election material**

- (1) This section applies if the electoral commission is satisfied that, having regard to the purpose of this part, it would be in the public interest to regulate, limit or prevent the distribution or display of how-to-vote cards or other election material at a polling booth for the election.
- (2) The electoral commission may give a direction—
  - (a) about how, where or when how-to-vote cards may be distributed or displayed at a polling booth for the election; or
  - (b) prohibiting the distribution or display of how-to-vote cards or other election material at a polling booth for the election; or
  - (c) prohibiting a person from canvassing for votes in or near polling booths; or
  - (d) permitting the display of political statements at a place mentioned in section 188(1).
- (3) The direction must be published on the electoral commission's website.
- (4) A person must not contravene the direction.  
Maximum penalty—10 penalty units.
- (5) Section 188 does not apply to the display of a political statement permitted under the direction.

**200J Issuing officers for s 12**

Despite section 12, an issuing officer for the election—

- (a) need not be a member of the staff of the electoral commission under section 12(2); and
- (b) may be another appropriately qualified person.

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## 200K Adjournment of poll under s 52A or 53

- (1) This section applies if a poll for the election is adjourned under section 52A(3) or 53(1).
- (2) Section 53 applies in relation to the poll as if the reference in section 53(3) to a day no later than 34 days after the day on which the poll is adjourned were a reference to the earliest Saturday on which the returning officer is satisfied the poll may practicably and safely be taken or resumed.
- (3) To remove any doubt, it is declared that the returning officer or presiding officer for a polling booth may act under section 53, as affected by this section, as occasion requires.

## 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.

### **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.

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**202 Electoral commission may recover expenditure incurred for conducting elections**

- (1) A local government is liable to pay all costs incurred by the electoral commission for conducting an election in the local government's area, including the remuneration, allowances and reasonable expenses paid to members or staff of the electoral commission.
- (2) The electoral commission may decide to recover all or part of the costs mentioned in subsection (1) from the local government.
- (3) If an election is conducted by the electoral commission in 2 or more local government areas using a shared and centrally administered service, the electoral commission may recover the costs incurred from the local governments for the areas collectively.
- (4) The costs recoverable by the electoral commission under this section include 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.

#### **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 or detention**

- (1) For this Act, a person is serving a sentence of imprisonment or detention 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 or detention concerned.
- (2) Also, for this Act, any part of a sentence of detention that a person is serving as a term of imprisonment is taken to be attributable to the sentence of detention.

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**206 Office of returning officer**

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

**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).

**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**

**216**      **Disclosure period for an election**

- (1) A reference in section 106A to an election held before the polling day for the election to which the section applies, or the last quadrennial election, includes an election held before the commencement.

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- (2) A reference in section 106A to a nomination as a candidate in an election, or an announcement or other indication of a person's intention to be a candidate in an election, includes a nomination, announcement or other indication made before the commencement.

## **217 Disclosure obligations for candidates—gifts**

- (1) This section applies to a person who—
- (a) immediately before the commencement, was not a candidate; and
  - (b) on the commencement, is a candidate.
- (2) For part 6, the disclosure period for the person is taken to start on the commencement.
- (3) Within 14 days after the commencement, the person must give a return under section 117(2) and (4), as in force immediately before the commencement, for the person's pre-commencement disclosure period.
- (3A) For applying section 117—
- (a) a reference to a candidate is taken to be a reference to the person; and
  - (b) a reference to relevant details is taken to be a reference to relevant details under section 109 as in force immediately before the commencement; and
  - (c) a reference to the required period is taken to be a reference to the period starting on the commencement and ending 14 days after the commencement; and
  - (d) a reference to the disclosure date is taken to be a reference to the day that is 14 days after the commencement; and
  - (e) a reference to the disclosure period is taken to be a reference to the person's pre-commencement disclosure period; and

