

Western Australia

## **Electoral Act 1907**

**Pts. I, IV and IVA incorporating the  
amendments proposed by the *Electoral and  
Constitution Amendment Bill 2011*  
(Bill No. 190-1)**



# Electoral Act 1907

---

## CONTENTS

---

### Part I — Preliminary

1.	Short title	2
2.	Commencement	2
4.	Terms used	2

### Part IV — Elections

#### Division (1) — Writs

64.	Issue of writs for general election	7
65.	Notice to be published	7
67.	Issue of writs in cases of vacancy	7
68.	Time of issue of writs	8
69.	Form of writ	9
69A.	Close of rolls	9
70.	Date of nomination	9
71.	Date of polling	9
72.	Date of return of writ	10
74.	Address and distribution of writs	11
75.	Duty of officer on receipt of writ	11
76.	Extension of time	12

#### Division (2) — Nominations

76A.	Qualification of persons for election	12
76B.	Disqualification of persons for election	13
77.	Candidates to nominate	13
78.	Mode of nomination	14
79.	Time for receipt of nominations	15
80.	Grouping of candidates	15
81.	Nomination paper and deposit	16
81A.	Centralised nomination procedure	16
82.	Withdrawal of nomination	17
83.	Formal defects	18
84.	Return or forfeiture of deposit	18
85.	Place of declaration of nominations and hour of nomination	19
86.	Proceedings on nomination day — Assembly election	19
87.	Proceedings on nomination day — Council election	20
87A.	Further duties of returning officer	22

## Electoral Act 1907

### Contents

---

88.	Death of candidate after nomination	22
89.	Failure or partial failure of election	24
	<b>Division (3) — Voting</b>	
	<i>(i) Early and absent voting</i>	
90.	Applications for early ballot papers	25
92.	Directions for early voting	30
93.	Registration of general early voters	35
94.	Authorised witnesses	36
95.	Offences relating to postal voting	36
97.	Spelling mistakes on early ballot papers	38
98.	Officer to decide	38
99A.	Absent voting	39
99B.	Regulations relating to early, absent, and provisional voting	39
	<i>(ii) At the poll</i>	
100.	Polling places	40
100A.	Mobile portable ballot boxes at certain institutions and hospitals	42
100B.	Mobile portable ballot boxes in certain remote areas	43
101.	Arrangements for taking the poll	44
102.	Duties of returning officer	44
102A.	Conjoint elections	44
104.	Appointment of polling place officers	45
105.	Substitute presiding officers and powers of assistant presiding officers	45
106.	Absence of returning officer or presiding officer not to invalidate election	45
107.	Subdivision of polling places	46
108.	No licensed premises to be used	46
109.	Certain buildings to be used free	46
110.	Separate compartments	47
111.	Ballot boxes	47
112.	Supply of rolls	47
113.	Ballot papers	47
113A.	Voting tickets	48
113B.	Printing Council ballot papers	49
113BA.	Printing Assembly ballot papers	50
113C.	Printing of political party names or “independent” on ballot papers	51
113D.	Claims etc. may be lodged with Electoral Commissioner	52
114.	Scrutineers	53
115.	Persons present at polling	53
116.	Maintenance of order	54
117.	Conduct of the poll	55
119.	Questions to be put to voters	55
120.	Consequences of answers	56

121.	Answer conclusive	57
122.	Persons objected to — how to vote	57
122A.	Vote of person whose name is not on roll or has been struck off roll or is on roll and cannot be found or has been struck out under s. 126	57
123.	No other question or declaration necessary	59
124.	Right to vote despite error in roll or change of name on marriage	59
125.	Ballot paper to be handed to elector	60
126.	Roll to be marked on ballot paper being issued	60
127.	Vote to be marked in private	61
128.	How votes to be marked	61
129.	Assistance to electors	62
130.	Spoilt ballot papers	63
131.	Adjournment of polling on account of riot	63
132.	Adjournment in other cases	63
133.	Voting at adjourned polling	64
	<b>Division (4) — Counting of votes (general)</b>	
134.	Count of votes — how conducted	64
135.	Adjournment to be announced	65
136.	Before adjourning, ballot papers etc., to be sealed in boxes	65
	<b>Division (4a) — Scrutiny and count (Assembly elections)</b>	
136A.	Application	65
137.	Power to appoint scrutineers	65
138.	Submissions by scrutineers	66
139.	Informal ballot papers	66
140.	Effect to be given to elector's intention	67
140A.	Some ballot papers with non-consecutive preferences can be formal	68
141.	Counting places and assistant returning officers	69
142.	The count of votes by assistant returning officers	69
142A.	Appointment of assistant returning officers for counting early, absent and provisional votes	70
143.	Returning officer to ascertain result of poll	71
144.	Counting of votes by returning officers	71
145.	Tied elections	76
146.	Re-count	77
	<b>Division (4b) — Scrutiny and count (Council elections)</b>	
146A.	Application and construction	77
146B.	Appointment of assistant returning officers and counting places	77
146C.	Power to appoint scrutineers	78
146D.	Submissions by scrutineers	79
146E.	Informal and formal ballot papers	79

Contents

---

146F.	Ballot papers deemed to be marked according to voting tickets	80
146G.	Counting of votes by assistant returning officers	80
146H.	Counting of votes by deputy returning officers	81
146I.	Counting of votes by returning officers	82
146J.	Re-count	84
	<b>Division (5) — Declaration of poll and return of the writ</b>	
147.	Declaration of poll and certification and return of writ	84
148.	Election not to be questioned	86
149.	Remedy for informalities in election proceedings	86
149A.	Election of unqualified or disqualified person void	87
	<b>Division (6) — After the poll</b>	
150.	Returning officer to forward statistical return and rolls to Electoral Commissioner	87
151.	Returning officer to send election papers to Clerk of Council or Assembly	87
152.	Preservation of election papers	88
153.	Production of rolls used at election	89
154.	Election papers to be delivered to Court of Disputed Returns	89
155.	Election papers to be destroyed	89
155AA.	Papers and documents used for dual purposes	90
	<b>Division (7) — Voting to be compulsory</b>	
156.	Compulsory voting	90
	<b>Part IVA — Filling vacancies in the Council</b>	
156A.	Terms used	95
156B.	Notification of vacancies in the Council	95
156C.	Filling vacancy by re-count — nominations	96
156D.	Filling vacancy by re-count — proceedings at close of nominations	97
156E.	Filling vacancy by fresh election	99
	<b>Notes</b>	
	Compilation table	100
	Provisions that have not come into operation	106
	<b>Defined Terms</b>	

Western Australia

## **Electoral Act 1907**

**An Act to regulate Parliamentary elections and for related purposes.**

*[Long title amended by No. 64 of 2006 s. 12.]*

## **Part I — Preliminary**

### **1. Short title**

This Act may be cited as the *Electoral Act 1907*<sup>1</sup>.

### **2. Commencement**

This Act shall come into operation on 1 March 1908.

[3. *Deleted by No. 10 of 1998 s. 76.*]

### **4. Terms used**

(1) In this Act, unless the contrary intention appears —

***absent voter*** means any person who votes under the provisions of section 99A;

***Assembly*** means the Legislative Assembly;

***Australian citizen*** means a person who is an Australian citizen under the *Australian Citizenship Act 1948* of the Commonwealth or any Act amending that Act or substituted therefor;

***authorised witness*** has the meaning given by section 94;

***candidate*** in Parts II and VII includes any person who, within 3 months before the day of election, offers himself for election as a member of the Council or Assembly;

***christian name*** means the name or names prefixed to the surname of any person, whether received at Christian baptism or not;

***conjoint election*** means a general election for the Council and the Assembly that are both to be held on the same day pursuant to writs issued on the same day;

***constitution***, in relation to a political party, means a written set of principles and rules (however described) under which the party is governed;

***Council*** means the Legislative Council;

***Deputy Electoral Commissioner*** means the person holding or acting in the office of Deputy Electoral Commissioner referred to in section 5A;

***district***, in relation to the Assembly, means an electoral district for the election of a member of the Assembly and, in relation to the Council, means an electoral district that forms part of a region;



*early ballot paper* means a ballot paper issued under section 90 and *early vote* has a corresponding meaning;

*election* means an election in a region or an election in a district;

*election year, in relation to a periodic election, means the year in which the writ for the periodic election is issued;*

*elector* means any person whose name appears on a roll as an elector;

*electoral census* means any enumeration of persons eligible as electors for the Council or Assembly, made under the provisions of Part III;

*Electoral Commissioner* means the Electoral Commissioner appointed under this Act;

*enrolment information* means a roll, information on a roll or other information relating to electors;

*expiry year means a year in which an Assembly, if it is not previously dissolved, will expire by effluxion of time;*

*general election* —

- (a) in relation to the Assembly, means the elections in the districts the writ for which is issued under ~~section 64(1);~~ section 64(1) or (2);
- (b) in relation to the Council, means the elections in the regions the writ for which is issued under ~~section 64(2);~~ section 64(3);

*general polling place* has the meaning given by section 100(3);

*group* means a group constituted in accordance with section 80;

*hour of nomination* means the hour fixed by section 85(2);

*officer* includes all persons appointed to any office under this Act or in the Western Australian Electoral Commission, or exercising any power or discharging any duty under this Act, except as an honorary Government electoral agent;

*official paper* means paper referred to in section 113(4);

*periodic election means —*

- (a) a general election for the Assembly the writ for which is issued under section 64(2); or
- (b) any general election for the Council;

**s. 4**

---

***political party*** means —

- (a) a body corporate or other body or organisation (not being a body corporate or other body or organisation described in paragraph (b)) having as one of the objects or activities of the body or organisation the promotion of the election to the Parliament of this State of a candidate or candidates endorsed by it or by a body or organisation that forms part of it; or
- (b) the branch or division for this State of a body corporate or other body or organisation which —
  - (i) is organised on a basis that includes this State and another State or Territory or other States or Territories;
  - (ii) has a branch or division for this State; and
  - (iii) has as one of the objects or activities of the body or organisation the promotion of the election to the Parliament of this State of a candidate or candidates endorsed by it or by a body or organisation that forms part of it;

***polling place*** means any building or structure in which the polling at elections is appointed to take place;

***President*** means the President of the Legislative Council;

***prison*** means a prison within the meaning of that expression as defined by section 3 of the *Prisons Act 1981*;

***referendum*** means the submission of a question to the electors pursuant to an Act but does not include an election under this Act, and a reference to an election being held on the same day as a referendum is a reference to the polling at an election being conducted on the day on which the votes of the electors are taken for the purposes of a referendum;

***region*** means an electoral region for the election of members of the Council;

***registered political party*** has the meaning given by section 62C;

***relevant citizenship law*** means the *Australian Citizenship Act 1948* of the Commonwealth, as amended and in force immediately before the day fixed by proclamation for the purposes of section 2(2) of the *Australian Citizenship Amendment Act 1984*, of the Commonwealth, and the regulations in force immediately before that day under the *Australian Citizenship Act 1948* of the Commonwealth, as so amended and in force;

**relevant number**, in relation to an election in a region, means the number of members of the Council that are to be returned at the election;

**returning officer** includes deputy returning officer;

**roll** means an electoral roll under this Act;

**secretary**, in relation to a political party, means the person who holds the office of secretary or chief administrative officer (however described) of the party;

**single member election** means —

- (a) an election in a district; or
- (b) an election in a region where the relevant number is one;

**Speaker** means the Speaker of the Legislative Assembly;

**sub-district** means a portion of a district the boundaries of which have been defined under the provisions of section 100;

**voting ticket** means a written statement of a particular order in which an elector might allocate preferences, in an election, being a statement for use under this Act in interpreting the votes of electors who choose to vote in accordance with the voting ticket;

**voting ticket square** means a square printed on a ballot paper to indicate in relation to the name of a candidate, or the names of candidates included in a group, that a voting ticket is registered in relation to that candidate or group;

**writ** means a writ directing the Electoral Commissioner to proceed with an election in a district, elections in all the districts, an election in a region or elections in all the regions.

- (2) A reference in this Act to a poll for a district or an election in or for a district is a reference to a poll or an election for the return by a district of a member of the Assembly.
- (3) A reference in this Act to a poll for a region or an election in or for a region is a reference to a poll or election for the return by a region of a member or members, as the case may require, of the Council but does not include the election of a member of the Council under sections 156C and 156D.
- (4) A reference in this Act to a full election in a region is a reference to an election in a region for the return of 6 members of the Council.

**s. 4**

---

- (5) A reference in this Act to the functions of the Electoral Commissioner is a reference to his functions under this Act and other written laws.

*[Section 4 amended by No. 44 of 1911 s. 2; No. 63 of 1948 s. 3; No. 34 of 1953 s. 2; No. 51 of 1962 s. 2; No. 33 of 1964 s. 4; No. 68 of 1964 s. 3; No. 28 of 1970 s. 3; No. 39 of 1979 s. 4 and 5; No. 9 of 1983 s. 3 and 29; No. 54 of 1983 s. 2; No. 66 of 1983 s. 3; No. 104 of 1985 s. 3; No. 40 of 1987 s. 17 and 84; No. 14 of 1996 s. 4; No. 43 of 1996 s. 4; No. 36 of 2000 s. 4, 28(1), 43, 62, 67 and 82; No. 64 of 2006 s. 13; No. 7 of 2009 s. 4; [the Electoral and Constitution Amendment Bill 2011 cl. 4.](#)]*

## Part IV — Elections

### Division (1) — Writs

[63.     Deleted by No. 36 of 2000 s. 7.]

~~64. — **Issue of writs for general election**~~

~~— (1) Whenever an Assembly expires or is dissolved the Governor shall, not later than 21 days after the dissolution or expiry, cause a writ to be issued for elections in all the districts.~~

~~— (2) Whenever the occasion arises under the *Constitution Acts Amendment Act 1899* for a writ to be issued for elections in all the regions the Governor shall, within the time prescribed by that Act, cause that writ to be issued.~~

~~— [Section 64 inserted by No. 40 of 1987 s. 38; amended by No. 36 of 2000 s. 8.]~~

**64.     Issue of writs for general election**

(1) If an Assembly is dissolved before 1 November last preceding its expiry year, the Governor shall cause a writ for elections in all the districts to be issued not later than 10 days after the dissolution.

(2) If an Assembly is not dissolved before 1 November last preceding its expiry year, the Governor shall cause a writ for elections in all the districts to be issued on the second Wednesday of February in the expiry year.

(3) In order to fill seats in the Council that are to be vacated by effluxion of time at the end of 21 May in a year, the Governor shall cause a writ for elections in all the regions to be issued on the second Wednesday of February last preceding that 21 May.

[Section 64 inserted by the *Electoral and Constitution Amendment Bill 2011 cl. 5.*]

**65.     Notice to be published**

(1) The Electoral Commissioner is to publish notice of the issue of a writ under section 64, 67 or 156E in the *Gazette*.

(2) The notice is to state the day of issue of the writ.

*[Section 65 inserted by No. 36 of 2000 s. 9.]*

[66.     Deleted by No. 79 of 1987 s. 20.]

**Electoral Act 1907**

**Part IV** Elections

**Division (1)** Writs

**s. 67**

---

[66A. Deleted by No. 47 of 1940 s. 2.]

**67. Issue of writs in cases of vacancy**

- (1) Whenever a vacancy occurs in the Assembly from any cause, the Speaker, upon a resolution by the House declaring such vacancy and the cause thereof, shall cause a writ to be issued to supply the vacancy.
- (2) Subject to section 39(4) of the *Constitution Acts Amendment Act 1899*, in the case of any such vacancy when Parliament is not in session, or when the vacancy occurs during any adjournment for a longer period than 7 days of the Assembly, the Speaker may, without such preceding resolution, cause a writ to be issued to supply the vacancy.
- (3) Subject to section 39(4) of the *Constitution Acts Amendment Act 1899*, if at the occurrence of any such vacancy there is no Speaker, and Parliament is not in session, or if the Speaker is absent from the State, the Governor shall, if satisfied of the existence of such vacancy, cause a writ to be issued for the election of a member for the seat so vacated.
- (4) In the case of a vacancy caused by death, the Speaker or the Governor, as the case may require, is to cause the writ to be issued on receiving notice of the death in the prescribed form signed by 2 members of the Assembly of which the deceased was a member.
- (4a) However, subject to section 39(4) of the *Constitution Acts Amendment Act 1899*, if the Speaker or Governor, as the case may be, is satisfied of the existence of the vacancy, the writ can be issued whether or not notice has been received under subsection (4).
- (5) Whenever a vacancy occurs by reason of any of the disqualifications mentioned in section 32(1)(a), and section 38(d), of the *Constitution Acts Amendment Act 1899*, it shall be the duty of the Registrar in Bankruptcy forthwith to give notice thereof in writing to the Speaker, if within the State, and otherwise to the Governor, and on receipt of such notice the Speaker, if within the State, or otherwise the Governor, shall forthwith, cause a writ to be issued for the election of a member to supply the vacancy.

[Section 67 amended by No. 44 of 1911 s. 24 and 43; No. 78 of 1984 s. 16; No. 40 of 1987 s. 39; No. 36 of 2000 s. 10; No. 64 of 2006 s. 53.]

**68. Time of issue of writs**

*[(1) deleted]*

- (2) Every writ shall be deemed to have been issued at the hour of 6 p.m. of the day on which it was issued.

*[Section 68 amended by No. 9 of 1983 s. 15; No. 40 of 1987 s. 40.]*

**69. Form of writ**

A writ is to be in the prescribed form and is to fix —

- (a) the last day for the nomination of candidates;
- (b) the day for the polling (***polling day***); and
- (c) the last day for the return of the writ.

*[Section 69 inserted by No. 36 of 2000 s. 11.]*

**69A. Close of rolls**

The time of the close of the rolls is 6 p.m. on the day 8 days after the date of the writ.

*[Section 69A inserted by No. 79 of 1987 s. 21.]*

~~**70. Date of nomination**~~

~~The date fixed as the last day for the nomination of candidates shall not be less than 7 nor more than 45 days from the date of the writ.~~

~~*[Section 70 amended by No. 63 of 1948 s. 13; No. 57 of 1952 s. 2; No. 33 of 1964 s. 25; No. 9 of 1983 s. 16; No. 79 of 1987 s. 22; No. 36 of 2000 s. 33.]*~~

**70. Date of nomination**

- (1) Subject to subsection (2), the date fixed as the last day for the nomination of candidates shall be not less than 7 nor more than 45 days after the date of the writ.

- (2) In the case of a periodic election the date fixed as the last day for the nomination of candidates shall be the second Friday next following the date of the writ.

*[Section 70 inserted by the Electoral and Constitution Amendment Bill 2011 cl. 6.]*

~~**71. Date of polling**~~

~~(1) The date fixed for the polling shall not be less than 21 days nor more than 45 days after the date of nomination.~~

~~(2) The day fixed for the polling shall be a Saturday, other than Easter Saturday or the Saturday immediately preceding or succeeding Easter Saturday.~~

~~(3) In the case of a general election for the Council or the Assembly the same date shall be fixed for the polling in each region or district as the case requires.~~

~~[Section 71 amended by No. 38 of 1931 s. 2; No. 63 of 1948 s. 14; No. 59 of 1959 s. 4; No. 79 of 1987 s. 23.]~~

**71. Date of polling**

(1) In this section —

*available day* means any day that is not an excluded day;

*excluded day* means —

(a) a day appointed as polling day for an election of the Senate or a general election of the House of Representatives or as the voting day for a referendum as defined in the *Referendum (Machinery Provisions) Act 1984* (Commonwealth); or

(b) Easter Saturday or the Saturday immediately preceding or succeeding Easter Saturday.

(2) Subsection (3) applies to any election other than an election held as part of a periodic election.

(3) The date fixed for the polling in an election to which this subsection applies shall be a Saturday that —

(a) is not less than 21 nor more than 45 days after the date of nomination; and

(b) is an available day.

(4) The same date shall be fixed under subsection (3) for the polling in each election in a district held as part of a general election for the Assembly for which the writ is issued under section 64(1).

(5) In the case of a periodic election, the date fixed for the polling in each election in a region or election in a district, as the case requires, shall be —

(a) the second Saturday of March in the election year; or



(b) if the second Saturday of March in the election year is an excluded day, the first succeeding Saturday that is an available day.

(6) If in the case of a periodic election the Premier, with the agreement of the Leader of the Opposition in the Legislative Assembly, recommends to the Governor that the date to be fixed for the polling be postponed because of exceptional circumstances, the date fixed for the polling shall be the first Saturday after the second Saturday of March that is an available day on which polling is practicable.

(7) In the case of a general election for the Council, the date fixed for the polling shall not be postponed to such an extent as would prevent the return of the writ on or before 21 May in the year in which seats in the Council are to be vacated by effluxion of time.

[Section 71 inserted by the Electoral and Constitution Amendment Bill 2011 cl. 7.]

**72. Date of return of writ**

(1) The date fixed as the last day for the return of the writ shall not be more than 90 days after the date of the writ.

~~[(2) deleted]~~

(2) In the case of a general election for the Council, the date fixed as the last day for the return of a writ in the election shall be not later than 21 May in the year in which seats in the Council are to be vacated by effluxion of time.

[Section 72 amended by No. 63 of 1948 s. 15; No. 9 of 1983 s. 17; No. 79 of 1987 s. 24; No. 36 of 2000 s. 12; the Electoral and Constitution Amendment Bill 2011 cl. 8.]

[73. Deleted by No. 36 of 2000 s. 13.]

**74. Address and distribution of writs**

A writ is to be addressed to the Electoral Commissioner and the Electoral Commissioner is to forward a copy of the writ —

(a) in the case of a general election for the Council, to the returning officer and deputy returning officers for each region;

**Electoral Act 1907**

**Part IV** Elections

**Division (1)** Writs

**s. 75**

---

- (b) in the case of any other election in a region, to the returning officer and deputy returning officers for the region;
- (c) in the case of a general election for the Assembly, to the returning officer for each district;
- (d) in the case of any other election in a district, to the returning officer for the district.

*[Section 74 inserted by No. 36 of 2000 s. 14.]*

**75. Duty of officer on receipt of writ**

- (1) Having received a writ for an election in a region or an election in a district the Electoral Commissioner is to —
  - (a) advertise in the region or district the day of issue of the writ and the writ's particulars;
  - (b) as soon as practicable after receiving the writ, advertise in the region or district the place of declaration of nominations appointed under section 85(1) for the election; and
  - (c) publish whatever information the Electoral Commissioner considers necessary to adequately inform electors about polling places at which the poll will be taken and polling areas declared under section 100(1)(i) in relation to polling places.
- (2) The advertisement under subsection (1)(a) must give at least 10 clear days' public notice of polling day.
- (3) In the case of a general election the Electoral Commissioner is to comply with subsections (1) and (2) in respect of each region or district.
- (4) In this section *advertise* in relation to a region or district means advertise in a newspaper circulating in the region or district, or by placards or otherwise.

*[Section 75 inserted by No. 40 of 1987 s. 41; amended by No. 58 of 1988 s. 4; No. 36 of 2000 s. 15; No. 64 of 2006 s. 53.]*

**76. Extension of time**

- (1) Subject to subsections (2) and (3) the Governor may extend the time appointed for the nomination of candidates, the taking of the poll, or the return of the writ for any election.

