



ELECTORAL ACT, 1985

No. 77 of 1985

SUMMARY OF PROVISIONS

PART I PRELIMINARY

Section

1. Short title
2. Commencement
3. Repeal
4. Interpretation

PART II ADMINISTRATION

DIVISION I—THE ELECTORAL COMMISSIONER AND DEPUTY ELECTORAL COMMISSIONER

5. The Electoral Commissioner and the Deputy Electoral Commissioner
6. Acting appointments
7. Terms and conditions of office

DIVISION II—THE POWERS AND FUNCTIONS OF THE ELECTORAL COMMISSIONER AND THE DEPUTY ELECTORAL COMMISSIONER

8. Powers and functions of the Electoral Commissioner
9. Delegation
10. Duties of the Deputy Electoral Commissioner

DIVISION III—STAFF OF THE ELECTORAL COMMISSIONER

11. Staff
12. Appointment of staff
13. Candidates and persons holding official positions in political parties not to be electoral officers

PART III ELECTORAL DISTRICTS AND SUBDIVISIONS

DIVISION I—ELECTORAL DISTRICTS

14. Electoral districts

DIVISION II—ELECTORAL SUBDIVISIONS

15. Electoral subdivisions

DIVISION III—DISTRICT RETURNING OFFICERS

16. The district returning officers
17. Duty to assist public

DIVISION IV—DISTRICT POLLING PLACES

18. Polling places

PART IV
ELECTORAL ROLLS

DIVISION I—DISTRICT AND SUBDIVISIONAL ROLLS

19. District and subdivisional rolls

DIVISION II—INFORMATION TO BE CONTAINED IN ROLL

20. Information to be contained on the roll
21. Suppression of elector's address

DIVISION III—REVISION OF THE ROLLS

22. Revision of the rolls
23. Rolls to be kept up to date

DIVISION IV—KEEPING, PRINTING AND INSPECTION OF THE ROLLS

24. Rolls to be kept by computer
25. Printing of rolls
26. Inspection and purchase of rolls

DIVISION V—POWER TO REQUIRE INFORMATION

27. Power to require information

DIVISION VI—JOINT COMMONWEALTH-STATE ARRANGEMENTS

28. Collaboration with the Commonwealth

PART V
ENROLMENT

DIVISION I—ENTITLEMENT TO ENROLMENT

29. Entitlement to enrolment

DIVISION II—CLAIMS FOR ENROLMENT

30. Claims for enrolment
31. Registration of claims

DIVISION III—TRANSFER OF ENROLMENT, ETC.

32. Notifications to be given by an elector

DIVISION IV—OBJECTIONS

33. Right of objection
34. Elector to have opportunity to be heard on objection
35. Determination of objection

PART VI
REGISTRATION OF POLITICAL PARTIES

36. Interpretation
37. Registration of political parties
38. Register of Political Parties
39. Application for registration
40. Order in which applications are to be determined
41. Publication of notice of application
42. Registration
43. Changes to Register
44. Voluntary de-registration
45. De-registration of political party
46. De-registration

PART VII
WRITS FOR ELECTIONS

47. Issue of writ
48. Contents of writ
49. Deferral of election
50. Failure of election

PART VIII
PREPARATIONS FOR AN ELECTION

DIVISION I—NOMINATION

51. Candidates must be nominated
52. Qualifications of candidate
53. Manner in which nomination is to be made
54. Declaration of nominations
55. Proceedings on nomination day
56. Death of candidate after nomination
57. Deposit to be forfeited in certain cases

DIVISION II—BALLOT PAPERS

Ballot Papers for Legislative Council Election

58. Grouping of candidates in Legislative Council election
59. Printing of Legislative Council ballot papers

Ballot Papers for a House of Assembly Election

60. Ballot papers for House of Assembly elections
- Ballot Papers Generally*
61. Form of ballot papers
62. Printing of the names of political parties in ballot papers
63. Voting tickets
64. Photographs of candidates
- DIVISION III—ESTABLISHMENT AND STAFFING OF POLLING BOOTHS
65. Properly staffed polling booths to be provided
66. Certain electoral material to be displayed
- DIVISION IV—SCRUTINEERS
67. Appointment of scrutineers
- DIVISION V—CERTIFIED LIST OF ELECTORS
68. Certified list of electors to be supplied to each returning officer
- PART IX
VOTING
- DIVISION I—ENTITLEMENT TO VOTE
69. Entitlement to vote
70. Errors, etc., in roll not to forfeit entitlement to vote
- DIVISION II—GENERAL PROVISIONS AS TO VOTING
71. Manner of voting
72. Questions to be put to person claiming to vote
73. Issue of voting papers
74. Issue of declaration voting papers by post
75. Fresh ballot paper may be issued where ballot paper spoiled
- DIVISION III—INDICATION OF VOTE
76. Marking of votes on ballot papers
- DIVISION IV—VOTING AT POLLING BOOTHS
77. Times and places of polling
78. Right of elector to receive ballot paper
79. Vote to be marked in private
80. Voter may be accompanied by an assistant in certain cases
81. Voting by elector to whom declaration voting papers have been issued
- DIVISION V—DECLARATION VOTING
82. Declaration vote, how made
83. Taking of declaration votes by electoral visitors
84. Security of ballot boxes
- DIVISION VI—COMPULSORY VOTING
85. Compulsory voting
- DIVISION VII—MISCELLANEOUS
86. Presiding officer may appoint substitute
87. Ballot boxes to be kept securely closed and fastened
88. Adjournment of polling
- PART X
THE SCRUTINY
- DIVISION I—PRELIMINARY
89. Scrutiny
90. Scrutineers
91. Preliminary scrutiny of declaration ballot papers
- DIVISION II—INTERPRETATION AND VALIDITY OF BALLOT PAPERS
92. Interpretation of ballot papers in Legislative Council elections
93. Interpretation of ballot papers in House of Assembly elections
94. Informal ballot papers
- DIVISION III—COUNTING OF VOTES
95. Scrutiny of votes in Legislative Council election
96. Scrutiny of votes in House of Assembly election
- DIVISION IV—RE-COUNT
97. Re-count
- PART XI
THE RETURN OF THE WRITS
98. Return of writ for election of members of the Legislative Council
99. Declaration of poll and return of writs for House of Assembly

PART XII
ADMINISTRATIVE AND JUDICIAL REVIEW
DIVISION I—ADMINISTRATIVE REVIEW

- 100. Reviewable decisions
- 101. Application for review

DIVISION II—DISPUTED ELECTIONS AND RETURNS

- 102. Method of disputing elections
- 103. The Court of Disputed Returns
- 104. Requisites of petition
- 105. Electoral Commissioner to be respondent to petition
- 106. Principles to be observed
- 107. Orders that the Court is empowered to make
- 108. Decisions to be final

PART XIII
OFFENCES

DIVISION I—BRIBERY, UNDUE INFLUENCE, ETC.

- 109. Bribery
- 110. Undue influence
- 111. Interference with political liberty

DIVISION II—ELECTORAL ADVERTISEMENTS, COMMENTARIES AND OTHER MATERIAL

- 112. Printing and publication of electoral advertisements, notices, etc.
- 113. Misleading advertising
- 114. Heading to electoral advertisements
- 115. Size of electoral advertisements
- 116. Published material to identify person responsible for political content

DIVISION III—OFFENCES RELATED TO THE CONDUCT OF AN ELECTION

- 117. Candidates not to take part in elections
- 118. Persons present at polling
- 119. Offender may be removed from polling booth
- 120. Secrecy of vote
- 121. Conduct of officers, scrutineers, etc.
- 122. Cards in polling booth
- 123. Witnessing electoral papers
- 124. Other offences relating to ballot papers, etc.
- 125. Prohibition of canvassing near polling booths
- 126. Prohibition of advocacy of forms of voting inconsistent with this Act
- 127. Failure to transmit claim
- 128. Forging or uttering electoral papers
- 129. Protection of the official mark

DIVISION IV—EMPLOYERS

- 130. Employers to allow employees leave of absence to vote

PART XIV
MISCELLANEOUS

- 131. Signature to electoral paper
- 132. Injunctions
- 133. Disqualification for bribery and undue influence
- 134. Service by post
- 135. Preservation of ballot papers
- 136. Offences committed with connivance of person other than offender
- 137. Summary offences
- 138. Exemption from stamp duty
- 139. Regulations.



ANNO TRICESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1985

No. 77 of 1985

An Act to regulate the conduct of parliamentary elections; to repeal the Electoral Act, 1929; and for other purposes.

[Assented to 6 June 1985]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

- | | |
|-----------------|---|
| Short title. | 1. This Act may be cited as the "Electoral Act, 1985". |
| Commencement. | 2. This Act shall come into operation on a day to be fixed by proclamation. |
| Repeal. | 3. The Electoral Act, 1929, is repealed. |
| Interpretation. | <p>4. (1) In this Act, unless the contrary intention appears—</p> <p>"abbreviation", in relation to the name of a political party, includes an alternative name of the party;</p> <p>"authorized witness" means a person (not being a candidate in an election) who is over or apparently over the age of 18 years;</p> <p>"bribery" means an offence against section 109;</p> <p>"counting centre" means premises at which the scrutiny of ballot papers is being, or is to be, conducted;</p> <p>"declaration ballot paper" means the ballot paper of a voter who makes a declaration vote;</p> <p>"declaration voting papers", in relation to an election, means—</p> <p style="padding-left: 40px;">(a) the ballot paper for the election;</p> <p style="padding-left: 40px;">and</p> |

(b) an envelope endorsed with a declaration to be made by the voter:

“election period”, in relation to an election, means the period commencing on the issue of the writ for the election and expiring at 6 o'clock in the afternoon on polling day:

“elector” means a person whose name appears on a roll as an elector (not being a person under the age of 18 years who is provisionally enrolled) and includes a person whose name should appear on a roll as an elector but has been, by error, omitted from the roll:

“electoral advertisement” means an advertisement containing electoral matter:

“the Electoral Commissioner” means the person for the time being holding, or acting in, the office of the Electoral Commissioner under this Act:

“electoral district” or “district” means—

(a) in relation to a Legislative Council election—the whole of the State;

(b) in relation to a House of Assembly election—a district for the return of a member of the House of Assembly:

“electoral matter” means matter calculated to affect the result of an election:

“electoral paper” means any document or form for use under this Act:

“electoral roll” or “roll” means an electoral roll kept under this Act:

“electoral visitor” means an electoral visitor appointed by the Electoral Commissioner:

“general election” means a general election of members of the House of Assembly:

“the hour of nomination” means 12 o'clock noon on the day fixed by a writ for the nomination:

“how-to-vote card” means a card, in the form of a ballot paper, indicating the manner in which a particular candidate or group of candidates suggests that a vote should be recorded by a voter:

“institution” means—

(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) a prison or other place of confinement;

or

(g) an institution of a prescribed kind,

or any part of an institution as defined above:

- “name”, of a candidate for election, includes a name by which the candidate is generally known:
- “officer” includes any person appointed to an office or position under this Act:
- “ordinary vote” means a vote that is not a declaration vote:
- “organization” means an incorporated or unincorporated association, group or organization (including an association, group or organization that constitutes a branch or division of a larger association, group or organization):
- “political party” means an organization of which an object or activity is the promotion of the election to the House of Assembly or the Legislative Council of a candidate or candidates endorsed by it:
- “polling booth” means a building, structure, vehicle or enclosure or part of a building, structure, vehicle or enclosure, for taking votes at an election:
- “polling place” means a place appointed as a polling place under this Act:
- “registered name”, in relation to a registered political party, means the name of the party, or an abbreviation of the name of the party, entered in the Register of Political Parties under Part VI:
- “registered officer”, in relation to a registered political party, means the person shown on the Register of Political Parties as the registered officer of that party and includes a person nominated by that registered officer as his deputy:
- “registered political party” means a political party registered under Part VI:
- “registered voting ticket” means a voting ticket lodged under section 63:
- “Register of Political Parties” means the register of political parties kept under Part VI:
- “remote subdivision” means a subdivision declared by the Electoral Commissioner under section 15 to be a remote subdivision:
- “returning officer” includes an assistant returning officer:
- “scrutiny” of ballot papers includes the counting of the votes recorded on ballot papers:
- “subdivision” means a subdivision of a district and, in relation to a district that is not divided into subdivisions, means the whole of the district:
- “to publish” includes to authorize, cause or permit to be published:
- “undue influence” means an offence against section 110:
- “voting papers”, in relation to an election, means any ballot paper or declaration voting papers required by an elector for the purpose of voting at the election:
- “voting ticket” means a written statement of a particular order in which a voter might allocate preferences in an election, being a statement for use under this Act in interpreting the votes of voters who—

(a) in relation to a Legislative Council election—choose to vote in accordance with the voting ticket;

(b) in relation to a House of Assembly election—do not indicate an order of preference covering all candidates:

“voting ticket square” means a square printed on a ballot paper for a Legislative Council election above the name of a candidate or the names of candidates forming a group—indicating that a voting ticket or voting tickets have been registered in relation to that candidate or group:

“writ” means a writ for an election.

(2) For the purposes of this Act, an organization endorses a candidate in an election if a part of the organization, or some other organization of which the organization is part, endorses the candidate in the election.

PART II ADMINISTRATION

DIVISION I—THE ELECTORAL COMMISSIONER AND DEPUTY ELECTORAL COMMISSIONER

5. (1) For the purposes of this Act, there shall be—

(a) an Electoral Commissioner;

and

(b) a Deputy Electoral Commissioner.

The Electoral
Commissioner
and the Deputy
Electoral
Commissioner.

(2) The Electoral Commissioner and the Deputy Electoral Commissioner shall each be appointed by the Governor.

(3) Neither the Electoral Commissioner nor the Deputy Electoral Commissioner shall be an officer of the Public Service of the State.

(4) Neither the Electoral Commissioner nor the Deputy Electoral Commissioner shall, without the consent of the Minister, engage in any remunerative employment outside the functions and duties of their respective offices.

6. (1) If—

(a) the office of Electoral Commissioner is temporarily vacant or the Electoral Commissioner is absent from the duties of his office;

and

(b) the office of Deputy Electoral Commissioner is vacant or the Deputy Electoral Commissioner is unavailable to act in the office of the Electoral Commissioner,

Acting
appointments.

the Governor may appoint a suitable person (who may, but need not, be an officer of the Public Service of the State) to act in the office of the Electoral Commissioner.

(2) If the office of Deputy Electoral Commissioner is temporarily vacant, or the Deputy Electoral Commissioner is absent from the duties of his office, the Governor may appoint a suitable person (who may, but need not, be an

officer of the Public Service of the State) to act in the office of Deputy Electoral Commissioner.

Terms and
conditions of
office.