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- (f) a reference to a gift is taken to be a reference to a gift under section 107 as in force immediately before the commencement; and
  - (g) a reference to the value of a gift is taken to be a reference to the value of a gift under section 108 as in force immediately before the commencement.
- (4) However, subsection (3) does not apply—
- (a) to the person if, before the commencement, a disclosure period would not have started under section 114 or 115 as in force immediately before the commencement, as applied under subsection (6), definition *pre-commencement disclosure period*, paragraph (a); or
  - (b) in relation to a gift that is the subject of a return given to the electoral commission under part 6 before the commencement.
- (5) Part 9, division 5 applies in relation to the person as if a reference in the division to part 6 included a reference to this section.
- (6) In this section—
- pre-commencement disclosure period***, for a person who, on the commencement, is a candidate, means the period—
- (a) starting when the disclosure period would have started for the person under section 114 or 115 as in force immediately before the commencement—
    - (i) if the person were a candidate for those sections; and
    - (ii) as if a reference in those sections to an election were a reference to the election for which the person is, on the commencement, a candidate; and
  - (b) ending immediately before the commencement.

**217A Disclosure obligations for agent for group of candidates—gifts**

- (1) This section applies in relation to a person who—

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- (a) represents a group of persons who—
    - (i) immediately before the commencement, were not candidates; and
    - (ii) on the commencement, are candidates; and
    - (iii) after the commencement, give a record of membership of the group to the electoral commission under section 41; and
  - (b) is appointed as the agent for the group after the commencement.
- (2) For part 6, the disclosure period for the group is taken to start on the day the group gives the record of membership to the electoral commission.
- (3) Within 14 days after the appointment, the person must give a return under section 118(2) and (4), as in force immediately before the commencement, for the group's pre-commencement disclosure period.
- (4) For applying section 118—
- (a) a reference to a group of candidates is taken to be a reference to the group of persons; and
  - (b) a reference to a gift is taken to be a reference to a gift under section 107 as in force immediately before the commencement; and
  - (c) a reference to the disclosure date is taken to be a reference to the day that is 14 days after the appointment; and
  - (d) a reference to relevant details is taken to be a reference to relevant details under section 109 as in force immediately before the commencement; and
  - (e) a reference to the required period is taken to be a reference to the period starting on the appointment and ending 14 days after the appointment; and
  - (f) a reference to the disclosure period is taken to be a reference to the group's pre-commencement disclosure period; and

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- (g) a reference to the value of a gift is taken to be a reference to the value of a gift under section 108 as in force immediately before the commencement.
- (5) However, subsection (3) does not apply in relation to a gift that is the subject of a return given to the electoral commission under part 6 before the commencement.
- (6) Part 9, division 5 applies in relation to the person and to each member of the group as if—
  - (a) a reference in the division to part 6 included a reference to this section; and
  - (b) a reference in the division to section 118 included a reference to this section.
- (7) In this section—

***pre-commencement disclosure period***, for a group of persons mentioned in subsection (1)(a), means the period—

  - (a) starting when the disclosure period would have started for the group under section 116, as in force immediately before the commencement—
    - (i) if the persons in the group were a group of candidates for that section; and
    - (ii) as if a reference in that section to an election were a reference to the election for which the persons in the group are, on the commencement, candidates; and
  - (b) ending immediately before the day the group gives the record of membership to the electoral commission.

### **217B Disclosure obligations for candidates—loans**

- (1) This section applies to a person who—
  - (a) immediately before the commencement, was not a candidate; and
  - (b) on the commencement, is a candidate.

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- (2) For part 6, the disclosure period for the person is taken to start on the commencement.
  - (3) Within 14 days after the commencement, the person must give a return under section 120(2) and (7), as in force immediately before the commencement, for the person's pre-commencement disclosure period.
  - (4) For applying section 120—
    - (a) a reference to a candidate is taken to be a reference to the person; and
    - (b) a reference to the required period is taken to be a reference to the period starting on the commencement and ending 14 days after the commencement; and
    - (c) a reference to the disclosure date is taken to be a reference to the day that is 14 days after the commencement; and
    - (d) a reference to the disclosure period is taken to be a reference to the person's pre-commencement disclosure period.
  - (5) However, subsection (3) does not apply—
    - (a) to the person if, before the commencement, a disclosure period would not have started under section 114 or 115 as in force immediately before the commencement, as applied under subsection (7), definition *pre-commencement disclosure period*, paragraph (a); or
    - (b) in relation to a loan that is the subject of a return given to the electoral commission under part 6 before the commencement.
  - (6) Part 9, division 5 applies in relation to the person as if—
    - (a) a reference in the division to part 6 included a reference to this section; and
    - (b) a reference in the division to section 120 included a reference to this section.
  - (7) In this section—