(2) No extension of the time for taking the poll shall be made under this section at any time later than 7 days before the time originally appointed.

~~(3) In the case of a general election for the Council the time prescribed for the return of the writ shall not be extended under this section beyond the time prescribed by the *Constitution Acts Amendment Act 1899*.~~

(3) In the case of a general election for the Council —

(a) the time appointed for the nomination of candidates or the taking of the poll shall not be extended to such an extent as would prevent the return of the writ on or before 21 May; and

(b) the time appointed for the return of the writ shall not be extended beyond 21 May,

in the year in which seats in the Council are to be vacated by effluxion of time.

(4) Where an extension of the time for taking the poll is made under this section public notice of the extension shall forthwith be given in the region or district in which the election is to be held.

*[Section 76 inserted by No. 40 of 1987 s. 41; amended by No. 36 of 2000 s. 16; [the Electoral and Constitution Amendment Bill 2011 cl. 9.](#)]*

### **Division (2) — Nominations**

#### **76A. Qualification of persons for election**

(1) Unless this Act or another enactment provides otherwise, a person who —

- (a) has reached the age of 18; and
- (b) is not subject to any legal incapacity; and
- (c) is an Australian citizen; and
- (d) has resided in the State for one year; and
- (e) is an elector entitled to vote at an election in a district,

is qualified to be elected as a member of the Council or the Assembly.

**Electoral Act 1907**

**Part IV** Elections

**Division (2)** Nominations

**s. 76B**

---

- (2) The reference in subsection (1)(e) to an elector entitled to vote at an election in a district includes a reference to a person if —
- (a) the person is qualified to be an elector entitled to vote at an election in a district; and
  - (b) the person's name appeared on a roll or the person has made a claim for enrolment; and
  - (c) by mistake, the Electoral Commissioner or an enrolment officer has omitted or removed the person's name from a roll or has not included the person's name on a roll.

*[Section 76A inserted by No. 64 of 2006 s. 27(1).]*

**76B. Disqualification of persons for election**

- (1) A person to whom the *Constitution Acts Amendment Act 1899* section 32 or 34(1) applies is disqualified from being elected as a member of the Council or the Assembly.
- (2) A person to whom the *Constitution Acts Amendment Act 1899* section 34(2) applies is disqualified from being elected as a member of the House of which the person is not a member.

*[Section 76B inserted by No. 64 of 2006 s. 27(1).]*

**77. Candidates to nominate**

- (1) A person shall not be capable of being elected at an election unless he —
- (a) duly nominates himself; and
  - (b) is qualified to be elected and is not disqualified from being elected as, or from being, a member of the House for which the election is being held.
- (2) Where —
- (a) a day is fixed as the polling day for 2 or more elections; and
  - (b) at the hour of nomination there exist nominations of a person for 2 or more of those elections,
- each of those nominations is invalid.
- (3) For the purposes of subsection (2) where a person has nominated himself in relation to an election and the person withdraws that nomination under section 82 before the hour of nomination, the nomination of the person for the election shall

be taken to have ceased to have effect at the time when the person withdraws that nomination.

- (3a) If a person who is not qualified under section 76A nominates himself as a candidate in an election, the nomination is invalid.
- (4) A person shall not nominate himself as a candidate in an election if, prior to and until the hour of nomination, he is, either by this Act or any other Act, disqualified from being elected at that election as, or from being, a member of the House for which the election is being held.
- Penalty: \$1 000.
- (5) A nomination made in contravention of subsection (4) is invalid.

*[Section 77 inserted by No. 40 of 1987 s. 42; amended by No. 50 of 2003 s. 56(2); No. 64 of 2006 s. 28 and 53.]*

#### **78. Mode of nomination**

- (1) Nominations may be in a form approved by the Electoral Commissioner, and shall —
- (a) be signed by the candidate; and
  - (b) state the surname and each christian or given name, the place of residence and occupation of the candidate and the form in which the candidate's name is to be printed on the ballot papers for the election.
- (2) The statement of the form of the candidate's name to be printed on the ballot papers shall include the candidate's surname and may include each, or one or more, of the candidate's given names.
- (3) For the purposes of subsection (2) a given name may be stated by specifying —
- (a) the name;
  - (b) an initial standing for the name; or
  - (c) a commonly accepted variation of the name (including an abbreviation or truncation of the name or an alternative form of the name).

*[Section 78 amended by No. 44 of 1911 s. 43; No. 51 of 1962 s. 5; No. 79 of 1987 s. 25; No. 36 of 2000 s. 34.]*

**79. Time for receipt of nominations**

Nominations may be received by the returning officer at any time after the issue of the writ and before the hour of nomination.

**80. Grouping of candidates**

- (1) Two or more candidates nominated for an election in a region where the relevant number is more than one may, in a form approved by the Electoral Commissioner and before the hour of nomination, make a claim to the returning officer —
  - (a) to have their names included in a group in the ballot papers to be used in that election; and
  - (b) to have their names included in that group in the order specified in that claim.
- (2) Subject to subsections (3), (4), (5) and (6), candidates nominated for an election in a region who have under subsection (1) made a claim referred to in that subsection shall, for the purposes of that election, be included in a group in the order specified in the claim.
- (3) Two or more candidates who have made a claim under subsection (1) may, in a form approved by the Electoral Commissioner and before the hour of nomination, withdraw that claim.
- (4) A claim under subsection (1) is of no force or effect if —
  - (a) the name of any candidate included in the claim is included in any other claim under that subsection; or
  - (b) the nomination of any candidate whose name is included in the claim is withdrawn under section 82.
- (5) Where a claim is made under subsection (1) in respect of an election and any of the persons who made the claim is, before polling day for that election, declared by any court to be incapable of being elected at that election, then, after the making of the declaration —
  - (a) where there are 2 or more other persons who made that claim, the group shall consist of the remainder of those persons only; or
  - (b) where there is only one other person who made that claim, the claim shall be of no force or effect.

- (6) Where a claim is made under subsection (1) and any of the persons who made the claim is a person whose nomination is invalid under section 77 —
- (a) where there are 2 or more other persons who made that claim, the group shall consist of the remainder of those persons only; or
  - (b) where there is only one other person who made that claim, the claim shall be of no force or effect.

*[Section 80 inserted by No. 40 of 1987 s. 43.]*

### **81. Nomination paper and deposit**

- (1) No nomination shall be valid unless —
- (a) the nomination paper is received by the returning officer after the issue of the writ and before the hour of nomination; and
  - (b) at or before the hour of nomination, the required deposit is lodged with the returning officer by or on behalf of the candidate in money or by a cheque drawn by a financial institution upon itself and payable to the Electoral Commissioner.
- (2) Unless a greater amount is prescribed, \$250 is the **required deposit** for the purposes of subsection (1)(b).

*[Section 81 inserted by No. 43 of 1996 s. 9; amended by No. 24 of 2000 s. 50.]*

### **81A. Centralised nomination procedure**

- (1) In this section —
- party nomination** means the nomination for an election of a candidate publicly recognised by a particular registered political party as being an endorsed candidate of that party.
- (2) A party nomination is to be regarded as having been made in accordance with sections 79 and 81 if —
- (a) it contains a declaration by the secretary of the registered political party that the candidate is publicly recognised by the party as being an endorsed candidate of the party;
  - (b) it is received by the Electoral Commissioner after the issue of the writ and not later than 24 hours before the hour of nomination; and

**Electoral Act 1907**

**Part IV** Elections

**Division (2)** Nominations

**s. 82**

---

- (c) not later than 24 hours before the hour of nomination, the required deposit (or an amount that includes that deposit) for the purposes of section 81(1)(b) is lodged with the Electoral Commissioner on behalf of the candidate in money or by a cheque drawn by a financial institution on itself and payable to the Electoral Commissioner.
- (3) Nothing in this section prevents a party nomination from being made in accordance with sections 79 and 81.
- (4) If 2 or more party nominations for an election in a region are made in accordance with subsection (2), a claim under section 80(1) may be made to the Electoral Commissioner together with the nominations.
- (5) If a party nomination has been made in accordance with subsection (2), the Electoral Commissioner is to —
  - (a) give the secretary of the registered political party a notice acknowledging receipt by the Electoral Commissioner of the candidate's nomination and the deposit lodged on behalf of the candidate; and
  - (b) give the returning officer, as soon as practicable before the hour of nomination —
    - (i) a copy of the nomination paper;
    - (ii) advice that the required deposit for the purposes of section 81(1)(b) has been lodged with the Electoral Commissioner on behalf of the candidate; and
    - (iii) details of any claim under section 80(1) made under subsection (4).
- (6) The reference in subsection (5)(b)(i) to a copy of the nomination paper includes a reference to a copy generated by way of transmission by facsimile or other electronic means under section 210(2).

*[Section 81A inserted by No. 36 of 2000 s. 35; amended by No. 74 of 2003 s. 47(2).]*

**82. Withdrawal of nomination**

- (1) Subject to subsection (2), a candidate may withdraw his nomination by lodging with the returning officer notice in writing of withdrawal of his nomination at any time before the hour of nomination, and thereupon the nomination shall be



cancelled and the deposit lodged with the nomination shall be forfeited to the Crown.

- (2) Where 2 or more candidates for an election in a region are included in a group, a candidate included in the group shall not, under subsection (1), withdraw his nomination except with the consent of the other or others.

*[Section 82 inserted by No. 33 of 1967 s. 10; amended by No. 40 of 1987 s. 44.]*

**83. Formal defects**

No nomination paper shall be rejected by reason of any defect or error therein, if the returning officer or Electoral Commissioner receiving it is satisfied that the provisions of this Act have been substantially complied with.

*[Section 83 amended by No. 36 of 2000 s. 36.]*

**84. Return or forfeiture of deposit**

- (1) The deposit made by or on behalf of a person nominated shall be retained pending the election, and after the election shall be returned in accordance with subsection (3) or (4) if he is elected or —
- (a) in the case of an election in a region where the relevant number is more than one, if the total number of first preference votes polled in his favour or in favour of the members of the group in which he is included is more than 4% of the total number of first preference votes polled by all the candidates in the election;
  - (b) in the case of a single member election where there are more than 2 candidates, if the total number of first preference votes polled in his favour is more than 4% of the total number of first preference votes polled by all the candidates in the election;
  - (c) in the case of a single member election where there are only 2 candidates, if the number of votes polled in his favour is more than 4% of the total number of votes polled by both the candidates in the election,

otherwise it shall be forfeited to the Crown.

- (2) On the death of a candidate before polling day, or on polling day before the close of the poll, the deposits made by or on

**Electoral Act 1907**

**Part IV** Elections

**Division (2)** Nominations

**s. 85**

---

behalf of that candidate and the other candidates shall be returned in accordance with subsection (3) or (4).

- (3) If a candidate was nominated under subsection 81A(2) the deposit (or an amount that includes the deposit) shall be returned to the person who paid it, or to a person authorised in writing by the person who paid it.
- (4) In all other cases, the deposit shall be returned to the candidate, or to a person authorised in writing by the candidate or, if the candidate is dead, to the candidate's legal representative.

*[Section 84 inserted by No. 40 of 1987 s. 45; amended by No. 36 of 2000 s. 37; No. 55 of 2006 s. 4.]*

**85. Place of declaration of nominations and hour of nomination**

- (1) The Electoral Commissioner is to appoint a place as the place of declaration of nominations for an election for the purposes of section 86 or 87, as the case may be.
- (2) The hour of nomination for an election is 12 noon on the last day for the nomination of candidates.

*[Section 85 inserted by No. 36 of 2000 s. 38; amended by No. 64 of 2006 s. 53.]*

**86. Proceedings on nomination day — Assembly election**

- (1) This section applies to an election in a district and not to an election in a region.
  - (1a) The returning officer shall attend at the place of declaration of nominations for the period of one hour immediately prior to the hour of nomination.
  - (2) At the hour of nomination the returning officer shall publicly produce all nomination papers received by him under section 81 or 81A(5)(b) between the issue of the writ and the hour of nomination, and declare the names, occupations, and residences of all candidates nominated.
- (2aa) If there is only one candidate for election the returning officer shall declare that candidate duly elected.

- (2a) If there are 2 or more candidates for election the order of the names of the candidates as they shall be placed on the ballot papers shall be determined as follows —
- (a) the returning officer shall, at the place of declaration of nominations immediately after the close of nominations and before all persons then present, make out in respect of each candidate, a slip bearing his name, and deal with the slips in accordance with Schedule 2;
  - (b) the candidate whose name appears on the first slip obtained by the returning officer in accordance with Schedule 2 shall be placed first on the ballot papers, the candidate whose name appears on the second slip so obtained shall be placed second on the ballot papers, and so on, until the placing of all the names of those candidates on the ballot papers has been determined.
- (2b) The returning officer shall forthwith after the order of the placing of the names of the candidates has been determined in accordance with subsection (2a), forward to the Electoral Commissioner at Perth, by telegraph or other expeditious means, the names and other particulars of the several candidates in such order and also advertise those names and particulars in such order in a newspaper circulating within the district for which the candidates have nominated.
- (3) Subject to section 88(2) the proceedings shall then stand adjourned to polling day.

*[Section 86 amended by No. 68 of 1964 s. 17; No. 28 of 1970 s. 12; No. 40 of 1987 s. 47 and 84; No. 36 of 2000 s. 39 and 40.]*

**87. Proceedings on nomination day — Council election**

- (1) This section applies to an election in a region and not to an election in a district.
- (2) The returning officer shall attend at the place of declaration of nominations for the period of one hour immediately prior to the hour of nomination.
- (3) At the hour of nomination the returning officer shall publicly produce all nomination papers received by him under section 81 or 81A(5)(b) between the issue of the writ and the hour of nomination, and declare the names, occupations, and residences of all candidates nominated.

**Electoral Act 1907**

**Part IV** Elections

**Division (2)** Nominations

**s. 87**

---

- (4) If there are not more candidates for election than the relevant number the returning officer shall declare that candidate or those candidates, as the case may be, duly elected.
- (5) If there are more candidates for election than the relevant number and they comprise or include 2 or more groups the order of the groups as they shall be placed on the ballot papers shall be determined as follows —
  - (a) the returning officer shall, at the place of declaration of nominations, immediately after the close of nominations and before all persons then present, make out in respect of each group, a slip bearing the names of the candidates in the group, and deal with the slips in accordance with Schedule 2;
  - (b) the group whose names appear on the first slip obtained by the returning officer in accordance with clause 5 of Schedule 2 shall be placed first on the ballot papers, the group whose names appear on the second slip so obtained shall be placed second on the ballot papers, and so on, until the placing of all the groups on the ballot papers has been determined.
- (6) If there are more candidates for election than the relevant number and 2 or more of them are not included in a group, the order of the names of the candidates not included in a group as they shall be placed on the ballot papers shall be determined as follows —
  - (a) the returning officer shall, at the place of declaration of nominations, immediately after the close of nominations and before all persons then present, make out in respect of each of those candidates, a slip bearing his name, and proceed to deal with the slips in accordance with Schedule 2;
  - (b) the candidate whose name appears on the first slip obtained by the returning officer in accordance with clause 5 of Schedule 2 shall, of those candidates, be placed first on the ballot papers, the candidate whose name appears on the second slip so obtained shall, of those candidates, be placed second on the ballot papers, and so on, until the placing of all the names of the candidates on the ballot papers has been determined.
- (7) As soon as is practicable the returning officer shall advertise the names and other particulars of the several candidates, in the

order prescribed by section 113B, in a newspaper circulating in the region.

- (8) Subject to section 88(1) the proceedings shall then stand adjourned to polling day.

*[Section 87 inserted by No. 40 of 1987 s. 48; amended by No. 79 of 1987 s. 27; No. 36 of 2000 s. 39 and 41; No. 64 of 2006 s. 53.]*

**87A. Further duties of returning officer**

- (1) Before attending the place of declaration of nominations as required by section 86(1a) or 87(2) the returning officer shall ascertain the correct time; and in any dispute that may arise as regards time his decision shall be final.
- (2) The returning officer shall give a receipt in the prescribed form to any candidate who has duly nominated, or to his agent, acknowledging that candidate's nomination and deposit received by the returning officer pursuant to section 81.

*[Section 87A inserted by No. 40 of 1987 s. 49; amended by No. 36 of 2000 s. 39.]*

**88. Death of candidate after nomination**

*[(1) deleted]*

- (2) If, after the nominations have been declared and before or on polling day before the hour of closing the poll, any candidate in an election dies, such election shall, by reason of such death, be deemed to have wholly failed, and in such case the following provisions shall apply:
- (a) Where the candidate dies before polling day the returning officer shall, upon being satisfied of the fact of the death of the candidate —
- (i) countermand the notice of the poll; and
- (ii) report the fact of the death and the date of the countermand of the notice of the poll to the Electoral Commissioner.
- (b) Where the candidate dies on polling day, the returning officer shall, upon being satisfied of the fact of the death of the candidate —
- (i) immediately close the poll for the election for which the deceased candidate had nominated but shall keep the polling place open for receiving

**Electoral Act 1907**

**Part IV** Elections

**Division (2)** Nominations

**s. 88**

---

early and absent votes for candidates for any other elections then being held; and

- (ii) report the fact of the death and the time of the closing of the poll to the Electoral Commissioner.
- (ba) On receipt of a report under paragraph (a)(ii) or (b)(ii) the Electoral Commissioner is to send a notice, with a copy of the report, to the Speaker or the Governor, whichever of them caused the writ to be issued.
- (bb) If there is no Speaker, and Parliament is not in session, or if the Speaker is absent from the State, a notice under paragraph (ba) may be sent to the Governor in any case.
- (c) Where any poll is interrupted, in consequence of the death of a candidate all ballot papers placed in the several ballot boxes in respect of the election for which the deceased candidate had nominated shall be taken out by the several presiding officers, and, being made up into sealed packages, shall be sent by them respectively unopened to the returning officer or deputy returning officer, who shall forthwith, in the presence of a magistrate or justice of the peace, burn or otherwise destroy the sealed packages unopened.
- (d) When a notice is sent under paragraph (ba) a fresh writ shall be issued forthwith for a new election in the place of the election which has failed as aforesaid, and save and except as in this subsection otherwise provided, all proceedings in connection with such new election shall be had and taken anew.
- (e) The roll which was in force and required to be used at the election which has failed shall, without any amendment thereof or addition thereto, be used at the new election.
- [(f) deleted]*
- (g) The appointment of officials and of polling places as made for and in connection with the election which has failed, shall not merely by reason of the failure of such election, be void or in any way affected, and may continue and apply for and in connection with the new election:

Provided that nothing in this paragraph shall operate so as to prevent the cancellation of any of the appointments aforesaid or the making of new appointments of officials

or of polling places for and in connection with the new election.

- (3) If, after the close of the poll for an election in a district and before the counting of the votes in the election has been completed, a candidate dies, and on the completion of the count of the votes it is found that such candidate, if still living, would have been entitled to be declared and to be returned as elected, no candidate shall be returned as elected at the election, and section 89 shall apply.
- (4) If, after the close of the poll for an election in a region and before the counting of the votes in the election has been completed, a candidate dies, and during the count of the votes or the continuation of the count of the votes after his death, as the case may be, that candidate is elected, he, shall be deemed for the purposes of section 10 of the *Constitution Acts Amendment Act 1899* and Part IVA of this Act to have vacated a seat in the Council immediately after he was elected.

*[Section 88 inserted by No. 18 of 1940 s. 3; amended by No. 58 of 1951 s. 7; No. 33 of 1967 s. 11; No. 40 of 1987 s. 50 and 84; No. 36 of 2000 s. 17 and 48(1).]*

**89. Failure or partial failure of election**

- (1) If no candidate is nominated for an election, or if no candidate is returned as elected at an election, the election shall be deemed to have wholly failed, and a new writ shall forthwith be issued for a supplementary election.
- (2) If an insufficient number of candidates is nominated for an election in a region where the relevant number is more than one, or if an insufficient number of candidates is returned as elected at such an election, the election shall be deemed to have partially failed, and a new writ shall forthwith be issued for a supplementary election to fill the remaining vacancy or vacancies, as the case may be.

*[Section 89 inserted by No. 18 of 1940 s. 4; amended by No. 40 of 1987 s. 51.]*

**Division (3) — Voting**

**(i) Early and absent voting**

*[Heading amended by No. 63 of 1948 s. 16; No. 36 of 2000 s. 48(5).]*

**90. Applications for early ballot papers**

- (1) An elector who —
- (a) being enrolled for a region or district, has reason to believe that throughout the hours of polling on polling day, he will be more than 8 kilometres by the nearest practicable route from any polling place open in the State for the purpose of an election for the Council or the Assembly; or
  - (b) will, by reason of emergency duty or requirements of employment, be precluded throughout the hours of polling on polling day from attending to vote at any polling place open in the State; or
  - (c) will, throughout the hours of polling on polling day, be travelling under conditions that will preclude him from voting during those hours at any polling place open in the State; or
  - (d) is seriously ill or infirm and by reason of such illness or infirmity will be precluded from attending to vote during the hours of polling at any polling place open in the State or, being a woman that will by approaching maternity be so precluded; or
  - (da) will be precluded from attending to vote during the hours of polling at any polling place open in the State because the elector will be caring for a person who is seriously ill or infirm or who is expected shortly to give birth; or
  - (db) is an elector whose residence is not shown on the roll because a request under section 51B has been granted; or
  - (dc) is by reason of —
    - (i) serving a sentence of detention (imposed under the *Young Offenders Act 1994*) or imprisonment; or
    - (ii) being otherwise in lawful custody or detention, precluded from attending at a polling place; or



- (e) is, by reason of his membership of a religious order or his religious beliefs —
  - (i) precluded from attending at a polling place; or
  - (ii) precluded from voting throughout the hours of polling on polling day or throughout the greater part of those hours,

may after the polling day has been publicly announced by the Government, make application for an early ballot paper.

- (1a) An elector may make an application for an early ballot paper at any time during the period referred to in subsection (1) to —
  - (a) the Electoral Commissioner; or
  - (b) the Deputy Electoral Commissioner; or
  - (c) a returning officer for any district or region; or
  - (d) an officer of the Western Australian Electoral Commission appointed by the Electoral Commissioner to issue early ballot papers; or
  - (e) a registrar as defined in the *Magistrates Court Act 2004* section 3, other than a deputy registrar appointed under section 26(5) of that Act; or
  - (f) a person appointed in writing by the Electoral Commissioner.
- (2) Each of the persons referred to in subsection (1a)(a), (b), (c), (d), (e) and (f) is in this Part called an **issuing officer**.
- (3) An application for an early ballot paper may be made orally or in writing and, if made in writing, may be made whether the elector is within or outside the State at the time of applying.
- (3a) A written application for an early ballot paper may be in the prescribed form for the election or elections, as the case may be, and shall —
  - (a) contain a statement by the applicant to the effect that the applicant is an elector who is entitled to apply for an early ballot paper; and
  - (b) be signed by the applicant; and
  - (c) be sent to an issuing officer by post.
- (3b) If an elector who wishes to make a written application for an early ballot paper is blind or the sight of the elector is so impaired that the elector is unable to sign the application, or the elector is unable to write or is otherwise so physically incapable

**Electoral Act 1907**

**Part IV** Elections

**Division (3)** Voting

**s. 90**

---

that the elector is unable to sign the application, then on satisfying an authorised witness of that inability to sign the elector may make a distinguishing mark on the application which shall be witnessed by the authorised witness.