7. (1) Subject to subsection (2), the terms and conditions on which the Electoral Commissioner and the Deputy Electoral Commissioner hold office shall, subject to this Act, be as determined by the Governor.

(2) The respective salaries and allowances of the Electoral Commissioner and the Deputy Electoral Commissioner shall be as determined by the Remuneration Tribunal.

(3) A rate of salary determined to be payable to the Electoral Commissioner or the Deputy Electoral Commissioner shall not be reduced during his term of office.

(4) The terms and conditions on which a person is appointed to act in the office of the Electoral Commissioner or the Deputy Electoral Commissioner shall be as determined by the Governor.

(5) The Electoral Commissioner and Deputy Electoral Commissioner are employees within the meaning and for the purposes of the Superannuation Act, 1974.

(6) A person appointed as Electoral Commissioner or Deputy Electoral Commissioner shall be so appointed for a term expiring on the day on which he attains the age of 65 years.

(7) The Governor may remove the Electoral Commissioner or Deputy Electoral Commissioner from office on presentation of an address from both Houses of Parliament praying for his removal.

(8) The Governor may suspend the Electoral Commissioner or Deputy Electoral Commissioner from office on the ground of incompetence or misbehaviour and, in the event of such a suspension—

(a) a full statement of the reason for the suspension shall be laid before Parliament within 3 sitting days if Parliament is then in session or, if not, within 3 sitting days of the commencement of the next session of Parliament;

and

(b) if within 12 sitting days of the statement being laid before Parliament no address praying for removal of the Electoral Commissioner or Deputy Electoral Commissioner is presented to the Governor under subsection (7), he shall be restored to office, but if such an address is presented, he may be removed from office.

(9) The office of the Electoral Commissioner or Deputy Electoral Commissioner becomes vacant if—

(a) he dies;

(b) he resigns his office by written notice addressed to the Governor, or his term of office expires;

(c) having reached the age of 55 years, he retires from office by written notice addressed to the Governor;

(d) he is removed from office under subsection (7) or (8);

(e) he is convicted of an indictable offence or sentenced to imprisonment for an offence;

- (f) he becomes a member, or a candidate for election as a member, of the Parliament of the State, the Commowalth, or any other State of the Commonwealth;
- (g) he becomes, in the opinion of the Governor, physically or mentally incapable of satisfactorily carrying out his functions and duties.

(10) Except as provided in this section, neither the Electoral Commissioner nor the Deputy Electoral Commissioner shall be removed or suspended from office, nor shall the office of the Electoral Commissioner or the Deputy Electoral Commissioner become vacant.

DIVISION II—THE POWERS AND FUNCTIONS OF THE ELECTORAL COMMISSIONER AND THE DEPUTY ELECTORAL COMMISSIONER

8. (1) The Electoral Commissioner—

- (a) is responsible to the Minister for the administration of this Act;
- (b) is responsible for the proper conduct of elections in accordance with this Act;
- (c) is responsible for the carrying out of appropriate programmes of publicity and public education in order to ensure that the public is adequately informed of their democratic rights and obligations under this Act;
- (d) is empowered—
- (i) to conduct and promote research into electoral matters;
 - (ii) to publish the results of such research and other material on electoral matters.

Powers and functions of the Electoral Commissioner.

(2) The Electoral Commissioner—

- (a) has the powers and functions conferred on or assigned to him under this Act or any other Act;
- and
- (b) may, with the permission of the Minister, carry out any other statutory or non-statutory functions on terms and conditions approved by the Minister.

9. (1) The Electoral Commissioner may delegate any of his powers or functions under this or any other Act.

Delegation.

(2) A delegation under this section—

- (a) may be absolute or conditional;
- (b) does not prevent the Electoral Commissioner from acting personally in any matter;
- and
- (c) is revocable at will.

10. The Deputy Electoral Commissioner—

- (a) shall perform such duties as the Electoral Commissioner may direct;

Duties of the Deputy Electoral Commissioner.

and

(b) shall, if the office of the Electoral Commissioner is temporarily vacant or the Electoral Commissioner is absent or unavailable to discharge the duties of his office, act in the office of the Electoral Commissioner.

DIVISION III—STAFF OF THE ELECTORAL COMMISSIONER

Staff.

11. The Electoral Commissioner shall have such staff as is necessary for the proper administration of this Act.

Appointment of staff.

12. (1) An officer may be appointed to the staff of the Electoral Commissioner in pursuance of the Public Service Act, 1967.

(2) The Electoral Commissioner—

(a) may appoint such officers as are required for the purposes of an election;

and

(b) may appoint, on a temporary basis, officers who are otherwise required for the administration of this Act.

(3) An officer appointed under subsection (2) shall be remunerated in accordance with a scale of fees and allowances fixed from time to time by the Minister.

Candidates and persons holding official positions in political parties not to be electoral officers.

13. (1) No candidate or person holding an official position in a political party shall be appointed as an officer.

(2) If an officer becomes a candidate, or accepts an official position in a political party, his office or position shall be vacated.

PART III

ELECTORAL DISTRICTS AND SUBDIVISIONS

DIVISION I—ELECTORAL DISTRICTS

Electoral districts.

14. (1) For the purposes of this Act—

(a) the whole of the State constitutes the Legislative Council electoral district;

and

(b) the State is, subject to subsection (3), divided into House of Assembly electoral districts in accordance with the Constitution Act, 1934.

(2) Each House of Assembly electoral district constitutes a division of the Legislative Council electoral district.

(3) Subject to subsection (4), where an electoral redistribution is made under the Constitution Act, 1934, the redistribution shall, for the purposes of subsection (1), be deemed to take effect when it becomes operative within the meaning of the Constitution Act, 1934.

(4) Where a by-election is to be held in a House of Assembly electoral district after an electoral redistribution becomes operative, but before it takes effect, under the Constitution Act, 1934—

(a) the district shall be taken to be as it existed at the last general election of members of the House of Assembly;

and

(b) electoral rolls shall be prepared for the purposes of the by-election accordingly.

(5) In this section—

“electoral redistribution” means an order of the Electoral Districts Boundaries Commission under the Constitution Act, 1934, dividing the State into House of Assembly electoral districts.

DIVISION II—ELECTORAL SUBDIVISIONS

15. (1) The Electoral Commissioner may, by notice published in the *Gazette*— Electoral subdivisions.

(a) divide an electoral district into subdivisions;

(b) alter the boundaries of a subdivision;

or

(c) abolish a subdivision.

(2) The Electoral Commissioner may appoint an electoral registrar in respect of one or more subdivisions.

(3) The Electoral Commissioner may, by notice published in the *Gazette*—

(a) declare a particular subdivision to be a remote subdivision;

or

(b) revoke a declaration under paragraph (a) .

DIVISION III—DISTRICT RETURNING OFFICERS

16. (1) There shall be a returning officer for the Legislative Council district. The district returning officers.

(2) In respect of each House of Assembly district there shall be—

(a) a returning officer (who shall be deputy returning officer for the corresponding Legislative Council division);

and

(b) such assistant returning officers as the Electoral Commissioner thinks fit.

17. Each returning officer shall keep a supply of the forms required for the purposes of this Act, and shall assist the public in their proper use. Duty to assist public.

DIVISION IV—DISTRICT POLLING PLACES

18. (1) Each district shall have such polling places as the Electoral Commissioner thinks fit. Polling places.

(2) The Electoral Commissioner may, by notice published in the *Gazette*—

(a) appoint such polling places for a district as he thinks fit:

or

(b) abolish a polling place.

(3) No polling place shall be abolished during an election period unless the Electoral Commissioner is of the opinion that it would be impracticable to take the poll at that polling place.

(4) When a writ is issued for an election in a district, the Electoral Commissioner shall, between the date of the issue of the writ and polling day, give public notice by advertisement in a newspaper circulating generally throughout the State of the position of all polling places for the district.

PART IV ELECTORAL ROLLS

DIVISION I—DISTRICT AND SUBDIVISIONAL ROLLS

District and
subdivisional
rolls.

19. (1) There shall be an electoral roll for each district.

(2) The electoral roll for a district shall consist of the rolls for the various divisions or subdivisions of the district.

DIVISION II—INFORMATION TO BE CONTAINED IN ROLLS

Information to be
contained on the
roll.

20. (1) Subject to this section, a roll shall contain the following information in relation to each elector enrolled on that roll:

(a) the surname;

(b) the Christian or given names;

(c) the address of the place of residence;

and

(d) such further particulars as may be prescribed.

(2) The place of residence of an elector whose place of residence is suppressed from the roll under this Division shall not be shown on a roll.

Suppression of
elector's address.

21. Where an electoral registrar is satisfied that the inclusion on a roll of the address of an elector's place of residence would place at risk the personal safety of the elector, a member of the elector's family or any other person, he may suppress the address from the roll.

DIVISION III—REVISION OF THE ROLLS

Revision of the
rolls.

22. Where—

(a) a new district or a new subdivision is created;

or

(b) the boundaries of an existing district or subdivision are altered.

the rolls shall be revised accordingly.

23. The electoral registrars shall keep the rolls under revision by— Rolls to be kept up to date.
- (a) adding the names of electors entitled to be enrolled in pursuance of claims for enrolment under this Act;
 - (b) removing the names of deceased electors;
 - (c) correcting mistakes and omissions in the rolls;
 - (d) registering changes of name;
 - (e) bringing up to date particulars appearing in the rolls.

DIVISION IV—KEEPING, PRINTING AND INSPECTION OF THE ROLLS

24. The rolls may be kept by computer. Rolls to be kept by computer.
25. A roll shall be printed whenever the Electoral Commissioner or the Minister so directs. Printing of rolls.
26. (1) Copies of the latest prints of the rolls shall be available for inspection without fee— Inspection and purchase of rolls.
- (a) at the office of the Electoral Commissioner;
 - (b) at the offices of the electoral registrars;
 - (c) at the offices of the returning officers;
- and
- (d) at such other places as the Electoral Commissioner determines.
- (2) The Electoral Commissioner shall make copies of the latest prints of the rolls available for purchase at prices determined by him.

DIVISION V—POWER TO REQUIRE INFORMATION

27. (1) The Electoral Commissioner may, by notice in writing, require— Power to require information.
- (a) any officer in the Public Service of the State;
 - (b) a local governing body, or any officer of a local governing body;
 - (c) the occupier of residential premises;
- or
- (d) the proprietor or person in charge of an institution,
- to provide him with information that he requires in connection with the preparation, maintenance or revision of the rolls.
- (2) A person who fails to provide information required under this section within the time allowed in the notice shall be guilty of an offence and liable to a penalty not exceeding \$200.

DIVISION VI—JOINT COMMONWEALTH-STATE ARRANGEMENTS

28. (1) The Governor may arrange with the Governor-General of the Commonwealth— Collaboration with the Commonwealth.
- (a) for the preparation, alteration or revision of the rolls;
- or

(b) for the carrying out of functions related to the preparation, alteration or revision of the rolls,

jointly by the Commonwealth and the State.

(2) Where any such arrangement is in force, the rolls may contain—

(a) names and particulars of persons who are enrolled as electors of the Commonwealth but not as electors of the State, provided that those persons who are not enrolled as electors for the State are clearly differentiated;

(b) distinguishing marks against the names of persons enrolled as State electors but not as Commonwealth electors to show that they are not enrolled as Commonwealth electors;

(c) any other particulars in addition to those required by this Act to be included in the rolls,

and those names, marks and particulars shall not, for the purposes of this Act, be regarded as part of the rolls.

PART V ENROLMENT

DIVISION I—ENTITLEMENT TO ENROLMENT

Entitlement to
enrolment.

29. (1) A person is entitled to be enrolled on the roll for a subdivision if—

(a) he has attained the age of 18 years;

(b) he is—

(i) an Australian citizen;

or

(ii) a British subject who was, at some time within the period of 3 months commencing on the 26th day of October, 1983, enrolled under the repealed Act as an Assembly elector or enrolled on an electoral roll maintained under a law of the Commonwealth or a Territory of the Commonwealth;

(c) his principal place of residence is within the subdivision and he has lived in the subdivision for 1 month preceding the date of his claim for enrolment;

and

(d) he is not of unsound mind.

(2) A person is entitled to provisional enrolment on the roll for a subdivision if—

(a) he has attained the age of 17 years;

and

(b) he would, if he had attained the age of 18 years, have been entitled to be enrolled on the roll for that subdivision under subsection (1).

(3) No person is entitled to be at the same time enrolled for more than one subdivision.

(4) Where a person is imprisoned, it shall be presumed, for the purposes of this Act, that the prisoner's principal place of residence is—

(a) the place that constituted the prisoner's principal place of residence immediately before the commencement of the imprisonment;

(b) if—

(i) the place of residence referred to in paragraph (a) was owned wholly or in part by the prisoner, or was the place of residence of a parent, spouse or child of the prisoner, at the commencement of the imprisonment;

(ii) the prisoner, or the parent, spouse or child of the prisoner, acquires during the term of the imprisonment some other place of residence in lieu of the place of residence referred to in paragraph (a);

(iii) the prisoner intends to reside at that new place of residence on release from prison;

(iv) the prisoner elects to be enrolled in respect of that place, that place;

or

(c) if—

(i) there is no place of residence in the State in respect of which the prisoner may be enrolled under paragraph (a) or (b);

and

(ii) the prisoner has been sentenced to imprisonment for 2 years or more—

the place at which the prisoner is imprisoned.

(5) A prisoner shall, for the purposes of the provisions of this Act relating to enrolment, and entitlement to vote, be deemed to reside at the place that constitutes the prisoner's principal place of residence under subsection (4).

DIVISION II—CLAIMS FOR ENROLMENT

30. (1) Except as otherwise provided in this Act, the name of an elector shall not be added to a roll except in pursuance of a claim for enrolment or the transfer of enrolment. Claims for enrolment.

(2) A claim for enrolment or the transfer of enrolment—

(a) must be in a form approved by the Electoral Commissioner;

(b) must be made to the appropriate electoral registrar;

and

(c) must be signed and attested as required by the Electoral Commissioner.

Registration of
claims.

31. (1) Where a claim for enrolment or transfer of enrolment is received at the office of an electoral registrar, the electoral registrar shall—

(a) if satisfied of the validity of the claim—enrol the claimant or transfer the enrolment of the claimant, in accordance with the claim;

or

(b) if not satisfied of the validity of the claim—reject the claim.

(2) No enrolment shall—

(a) be made on the roll for a subdivision;

or

(b) be transferred from or to the roll for a subdivision.

on the basis of a claim received at the office of an electoral registrar between the time on which rolls for an election in the relevant district close and polling day for that election.