*pre-commencement disclosure period*, for a person who, on the commencement, is a candidate, means the period—

- (a) starting when the disclosure period would have started for the person under section 114 or 115 as in force immediately before the commencement—
  - (i) if the person were a candidate for those sections; and
  - (ii) as if a reference in those sections to an election were a reference to the election for which the person is, on the commencement, a candidate; and
- (b) ending immediately before the commencement.

**217C Disclosure obligations for agent for group of candidates—loans**

- (1) This section applies in relation to a person who—
  - (a) represents a group of persons who—
    - (i) immediately before the commencement, were not candidates; and
    - (ii) on the commencement, are candidates; and
    - (iii) after the commencement, give a record of membership of the group to the electoral commission under section 41; and
  - (b) is appointed as the agent for the group after the commencement.
- (2) For part 6, the disclosure period for the group is taken to start on the day the group gives the record of membership to the electoral commission.
- (3) Within 14 days after the appointment, the person must give a return under section 120(4) and (7), as in force immediately before the commencement, for the group's pre-commencement disclosure period.
- (4) For applying section 120—

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- (a) a reference to a group of candidates is taken to be a reference to the group of persons; and
  - (b) a reference to the required period is taken to be a reference to the period starting on the appointment and ending 14 days after the appointment; and
  - (c) a reference to the disclosure date is taken to be a reference to the day that is 14 days after the appointment; and
  - (d) a reference to the disclosure period is taken to be a reference to the group's pre-commencement disclosure period.
- (5) However, subsection (3) does not apply in relation to a loan that is the subject of a return given to the electoral commission under part 6 before the commencement.
- (6) Part 9, division 5 applies in relation to the person and to each member of the group as if—
- (a) a reference in the division to part 6 included a reference to this section; and
  - (b) a reference in the division to section 120 included a reference to this section.
- (7) In this section—
- pre-commencement disclosure period***, for a group of persons mentioned in subsection (1)(a), means the period—
- (a) starting when the disclosure period would have started for the group under section 116, as in force immediately before the commencement—
    - (i) if the persons in the group were a group of candidates for that section; and
    - (ii) as if a reference in that section to an election were a reference to the election for which the persons in the group are, on the commencement, candidates; and
  - (b) ending immediately before the day the group gives the record of membership to the electoral commission.

## 218 Disclosure obligations for electoral expenditure

- (1) This section applies to the following, each an *election participant*, for applying part 6, division 4 in relation to an election to be held after the commencement—
  - (a) a candidate in the election;
  - (b) a group of candidates for the election;
  - (c) a registered political party;
  - (d) an associated entity;
  - (e) a third party to which section 125A applies for the election.
- (2) It is immaterial whether the election participant incurred electoral expenditure for the election before or after the commencement.
- (3) If, under section 106A, the election participant's disclosure period for the election, other than for this section, started before the introduction day, the disclosure period for the election, for a provision of part 6, division 4, is taken to have started on the introduction day.
- (4) Within 14 days after the commencement, the election participant must give a return under part 6, division 4 for any electoral expenditure the participant incurred during the period—
  - (a) starting on the introduction day; and
  - (b) ending on the commencement.
- (5) Part 9, division 5 applies in relation to the election participant as if a reference in the division to part 6 includes a reference to this section.
- (6) In this section—

*introduction day* means the day the Bill for the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Act 2019* was introduced into the Legislative Assembly.