- (3c) Where an elector who makes a written application for an early ballot paper expects to be absent from the address for which he is enrolled at the time that the early ballot paper will be forwarded by the issuing officer the elector may in the application state an address to which the ballot paper is to be forwarded.
- (3d) Any ballot paper, declaration, envelope or notice that is required by this section to be posted to an elector who has made a written application for an early ballot paper shall be posted to the address for which the elector is enrolled unless the elector has stated another address under subsection (3c) in which case it shall be posted to that other address.
- (3e) An oral application for an early ballot paper shall be made in person before an issuing officer and —
- (a) shall include the following statements —
    - (i) a statement of the ground upon which the applicant applies for an early ballot paper;
    - (ii) a statement specifying the district for which the applicant is enrolled;
    - (iii) a statement of such other particulars (if any) as are prescribed;
  - (b) shall not be made earlier than 24 hours after the hour of nomination.
- (4) On receipt of a written application made under this section, the issuing officer —
- (a) shall enter on the application form the date of its receipt and sign the endorsement;
  - (b) shall number it in the manner prescribed by the regulations, if it is properly signed and, in the case of an elector making his mark, it is witnessed and the application is otherwise in order; and
  - (c) shall after the close of nominations, issue to the elector by post —
    - (i) an early ballot paper printed under the authority of the Electoral Commissioner in the form prescribed by the regulations and initialled by the

issuing officer and a declaration in the form so prescribed;

- (ii) an envelope marked “ballot paper”; and
- (iii) a further envelope addressed to the Electoral Commissioner for the purpose of returning therein to him the declaration which was completed by the elector and authorised witness together with the envelope containing the ballot paper.

(4aa) A ballot paper printed on official paper does not have to be initialled by the issuing officer under subsection (4)(c)(i) or (4b)(a).

(4a) The Electoral Commissioner may direct any issuing officer to forward all or any written applications made under this section to the office of the Electoral Commissioner so that any such applications can be dealt with in terms of subsection (4) by an issuing officer designated by the Electoral Commissioner.

(4b) Where an oral application for an early ballot paper is made to an issuing officer and the issuing officer is satisfied that the application is properly made, the issuing officer shall issue to the elector —

- (a) an early ballot paper printed under the authority of the Electoral Commissioner in the form prescribed by the regulations and initialled by the issuing officer; and
- (b) an envelope marked “ballot paper”,

and make a record of the name of the elector and of such other particulars as are prescribed.

(4c) Immediately on issuing the ballot paper and envelope to the elector under subsection (4b), the issuing officer shall —

- (a) if a copy of the electoral roll is available, make a record of the elector’s name on a copy of the roll in the manner prescribed for the purposes of section 126(1); or
- (b) if a copy of the electoral roll is not available —
  - (i) issue the elector with a declaration in the prescribed form; and
  - (ii) make a record of the name of the elector and of such other particulars as are prescribed.

**Electoral Act 1907**

**Part IV** Elections

**Division (3)** Voting

**s. 90**

---

- (5) Notwithstanding anything in subsection (1), (4) or (4b), an issuing officer shall not issue an early ballot paper —
- (a) in respect of a written application for an early ballot paper unless the application is received before 6 p.m. on the Thursday next preceding polling day;
  - (b) in respect of an oral application for an early ballot paper unless the application is made before 6 p.m. on the day immediately preceding polling day.
- (6) When a written application for an early ballot paper has been dealt with by an issuing officer, the issuing officer shall forthwith send the application to the Electoral Commissioner.
- (7) Where the issuing officer dealing with a written application for an early ballot paper —
- (a) is not satisfied that the application is in order; or
  - (b) is not satisfied that the applicant is entitled to an early ballot paper,

the issuing officer shall forthwith post to the applicant a notice in the prescribed form.

- (7a) When a written application for an early ballot paper is properly signed by the applicant therefor, if the issuing officer is satisfied that the applicant is entitled to an early ballot paper, the application shall not be deemed insufficient or invalid by reason only that in the application there is an omission or incorrect description or misdescription in respect of any of the particulars required by law to be contained therein.
- (8)(a) An issuing officer shall not visit any elector for the purpose of taking his vote, but if a request is made at any time within 7 days before 6 p.m. on the day immediately preceding polling day to an issuing officer by or on behalf of an elector who is entitled to an early ballot paper under subsection (1)(d), the issuing officer may visit the elector by or on whose behalf the request was made, for the purpose, and shall obtain from the elector an oral application for an early ballot paper under and in accordance with this section.
- (b) When the issuing officer receives the application he shall if the elector is entitled to an early ballot paper issue him with one and the vote of the elector shall be taken in accordance with the provisions of this section and section 92(3).

(9) Where an issuing officer issues an early ballot paper to an elector under this section and the elector satisfies the issuing officer that the ballot paper has not been delivered to the elector or has been lost or destroyed the issuing officer shall issue a further ballot paper together with the necessary envelopes and declaration to the elector and shall advise the Electoral Commissioner of that fact.

(10) A person who obtains an early ballot paper by impersonating another person or making a false statement either in a written application or in an oral application commits an offence.

Penalty: 12 months imprisonment.

(11) Where a person wishes to vote at 2 elections that are held on the same day only one application for an early ballot paper is necessary in respect of the elections and the issuing officer shall, subject to this Act, provide an applicant for an early ballot paper with such ballot papers and ballot paper envelopes as are necessary in respect of each election.

*[(12) deleted]*

(13) Notwithstanding anything in this section, the issuing officer is not —

(a) authorised to issue early ballot papers before the expiration of 24 hours after the hour of nomination; or

(b) required to issue an early ballot paper before the expiration of 48 hours after the hour of nomination.

*[Section 90 inserted by No. 59 of 1959 s. 5; amended by No. 51 of 1962 s. 6; No. 33 of 1964 s. 28; No. 68 of 1964 s. 18; No. 113 of 1965 s. 8; No. 28 of 1970 s. 13; No. 94 of 1972 s. 4; No. 39 of 1979 s. 12; No. 9 of 1983 s. 18; No. 40 of 1987 s. 52 and 84; No. 79 of 1987 s. 28; No. 78 of 1995 s. 147; No. 43 of 1996 s. 10; No. 36 of 2000 s. 28(1), 44, 48(1), (2), (3) and (4) and 82; No. 59 of 2004 s. 141; No. 64 of 2006 s. 29; No. 7 of 2009 s. 12.]*

*[91. Deleted by No. 53 of 1957 s. 4.]*

**92. Directions for early voting**

(1) The directions prescribed by this section for regulating voting by means of early ballot papers, whether within or outside the State, shall be complied with.

**Electoral Act 1907**

**Part IV** Elections

**Division (3)** Voting

**s. 92**

---

- (1a) Subsection (2) applies if an elector is issued with an early ballot paper under section 90(4)(c).
- (2)(a) The elector shall complete the declaration and exhibit his early ballot paper, unmarked, to an authorised witness.
  - (b) The authorised witness shall sign his name in his own handwriting on the declaration in the space provided for the purpose and shall add the date he so signs and his address as at that date.
  - (c) The elector shall in the presence of the authorised witness indicate his vote on the early ballot paper in the manner prescribed by section 128, but so that the witness shall not see the vote.
  - (d) The elector shall fold the ballot paper and in the presence of the authorised witness put it in the envelope marked “ballot paper”, and fasten the envelope.
  - (e) The elector shall enclose the declaration duly completed and the envelope marked “ballot paper” and its contents in the envelope addressed to the Electoral Commissioner and fasten the envelope.
  - (f) The elector shall, before the close of the poll, post or deliver the envelope, or cause it to be posted or delivered, to the Electoral Commissioner.
- (3) If an elector is issued with an early ballot paper under section 90(4b) —
  - (a) the elector shall, if issued with a declaration under section 90(4c)(b), complete the declaration before the issuing officer and return it to the officer; and
  - (b) the elector shall indicate the elector’s vote on the early ballot paper in the manner prescribed by section 128, but so that neither the issuing officer nor any other person can see the vote; and
  - (c) the elector shall fold the ballot paper, put it in the envelope marked “ballot paper”, fasten the envelope and return it to the issuing officer.
- (4) An issuing officer who receives a declaration under subsection (3)(a) shall sign the declaration as the authorised witness and add the date he signs and his address at that date.

- (4aa) An issuing officer shall send any declaration signed under subsection (4) and any envelope received under subsection (3)(c) to the Electoral Commissioner forthwith.
- (4a) If an elector who votes as directed under subsection (2) believes on reasonable grounds that the envelope —
- (a) if posted under subsection (2)(f), would not reach the Electoral Commissioner before 9 a.m. on the Tuesday next succeeding polling day; or
  - (b) if delivered under subsection (2)(f), would not reach the Electoral Commissioner before the close of the poll,
- the envelope and its contents may be posted or delivered unopened to a returning officer, or delivered unopened to a presiding officer in charge of any polling place open on polling day, so as to reach the returning officer or presiding officer before the close of the poll, and the returning officer or presiding officer shall, in accordance with the regulations, send the envelope and its contents unopened to the Electoral Commissioner.
- (4b) A returning officer or presiding officer shall not accept an early ballot paper after the close of the poll.
- (4c) Where an envelope that contains an early ballot paper —
- (a) is posted to the Electoral Commissioner bearing a postmark that includes a time after the close of the poll; or
  - (b) reaches the Electoral Commissioner at or after 9 a.m. on the Thursday next succeeding polling day,
- the early ballot paper shall be rejected.
- (5)(a) If an elector cannot vote without assistance because the elector is sight impaired, physically incapacitated or illiterate, the elector may nominate a person (other than a candidate at the election) to assist the elector, and the nominated person must, in accordance with the directions of the elector, do any act required or authorised by subsection (2), (3) or (4a).
- (b) If the elector has been issued with a declaration under section 90(4)(c) or 90(4c)(b), the person appointed under paragraph (a) is to state in the declaration his full name and address and the fact that he has been appointed by the elector to mark the ballot paper for the elector.

**Electoral Act 1907**

**Part IV** Elections

**Division (3)** Voting

**s. 92**

---

(baa) If the elector's name has been recorded under section 90(4c)(a), a person appointed under paragraph (a) must give the issuing officer his full name and address and satisfy the issuing officer that he has been appointed by the elector to mark the ballot paper for the elector.

(ba) Without limiting paragraph (a), if the elector completes the declaration but is so disabled as to be unable to vote without assistance the authorised witness may, according to the directions of the elector, mark the ballot for the elector and do for the elector any other act required or authorised by subsection (2)(d) or (e), (3)(c) or (4a).

(c) Subject to paragraph (a), a person who, not being the declarant named in a declaration made under this section, —

- (i) signs as the declarant; or
- (ii) makes a distinguishing mark as the declarant,

on the declaration with or without the authority of the declarant so named commits an offence.

Penalty: \$1 000.

(d) An authorised witness shall not witness the signature or mark of any elector on a declaration made under this section unless —

- (i) he has satisfied himself as to the identity of the declarant named therein; and
- (ii) he has seen the declarant —
  - (I) sign the declaration in his, the declarant's own hand writing; or
  - (II) make his mark thereon;and

(iii) he knows the statements contained in the declaration are true, or has satisfied himself, by inquiry from the declarant or otherwise, that the statements contained in the declaration are true.

Penalty: \$1 000.

(6) An elector to whom an early ballot paper has been issued under section 90(4)(c) is not entitled to vote at any polling place unless the early ballot paper has been delivered to the presiding officer for cancellation, but if the elector claims not to have received the early ballot paper, the elector may be permitted to vote after making a declaration in the prescribed form before the presiding officer at the polling place.



- (7) The Electoral Commissioner shall retain at his office in a sealed ballot box all envelopes containing early ballot papers received by him after the close of nominations and up to the time when he commences scrutiny of the declarations relating to the early ballot papers enclosed in those envelopes as provided in subsection (8).
- (8) At any time not earlier than 72 hours before the commencement of the poll, the Electoral Commissioner or an assistant returning officer appointed under section 142A, or that section as applied by section 146B(1), together with such other assistant presiding officers appointed by the Electoral Commissioner or the assistant returning officer as may be necessary, shall commence the scrutiny of declarations relating to early ballot papers in the prescribed manner.
- (9) Where a declaration relating to an early ballot paper —
- (a) is not signed by the elector to whom it was issued or a person appointed under subsection (5)(a); or
  - (b) is not witnessed by an authorised witness in accordance with this Act; or
  - (c) does not bear the date the authorised witness signed the declaration; or
  - (d) does not bear the address of the authorised witness as at the date he signed the declaration as required by subsection (2)(b) or (3)(a),
- the early ballot paper shall be rejected.
- (9a) A determination of an entitlement to vote at an election being held on any day applies to any other election being held on that day and only one declaration is required under this section.
- (10)(a) An early ballot paper shall not be rejected for the reason only that a declaration relating to it has been enclosed with the early ballot paper in the envelope marked “ballot paper”.
- (b) Where the Electoral Commissioner has reason to believe that a declaration relating to an early ballot paper is so enclosed, he may open the envelope marked “ballot paper” and, without permitting any person to see the ballot paper enclosed therein, and if a declaration is so enclosed, extract the declaration and in any case refasten the envelope containing the early ballot paper and deal with the early ballot paper in the prescribed manner.

**Electoral Act 1907**

**Part IV** Elections

**Division (3)** Voting

**s. 93**

---

- (11) The decision of the Electoral Commissioner as to the rejection or admission of any early ballot paper is subject to review only by the Court of Disputed Returns.
- (12) At any time after an envelope containing an early ballot paper has been dealt with in accordance with —
- (a) the regulations made for the purposes of subsection (8); or
  - (b) subsection (10),

an officer or officers referred to in subsection (8) may, in the prescribed manner, open the envelope and deal with the ballot paper in it.

*[Section 92 inserted by No. 53 of 1957 s. 5; amended by No. 59 of 1959 s. 6; No. 51 of 1962 s. 7; No. 33 of 1964 s. 29; No. 68 of 1964 s. 19; No. 113 of 1965 s. 8; No. 33 of 1967 s. 12; No. 70 of 1973 s. 6; No. 40 of 1987 s. 53 and 84; No. 79 of 1987 s. 29; No. 66 of 1990 s. 5; No. 78 of 1995 s. 147; No. 36 of 2000 s. 45 and 48(1) to (3); No. 64 of 2006 s. 30 and 53.]*

**93. Registration of general early voters**

- (1) Any person —
- (a) whose place of living is not within 20 kilometres, by the nearest practicable route, of a polling place; or
  - (aa) who is, by reason of caring for a person who is seriously ill or infirm, precluded from attending at a polling place; or
  - (ab) whose residence is not shown on the roll because a request under section 51B has been granted; or
  - (b) who is, by reason of membership of a religious order or religious beliefs —
    - (i) precluded from attending at a polling place; or
    - (ii) precluded from voting throughout the hours from 8 a.m. to 6 p.m. on Saturday or throughout the greater part of those hours;
- or
- (c) who is permanently disabled; or
  - (d) who is entitled to vote under section 17A(2),

may, at any time, lodge an application in writing with the Electoral Commissioner to be registered as a general early voter.

- (2) If it appears to the Electoral Commissioner that the application is validly made and that the elector is entitled to be registered as a general early voter, he shall register the elector and notify him to that effect, but if the Electoral Commissioner is not satisfied that the elector is entitled to be registered as a general early voter, he shall reject the application and notify the elector of his decision.
- (3) Any registration under this section may at any time other than between the issue of the writ for an election at which the elector is entitled to vote or for a referendum and the return of the writ, be cancelled by the Electoral Commissioner who shall send notice of the cancellation to the elector.
- (4) As soon as is practicable after nominations have been declared, the Electoral Commissioner shall send an early ballot paper to each elector registered under this section and the provisions of section 92 apply in respect of the ballot paper as if repeated in this section.

*[Section 93 inserted by No. 53 of 1957 s. 6; amended by No. 33 of 1967 s. 13; No. 54 of 1983 s. 9; No. 40 of 1987 s. 54 and 84; No. 79 of 1987 s. 30; No. 36 of 2000 s. 46, 48(1) and (2); No. 7 of 2009 s. 13.]*

**94. Authorised witnesses**

- (1) Except as provided in subsection (2) any person who has attained the age of 18 years is an authorised witness for the purposes of this Division.
- (2) No person who is a candidate at any election shall be, or act as, an authorised witness in connection with that election.

*[Section 94 inserted by No. 53 of 1957 s. 7; amended by No. 59 of 1959 s. 7; No. 51 of 1962 s. 8; No. 70 of 1973 s. 7.]*

**95. Offences relating to postal voting**

- (1) A person shall not persuade or induce, or associate with any other person in persuading or inducing, an elector to make application for an early ballot paper.
  - (1a) An elector shall not make, and a person shall not induce an elector to make, any false statement in an application for an early ballot paper.
- (2) A person other than the elector to whom the early ballot paper has been issued, or other than a person appointed by the elector

**Electoral Act 1907**

**Part IV** Elections

**Division (3)** Voting

**s. 95**

---

in pursuance of section 92(5), shall not mark a vote on any ballot paper.

- (3) A person shall not open any envelope which is addressed to the Electoral Commissioner, and in which an early ballot paper has been enclosed, unless authorised to do so by the Electoral Commissioner.
- (4) A person shall not persuade or induce an elector to hand over to him an early ballot paper upon which a vote has been recorded.
- (5) An authorised witness shall not influence or attempt to influence in any way the vote of an elector voting by early vote before him.
- (6) An authorised witness shall not disclose any knowledge of the vote of any elector voting by early vote before him.
- (6a) A person appointed by an elector to mark the vote of an elector on the ballot paper under the provisions of section 92(5) shall not disclose any knowledge of the vote of the elector on whose behalf he marked the vote on the ballot paper.
- (7) Any person present when an elector is before an authorised witness for the purpose of voting —
  - (a) shall obey all directions of the authorised witness; and
  - (b) shall not, except as provided in section 92(5) —
    - (i) make any communication whatever to the elector in relation to his vote;
    - (ii) assist the elector, or in any way interfere with him in relation to his vote; and
    - (iii) look at, or do anything else whereby he may become acquainted with the elector's vote.
- (8) Where an elector is an inmate in an institution, which institution is prescribed by the regulations as one to which the provisions of this section apply, or is an inmate in an institution or is a patient in a hospital at which a polling place has been appointed under the provisions of section 100, then notwithstanding any other provision of this Act, a person shall not —
  - (a) give to the elector an early ballot paper;
  - (b) be present when the elector indicates his vote on the early ballot paper;
  - (c) sign his name on the declaration accompanying the early ballot paper;

- (d) take custody of or transmit to the Electoral Commissioner the envelope containing the early ballot paper; or
- (e) visit the elector in connection with or relative to his voting by early vote, if such visit is forbidden by or on behalf of a legally qualified medical practitioner,

unless, except in the case referred to in paragraph (e), he is authorised in writing by the Electoral Commissioner to do so.

- (9) A person to whom an application for an early ballot paper or an envelope containing or purporting to contain an early ballot paper is entrusted by a voter for the purpose of posting it or delivering it to the Electoral Commissioner or a returning officer or delivering it to a presiding officer, shall forthwith post or deliver the application or envelope.
- (10) A person guilty of any contravention of any of the provisions of this section is liable to a penalty not exceeding \$1 000.

*[Section 95 inserted by No. 53 of 1957 s. 8; amended by No. 59 of 1959 s. 8; No. 113 of 1965 s. 8; No. 39 of 1979 s. 13; No. 40 of 1987 s. 84; No. 79 of 1987 s. 78; No. 78 of 1995 s. 147; No. 36 of 2000 s. 48(1), (2), (4), (6) to (8).]*

*[96. Deleted by No. 57 of 1952 s. 5.]*

**97. Spelling mistakes on early ballot papers**

Without limiting the generality of section 140 or 146F an early ballot paper shall not be rejected as informal by reason only of any mistake in spelling.

*[Section 97 inserted by No. 40 of 1987 s. 55; amended by No. 36 of 2000 s. 48(2).]*

**98. Officer to decide**

Subject to sections 144(2b), 146, 146I(1), and 146J, the decision of the officer conducting the count of the votes as to the allowance or disallowance of any early ballot paper is final unless reversed under Part V.

*[Section 98 inserted by No. 79 of 1987 s. 31; amended by No. 36 of 2000 s. 48(1).]*

*[99. Deleted by No. 53 of 1957 s. 9.]*

**Electoral Act 1907**

**Part IV** Elections

**Division (3)** Voting

**s. 99A**

---

**99A. Absent voting**

- (1) Where, on polling day for an election, an elector is absent from the district for which he is enrolled and has not applied for or obtained a ballot paper under and in accordance with the provisions of section 90, such elector shall, subject to the regulations relating to absent voting, be permitted to vote in person in the prescribed manner as an absent voter at any polling place open outside the district for which he is enrolled.
- (2) For the purposes of this section, the Electoral Commissioner may make all arrangements for the taking of absent votes at any one or more of the polling places appointed under the provisions of section 100 in any region or district for which a candidate shall have been declared elected before the polling day under section 87(4) or 88(1) or section 86(2aa).
- (3) This section does not apply to a person who claims to vote at a polling place that is appointed under section 100 for the district for which the person is enrolled.

*[Section 99A inserted by No. 63 of 1948 s. 18; amended by No. 58 of 1951 s. 10; No. 57 of 1952 s. 7; No. 33 of 1964 s. 30; No. 33 of 1967 s. 14; No. 40 of 1987 s. 56 and 84; No. 36 of 2000 s. 74.]*

**99B. Regulations relating to early, absent, and provisional voting**

- (1) In this section, **ballot papers** means early ballot papers mentioned in section 90, ballot papers for absent voting under section 99A, and ballot papers for provisional voting under section 119(4a), 122(2) or 122A.
- (2) The regulations relating to early voting, absent voting under section 99A, and provisional voting under section 119(4a), 122(2) or 122A may prescribe all matters, not inconsistent with this Act, necessary or convenient to be prescribed for carrying the provisions of this Act relating to those methods of voting into effect, and in particular may provide for —
  - (a) the forms of ballot papers;
  - (b) the manner in which votes are to be marked on ballot papers;
  - (c) the method of dealing with ballot papers, including the scrutiny thereof and the counting of votes thereon;
  - (d) the grounds upon which ballot papers are to be rejected as informal; and

- (e) the retention and preservation of documents likely to be required in case of a disputed election including envelopes, rejected votes and ballot papers until validity of the election in respect of which they are used is no longer liable to be disputed.
- (3) Ballot papers containing votes and enclosed in any prescribed envelope may, if so provided by the regulations, be placed in any ballot box in use at the polling place at which the votes were cast and in the case of early ballot papers, in any ballot box in use at the place at which they were received but subject to sections 144(2b), 146, 146I(1), and 146J a prescribed envelope containing a ballot paper shall, unless the regulations provide otherwise, only be opened and the ballot paper dealt with, as regards the scrutiny thereof and the counting of the votes thereon by the Electoral Commissioner or an assistant returning officer appointed pursuant to section 142A or pursuant to that section as applied by section 146B(1).
- (4) The returning officer or assistant returning officer who is authorised by the provisions of this Act to open the ballot box, shall, without opening the envelope containing any ballot paper, transmit it in the manner prescribed to the Electoral Commissioner.
- (5) Nothing in this section shall authorise any elector to vote more than once at any election.