(3) Where a claim is rejected, the electoral registrar shall notify the claimant in writing—

(a) of the rejection of the claim;

(b) of the reasons for its rejection;

and

(c) of the claimant's rights under this Act to have the decision reviewed.

DIVISION III—TRANSFER OF ENROLMENT, ETC.

Notifications to
be given by an
elector.

32. (1) An elector whose principal place of residence changes from one subdivision to another shall, within 21 days of becoming entitled to be enrolled for that other subdivision, notify the electoral registrar for the subdivision in which the principal place of residence is currently situated of the address of the principal place of residence.

(2) An elector whose principal place of residence changes from one address to another within the same subdivision shall, within 21 days of the change, notify the appropriate electoral registrar of the address of the elector's current principal place of residence.

(3) An elector who fails, without proper excuse, to give a notification under this section shall be guilty of an offence and liable to a penalty not exceeding \$50.

(4) Proceedings for an offence against subsection (3) shall not be commenced after an appropriate notification has been given.

DIVISION IV—OBJECTIONS

Right of
objection.

33. (1) Any elector may object to—

(a) the enrolment of a particular person as an elector;

or

(b) the enrolment of a particular person on the roll for a particular subdivision.

(2) If an electoral registrar is of the opinion that a person whose name appears on a roll for a subdivision—

(a) should not be enrolled as an elector;

or

(b) should not be enrolled on the roll for that subdivision.

he shall object to that enrolment.

(3) An objection—

(a) must be in a form approved by the Electoral Commissioner;

(b) must set out the grounds on which the objection is made;

and

(c) in the case of an objection under subsection (1)—must be accompanied by a deposit of 2 dollars.

(4) A deposit under subsection (3) (c) shall be returned to the objector on determination of the objection unless the electoral registrar is of the opinion that the objector had no reasonable grounds for making the objection, in which case it shall be forfeited to the Crown.

34. (1) Subject to subsection (2), where an objection is made under this Division, the electoral registrar shall afford the person to whose enrolment the objection relates a reasonable opportunity to answer the objection.

Elector to have opportunity to be heard on objection.

(2) If, in the opinion of the electoral registrar, an objection is frivolous or vexatious, he may reject the objection without notifying the person to whose enrolment the objection relates.

35. (1) When a person has been afforded a reasonable opportunity to answer an objection under this Division, the electoral registrar may, after considering the answer (if any) made to the objection—

Determination of objection.

(a) reject the objection;

or

(b) uphold the objection, remove the name of that person from the subdivision roll and, if it appears from the circumstances of the case that that person should be enrolled for some other subdivision, transfer the name of that person to the roll for the appropriate subdivision.

(2) No name shall be removed from a roll in pursuance of this section between the time at which the rolls for an election in the relevant district close and polling day for that election.

(3) Where a decision is made on an objection under this section, the electoral registrar shall give written notice to the person to whose enrolment objection is taken and, if the objection was not made by the electoral registrar, the objector, of—

(a) the decision made on the objection;

(b) the reasons for that decision;

and

(c) (where applicable) the rights of the person to whom the notice is given to have the decision reviewed.

PART VI

REGISTRATION OF POLITICAL PARTIES

Interpretation.

36. (1) In this Part, unless the contrary intention appears—

“eligible political party” means—

(a) a parliamentary party;

or

(b) a political party, other than a parliamentary party, that has at least 150 members;

“parliamentary party” means a political party at least one member of which is a member of—

(a) the Parliament of the Commonwealth;

(b) the Parliament of a State;

(c) the Legislative Assembly of the Northern Territory of Australia;

or

(d) the Australian Capital Territory House of Assembly;

“secretary”, in relation to a political party, means the secretary or chief administrative officer (however described) of the party.

(2) For the purposes of this Part, two political parties shall be taken to be related if—

(a) one is a part of the other;

or

(b) both are parts of the same political party.

(3) For the purposes of this Part, a person shall be taken to be a member of a political party if he is a member of a related political party.

Registration of political parties.

37. Subject to this Part, an eligible political party may be registered under this Part.

Register of Political Parties.

38. (1) The Electoral Commissioner shall establish and maintain a register, to be known as the Register of Political Parties, containing a list of the political parties that are registered under this Part.

(2) The Register shall be open for public inspection, without fee, during ordinary office hours, at the principal office of the Electoral Commissioner.

Application for registration.

39. (1) An application for the registration of an eligible political party may be made to the Electoral Commissioner by the secretary of the party, or any other person authorized by the party to make the application.

(2) An application for the registration of an eligible political party must be in writing, signed by the applicant, and must—

(a) set out the name of the party;

(b) if the party wishes to be able to use an abbreviation of its name for the purposes of this Act—set out that abbreviation;

(c) set out the name and address of the person who is to be the registered officer of the party for the purposes of this Act and contain a specimen signature of that person;

(d) set out the name and address of the applicant and particulars of the capacity in which the applicant makes the application;

and

(e) be accompanied by a copy of the constitution of the party.

40. (1) Subject to this section, applications for registration of political parties shall be determined in the order in which they are received by the Electoral Commissioner. Order in which applications are to be determined.

(2) If within the period of 3 months immediately following the commencement of this Part applications are received by the Electoral Commissioner for registration of parliamentary and other political parties, the applications in respect of parliamentary parties shall be determined before the others.

41. (1) Where an application for registration is lodged with the Electoral Commissioner, the Electoral Commissioner shall publish notice of the application in the *Gazette* and in a newspaper circulating generally in the State. Publication of notice of application.

(2) A notice under subsection (1) in relation to an application shall—

(a) set out—

(i) particulars of the name of the party and of any abbreviation of that name that the party desires to use for the purposes of this Act;

and

(ii) the name of the applicant;

and

(b) invite any elector who desires to object to the application to submit a written objection, containing particulars of the grounds of the objection, to the Electoral Commissioner within 1 month after the date of the publication of the notice in the *Gazette*.

(3) An objection submitted to the Electoral Commissioner in response to an invitation under subsection (2)—

(a) must be signed by the objector;

and

(b) must set out the postal address of the objector.

42. (1) After considering all objections to an application for registration of a political party submitted under this Part, the Electoral Commissioner shall determine the application. Registration.

(2) An application for the registration of a political party shall be refused if, in the opinion of the Electoral Commissioner, the name of the party or the abbreviation of its name (if any) that it wishes to be registered—

(a) comprises more than 6 words;

(b) is obscene;

(c) is the name, or is an abbreviation or acronym of the name, of another political party (not being a related political party) that is a parliamentary party or a registered political party;

(d) so nearly resembles the name, or an abbreviation or acronym of the name, of another political party (not being a related political party) that is a parliamentary party or a registered political party that it is likely to be confused with or mistaken for that name, abbreviation or acronym;

or

(e) comprises the words "Independent Party" or comprises or contains the word "Independent" and—

(i) the name, or an abbreviation or acronym of the name, of a parliamentary party or a registered political party;

or

(ii) matter that so nearly resembles the name, or an abbreviation or acronym of the name, of a parliamentary party or a registered political party that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym.

(3) An application for the registration of a political party may be refused if, in the opinion of the Electoral Commissioner, the name of the party, or the abbreviation (if any) of the name, that it wishes to be registered, is the name, or an abbreviation or acronym of the name, of a prominent public body, or so nearly resembles the name, or an abbreviation or acronym of the name, of a prominent public body that it is likely to be confused with that name, abbreviation or acronym.

(4) Where a writ for an election has been issued, a political party shall not be registered during the election period.

(5) Where the Electoral Commissioner decides that a political party should be registered, he shall—

(a) register the party by entering in the Register—

(i) the name of the party;

(ii) if an abbreviation of the name of the party was set out in the application—that abbreviation;

and

(iii) the name and address of the person who has been nominated as the registered officer of the party for the purposes of this Act;

(b) give written notice to the applicant that he has registered the party;

(c) if any person or persons submitted objections to the application—give written notice to the objector or objectors that he has registered the party, setting out in the notice to each objector the reasons for rejecting the objection;

and

(d) publish in the *Gazette* notice of the registration of the party.

(6) Where the Electoral Commissioner decides that an application for the registration of a political party should be refused, he shall give the applicant written notice of—

(a) the refusal;

(b) the reasons for the refusal;

and

(c) the rights of the applicant to have the decision of the Electoral Commissioner reviewed.

43. (1) Where a political party is registered under this Part, an application may be made to the Electoral Commissioner, by the registered officer of the party, or any other person authorized by the party to make the application, to change the Register by—

Changes to Register.

(a) changing the name of the party to a name specified in the application;

(b) if an abbreviation of the name of the party is entered in the Register—changing that abbreviation to an abbreviation specified in the application;

(c) if an abbreviation of the name of the party is not entered in the Register—entering in the Register an abbreviation of the name of the party, being an abbreviation specified in the application.

(2) An application under subsection (1) shall be dealt with in the same way and determined by reference to the same principles as an application for registration of a political party.

(3) Where a registered political party desires to change its registered officer or the address of its registered officer as shown in the Register, it may, by notice signed by the secretary of the party, inform the Electoral Commissioner of the desired change and the Register shall be altered accordingly.

44. (1) A political party that is registered under this Part shall be de-registered by the Electoral Commissioner if an application for de-registration is made to the Electoral Commissioner by the registered officer or some other person authorized by the party to make the application.

Voluntary de-registration.

(2) An application under subsection (1) must—

(a) be in writing, signed by the applicant;

and

(b) set out the name and address of the applicant and particulars of the capacity in which he makes the application.

(3) Where a political party is de-registered under subsection (1), that party, or a party that has a name that so nearly resembles the name of the de-registered party that it is likely to be confused with or mistaken for that name, is ineligible for registration under this Part until after the general election next following the de-registration.

45. (1) If the Electoral Commissioner is satisfied on reasonable grounds that—

De-registration of political party.

(a) a political party registered under this Part has ceased to exist (whether by amalgamation with another political party or otherwise);

(b) a political party so registered, not being a parliamentary party, has ceased to have at least 150 members;

(c) a political party so registered, not being a parliamentary party, has not at either of the last 2 general elections for the House of Assembly, or a simultaneous Legislative Council election, endorsed a candidate for election;

or

(d) the registration of a political party was obtained by fraud or misrepresentation,

the Electoral Commissioner may de-register the party.

(2) A political party shall not be de-registered under this section unless the Electoral Commissioner has, by notice in writing addressed to the registered officer of the party—

(a) informed the registered officer of his intention to de-register the party;

and

(b) allowed the registered officer a reasonable opportunity to show cause why the party should not be de-registered.

De-registration.

46. (1) Where a writ for an election has been issued, a political party shall not be de-registered under this Part during the election period.

(2) Where a political party is de-registered under this Part, the Electoral Commissioner shall cause the particulars on the Register that relate to that party to be cancelled.

PART VII

WRITS FOR ELECTIONS

Issue of writ.

47. (1) Subject to subsection (2), the Governor is the sole authority by whom a writ for an election may be issued.

(2) If—

(a) a casual vacancy in the membership of the House of Assembly occurs;

or

(b) an election to fill a vacancy in the membership of the House of Assembly is declared void by the Court of Disputed Returns,

the Speaker of the House of Assembly shall issue a writ for a by-election.

(3) Where a writ for an election is issued, it shall, for the purposes of this Act, be presumed that the writ was issued at 1 minute past midnight on the date of the issue of the writ.

Contents of writ.

48. (1) A writ must be addressed to the Electoral Commissioner.

(2) A writ must fix—

(a) the date and time for the close of the rolls;

and

(b) the date for—

- (i) the nomination;
- (ii) the polling;
- and
- (iii) the return of the writ.

(3) The date fixed for the close of the rolls must be a date falling not less than 7 days nor more than 10 days after the date of the issue of the writ.

(4) The date fixed for the nomination must be a date falling not less than 3 days nor more than 14 days after the date fixed for the close of the rolls.

(5) The date fixed for the polling must be a Saturday falling not less than 14 days nor more than 30 days after the date fixed for the nomination.

(6) In the case of a general election for the House of Assembly—

- (a) a single writ may be issued in respect of all elections in all House of Assembly districts;
- (b) irrespective of whether a single writ is issued, the same day must be fixed for polling in each district;
- (c) if more than one writ is issued, all writs must be returnable on the same day.

(7) As soon as practicable after the issue of a writ for an election—

- (a) its terms must be advertised by the Electoral Commissioner in a newspaper circulating throughout the State;
- and
- (b) the Electoral Commissioner shall notify all returning officers affected by the writ of its terms.

49. (1) Notwithstanding any other provision of this Act, the person who issued a writ for an election may, in order to meet a difficulty that has arisen in relation to the conduct of the election, by notice published in a newspaper circulating generally throughout the State, defer—

Deferral of election.

- (a) the date and time for the close of the rolls;
- (b) the date for—

- (i) the nomination;
- (ii) the polling;
- or
- (iii) the return of the writ.

(2) A date or time fixed by notice under subsection (1) shall be deemed to have been validly fixed by the writ.

(3) A deferment shall not be granted under subsection (1) if the effect of the deferment would be to postpone polling by more than 21 days from the date originally fixed by the writ.

50. (1) Whenever an election wholly or partially fails, a new writ shall forthwith be issued for a supplementary election.

Failure of election.

(2) An election shall be deemed to have wholly failed if no candidate is nominated or returned as elected.

(3) A Legislative Council election shall be deemed to have partially failed if one or more candidates are returned as elected but not the full number required to be elected.

(4) A supplementary election shall, unless more than 3 months have elapsed between the date fixed for the return of the writ for the election that failed and the date of the writ for the supplementary election, be held on the same rolls as were prepared for the earlier election.

PART VIII PREPARATIONS FOR AN ELECTION

DIVISION I—NOMINATION

Candidates must be nominated.

51. No person is capable of being elected as a member of the House of Assembly or the Legislative Council unless duly nominated for election.

Qualifications of candidate.

52. (1) A person is not qualified to be a candidate for election as a member of the House of Assembly or the Legislative Council unless he is an elector.

(2) Where two or more elections are to be held under this Act on the same day, a person is not entitled to be a candidate in more than one of those elections and, if upon the declaration of nominations the same person is nominated as a candidate in more than one of those elections, each of those nominations shall be invalid.

Manner in which nomination is to be made.

53. (1) A nomination may be made at any time after the issue of the writ for the election and before the hour of nomination by lodging a duly completed nomination paper at the office of the appropriate district returning officer together with a deposit of the prescribed amount in cash or a banker's cheque.

(2) A nomination paper—

- (a) must be in a form approved by the Electoral Commissioner;
 - (b) must be signed by 2 electors enrolled for the relevant district;
 - (c) must contain a statement, signed by the candidate, to the effect that he consents to stand as a candidate in the election;
- and
- (d) must contain a declaration, signed by the candidate, to the effect that he is qualified to stand as a candidate in the election.