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

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

**Division 5 Transitional provision for COVID-19  
Emergency Response and Other  
Legislation Amendment Act 2021**

**220 Application of pt 9B to election**

- (1) Part 9B applies to an election mentioned in section 200N—
  - (a) whether notice of the election mentioned in section 200N(1)(a) was published before or after the commencement; and
  - (b) whether a regulation providing for the election to be held mentioned in section 200N(1)(b) was made before or after the commencement.
- (2) Subsection (3) applies if, immediately before the expiry of part 9B under section 200ZG, anything required or permitted to be done under this Act in relation to an election mentioned in section 200N has not been done.
- (3) Expired part 9B continues to apply for the election as if the expired part continued in effect.

**Division 6 Transitional provisions for Local  
Government Electoral and Other  
Legislation (Expenditure Caps)  
Amendment Act 2023**

**221 Definitions for division**

In this division—

**2024 quadrennial election** means the quadrennial election to be held in 2024.

**amending Act** means the *Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Act 2023*.

**former**, for a provision of this Act, means the provision as in force from time to time before the commencement.

**new**, for a provision of this Act, means the provision as in force from the commencement.

**post-commencement election** means the 2024 quadrennial election and any subsequent election.

## 222 Elections held after introduction day and before 2024 quadrennial election

- (1) This section applies in relation to an election held on or after the introduction day and before the 2024 quadrennial election.
- (2) This Act as in force immediately before the commencement applies in relation to the election as if the amending Act had not been enacted.
- (3) Without limiting subsection (2)—
  - (a) section 128 as in force immediately before the commencement applies to the electoral commission in relation to publishing a record about a return for the election; and
  - (b) section 130B as in force immediately before the commencement applies to the electoral commission in relation to giving a notice about a summary return under that section for the election.
- (4) In this section—

**introduction day** means the day the Bill for the amending Act was introduced into the Legislative Assembly.

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**223 Continuation of existing groups of candidates for 2024 quadrennial election**

- (1) This section applies if, before the commencement, a group of 2 or more candidates gave the electoral commission a record of the membership of the group under former section 41(2) for the 2024 quadrennial election.
- (2) The record is taken to be a notice of the membership of the group given to the electoral commission under new section 42 for the 2024 quadrennial election.
- (3) If, before the commencement, the electoral commission published the record on the electoral commission's website under former section 41(4), the record is taken to be published on the electoral commission's website under new section 42(2).
- (4) If, but for subsection (2), the group would not be eligible under new section 43B to give notice of the membership of the group under new section 42—
  - (a) on the relevant day—
    - (i) subsection (2) stops applying to the record; and
    - (ii) the group stops being a group of candidates for the 2024 quadrennial election; and
  - (b) the electoral commission must remove the record from the electoral commission's website as soon as practicable after the relevant day; and
  - (c) new section 43A applies to the group as if the group had been wound up under new section 43A on the relevant day.
- (5) In this section—

*relevant day* means the day that is 14 days after the commencement.

**224 Gifts**

- (1) An amount forgiven on a loan mentioned in new section 107(2)(c)(ii) is a gift if the amount is forgiven after the

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commencement, even if the loan was made before the commencement.

- (2) An amount or service mentioned in new section 107(2)(e) is a gift if the amount was paid, or service was provided, under a sponsorship arrangement after the commencement, even if the sponsorship arrangement was entered into before the commencement.
- (3) New section 107(5) does not apply to a gift, or part of a gift, mentioned in new section 107(4) that was made before the commencement.
- (4) New section 119A applies in relation to a gift returned after the commencement whether the gift was received before or after the commencement.

## **225 Electoral expenditure**

- (1) New section 109E applies to electoral expenditure whether the expenditure was incurred before or after the commencement.
- (2) New section 123U applies to electoral expenditure incurred whether an event mentioned in new section 123U(3) happened before or after the commencement.