*[Section 99B inserted by No. 58 of 1951 s. 11; amended by No. 57 of 1952 s. 8; No. 53 of 1957 s. 10; No. 40 of 1987 s. 57 and 84; No. 79 of 1987 s. 32; No. 36 of 2000 s. 48(1) and (9).]*

***(ii) At the poll***

**100. Polling places**

- (1) The Electoral Commissioner may, by notice in the *Government Gazette* —
  - (a) appoint such polling places for regions and districts as the Electoral Commissioner considers necessary;
  - [(b) deleted]*
  - (c) appoint such other polling places as he thinks fit in any institution or hospital, or both;
  - (d) declare any institution or hospital, or both, so appointed to be a special institution or hospital, or both, for the purposes of this Act;

**Electoral Act 1907**

**Part IV** Elections

**Division (3)** Voting

**s. 100**

---

- (e) declare any area of the State in which he considers attendance of electors at a polling place under usual conditions is difficult by reason of remoteness, to be a remote area for the purposes of this Act;
  - (f) abolish any polling place;
  - (g) cancel or amend a declaration made under paragraph (d) or (e);
  - (h) establish sub-districts and fix the boundaries thereof, and abolish sub-districts;
  - (i) declare, and fix the boundaries of, a polling area for the purposes of section 193 in relation to each polling place appointed under paragraph (a);
  - (j) cancel a declaration under paragraph (i) or amend boundaries fixed under that paragraph.
- (2) When a sub-district is established or abolished the Electoral Commissioner may, by notification in the *Government Gazette*, give such directions as are thereby rendered necessary or expedient for the change of electors from one roll to another roll and effect shall be given forthwith to such directions in the manner prescribed by such notice.
- (3) If a polling place is appointed under subsection (1) for all regions, or all districts, for the purposes of a general election, that polling place is referred to as a ***general polling place***.
- (3a) The Electoral Commissioner may, in relation to a general polling place, perform the functions of the returning officers for the regions, or districts, under the provisions listed in the Table to this subsection.

**Table of provisions**

section 102	section 112(3)
section 105(1)	section 115(1a)
section 106(2)	section 116
section 107(1)	section 132
section 110	section 141(4)

- (3b) References in this Act to the returning officer may be read as references to the Electoral Commissioner where necessary for the purposes of subsection (3a).



- (4) A polling area declared under subsection (1)(i) in relation to a polling place shall be adjacent to the entrance to the polling place and no part of the boundaries fixed under subsection (1)(i) or (j) shall be more than 100 metres from that entrance.

*[Section 100 amended by No. 44 of 1911 s. 29; No. 26 of 1949 s. 4; No. 59 of 1959 s. 9; No. 39 of 1979 s. 14; No. 40 of 1987 s. 58 and 84; No. 79 of 1987 s. 33; No. 58 of 1988 s. 5; No. 14 of 1996 s. 4; No. 36 of 2000 s. 50.]*

**100A. Mobile portable ballot boxes at certain institutions and hospitals**

- (1) Where a polling place has been appointed under the provisions of section 100, at any institution or hospital, the presiding officer appointed under section 102(5), notwithstanding any other provision of this Act, shall with another officer attend at the polling place, at such times or during such hours as are provided by subsection (2) with such number of mobile portable ballot boxes as the Electoral Commissioner thinks fit and approved by him for the purpose of affording an opportunity to vote to every elector who —
- (a) is for the time being resident in the institution or hospital wherein the polling place is appointed to be; and
  - (b) by reason of illness or infirmity or in the case of a woman, by reason of approaching maternity, is unable to attend at another polling place to record his vote.
- (2) For the purposes of subsection (1), the attendance of the presiding officer and another officer at any institution or hospital, to which that section applies, shall be —
- (a) where the institution or hospital is a special one for the purposes of this Act by virtue of a declaration under section 100(1)(d), at such times in the period of 14 days up to and including polling day as the Electoral Commissioner thinks fit; or
  - (b) where the institution or hospital is not such a special one, during polling hours as provided by section 117(2).
- (3) On a visit to an elector by the officer in charge of the mobile portable ballot box the vote of the elector shall, so far as is reasonably practicable, be taken in all respects as if the vote were recorded at a polling place under usual conditions.
- (4) The presiding officer and another officer shall together be in attendance with the mobile portable ballot box when an elector

**Electoral Act 1907**

**Part IV** Elections

**Division (3)** Voting

**s. 100B**

---

records his vote thereat and shall be accompanied by such of the scrutineers appointed by candidates to represent them at the polling place during the polling, as choose to accompany them.

- (5) The Electoral Commissioner or the returning officer as the case may require shall give not less than 48 hours notice in writing to each candidate for the region and district in which the institution or hospital is situated of the time or times at which the presiding officer and another officer will be in attendance pursuant to subsection (2)(a).

*[Section 100A inserted by No. 59 of 1959 s. 10; amended by No. 33 of 1964 s. 31; No. 39 of 1979 s. 15; No. 9 of 1983 s. 19; No. 40 of 1987 s. 84.]*

**100B. Mobile portable ballot boxes in certain remote areas**

- (1) Where any area of the State is a remote area of the State for the purposes of this Act by virtue of a declaration under section 100(1)(e), the presiding officer and other officer appointed under section 102(5), notwithstanding any other provision of this Act, shall attend at such places in the remote area, and at such times in the period of 14 days up to and including polling day, as the Electoral Commissioner thinks fit, with such number of mobile portable ballot boxes as the Electoral Commissioner thinks fit and approved by him for the purpose of affording an opportunity to vote to every elector who may have difficulty in attending at a polling place under usual conditions.
- (2) For the purposes of subsection (1) of this section, subsections (3) and (4) of section 100A apply with such modifications as are necessary.
- (2a) The Electoral Commissioner or the returning officer shall give not less than 48 hours notice in writing to each candidate for the region or district in which a place is situated of the time or times at which the presiding officer and another officer will be in attendance at that place under subsection (1).
- (3) Where, for reasonable cause, there is a failure to attend a place in a remote area as required by subsection (1) or to give the notice required by subsection (2a), the election and the result thereof shall be deemed not to be affected thereby.

*[Section 100B inserted by No. 39 of 1979 s. 16; amended by No. 40 of 1987 s. 84; No. 79 of 1987 s. 34; No. 64 of 2006 s. 53.]*

**101. Arrangements for taking the poll**

If the proceedings on the day of nomination stand adjourned to polling day, the returning officer shall immediately make all necessary arrangements for taking the poll.

**102. Duties of returning officer**

In particular the returning officer shall —

- (1) appoint a presiding officer to preside at each polling place at which he will not be continuously present;
- (2) appoint all necessary assistant presiding officers, poll clerks and doorkeepers;
- (3) furnish polling places and provide ballot boxes;
- (4) provide ballot papers and copies of the roll for use at each polling place;
- (5) appoint a presiding officer and another officer to be in attendance with and operate each mobile portable ballot box at each polling place appointed at an institution or hospital, and at each place in a remote area where a presiding officer and another officer are required to attend pursuant to section 100B.

*[Section 102 amended by No. 59 of 1959 s. 11; No. 68 of 1964 s. 22; No. 39 of 1979 s. 17.]*

**102A. Conjoint elections**

- (1) In the case of a conjoint election, every person appointed as a presiding officer, an assistant presiding officer, a poll clerk or a doorkeeper for any polling place in a district shall, without any further appointment or authority than this subsection, be the presiding officer, the assistant presiding officer, poll clerk or doorkeeper, as the case may be, for that polling place in respect of any election for the region of which the district forms part.
- (2) The Electoral Commissioner may give such directions as he may consider necessary or expedient to implement the provisions of this Act, for the proper and efficient conduct of any election.
- (3) Without limiting the generality of subsection (2), the Electoral Commissioner may, for the purpose of assisting an elector on request as provided by section 129, give such directions as he

**Electoral Act 1907**

**Part IV** Elections

**Division (3)** Voting

**s. 104**

---

may consider necessary or expedient on and in relation to methods of —

- (a) conveying details on the ballot paper to the elector without conveying political information other than names or words printed in accordance with section 113C;
- (b) translating the voter's instructions; and
- (c) eliciting the exact direction of the voter's preferences.

*[Section 102A inserted by No. 33 of 1964 s. 32; amended by No. 39 of 1979 s. 18; No. 40 of 1987 s. 84; No. 79 of 1987 s. 35.]*

*[103. Deleted by No. 36 of 2000 s. 75.]*

**104. Appointment of polling place officers**

- (1) The appointment of presiding officers, assistant presiding officers, poll clerks, and doorkeepers shall be made in writing in the prescribed form.

*[(2) deleted]*

*[Section 104 amended by No. 44 of 1911 s. 43; No. 40 of 1987 s. 84; No. 43 of 1996 s. 11.]*

**105. Substitute presiding officers and powers of assistant presiding officers**

- (1) Any presiding officer may appoint a substitute to perform his duties during his temporary absence, and may, if authorised by the returning officer so to do, appoint in writing one or more assistant presiding officers to assist him in presiding at any polling place.
- (2) Any assistant presiding officer may, subject to the direction of the presiding officer, exercise all or any of his powers, and shall, in respect of those powers, be deemed to be the presiding officer.

**106. Absence of returning officer or presiding officer not to invalidate election**

- (1) In case any returning officer or presiding officer is prevented from attendance by illness or other sufficient cause, and time does not permit of a substitute being appointed under the provisions of section 7, he may appoint by writing under his hand, a substitute to act for him, who shall have full power and

authority to do all things required by this Act to be done by his principal.

- (2) If, by reason of the absence of the presiding officer, the poll is not taken at any polling place, the election shall not therefore be void, but the returning officer may appoint another day not later than 21 days from the day fixed for the election, for taking the poll at such polling place, of which appointment public notice shall be given, and the poll shall be taken accordingly and be deemed to have been taken on the day previously appointed.

**107. Subdivision of polling places**

- (1) When a large number of electors is likely to vote at a polling place, the returning officer may subdivide a polling place into sections, and shall, in such case, appoint presiding officers to take the poll at each section at which he does not himself preside.
- (2) If a polling place is divided into sections there shall be fixed over each such section, a notice indicating the letters of the alphabet for the section of such polling place at which each elector, according to the initial letter of his surname, is to vote; and no elector shall be permitted to vote in any section thereof save that which is so denoted by the initial letter of his surname.
- (3) All the provisions of this Act relating to presiding officers shall apply to presiding officers at each section of a polling place.

**108. No licensed premises to be used**

No part of any premises licensed for the sale of intoxicating liquors shall be used for the purposes of any polling place.

**109. Certain buildings to be used free**

All buildings under the control of the Government, or the property of a local government and all Agricultural Halls, Mechanics' and Miners' Institutes, and other buildings which have been or may hereafter be subsidised in their erection by the Government, may be used free of charge, for the purposes of any nomination proceedings or poll.

*[Section 109 amended by No. 33 of 1964 s. 33; No. 14 of 1996 s. 4.]*

**110. Separate compartments**

Polling places shall have separate voting compartments, constructed so as to screen the electors from observation while they are marking their ballot papers, and each compartment shall be furnished by the returning officer with a pencil for the use of electors.

**111. Ballot boxes**

Each polling place or section of a polling place shall be provided with a ballot box, with a lock and key or other sealing device, and with a cleft for receiving the ballot papers.

*[Section 111 amended by No. 59 of 1919 s. 5; No. 79 of 1987 s. 36.]*

**112. Supply of rolls**

- (1) As soon as is practicable after the close of the roll for an election the Electoral Commissioner shall cause a roll to be provided for use in the election.
- (2) The roll so supplied shall contain any marks required by section 47(3)(g).
- (3) The Electoral Commissioner shall cause a sufficient number of copies of the roll to be delivered to the returning officer and, before the hour of opening of the poll, the returning officer shall cause a sufficient number of copies of the roll to be delivered to each presiding officer.
- (4) The Electoral Commissioner shall cause copies of the rolls to be delivered to the presiding officer at each general polling place.

*[Section 112 inserted by No. 43 of 1996 s. 12; amended by No. 36 of 2000 s. 28(1) and 51.]*

**113. Ballot papers**

- (1) Ballot papers shall be in the appropriate prescribed form.
- (1a) Ballot papers shall contain the names of all the persons nominated as candidates.
- (2) Where similarity in the names of 2 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.

- (3) The printing in a ballot paper shall be in characters of such size or sizes as the Electoral Commissioner determines.
- (4) The official paper for use in the printing of ballot papers is paper that either —
  - (a) has a water mark in it as prescribed; or
  - (b) incorporates such security features or devices as the Electoral Commissioner approves.

*[Section 113 amended by No. 44 of 1911 s. 43; No. 28 of 1970 s. 14; No. 40 of 1987 s. 59; No. 79 of 1987 s. 37; No. 43 of 1996 s. 13; No. 36 of 2000 s. 81(1).]*

**113A. Voting tickets**

- (1) For the purposes of an election in a region a candidate or a group may, before the expiration of 24 hours after the hour of nomination, lodge a voting ticket with the returning officer.
- (2) A voting ticket may be lodged under subsection (1) on behalf of a candidate or a group by a person who is authorised to do so by a notice in writing that has been —
  - (a) signed by that candidate, or by each candidate included in that group; and
  - (b) lodged with the returning officer at or before the hour of nomination.
- (3) Where a candidate is included in a group, a voting ticket may not be lodged under subsection (1) by or on behalf of the candidate individually, but only by or on behalf of the group as a whole.
- (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 a candidate who is not included in any group — 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 — indicate preferences for the candidates in the group —
    - (A) in the order in which the names of those candidates are to appear in the ballot paper; and

**Electoral Act 1907**

**Part IV** Elections

**Division (3)** Voting

**s. 113B**

---

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

(5) If —

(a) for the purposes of an election in a region for which there is a group —

(i) a voting ticket has been lodged under subsection (1) by or on behalf of a group; or

(ii) a voting ticket has been lodged under subsection (1) by or on behalf of a candidate not included in any group;

or

(b) for the purposes of an election in a region for which there are no groups a voting ticket has been lodged under subsection (1) by or on behalf of a candidate,

then, except in the case of a voting ticket lodged by or on behalf of a candidate in an election in which there are not more than 2 candidates, the voting ticket shall be regarded as being registered in relation to the group or candidate, as the case may be, for the purposes of the election.

*[Section 113A inserted by No. 40 of 1987 s. 60; amended by No. 79 of 1987 s. 38; No. 20 of 1988 s. 4.]*

**113B. Printing Council ballot papers**

(1) In printing the ballot papers for an election in a region for which there is a group —

(a) if there is only one group, the names of candidates included in that group shall be printed in a group before the names of candidates, if any, not included in that group;

(b) if there are 2 or more groups, the names of candidates included in the groups shall be printed in groups in the ballot papers in the order determined under section 87(5), before the names of candidates, if any, not included in any such group;

(c) the order, within a group, in which the names of candidates in that group shall be printed in the ballot papers shall be the order specified in the claim made by them in accordance with section 80(1); and



- (d) the names of candidates, if any, not included in any group shall be printed in the ballot papers in the order determined under section 87(6).
- (2) In printing the ballot papers for an election in a region for which there are no groups, the names of the candidates shall be printed in the order determined under section 87(6).
- (3) In printing the ballot papers for an election in a region —
  - (a) a square shall be printed opposite the name of each candidate; and
  - (b) where a voting ticket is registered in relation to the election an additional square shall be printed in the prescribed position —
    - (i) in the case of a voting ticket lodged by or on behalf of a group — adjacent to the names of the candidates included in the group or adjacent to the squares printed opposite those names; and
    - (ii) in the case of a voting ticket lodged by or on behalf of a candidate — adjacent to the name of that candidate or adjacent to the square printed opposite that name,

in order to indicate that a voting ticket is registered in relation to the group or candidate, as the case may be.
- [(4) deleted]*
- (5) Where before polling day for an election in a region where the relevant number is more than one any candidate is declared by any court to be incapable of being elected at that election, the returning officer may take such action with respect to the printing of the ballot papers (including, if he thinks fit, causing the ballot papers to be reprinted, causing notations or marks to be made on them or again applying the provisions of section 87(6)) as in his opinion is necessary as a consequence of the declaration.

*[Section 113B inserted by No. 40 of 1987 s. 60; amended by No. 79 of 1987 s. 39.]*

### **113BA. Printing Assembly ballot papers**

- In printing the ballot papers for an election in a district —
- (a) the names of the candidates shall be printed in order determined under section 86(2a); and

**Electoral Act 1907**

**Part IV** Elections

**Division (3)** Voting

**s. 113C**

---

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

*[Section 113BA inserted by No. 79 of 1987 s. 40; amended by No. 20 of 1988 s. 5.]*

**113C. Printing of political party names or “independent” on ballot papers**

- (1) Subject to this section, where a candidate in an election applies to have a name specified in the application being —
  - (a) a name of a registered political party; or
  - (b) a composite name of 2 registered political parties comprising a name of one registered political party and a name of the other registered political party,

printed adjacent to the applicant’s name on the ballot papers for use in the election, the name so specified shall be so printed on those ballot papers.

- (2) Where —
  - (a) in accordance with subsection (1), a name is printed adjacent to the name of a candidate on ballot papers for use in an election; and
  - (b) a voting ticket square is printed on those ballot papers in relation to the candidate or in relation to a group in which the candidate is included,

the name so printed shall also be printed adjacent to that voting ticket square.

- (3) An application under subsection (1) —
  - (a) must be in a form approved by the Electoral Commissioner;
  - (b) must be signed by the candidate;
  - (c) must contain a declaration signed by the secretary of the registered political party or, if the application is for the printing of a composite name, by the secretary of each registered political party concerned, stating that the party supports the application;
  - (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 the candidates to be included in the group for the printing of the same name, adjacent to the name of each of those candidates; and

- (e) must be received by the returning officer not later than the hour of nomination.

[(4) *deleted*]

- (5) Subject to this section, where a candidate in an election who is not endorsed as a candidate in the election by a registered political party applies to have the word “Independent” printed adjacent to the applicant’s name on the ballot papers for use in the election that word shall be so printed on those ballot papers.
- (6) Where —
  - (a) in accordance with subsection (5), the word “Independent” is printed adjacent to the name of the candidate on ballot papers for use in an election; and
  - (b) a voting ticket square is printed on those ballot papers in relation to the candidate or in relation to a group in which the candidate is included,

that word shall also be printed adjacent to that voting ticket square.

- (7) An application under subsection (5) —
  - (a) must be in a form approved by the Electoral Commissioner;
  - (b) must be signed by the candidate;
  - (c) where the name of the applicant is to be included in a group, must be in the form of a joint application by all the candidates to be included in the group for the printing of the word “Independent” adjacent to the name of each of those candidates; and
  - (d) must be received by the returning officer not later than the hour of nomination.

[(8), (9) *deleted*]

- (10) In this section —  
**name** includes an abbreviation or acronym of a name.

*[Section 113C inserted by No. 40 of 1987 s. 60; amended by No. 79 of 1987 s. 41; No. 66 of 1990 s. 5; No. 36 of 2000 s. 65.]*

**113D. Claims etc. may be lodged with Electoral Commissioner**

- (1) Where a claim, voting ticket, notice or application under section 80, 113A or 113C is lodged with the Electoral Commissioner it shall be deemed to have been made to, lodged

**Electoral Act 1907**

**Part IV** Elections

**Division (3)** Voting

**s. 114**

---

with or received by the returning officer and to have been so made, lodged or received at the time at which it was lodged with the Electoral Commissioner.

- (2) This section does not affect the operation of section 81A.

*[Section 113D inserted by No. 40 of 1987 s. 60; amended by No. 36 of 2000 s. 42.]*

*[113E. Deleted by No. 79 of 1987 s. 42.]*

**114. Scrutineers**

- (1) Scrutineers may be appointed by candidates to represent them at polling places during the polling but —

- (a) at a single member election, not more than one scrutineer at a time shall be allowed to each candidate at each polling place, or section of a polling place, if divided;
- (b) at an election in a region where the relevant number is more than one —
- (i) not more than one scrutineer at a time shall be allowed to each group; and
- (ii) not more than one scrutineer at a time shall be allowed to each candidate who is not included in any group,

at each polling place, or section of a polling place, if divided.

- (2) The appointment of scrutineers shall be made by written notice to the returning officer or presiding officer, signed by the candidate, or any candidate included in the group in the case of an appointment under subsection (1)(b)(i), giving the names and addresses of the scrutineers, or without such notice by permission of the returning officer or presiding officer.

- (3) Every scrutineer shall, upon his appointment, make and subscribe a declaration in the presence of the returning officer or presiding officer in the prescribed form.

*[Section 114 amended by No. 44 of 1911 s. 43; No. 40 of 1987 s. 61; No. 79 of 1987 s. 43.]*

**115. Persons present at polling**

- (1) No candidate shall in any way take part in the conduct of an election; and no one, other than the Electoral Commissioner or

an officer deputed by him, presiding officer, assistant presiding officer, the poll clerks, doorkeepers, scrutineers, and any member of the Police Force on duty at a polling place, and the electors voting or about to vote, and any person appointed under section 129(1)(b) to be present while an elector's ballot paper is marked, shall be permitted to enter or remain in the polling place during the polling.

- (1a) A presiding officer, assistant presiding officer, poll clerk, doorkeeper or scrutineer in a polling place shall wear or display such identification as is provided or required by the returning officer.
- (2) Where an election is conducted on the same day as a referendum the reference in subsection (1) to scrutineers shall be deemed to include a reference to scrutineers (if any) appointed under any Act for the purposes of the referendum.

*[Section 115 amended by No. 68 of 1964 s. 23; No. 54 of 1983 s. 10; No. 40 of 1987 s. 84; No. 79 of 1987 s. 44.]*

**116. Maintenance of order**

- (1) The returning officer or presiding officer may summon to his assistance in such polling place any member of the Police Force for the purpose of —
- (a) preserving the public peace or preventing any breach thereof, and for removing out of such polling place any person who, in his opinion, is wilfully and unnecessarily obstructing the polling, or wilfully violating any of the provisions of this Act;
  - (b) causing to be removed any person who obstructs the approaches to a polling place; or
  - (c) causing to be arrested and taken before a justice of the peace, without any other warrant than this Act, any person reasonably suspected by the returning officer or presiding officer of committing or attempting to commit at a polling place any of the offences mentioned in this Act.
- (2) All members of the Police Force shall aid and assist the returning officer or presiding officer in the performance of his duty.

**117. Conduct of the poll**

The polling shall be conducted as follows:

- (1) Before any vote is taken the presiding officer shall exhibit the ballot box empty, and shall then securely fasten and seal it so that nothing can be removed without breaking the seal.
- (2) Subject to sections 100A and 100B, the poll shall be open at 8 a.m., and shall not close until all the electors present in the polling place at 6 p.m., and desiring to vote, have voted; and in any dispute as regards the time the decision of the presiding officer shall be final.
- (3) At the close of the poll the presiding officer shall publicly close, fasten, seal, and take charge of the ballot box, and with the least possible delay forward it to the counting place for the purposes of scrutiny; and it shall on no account be opened except as allowed by this Act. The cleft shall also be closed and sealed unless the ballot box is provided with an outer cover without a cleft.
- (4) The presiding officer shall also forward to the counting place the marked roll or rolls used at the poll, and any other documents received before or during the poll, having first endorsed and signed such rolls to identify them.
- (5) Any scrutineer present may affix his seal to the cover of the ballot box.