(3) A nomination is not invalid by reason of a formal defect or error if the provisions of this Act have been substantially complied with.

(4) If a nominated candidate, by notice in writing lodged with the appropriate district returning officer before the hour of nomination, withdraws his consent to stand as a candidate in an election, the nomination is revoked and the candidate's deposit shall be returned.

Declaration of nominations.

54. (1) The returning officer for each district shall, at the hour of nomination, attend at his office, and shall there publicly produce all nomi-

nation papers received by him, and declare the names and addresses of all candidates duly nominated for the election in that district.

(2) The returning officer may, with the concurrence of the Electoral Commissioner, reject a nomination if in the opinion of the returning officer the name under which the candidate is nominated—

(a) is obscene;

(b) is frivolous;

or

(c) has been assumed for an ulterior purpose.

(3) Where a nomination is to be rejected under subsection (2), the returning officer shall, if practicable, give the nominee sufficient notice of the proposed rejection to enable the withdrawal of the nomination and the making of a fresh nomination under a different name before the hour of nomination.

55. (1) In the case of a Legislative Council election, if the number of candidates nominated is not greater than the number of candidates required to be elected, the returning officer shall declare the candidate or candidates nominated duly elected.

Proceedings on nomination day

(2) In the case of a House of Assembly election, if one candidate only is nominated, the returning officer shall declare that candidate duly elected.

(3) If, in any election, the number of candidates nominated is greater than the number required to be elected, the proceedings shall, subject to this Act, stand adjourned to polling day.

56. (1) If after the nominations for an election for the Legislative Council have been declared, and before polling day, two or more candidates die, the election shall be deemed to have wholly failed.

Death of candidate after nomination.

(2) If after the nominations for an election for the House of Assembly have been declared, and before polling day, any candidate dies, the election shall be deemed to have wholly failed.

57. (1) The deposit made by or on behalf of a candidate shall be retained pending the election, and after the election shall be returned to the candidate, or to some person authorized to receive it, if—

Deposit to be forfeited in certain cases.

(a) the candidate is elected;

(b) the total number of votes polled in the candidate's favour as first preference votes exceeds 4 per cent of the total number of formal votes cast in the election;

or

(c) where the candidate is a member of a group, the total number of votes polled in favour of members of the group as first preference votes exceeds 4 per cent of the total number of formal votes cast in the election,

but otherwise the deposit shall, subject to subsection (2), be forfeited to the Crown.

(2) If a candidate dies before polling day, his deposit shall be returned to his personal representative.

DIVISION II—BALLOT PAPERS

Ballot Papers for a Legislative Council Election

Grouping of candidates in Legislative Council election.

58. (1) Where two or more candidates in a Legislative Council election apply under this section to have their names grouped together on the ballot paper, the names of those candidates shall be grouped together on the ballot paper.

(2) An application under subsection (1)—

- (a) must be in a form approved by the Electoral Commissioner;
- (b) must be signed by all the candidates who are to be included in the group;
- (c) must set out the order in which the names of the candidates are to be included in the group;

and

- (d) must be received by the returning officer for the Legislative Council not later than the hour of nomination.

(3) A candidate is not entitled to have his name included in more than one group.

Printing of Legislative Council ballot papers.

59. (1) In printing the ballot papers to be used in a Legislative Council election—

- (a) the names of candidates included in groups shall be printed in groups on the ballot papers before the names of candidates not included in groups;
- (b) the order of the groups in the ballot papers shall be determined by lot;
- (c) the order of the names of the candidates whose names are not included in any group shall be determined by lot;
- (d) where similarity in the names of two or more candidates is likely to cause confusion, the names of those candidates may be arranged with such description or addition as will distinguish them from one another;

and

- (e) a square shall be printed opposite the name of each candidate.

(2) Where a voting ticket, or voting tickets, have been lodged under this Division on behalf of an individual candidate or a group of candidates, an additional square shall be printed on the ballot paper above the name of the candidate, or the names of the candidates forming the group, in order to indicate that a voting ticket or voting tickets have been registered in relation to the candidate or group.

Ballot Papers for a House of Assembly Election

Ballot papers for House of Assembly elections.

60. In printing the ballot papers to be used in a House of Assembly election—

- (a) the order of the names of the candidates in the ballot papers shall be determined by lot;
- (b) where similarity in the names of two or more candidates is likely to cause confusion, the names of those candidates may be

arranged with such description or addition as will distinguish them from one another;

and

(c) a square shall be printed opposite the name of each candidate.

Ballot Papers Generally

61. (1) Subject to this Act, ballot papers shall be in a form prescribed by regulation. Form of ballot papers.

(2) The following statement must be included on each ballot paper at or near the top of the ballot paper and in clearly legible print—

“You are not legally obliged to mark the ballot paper.”

62. (1) Subject to this section, where a candidate applies under this section— Printing of the names of political parties in ballot papers.

(a) to have the registered name of a registered political party printed adjacent to his name on the ballot papers for use in the election;

(b) to have a composite name consisting of the registered names of 2 registered political parties printed adjacent to his name on the ballot papers for use in the election;

(c) to have the description “Independent” printed adjacent to his name on the ballot papers for use in the election;

or

(d) to have a description consisting of the word “Independent” followed by not more than 5 additional words printed adjacent to his name on the ballot papers for use in the election,

the ballot papers shall be printed accordingly.

(2) An application under subsection (1)—

(a) must be in a form approved by the Electoral Commissioner;

(b) must be signed by the candidate;

(c) in the case of an application for printing the name of a registered political party or a composite name consisting of the registered names of 2 political parties—

(i) must contain a declaration, signed by the registered officer of the political party or each of the political parties, stating that the party supports the application;

(ii) if the registered political party has more than one registered name—must specify which of those names is to be printed in the ballot paper in pursuance of the application;

and

(iii) if the application is for the printing of a composite name—must specify the form of the composite name;

(d) where the name of the applicant is to be included in a group—must be in the form of a joint application by all members of the group for the printing of the same name or description, adjacent to the name of each member of the group;

and

(e) must be received by the Electoral Commissioner not later than the hour of nomination.

(3) The Electoral Commissioner may reject an application under subsection (1) (d), if the description to which the application relates is, in the opinion of the Electoral Commissioner, obscene or frivolous.

Voting tickets.

63. (1) A candidate, or a group of candidates, in an election may, before the expiration of 72 hours after the closing of nominations for the election, lodge with the returning officer 1 or 2 voting tickets.

(2) Where a candidate is a member of a group of candidates, a voting ticket may not be lodged under subsection (1) on behalf of the candidate individually, but only on behalf of the group as a whole.

(3) A voting ticket shall not be lodged under subsection (1) unless written notice has been given to the returning officer, at or before the hour of nomination, of the intention of the candidate or group to lodge a voting ticket or voting tickets.

(4) A voting ticket lodged under subsection (1) must—

(a) indicate by consecutive numbers commencing with the number 1 an order of preference for all candidates in the election;

and

(b) (i) in the case of a voting ticket lodged by or on behalf of an individual candidate—indicate a preference for that candidate over all other candidates in the election;

(ii) in the case of a voting ticket lodged by or on behalf of a group of candidates—indicate preferences for the candidates comprising the group—

(A) in the order in which the names of those candidates are to appear in the ballot paper;

and

(B) over all candidates in the election who are not included in that group.

Photographs of candidates.

64. (1) If the Electoral Commissioner so decides, photographs of all candidates in an election shall be printed on the ballot paper for that election.

(2) Notice of a decision under subsection (1) must be given to the candidates in the election on or before the day fixed for the nomination.

(3) A candidate whose photograph is to be printed on a ballot paper in pursuance of subsection (1) shall, within 3 days after the day fixed for the nomination, submit to the returning officer a photograph—

(a) that was taken of the candidate within 12 months before submission of the photograph;

and

(b) that complies with the requirements of the regulations.

(4) If a candidate fails to submit a photograph that conforms with the requirements of subsection (3) within the time allowed by that subsection

or such further time as may be allowed by the Electoral Commissioner, the nomination of that candidate becomes void.

(5) A photograph of a candidate printed on a ballot paper must appear opposite the name of the candidate.

DIVISION III—ESTABLISHMENT AND STAFFING OF POLLING BOOTHS

65. (1) Where a poll is to be taken at an election, it is the responsibility of the returning officer for the district to ensure—

Properly staffed polling booths to be provided.

(a) that a polling booth is properly established at each polling place within the district;

and

(b) that each polling booth—

(i) is properly divided into compartments so that voters may mark their votes without the vote being observed;

(ii) is properly equipped with ballot boxes and other necessary equipment;

and

(iii) is properly staffed with a presiding officer, poll clerks and any other necessary staff.

(2) No premises licensed for the sale of liquor shall be used as a polling booth.

(3) Any premises under the control of the Government of the State, and any premises of a local governing body, may be used for the purposes of the poll on terms and conditions approved by the Electoral Commissioner.

66. (1) The returning officer for a district shall have the following electoral material prepared for display in polling booths:

Certain electoral material to be displayed.

(a) posters formed from the how-to-vote cards submitted by the candidates in the election;

and

(b) posters containing the voting tickets registered for the purposes of the election.

(2) How-to-vote cards submitted for inclusion in posters under subsection (1) (a)—

(a) must be in the prescribed form;

(b) must be submitted in a quantity determined by the returning officer;

(c) must be received by the returning officer not less than 7 days before polling day;

and

(d) where two or more candidates form a group for the purposes of a Legislative Council election—must be jointly submitted by or on behalf of all candidates in the group,

and all how-to-vote cards submitted by or on behalf of the same candidate or group of candidates must be in identical form.

(3) The form of a poster prepared under this section shall, subject to this section, be as determined by the Electoral Commissioner.

(4) The order in which the electoral material referred to in subsection (1) is arranged on the poster shall, subject to subsection (5), be determined by lot.

(5) Voting tickets relating to the same candidate or group shall be gathered together.

(6) The presiding officer at each polling booth shall cause—

(a) a poster prepared under subsection (1) (a) to be displayed in each voting compartment;

and

(b) a poster prepared under subsection (1) (b) to be displayed in a prominent position in the polling booth.

DIVISION IV—SCRUTINEERS

Appointment of scrutineers.

67. (1) A candidate for election may by notice in writing to a district returning officer—

(a) appoint scrutineers for polling booths in the district;

(b) appoint the same or other scrutineers to represent his interests at the scrutiny.

(2) A notice of appointment under subsection (1) must specify the polling booth or counting centre in respect of which each appointment is made.

(3) Except where the returning officer allows a greater number of scrutineers—

(a) for each polling booth there must not be more than two scrutineers in respect of each individual candidate or group of candidates;

(b) for each counting centre there must not be more than—

(i) two scrutineers in respect of each individual candidate or group of candidates;

or

(ii) if counting of votes takes place simultaneously at two or more places in the counting centre—one scrutineer for each such place in respect of each individual candidate or group of candidates.

(4) A scrutineer may, by notice given to the officer presiding at a polling booth or counting centre, appoint a substitute to act for him during a temporary absence of the scrutineer from the polling booth or counting centre.

DIVISION V—CERTIFIED LIST OF ELECTORS

Certified list of electors to be supplied to each returning officer.

68. As soon as practicable after the date fixed for the closing of the rolls for an election, the Electoral Commissioner shall supply the returning officer for each district with a certified list of the electors enrolled for the district.

PART IX
VOTING

DIVISION I—ENTITLEMENT TO VOTE

69. (1) Subject to this section, a person is entitled to vote at an election if he is enrolled for the district in which the election is held. Entitlement to vote.

(2) A person is not entitled to vote at an election if—

(a) he was provisionally enrolled;

and

(b) he has not, as at polling day, attained the age of 18 years.

(3) A person is not entitled to vote at an election unless his principal place of residence was, at some time within the period of 3 months immediately preceding polling day, at the address for which he is enrolled.

(4) Except as otherwise provided in this Act, the enrolment of a person on a district roll is conclusive evidence of the right of that person to vote at an election for that district.

70. (1) No error or omission in the roll disqualifies an elector from voting. Errors, etc., in roll not to forfeit entitlement to vote.

(2) No female elector is disqualified from voting under the name appearing in the roll because her surname has been changed by marriage.

DIVISION II—GENERAL PROVISIONS AS TO VOTING

71. (1) An elector who is entitled to vote at an election may exercise that vote— Manner of voting.

(a) by attending at a polling place for the district for which he is enrolled and voting in the manner prescribed by this Act;

or

(b) in the case of an elector entitled to do so by virtue of subsection (2)—by making a declaration vote.

(2) An elector—

(a) who attends on polling day at a polling booth outside the district for which he is enrolled as an elector;

(b) who—

(i) will not, throughout the hours of polling on polling day, be within 8 kilometres by the nearest practicable route of any polling booth;

(ii) will, throughout the hours of polling on polling day, be travelling under conditions that preclude voting at a polling booth;

(iii) is, by reason of illness, infirmity or disability, precluded from voting at a polling booth;

(iv) is, by reason of caring for a person who is ill, infirm or disabled, precluded from voting at a polling booth;

(v) is, by reason of advanced pregnancy, precluded from voting at a polling booth;

(vi) is, by reason of membership in a religious order, or religious beliefs, precluded from attending at a polling booth or precluded from voting throughout the hours of polling on polling day or the greater part of those hours;

or

(vii) is, for a reason of a prescribed nature, precluded from voting at a polling booth;

(c) who is an inmate of a declared institution;

(d) whose name, as a result of an official error, does not appear on the certified list of electors for a district;

(e) who appears from a record erroneously made under this Act to have voted already in the election;

or

(f) whose address has been suppressed from publication under this Act,

is entitled to make a declaration vote.

Questions to be put to person claiming to vote.

72. (1) An authorized officer shall, before issuing voting papers to a person who appears personally before him claiming to vote, put the following questions to that person:

(a) such questions as are necessary to establish the identity and the address of the principal place of residence of the claimant;

and

(b) the following question: Have you voted before in this election? *or* Have you voted before in these elections? (as the case requires),

and may put such further questions as are necessary to establish whether the claimant is entitled to vote.

(2) If a person claiming to vote to whom questions are put under this section—

(a) refuses to answer fully any such question;

(b) so answers any such question as to indicate that he is not entitled to vote,

his claim to vote shall be rejected.

Issue of voting papers.

73. (1) Voting papers may be issued to an elector claiming to vote by an officer authorized for the purpose.

(2) Declaration voting papers shall not be issued to an elector (not being a registered declaration voter) except on an application made in the prescribed manner, and such an application must be supported by a written declaration of the ground of the applicant's entitlement to make a declaration vote, which—

(a) if the application is made orally—must be made before the officer to whom the application is made;

or

(b) if the application is made in writing—must be made in the application.