## **226 Agents and register of group agents**

- (1) The register of group agents for the 2024 quadrennial election is taken to form part of the register of agents kept under new section 116D for the election.
- (2) A person recorded in the register of group agents for the 2024 quadrennial election as the agent of a group of candidates for the election is taken to have been appointed as the agent of the group for new part 6 for the election.
- (3) However, subsection (2) does not apply if the person has been convicted of an offence against former part 6 or former part 9, division 5.
- (4) Subsection (2) does not limit new section 116E(2).

(5) In this section—

*register of group agents* means the register kept under section 43(1) as in force immediately before the commencement.

## **227 Existing disclosure obligations for post-commencement elections**

(1) This section applies if—

(a) before the commencement, an entity was required under a former return provision to give the electoral commission a return for the 2024 quadrennial election by the disclosure deadline for the return; and

(b) immediately before the commencement—

(i) the entity had not given the return under the former return provision; and

(ii) the disclosure deadline for the return under the former return provision had not passed.

(2) Part 6 as in force immediately before the commencement continues to apply in relation to the return as if the amending Act had not been enacted.

(3) In this section—

*former return provision* means former section 117(2), 118(2), 118A(2), 120(2) or (4), 124(2) or 125A(2).

## **228 Summary returns for post-commencement elections under new ss 117 and 120**

(1) This section applies to a return required to be given in relation to a participant in a post-commencement election under new section 117(4) or 120(6) if the participant's disclosure period for the election includes a period before the commencement.

(2) The return must include gifts or loans received during all of the disclosure period for the election, including any part of the period that occurred before the commencement.

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- (3) A reference in new section 117(4) to a gift received during the participant's disclosure period for the election is, to the extent the period occurred before the commencement, taken to be a reference to a gift within the meaning of former section 107.

**229 Disclosure period for post-commencement elections for particular third parties under new s 118A**

- (1) This section applies to an entity if—
  - (a) before the commencement, the entity was not a third party for a post-commencement election under former section 106; and
  - (b) on the commencement, the entity is a third party for the post-commencement election under new section 106.
- (2) For new section 118A, the entity's disclosure period for the post-commencement election does not include any part of the period occurring before the commencement.
- (3) This section applies despite new section 106A.

**230 Disclosure period for post-commencement elections for third parties under new s 118B**

- (1) For new section 118B, a third party's disclosure period for a post-commencement election does not include any part of the period occurring before the commencement.
- (2) This section applies despite new section 106A.

**231 First reporting period for new ss 118AA, 120A and 125G**

For new sections 118AA, 120A and 125G, the first reporting period is the period—

- (a) starting on the day of the commencement; and
- (b) ending on the following day—
  - (i) if the day mentioned in paragraph (a) is before 30 June in a year—30 June in the year;

(ii) otherwise—31 December in the year.

**232 Summary expenditure returns for post-commencement elections under new ss 125 and 125A**

- (1) This section applies to a return required to be given in relation to a participant in a post-commencement election under new section 125(2) or 125A(2) if the participant's disclosure period for the election includes a period before the commencement.
- (2) The return must include electoral expenditure incurred during all of the disclosure period for the election, including any part of the period that occurred before the commencement.
- (3) A reference in new sections 125 and 125A to electoral expenditure incurred during the participant's disclosure period for the election is, to the extent the period occurred before the commencement, taken to be a reference to electoral expenditure within the meaning of former section 123.

**233 Summary expenditure returns for particular third parties for post-commencement elections under former s 125A**

- (1) This section applies to an entity if, immediately before the commencement—
  - (a) the entity was a third party under former section 106 for a post-commencement election; and
  - (b) former section 125A applied to the entity for the election.
- (2) Within 14 days after the commencement, the entity must give a return under former section 125A(4) for the entity's pre-commencement disclosure period for the post-commencement election.
- (3) For applying former section 125A(4)—
  - (a) a reference to a third party is taken to be a reference to the entity; and

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- (b) a reference to the disclosure period is taken to be a reference to the entity's pre-commencement disclosure period for the post-commencement election; and
  - (c) a reference to the required period is taken to be a reference to the period starting on the day of the commencement and ending 14 days after the commencement.
- (4) New part 9, division 5 applies in relation to the entity as if a reference in the division to part 6 included a reference to this section.
- (5) In this section—
- pre-commencement disclosure period*, for an entity for a post-commencement election, means the period—
- (a) starting when the disclosure period mentioned in former section 125A would have started for the entity for the post-commencement election; and
  - (b) ending immediately before the commencement.

**234 Disclosure period for dedicated accounts under new ss 127AA and 127AB**

- (1) For new sections 127AA and 127AB, the disclosure period for a registered political party that endorses a candidate in a post-commencement election or a relevant third party for a post-commencement election does not include any part of the period occurring before the commencement.
- (2) This section applies despite new section 106A.

**235 Notice of dedicated account under new s 127BA**

- (1) This section applies if, immediately before the commencement—
  - (a) a registered political party had endorsed a candidate for the 2024 quadrennial election; or

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- (b) a person was a candidate for the 2024 quadrennial election.
- (2) New section 127BA applies in relation to the registered political party or candidate as if the party or candidate became a participant in the 2024 quadrennial election on the commencement.
- (3) However, despite new section 127BA(2), the notice under that provision must be given within 14 days after the commencement.
- (4) For applying new section 127BA(4), a reference in that provision to a notice given under new section 127BA is taken to be a reference to a nomination containing information about a candidate's account for a previous election given to the returning officer under former section 27(2) for the previous election.

**236 Notice of endorsement of candidates under new s 135A**

- (1) This section applies in relation to a registered political party if, immediately before the commencement, a candidate in a post-commencement election was endorsed by the party.
- (2) New section 135A(2) applies in relation to the registered political party as if the endorsement of the candidate in the post-commencement election happened on the commencement.
- (3) However, despite new section 135A(2), an event notice under that subsection must be given within 14 days after the commencement.
- (4) In this section—  
*endorsed*, in relation to a candidate by a registered political party, has the meaning given by new section 109G.

**237 Existing records under former s 196**

Former section 196 continues to apply in relation to a record that, immediately before the commencement, was required to

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be kept under that section as if the amending Act had not been enacted.

## **Division 7                      Transitional provisions for Electoral Laws (Restoring Electoral Fairness) Amendment Act 2025**

### **238      Definitions for division**

In this division—

*amending Act* means the *Electoral Laws (Restoring Electoral Fairness) Amendment Act 2025*.

*former*, for a provision of this Act, means the provision as in force from time to time before the commencement.

### **239      Prisoner voting in particular elections**

Despite the amending Act, former sections 17, 19, 64 and 69 continue to apply to a person in relation to an election for which public notice was given under section 25(1) before the commencement.

### **240      Recovery of particular donations**

- (1) This section applies in relation to a political donation that was unlawfully accepted under former section 113B before the commencement.
- (2) Former section 113C continues to apply in relation to the person who accepted the donation, as if section 41 of the amending Act had not commenced.
- (3) For the purpose of this section, former part 6, division 1A continues to apply as if the amendments of that division made by the amending Act had not commenced.

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**241 Proceedings for particular offences**

- (1) This section applies in relation to an offence against former section 194A or 194B committed by a person before the commencement.
- (2) Without limiting the *Acts Interpretation Act 1954*, section 20, a proceeding for the offence may be continued or started, and the person may be convicted of and punished for the offence, as if the amending Act had not commenced.
- (3) Subsection (2) applies despite the Criminal Code, section 11.

## 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** see section 106.

**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**—

- (a) of a registered political party that endorses a candidate in an election—see section 112C(2) and (3); or
- (b) of a candidate in an election—see section 112D(2), (3), (4) and (5); or
- (c) of a group of candidates for an election—see section 112E(2) and (3).

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

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

**bank statement**, for an account with a financial institution, for part 6, see section 106.

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

**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.

***campaign purpose***, for incurring electoral expenditure, for part 6, see section 109B.

***candidate—***

- (a) means a person whose nomination as a candidate for an election has been certified by the returning officer under section 27(3)(a); and
- (b) for part 4, division 2, subdivision 3 and parts 6 and 9—includes another person who—
  - (i) is an elected or appointed councillor at any time during the disclosure period mentioned in section 106A for a candidate; or
  - (ii) has announced or otherwise publicly indicated an intention to be a candidate in the election; or
  - (iii) has otherwise indicated the person's intention to be a candidate in the election, including, for example, by accepting a gift made for the purpose of the election.

***capped expenditure period***, for an election, for part 6, see section 123A.

***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.

***dedicated account***, of a participant in an election, means the account the participant must operate under section 126(2), 127(2), 127AA(2) or 127AB(2) for the election.

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

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

***disclosure period***, for an election, for part 6—

- (a) for a candidate in the election—see section 106A(1); or
- (b) for a registered political party that endorses a candidate in the election—see section 106A(3); or
- (c) for a group of candidates for the election—see section 106A(4); or
- (d) for a third party for the election—see section 106A(5); or
- (e) for an associated entity of a registered political party that endorses a candidate in the election or of a candidate in the election or a group of candidates for the election—see section 106A(6).

***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 company; 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 another person; and
- (f) any transaction entered into by a person with intent to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

**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*** see section 109A.

***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.

***electoral purpose*** means a purpose that relates to an election.

***endorsed***, in relation to a candidate by a registered political party, for part 6, see section 109G.

***expenditure cap***, for an election, in relation to a participant in the election, for part 6, division 4, see section 123B.

***financial controller***, of an associated entity of a registered political party that endorses a candidate in an election, or of a candidate in an election or a group of candidates for an election, for part 6, see section 106.

***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.

***fundraising contribution***, for part 6, see section 107A.

***gift*** see section 107.

***gifted***, for an amount of electoral expenditure incurred, for part 6, see section 109C(1).

***group campaign activity*** see section 183(2).

***group of candidates***, for an election, see section 42(3).

***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.

***individual candidate***, for part 6, see section 106AA.

***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.

***maximum amount***, for an election, for part 6, division 4, see section 123.

***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.

**number of enrolled electors**, for an election, for part 6, division 4, see section 123S(1).

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

**official cash rate** means the Reserve Bank of Australia's cash rate target.

**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.

**participant**, in relation to an election, see section 106AB.

**person acting on behalf of a candidate**, for part 6, see section 111(1).

**person acting on behalf of a group of candidates**, for part 6, see section 111(2).

**place** includes a vehicle.

**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).

***prescribed matter***, in relation to a relevant entity for an election, for part 6, division 5B, see section 127M.

***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.

***recipient***, of a gift or loan, for part 6, see section 106.

***registered***, for a third party in relation to an election, for part 6, see section 106.

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

**registered officer**, of a registered political party, see the *Electoral Act 1992*, schedule 1.

**registered political party** see the *Electoral Act 1992*, schedule 1.

**register of agents**, for part 6, see 106.

**register of political parties** means the register of political parties kept under the *Electoral Act 1992*.

**register of third parties**, for an election, for part 6, see section 106.

**related political party**, for part 6, see section 106.

**relevant day**, for an election, for part 6, division 4, see section 123S(3) and (4).

**relevant details**, for a gift, for part 6, see section 109.

**relevant entity**, for an election, for part 6, division 5B, see section 127L.

**relevant material**, for part 6, see section 106.

**relevant third party**, for an election, for part 6, see section 106.

**reporting period**, for part 6, see section 106.

**required period**, for part 6, see section 106.

**restricted donation**, for part 6, see section 106.

**restricted donation statement** see section 113AB.

**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.

**source**, for part 6—

(a) of a gift—see section 121A(1); or

(b) of a loan—see section 121A(2).

*special postal voter* see section 68(5A).

*spoilt ballot paper* see sections 85(1)(a)(i) and 85A(1)(b).

*sponsorship arrangement*, for part 6, see section 107B.

*third party*, for an election, for part 6, see section 106.

*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.