*[Section 117 amended by No. 44 of 1911 s. 30; No. 59 of 1919 s. 5; No. 10 of 1936 s. 2; No. 57 of 1952 s. 9; No. 68 of 1964 s. 24; No. 39 of 1979 s. 19; No. 79 of 1987 s. 45.]*

*[118. Deleted by No. 64 of 2006 s. 31.]*

**119. Questions to be put to voters**

- (1) The presiding officer shall put to any person claiming to vote at any election the following questions —
  - (a) Have you cast an early vote for this election (or these elections, as the case requires) or already voted today?
  - (b) What is your full name?
  - (c) Where do you live?

and may then put any other question the presiding officer considers necessary to determine whether the person is enrolled to vote.

*[(2), (3) deleted]*

- (4) The presiding officer may and shall, when requested by a scrutineer, require any person claiming to vote to make a declaration in the prescribed form before the person is permitted to vote.
- (4a) A person who makes a declaration as required under subsection (4) shall be permitted to vote as a provisional voter in the prescribed manner.
- (5) Subject to the provisions of section 122A, the electoral roll in force at the time of the election shall be conclusive evidence of the right of each person enrolled thereon to vote as an elector, unless he refuses to answer fully any such question put to him by the presiding officer, or to make the declaration requested of him, or fails by his answers to satisfy the presiding officer that he is entitled to vote.
- (6) A determination of an entitlement to vote at an election being held on any day applies to any other election being held on that day and only one declaration is required under subsection (4).
- (7) Where it appears to the presiding officer that an elector does not understand any question he is asked pursuant to subsection (1) —
  - (a) the presiding officer shall ask the elector the question in less formal language than the language provided in the subsection but in words to the like effect; and
  - (b) if the elector then finds difficulty with the question, the presiding officer may assist him in answering it.

*[Section 119 inserted by No. 44 of 1911 s. 31; amended by No. 63 of 1948 s. 19; No. 26 of 1949 s. 5; No. 53 of 1957 s. 11; No. 33 of 1964 s. 35; No. 33 of 1967 s. 15; No. 94 of 1970 s. 7; No. 39 of 1979 s. 20; No. 9 of 1983 s. 20 and 31; No. 104 of 1985 s. 5; No. 40 of 1987 s. 84; No. 79 of 1987 s. 47; No. 36 of 2000 s. 32(2); No. 64 of 2006 s. 32 and 53.]*

## **120. Consequences of answers**

- (1) If any person refuses to answer fully any such question put to him by the presiding officer, or to make the declaration requested of him, or fails by his answer to satisfy the presiding officer that he is entitled to vote, his claim to vote shall be rejected.

**Electoral Act 1907**

**Part IV** Elections

**Division (3)** Voting

**s. 121**

---

- (2) If by virtue of section 51B information relating to an elector is not shown on the roll, subsection (1) does not apply to a refusal to answer the question put to the elector under section 119(1)(c).

*[Section 120 amended by No. 64 of 2006 s. 33.]*

**121. Answer conclusive**

The elector's answers to the questions shall be conclusive, and the matter shall not be further inquired into during the polling.

**122. Persons objected to — how to vote**

- (1) No person whose name on the roll has been objected to and is marked in accordance with the provisions of section 47 shall have a right to vote until he has made a declaration in the prescribed form.
- (2) A person who makes a declaration as required by subsection (1) shall be permitted to vote as a provisional voter in the prescribed manner.
- (3) Every elector who has voted by early vote and made a declaration as required under section 92, shall be deemed to have made a declaration under this section.

*[Section 122 amended by No. 44 of 1911 s. 43; No. 40 of 1987 s. 84; No. 79 of 1987 s. 48; No. 36 of 2000 s. 48(8); No. 64 of 2006 s. 34.]*

**122A. Vote of person whose name is not on roll or has been struck off roll or is on roll and cannot be found or has been struck out under s. 126**

- (1) Notwithstanding anything contained in this Act, where a person who is entitled to be enrolled on the roll for a region or district claims to vote at any election in respect thereof at a polling place at which there is a copy of the roll and his name has been omitted from or struck off the roll owing to an error of an officer or a mistake of fact, or where any person who is so enrolled so claims to vote at such a polling place and his name cannot be found on the roll by the presiding officer or a record has been made in respect of his name on the copy of the roll under the provisions of section 126, he may subject to this Act and the regulations, be permitted to vote as a provisional voter if —
- (a) in the case of a person whose name has been omitted from the roll —



- (i) a duly completed claim for the enrolment of the person in respect of the region of which the district forms part, or the district, was received under section 42 before the close of the roll for the election; and
  - (ii) no circumstances occurred after sending or delivering the claim as would have compelled or authorised an enrolment officer to reject the claim under the provisions of section 47 or to strike the name off the roll under the provisions of section 48;
- or
- (b) in the case of a person whose name has been struck off the roll —
    - (i) his name was not, to the best of his knowledge, struck off the roll for the region or district as the case may be, owing to objection, or duplication of enrolment or disqualification; and
    - (ii) he had from the time of his enrolment for the region or district, as the case may be, to the time of the close of the roll for the election continuously retained his right to enrolment for that region or district;
- or
- (c) in the case of a person whose name is on the roll for a region or district as the case may be but cannot be found by the presiding officer, he claims that his name appears or should appear on the roll; or
  - (d) in the case of a person in respect of whose name a record has been made on a copy of the roll under the provisions of section 126, he denies that he has been previously handed a ballot paper or has voted at that election,

and if, in every such case, such person makes a declaration in the prescribed form before the presiding officer at the polling place.

**Electoral Act 1907**

**Part IV** Elections

**Division (3)** Voting

**s. 123**

---

- (2) A determination of an entitlement to vote at an election being held on any day applies to any other election being held on that day and only one declaration is required under subsection (1).

*[Section 122A inserted by No. 63 of 1948 s. 20; amended by No. 58 of 1951 s. 12; No. 33 of 1964 s. 36; No. 9 of 1983 s. 21; No. 40 of 1987 s. 84; No. 79 of 1987 s. 49; No. 36 of 2000 s. 28(1) and (3), 76 and 77(3).]*

**123. No other question or declaration necessary**

- (1) No elector shall at any election be required to answer any question or to make any declaration, except as herein provided.
- (2) No person claiming to vote at any election shall be excluded from voting thereat except by reason of —
- (a) it appearing to the presiding officer, upon putting the questions hereinbefore prescribed, or any of them —
    - (i) that he is not the person whose name appears on the roll; or
    - (ii) that he has previously voted for the region or district at the same election; or
    - (iii) that he is otherwise not entitled to vote under this Act;
  - or
  - (b) such person refusing to answer any of such questions, or to make the declaration required under sections 119 and 122.

*[Section 123 amended by No. 40 of 1987 s. 84.]*

**124. Right to vote despite error in roll or change of name on marriage**

- (1) No omission from the roll of any name other than the surname, or entry of a wrong name other than the surname, and no misspelling of any name, shall warrant the rejection at any polling of any claim to vote, if the elector is sufficiently identified in the opinion of the presiding officer.
- (2) No elector shall be disqualified from voting under the surname appearing on the roll by reason of having become entitled to use another surname.

*[Section 124 amended by No. 79 of 1987 s. 50.]*

**125. Ballot paper to be handed to elector**

- (1) If the name under which the elector claims to vote is upon the copy of the roll, and his right to vote is not challenged, or, if challenged, he makes the necessary declaration, or answers the prescribed questions satisfactorily, the presiding officer shall deliver to him a ballot paper.
- (2) Before the delivery of the ballot paper to the elector, it shall be marked on the back by the presiding officer with his initials.
- (2a) A ballot paper printed on official paper does not have to be initialled by the presiding officer.
- (3) The initials of the presiding officer shall be placed on the back of the ballot paper in such a position as to be easily seen when the ballot paper is folded to conceal the vote.
- (3a) Where an election is held on the same day as a referendum a ballot paper shall not be issued to a person for the election (other than by way of replacement for a spoilt ballot paper) unless a ballot paper is issued to the person for the referendum.
- (4) Every presiding officer who fails faithfully to perform any duty imposed on him by this section by reason whereof any of the requirements of this section are not effectively fulfilled, is liable to a fine not exceeding \$20.

*[Section 125 amended by No. 113 of 1965 s. 8; No. 54 of 1983 s. 11; No. 40 of 1987 s. 84; No. 79 of 1987 s. 51; No. 43 of 1996 s. 14.]*

**126. Roll to be marked on ballot paper being issued**

- (1) Immediately upon handing the ballot paper to the person claiming to vote, the officer shall make a record, in a prescribed manner, in respect of the person's name on the copy of the roll.
- (2) The record so made on the copy of the roll shall be prima facie evidence of the identity of the person to whom the ballot paper is delivered, with the elector in respect of whose name a record is so made on the roll, and of the fact that such elector voted at the election.

*[Section 126 amended by No. 36 of 2000 s. 77(1) and (2).]*

**Electoral Act 1907**

**Part IV** Elections

**Division (3)** Voting

**s. 127**

---

**127. Vote to be marked in private**

Upon receipt of the ballot paper the elector shall, subject to the provisions of section 129, without delay —

- (a) retire alone to some unoccupied voting compartment and there, in private, mark his vote on the ballot paper in the manner hereinafter described;
- (b) fold the ballot paper so as to conceal the names of the candidates and then forthwith, without unfolding it, deposit it in the ballot box;
- (c) quit the polling place.

*[Section 127 amended by No. 58 of 1951 s. 13; No. 43 of 1996 s. 15.]*

**128. How votes to be marked**

- (1) In an election where there are only 2 candidates on the ballot paper an elector shall mark his vote on the ballot paper by placing the numeral “1” in the square opposite the name of the candidate for whom he votes.
- (2) In an election in a region where there are more than 2 candidates on the ballot paper an elector shall mark his vote on the ballot paper —
  - (a) by placing the numeral “1” in the square opposite the name of the candidate for whom he votes as his first preference and consecutive numerals beginning with the numeral “2” in the squares opposite the names of the remaining candidates so as to indicate the order of his preference for all candidates; or
  - (b) by placing the numeral “1”, a tick or a cross in a voting ticket square printed on the ballot paper.
- (3) In an election in a district where there are more than 2 candidates on the ballot paper an elector shall mark his vote on the ballot paper by placing the numeral “1” in the square opposite the name of the candidate for whom he votes as his first preference and consecutive numerals beginning with the numeral “2” in the squares opposite the names of the remaining candidates so as to indicate the order of his preference for all candidates.

*[Section 128 inserted by No. 40 of 1987 s. 62; amended by No. 79 of 1987 s. 52; No. 20 of 1988 s. 6.]*

*[128A. Deleted by No. 79 of 1987 s. 53.]*

**129. Assistance to electors**

- (1) If an elector cannot vote without assistance because the elector is sight impaired, physically incapacitated or illiterate, the elector may nominate a person (other than a candidate at the election or a scrutineer for a candidate) to assist the elector, and the nominated person must mark the elector's ballot paper according to the directions of the elector and fold and deposit the ballot paper in the ballot box.
- (1a) Dealings with a ballot paper under subsection (1) are to be conducted in the presence of such scrutineers as are present, or, if there are no scrutineers present, then in the presence of an electoral officer who is not the person nominated to assist the elector.
- (2) Without limiting the generality of subsection (1), an elector to whom that subsection applies may indicate the manner in which the elector wishes the ballot paper to be marked by presenting to the person marking the ballot paper a statement in writing (which may be, or include, a "how-to-vote" card) that specifies the manner in which the ballot paper is to be marked.
- (3) Where an elector is at a place that is in close proximity to a polling place but is unable to enter the polling place because of physical disability, sections 118 to 126 shall apply, or may be applied, to the person at the first-mentioned place and, at that place —
  - (a) the elector —
    - (i) may mark his vote on the ballot paper in the presence of the presiding officer, an assistant presiding officer or a poll clerk, and of such scrutineers as are present; and
    - (ii) fold the ballot paper so as to conceal the names of the candidates, and hand the ballot paper to the electoral officer in whose presence it was marked;
  - or
  - (b) the elector's ballot paper may be marked, folded and deposited in a ballot box by a person in accordance with subsection (1).

**Electoral Act 1907**

**Part IV** Elections

**Division (3)** Voting

**s. 130**

---

- (4) The electoral officer who is handed a ballot paper under subsection (3)(a)(ii) shall return to the polling place and deposit the ballot paper in the ballot box.

*[Section 129 inserted by No. 39 of 1979 s. 21; amended by No. 79 of 1987 s. 54; No. 64 of 2006 s. 35.]*

**130. Spoilt ballot papers**

- (1) If any elector satisfies the presiding officer, before his ballot paper is deposited in the ballot box that he has spoilt it by mistake or accident, he may, on giving it up, receive a new ballot paper from the presiding officer, who shall there and then cancel the spoilt ballot paper by writing “spoilt” on the back of it.
- (2) Having cancelled a spoilt ballot paper the presiding officer is to —
- (a) place the ballot paper in an envelope, seal the envelope and write on the envelope an indication of the type of ballot paper enclosed and that it is spoilt; and
  - (b) sign the envelope.
- (3) The envelopes containing spoilt ballot papers cancelled at a polling place are to be sealed up in a packet that is to be given to the returning officer after the close of the poll.

*[Section 130 amended by No. 59 of 1919 s. 5; No. 36 of 2000 s. 78.]*

**131. Adjournment of polling on account of riot**

The presiding officer may adjourn the polling from day to day in any case where polling is interrupted or obstructed by riot or open violence.

**132. Adjournment in other cases**

- (1) If from any cause any polling place is not opened on polling day, or, if opened, the poll cannot be proceeded with, the returning officer or the presiding officer may adjourn the polling for a period not to exceed 21 days, and shall forthwith give public notice of the adjournment.
- (2) If from any cause polling cannot be commenced or proceeded with at a special institution or hospital appointed under section 100(1)(c) or (d) or at any place within a remote area declared under section 100(1)(e) the returning officer or the presiding officer may postpone or adjourn the polling for a

period not to exceed 21 days, and shall forthwith give public notice of the postponement or adjournment, as the case may be.

*[Section 132 amended by No. 79 of 1987 s. 55.]*

**133. Voting at adjourned polling**

Where for any reason the polling is adjourned at any polling place, those electors only who are entitled to vote at such polling place who have not already voted shall be entitled to vote at the adjourned polling at that polling place.

**Division (4) — Counting of votes (general)**

*[Heading amended by No. 40 of 1987 s. 63.]*

**134. Count of votes — how conducted**

The result of the polling shall be ascertained by scrutiny of the ballot papers and by count of the votes in accordance with Division (4a) or (4b), as the case may require, and shall be conducted in the presence of any candidate or scrutineer that may be present in the following manner:

- (1) The scrutiny and count of votes shall commence as soon as practicable after the closing of the poll.
- (2) The candidates, the scrutineers, and officers may be present, but no other person.
- (2a) The scrutineers and officers present shall wear or display such identification as is provided or required by the returning officer.
- (3) Where the count of the votes is not commenced immediately after the close of the poll, the scrutineers shall be informed in writing by the officer conducting the count as regards the time and place when and where such count will be commenced and conducted by him.
- (4) All the proceedings at the count of the votes shall be subject to the inspection of the scrutineers.
- (5) All informal votes shall be rejected and the number recorded.
- (6) The count of the votes may, from time to time, be adjourned as the officer conducting the count may deem necessary, until it has been duly completed.

*[Section 134 amended by No. 44 of 1911 s. 33; No. 40 of 1987 s. 84; No. 79 of 1987 s. 56.]*

**Electoral Act 1907**

**Part IV** Elections

**Division (4a)** Scrutiny and count (Assembly elections)

**s. 135**

---

**135. Adjournment to be announced**

Each adjournment shall be announced to the scrutineers and officers by the officer conducting the count and the time and place for the continuation of the count shall be in a similar manner made known to them.

*[Section 135 amended by No. 40 of 1987 s. 84.]*

**136. Before adjourning, ballot papers etc., to be sealed in boxes**

- (1) Before every adjournment of the count of the votes all ballot papers and other documents connected with such count shall be placed in one or more ballot boxes, and the officer conducting the count shall then, in the presence of such scrutineers and officers as are present, seal such ballot box or boxes with his official seal, if any, or with his private seal, and any scrutineer who shall desire so to do, shall be permitted by the officer conducting the count to place his special seal upon such ballot box or boxes. The cleft shall also be closed and sealed unless the ballot box is provided with an outer cover without a cleft.
- (2) Before recommencing the count such seals shall be exhibited unbroken to the scrutineers and officers.

*[Section 136 amended by No. 59 of 1919 s. 5; No. 40 of 1987 s. 84.]*

**Division (4a) — Scrutiny and count (Assembly elections)**

*[Heading inserted by No. 40 of 1987 s. 64.]*

**136A. Application**

Subject to sections 146B(1), 146D, and 146E, this Division applies only in relation to an election in a district and the poll for such an election.

*[Section 136A inserted by No. 40 of 1987 s. 64; amended by No. 79 of 1987 s. 57.]*

**137. Power to appoint scrutineers**

- (1) Each candidate may appoint scrutineers to represent him at the scrutiny and count of votes at each place where such scrutiny and count are conducted.



- (2) An appointment under subsection (1) shall be made in writing and addressed to the returning officer, or assistant returning officer, as the case may be.
- (3) For each place where the scrutiny and count of votes are conducted, each candidate may appoint not more than —
  - (a) 2 scrutineers; or
  - (b) if counting of votes takes place simultaneously at 2 or more locations in that place, one scrutineer for each of those locations,

unless the returning officer, or assistant returning officer, as the case may be, allows a greater number.

*[Section 137 amended by No. 40 of 1987 s. 84; No. 64 of 2006 s. 36.]*

**138. Submissions by scrutineers**

- (1) A scrutineer may make submissions in relation to any ballot paper that the ballot paper is informal or not informal, and the officer conducting the count shall endorse the paper as “rejected” or “admitted” according to his decision to admit or reject the ballot paper.
- (2) Where an officer makes an endorsement referred to in subsection (1) the officer shall initial the endorsement.
- (3) Subject to sections 144(2b) and 146 a decision of an officer on a submission under subsection (1) is final unless reversed under Part V.
- (4) Nothing in this section prevents the officer conducting the count from rejecting any ballot paper as being informal or from admitting a ballot paper to the count in the absence of a submission by a scrutineer.

*[Section 138 inserted by No. 79 of 1987 s. 58.]*

**139. Informal ballot papers**

A ballot paper shall be informal —

- (a) if it is not initialled by the presiding officer, or, in the case of an early ballot paper, not initialled by the issuing officer, but where a ballot paper is not initialled by the presiding officer or the issuing officer, if it is printed on official paper the fact that it is not so initialled shall not of itself render the ballot paper informal; or

**Electoral Act 1907**

**Part IV** Elections

**Division (4a)** Scrutiny and count (Assembly elections)

**s. 140**

---

[(b) *deleted*]

- (c) if it has upon it any mark or writing not authorised by this Act which, in the opinion of the returning officer, will enable any person to identify the elector; or
- (d) where there are only 2 candidates, if it does not indicate the candidate for whom the elector votes, or, where there are more than 2 candidates, if it does not indicate the order of the elector's preference for all candidates, but the operation of this paragraph is subject to section 140A; or
- (e) if no mark is indicated on it, or the surname of any candidate is omitted from it, or no name of any candidate is written on it.

*[Section 139 amended by No. 44 of 1911 s. 34; No. 53 of 1957 s. 12; No. 59 of 1959 s. 12; No. 68 of 1964 s. 26; No. 40 of 1987 s. 65; No. 79 of 1987 s. 59; No. 43 of 1996 s. 16; No. 36 of 2000 s. 48(2).]*

**140. Effect to be given to elector's intention**

- (1) A ballot paper shall not be informal for any reason other than the reasons enumerated in section 139.
- (2) Without limiting the generality of subsection (1), where the vote of an elector is marked on a ballot paper in a manner other than the prescribed manner but the ballot paper clearly indicates the elector's intention as necessary under section 139(d) and is not informal under section 139(a), (c) or (e), that ballot paper —
  - (a) shall not be informal; and
  - (b) shall be given effect to according to the elector's intention.
- (3) In subsection (2) ***prescribed manner*** means —
  - (a) where there are only 2 candidates on the ballot paper, the manner required by section 128(1);
  - (b) where there are more than 2 candidates on the ballot paper, the manner required by section 128(3).

*[Section 140 inserted by No. 40 of 1987 s. 66; amended by No. 79 of 1987 s. 60; No. 20 of 1988 s. 7; No. 43 of 1996 s. 17.]*

**140A. Some ballot papers with non-consecutive preferences can be formal**

- (1) Where a ballot paper in an election in which there are more than 2 candidates —
- (a) has the numeral “1” in the square opposite the name of a candidate;
  - (b) has other numerals in the squares opposite the names of the remaining candidates or all but one of the remaining candidates; and
  - (c) but for this subsection, would be informal under section 139(d),

then —

- (d) the ballot paper shall not be informal under section 139(d);
  - (e) the numeral “1” shall be taken to express the elector’s first preference;
  - (f) where numerals in squares opposite the names of candidates are in a sequence of consecutive numbers beginning with the numeral “1”, the elector shall be taken to have expressed a preference by the other numeral, or to have expressed preferences by the other numerals, in that sequence; and
  - (g) the elector shall not be taken to have expressed any other preference.
- (2) In considering, for the purposes of subsection (1), whether numerals are in a sequence of consecutive numerals, any numeral that is repeated shall be disregarded.
- (3) If a ballot paper does not have a numeral in the square opposite the name of a candidate but a preference for that candidate is marked on the ballot paper in some other manner that clearly indicates the elector’s intention, the ballot paper shall be regarded, for the purposes of this section, as having the numeral appropriate to that preference marked in the square opposite the name of that candidate.

*[Section 140A inserted by No. 43 of 1996 s. 18.]*

*[140B. Deleted by No. 20 of 1988 s. 8.]*

**141. Counting places and assistant returning officers**

- (1) Subject to subsection (3) each polling place appointed under section 100(1)(a) or (c) shall be a counting place.
- (2) The returning officer may, by notice published in a newspaper circulating in the region or district, appoint such other counting places as he considers necessary for the region or district.
- (3) The returning officer may, by notice published in a newspaper circulating in the region or district, declare that subsection (1) does not apply to a polling place specified in the notice.
- (4) The returning officer shall appoint assistant returning officers to count, at counting places referred to in subsection (1) or appointed under subsection (2), votes cast at one or more polling places.
- (5) This section does not limit section 134(3).

*[Section 141 inserted by No. 79 of 1987 s. 62; amended by No. 64 of 2006 s. 53.]*

**142. The count of votes by assistant returning officers**

The procedure at the count of votes by the assistant returning officers shall be as follows:

- (1) Each assistant returning officer shall open all ballot boxes received at his counting place.
- (2) The assistant returning officer shall count all the votes on the ballot papers found in the boxes opened by himself, rejecting all informal ballot papers, and ascertain —
  - (a) the number of votes for each candidate, if there are only 2 candidates; or
  - (b) if there are more than 2 candidates, the number of first preference votes given for each candidate,and shall make and keep a record of the total number of votes for each candidate counted by him from each of such ballot boxes.