(3) When a ballot paper is issued to a voter it must be authenticated—

(a) by the initials of the officer by whom it is issued;

or

(b) by a prescribed mark.

(4) An exact record shall be kept of all persons to whom ballot papers are issued.

74. (1) Declaration voting papers shall be issued by post in respect of an election—

Issue of
declaration voting
papers by post.

(a) to any elector who is entitled to vote at the election and is registered on the register of declaration voters maintained under this section;

or

(b) to an elector who applies, by letter, for the issue of declaration voting papers.

(2) Declaration voting papers shall not be sent by post to an elector in pursuance of an application under subsection (1) (b) if the application is received by the officer to whom it is made after 9 p.m. on the Thursday preceding polling day.

(3) The Electoral Commissioner shall maintain a register of declaration voters.

(4) The register shall contain the names of persons who, on application to the Electoral Commissioner, satisfy him that they are by reason of—

(a) physical disability;

or

(b) the remoteness of their places of residence,

likely to be precluded from attending at polling booths to exercise their votes.

(5) The Electoral Commissioner shall from time to time revise the register of declaration voters.

(6) The register of declaration voters shall be available for inspection, without fee, at the office of the Electoral Commissioner.

75. If a person to whom voting papers have been issued satisfies the officer by whom they were issued, or some other officer with authority to issue voting papers, that the voting papers have been inadvertently spoiled, he shall, on delivering up the spoiled voting papers to the officer, be entitled to fresh voting papers.

Fresh ballot paper
may be issued
where ballot
paper spoiled.

DIVISION III—INDICATION OF VOTE

76. (1) In a Legislative Council election a voter shall mark his vote on his ballot paper as follows:

Marking of votes
on ballot papers.

(a) by placing the number 1 in the square opposite the name of the candidate for whom he votes as his first preference, and con-

secutive numbers in the squares opposite the names of the remaining candidates so as to indicate the order of his preference for all candidates;

or

(b) if the ballot paper contains a voting ticket square—by placing the number 1 in that square.

(2) In a House of Assembly election, a voter shall mark his vote on his ballot paper by placing the number 1 in the square opposite the name of the candidate for whom he votes as his first preference, and consecutive numbers in the squares opposite the names of the remaining candidates so as to indicate the order of his preference for all candidates.

(3) For the purposes of this Act, where a voter places a tick or a cross on a ballot paper, the tick or cross shall be deemed equivalent to the number 1.

DIVISION IV—VOTING AT POLLING BOOTHS

Times and places
of polling.

77. (1) Polling shall be conducted—

(a) at an appointed polling place—in the polling booth established for that place;

(b) at such other places within a remote subdivision as may be determined by the Electoral Commissioner—in a mobile polling booth.

(2) Polling at a polling booth shall be conducted at the following times:

(a) in the case of polling at a polling booth at an appointed polling place—

(i) the poll shall open at 8 o'clock in the morning of polling day, and shall not close until all electors present in the polling booth at 6 o'clock in the afternoon, and desiring to vote, have voted;

and

(ii) the doors of the polling booth shall be closed at 6 o'clock in the afternoon and no person shall be admitted after that hour to the polling booth for the purpose of voting;

(b) in the case of polling at a mobile polling booth in a remote subdivision—the poll shall open and close at such times (being times that fall within the 4 days up to and including polling day) as may be determined by the Electoral Commissioner.

(3) The Electoral Commissioner shall, by notice published in a newspaper circulating generally throughout the State, give notice of the times and places at which a mobile polling booth will be open for the purposes of polling.

(4) Where an election is held in some districts only, it is not necessary to open polling booths in districts in which no election is held.

Right of elector
to receive ballot
paper.

78. (1) Subject to this Act, where an elector who is entitled to vote in an election attends at a polling booth and claims to vote, a ballot paper shall be issued to that elector.

(2) Where a person claiming to vote is entitled, and applies, to make a declaration vote, the appropriate declaration voting papers shall be issued to him.

(3) The presiding officer shall, at the request of a scrutineer, note any objection by the scrutineer to the right of any person to vote, and shall keep a record of the objection.

79. (1) Subject to this Part, the voter, on receipt of the ballot paper (not being a declaration ballot paper) shall without delay— Vote to be marked in private.

(a) retire alone to some unoccupied compartment of the booth, and there, in private, mark his vote on the ballot paper;

(b) deposit the ballot paper in the ballot box;

and

(c) leave the booth.

(2) Subject to this Part, where the voter makes a declaration vote, the voter shall—

(a) sign the appropriate declaration on the envelope that is to contain the ballot paper in the presence of an officer (who shall sign the envelope as witness);

(b) retire alone to some unoccupied compartment of the booth and there, in private, mark his vote on the ballot paper;

(c) enclose the ballot paper in the envelope, seal the envelope and deposit it in the ballot box;

and

(d) leave the booth.

80. (1) Subject to subsection (2), if a voter satisfies the presiding officer that he is unable to vote without assistance, the voter may be accompanied by an assistant of his choice while in the polling booth. Voter may be accompanied by an assistant in certain cases.

(2) The presiding officer may express his disapproval of a person chosen to assist a voter under this section and, in that event, some other person acceptable to the presiding officer, must be chosen by the voter.

(3) The assistant may assist the voter in any of the following ways:

(a) he may act as an interpreter;

(b) he may explain the ballot paper, and the voter's obligations under this Act in relation to the marking of the ballot paper, to the voter;

(c) he may assist the voter to mark the ballot paper, or may himself mark the ballot paper at the voter's direction;

(d) he may fold and deposit the ballot paper in the ballot box.

81. (1) A person to whom declaration voting papers have been issued (otherwise than at the polling booth) is not entitled to vote at a polling booth unless— Voting by elector to whom declaration voting papers have been issued.

(a) he delivers up the declaration voting papers to the presiding officer for cancellation;

or

(b) he makes a declaration, in the prescribed form, to the effect that the declaration voting papers have not been received by him.

(2) Where an elector exercises an ordinary vote at a polling place after making a declaration under subsection (1) (b), any declaration ballot paper purporting to be a ballot paper of that elector shall not be admitted to the scrutiny.

DIVISION V—DECLARATION VOTING

Declaration vote,
how made.

82. (1) An elector who is entitled, and desires, to make a declaration vote shall vote in the following manner:

(a) if the vote is taken at a polling booth—it shall be taken in the manner prescribed by Division IV;

(b) if the declaration voting papers are issued to the elector personally but not at a polling booth—the vote shall be taken before the officer issuing the declaration voting papers;

(c) if the declaration voting papers are issued by post to the elector—the vote shall be taken before an authorized witness.

(2) Where an elector makes a declaration vote otherwise than at a polling booth, he shall—

(a) sign the appropriate declaration on the envelope (which shall be signed by the person before whom the vote is taken as witness);

(b) mark his vote, in private, on the ballot paper and fold it so as to conceal the vote;

(c) place the ballot paper in the envelope provided and seal the envelope;

(d) (i) if the vote is taken before an officer—the envelope shall then be deposited in a ballot box or forthwith transmitted or caused to be transmitted by the officer before whom the vote was taken to the appropriate returning officer;

(ii) if the vote is taken before an authorized witness who is not an officer—the envelope shall be lodged with the returning officer for the appropriate district before the close of poll on polling day, or sent by post so as to reach that returning officer, before the expiration of 7 days from the close of poll.

(3) An elector who satisfies the person before whom he is to make a declaration vote (otherwise than at a polling booth) that he is unable to vote without assistance may be assisted by—

(a) the person before whom the vote is taken;

or

(b) a person who is acceptable to that person.

(4) The assistant may assist the voter in any of the following ways:

(a) he may act as an interpreter;

(b) he may explain the ballot paper and the voter's obligations under this Act in relation to the marking of the ballot paper;

- (c) he may assist the voter to mark the ballot paper, or may himself mark the ballot paper at the voter's direction;
 - (d) he may fold the ballot paper, place it in the appropriate envelope and seal the envelope;
 - (e) he may assist the voter to complete the appropriate declaration on the envelope;
- and
- (f) he may deposit the envelope in a ballot box, or lodge it with, or forward it by post to, the appropriate district returning officer (as the case may require).

(5) Where an elector makes a declaration vote before an officer (otherwise than in a polling booth) the officer shall make available for the assistance of the elector copies of any how-to-vote cards and other electoral materials in the possession of the officer that are to be exhibited in the polling booth on polling day.

83. (1) The Electoral Commissioner may, by notice published in the *Gazette*—

Taking of
declaration votes
by electoral
visitors.

- (a) declare the whole or a specified part of an institution to be a declared institution;

or

- (b) vary or revoke a declaration under this section.

(2) The Electoral Commissioner shall, in respect of each election—

- (a) appoint a sufficient number of assistant returning officers to be electoral visitors;

and

- (b) make the necessary arrangements for all declared institutions within the district in which the election is being held to be visited by electoral visitors so that the votes of those persons at the declared institution who are entitled to declaration votes may be taken before them.

(3) A declared institution may be visited under this section at any time between the expiration of 3 days from the date fixed for the nomination and the close of poll on polling day.

(4) An electoral visitor may require the person apparently in charge of a declared institution to furnish him with the following information:

- (a) the names and addresses of the inmates of the institution;

and

- (b) any other information that is reasonably required in order to determine whether an inmate is entitled to exercise a declaration vote.

(5) A person who—

- (a) hinders an electoral visitor in the exercise of his functions under this section;

or

(b) refuses or fails, without reasonable excuse, to furnish information when required to do so under subsection (4),

shall be guilty of an offence.

Penalty: \$500.

(6) A person shall not counsel or procure two or more inmates of a declared institution to make applications by post for the issue of declaration voting papers.

Penalty: \$500.

Security of ballot boxes.

84. At the close of poll, all ballot boxes containing declaration ballot papers shall be opened and the ballot papers forwarded as soon as practicable to the appropriate returning officers or deputy returning officers.

DIVISION VI—COMPULSORY VOTING

Compulsory voting.

85. (1) Subject to subsection (2), it is the duty of every elector to record his vote at each election in a district for which he is enrolled.

(2) An elector who leaves the ballot paper unmarked but who otherwise observes the formalities of voting is not in breach of the duty imposed by subsection (1).

(3) Within the prescribed period after the close of each election, the Electoral Commissioner shall send by post to each elector who appears not to have voted at the election a notice, in the prescribed form—

(a) notifying the elector that he appears to have failed to vote at the election and that it is an offence to fail to vote at an election without a valid and sufficient reason;

and

(b) calling on him to show cause why proceedings for failing to vote at the election without a valid and sufficient reason should not be instituted against him,

but the Electoral Commissioner, if satisfied that the elector is dead or had a valid and sufficient reason for not voting, need not send such a notice.

(4) Before sending any such notice, the Electoral Commissioner shall insert in the notice a date, not being less than 21 days after the date of posting of the notice, on which the form attached to the notice, duly filled up and signed by the elector, is to be in the hands of the Electoral Commissioner.

(5) Every elector to whom a notice under this section has been sent shall fill up the form at the foot of the notice by stating in it the reasons (if any) why proceedings for failing to vote at the election should not be instituted against him, sign the form, and post it so as to reach the Electoral Commissioner not later than the date inserted in the notice.

(6) If any elector is absent or unable, by reason of physical incapacity, to fill up, sign and post the form, within the time allowed under subsection (4), any other elector who has personal knowledge of the facts may fill up, sign and post the form, duly witnessed, within that time, and, in that case, the elector shall be deemed to have complied with subsection (5).

(7) Every elector who—

(a) fails to vote at an election without a valid and sufficient reason for the failure;

(b) on receipt of a notice in accordance with subsection (3), fails to fill up, sign and post the form (duly witnessed) which is attached to the notice within the time allowed under subsection (4);

or

(c) makes a statement in the form that is, to his knowledge, false or misleading in a material particular,

shall be guilty of an offence.

Penalty: \$50.

(8) An elector has a valid and sufficient reason for failing to vote at an election if—

(a) the elector was ineligible to vote at the election;

(b) the elector was absent from the State on polling day;

(c) the elector had a conscientious objection, based on religious grounds, to voting at the election;

or

(d) there is some other proper reason for the elector's failure to vote.

(9) Proceedings for an offence against this section shall not be instituted except by the Electoral Commissioner or an officer authorized in writing by the Electoral Commissioner.

(10) In proceedings for an offence against this section, a certificate apparently signed by an officer and certifying that the defendant failed to vote at an election shall be accepted as proved in the absence of proof to the contrary.

DIVISION VII—MISCELLANEOUS

86. (1) The presiding officer at a polling booth may appoint a suitable person to act in his position during a temporary absence of the presiding officer from the polling booth.

Presiding officer may appoint substitute.

(2) A person appointed under subsection (1) shall, while acting in the position of the presiding officer, have all the powers, functions and responsibilities of the presiding officer.

87. (1) Subject to subsection (2), a ballot box shall be kept securely closed and sealed so as to prevent the introduction or removal of any paper or object except—

Ballot boxes to be kept securely closed and fastened.

(a) when the ballot box is immediately required for the purpose of receiving voting papers;

or

(b) when the voting papers are required for the purposes of scrutiny.

(2) An officer shall, before voting papers are first deposited in a ballot box for the purposes of an election, publicly open the ballot box and exhibit it empty.

88. (1) If for any reason it is not practicable to proceed with polling at a polling place on polling day, the Electoral Commissioner may adjourn polling at that polling place for a period not exceeding 21 days.

Adjournment of polling.

(2) Where for any reason the polling is adjourned at any polling place, only those electors for the district for which the polling place is appointed who were entitled to vote on polling day and who have not already voted, shall be entitled to vote at the adjourned polling.

PART X THE SCRUTINY

DIVISION I—PRELIMINARY

Scrutiny.

89. (1) The result of an election shall be ascertained by scrutiny.

(2) The scrutiny shall commence as soon as practicable after the close of poll and may be adjourned from time to time as may be necessary until the counting of the votes is complete.

Scrutineers.

90. (1) All proceedings at the scrutiny shall be open to the inspection of the scrutineers.

(2) If a scrutineer objects to a ballot paper as being informal, the officer conducting the scrutiny shall mark the ballot paper “admitted” or “rejected” according to his decision to admit or reject the ballot paper.

(3) Nothing in this section prevents the officer conducting the scrutiny from rejecting a ballot paper as informal although it is not objected to.

Preliminary
scrutiny of
declaration ballot
papers.

91. (1) At the scrutiny, the returning officer or a deputy returning officer shall produce all applications for declaration voting papers, and shall produce unopened all envelopes containing declaration ballot papers received up to the end of the period of 7 days immediately following the close of the poll by him, or received up to the close of the poll by any other officer and shall—

(a) if satisfied—

(i) that the voter is entitled to vote at the election and has not voted at the election otherwise than by making a declaration vote;

and

(ii) in the case of declaration voting papers of voters whose votes were not taken before an officer—

(A) that the signature of the declarant corresponds with the signature on the application for declaration voting papers;

and

(B) that the vote was recorded before the close of poll,

accept the ballot paper for further scrutiny, but, if not so satisfied, disallow the ballot paper without opening the envelope in which it is contained;

(b) having determined that a ballot paper is to be accepted for further scrutiny, withdraw it from its envelope and, without inspecting

or unfolding it or allowing any other person to do so, place it in a locked and sealed ballot box reserved for such ballot papers;

(c) seal up in separate parcels and preserve—

(i) all envelopes endorsed with declarations relating to declaration ballot papers accepted for further scrutiny;

and

(ii) all unopened envelopes containing declaration ballot papers disallowed;

and

(d) proceed with the scrutiny of the declaration ballot papers which have been accepted for further scrutiny.

(2) Where two or more declaration ballot papers in respect of the same election are received from the same elector, the first to come into the hands of the returning officer or deputy returning officer shall, subject to this section, be accepted for further scrutiny and the remainder shall be rejected.

DIVISION II—INTERPRETATION AND VALIDITY OF BALLOT PAPERS

92. (1) This section applies only in relation to a Legislative Council election.

Interpretation of
ballot papers in
Legislative
Council elections

(2) Subject to subsection (4), where—

(a) a voter marks a ballot paper by placing the number 1 in the voting ticket square for a particular candidate or group;

and

(b) there is 1 voting ticket registered for the purposes of the election in relation to that candidate or group,

the ballot paper shall be deemed to have been marked in accordance with that voting ticket.

(3) Subject to subsection (4), where—

(a) a voter marks a ballot paper by placing the number 1 in the voting ticket square for a particular candidate or group;

and

(b) there are 2 voting tickets registered for the purposes of the election in relation to that candidate or group,

then the ballot paper shall be grouped with other ballot papers marked in the same manner and—

(c) if the number of those ballot papers is an even number—half of them shall be deemed to have been marked in accordance with one ticket and half in accordance with the other;

or

(d) if the number of those ballot papers is not an even number—

(i) one of the ballot papers shall be deemed to have been marked in accordance with whichever of the 2 tickets is determined by lot by the returning officer;

and

- (ii) half the remainder (if any) shall be deemed to have been marked in accordance with one ticket and half in accordance with the other.

(4) Where a voter marks a ballot paper by placing the number 1 in a voting ticket square but also indicates preferences for individual candidates, the following provisions apply:

- (a) if the indication of preferences for individual candidates would, if it stood alone, constitute a valid vote, that indication of preferences shall be taken to be the vote of the voter and the mark in the voting ticket square shall be disregarded;
- (b) if the indication of preferences for individual candidates would not, if it stood alone, constitute a valid vote, it shall be disregarded and the vote of the voter shall be taken to have been expressed by the mark in the voting ticket square.

Interpretation of
ballot papers in
House of
Assembly
elections.

93. (1) This section applies only in relation to a House of Assembly election.

(2) Where—

- (a) a voter marks a ballot paper by placing the number 1 in the square opposite the name of a particular candidate and indicates no further preference;

and

- (b) there is 1 voting ticket registered for the purposes of the election in relation to that candidate,

the ballot paper shall be deemed to have been marked in accordance with that voting ticket.

(3) Where—

- (a) a voter marks a ballot paper by placing the number 1 in the square opposite the name of a particular candidate and indicates no further preference;

and

- (b) there are 2 voting tickets registered for the purposes of the election in relation to that candidate,

then the ballot paper shall be grouped with other ballot papers marked in the same manner and—

- (c) if the number of those ballot papers is an even number—half of them shall be deemed to have been marked in accordance with one ticket and half in accordance with the other;

or

- (d) if the number of those ballot papers is not an even number—

- (i) one of the ballot papers shall be deemed to have been marked in accordance with whichever of the 2 tickets is determined by lot by the returning officer;

and

- (ii) half the remainder (if any) shall be deemed to have been marked in accordance with one ticket and half in accordance with the other.

(4) Where—

- (a) a voter marks a ballot paper by placing the number 1 in the square opposite the name of a particular candidate and proceeds to indicate further preferences by consecutive numbers;
- (b) there is 1 voting ticket registered for the purposes of the election in relation to that candidate;
- (c) the preferences indicated by the voter are consistent with that voting ticket;

and

(d) the ballot paper would, apart from this subsection, be informal, the ballot paper shall be deemed to have been marked in accordance with that voting ticket.

(5) Where—

- (a) a voter marks a ballot paper by placing the number 1 in the square opposite the name of a particular candidate and proceeds to indicate further preferences by consecutive numbers;
- (b) there are 2 voting tickets registered for the purposes of the election in relation to the candidate;
- (c) the preferences indicated by the voter are consistent with one or both of those voting tickets;

and

(d) the ballot paper would, apart from this subsection, be informal, the ballot paper, if consistent with both voting tickets, shall be treated as if it had been marked only with the number 1 and dealt with in accordance with subsection (3), but if it is consistent with one only of the voting tickets, it shall be deemed to have been marked in accordance with that voting ticket.

94. (1) Subject to this section, a ballot paper is informal if—

- (a) it is not authenticated by the initials of the officer by whom it was issued, or by an official mark as prescribed;
- (b) it has no vote indicated on it, or it does not indicate, in the manner required by this Act, the order of the voter's preference for all candidates in the election;
- (c) it has upon it any mark or writing (not authorized by this Act or the regulations) by which the voter can be identified;

or

- (d) in the case of a ballot paper required by this Act to be deposited in a ballot box—it is not so deposited.

(2) A ballot paper that is not duly authenticated by initials or an official mark is not informal by reason of subsection (1) (a) if the officer responsible for considering whether the ballot paper should be admitted is satisfied that it is an authentic ballot paper on which a voter has marked his vote.

Informal ballot papers.

(3) Where a voter indicates by consecutive numbers commencing with the number 1 the order of his preference for all candidates on a ballot paper except one—

(a) the ballot paper is not informal;

and

(b) it shall be presumed that the candidate for whom no preference is expressed is the one least preferred by the voter and that the voter has accordingly indicated the order of his preference for all candidates.

(4) A ballot paper to which effect can be given under the provisions of this Division relating to registered voting tickets is not informal by reason of subsection (1) (b).

(5) Where a candidate in a Legislative Council election dies between the date of nomination and polling day—

(a) a ballot paper is not informal by reason only—

(i) of the inclusion on the ballot paper of the name of the deceased candidate;

(ii) of the marking of any consecutive number opposite that name;

or

(iii) of the omission to place any number opposite that name, or of any resultant failure to indicate in consecutive order the voter's preferences;

and

(b) a preference indicated on the ballot paper for that candidate shall be ignored and subsequent preferences shall be renumbered accordingly.

(6) Where—

(a) a ballot paper has not been marked by a voter in the manner required by this Act;

but

(b) notwithstanding that fact, the voter's intention is clear,

the ballot paper is not informal and shall be counted as if the voter's intention had been properly expressed in the manner required by this Act.

(7) A ballot paper shall not be informal except for a reason specified in this section.

DIVISION III—COUNTING OF VOTES

Scrutiny of votes
in Legislative
Council election.

95. (1) In a Legislative Council election, the scrutiny shall, subject to this Act, be conducted, and the vacancies shall be filled, in the manner set out in this section.

(2) Each assistant returning officer shall, in the presence of an assistant presiding officer or a poll clerk, and of such authorized scrutineers as may attend—

- (a) open all ballot boxes sent to him, or received from polling places within or for that portion of the district in which he exercises his powers;
 - (b) reject all informal ballot papers, and arrange the unrejected ballot papers under the names of the respective candidates by placing in a separate parcel all those on which a first preference is indicated for the same candidate;
 - (c) count the first preference votes given for each candidate on all unrejected ballot papers;
 - (d) make out and sign a statement setting out the number of first preference votes given for each candidate, and the number of informal ballot papers;
 - (e) place in a separate parcel all the ballot papers which have been rejected as informal;
 - (f) transmit the following information, by telegram or in some other expeditious manner, to the deputy returning officer for the division:
 - (i) the number of first preference votes given for each candidate;and
 - (ii) the total number of ballot papers rejected as informal;
 - (g) seal up the parcels and endorse on each parcel a description of its contents;
- and
- (h) transmit the parcels to the deputy returning officer with the least possible delay, together with the statement specified in paragraph (d), and the deputy returning officer shall open all ballot boxes not opened by an assistant returning officer and shall conduct the scrutiny of the ballot papers contained in those boxes, as far as applicable, in the manner described above.
- (3) The deputy returning officer shall then transmit all voting papers to the returning officer for the Legislative Council.
- (4) The returning officer for the Legislative Council shall—
- (a) open the sealed parcels of ballot papers received from the deputy returning officers and shall make a fresh scrutiny of the ballot papers contained in the parcels, and for that purpose he shall have the same powers as if the fresh scrutiny were the original scrutiny, and may reverse any decision given by an assistant or deputy returning officer in relation to the original scrutiny;
 - (b) arrange the unrejected ballot papers so scrutinized by him under the names of the respective candidates by placing in a separate parcel all those on which a first preference is indicated for the same candidate;
- and
- (c) count the first preference votes given for each candidate on those ballot papers.

(5) Where, for the purposes of the succeeding provisions of this section, the number of ballot papers or votes in any category is required to be ascertained or a quota or transfer value is required to be determined, the returning officer shall determine the quota or transfer value.

(6) The number of first preference votes given for each candidate and the total number of all such votes shall be ascertained and a quota shall be determined by dividing the total number of first preference votes by 1 more than the number of candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by 1, and any candidate who has received a number of first preference votes equal to or greater than the quota shall be elected.

(7) Unless all the vacancies have been filled, the number (if any) of votes in excess of the quota (in this section referred to as "surplus votes") of each elected candidate shall be transferred to the continuing candidates as follows:

- (a) the number of surplus votes of the elected candidate shall be divided by the number of first preference votes received by him and the resulting fraction shall be the transfer value;
- (b) the total number of ballot papers of the elected candidate that express the first preference vote for him and the next available preference for a particular continuing candidate shall be multiplied by the transfer value, the number so obtained (disregarding any fraction) shall be added to the number of first preference votes of the continuing candidate and all those ballot papers shall be transferred to the continuing candidate,

and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer shall be elected.

(8) Unless all the vacancies have been filled, the surplus votes (if any) of any candidate elected under subsection (7), or elected subsequently under this subsection, shall be transferred to the continuing candidates in accordance with subsection (7) (a) and (b), and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer shall be elected.

(9) Where a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under subsection (7) or (8) of the surplus votes of a particular elected candidate, no votes of any other candidate shall be transferred to the continuing candidate.

(10) For the purposes of the application of subsection (7) (a) and (b) in relation to a transfer under subsection (8) or (12) of the surplus votes of an elected candidate, each ballot paper of the elected candidate that was obtained by him on a transfer under this section shall be dealt with as if any vote it expressed for the elected candidate were a first preference vote, as if the name of any other candidate previously elected or excluded had not been on the ballot paper and as if the numbers indicating subsequent preferences had been altered accordingly.

(11) Where, after the counting of first preference votes or the transfer of surplus votes (if any) of elected candidates, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes shall be excluded and all his votes shall be transferred to the continuing candidates as follows:

- (a) the total number of ballot papers of the excluded candidate that express the first preference vote for him and the next available preference for a particular continuing candidate shall be transferred, each ballot paper at a transfer value of 1, to the continuing candidate and added to the number of votes of the continuing candidate and all those ballot papers shall be transferred to the continuing candidate;
- (b) the total number (if any) of other votes obtained by the excluded candidate on transfers under this section shall be transferred from the excluded candidate in the order of the transfers on which he obtained them, the votes obtained on the earliest transfer being transferred first, as follows:
- (i) the total number of ballot papers transferred to the excluded candidate from a particular candidate and expressing the next available preference for a particular continuing candidate shall be multiplied by the transfer value at which the votes were so transferred to the excluded candidate;
 - (ii) the number so obtained (disregarding any fraction) shall be added to the number of votes of the continuing candidate;
 - (iii) all those ballot papers shall be transferred to the continuing candidate.

(12) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer under subsection (11) or (13) of votes of an excluded candidate shall be elected, and, unless all the vacancies have been filled, the surplus votes (if any) of the candidate so elected shall be transferred in accordance with subsection (7) (a) and (b), except that, where the candidate so elected is elected before all the votes of the excluded candidate have been transferred, the surplus votes (if any) of the candidate so elected shall not be transferred until the remaining votes of the excluded candidate have been transferred in accordance with subsection (11) (a) and (b) to continuing candidates.

(13) Subject to subsection (15), where, after the transfer of all the votes of an excluded candidate, no continuing candidate has received a number of votes greater than the quota, the continuing candidate who has the fewest votes shall be excluded and his votes shall be transferred in accordance with subsection (11) (a) and (b).

(14) Where a candidate is elected as a result of a transfer of the first preference votes of an excluded candidate or a transfer of all the votes of an excluded candidate that were transferred to the excluded candidate from a particular candidate, no other votes of the excluded candidate shall be transferred to the candidate so elected.

(15) In respect of the last vacancy for which 2 continuing candidates remain, the continuing candidate who has the larger number of votes shall be elected notwithstanding that that number is below the quota, but if those candidates have an equal number of votes—

- (a) the matter shall be referred, on the application of the Electoral Commissioner, to the Court of Disputed Returns;
- (b) the Court shall determine the validity of any disputed ballot papers;

(c) if it then appears that the deadlock has been resolved, the Court shall declare the appropriate candidate elected, but if not, the Court shall order a fresh election;

and

(d) a fresh election held by order of the Court under paragraph (c) shall be held in accordance with any directions of the Court and the 2 candidates referred to above shall be the sole candidates in that election.

(16) Subsection (15) does not limit the jurisdiction of the Court of Disputed Returns under Division II of Part XII in relation to an election.

(17) Notwithstanding any other provision of this section, where, on the completion of a transfer of votes under this section, the number of continuing candidates is equal to the number of remaining unfilled vacancies, those candidates shall be elected.

(18) The returning officer shall, on the completion of the last count—

(a) make out and sign a statement setting out the number of ballot papers and votes counted to each candidate at each count and the number of informal ballot papers, and shall forward the statement to the Electoral Commissioner;

(b) place in a separate parcel all the ballot papers which have been rejected as informal;

(c) place in a separate parcel all the unrejected ballot papers;

and

(d) seal up the parcels and endorse on each parcel a description of its contents, and permit any scrutineers present, if they so desire, to countersign the endorsement.