*[(3) deleted]*

- (4) Each assistant returning officer shall certify in writing, addressed to the returning officer, the number of votes or first preference votes, as the case may be, given for each candidate in the ballot papers contained in the ballot boxes counted at his counting place.

- (5) An assistant returning officer may communicate to the returning officer the number of votes or first preference votes, as the case may be, recorded for each candidate at the counting place for which he is appointed, and the returning officer, in ascertaining the result of the poll, may act upon the information so received.
- (6) Each assistant returning officer shall —
- (a) enclose —
    - (i) in one packet, all the used ballot papers in his possession;
    - (ii) in another packet, all the unused ballot papers in his possession; and
    - (iii) in another packet, all copies of rolls, books, communications from officers, or other papers or documents used or received at or in connection with the election, that are in his possession;
- and
- (b) seal up the several packets and endorse the same with a description and the number of the contents thereof respectively, and the name of the counting place and the date of the polling, and sign the endorsement, and forthwith forward the said packets to the returning officer.
  - (c) The packet containing the used ballot papers shall be sealed before the scrutineers, if any, present at the count, and any scrutineer who desires so to do shall be permitted by the assistant returning officer to affix his seal upon such packet.

*[Section 142 amended by No. 44 of 1911 s. 35; No. 59 of 1919 s. 5; No. 58 of 1961 s. 17; No. 68 of 1964 s. 28; No. 40 of 1987 s. 68 and 84; No. 79 of 1987 s. 78; No. 36 of 2000 s. 68.]*

**142A. Appointment of assistant returning officers for counting early, absent and provisional votes**

- (1) The Electoral Commissioner may appoint assistant returning officers for the purpose of counting, under the direction of the Electoral Commissioner, votes cast at general polling places, early and absent votes and provisional votes cast under section 119(4a), 122(2), or 122A.

**Electoral Act 1907**

**Part IV** Elections

**Division (4a)** Scrutiny and count (Assembly elections)

**s. 143**

---

- (2) Each such assistant returning officer shall certify in writing addressed to the returning officer of the district concerned, the number of votes or first preference votes, as the case may be, given for each candidate on the ballot papers used for voting at general polling places, early and absent voters' ballot papers and ballot papers used for provisional voting under section 119(4a), 122(2), or 122A counted by him.
- (3) Any such assistant returning officer may communicate to the returning officer of the district concerned, the number of votes or first preference votes, as the case may be, given for each candidate on the ballot papers used for voting at general polling places, early and absent voters' ballot papers and ballot papers used for provisional voting under section 119(4a), 122(2) or 122A counted by him, and the returning officer in ascertaining the result of the poll may act upon the information so received.
- (4) Each such assistant returning officer shall, as soon as possible after completing the count of the votes on such ballot papers used for voting at general polling places, early and absent voters' ballot papers and ballot papers used for provisional voting under section 119(4a), 122(2), or 122A, transmit the same in the prescribed manner to the returning officer of the district concerned.

*[Section 142A inserted by No. 63 of 1948 s. 21; amended by No. 58 of 1951 s. 18; No. 57 of 1952 s. 11; No. 40 of 1987 s. 69 and 84; No. 79 of 1987 s. 63; No. 36 of 2000 s. 48(1), 52 and 68.]*

**143. Returning officer to ascertain result of poll**

- (1) The returning officer for the district shall, in manner hereinafter provided, ascertain the total number of votes given for each candidate.

*[(2) deleted]*

*[Section 143 amended by No. 40 of 1987 s. 70 and 84.]*

**144. Counting of votes by returning officers**

- (1) The procedure at the count of the votes by the returning officer for each district shall, if there are only 2 candidates, be as follows:
  - (a) The returning officer shall —
    - (i) open all ballot boxes not opened by assistant returning officers;

- (ii) count all the votes on the ballot papers found in such ballot boxes, rejecting all informal ballot papers, and ascertain the number of votes given for each candidate; and
    - (iii) make and keep a record of the number of votes counted from each ballot box.
  - (b) The returning officer shall then —
    - (i) ascertain from the communications received from assistant returning officers the number of votes given for each candidate at polling places where the ballot boxes have been opened by assistant returning officers and by persons voting at general polling places, absent voters and persons voting provisionally under section 119(4a), 122(2), or 122A and persons voting by early vote; and
    - (ii) add the votes so given for each candidate to the votes counted by himself in favour of each such candidate, so as to ascertain, for the whole district, the number of votes given for each candidate respectively.
  - (c) The candidate who has received the largest number of votes shall be declared by the returning officer duly elected.
  - (d) If the candidates have an equal number of votes section 145 applies.
- (2) The procedure at the count of the votes by the returning officer for each district, if there are more candidates than 2, shall be as follows:
- (a) The returning officer shall —
    - (i) open all ballot boxes not opened by assistant returning officers;
    - (ii) arrange the ballot papers under the names of the respective candidates and place in a separate parcel all those on which a first preference is indicated for the same candidate, rejecting informal ballot papers; and
    - (iii) count all the first preference votes given for each candidate respectively; and
    - (iv) make and keep a record of the number of votes counted by him from each ballot box.

**Electoral Act 1907**

**Part IV** Elections

**Division (4a)** Scrutiny and count (Assembly elections)

**s. 144**

---

- (b) The returning officer shall then —
- (i) ascertain from the communications received from assistant returning officers the number of first preference votes given for each candidate at polling places where the ballot boxes have been opened by such assistant returning officers and by persons voting at general polling places, absent voters and persons voting provisionally under section 119(4a), 122(2), or 122A and persons voting by early vote; and
  - (ii) add the first preference votes so given for each candidate to the votes counted by himself in favour of each such candidate, so as to ascertain, for the whole district, the number of first preference votes polled by each candidate respectively.
- (c) The candidate who has received the largest number of first preference votes shall, if such number constitutes an absolute majority of votes, be declared by the returning officer duly elected.
- (d) If no candidate has an absolute majority of votes the returning officer —
- (i) shall open the packets of ballot papers received from the assistant returning officers, including ballot papers used for voting at general polling places, absent voters' ballot papers and ballot papers used for provisional voting under section 119(4a), 122(2), or 122A and early ballot papers and deal with the ballot papers contained therein as prescribed by paragraph (a)(ii), adding such ballot papers to those previously counted by himself for each candidate; and
  - (ii) shall then declare the candidate who has obtained the fewest first preference votes to be a defeated candidate, and each ballot paper counted to him shall be distributed among the non-defeated candidates next in order of the elector's preference.
- (e) After such distribution the number of votes given to each non-defeated candidate shall again be ascertained.



- (ea) The candidate who then has obtained the largest number of votes shall, if such number constitutes an absolute majority of votes, be declared duly elected.
- (f) If no candidate then has an absolute majority of votes the process of declaring the candidate who has the fewest votes to be defeated, and distributing each of his ballot papers amongst the non-defeated candidates next in order of the voter's preference shall be repeated, and the votes re-counted after every such redistribution until one candidate has obtained an absolute majority of votes, and such candidate shall then be declared duly elected.
- (fa) A ballot paper shall be set aside as exhausted where on a count it is found that the ballot paper expresses no preference for any non-defeated candidate.
- (g) If, after any count, the candidate with the fewest votes has to be declared to be defeated under paragraph (d) or (f), and 2 or more candidates (in this paragraph called the *tied candidates*) have an equal number of votes (each other candidate having a larger number of votes) —
  - (i) the returning officer shall make out in respect of each of the tied candidates a slip bearing the name of the candidate, and deal with the slips in accordance with Schedule 2; and
  - (ii) the candidate whose name is on the slip obtained by the returning officer in accordance with clause 5 of Schedule 2 shall be declared to be defeated.
- (h) If after any count 2 or more candidates have an equal number of votes and they are the only candidates, or the only non-defeated candidates, section 145 applies.
- (2a) Where there are more candidates than 2 then, notwithstanding that a candidate has been declared duly elected, the process of excluding the candidate who has the fewest votes and distributing that candidate's preferences to the candidate next in order of the elector's preference shall be continued until there are only 2 unexcluded candidates.
- (2b) At any time before a candidate has been declared duly elected the returning officer may, if he thinks fit, make a fresh scrutiny of all the ballot papers or any parcel of them and for that purpose has the same power in relation to the counting of the

**Electoral Act 1907**

**Part IV** Elections

**Division (4a)** Scrutiny and count (Assembly elections)

**s. 144**

---

votes as on the first scrutiny and may reverse any decision given by an assistant returning officer on the original scrutiny and if after such scrutiny one of the candidates is found to have obtained an absolute majority of votes shall declare that candidate duly elected.

- (3) In this section *absolute majority of votes* means a greater number than one-half of the whole number of ballot papers other than informal ballot papers.
- (3a) For the purposes of subsection (3), if at any stage of the count, ballot papers have been set aside under subsection (2)(fa), the whole number of ballot papers, at that stage, shall be taken to be reduced by the number of those ballot papers set aside.
- (4) Where the returning officer is satisfied that the votes —
- (a) on any ballot papers issued at some remote polling place in connection with the election, which have not been received by him; and
  - (b) on any ballot papers used for voting at general polling places or absent voters' ballot papers or ballot papers used for provisional voting under section 119(4a), 122(2), or 122A or ballot papers used for voting by early vote which have not been received by him,

cannot, having regard to the number of those ballot papers, possibly affect the result of the election, he may subject to the concurrence of the Electoral Commissioner —

- (c) if there are only 2 candidates, declare the candidate who has received the largest number of votes on the ballot papers then received and counted to be duly elected; or
- (d) if there are more than 2 candidates and one candidate has received an absolute majority of the votes on the ballot papers then received and counted, declare such candidate duly elected; or
- (e) if no candidate has an absolute majority of the votes, then received and counted, proceed with the scrutiny;

without awaiting the receipt of the ballot papers which have not been received by him.

*[Section 144 amended by No. 59 of 1919 s. 5; No. 63 of 1948 s. 22; No. 57 of 1952 s. 12; No. 40 of 1987 s. 71 and 84; No. 79 of 1987 s. 64; No. 43 of 1996 s. 19; No. 36 of 2000 s. 48(8) and (9), 53, 69 and 82.]*

**145. Tied elections**

- (1) If after any count 2 or more candidates have an equal number of votes and they are the only candidates, or the only non-defeated candidates, the returning officer shall re-count the votes on the ballot papers and, where appropriate, declare one of the candidates duly elected under section 144(1)(c), (2)(ea) or (2)(f).
- (2) The returning officer conducting the re-count shall have the same powers as if the re-count were the scrutiny, and may reverse any decision in relation to the scrutiny as to the allowance or admission or disallowance or rejection of any ballot paper.
- (3) If after the re-count 2 or more candidates (in this section called *the tied candidates*) have an equal number of votes and they are the only candidates, or the only non-defeated candidates, the returning officer shall notify the Electoral Commissioner of the result of the re-count.
- (4) On receipt of notification under subsection (3) the Electoral Commissioner shall file a petition addressed to the Court of Disputed Returns constituted under Part V —
  - (a) setting out the results of the scrutiny and count and the re-count; and
  - (b) requesting the Court to determine whether any of the candidates was duly elected and, if so, to declare that candidate duly elected.
- (5) Part V applies in respect of the petition as if it were a petition duly filed under sections 158 to 160 and, for the purposes of that application, the tied candidates shall be regarded as parties to the petition.
- (6) The Court shall endeavour to make its determination as soon as practicable after the petition is filed.
- (7) The Court may order that a new election be held in place of the election to which the petition relates if —
  - (a) the tied candidates both or all jointly request the Court to do so; or
  - (b) the Court is unable to declare any of the candidates duly elected,

and, notwithstanding anything in this Act, except where the Court otherwise orders, the same roll as was used for that election shall be used for the new election.

*[Section 145 inserted by No. 40 of 1987 s. 72.]*

**Electoral Act 1907**

**Part IV** Elections

**Division (4b)** Scrutiny and count (Council elections)

**s. 146**

---

**146. Re-count**

- (1) At any time before the declaration of the poll the returning officer may, if he thinks fit, at the request of any scrutineer, or of his own motion, re-count the ballot papers contained in any parcel.
- (2) The returning officer conducting the re-count shall have the same powers as if the re-count were the scrutiny, and may reverse any decision in relation to the scrutiny as to the allowance or admission or disallowance or rejection of any ballot paper.

*[Section 146 amended by No. 44 of 1911 s. 36.]*

**Division (4b) — Scrutiny and count (Council elections)**

*[Heading inserted by No. 40 of 1987 s. 73.]*

**146A. Application and construction**

- (1) This Division applies only in relation to an election in a region and the poll taken for such an election.
- (2) Where in relation to an election in a region the relevant number is one and there are only 2 candidates, a reference in this Division and Schedule 1 to —
  - (a) the indication of an elector's first preference for a candidate, shall be read and construed as a reference to the indication of the candidate for whom the elector votes;
  - (b) first preference votes given for a candidate, shall be read and construed as a reference to votes given for the candidate.

*[Section 146A inserted by No. 40 of 1987 s. 73.]*

**146B. Appointment of assistant returning officers and counting places**

- (1) Sections 141 and 142A apply to and in relation to an election in a region as if references in those sections to a district were references to a region.
- (2) In the case of a conjoint election appointments of assistant returning officers and counting places under section 141, and of assistant returning officers under section 142A, for the purposes

of an election for the Assembly have effect for the purposes of the corresponding election for the Council.

*[Section 146B inserted by No. 40 of 1987 s. 73.]*

**146C. Power to appoint scrutineers**

- (1) Where the relevant number is more than one —
  - (a) each group may appoint not more than 3 scrutineers to represent the candidates included in that group at the scrutiny and count of votes at each place where such scrutiny and count are conducted under section 146G or 146H;
  - (b) each group may appoint scrutineers, not exceeding in number such number as the returning officer determines, to represent the candidates included in that group at the scrutiny and count of votes under section 146I;
  - (c) each candidate who is not included in any group may appoint not more than 2 scrutineers to represent the candidate at the scrutiny and count of votes at each place where such scrutiny and count are conducted under section 146G or 146H;
  - (d) each candidate who is not included in any group may appoint scrutineers, not exceeding in number such number as the returning officer determines, to represent the candidate at the scrutiny and count of votes under section 146I.
- (2) Where the relevant number is one —
  - (a) each candidate may appoint not more than 2 scrutineers to represent the candidate at the scrutiny and count of votes at each place where such scrutiny and count are conducted under section 146G or 146H;
  - (b) each candidate may appoint scrutineers, not exceeding in number such number as the returning officer determines, to represent the candidate at the scrutiny and count of votes under section 146I.
- (3) An appointment under subsection (1) or (2) shall be made in writing and addressed to the returning officer, deputy returning officer or assistant returning officer, as the case may be.

*[Section 146C inserted by No. 40 of 1987 s. 73; amended by No. 64 of 2006 s. 37.]*

**146D. Submissions by scrutineers**

Section 138 applies to and in relation to ballot papers used in an election in a region as if the references in section 138(3) to sections 144(2b) and 146 were references to sections 146I(1) and 146J.

*[Section 146D inserted by No. 79 of 1987 s. 65.]*

**146E. Informal and formal ballot papers**

- (1) Section 139 applies to and in relation to ballot papers used in an election in a region as if the reference in section 139(d) to section 140A were a reference to section 146E(3).
- (2) Subsections (1) and (2) of section 140 apply to and in relation to ballot papers used in an election in a region and in subsection (2) of that section, as applied by this section, ***prescribed manner*** means —
  - (a) where there are only 2 candidates on the ballot paper, the manner required by section 128(1);
  - (b) where there are more than 2 candidates on the ballot paper, the manner authorised by section 128(2)(a).
- (3) A ballot paper shall not be informal under section 139(d) if the elector has marked his vote on the ballot paper under section 128(2)(b).
- (4) If a ballot paper —
  - (a) has been marked under section 128(2)(b); but
  - (b) has also been marked so as to indicate the order of the elector's preference in such a manner that it would not be informal under section 139(d) even if it were not marked under section 128(2)(b),the elector shall, for the purposes of subsection (5) and section 146F, be deemed not to have marked his vote on the ballot paper under section 128(2)(b).
- (5) If a ballot paper has been marked under section 128(2)(b) any indication of preferences on the ballot paper otherwise than under section 128(2)(b) shall be disregarded for the purposes of this Division.
- (6) For the purposes of this section and section 146F an elector shall not be taken to have marked his vote under section 128(2)(b) if the elector has placed a preference mark in 2 or more voting ticket squares printed on the ballot paper.

- (7) In subsection (6) *preference mark* means the numeral “1”, a tick or a cross.

*[Section 146E inserted by No. 20 of 1988 s. 9; amended by No. 43 of 1996 s. 20.]*

**146F. Ballot papers deemed to be marked according to voting tickets**

Where an elector has marked his vote on the ballot paper under section 128(2)(b) the ballot paper shall be deemed to have been marked in accordance with the voting ticket registered for the purposes of the election in relation to the candidate or group whose voting ticket square the elector has marked.

*[Section 146F inserted by No. 40 of 1987 s. 73; amended by No. 79 of 1987 s. 67.]*

**146G. Counting of votes by assistant returning officers**

- (1) As soon as practicable after the close of the poll each assistant returning officer shall —
- (a) open all ballot boxes received at his counting place, reject all informal ballot papers, and count the number of first preference votes given for each candidate;
  - (b) enclose —
    - (i) in one packet, all the used ballot papers in his possession;
    - (ii) in another packet, all the unused ballot papers in his possession; and
    - (iii) in another packet, all copies of rolls, books, communications from officers, or other papers or documents used or received at or in connection with the election, that are in his possession;
- and
- (c) seal up those packets, endorse each with a description of its contents and with the name of the counting place and the date of the polling, sign the endorsement, and forward the packets to the deputy returning officer for the district together with a list of the total number of first preference votes given for each candidate on the ballot papers contained in the packet mentioned in paragraph (b)(i).
- (2) The packet mentioned in subsection (1)(b)(i) shall be sealed before the scrutineers, if any, present and any scrutineer who

**Electoral Act 1907**

**Part IV** Elections

**Division (4b)** Scrutiny and count (Council elections)

**s. 146H**

---

desires to do so shall be permitted by the assistant returning officer to affix his seal on the packet.

- (3) The list made out under subsection (1)(c) shall be verified by the signature of the assistant returning officer and also by the signatures of such of the scrutineers, if any, as are present and consent to sign it.
- (4) In the case of a conjoint election subsection (1)(b)(iii) does not apply to papers or documents that apply to both the election for the Assembly and the election for the Council.

*[Section 146G inserted by No. 40 of 1987 s. 73.]*

**146H. Counting of votes by deputy returning officers**

- (1) As soon as practicable after the close of the poll the deputy returning officer for each district shall —
  - (a) open all ballot boxes received from polling places within the district that have not been opened by an assistant returning officer, reject all informal ballot papers, and count the number of first preference votes given for each candidate;
  - (b) enclose —
    - (i) in one packet, all the used ballot papers in his possession;
    - (ii) in another packet, all the unused ballot papers in his possession; and
    - (iii) in another packet all copies of rolls, books, communications from officers, or other papers or documents used or received at or in connection with the election, that are in his possession, other than those that have been forwarded to him under section 146G(1)(c);
  - (c) seal up those packets, endorse each with a description of its contents and with the name of the district and the date of the polling, and sign the endorsement;
  - (d) make out a list of the total number of first preference votes given for each candidate on the ballot papers contained in the packet mentioned in paragraph (b)(i);
  - (e) enclose —
    - (i) in one packet, all the packets made up under section 146G(1)(b)(i) and forwarded to him under section 146G(1)(c), the lists forwarded to



- him with those packets, the packet made up by him under paragraph (b)(i) of this subsection and the list made out by him under paragraph (d);
- (ii) in another packet, all the packets made up under section 146G(1)(b)(ii) and forwarded to him under section 146G(1)(c) and the packet made up by him under paragraph (b)(ii) of this subsection; and
  - (iii) in another packet, all the packets made up under section 146G(1)(b)(iii) and forwarded to him under section 146G(1)(c) and the packet made up by him under paragraph (b)(iii) of this subsection;
- and
- (f) seal up those packets, endorse each with a description of its contents and with the name of the district and the date of the polling, sign the endorsement, and forward the packets to the returning officer.
- (2) The packets mentioned in subsection (1)(b)(i) and (e)(i), respectively, shall be sealed before the scrutineers, if any, present and any scrutineer who desires to do so shall be permitted by the deputy returning officer to affix his seal on any such packet.
  - (3) The list made out under subsection (1)(d) shall be verified by the signature of the deputy returning officer and also by the signatures of such of the scrutineers, if any, as are present and consent to sign it.
  - (4) In the case of a conjoint election subsection (1)(b)(iii) and subsection (1)(e)(iii) do not apply to papers or documents that relate to both the election for the Assembly and the election for the Council.

*[Section 146H inserted by No. 40 of 1987 s. 73.]*

**146I. Counting of votes by returning officers**

- (1) The returning officer shall open the sealed packets of ballot papers made up under sections 146G(1)(b)(i) and 146H(1)(b)(i) and forwarded to him under section 146H(1)(f), and shall make a fresh scrutiny of the ballot papers contained in the packets and the ballot papers transmitted to him under section 142A(4), and for this purpose he shall have the same powers as if the fresh scrutiny were the original scrutiny, and may reverse any

**Electoral Act 1907**

**Part IV** Elections

**Division (4b)** Scrutiny and count (Council elections)

**s. 146I**

---

decision given by an assistant returning officer or deputy returning officer in relation to the original scrutiny as to the admission or rejection of any ballot paper.

- (2) The returning officer shall ascertain the result of the polling using the method provided in Schedule 1.
- (3) For the purposes of subsection (2) the returning officer may, if the returning officer thinks fit —
  - (a) cause the preferences indicated on ballot papers to be recorded in an automated form; and
  - (b) on the basis of the information so recorded, use automated means to carry out the procedures set out in Schedule 1 other than the procedures referred to in clauses 12, 15 and 17 of that Schedule for resolving equalities of votes or surpluses under those clauses.
- (4) For proceedings under subsection (3) the requirements of section 134(4) are met if —
  - (a) the recording of preferences in an automated form is subject to the inspection of the scrutineers; and
  - (b) the scrutineers have access to the information so recorded and information as to the results obtained by using automated means to carry out the various procedures set out in Schedule 1.
- (5) If the result of the election is ascertained in accordance with subsection (3) —
  - (a) when transmitting documents to the Electoral Commissioner under section 151(d), the returning officer shall transmit to the Electoral Commissioner a copy, in an automated form, of the information recorded under subsection (3)(a);
  - (b) despite section 152(b), ballot papers do not have to be preserved or held in custody after the election can no longer be questioned if the preferences on them have been recorded in an automated form;
  - (c) section 155 extends to information recorded in an automated form; and
  - (d) on any recount, under section 156D, of the votes on the ballot papers used in the counting of votes at the election, the Electoral Commissioner shall, on the basis of the information recorded under subsection (3)(a), use automated means to carry out the procedures set out in Schedule 11 (as modified to give effect to

section 156D(5) to (7)) other than the procedures referred to in clauses 12, 15 and 17 of that Schedule for resolving equalities of votes or surpluses under those clauses.

- (6) In this section *automated* means involving the use of a computer.

*[Section 146I inserted by No. 40 of 1987 s. 73; amended by No. 79 of 1987 s. 68 and 78; No. 43 of 1996 s. 21.]*

**146J. Re-count**

- (1) At any time before the declaration of the result of the election the returning officer may, if he thinks fit, on the written request of any candidate setting forth the reasons for the request, or of his own motion, re-count the votes on the ballot papers from any district or portion of a district, or on the ballot papers contained in any parcel or on the ballot papers of any particular class.
- (2) In conducting the re-count the returning officer shall have the same powers as if the re-count were the scrutiny, and may reverse any decision in relation to the scrutiny as to the allowance or admission or disallowance or rejection of any ballot paper.
- (3) Section 146I(3) to (5) apply in relation to the re-count.

*[Section 146J inserted by No. 40 of 1987 s. 73; amended by No. 43 of 1996 s. 22.]*

**Division (5) — Declaration of poll and return of the writ**

**147. Declaration of poll and certification and return of writ**

- (1) As soon as practicable after the result of the election has been ascertained, the returning officer is to —
- (a) declare the result of the election and the name of the candidate, or names of the candidates, elected; and
  - (b) send to the Electoral Commissioner a written statement setting out —
    - (i) the result of the election; and
    - (ii) the day on which the result was declared; and
    - (iii) the name of the candidate, or names of the candidates, elected.

**Electoral Act 1907**

**Part IV** Elections

**Division (5)** Declaration of poll and return of the writ

**s. 147**

---

- (1a) A declaration under subsection (1) is to be made —
  - (a) in the case of an election in a district, within the district at a place appointed by the returning officer, unless the Electoral Commissioner decides that the declaration is to be made at a place outside the district; or
  - (b) in the case of an election in a region, at a place appointed by the Electoral Commissioner.
- (2) A statement under subsection (1)(b) is not required if the election in the region or district has wholly failed or the returning officer has given the Electoral Commissioner a notification under section 145(3).
- (3) In the case of a general election for the Council, when all the statements required under subsection (1)(b) have been received the Electoral Commissioner is to certify on the writ, in respect of each region —
  - (a) the names of the candidates elected; and
  - (b) the day on which the result of the election was declared.
- (4) In the case of any other election in a region, when the statement required under subsection (1)(b) has been received the Electoral Commissioner is to certify on the writ —
  - (a) the name of the candidate, or names of the candidates, elected; and
  - (b) the day on which the result of the election was declared.
- (5) In the case of a general election for the Assembly, when all, or all except not more than 5, of the statements required under subsection (1)(b) have been received the Electoral Commissioner is to certify on the writ, in respect of each district for which a statement has been received —
  - (a) the name of the candidate elected; and
  - (b) the day on which the result of the election was declared.
- (6) In the case of any other election in a district, when the statement required under subsection (1)(b) has been received the Electoral Commissioner is to certify on the writ —
  - (a) the name of the candidate elected; and
  - (b) the day on which the result of the election was declared.
- (7) A certificate under subsection (3), (4), (5) or (6) is to be signed and dated by the Electoral Commissioner.

- (8) The writ is to be regarded as having been returned on the date of the certificate.
- (9) As soon as practicable after the return of the writ the Electoral Commissioner is to forward to the Clerk of the Council or the Clerk of the Assembly, as the case may require, the name of the member, or names of the members, elected together with a copy of the certified writ.
- (10) If in the case of a general election for the Assembly a statement required under subsection (1)(b) is received after the writ has been certified under subsection (5), the Electoral Commissioner is to —
- (a) comply with subsections (5) and (7) in respect of the district for which the statement was received; and
  - (b) forward to the Clerk of the Assembly the name of the member elected together with a copy of the writ as further certified,

but the writ is still regarded as having been returned on the date of the original certificate.

*[Section 147 inserted by No. 36 of 2000 s. 18; amended by No. 64 of 2006 s. 38.]*

**148. Election not to be questioned**

No election shall be liable to be questioned by reason of any defect in the title or any want of title of any person by or before whom such election is held, if such person really acted at such election, nor by reason of any formal error or defect in any declaration or other instrument, or in any publication made under this Act or intended to be so made, nor by reason of any such publication being out of time.

**149. Remedy for informalities in election proceedings**

No election shall be void in consequence solely of any delay in holding the election at the time appointed, or in taking the poll, or in the return of the writ, or in consequence of any impediment of a merely formal nature; and the Governor may adopt such measures as may be necessary for removing any obstacle of a merely formal nature by which the due course of any election might be impeded:

Provided that the validity of the election and the measures so taken shall be forthwith declared by the Governor by proclamation.

**149A. Election of unqualified or disqualified person void**

- (1) If a person not qualified under section 76A is elected as a member of the Council or the Assembly, the election of that person is void.
- (2) If a person disqualified under section 76B(1) is elected as a member of the Council or the Assembly, the election of that person is void.
- (3) If a person disqualified under section 76B(2) from being elected as a member of a House is elected as a member of that House, the election of that person is void.

*[Section 149A inserted by No. 64 of 2006 s. 39.]*

**Division (6) — After the poll**

**150. Returning officer to forward statistical return and rolls to Electoral Commissioner**

- (1) The returning officer shall forthwith, after the day of polling at any election, complete and forward to the Electoral Commissioner a statistical return in the prescribed form.
- (2) He shall also forward to the Electoral Commissioner all the certified copies of the marked and signed rolls used in his region or district by himself and by the presiding officers, upon which rolls records have been made under section 126 in respect of the names of electors who voted at the election.

*[Section 150 amended by No. 40 of 1987 s. 84; No. 36 of 2000 s. 77(4).]*

**151. Returning officer to send election papers to Clerk of Council or Assembly**

The returning officer shall also, as soon as practicable after the day of polling at any election —

- (a) enclose —
  - (i) in a packet or packets, as the case may require, all the used ballot papers; and
  - (ii) in another packet or other packets, as the case may require, all books, communications from officers, or other papers or documents used or received at or in connection with the election, that are in his possession (with the exception of the signed rolls);

- (b) seal up the said several packets and endorse the same with a description and the number of the contents thereof respectively, and the name of the region or the district and the date of the polling, and shall sign the endorsement, and forthwith forward the said packets to the Clerk of the Council or the Clerk of the Assembly, as the case may be;
- (c) seal up, endorse, and transmit in a similar manner to the same Clerk a packet or packets, as the case may require, containing all ballot papers printed for the said election and not used by him or by deputy or assistant returning officers or presiding officers;
- (d) seal up, endorse, and transmit to the Electoral Commissioner the marked rolls used at the election and all declarations in the prescribed form, excluding declarations relating to early votes, absent votes and provisional votes cast under section 119(4a), 122(2), or 122A, received by himself and the presiding officers;
- (e) the Clerk of the Council, the Clerk of the Assembly, or the Electoral Commissioner, as the case may be, shall forthwith give or send to the returning officer a receipt under his hand for the said packets.

*[Section 151 amended by No. 44 of 1911 s. 43; No. 58 of 1951 s. 19; No. 68 of 1964 s. 29; No. 40 of 1987 s. 74 and 84; No. 79 of 1987 s. 70; No. 36 of 2000 s. 48(1).]*

**152. Preservation of election papers**

The Clerk of the Council and the Clerk of the Assembly shall preserve and hold in custody all such ballot papers and other documents forwarded by the returning officers under the provisions of this Part until —

- (a) in the case of an election other than a full election in a region, the election concerned can be no longer questioned; or
- (b) in the case of a full election in a region, the members elected at the next succeeding full election in the region become entitled to sit and vote,

when such ballot papers shall be destroyed.

*[Section 152 amended by No. 40 of 1987 s. 75.]*

**Electoral Act 1907**

**Part IV** Elections

**Division (6)** After the poll

**s. 153**

---

**153. Production of rolls used at election**

- (1) Any candidate on payment of a fee of \$100 may give notice to the returning officer requiring production of the rolls used by him and any assistant returning officers at any election, and if the notice is so given after the day of the election and before the day when the election can no longer be questioned such returning officer or assistant returning officers shall produce such roll or rolls in the presence of the other candidates (if they wish to be present) within 35 days of the date of service of the notice.
- (2) If the returning officer is satisfied that the application was made for a bona fide purpose he may direct repayment of the sum deposited.

*[Section 153 amended by No. 28 of 1970 s. 15; No. 64 of 2006 s. 40.]*

**154. Election papers to be delivered to Court of Disputed Returns**

- (1) Such ballot papers and other documents as may be required by the Court of Disputed Returns shall, upon an order of the Court, be produced by the Clerk of the Council or the Clerk of the Assembly.
- (2) Such ballot papers and other documents as may be required for the purposes of the election of a member of the Council under sections 156C and 156D shall be made available to the Electoral Commissioner by the Clerk of the Council at the request of the Electoral Commissioner.
- (3) Ballot papers or other documents held by the Clerk of the Council or the Clerk of the Assembly under section 152 shall not be made available for any purpose other than a purpose mentioned in subsection (1) or (2).

*[Section 154 amended by No. 40 of 1987 s. 76.]*

**155. Election papers to be destroyed**

- (1) Subject to subsection (2), all books, documents, and papers used for or in connection with any election may, when the election can be no longer questioned, be destroyed by the Electoral Commissioner, or with his approval, by any returning officer.
- (2) Subsection (1) does not apply to books, documents or papers used for or in connection with a full election in a region that



may be required for the purposes of the election of members of the Council under sections 156C and 156D.

*[Section 155 amended by No. 40 of 1987 s. 77 and 84; No. 79 of 1987 s. 78; No. 36 of 2000 s. 28(1).]*

**155AA. Papers and documents used for dual purposes**

Notwithstanding sections 152, 154 and 155, where books, documents or papers used in connection with an election were also used in connection with a referendum or another election —

- (a) they shall be available for purposes connected with that referendum or other election; and
- (b) they shall not be destroyed while that referendum or other election can be questioned.

*[Section 155AA inserted by No. 54 of 1983 s. 12.]*

*[155A. Deleted by No. 40 of 1987 s. 78.]*

**Division (7) — Voting to be compulsory**

*[Heading amended by No. 33 of 1964 s. 37.]*

**156. Compulsory voting**

- (1) It shall be the duty of every elector to record his vote at any election for the region or district for which he is enrolled unless he is prevented from doing so by absence from the State, or by illness or infirmity, or any physical incapacity on the day of the election.
- (2) As soon as practicable after the election the Electoral Commissioner shall prepare, or cause the returning officer to prepare and furnish to the Electoral Commissioner, a list of the names and descriptions of the electors enrolled for the region or district who did not vote at the election.
- (2a) A list prepared under subsection (2) shall be certified by statutory declaration of the person by whom it was prepared.
- (3) A list prepared and certified under subsections (2) and (2a) shall in all proceedings be prima facie evidence of the contents thereof and of the fact that the electors whose names appear therein did not vote at the election.
- (4) Subject to subsection (5), within the prescribed period after the close of each election, the Electoral Commissioner shall send a

**Electoral Act 1907**

**Part IV** Elections

**Division (7)** Voting to be compulsory

**s. 156**

---

- penalty notice to each elector whose name appears on the list prepared under subsection (2).
- (5) The Electoral Commissioner does not have to send a penalty notice to an elector if the Electoral Commissioner is satisfied that the elector —
- (a) is dead;
  - (b) was outside the State on polling day;
  - (c) was ineligible to vote at the election; or
  - (d) had a valid and sufficient reason for failing to vote.
- (6) A penalty notice is a notice in a prescribed form notifying the elector —
- (a) that the elector appears to have failed to vote at the election;
  - (b) that it is an offence to fail to vote at an election without a valid and sufficient reason for the failure; and
  - (c) that if the elector does not wish to have the apparent failure to vote dealt with by a court, the elector may on or before the date set out in the notice (the *response date*) —
    - (i) if the elector did vote as required by this Act — give the Electoral Commissioner particulars of the circumstances of the elector's voting;
    - (ii) if the elector failed to vote — give the Electoral Commissioner a valid and sufficient reason for the failure; or
    - (iii) pay to the Electoral Commissioner the penalty set out in the notice (the *modified penalty*).
- (7) The response date set out in a penalty notice shall not be less than 21 days after the day on which the notice is sent.
- (8) The modified penalty set out in a penalty notice shall be an amount not exceeding \$20, unless the elector has previously paid a modified penalty under this section or been convicted of an offence against this section, in which case it shall be an amount not exceeding \$50.

[(9), (10) deleted]

- (11) If, on or before the response date —
- (a) an elector responds to a penalty notice in the manner indicated in subsection (6)(c)(i) or (ii) and the Electoral Commissioner is satisfied —
    - (i) in the case of a response under subsection (6)(c)(i) — that the elector did vote as required by this Act; or
    - (ii) in the case of a response under subsection (6)(c)(ii) — that the reason for the failure to vote is a valid and sufficient reason;
  - or
  - (b) an elector responds to a penalty notice by paying the modified penalty,
- proceedings are not to be taken against the elector for a contravention of subsection (16)(a).
- (12) If, on or before the response date, an elector responds to a penalty notice in the manner indicated in subsection (6)(c)(i) or (ii) but the Electoral Commissioner is not satisfied —
- (a) in the case of a response under subsection (6)(c)(i) — that the elector voted as required by this Act; or
  - (b) in the case of a response under subsection (6)(c)(ii) — that the reason for the failure to vote is a valid and sufficient reason,
- the Electoral Commissioner shall send to the elector a notice in a prescribed form notifying the elector —
- (c) that the Electoral Commissioner is not so satisfied; and
  - (d) that if the elector does not wish to have the apparent failure to vote without a valid and sufficient reason for such failure dealt with by a court, the elector may, on or before the date set out in the notice (the *response date*) pay to the Electoral Commissioner the penalty set out in the notice (the *modified penalty*).
- (13) Subsections (7) and (8) apply, with any necessary modifications, to a notice under subsection (12).
- (14) If in response to a notice under subsection (12) the modified penalty is paid to the Electoral Commissioner on or before the response date, proceedings are not to be taken against the elector for a contravention of subsection (16)(a).

**Electoral Act 1907**

**Part IV** Elections

**Division (7)** Voting to be compulsory

**s. 156**

---

(14a) If an elector is unable, by reason of absence from his place of living or physical incapacity, to respond to a penalty notice or to a notice under subsection (12) on or before the response date, any other elector who has a personal knowledge of the facts may, subject to the regulations, respond to the notice within that time, and that response is to be treated as compliance by the first-mentioned elector with the notice.

(14b) In proceedings for an offence against this section a statement in a certificate signed by the Electoral Commissioner that a person named in the certificate —

- (a) did not vote at an election;
- (b) was sent a penalty notice or a notice under subsection (12);
- (c) did or did not (as the case may be) respond to a penalty notice or a notice under subsection (12) on or before the response date; or
- (d) responded to a penalty notice or a notice under subsection (12) in a particular manner,

is evidence of the facts stated.

(15) At the conclusion of an election, the Electoral Commissioner shall —

- (a) cause to be ascertained whether any person who failed or neglected to respond to a penalty notice is living at the address shown in the roll; and
- (b) if he is satisfied that the person is no longer living at that address, cause the name of that person to be removed from the roll,

and any person whose name has been removed from the roll pursuant to this subsection shall be required to furnish a new claim for enrolment before his name is reinstated on the roll.

(16) Every elector who —

- (a) fails to vote at an election without a valid and sufficient reason for such failure (in this section the words ***valid and sufficient reason*** shall include an honest belief on the part of an elector that abstention from voting is part of his religious duty); or

(b) makes a statement in response to a penalty notice or to a notice under subsection (12) that is, to the person's knowledge, false or misleading in a material particular,

shall be guilty of an offence.

Penalty: \$50.

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

*[Section 156 inserted by No. 10 of 1936 s. 3; amended by No. 63 of 1948 s. 23; No. 58 of 1951 s. 20; No. 33 of 1964 s. 38; No. 68 of 1964 s. 30; No. 28 of 1970 s. 16; No. 70 of 1973 s. 8; No. 123 of 1982 s. 2; No. 9 of 1983 s. 22; No. 40 of 1987 s. 84; No. 79 of 1987 s. 71 and 77; No. 43 of 1996 s. 23; No. 36 of 2000 s. 28(1); No. 64 of 2006 s. 41.]*

## **Part IVA — Filling vacancies in the Council**

*[Heading inserted by No. 40 of 1987 s. 79.]*

### **156A. Terms used**

In this Part —

**original election**, in relation to a vacancy, means the full election in the region in respect of which the vacancy has occurred at which —

- (a) the member in whose seat the vacancy has occurred; or
- (b) in a case where the member in whose seat the vacancy has occurred was elected under sections 156C and 156D or under section 156E, the member who was the predecessor (whether immediate, intermediate, or original) of that member,

was elected;

**qualified person**, in relation to a vacancy, means a person who —

- (a) was a candidate at original election;
- (b) did not withdraw from, and was not elected at, that election;
- (c) has not become a member of the Council since that election; and
- (d) is qualified to be elected and is not disqualified from being elected as a member of the Council;

**vacancy** means a vacancy in the Council that occurs otherwise than because of —

- (a) the expiration of the term of service of a member;
- (b) an election in a region failing wholly or partially; or
- (c) the declaration of an election in a region to be absolutely void.

*[Section 156A inserted by No. 40 of 1987 s. 79; amended by No. 36 of 2000 s. 55(1) and (2); No. 64 of 2006 s. 53.]*

### **156B. Notification of vacancies in the Council**

- (1) Where a vacancy occurs the President, upon a resolution of the Council declaring the vacancy and the cause thereof, shall, by notice signed by him, inform the Governor of the vacancy.
- (2) Subject to section 39(4) of the *Constitution Acts Amendment Act 1899*, where a vacancy occurs when Parliament is not in

session or during an adjournment for longer than 7 days of the Council the President may, without a resolution of the Council, by notice signed by him, inform the Governor of the vacancy.

- (3) Subject to section 39(4) of the *Constitution Acts Amendment Act 1899*, where a vacancy occurs when there is no President, or when the President is absent from the State, the Governor may take notice of the vacancy.

*[Section 156B inserted by No. 40 of 1987 s. 79.]*

**156C. Filling vacancy by re-count — nominations**

- (1) Where the Governor receives or takes notice of a vacancy under section 156B the Governor shall inform the Electoral Commissioner who shall —
- (a) if satisfied that it is practicable to fill the vacancy under this section and section 156D, publish in at least 2 newspapers circulating generally in the region in respect of which the vacancy has occurred a notice in accordance with the prescribed form to the effect that the vacancy has occurred; or
  - (b) by notice signed by him, inform the Governor that he is not satisfied that it is practicable to fill the vacancy under this section and section 156D.
- (2) Where a vacancy is to be filled and —
- (a) the member in whose seat the vacancy has occurred; or
  - (b) in a case where the member in whose seat the vacancy has occurred was elected under this section and section 156D or under section 156E, the member who was the predecessor (whether immediate, intermediate, or original) of that member,

was, at the time of being elected at the original election, publicly recognised by a particular political party as being an endorsed candidate of that party and publicly represented himself to be such a candidate at that time then, without limiting the generality of subsection (1), it shall be taken to be impracticable to fill the vacancy under this section and section 156D if the Parliamentary leader of that party, by notice signed by him, informs the Electoral Commissioner that there is no available qualified person who is a member of that party.

**s. 156D**

---

- (3) Where notice of a vacancy is published under subsection (1)(a) a qualified person may nominate himself as a candidate for the vacancy in accordance with this section.
- (4) A person may make a nomination under subsection (3) —
- (a) by delivering or posting his written consent to act, if elected; or
  - (b) by signifying his consent to act, if elected, by a message sent by telegram, telex, or other electronic means,
- to the Electoral Commissioner so that it is received by the Electoral Commissioner before 12 noon on the tenth day after the day on which the notice of the vacancy was published under subsection (1)(a).
- (5) Where a nomination under subsection (3) is made otherwise than by telegram, telex, or other electronic means, it is not valid unless made in the prescribed form by the nominating candidate and unless his signature is witnessed by an elector.
- (6) Where such a nomination is made by a message by telegram, telex, or other electronic means, it is not valid unless it is verified in the prescribed manner.

*[Section 156C inserted by No. 40 of 1987 s. 79; amended by No. 36 of 2000 s. 55(2).]*

**156D. Filling vacancy by re-count — proceedings at close of nominations**

- (1) At 12 noon on the tenth day after the day on which notice of a vacancy was published under section 156C(1)(a) the Electoral Commissioner shall declare the names of each person who has made a nomination in accordance with section 156C (in this section referred to as a **consenting candidate**).
- (2) If there is no consenting candidate for the vacancy the Electoral Commissioner shall, by written notice, inform the Governor accordingly.
- (3) If there is only one consenting candidate for the vacancy the Electoral Commissioner shall —
- (a) declare that consenting candidate to be elected as a member of the Council to fill the vacancy; and
  - (b) by written notice, inform the Governor of the election of that consenting candidate.



- (4) If there are 2 or more consenting candidates for the vacancy the Electoral Commissioner, using the method prescribed in Schedule 1, shall re-count the votes on the ballot papers used in the counting of votes at the original election.
- (5) On the re-count under subsection (4) a preference indicated on a ballot paper for a previously elected member whose seat has become vacant shall be disregarded and the ballot paper shall be treated as if the numeral indicating any subsequent preference had been altered accordingly.
- (6) If on the re-count under subsection (4) a non-participating candidate is elected that election has no effect and the Electoral Commissioner shall terminate that re-count and repeat the procedure of re-counting the votes on the ballot papers until a consenting candidate is elected.
- (7) On a re-count under subsection (6) a preference indicated on a ballot paper for —
  - (a) a previously elected member whose seat has become vacant; or
  - (b) a non-participating candidate who has been elected on the re-count under subsection (4) or on a previous re-count under subsection (6),shall be disregarded and the ballot paper shall be treated as if the numeral indicating any subsequent preference had been altered accordingly.
- (8) When on a re-count under this section a consenting candidate is elected the Electoral Commissioner shall —
  - (a) in the prescribed manner, declare that consenting candidate to be elected as a member of the Council to fill the vacancy; and
  - (b) by written notice, inform the Governor of the election of that consenting candidate.
- (9) A re-count under this section does not affect the election of a previously elected member and where a previously elected member is elected or excluded during a re-count that election or exclusion has effect for the purposes of the continuation of the re-count and for those purposes only.
- (10) The Electoral Commissioner shall make such arrangements for a re-count under this section as are prescribed.

**s. 156E**

---

- (11) A consenting candidate may appoint one scrutineer to represent the candidate at a re-count under this section.
- (12) When a member has been elected under this section the Electoral Commissioner shall retain papers and documents relating to the election of the member until the election can be no longer questioned.
- (13) If no re-count under subsection (4) or (6) results in the election of a consenting candidate the Electoral Commissioner shall, by written notice, inform the Governor that the vacancy has not been filled under this section.
- (14) In this section —
- non-participating candidate*** means a person who was a candidate at the original election and is neither a consenting candidate nor a previously elected member;
- previously elected member*** means a person who —
- (a) was elected as a member of the Council at the original election; or
- (b) was declared elected as a member of the Council under this section after the original election.

*[Section 156D inserted by No. 66 of 1990 s. 3; amended by No. 36 of 2000 s. 55(2).]*

**156E. Filling vacancy by fresh election**

- (1) Subject to subsection (2), where after receiving or taking notice of a vacancy under section 156B the Governor receives a notice under section 156C(1)(b), 156D(2) or 156D(13) in relation to the vacancy the Governor shall cause a writ to be issued for an election in the region concerned to fill the vacancy.
- (2) A writ shall not be issued under subsection (1) on or after 1 January in the year in which the term of service of the member whose seat has been vacated would have expired and, in that case, the vacancy shall be deemed for the purposes of ~~sections 8(6) and 10 of the Constitution Acts Amendment Act 1899~~ [section 64\(3\) and the Constitution Acts Amendment Act 1899 section 10](#) to occur by effluxion of time at the close of 21 May in that year.

*[Section 156E inserted by No. 40 of 1987 s. 79; amended by No. 66 of 1990 s. 4; No. 36 of 2000 s. 19; [the Electoral and Constitution Amendment Bill 2011 cl. 10.](#)]*

**Notes**

<sup>1</sup> This reprint is a compilation as at 23 July 2010 of the *Electoral Act 1907* and includes the amendments made by the other written laws referred to in the following table <sup>1a, 6</sup>. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Electoral Act 1907</i>	27 of 1907 (7 Edw. VII No. 27)	20 Dec 1907	1 Mar 1908 (see s. 2)
<i>Electoral Act Amendment Act 1911</i>	44 of 1911 (1 Geo. V No. 55)	16 Feb 1911	1 May 1911 (see s. 1)
<i>Electoral Act Amendment Act 1912</i>	56 of 1912 (3 Geo. V No. 37)	30 Dec 1912	30 Dec 1912
<i>Electoral Act Amendment Act 1918</i>	5 of 1918 (8 Geo. V No. 19) (as amended by No. 59 of 1919 s. 6)	18 Mar 1918	18 Mar 1918
<i>Electoral Amendment Act 1919</i>	59 of 1919 (10 Geo. V No. 47)	17 Dec 1919	17 Dec 1919
<i>Electoral Act Amendment Act 1921</i>	7 of 1921 (12 Geo. V No. 7)	26 Oct 1921	26 Oct 1921
<b>Reprint of the <i>Electoral Act 1907</i> in Appendix Session Volume 1928</b> (includes amendments listed above)			
<i>Electoral Act Amendment Act 1931</i>	38 of 1931 (22 Geo. V No. 38)	3 Dec 1931	3 Dec 1931
<i>Electoral Act Amendment Act 1934</i>	39 of 1934 (25 Geo. V No. 38)	4 Jan 1935	4 Jan 1935
<i>Electoral Act Amendment Act 1936</i>	10 of 1936 (1 Edw. VIII No. 10)	3 Dec 1936	3 Dec 1936
<i>Electoral Act Amendment Act 1940</i>	18 of 1940 (4 Geo. VI No. 18)	29 Nov 1940	29 Nov 1940
<i>Electoral Act Amendment Act (No. 3) 1940</i>	47 of 1940 (4 & 5 Geo. VI No. 47)	30 Dec 1940	30 Dec 1940

**Reprint of the *Electoral Act 1907* in Volume 2 of Reprinted Acts** <sup>6</sup>(includes amendments listed above)

## Electoral Act 1907

---

Short title	Number and year	Assent	Commencement
<i>Electoral Act Amendment Act 1948</i>	63 of 1948 (12 & 13 Geo. VI No. 63)	21 Jan 1949	27 May 1949 (see s. 1 and <i>Gazette</i> 27 May 1949 p. 1133)
<b>Reprint of the <i>Electoral Act 1907</i> approved 21 Oct 1949 (not in a Volume)</b> (includes amendments listed above and in the <i>Electoral Act Amendment Act 1949</i> )			
<i>Electoral Act Amendment Act 1949</i>	26 of 1949 (13 Geo. VI No. 112)	22 Oct 1949	22 Oct 1949
<i>Electoral Act Amendment Act 1951</i>	58 of 1951 (15 & 16 Geo. VI No. 58)	7 Jan 1952	7 Jan 1952
<i>Electoral Act Amendment Act 1952</i>	57 of 1952 (1 Eliz. II No. 57)	23 Dec 1952	23 Dec 1952
<i>Electoral Act Amendment Act (No. 2) 1953</i>	34 of 1953 (2 Eliz. II No. 34)	18 Dec 1953	18 Dec 1953
<b>Reprint of the <i>Electoral Act 1907</i> approved 19 Mar 1956 in Volume 9 of Reprinted Acts</b> (includes amendments listed above)			
<i>Electoral Act Amendment Act (No. 2) 1957</i>	53 of 1957 (6 Eliz. II No. 53)	6 Dec 1957	14 Feb 1958 (see s. 2 and <i>Gazette</i> 14 Feb 1958 p. 244)
<i>Electoral Act Amendment Act (No. 3) 1959</i>	59 of 1959 (8 Eliz. II No. 59)	3 Dec 1959	15 Jan 1960 (see s. 2 and <i>Gazette</i> 15 Jan 1960 p. 35)
<b>Reprint of the <i>Electoral Act 1907</i> approved 26 Feb 1962 (not in a Volume)</b> (includes amendments listed above)			
<i>Electoral Act Amendment Act 1962</i>	51 of 1962 (11 Eliz. II No. 51)	20 Nov 1962	20 Nov 1962
<i>Electoral Act Amendment Act 1964</i>	33 of 1964 (13 Eliz. II No. 33)	3 Nov 1964	31 Dec 1964 (see s. 2 and <i>Gazette</i> 24 Dec 1964 p. 4094)
<i>Electoral Act Amendment Act (No. 3) 1964</i>	68 of 1964 (13 Eliz. II No. 68)	4 Dec 1964	31 Dec 1964 (see s. 2 and <i>Gazette</i> 24 Dec 1964 p. 4094)
<b>Reprint of the <i>Electoral Act 1907</i> approved 9 Feb 1965 in Volume 19 of Reprinted Acts</b> (includes amendments listed above)			
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
<i>Electoral Act Amendment Act 1967</i>	33 of 1967	17 Nov 1967	24 Nov 1967 (see s. 2 and <i>Gazette</i> 24 Nov 1967 p. 3195)
<i>Electoral Act Amendment Act 1970</i>	28 of 1970	20 May 1970	1 Nov 1970 (see s. 2 and <i>Gazette</i> 30 Oct 1970 p. 3343)

---

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Electoral Act Amendment Act (No. 2) 1970</i>	94 of 1970	30 Nov 1970	5 Dec 1970 (see s. 2 and <i>Gazette</i> 4 Dec 1970 p. 3705)
<b>Reprint of the Electoral Act 1907 approved 12 Jan 1971 (not in a Volume)</b> (includes amendments listed above)			
<i>Metric Conversion Act 1972</i>	94 of 1972	4 Dec 1972	Relevant amendments (see First Sch. <sup>7</sup> ) took effect on 1 Jan 1974 (see s. 4(2) and <i>Gazette</i> 7 Dec 1973 p. 4490)
<i>Electoral Act Amendment Act (No. 2) 1973</i>	70 of 1973	6 Dec 1973	1 Jan 1974 (see s. 2 and <i>Gazette</i> 28 Dec 1973 p. 4725)
<i>Electoral Act Amendment Act (No. 2) 1976</i>	129 of 1976	9 Dec 1976	9 Dec 1976
<i>Electoral Act Amendment Act (No. 2) 1979</i>	39 of 1979	25 Oct 1979	23 Nov 1979 (see s. 2 and <i>Gazette</i> 23 Nov 1979 p. 3635)
<i>Acts Amendment (Master, Supreme Court) Act 1979 Pt. XI</i>	67 of 1979	21 Nov 1979	11 Feb 1980 (see s. 2 and <i>Gazette</i> 8 Feb 1980 p. 383)
<i>Electoral Amendment Act 1980</i>	52 of 1980	19 Nov 1980	19 Nov 1980
<b>Reprint of the Electoral Act 1907 approved 8 Dec 1981</b> (includes amendments listed above)			
<i>Electoral Amendment Act 1982</i>	31 of 1982	27 May 1982	11 Oct 1982 (see s. 2 and <i>Gazette</i> 10 Sep 1982 p. 3637)
<i>Electoral Amendment Act (No. 2) 1982</i>	123 of 1982	10 Dec 1982	10 Dec 1982
<i>Electoral Amendment Act 1983</i>	9 of 1983	29 Sep 1983	s. 5: 7 Oct 1983 (see s. 2 and <i>Gazette</i> 7 Oct 1983 p. 4066); s. 1-4 and 6-28: 1 Nov 1983 (see s. 2 and <i>Gazette</i> 14 Oct 1983 p. 4147); s. 29-31: 26 Jan 1984 (see s. 2 and <i>Gazette</i> 18 Nov 1983 p. 4559)
<i>Electoral Amendment Act (No. 2) 1983</i>	54 of 1983	13 Dec 1983	13 Dec 1983
<i>Electoral Amendment Act (No. 3) 1983</i>	66 of 1983	22 Dec 1983	26 Jan 1984 (see s. 2 and <i>Gazette</i> 20 Jan 1984 p. 119)
<i>Health Legislation Amendment Act 1984 Pt. VI</i>	28 of 1984	31 May 1984	1 Jul 1984 (see s. 2 and <i>Gazette</i> 15 Jun 1984 p. 1629)
<i>Acts Amendment and Repeal (Disqualification for Parliament) Act 1984 Pt. VII</i>	78 of 1984	14 Nov 1984	1 Jul 1985 (see s. 2 and <i>Gazette</i> 17 May 1985 p. 1671)

## Electoral Act 1907

---

Short title	Number and year	Assent	Commencement
<i>Electoral Amendment Act 1984</i>	76 of 1984	26 Nov 1984	s. 1 and 2: 26 Nov 1984; Act other than s. 1 and 2: 24 Dec 1984 (see s. 2 and <i>Gazette</i> 21 Dec 1984 p. 4173)
<i>Electoral Amendment Act (No. 2) 1985</i>	104 of 1985 (as amended by No. 1 of 1987)	7 Dec 1985	s. 1 and 2: 7 Dec 1985; Act other than s. 1 and 2: 1 May 1987 (see s. 3 of Act No. 1 of 1987 and Commonwealth Special <i>Gazette</i> 68 of 1987)
<b>Reprint of the <i>Electoral Act 1907</i> as at 16 Jun 1986</b> (includes amendments listed above except those in the <i>Electoral Amendment Act (No. 2) 1985</i> )			
<i>Acts Amendment (Electoral Reform) Act 1987 Pt. IV</i> <sup>8,9</sup>	40 of 1987	12 Jul 1987	30 Oct 1987 (see s. 2 and <i>Gazette</i> 30 Oct 1987 p. 3977)
<i>Electoral (Procedures) Amendment Act 1987</i>	79 of 1987	1 Dec 1987	s. 1 and 2: 1 Dec 1987; Act other than s. 1 and 2: 16 Feb 1988 (see s. 2 and <i>Gazette</i> 16 Feb 1988 p. 477)
<i>Electoral Amendment Act 1988</i>	20 of 1988	9 Sep 1988	9 Sep 1988 (see s. 2)
<i>Electoral Amendment Act (No. 2) 1988</i>	58 of 1988	8 Dec 1988	s. 1 and 2: 8 Dec 1988; Act other than s. 1 and 2: 27 Jan 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 264)
<b>Reprint of the <i>Electoral Act 1907</i> as at 1 Jan 1989</b> (includes amendments listed above except those in the <i>Electoral Amendment Act (No. 2) 1988</i> )			
<i>Guardianship and Administration Act 1990</i> s. 123	24 of 1990	7 Sep 1990	20 Oct 1992 (see s. 2 and <i>Gazette</i> 2 Oct 1992 p. 4811)
<i>Electoral Amendment Act 1990</i>	66 of 1990	17 Dec 1990	14 Jan 1991
<i>Criminal Law Amendment Act (No. 2) 1992</i> s. 16(4)	51 of 1992	9 Dec 1992	6 Jan 1993
<i>Electoral Amendment (Political Finance) Act 1992</i> <sup>10</sup>	75 of 1992 (as amended by No. 43 of 1996 Pt. 3; No. 64 of 2006 s. 55)	16 Dec 1992	s. 1 and 2: 16 Dec 1992; Act other than s. 1, 2, 5 and 6: 9 Nov 1996 (see s. 2 and <i>Gazette</i> 8 Nov 1996 p. 6265); s. 5 and 6 repealed by No. 64 of 2006 s. 55
<i>Financial Administration Legislation Amendment Act 1993</i> s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Ministry of Justice) Act 1993</i> Pt. 8 <sup>11</sup>	31 of 1993	15 Dec 1993	1 Jul 1993 (see s. 2)

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 11	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Sentencing (Consequential Provisions) Act 1995</i> Pt. 26 and s. 147	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Electoral Legislation Amendment Act 1996</i> Pt. 2	43 of 1996	16 Oct 1996	9 Nov 1996 (see s. 2(2) and <i>Gazette</i> 8 Nov 1996 p. 6265)
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Mental Health (Consequential Provisions) Act 1996</i> Pt. 6	69 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2)
<b>Reprint of the Electoral Act 1907 as at 22 Apr 1997</b> (includes amendments listed above except those in the <i>Electoral Amendment (Political Finance) Act 1992</i> s. 5 and 6 and the <i>Mental Health (Consequential Provisions) Act 1996</i> )			
<i>Equal Opportunity Amendment Act (No. 3) 1997</i> s. 8	42 of 1997	9 Dec 1997	6 Jan 1998 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 76	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Acts Repeal and Amendment (Births, Deaths and Marriages Registration) Act 1998</i> s. 11	40 of 1998	30 Oct 1998	14 Apr 1999 (see s. 2 and <i>Gazette</i> 9 Apr 1999 p. 1433)
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 50	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
<i>Electoral Amendment Act 2000</i> <sup>12</sup>	36 of 2000	10 Oct 2000	s. 1 and 2: 10 Oct 2000; Act other than s. 1, 2, 28 and Pt. 5: 21 Oct 2000 (see s. 2 and <i>Gazette</i> 20 Oct 2000 p. 5899); s. 28 and Pt. 5: 11 Nov 2000 (see s. 2 and <i>Gazette</i> 10 Nov 2000 p. 6193)
<b>Reprint of the Electoral Act 1907 as at 15 Dec 2000</b> (includes amendments listed above except those in the <i>Electoral Amendment (Political Finance) Act 1992</i> s. 5 and 6)			
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)

## Electoral Act 1907

---

Short title	Number and year	Assent	Commencement
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 56	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 47	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Criminal Code Amendment Act 2004</i> s. 58	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<i>Children and Community Services Act 2004</i> Sch. 2 cl. 8	34 of 2004	20 Oct 2004	1 Mar 2006 (see s. 2 and <i>Gazette</i> 14 Feb 2006 p. 695)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> s. 468 <sup>13</sup>	55 of 2004	24 Nov 2004	24 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Electoral Amendment and Repeal Act 2005</i> Pt. 2	1 of 2005	20 May 2005	20 May 2005 (see s. 2)
<i>Constitution and Electoral Amendment Act 2005</i> s. 4	2 of 2005	23 May 2005	23 May 2005 (see s. 2)
<b>Reprint 13: The Electoral Act 1907 as at 9 Sep 2005</b> (includes amendments listed above except those in the <i>Electoral Amendment (Political Finance) Act 1992</i> s. 5 and 6 and the <i>Children and Community Services Act 2004</i> )			
<i>Electoral Reform (Electoral Funding) Act 2006</i>	55 of 2006	26 Oct 2006	27 Oct 2006 (see s. 2)
<i>Electoral Legislation Amendment Act 2006</i> Pt. 3 <sup>14</sup>	64 of 2006	8 Dec 2006	5 Mar 2007 (see s. 2(2) and <i>Gazette</i> 2 Mar 2007 p. 689)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4 and Sch. 1 cl. 51	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<b>Reprint 14: The Electoral Act 1907 as at 7 Dec 2007</b> (includes amendments listed above)			
<i>Criminal Law Amendment (Homicide) Act 2008</i> s. 32	29 of 2008	27 Jun 2008	1 Aug 2008 (see s. 2(d) and <i>Gazette</i> 22 Jul 2008 p. 3353)
<i>Electoral Amendment Act 2008</i>	38 of 2008	3 Jul 2008	s. 1 and 2: 3 Jul 2008 (see s. 2(a)); Act other than s. 1 and 2: 30 Apr 2010 (see s. 2(b) and <i>Gazette</i> 23 Apr 2010 p. 1523)

---



<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Electoral Amendment (Miscellaneous) Act 2009</i>	7 of 2009	21 May 2009	Pt. 1: 21 May 2009 (see s. 2(a)); Act other than Part 1: 1 Oct 2009 (see s. 2(b) and <i>Gazette</i> 1 Sep 2009 p. 3393)
<i>Acts Amendment (Bankruptcy) Act 2009</i> s. 34	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))

**Reprint 15: The Electoral Act 1907 as at 23 Jul 2010** (includes amendments listed above)

[Electoral and Constitution](#) [Current Bill](#)  
[Amendment Bill 2011 Pt. 2](#)

<sup>1a</sup> On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 75 <sup>15</sup>	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))

<sup>2</sup> The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39 but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26 and those provisions may be amended by regulations under subsection (3) of that section. See also endnote 15.

<sup>3</sup> Repealed by the *Planning and Development (Consequential and Transitional Provisions) Act 2005* s. 4. The part of the State that was, as at 1 June 1988, described in the Third Schedule to the *Metropolitan Region Town Planning Scheme Act 1959* is also described in the *Planning and Development Act 2005* Sch. 3 as it was enacted on 12 December 2005.

<sup>4</sup> Under the *Public Sector Management Act 1994* s. 112(1), a reference to the *Public Service Act 1978* is, unless the contrary is intended, to be read and construed as a reference to the *Public Sector Management Act 1994*.

<sup>5</sup> The *Interpretation Act 1918* was repealed by the *Interpretation Act 1984*.

<sup>6</sup> In this reprint the renumbering of sections effected in the 1943 reprint (in Volume 2 of the Reprinted Acts of the Parliament of Western Australia) and retained in subsequent reprints has again been retained. References to the original numbering are contained in the 1943 reprint.

<sup>7</sup> The Schedule to the *Metric Conversion Act 1972* was redesignated as the First Schedule by the *Metric Conversion Act Amendment Act 1973*.

<sup>8</sup> The *Acts Amendment (Electoral Reform) Act 1987* s. 19(2) reads as follows:

- (2) References to the Chief Electoral Officer in any written law shall, unless because of the context it would be inappropriate so to do, be read and construed as references to the Electoral Commissioner.

<sup>9</sup> The *Acts Amendment (Electoral Reform) Act 1987* s. 21(2) reads as follows:

- (2) A Registrar or returning officer holding office immediately before the commencement of this Act shall, on and from that commencement, be deemed to have been appointed by the Electoral Commissioner.

<sup>10</sup> The *Electoral Amendment (Political Finance) Act 1992* s. 8 is a transitional provision of no further effect.

<sup>11</sup> The *Acts Amendment (Ministry of Justice) Act 1993* Pt. 19 is a savings and transitional provision that is of no further effect.

<sup>12</sup> The *Electoral Amendment Act 2000* s. 81(2) reads as follows:

- (2) The repeal of Schedule 3 does not affect the operation of the *Electoral (Ballot Paper Forms) Regulations 1990*.

<sup>13</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>14</sup> The *Electoral Legislation Amendment Act 2006* s. 27(2)-(4) read as follows:

- (2) A person who is a member of the Legislative Assembly or the Legislative Council immediately before the commencement —
  - (a) does not become disqualified, on the commencement, for membership of the Legislative Assembly or the Legislative Council for the purposes of the *Constitution Acts Amendment Act 1899* section 38(a) or 40(a); and
  - (b) is not prevented from completing his or her current term as a member,by reason only of not being an Australian citizen as defined in the *Electoral Act 1907* section 4(1).
- (3) A person who has been elected as a member of the Legislative Council but has not begun his or her term as a member before the commencement —
  - (a) does not become disqualified, on the commencement for membership of the Legislative Assembly or the Legislative Council for the purposes of the *Constitution Acts Amendment Act 1899* section 38(a) or 40(a); and
  - (b) is not prevented from beginning and completing his or her term as a member,

by reason only of not being an Australian citizen as defined in the *Electoral Act 1907* section 4(1).

- (4) In subsections (2) and (3) —  
**commencement** means the coming into operation of this section.

<sup>15</sup> On the date as at which this reprint was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 75 had not come into operation. It reads as follows:

**75. Various provisions repealed**

The provisions listed in the Table to this section are repealed.

**Table of provisions repealed**

<b>Act</b>	<b>Provision</b>
.....	.....
<i>Electoral Act 1907</i>	s. 5E(2)
.....	.....

Defined Terms

---

## Defined Terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
absent voter .....	4(1)
absolute majority of votes .....	144(3)
advertise .....	75(4)
Assembly .....	4(1)
Australian citizen .....	4(1)
authorised witness .....	4(1)
automated .....	146I(6)
available day .....	71(1)
ballot papers .....	99B(1)
candidate .....	4(1)
christian name .....	4(1)
conjoint election .....	4(1)
consenting candidate .....	156D(1)
constitution .....	4(1)
Council .....	4(1)
Deputy Electoral Commissioner .....	4(1)
district .....	4(1)
early ballot paper .....	4(1)
early vote .....	4(1)
election .....	4(1)
election year .....	4(1)
elector .....	4(1)
electoral census .....	4(1)
Electoral Commissioner .....	4(1)
enrolment information .....	4(1)
excluded day .....	71(1)
expiry year .....	4(1)
general election .....	4(1)
general polling place .....	4(1), 100(3)
group .....	4(1)
hour of nomination .....	4(1)
issuing officer .....	90(2)
modified penalty .....	156(6), 156(12)
name .....	113C(10)
non-participating candidate .....	156D(14)
officer .....	4(1)
official paper .....	4(1)
original election .....	156A
party nomination .....	81A(1)
periodic election .....	4(1)
political party .....	4(1)
polling place .....	4(1)
polling day .....	69
preference mark .....	146E(7)
prescribed manner .....	140(3), 146E(2)
President .....	4(1)
previously elected member .....	156D(14)
prison .....	4(1)

**Defined Terms**

---

qualified person.....	156A
referendum .....	4(1)
region .....	4(1)
registered political party .....	4(1)
relevant citizenship law.....	4(1)
relevant number .....	4(1)
required deposit.....	81(2)
response date.....	156(6), 156(12)
returning officer .....	4(1)
roll.....	4(1)
secretary .....	4(1)
single member election .....	4(1)
Speaker.....	4(1)
sub-district .....	4(1)
the tied candidates.....	145(3)
tied candidates.....	144(2)
vacancy .....	156A
valid and sufficient reason .....	156(16)
voting ticket .....	4(1)
voting ticket square .....	4(1)
writ.....	4(1)