(19) For the purposes of this Act—

(a) the order of election of candidates in a Legislative Council election shall be taken to be in accordance with the order of the count or transfer as a result of which they were elected, the candidates (if any) elected on the count of first preference votes being taken to be the earliest elected;

and

(b) where 2 or more candidates are elected as a result of the same count or transfer, the order in which they shall be taken to have been elected shall be in accordance with the relative numbers of their votes, the candidate with the largest number of votes being taken to be the earliest elected, but if any 2 or more of those candidates each have the same number of votes, the order in which they shall be taken to have been elected shall be taken to be in accordance with the relative numbers of their votes at the last count or transfer before their election at which each of them had a different number of votes, the candidate with the largest number of votes at that count or transfer being taken to be the earliest elected, and if there has been no such count or transfer the returning officer shall determine the order in which they shall be taken to have been elected.

(20) Subject to subsections (21) and (22), where, after any count or transfer under this section, 2 or more candidates have surplus votes, the order of any transfers of the surplus votes of those candidates shall be in accordance with the relative sizes of the surpluses, the largest surplus being transferred first.

(21) Subject to subsection (22), where, after any count or transfer under this section, 2 or more candidates have equal surpluses, the order of any transfers of the surplus votes of those candidates shall be in accordance with the relative numbers of votes of those candidates at the last count or transfer at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count or transfer being transferred first, but if there has been no such count or transfer the returning officer shall determine the order in which the surpluses shall be dealt with.

(22) Where, after any count or transfer under this section, a candidate obtains surplus votes, those surplus votes shall not be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count or transfer.

(23) Where the candidate who has the fewest votes is required to be excluded and 2 or more candidates each have the fewest votes, whichever of those candidates had the fewest votes at the last count or transfer at which each of those candidates had a different number of votes shall be excluded, but if there has been no such count or transfer, the returning officer shall determine which candidate shall be excluded.

(24) Where a candidate is elected by reason that the number of first preference votes received by him, or the aggregate of first preference votes received by him and all other votes obtained by him on transfers under this section, is equal to the quota, all the ballot papers expressing those votes shall be set aside as finally dealt with.

(25) In a case where a candidate has died between the date of nomination and polling day, a vote indicated on a ballot paper opposite the name of the deceased candidate shall be counted to the candidate next in the order of the voter's preference, and the numbers indicating subsequent preferences shall be deemed to be altered accordingly.

(26) For the purposes of this section, a transfer under subsection (7), (8) or (12) of the surplus votes of an elected candidate, a transfer in accordance with subsection (11) (a) of all first preference votes of an excluded candidate or a transfer in accordance with subsection (11) (b) of all the votes of an excluded candidate that were transferred to him from a particular candidate each constitutes a separate transfer.

(27) In this section—

“continuing candidate” means a candidate not already elected or excluded from the count.

(28) In this section, a reference to votes of or obtained or received by a candidate includes votes obtained or received by the candidate on any transfer under this section.

96. (1) In a House of Assembly election, the scrutiny shall, subject to this Act, be conducted in the following manner.

Scrutiny of votes
in House of
Assembly
election.

(2) Each assistant returning officer shall, in the presence of an assistant presiding officer or a poll clerk, and of such authorized scrutineers as may attend—

- (a) open all ballot boxes sent to him, or received from polling places within or for that portion of the district in which he exercises his powers;
- (b) reject all informal ballot papers, and arrange the unrejected ballot papers under the names of the respective candidates by placing in a separate parcel all those on which a first preference is indicated for the same candidate;
- (c) count the first preference votes given for each candidate on all unrejected ballot papers;
- (d) make out and sign a statement setting out the number of first preference votes given for each candidate, and the number of informal ballot papers;
- (e) place in a separate parcel all the ballot papers which have been rejected as informal;
- (f) transmit the following information, by telegram or in some other expeditious manner, to the district returning officer:
 - (i) the number of first preference votes given for each candidate;
 - and
 - (ii) the total number of ballot papers rejected as informal;
- (g) seal up the parcels and endorse on each parcel a description of its contents and permit any scrutineers present, if they so desire, to countersign the endorsement;
- and
- (h) transmit the parcels to the district returning officer with the least possible delay, together with the statement specified in paragraph (d), and the district returning officer shall open all ballot boxes not opened by an assistant returning officer and shall conduct the scrutiny of the ballot papers contained in those boxes (as far as applicable) in the manner described above.

(3) From the statements transmitted to the district returning officer by the assistant returning officers in or for the district, and the result of the scrutiny of the votes counted by him, the district returning officer shall ascertain the total number of first preference votes given for each candidate for the district.

(4) The candidate who has received the largest number of first preference votes shall, if that number constitutes an absolute majority of votes, be elected.

(5) If no candidate has received an absolute majority of first preference votes, the district returning officer—

- (a) shall open the sealed parcels of ballot papers received from the assistant returning officers for the district;
- (b) shall make a fresh scrutiny of the ballot papers contained in the parcels, and, for the purpose of that scrutiny, shall have the same powers as if it were the original scrutiny, and may reverse any decision given by an assistant returning officer in relation to the original scrutiny;

(c) from the result of the scrutiny of the votes counted by him and the fresh scrutiny conducted by him under this subsection, shall ascertain the total number of first preference votes given for each candidate and the number of informal ballot papers;

and

(d) shall proceed with the scrutiny and the counting of the votes as follows:

(i) the candidate who has received the fewest first preference votes shall be excluded, and each ballot paper counted to him shall be counted to the candidate next in the order of the voter's preference;

(ii) if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the fewest votes, and counting each of his ballot papers to the unexcluded candidate next in the order of the voter's preference, shall be repeated until 1 candidate has received an absolute majority of votes;

and

(iii) the candidate who has received an absolute majority of votes shall be elected.

(6) If on any count 2 or more candidates have an equal number of votes, and one of them has to be excluded, the district returning officer shall decide which shall be excluded, but if in the final count 2 candidates have an equal number of votes—

(a) the matter shall be referred, on the application of the Electoral Commissioner, to the Court of Disputed Returns;

(b) the Court shall determine the validity of any disputed ballot papers;

(c) if it then appears that the deadlock has been resolved, the Court shall declare the appropriate candidate elected, but if not, the Court shall order a fresh election.

(7) Subsection (6) does not limit the jurisdiction of the Court of Disputed Returns under Division II of Part XII in relation to an election.

(8) In this section, an absolute majority of votes means a greater number than one-half of the whole number of ballot papers other than informal ballot papers.

(9) The district returning officer shall—

(a) place in a separate parcel all the ballot papers which have been rejected as informal;

(b) place in a separate parcel all the unrejected ballot papers;

and

(c) seal up the parcels and endorse on each parcel a description of its contents, and permit any scrutineers present, if they so desire, to countersign the endorsement.

(10) Where 3 or more candidates stood for election in a district, then, notwithstanding the election of a candidate, the process of excluding the candidate who has the fewest votes and attributing his votes to the candidate

next in order of the voter's preference shall be continued until there are only 2 unexcluded candidates.

(11) The Electoral Commissioner shall, within 3 months after the return of the writ, cause to be published in the *Gazette* a notice showing the number of votes attributable to each of the 2 unexcluded candidates at the conclusion of the process referred to in subsection (10).

DIVISION IV—RE-COUNT

Re-count.

97. (1) At any time before the declaration of the result of a Legislative Council election, the returning officer may, if he thinks fit, and shall, if so directed by the Electoral Commissioner, direct a re-count of the ballot papers from any division or portion of a division, or of the ballot papers contained in any parcel or in any other category.

(2) At any time before the declaration of the result of a House of Assembly election, the district returning officer may, if he thinks fit, and shall, if so directed by the Electoral Commissioner, re-count the ballot papers contained in any parcel.

(3) The officer conducting a re-count—

(a) may reverse any decision taken at the scrutiny in relation to the allowance or disallowance of ballot papers;

but

(b) is, subject to paragraph (a), bound by decisions and determinations made at the scrutiny so far as they are applicable to the re-count.

(4) The officer conducting a re-count may, and at the request of any scrutineer shall, reserve any ballot paper for the decision of the Electoral Commissioner.

(5) The Electoral Commissioner shall decide whether any ballot paper, reserved for his decision in pursuance of this section, is to be allowed and admitted or disallowed and rejected.

PART XI

THE RETURN OF THE WRITS

Return of writ for election of members of the Legislative Council.

98. (1) In a Legislative Council election, the returning officer shall, as soon as practicable after the result of the election has been ascertained—

(a) publicly declare the result of the election and the names of the candidates elected;

(b) make out a statement setting out the result of the election and the names of the candidates elected and transmit the statement to the Electoral Commissioner.

(2) The returning officer need not defer the making of a declaration and statement under subsection (1) by reason of the non-receipt of ballot papers if it is clear that those ballot papers cannot possibly affect the result of the election.

(3) On receipt of the statement referred to in subsection (1) (b), the Electoral Commissioner shall by endorsement certify on the writ for the

election the names of the candidates elected and return the writ to the Governor.

99. (1) In a House of Assembly election, the district returning officer shall, as soon as practicable after the result of the election has been ascertained—

Declaration of poll and return of writs for House of Assembly.

- (a) publicly declare the result of the election and the name of the candidate elected;
- (b) make out a statement setting out the result of the election and the name of the candidate elected and transmit the statement to the Electoral Commissioner.

(2) A district returning officer need not defer the making of a declaration and statement under subsection (1) by reason of the non-receipt of ballot papers if it is clear that those ballot papers cannot possibly affect the result of the election.

(3) Where—

- (a) in the case of a general election—the Electoral Commissioner has received statements from all district returning officers in pursuance of subsection (1) (b);

or

- (b) in any other case—the Electoral Commissioner has received a statement from the district returning officer for a district in pursuance of subsection (1) (b) in relation to the election held in the district,

the Electoral Commissioner shall by endorsement certify on the writ for the election the name of each candidate elected for each district or the name of the candidate elected for the district, as the case requires, and return the writ to the Governor or the Speaker.

PART XII

ADMINISTRATIVE AND JUDICIAL REVIEW

DIVISION I—ADMINISTRATIVE REVIEW

100. (1) A decision of any of the following classes is reviewable under this Division:

Reviewable decisions.

- (a) a decision by the Electoral Commissioner or an officer as to the enrolment of any claimant for enrolment;
- (b) a decision by an electoral registrar on an objection to the enrolment of an elector on a roll;
- (c) a decision by the Electoral Commissioner as to the registration of a political party;

or

- (d) a decision of a prescribed class taken under this Act by the Electoral Commissioner or an officer.

(2) A person has, for the purposes of this Division, a proper interest in a decision that is reviewable under this Division—

- (a) if he is the person on whose claim or application the decision was taken;
 - (b) if he objected, in accordance with this Act, to the claim or application in respect of which the decision was made, or the decision was made on his objection;
 - (c) his rights under this Act are directly affected by the decision;
- or
- (d) he is a person of a prescribed class.

Application for review.

101. (1) A person who has a proper interest in a decision that is reviewable under this Division may, if he is dissatisfied with the decision, apply to the Electoral Commissioner or to a local court of full jurisdiction for a review of the decision.

(2) An application under subsection (1)—

- (a) must be in writing;
- (b) must be made within 1 month after the applicant receives notice of the decision or such longer period as the Electoral Commissioner or the court may allow;

and

- (c) must set out, in detail, the grounds on which the applicant seeks a review of this decision.

(3) Where an application is made under subsection (2), the Electoral Commissioner or the court shall afford the applicant and all other persons with a proper interest in the decision to make submissions, orally or in writing, on the application.

(4) After considering all representations made under subsection (3), the Electoral Commissioner or the court may—

- (a) confirm the decision subject to the review;
 - (b) modify the decision subject to the review;
- or
- (c) quash the decision subject to the review and make any decision that should have been made in the first instance.

DIVISION II—DISPUTED ELECTIONS AND RETURNS

Method of disputing elections.

102. The validity of any election or return may be disputed by petition addressed to the Court of Disputed Returns and not otherwise.

The Court of Disputed Returns.

103. (1) The Supreme Court shall be the Court of Disputed Returns.

(2) The jurisdiction of the Supreme Court, when sitting as the Court of Disputed Returns under this Act, is exercisable by a single judge.

Requisites of petition.

104. (1) A petition disputing an election or return shall—

- (a) set out the facts relied on to invalidate the election or return;
- (b) set out the relief to which the petitioner claims to be entitled;
- (c) be signed by a candidate at the election in dispute or by a person who was qualified to vote at the election;

(d) be attested by 2 witnesses whose occupations and addresses are stated;

(e) be filed in the Court within 40 days after the return of the writ.

(2) At the time of filing the petition, the petitioner shall deposit with the Registrar of the Supreme Court \$200 as security for costs.

105. The Electoral Commissioner shall be the respondent to any petition in which the validity of an election or return is disputed.

Electoral Commissioner to be respondent to petition.

106. (1) The Court shall be guided by good conscience and the substantial merits of each case without regard to legal forms or technicalities.

Principles to be observed.

(2) The Court is not bound by the rules of evidence.

107. (1) The Court may make any of the following orders:

Orders that the Court is empowered to make.

(a) an order that a person found by the Court not to have been duly elected cease to be a member of the Legislative Council or the House of Assembly (as the case may require);

(b) an order that a person found by the Court to have been duly elected (but not returned as elected) take his seat as a member of the Legislative Council or the House of Assembly (as the case may require);

(c) an order declaring an election void and requiring a new election to be held.

(2) The Court may award costs against an unsuccessful party to the petition.

(3) An election shall not be declared void on the ground of—

(a) a defect in a roll or certified list of electors;

or

(b) an irregularity in, or affecting, the conduct of the election,

unless the Court is satisfied on the balance of probabilities that the result of the election was affected by the defect or irregularity.

(4) An election may be declared void on the ground of the defamation of a candidate but only if the Court of Disputed Returns is satisfied, on the balance of probabilities, that the result of the election was affected by the defamation.

108. All decisions of the Court shall be final, conclusive and without appeal, and shall not be questioned in any way.

Decisions to be final.

PART XIII

OFFENCES

DIVISION I—BRIBERY, UNDUE INFLUENCE, ETC.

109. (1) A person who offers or solicits an electoral bribe shall be guilty of an indictable offence.

Bribery.

Penalty: Imprisonment for 2 years.

(2) In this section—

“bribe” does not include a declaration of public policy or a promise of public action:

“electoral bribe” means a bribe for the purpose of—

- (a) influencing the vote of an elector;
- (b) influencing the candidature of any person in an election;
- or
- (c) otherwise influencing the course or result of an election.

Undue influence.

110. A person who, by violence or intimidation, influences or attempts to influence—

- (a) the vote of an elector;
- (b) the candidature of any person in an election;
- or
- (c) the course or result of an election,

shall be guilty of an indictable offence.

Penalty: Imprisonment for 2 years.

Interference with political liberty.

111. A person shall not hinder or interfere with the free exercise or performance, by any other person, of a right or duty under this Act.

Penalty: Imprisonment for 6 months.

DIVISION II—ELECTORAL ADVERTISEMENTS, COMMENTARIES AND OTHER MATERIAL

Printing and publication of electoral advertisements, notices, etc.

112. (1) A person shall not publish or distribute, or cause or permit to be published or distributed, an electoral advertisement in printed form unless—

(a) the name and address (not being a post office box) of the author of the advertisement, or the person who authorized its publication, appears at the end;

and

(b) in the case of an electoral advertisement that is printed otherwise than in a newspaper—the name and place of business of the printer appears at the end.

(2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction—

- (a) if the offender is a natural person—by a fine not exceeding \$1 000;
- or
- (b) if the offender is a body corporate—by a fine not exceeding \$5 000.

(3) Subsection (1) does not apply in relation to—

- (a) a car sticker, T-shirt, lapel button, lapel badge, pen, pencil or balloon;

or

(b) an article included in a prescribed class of articles.

113. (1) Where—

(a) an electoral advertisement contains a statement purporting to be a statement of fact;

Misleading advertising.

and

(b) the statement is inaccurate and misleading to a material extent,

a person who authorized, caused or permitted the publication of the advertisement shall be guilty of an offence.

Penalty:

(a) where the offender is a natural person—\$1 000;

(b) where the offender is a body corporate—\$10 000.

(2) It is a defence to a charge of an offence against subsection (1) for the defendant to prove—

(a) that he took no part in determining the contents of the advertisement;

and

(b) that he could not reasonably be expected to have known that the statement to which the charge relates was inaccurate and misleading.

(3) This section applies to advertisements published by any means (including radio or television).

114. (1) Where electoral matter is to be inserted in a newspaper, the proprietor of the newspaper shall cause the word “advertisement” to be printed as a headline in letters not smaller than 10 point or long primer to each article or paragraph containing the electoral matter.

Heading to electoral advertisements.

Penalty:

(a) if the offender is a natural person—\$500;

or

(b) if the offender is a body corporate—\$2 500.

(2) This section applies only in respect of electoral matter for the publication of which payment or other consideration has been, or is to be, given.

115. (1) A person shall not exhibit an electoral advertisement on—

(a) a vehicle or vessel;

or

(b) a building, hoarding or other structure,

if the advertisement occupies an area in excess of 1 square metre.

Penalty: \$1 000.

Size of electoral advertisements.

(2) For the purposes of subsection (1), electoral advertisements—

(a) that are apparently exhibited by or on behalf of the same candidate or political party;

and

(b) that are at their nearest points within 1 metre of each other,

shall be deemed to form a single advertisement.

(3) This section does not apply to—

(a) the exhibition of an advertisement in a theatre (including a drive-in theatre) by means of a cinematograph;

(b) the exhibition of the name of a candidate or the name of a political party (or both) at or near an office or room, where—

(i) the name is so exhibited in order to indicate that the office or room is an office or committee room of that candidate or political party;

and

(ii) the place of exhibition is more than 100 metres from the entrance to a polling booth;

or

(c) the exhibition of an advertisement of a prescribed kind or the exhibition of an advertisement in circumstances of a prescribed kind.

Published material to identify person responsible for political content.

116. (1) A person shall not, during an election period, publish material consisting of, or containing a commentary on, any candidate or political party, or the issues being submitted to electors, in written form, or by radio or television, unless the material or the programme in which the material is presented contains a statement of the name and address (not being a post office box) of a person who takes responsibility for the publication of the material.

Penalty:

(a) if the offender is a natural person—\$500;

(b) if the offender is a body corporate—\$2 500.

(2) This section does not apply to—

(a) the publication in a newspaper of a leading article;

(b) the publication of a report of a meeting that does not contain any comment (other than comment made by a speaker at the meeting) on any candidate, or political party, or the issues being submitted to electors;

(c) the publication in a newspaper of an article, letter, report or other matter if the newspaper contains a statement to the effect that a person whose name and address (not being a post office box) appears in the statement takes responsibility for the publication of all electoral matter published in the newspaper;

(d) a news service or a current affairs programme on radio or television.

DIVISION III—OFFENCES RELATED TO THE CONDUCT OF AN ELECTION

117. (1) A person shall not take part in the conduct of an election in which he is a candidate for election. Candidates not to take part in elections.

Penalty: \$1 000.

(2) A candidate shall not personally solicit the vote of any elector on polling day.

Penalty: \$1 000.

118. (1) No person (other than officers, scrutineers and the electors voting or about to vote) shall be present in a polling booth during polling except by permission of the presiding officer. Persons present at polling.

Penalty: \$200.

(2) A person who is present in a polling booth in contravention of subsection (1) may be removed by a member of the police force, or a person authorized by the presiding officer to remove him.

119. (1) A person who misconducts himself in a polling booth, or fails to obey the lawful directions of the presiding officer, shall be guilty of an offence punishable on conviction by a fine not exceeding \$500 and may be removed from the polling booth by a member of the police force or by any person authorized by the presiding officer. Offender may be removed from polling booth.

(2) Any person who has been removed from a polling booth by direction of the presiding officer under subsection (1) and who re-enters the polling booth without the permission of the presiding officer, shall be guilty of a further offence, punishable on conviction by a fine not exceeding \$1 000 or imprisonment for a period not exceeding 6 months, or both.

120. (1) A person shall not, by clandestine or dishonest means, attempt to discover how a voter voted. Secrecy of vote.

Penalty: \$1 000 or imprisonment for 3 months.

(2) No person shall open an envelope containing a declaration ballot paper except the returning officer to whom it is addressed, or an officer acting with the authority of that returning officer.

Penalty: \$500.

121. (1) An officer shall not solicit the vote of an elector or take part in a campaign for the election of a particular candidate or of candidates of a particular political party. Conduct of officers, scrutineers, etc.

Penalty: \$2 000 or imprisonment for 6 months.

(2) An officer or scrutineer shall not attempt to influence the vote of an elector.

Penalty: \$2 000 or imprisonment for 6 months.

(3) An officer or scrutineer shall not wear or display in a polling booth any badge or emblem of a candidate or political party.

Penalty: \$1 000.

(4) An officer or other person who acquires knowledge of the vote of an elector through assisting the elector to vote, or otherwise in the exercise of powers or functions under this Act, shall not divulge that knowledge.

Penalty: \$2 000 or imprisonment for 6 months.

(5) An officer or other person shall not mark a ballot paper so as to make possible identification of the voter.

Penalty: \$2 000 or imprisonment for 6 months.

Cards in polling booth.

122. (1) A person shall not, except as authorized by this Act, wilfully exhibit or leave in any polling booth any card or paper with any direction or instruction as to how an elector should vote or as to the method of voting.

Penalty: \$500.

(2) This section does not apply to any official instructions exhibited by proper authority at any polling booth.

Witnessing electoral papers.

123. (1) A person shall not—

(a) sign his name as witness on any electoral paper unless it has been signed by the person whose signature he purports to witness;

(b) sign his name as witness on any electoral paper unless he has seen the person, whose signature he purports to witness, sign it;

or

(c) write on any electoral paper as his own name—

(i) the name of another person;

or

(ii) any name not being his own name.

Penalty: \$1 000.

(2) In this section—

“electoral paper” includes any prescribed form.

Other offences relating to ballot papers, etc.

124. (1) A person shall not—

(a) exercise or attempt to exercise a vote to which he is not entitled;

(b) vote more than once at the same election;

or

(c) make a statement in any claim, application, return or declaration, or in answer to a question, under this Act that is, to his knowledge, false or misleading in a material respect.

Penalty: \$2 000 or imprisonment for 6 months, or both.

(2) It is a defence to a charge of an offence against subsection (1) (a) or (b) to prove that acts alleged to constitute the offence arose from an honest misunderstanding or mistake on the part of the defendant.

(3) Except as authorized by this Act, a person (not being an elector to whom the ballot paper has been lawfully issued) shall not mark a vote, or make any other mark or writing on a ballot paper.

Penalty: \$2 000 or imprisonment for 6 months, or both.

(4) A person shall not, without proper authority, destroy or interfere with voting papers.

Penalty: \$2 000 or imprisonment for 6 months, or both.

(5) A person shall not wilfully deface, mutilate, destroy or remove any notice, list or other document affixed by any district returning officer.

Penalty: \$500.

125. (1) When a polling booth is open for polling, a person shall not— Prohibition of canvassing near polling booths.

(a) canvass for votes;

(b) solicit the vote of any elector;

(c) induce an elector not to vote for a particular candidate;

(d) induce an elector not to vote at the election;

or

(e) exhibit a notice or sign (other than an official notice) relating to the election,

at an entrance of, or within, the polling booth, or in any public or private place within 6 metres of an entrance to the booth.

Penalty: \$500.

(2) Where—

(a) a building used as a polling booth is situated in grounds within an enclosure;

and

(b) the appropriate district returning officer causes to be displayed throughout the hours of polling at each entrance to those grounds a notice signed by him stating that those grounds are, for the purposes of subsection (1), part of the polling booth,

those grounds shall, for the purposes of that subsection, be deemed to be part of the polling booth.

126. (1) A person shall not publicly advocate—

(a) that a person who is entitled to vote at an election should abstain from voting at the election;

(b) that a voter should mark a ballot paper otherwise than in the manner prescribed in section 76 (1) or (2);

or

(c) that a voter should refrain from marking a ballot paper issued to the voter for the purpose of voting.

Penalty: \$2 000.

Prohibition of advocacy of forms of voting inconsistent with this Act.

(2) A person shall not distribute how-to-vote cards in relation to an election unless each card is marked so as to indicate a valid vote in the manner prescribed in section 76 (1) or (2).

Penalty: \$2 000.

Failure to
transmit claim.

127. Any person who accepts an electoral paper for transmission to an officer shall forthwith transmit it to the appropriate officer.

Penalty: \$1 000.

Forging or
uttering electoral
papers.

128. A person shall not—

(a) forge any electoral paper;

or

(b) utter any forged electoral paper, knowing it to be forged.

Penalty: \$10 000 or imprisonment for 12 months, or both.

Protection of the
official mark.

129. (1) A person shall not, without lawful authority—

(a) make any mark purporting to be an official mark on or in any paper;

(b) have in his possession any paper bearing any official mark;

or

(c) make use of or have in his possession any instrument capable of making on or in any paper an official mark.

Penalty: \$1 000.

(2) A person who, without lawful authority, makes on or in any ballot paper, or on or in any paper purporting to be a ballot paper, an official mark, shall be deemed to have forged a ballot paper, and shall be punishable accordingly.

(3) All paper bearing an official mark, and all instruments capable of making on or in paper an official mark, made, used, or in the possession of any person without lawful authority shall be forfeited to the Crown and may without warrant be seized by a member of the police force and destroyed or dealt with as prescribed.

(4) In this section—

“official mark” means any prescribed mark to be placed or made on or in any electoral paper, and include any mark so nearly resembling an official mark as to be likely to deceive.

DIVISION IV—EMPLOYERS

Employers to
allow employees
leave of absence
to vote.

130. (1) If an employee who is an elector notifies his employer before the polling day that he desires leave of absence to enable him to vote at any election, the employer shall, if the absence desired is necessary to enable the employee to vote at the election, allow him leave of absence without any penalty or disproportionate deduction of pay for such reasonable period, not exceeding 2 hours, as is necessary to enable the employee to vote at the election.

Penalty: \$1 000.

(2) No employee shall, under pretence that he intends to vote at the election, but without a genuine intention of doing so, obtain leave of absence under this section.

Penalty: \$500.

(3) This section shall not apply to any elector whose absence may cause danger or substantial loss in respect of the employment in which he is engaged.

PART XIV MISCELLANEOUS

131. (1) An electoral paper that is required by this Act to be signed by any person must be signed by that person with his personal signature. Signature to electoral paper.

(2) Where a person who is unable to sign his name in writing makes his mark as his signature to an electoral paper, the mark shall be deemed to be his personal signature, if it is identifiable as such, and is made in the presence of a witness who signs the electoral paper as witness.

132. (1) Where a person has engaged, is engaging or is proposing to engage in conduct that constitutes a contravention of, or an offence against, this Act or any other law of the State in its application to elections, the Supreme Court may, on the application of the Electoral Commissioner, grant an injunction restraining that person from engaging in the conduct. Injunctions.

(2) Where—

(a) a person has refused or failed to carry out a legal obligation;

and

(b) the refusal or failure constitutes an offence against this Act or any other law of the State in its application to elections,

the Supreme Court may, on the application of the Electoral Commissioner, grant an injunction requiring that person to carry out that obligation.

(3) An injunction shall not be granted under this section in respect of a contravention of, or non-compliance with, a provision of Division II of Part XIII.

(4) Where an application is made to the Supreme Court for an injunction under subsection (1), the Court may, before determining the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in that subsection pending the determination of the application.

(5) The Supreme Court may discharge or vary an injunction granted under subsection (1), (2) or (4).

(6) Where the Electoral Commissioner makes an application to the Supreme Court for the grant of an injunction under this section, the Court shall not require the Electoral Commissioner or any other person, as a condition of the granting of an interim injunction, to give any undertakings as to damages.

Disqualification
for bribery and
undue influence.

133. Any person who is convicted of bribery or undue influence or an attempt to commit bribery or undue influence shall, during a period of 2 years from the date of the conviction, be disqualified from sitting or being elected as a Member of either House of the Parliament.

Service by post.

134. Any notice or other document that is to be served or given by the Electoral Commissioner under this Act may be served by post.

Preservation of
ballot papers.

135. All ballot papers, certified lists of voters and declarations used at or in connection with an election shall be preserved, until the election can no longer be questioned.

Offences
committed with
connivance of
person other than
offender.

136. Where a person commits an offence against this Act on behalf, and with the connivance, of another, that other person is also guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

Summary
offences.

137. The offences constituted by this Act are, except where otherwise provided, summary offences.

Exemption from
stamp duty.

138. No declaration made for the purposes of this Act is chargeable with stamp duty.

Regulations.

139. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) authorize the use of machines or devices of a kind specified in the regulations for the purpose of recording votes, and make any necessary provisions regulating the use of such machines or devices, and the counting of votes recorded by them (which provisions shall, to the extent of any inconsistency, prevail over the provisions of this Act);
- (b) prescribe penalties not exceeding \$500 for any contravention of a regulation;
- (c) provide for the expiation of offences against the provisions of this Act dealing with compulsory enrolment or compulsory voting.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor