



Constitutional Convention (Election) Act 1997

No. 128, 1997



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**An Act to provide for the election of delegates to
the Constitutional Convention, and for related
purposes**

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Constitutional Convention (Election) Act 1997

No. 128, 1997

**An Act to provide for the election of delegates to
the Constitutional Convention, and for related
purposes**

The Parliament of Australia enacts:

[Assented to 15 September 1997]

Part 1—Preliminary

1 Short title

This Act may be cited as the *Constitutional Convention (Election) Act 1997*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Act extends to Norfolk Island

This Act extends to Norfolk Island.

4 Act to bind Crown

This Act binds the Crown in each of its capacities, but nothing in this Act renders the Crown liable to be prosecuted for an offence.

5 Identifying defined terms

- (1) Many of the terms in this Act are defined in the Dictionary in Schedule 1.
- (2) Most defined terms are identified by an asterisk appearing at the start of the term: as in *delegate. The footnote that goes with the asterisk contains a signpost to the Dictionary.
- (3) An asterisk usually identifies the first occurrence of a term in a section, subsection, note or definition. Later occurrences of the term in the same subsection, note or definition are not asterisked.
- (4) Terms are not asterisked in headings or tables.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (5) The following basic terms used throughout the Act are not identified with an asterisk:

Terms that are not identified	
Item	This term:
1	AEO
2	Assistant DRO
3	Australia
4	CEA
5	DRO
6	election
7	Electoral Commission
8	Electoral Commissioner
9	officer
10	Territory

These terms are all defined in the Dictionary in Schedule 1.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2—Overview of election process

Division 1—General

6 Purpose of Act

The purpose of the Act is to provide for elections of *delegates from each State and Territory to the Constitutional Convention. As well as delegates who are elected, there will also be delegates to the Convention who are appointed delegates. The Act does not deal with the appointment of delegates.

7 Number of delegates to be elected from each State and Territory

The number of *delegates to be elected from each State and Territory is as follows:

Item	State/Territory	Number of delegates
1	New South Wales	20
2	Victoria	16
3	Queensland	13
4	Western Australia	9
5	South Australia	8
6	Tasmania	6
7	Australian Capital Territory	2
8	Northern Territory	2

8 Who can vote

- (1) A person is entitled to vote at an election for a State or Territory if the person's name is on the *list of electors compiled under section 9 for that State or Territory.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 9

- (2) The list of electors for a State or Territory is conclusive evidence of the right of each person named on the list to vote in the election for that State or Territory.

9 List of electors

- (1) As soon as practicable after the day fixed under section 14 for the close of the *Rolls, the Electoral Commissioner must cause a *list of electors for each State and Territory to be compiled.
- (2) The list for a State or Territory is a list of the names and addresses of all persons whose names:
- (a) appear on the *Roll for the State or Territory; and
 - (b) would be required, if the election were an election of Senators to be held on the *closing day of the poll, to be included on a certified list used for the purposes of the Senate election under section 208 of the CEA.
- (3) The list is not to be compiled until claims to which subsection (4) applies have been dealt with under the CEA.
- (4) This subsection applies to a claim if:
- (a) it is a claim under section 102 (age 17 enrolment) or subsection 103(1) (enrolment or transfer of enrolment) of the CEA; and
 - (b) the claim is received before 8 pm on the day fixed under section 14 for the close of the *Rolls.
- (5) Nothing in this Act is to be taken to require the address of a person to be included on the *list of electors if the person's address is not shown on the *Roll because of section 106 of the CEA.

10 One vote

- (1) A person must not vote more than once at an election.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 11

- (2) A person must not vote at an election in more than one State or Territory.

11 Voting is voluntary

A person is not required to vote at an election.

12 Voluntary voting not a precedent for any Parliamentary election or referendum

It is declared that it is not the intention of the Parliament that the method of voting for an election under this Act be a precedent for the method of voting under any other Act of the Commonwealth for any Parliamentary election or referendum.

13 Electoral Commission to run election

The elections are to be conducted by the Electoral Commission in accordance with:

- (a) the Act; and
- (b) the regulations.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 2—Timetable for elections

14 Minister to fix timetable for elections

- (1) The Minister must, by written notice, fix the dates for the following in relation to the elections:
 - (a) the close of the *Rolls;
 - (b) the nominations;
 - (c) the *closing day of the poll;
 - (d) the notification of the election results.
- (2) The Minister must cause a copy of the notice to be published in the *Gazette* before the first of the days fixed under subsection (1).
- (3) A failure by the Minister to comply with this section does not invalidate the fixing of the dates.

15 Date for close of Rolls

The date fixed for the close of the *Rolls must be:

- (a) where there has been a public announcement of the proposed *closing day of the poll before the giving of the notice referred to in subsection 14(1)—not less than 7 days after the date of the announcement; and
- (b) where there has been no such public announcement—7 days after the day the Minister gives notice under section 14.

16 Date of nomination

- (1) Subject to subsection (2), the date fixed for the nomination of the candidates must be 9 days after the day the Minister gives notice under section 14.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 2 **Overview of election process**

Division 2 Timetable for elections

Section 17

- (2) Where a candidate for an election dies, after being nominated and before 12 o'clock noon on the day fixed by the Minister's notice as the date of nomination for the election, the day fixed as the date of nomination for the election is to be taken to be the day after the day so fixed.

17 Date of notice of results

The date fixed for the notification of the election results by the Electoral Commissioner under subsection 116(2) must not be more than 28 days after the *closing day of the poll.

18 Electoral Commissioner to advertise election

As soon as practicable after the day the Minister gives notice under section 14, the Electoral Commissioner must:

- (a) advertise the contents of the notice in at least one newspaper circulating generally in the State or Territory; and
- (b) take such steps as the Electoral Commissioner considers necessary to advise the AEO and each DRO in the State or Territory of the dates fixed by the notice; and
- (c) give such directions as the Electoral Commissioner considers appropriate to the AEO and each DRO in relation to the holding of the election.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 3—Administration

19 AEO for the Australian Capital Territory

- (1) The Electoral Commissioner must, for the purposes of the election for the *Australian Capital Territory, appoint an AEO for the Australian Capital Territory. The appointment is to terminate upon the completion of the election.
- (2) The Electoral Commissioner may appoint a person to act as AEO for the *Australian Capital Territory during any period, or during all periods, when the AEO for the Territory is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the Office.
- (3) The appointment of a person to act as AEO for the *Australian Capital Territory ceases to have effect if the person delivers to the Electoral Commissioner a signed notice of resignation.
- (4) A person acting as AEO for the *Australian Capital Territory has, and may exercise, all the powers and must perform all the functions of the AEO for the Territory.
- (5) The validity of anything done by or in relation to a person purporting to act under subsection (2) cannot be called into question on the ground that the occasion for the appointment had not arisen, that there is a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had passed.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 20

20 Electoral Commissioner may direct officers

The Electoral Commissioner may give written directions to officers with respect to the performance of their functions and the exercise of their powers under this Act.

21 Divisional Returning Officers

- (1) The DRO for a *Division is charged with the duty of giving effect to this Act within or for the Division, subject to the directions of the Electoral Commissioner and the AEO.
- (2) An *Assistant Returning Officer appointed in respect of a place outside Australia must perform the functions and exercise the powers conferred on him or her by this Act subject to the directions of the Electoral Commissioner and the AEO.
- (3) The DRO for a *Division may, subject to any directions given by the Electoral Commissioner and the AEO for the State or Territory, give written directions to officers with respect to the performance of their functions and the exercise of their powers under this Act and in, or in relation to, the Division.

22 Employment of temporary staff

For the purposes of an election under this Act, the reference in subparagraph 35(1)(a)(i) of the CEA to an election is to be read as a reference to an election under this Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3—The nominations

Division 1—Nominations

23 Candidate must nominate in order to be elected

A person cannot be elected as a *delegate unless the person has nominated himself or herself under this Part for election as a delegate from a State or Territory.

24 Qualifications for election and nomination

- (1) A person is qualified to be elected as a *delegate if:
 - (a) the person has turned 18; and
 - (b) the person is an Australian citizen; and
 - (c) the person is entitled to vote in the election for the delegate.
- (2) A person cannot nominate for election as a *delegate unless the person is qualified under subsection (1).

25 Persons not entitled to nominate

A person cannot nominate as a *delegate if, at the *hour of nomination, the person is:

- (a) a member of the Parliament of the Commonwealth of Australia or of a State; or
- (b) a member of the Legislative Assembly of the *Northern Territory or of the *Australian Capital Territory; or
- (c) if any appointments of delegates have been made—a person who has been appointed as a delegate.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 26

26 Multiple nominations prohibited

- (1) A person may nominate for election as a *delegate from one State or Territory. If at the *hour of nomination there are nominations of the same person for 2 or more elections, each of those nominations is invalid.
- (2) For the purposes of subsection (1), where a person has nominated in relation to an election and the person withdraws the nomination under section 46 before the *hour of nomination, the nomination of the person for the election is taken to have ceased to have effect at the time when the person withdrew the nomination.

27 Mode of nomination

- (1) A nomination may be in the *approved form and must set out the name and place of residence of the candidate, or each candidate, nominating.
- (2) A nomination may name a candidate only by specifying the surname and the given name, or one or more of the given names, under which the candidate appears on the *list of electors.
- (3) For the purposes of subsection (2), a given name may be specified by specifying:
 - (a) an initial standing for that name; or
 - (b) a commonly accepted variation of that name (including an abbreviation or truncation of that name or an alternative form of that name).
- (4) A nomination must include a statement of the form in which the candidate's name or candidates' names, as the case may be, is or are to be printed on the ballot-paper and the *list of candidates in the election.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 28

- (5) Nothing in this Act is to be taken as requiring a person whose address is not shown on the *Roll because of section 106 of the CEA to set out his or her address on a nomination paper.
- (6) A candidate who does not set out his or her address on a nomination form must provide the AEO with an address for correspondence.

28 To whom nominations made

Nominations of candidates in an election must be made to the AEO for the State or Territory to which the election relates.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 2—Requests for group and candidate names

29 Grouping of candidates in list of candidates

- (1) Two or more candidates in an election may make a joint request that their names be grouped in the *list of candidates.
- (2) In the request, the candidates may specify the order in which the names of candidates in the *group are to be set out in the *list of candidates.
- (3) If the candidates do not specify an order under subsection (2), the names of the candidates in the *group are to be set out in the *list of candidates in alphabetical order.
- (4) A request under subsection (1) must be in writing, signed by the candidates, and must be given to the AEO with the nomination or nominations of the candidates.
- (5) A candidate's name may not be included in more than one *group.

30 Notification of group name

- (1) A candidate who joins in a request under section 29 may request that a *group name be printed opposite the name of the group's *first candidate on the ballot-paper and the *list of candidates in the election.
- (2) A request must be:
 - (a) in writing; and
 - (b) signed by:
 - (i) if an order is specified in the request under subsection 29(2)—the candidate listed first in the order; and
 - (ii) otherwise—all the candidates who joined in the request; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(c) given to the AEO before the *hour of nomination.

31 Notification of candidate name

- (1) An *ungrouped candidate in the election may request that a name be printed opposite the candidate's name on the ballot-paper and the *list of candidates in the election.
- (2) A request under subsection (1) must be in writing, signed by the candidate, and must be given to the AEO with the nomination of the candidate.

32 Requests involving certain names to be refused

- (1) The AEO must refuse a request under section 30 or 31 concerning a name if:
 - (a) the name comprises more than 6 words; or
 - (b) in the opinion of the AEO, the name is obscene.
- (2) The AEO must refuse a request under section 30 or 31 concerning the name of a *registered political party unless the *registered officer of the party has, in writing, certified the request.
- (3) The AEO must refuse a request under section 30 or 31 concerning the following names:
 - (a) Australian Republican Movement;
 - (b) Australians for Constitutional Monarchy;unless:
 - (c) in the case of the name referred to in paragraph (a)—the secretary of the Australian Republican Movement Limited, Australian Company Number 054 557 505, has certified the request in writing; and
 - (d) in the case of the name referred to in paragraph (b)—the secretary of Australians for Constitutional Monarchy, Australian Company Number 059 527 776, has certified the request in writing.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3 **The nominations**

Division 2 Requests for group and candidate names

Section 33

- (4) Subject to subsections (2) and (3), the AEO may accept a request from a candidate under section 30 or 31 despite the fact that a request has already been accepted for the same name to be printed on the ballot-paper and *list of candidates opposite another candidate's name.

33 Combined request and nomination

A request required by a provision of this Part or Part 4 to be given to the AEO may be written on the same paper as the nomination of the candidate to whom the request relates.

34 Combined requests

Two or more requests that are required by a provision of this Part or Part 4 to be given to the AEO may be combined if they are to be made by the same person.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 3—Candidate statements

35 Group and candidate statements

- (1) A group, or an *ungrouped candidate, may submit a statement under this *Division for inclusion in the *voting material to be distributed under Part 5.
- (2) The maximum number of words in an *ungrouped candidate's statement is 50.
- (3) The maximum number of words in a *group's statement is the number worked out as follows:

$$50 + \left(25 \times \text{Number of candidates for the group} \right)$$

- (4) If a dispute arises about the counting of numbers of words for the purposes of this section, the number is to be worked out by a method determined by the Electoral Commissioner.

36 Requirements for statements

- (1) Statements must be in English.
- (2) Statements must not contain anything other than words and numbers.
- (3) Statements must be submitted to the AEO no later than 24 hours after the *hour of nomination.
- (4) An *ungrouped candidate's statement must be signed by the candidate.
- (5) A *group's statement must be signed by:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3 **The nominations**

Division 3 Candidate statements

Section 37

- (a) if an order was specified in the request relating to the group under subsection 29(2)—the candidate listed first in that order; and
 - (b) otherwise—the candidate authorised in writing for the purposes of this Division by all the candidates who joined in the request under subsection 29(1).
- (6) The AEO must refuse to accept a statement if it does not comply with a requirement of this section.
- (7) The AEO must refuse to accept a statement if:
- (a) it contains material that, in the opinion of the officer, is obscene; or
 - (b) it contains a reference to another candidate in the election and that other candidate has not consented in writing to the reference being made.
- (8) A written consent referred to in subsection (7) must be submitted together with the statement to which it relates.
- (9) Paragraph (7)(b) does not apply to a reference in a group's statement to a candidate who is a candidate for the group.

37 Alteration of statements after submission

- (1) Alterations may be made to a statement submitted under this *Division up until the end of the period of 72 hours after the *hour of nomination.
- (2) Alterations must be submitted in writing and must be signed by the person who signed the statement.
- (3) If the AEO considers that a statement submitted does not comply with the requirements of this *Division, the officer must make such efforts as are reasonable and practicable to contact the person who signed the statement in order that the person may make alterations to the statement under subsection (1).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

38 Printing of statements

- (1) The AEO must cause to be printed a pamphlet consisting of all the statements accepted under section 36 in relation to the election in the State or Territory.
- (2) If a statement exceeds the number of words worked out under section 35 in relation to the statement, the AEO may print so much of the statement as does not exceed that number.
- (3) The statements must be printed in type that is uniform (as between statements) in size and style.
- (4) The statements must be printed so that the order of the statements of *groups and of *ungrouped candidates corresponds to the order of grouped and ungrouped candidates in the *list of candidates.
- (5) If a *group, or an *ungrouped candidate, does not have a statement accepted under section 36 the pamphlet must, at the point where the statement would otherwise have appeared, contain a statement that there is no statement for the group or candidate.

39 Electoral Commission not to be liable

The following persons are not liable to any action, suit or proceeding for or in relation to any act done, or omitted to be done, in good faith in the performance or exercise, or the purported performance or exercise, of a function or duty under this Division:

- (a) a member of the Electoral Commission;
- (b) an officer;
- (c) an employee or agent of the Electoral Commission.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 4—Formal requirements of nomination etc.

40 Requisites for nomination

- (1) A person's nomination is not valid unless, in the nomination paper, the person:
 - (a) consents to act if elected; and
 - (b) declares that:
 - (i) the person is qualified under section 24 to be elected as a *delegate; and
 - (ii) the person is not, and does not intend to be, a candidate in any other election; and
 - (c) states whether the person is an Australian citizen by reason of birth in *Australia, having been granted a certificate of Australian citizenship or other means and provides:
 - (i) in the case of citizenship by birth in Australia—the date and place of birth; or
 - (ii) in the case of citizenship by reason of having been granted a certificate of Australian citizenship—the date on which the person became an Australian citizen; or
 - (iii) in the case of citizenship by any other means—particulars of those means.

Note: The reference to *any other election* in subparagraph (1)(b)(ii) means any other election of delegates under this Act—see definition of *election* in the Dictionary in Schedule 1.

- (2) A nomination is not valid unless:
 - (a) the nomination paper or a *facsimile of it is received by the AEO on or after the day the Minister gives notice under section 14 and before the *hour of nomination; and
 - (b) if, for the purpose of the nomination, a nomination paper is delivered to the AEO—each person nominated, or some person on his or her behalf, pays to that officer, at the time of

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

delivery of the nomination paper, a nomination fee of \$500;
and

- (c) if, for the purpose of the nomination, a facsimile of a nomination paper is received by the AEO—each person nominated, or some person on his or her behalf, pays to that officer, before the latest time at which such a facsimile could have been received so that the nomination is valid, a nomination fee of \$500.
- (3) The nomination fee may be paid by:
- (a) legal tender; or
 - (b) bank cheque; or
 - (c) money order; or
 - (d) a payment order drawn by a non-bank financial institution on itself or on another branch of the non-bank financial institution.

41 Form of consent to act

The consent of a person nominated to act if elected and the declaration referred to in paragraph 40(1)(b) is sufficient if the person signs the form of consent and declaration at the foot of the nomination paper, but the AEO receiving the nomination may accept any other form of consent and declaration whether accompanying the nomination paper or not that the officer considers satisfactory, and such acceptance is final.

42 Rejection of nominations and requests

- (1) Subject to subsection (2), a nomination is to be rejected by the officer to whom it is made if, and only if, the provisions of section 27, 28, 40 or 41 have not been complied with in relation to the nomination.
- (2) No nomination is to be rejected by reason of any formal defect or error in the nomination if the officer to whom the nomination is

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3 **The nominations**

Division 4 Formal requirements of nomination etc.

Section 43

made is satisfied that the provisions of sections 27, 28, 40 and 41 have been substantially complied with.

- (3) A request under this Part is not ineffective because of any formal defect or error in the request if the requirements of this Act have been substantially complied with.

43 Place of nomination

The place of nomination for election of *delegates for a State or Territory is the office of the AEO for that State or Territory.

44 Hour of nomination

The hour of nomination is 12 o'clock noon on the day fixed by the Minister under section 14 as the date for nominations.

45 Declaration of nominations

- (1) Subject to subsection (2), the AEO must, 24 hours after the *hour of nomination, attend at the *place of nomination or at another place specified in writing by the AEO for the purpose of this section, publicly produce all nomination papers received by him or her, and, in respect of each candidate, declare:
- (a) the name of the candidate; and
 - (b) the place of residence of the candidate.
- (2) The AEO must not declare the place of residence of a candidate, if the candidate's address has been excluded from the *Roll under section 104 of the CEA.

46 Withdrawal of nomination

A candidate may withdraw his or her nomination at any time before the *hour of nomination by lodging with the AEO a notice of withdrawal, and thereupon the nomination is cancelled, and the nomination fee paid must be returned to:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (a) if the candidate paid the nomination fee—the candidate, or a person authorised in writing by the candidate; and
- (b) if another person paid the nomination fee—that other person.

47 Return of fee in case of candidate's death

In the case of the death of any candidate before the *close of the poll the nomination fee paid in respect of the candidate must be returned to:

- (a) if the candidate paid the nomination fee—the personal representative of the estate of the candidate; and
- (b) if another person paid the nomination fee—that other person.

48 Proceedings on nomination day

- (1) If the number of candidates nominated in an election is not greater than the number of candidates required to be elected, the AEO must declare the candidate or candidates nominated duly elected.
- (2) If in an election the number of candidates nominated is greater than the number required to be elected, the result of the election is to be determined by polling.

49 Death of candidate after nomination

If, after the nominations for an election have been declared and before the *closing day of the poll, any candidate dies and the candidates remaining are not greater in number than the candidates required to be elected, they must immediately be declared to be elected.

50 Failure of election

- (1) If an election wholly fails, the Minister may fix dates in respect of a new election under section 14.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 3 The nominations

Division 4 Formal requirements of nomination etc.

Section 50

- (2) An election is taken to have wholly failed if no candidate is nominated or returned as elected.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 4—Preparation for the polling

Division 1—The poll

51 Arrangements for polling

If the result of an election is to be determined by polling, the Electoral Commissioner must immediately cause all necessary arrangements to be made for taking the poll.

52 Participation by candidates in conduct of election

A candidate must not in any way take part in the conduct of an election.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 2—Ballot-paper and list of candidates

53 Ballot-papers

- (1) A ballot-paper to be used in an election must be in the *approved form.
- (2) The ballot-paper must have the words “Ballot-paper” as a heading.
- (3) Before issuing a ballot-paper for an election, an officer must, if the particulars are not already printed on the ballot-paper, write on the ballot-paper:
 - (a) the name of the State or Territory in which the election is to be held; and
 - (b) the number of candidates to be elected; and
 - (c) on Part A, the full names of candidates arranged in the same way as would be required if the names were being printed on the ballot-paper; and
 - (d) on Part B, the number of squares and an indication of the preference that the squares represent that would be required if the squares were being printed on the ballot-paper; and
 - (e) the material that would be required by subsection 56(1) and paragraphs 56(2)(b) and (g) to be printed on the ballot-paper if the ballot-paper were being printed.

54 Official mark

The official mark for the authentication of ballot-papers is that *approved by the Electoral Commissioner for the purpose.

55 Printing of list of candidates

In printing the *list of candidates to be used in an election:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (a) the names of each of the candidates are to be printed in the form stated in the candidate's nomination under subsection 27(4); and
- (b) the names of *grouped candidates are to be printed in their respective *groups; and
- (c) the names of each of the *first candidates are to be printed opposite the name of the candidate's group requested under section 30 if that request has not been refused under section 32; and
- (d) the order of the names of the candidates in a particular group is to be as provided in section 29; and
- (e) the names of grouped candidates are to be printed before the names of *ungrouped candidates; and
- (f) the order of the several groups and of the ungrouped candidates is to be as determined by the AEO under section 59; and
- (g) the names of each of the ungrouped candidates are to be printed opposite the name the candidate requested under section 31 if that request has not been refused under section 32; and
- (h) where similarity in the names of 2 candidates is likely to cause confusion those names may be arranged with such description or addition as will distinguish them from one another; and
- (i) opposite the name of each candidate must be printed that candidate's number.

56 Printing of ballot-papers

- (1) In printing ballot-papers to be used in an election there must be a Part A and a Part B and a dividing line between the 2 parts.
- (2) In printing Part A of the ballot-paper:
 - (a) the names of only the *first candidates in *groups are to be printed; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 4 **Preparation for the polling**

Division 2 Ballot-paper and list of candidates

Section 56

- (b) the names of each of the first candidates are to be printed in the form stated in the candidate's nomination under subsection 27(4); and
 - (c) the names of each of the first candidates are to be printed opposite the name of the candidate's group requested under section 30 if that request has not been refused under section 32; and
 - (d) the order in which the names of first candidates are to be printed is to follow the order of the groups as determined under section 59 for the purposes of section 55; and
 - (e) the names of *grouped candidates are to be printed before the names of *ungrouped candidates; and
 - (f) the order in which the names of ungrouped candidates are to be printed is the same as the order determined for ungrouped candidates under section 59 for the purposes of section 55; and
 - (g) the names of each of the ungrouped candidates are to be printed opposite the name the candidate requested under section 31 if that request has not been refused under section 32; and
 - (h) where similarity in the names of 2 or more candidates is likely to cause confusion those names are to be arranged in the same way, and with the same description or addition, as they are arranged, described or added to under paragraph 55(h); and
 - (i) except as otherwise provided by the Electoral Commissioner, a square must be printed opposite the name of each candidate.
- (3) In printing Part B of the ballot-paper:
- (a) the number of squares that must be printed is:
 - (i) in the case of a ballot-paper for an election where the number of *delegates to be elected is more than 9—equal to the number of delegates to be elected; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (ii) in any other case—9; and
- (b) on or near the square to be used for a first preference vote must be printed something which identifies the square as the first *preference square; and
- (c) on or near the other squares must be printed something which identifies the squares as the second preference square, the third preference square and so on.

57 Form of candidate's name and other material on ballot-paper and list of candidates

Names of grouped candidates

- (1) The names of *grouped candidates stated in the candidate nominations under subsection 27(4) must be printed in type that is uniform in size and style for all of those names.

Names of ungrouped candidates

- (2) The names of *ungrouped candidates stated in the candidate nominations under subsection 27(4) must be printed in type that is uniform in size and style for all of those names.

Names groups have requested

- (3) The names that *groups have requested be printed opposite their names on ballot-papers and the *list of candidates under section 30 must be printed in type that is uniform in size and style for all of those names.

Names ungrouped candidates have requested

- (4) The names that *ungrouped candidates have requested be printed opposite their names on ballot-papers and the *list of candidates under section 31 must be printed in type that is uniform in size and style for all of those names.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 58

58 Determination of candidate numbers

- (1) Each candidate in an election must be given a unique number (the *candidate number*). The number is used in *voting method B.
- (2) The method to be used to work out the number is to be as determined by the Electoral Commissioner.

59 Determination of order of names

- (1) Where for the purposes of section 55 a person is required to determine under this section the order of the names of candidates or of *groups in the *list of candidates to be used in an election:
 - (a) the person must, 24 hours after the *hour of nomination, at the *place of nomination or at another place specified in writing by the AEO for the purpose of this section, and before all persons present at that place:
 - (i) prepare a list of the names or groups, as the case may be, in such order as the person considers appropriate; and
 - (ii) read out that list; and
 - (iii) place a number of balls equal to the number of candidates or groups, as the case may be, being balls of equal size and weight and each of which is marked with a different number, in a spherical container large enough to allow all the balls in it to move about freely when it is rotated; and
 - (iv) rotate the container and permit any other person present who wishes to do so to rotate the container; and
 - (v) cause a person who is blindfolded and has been blindfolded since before the rotation of the container in accordance with subparagraph (iv) to take the balls, or cause the balls to come, out of the container one by one and, as each ball is taken or comes out, to pass it to

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- another person who must call out the number on the ball; and
- (vi) as each number is called out in accordance with subparagraph (v), write the number opposite to a name or group, as the case may be, in the list prepared in accordance with subparagraph (i) so that the number called out first is opposite the first name or group in the list and the subsequent order of the numbers in the list is the order in which they are called out; and
 - (vii) place all the balls back in the container; and
 - (viii) rotate the container and permit any other person present who wishes to do so to rotate the container; and
 - (ix) cause a person who is blindfolded and has been blindfolded since before the rotation of the container in accordance with subparagraph (viii) to take the balls, or cause the balls to come, out of the container one by one and, as each ball is taken or comes out, to pass it to another person who must call out the number on the ball; and
 - (x) prepare a list of the numbers called out in accordance with subparagraph (ix) set out in the order in which they were called out in accordance with subparagraph (ix); and
 - (xi) write on the list prepared in accordance with subparagraph (x) opposite each number the name or group, as the case may be, set out opposite to that number in the list prepared in accordance with subparagraph (i); and
- (b) the order in which the names or groups, as the case may be, are set out in the list prepared in accordance with subparagraph (a)(x) is the order of the names or groups determined by the person under this section.

- (2) A reference in subparagraph (1)(a)(v) or (ix) to a person is a reference to a person employed by the Commonwealth, a State or a

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 4 **Preparation for the polling**

Division 2 Ballot-paper and list of candidates

Section 59

Territory or by an authority of the Commonwealth, a State or a Territory.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 3—Voting tickets

60 Group voting tickets

- (1) *Grouped candidates may, before the end of 48 hours after the *hour of nomination, lodge with the AEO a written statement that they wish voters in the election to indicate their preferences in relation to candidates in the election in an order specified in the statement. The order specified must:
 - (a) give preferences to the candidates lodging the statement before any other candidate; and
 - (b) show a number of preferences that is not less than the number of candidates to be elected.
- (2) Where an order of preferences is not lodged in respect of a *group as provided for in subsection (1), the candidates are taken to have lodged a statement with the AEO that the candidates in the group wish the voters in the election to indicate preferences for all of the candidates in the group in the order in which the candidates' names appear in the *list of candidates.
- (3) Without limiting subsection (1), a statement for the purposes of that subsection may specify an order of preferences by setting out the names of the candidates in the election to whom a preference is to be given with a number written or printed opposite the name of each of those candidates showing that order of preferences.
- (4) A statement under subsection (1) may be signed:
 - (a) by the *first candidate in the *group; or
 - (b) by a person authorised by all the members of the group, by written instrument given to the AEO with the nomination or nominations of members of the group, to sign such a statement on behalf of the group.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 61

- (5) The statement lodged, or taken to have been lodged, under this section is taken to be a group voting ticket registered for the purposes of an election, being the order of preferences specified in the statement.

61 Individual voting tickets

- (1) An *ungrouped candidate may lodge with the AEO a written statement that the candidate wishes voters in the election to indicate their preferences in relation to the candidates in the election in an order specified in the statement. The order specified must:
- (a) give preference to the candidate lodging the statement before any other candidate; and
 - (b) show a number of preferences that is at least equal to the number of candidates to be elected.
- (2) A statement under subsection (1) must be lodged before the end of 48 hours after the *hour of nomination.
- (3) Without limiting subsection (1), a statement for the purposes of that subsection may specify an order of preferences by setting out the names of the candidates in the election to whom a preference is to be given with a number written or printed opposite the name of each candidate showing the order of preferences.
- (4) Where a candidate has lodged a statement under subsection (1), section 62 applies as if the candidate were a *group that had a group voting ticket registered for the purposes of the election, and as if the statement had been lodged under section 60.
- (5) The statement is taken to be an individual voting ticket, being the order of preferences given in that statement.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

62 Voting tickets to be displayed

Where a *group voting ticket is registered for the purposes of an election in a State or Territory, the AEO must cause the details of the ticket to be made available for inspection at the following places:

- (a) the office of the AEO;
- (b) each office of a DRO or Assistant DRO in that State or Territory;
- (c) any place for which an *Assistant Returning Officer has been appointed.

Note 1: *Group voting tickets are registered under section 60.

Note 2: This section also applies to individual voting tickets (see subsection 61(4)).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5—Voting

Division 1—Distribution of voting material and candidate statements

63 Meaning of *voting material*

Voting material, in relation to an election, means all of the following material:

- (a) a ballot-paper;
- (b) a *vote certificate in the *approved form;
- (c) a *certificate envelope;
- (d) a reply-paid envelope addressed to the *appropriate DRO;
- (e) a *list of candidates.

64 Meaning of *appropriate DRO*

Appropriate DRO, in relation to an *elector, means the DRO for the *Division for which the elector is *enrolled.

65 Issue of voting materials to electors

- (1) As soon as the *voting material for the election in a State or Territory becomes available, the Electoral Commissioner must cause the voting material to be sent, by post or other means, to each *elector, other than an Antarctica elector, on the *list of electors for the State or Territory.
- (2) The issue of *voting material for an election must be completed, as nearly as practicable, 21 days before the *closing day of the poll.
- (3) The address to which an *elector's *voting material must be sent is the postal address of the elector as notified by the elector for the

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

purposes of the election. However, if no such address has been notified the material must be sent to the elector's postal address as notified on the elector's claim for enrolment under the CEA or, if there is no such postal address, the elector's address as shown on the *list of electors.

- (4) To enable the Electoral Commissioner to comply with subsection (1), the Electoral Commissioner may make arrangements with appropriate authorities to send, by post or other means, *voting material to an *elector who is overseas. The Electoral Commissioner may also make arrangements for the return to the appropriate DRO of the elector's ballot-paper and *vote certificate.
- (5) The Antarctic Returning Officer must ensure that each Antarctic elector, before voting under Part 6, has reasonable access to:
 - (a) a *list of candidates; and
 - (b) the text of the pamphlet of *candidate statements printed under section 38;in relation to the election in which the elector is voting.

66 Issue of candidate statements

- (1) The Electoral Commissioner must cause a copy of the pamphlet of candidate statements to be sent, by post or other means, to each address to which *voting material has been sent under section 63.
- (2) The pamphlet is to be sent at the same time, as nearly as practicable, as the *voting material is sent under section 63.

67 Request for voting material

- (1) An officer who receives a request from a person for *voting material may send, by post or other means, voting material and *candidate statements to the person.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5 Voting

Division 1 Distribution of voting material and candidate statements

Section 68

- (2) The officer who receives a request under subsection (1) may ask the person making the request for the person's date of birth and for any other information that may be requested on a claim for enrolment under the CEA.
- (3) Despite subsection (1), if the person makes the request after 6 pm on the day that is 5 days before the *close of the poll, the officer must not post to the person the *voting material and *candidate statements.

68 Record of issue of voting material on request to be kept

An officer issuing *voting material to a person under section 67 must record the issue of voting material to the person.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 2—How voting is done

69 Requirements for voting

- (1) The following requirements for voting must be substantially observed:
 - (a) the *elector must sign the *vote certificate unless the elector is registered on the grounds specified under paragraph 184A(2)(e) or (f) of the CEA. If the elector is registered on those grounds, a person must sign on behalf of the voter and indicate why the person is signing on the voter's behalf;
 - (b) the elector must mark:
 - (i) his or her date of birth on the vote certificate; and
 - (ii) his or her vote on the ballot-paper in a manner provided for in section 70, fold the ballot-paper, place it in the *certificate envelope and fasten the envelope;
 - (c) the elector must:
 - (i) in the case of an elector who is not an *overseas elector—post or deliver the envelope to the *appropriate DRO; and
 - (ii) in the case of an overseas elector:
 - (A) post or deliver the envelope to the *appropriate DRO; or
 - (B) give the envelope to an *Assistant Returning Officer who has been appointed in respect of a place outside Australia by 12 noon (in the place where the Assistant Returning Officer is) on the seventh day before the close of the poll;
 - (d) if the elector cannot read or is so disabled as to be unable to vote without assistance, a person chosen by the elector may, according to the directions of the elector, complete the vote certificate and do for the elector any act required by paragraph (b) or (c);

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5 Voting

Division 2 How voting is done

Section 70

- (e) directions under paragraph (d) may be given by reference to a how-to-vote card.
- (2) Despite paragraph (1)(c), where a ballot-paper would be unlikely to reach the *appropriate DRO before the close of the poll, the envelope containing the ballot-paper may, before the close of the poll, be addressed to, and posted or delivered to, any AEO or any DRO or Assistant DRO.
- (3) An officer to whom an envelope containing a ballot-paper is posted or delivered under subsection (2) must deal with the envelope and ballot-paper as required by sections 74 and 75.

70 Marking votes in an election

- (1) In an election a person may vote on Part A or Part B of the ballot-paper.
- (2) If the person chooses to vote on Part A of the ballot-paper, he or she must mark his or her vote on the ballot-paper by writing the number 1 in the square opposite the name of one and only one candidate.
- (3) If the person chooses to vote on Part B of the ballot-paper, he or she:
 - (a) must mark his or her vote on the ballot-paper by writing a *candidate number in the first *preference square; and
 - (b) may write other candidate numbers in as many of the remaining preference squares as he or she wants to so as to indicate the order of the person's preferences for the candidates.
- (4) If a person chooses to vote on Part A of the ballot-paper and he or she marks a tick or a cross in a square, the person is to be regarded as having written the number 1 in the square.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

71 Votes by overseas electors may be given to overseas Assistant Returning Officer

- (1) An *Assistant Returning Officer who has been appointed in respect of a place outside Australia may accept a *certificate envelope from an *overseas elector up until 12 noon (in the place where the Assistant Returning Officer is) on the seventh day before the *close of the poll.
- (2) The Assistant Returning Officer must forward the envelope to the appropriate DRO.

72 Votes to be received before the close of the poll

- (1) To be counted, a vote (other than a vote from an *overseas elector) must be received at an office of the AEO, a DRO or an Assistant DRO before the *close of the poll.
- (2) To be counted, a vote from an *overseas elector must be received either:
 - (a) at an office of the AEO, a DRO, an Assistant DRO or an *Assistant Returning Officer who has not been appointed in respect of a place outside Australia before the *close of the poll; or
 - (b) by an Assistant Returning Officer who has been appointed in respect of a place outside Australia by 12 noon (in the place where the Assistant Returning Officer is) on the seventh day before the close of the poll.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 3—Procedure for dealing with votes received

73 Undertaking by officers and scrutineers

- (1) An officer to whom this subsection applies must not begin the performance of his or her duties in relation to an election unless the officer has signed an undertaking in the approved form relating to that election.
- (2) Subsection (1) applies to the following officers:
 - (a) a DRO;
 - (b) an *Assistant Returning Officer;
 - (c) an Assistant DRO;
 - (d) an *Antarctic Returning Officer;
 - (e) an *Assistant Antarctic Returning Officer.
- (3) A scrutineer must not begin the performance of his or her duties unless the scrutineer has signed an undertaking in the *approved form.
- (4) A person employed by the Electoral Commission to perform duties in connection with the conduct of an election must not begin the performance of his or her duties unless the person has signed an undertaking in the *approved form.
- (5) The failure of a person to sign an undertaking is not a ground for setting aside the result of an election.

74 Procedure for dealing with vote certificates, ballot-papers etc.

Where:

- (a) a DRO receives a *certificate envelope purporting to contain a ballot-paper from a voter whose address is not in that DRO's *Division; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (b) an AEO or Assistant DRO receives a certificate envelope purporting to contain a ballot-paper;
the DRO, AEO, Assistant DRO or *Assistant Returning Officer must:
- (c) record on the envelope the date and time of receipt and the place at which it is received; and
- (d) make a record of the name of the voter and the name of the Division as shown in the *vote certificate; and
- (e) deal with the certificate envelope in accordance with section 75; and
- (f) until the certificate envelope is so dealt with, keep the envelope in safe custody.

75 Forwarding of certificate envelopes

- (1) A person who is required by paragraph 74(e) to deal with a *certificate envelope in accordance with this section must:
 - (a) place in a parcel the certificate envelopes relating to a particular *Division together with records a DRO, AEO, Assistant DRO or *Assistant Returning Officer has made under paragraph 74(d) relating to that Division, endorse on the parcel the number of the envelopes, seal up the parcel and forthwith deliver it, or cause it to be delivered, to the DRO for that Division or, with the approval of the AEO for the State or Territory that includes that Division, to another person to be dealt with in accordance with subsection (2); and
 - (b) forward to the last-mentioned DRO advice in writing of the total number of certificate envelopes enclosed in the parcel delivered or to be delivered to the DRO.
- (2) Each DRO must:
 - (a) maintain a record of the particulars of the advice, and of the number of *certificate envelopes received from other DROs,

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 5 **Voting**

Division 3 Procedure for dealing with votes received

Section 75

- from AEOs, Assistant DROs, from persons referred to in subsection (3) or from *Assistant Returning Officers; and
- (b) keep in safe custody until the *scrutiny, all certificate envelopes purporting to contain a ballot-paper:
- (i) delivered to the DRO before the *close of the poll; or
 - (ii) received from another DRO, from an AEO, Assistant DRO or from a person referred to in subsection (3), where the certificate envelope bears evidence that it was received by that DRO or AEO before the close of the poll; or
 - (iii) received from an *Assistant Returning Officer who has been appointed in respect of a place outside Australia as provided for in subsection 72(2).
- (3) Where *certificate envelopes or records relating to a particular *Division are, with the approval of the AEO for the State or Territory that includes that Division, delivered to a person other than the DRO for that Division, that person must, as soon as practicable, deliver them, or cause them to be delivered, to that DRO.
- (4) Nothing in this section requires all of the *certificate envelopes to be delivered in the same parcel.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 6—Special provisions relating to the polling in Antarctica

76 Meaning of *station*

- (1) *Station*, in relation to *Antarctica, means:
 - (a) a research station in Antarctica that is operated by the Commonwealth and has been declared by the Electoral Commissioner under section 246 of the CEA, by written instrument, to be a permanent research station; or
 - (b) in relation to the elections, a ship that has been declared by the Electoral Commissioner, by written instrument, to be a station for the purposes of this section in relation to the elections.
- (2) The Electoral Commissioner must not make a declaration under paragraph (1)(b) in relation to a ship unless the Electoral Commissioner is satisfied that, during the period between the *hour of nomination and the *close of the poll, the ship is likely to be at sea transporting *research personnel to or from *Antarctica.

77 Antarctic Returning Officers and Assistant Antarctic Returning Officers

- (1) There is to be an *Antarctic Returning Officer, and an *Assistant Antarctic Returning Officer, for each *station.
- (2) *Antarctic Returning Officers and *Assistant Antarctic Returning Officers are to be appointed by the Electoral Commissioner by instrument in writing.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (3) The person in charge of a *station must not be appointed to be the *Antarctic Returning Officer, or *Assistant Antarctic Returning Officer, for that station.
- (4) The person in charge of a *station may, by instrument in writing, appoint a person (including the *Assistant Antarctic Returning Officer) to act as the *Antarctic Returning Officer for the station during any period, or during all periods, when the Antarctic Returning Officer for the station is absent from duty at the station, is absent from *Antarctica, or is for any other reason unable to perform the functions of the office.
- (5) The person in charge of a *station may, by instrument in writing, appoint a person to act as the *Assistant Antarctic Returning Officer for the station during any period, or during all periods, when the Assistant Antarctic Returning Officer for the station is acting as *Antarctic Returning Officer for the station, is absent from duty at the station, is absent from *Antarctica, or is for any other reason unable to perform the functions of the office.
- (6) A person acting as *Antarctic Returning Officer or *Assistant Antarctic Returning Officer for a *station has and may exercise all the powers, and is to perform all the functions, of the Antarctic Returning Officer, or the Assistant Antarctic Returning Officer, for the station, as the case requires.

78 Antarctic electors

For the purposes of treating a person as an *Antarctic elector in respect of an election, a reference in subsection 249(1) of the CEA to any election the polling day of which occurs while the elector is in *Antarctica is to be read as a reference to an election under this Act.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

79 Arrangements for the polling in Antarctica

- (1) If the name of an *Antarctic elector is on the *list of electors for a State or Territory in relation to an election, the AEO for the State or Territory must immediately cause to be *transmitted to the *Antarctic Returning Officer at whose *station the elector is based:
 - (a) directions for the preparation by the Antarctic Returning Officer of ballot-papers for use in relation to the election; and
 - (b) the name of the elector and the particulars relating to the elector that are entered on the list of electors.
- (2) Where information is *transmitted by an AEO to an *Antarctic Returning Officer under this section, both the AEO and the Antarctic Returning Officer must, immediately after the transmission, cause a statement in writing of the information transmitted to be prepared.
- (3) Sections 53 and 56 apply in relation to ballot-papers prepared under this section as if a reference in section 56 to the printing of ballot-papers were a reference to such preparation.

80 Ballot-papers to be initialled

No ballot-paper must be delivered to any voter in *Antarctica without being first initialled on the back by the *Antarctic Returning Officer, and an exact account must be kept of all initialled ballot-papers.

81 The polling in Antarctica

- (1) The polling at a *station in *Antarctica must be conducted as follows:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (a) before any vote is taken, the *Antarctic Returning Officer for the station must exhibit the ballot-box empty, and must then securely fasten its cover;
 - (b) the poll must be open during such hours on such days as the Antarctic Returning Officer, subject to subsection (2), directs;
 - (c) the Antarctic Returning Officer or the *Assistant Antarctic Returning Officer must, at all times at which the poll is open, be present in that part of the station at which the polling is taking place.
- (2) The polling at a *station in relation to an election must not continue beyond 6 o'clock in the afternoon by standard time in the *Australian Capital Territory on the *closing day of the poll.

82 Entitlement of Antarctic electors to vote

An *Antarctic elector whose name has been *transmitted to the *Antarctic Returning Officer for a *station under paragraph 79(1)(b) is entitled to vote at the station during the period when the poll is open at that station.

83 Questions to be put to voter at Antarctic station

- (1) The *Antarctic Returning Officer for a *station must put to each person claiming to vote at the station such questions as the officer thinks necessary to enable the person's identity and place of living to be established.
- (2) If a person claiming to vote refuses to answer fully a question put to him or her under this section, the person's claim to vote at the *station must be rejected.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

84 Right of Antarctic elector to receive ballot-paper

The *Antarctic Returning Officer or the *Assistant Antarctic Returning Officer for a *station must, at the polling, give to each person claiming to vote at the station a ballot-paper for the State or Territory in respect of which the person is on the *list of electors, duly initialled by the Antarctic Returning Officer, if the name under which the person claims to vote has been *transmitted to the Antarctic Returning Officer under paragraph 79(1)(b) and the person's claim to vote is not rejected.

85 Issue of ballot-paper to be recorded

Immediately upon giving a ballot-paper to the person claiming to vote, the *Antarctic Returning Officer or the *Assistant Antarctic Returning Officer must record on the statement prepared by the officer under subsection 79(2) the fact that the ballot-paper has been given to that person.

86 Votes to be marked in private

Except as otherwise prescribed, the voter upon receipt of the ballot-paper must without delay retire alone to some unoccupied part of the *station and there, in private, mark his or her vote on the ballot-paper, fold the ballot-paper so as to conceal his or her vote and deposit it in the ballot-box.

87 Assistance to certain voters

- (1) If any voter satisfies the *Antarctic Returning Officer for the *station where the person is voting that his or her sight is so impaired or that the voter is so physically incapacitated that he or she is unable to vote without assistance, the Antarctic Returning Officer must permit a person appointed by the voter to enter an unoccupied part of the station with the voter, mark, fold, and deposit the voter's ballot-paper.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 88

- (2) If any such voter fails to appoint a person under subsection (1) the *Antarctic Returning Officer must mark, fold and deposit his or her ballot-paper. The Antarctic Returning Officer must do so in the presence of such scrutineers as are present, or, if there be no scrutineers present, then if the voter so desires, in the presence of a person appointed by such voter.

88 Spoilt ballot-papers

- (1) If any voter before depositing a ballot-paper in the ballot-box satisfies the *Antarctic Returning Officer that he or she has spoilt the ballot-paper by mistake or accident, the voter may, on giving it up, receive a new ballot-paper from the Antarctic Returning Officer, who must there and then cancel the spoilt ballot-paper.
- (2) An *Antarctic Returning Officer who has cancelled a spoilt ballot-paper must:
- (a) write “spoilt” on the back of the ballot-paper; and
 - (b) place the ballot-paper in an envelope, seal the envelope and write on the envelope that it contains a spoilt ballot-paper; and
 - (c) sign the envelope.

89 Proceedings by Antarctic Returning Officer on close of poll

At the *close of the poll, the *Antarctic Returning Officer must, in the presence of the *Assistant Antarctic Returning Officer:

- (a) open the ballot-box; and
- (b) *transmit to the AEO designated by the Electoral Commissioner for the purpose of this paragraph:
 - (i) particulars of each *elector on the *list of electors for a State or Territory who has voted in elections held in the State or Territory in the poll taken at the *station; and
 - (ii) unless subparagraph (iii) applies—particulars of the marking of each ballot-paper; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (iii) if the Antarctic Returning Officer is unable clearly to read or understand the particulars referred to in subparagraph (ii)—a statement to that effect together with such information relating to those particulars as the Antarctic Returning Officer thinks sufficient to explain that inability; and
- (c) cause a statement in writing of the information transmitted to be prepared.

90 Result of the polling in Antarctica

- (1) Upon receipt of the particulars referred to in subparagraph 89(b)(ii), an AEO must forthwith:
 - (a) initial the back of a ballot-paper appropriate for the election for which the vote was cast; and
 - (b) cause those particulars to be transcribed onto the ballot-paper; and
 - (c) seal the ballot-paper in an envelope; and
 - (d) sign the envelope; and
 - (e) cause to be sent to the *appropriate DRO, the envelope containing the ballot-paper.
- (2) An officer must not mark a ballot-paper under this section in a manner that is likely to enable the ballot-paper to be identified as representing the vote of an *Antarctic elector.
- (3) Upon receipt of information under subsection (1), an AEO must forthwith:
 - (a) cause a statement in writing of that information to be prepared; and
 - (b) cause to be sent to each *appropriate DRO, particulars of the *Antarctic electors who have voted in the election in relation to the *Division.
- (4) A reference in Part 7 to *scrutiny:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 91

- (a) includes a reference to scrutiny of any act or thing done under paragraphs (1)(a) to (d) (inclusive); and
 - (b) does not include a reference to scrutiny of:
 - (i) any act or thing done in *Antarctica; or
 - (ii) the transmission of any information to or from Antarctica.
- (5) For the purposes of sections 101 and 102, a ballot-paper marked in accordance with paragraph (1)(b) is taken to have been used for voting under Part 5.

91 Preservation of ballot-papers etc.

- (1) As soon as practicable after the *close of the poll, the *Antarctic Returning Officer for each *station must forward to the Electoral Commissioner a copy of the statements prepared by the officer under subsection 79(2) and paragraph 89(c), the envelopes containing spoilt ballot-papers dealt with under section 88 and the ballot-papers used for voting at the station.
- (2) The documents to which this subsection applies that are used at or in connection with an election must be preserved in accordance with directions of the Electoral Commissioner for the purposes of this subsection until:
 - (a) the election can no longer be questioned; or
 - (b) the end of the period of 6 months commencing on the date fixed under section 14 for the notification of the election results;whichever last occurs.
- (3) Subsection (2) applies to the following documents:
 - (a) the statements referred to in subsection 79(2), paragraph 89(c) and paragraph 90(3)(a);
 - (b) the ballot-papers referred to in paragraph 90(1)(b);

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (c) the ballot-papers prepared by an *Antarctic Returning Officer and used for voting in *Antarctica;
- (d) the envelopes containing spoilt ballot-papers dealt with under section 88.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 7—The scrutiny

Division 1—General

92 Scrutiny

- (1) The result of the polling is to be ascertained by *scrutiny.
- (2) The *scrutiny consists of:
 - (a) the preliminary scrutiny (see Division 2); and
 - (b) the further scrutiny (see Division 3).

93 Scrutineers

- (1) A candidate may appoint scrutineers to represent the candidate at the *scrutiny.
- (2) A candidate is not entitled to be represented at the *scrutiny at a particular counting centre by a number of scrutineers that is greater than the number of officers who are engaged in a scrutiny or counting of ballot-papers at that centre.
- (3) The appointment of a scrutineer under this section to represent a candidate at a counting centre:
 - (a) must be made by notice in writing signed by the candidate, given or sent to the officer who is to conduct, or is conducting, the *scrutiny at the counting centre; and
 - (b) must specify the name and address of the scrutineer.
- (4) In this section:

counting centre means any premises at which a *scrutiny or counting of ballot-papers is to be, or is being, conducted.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

94 Presence of scrutineers

- (1) Scrutineers who have been appointed under section 93, and any persons approved by the officer conducting the *scrutiny, may be present at the scrutiny.
- (2) All the proceedings at the *scrutiny are to be open to the inspection of the scrutineers.
- (3) A person who is present at the *scrutiny in the capacity of a scrutineer must wear a badge, supplied by the Electoral Commission, that identifies the person as a scrutineer.

95 Scrutiny may be adjourned

The *scrutiny may be adjourned from time to time, as necessary, until the counting of the votes is complete.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 2—Preliminary scrutiny

96 Preliminary scrutiny

- (1) As soon as convenient after a DRO begins to receive envelopes that purport to contain ballot-papers, other than envelopes required to be dealt with under section 75, the DRO must conduct such preliminary scrutinies as he or she considers necessary.
- (2) To be included in the preliminary scrutinies, such envelopes must be received:
 - (a) as provided for in section 72; and
 - (b) by the *appropriate DRO by 6 pm on the sixth day after the *close of the poll.
- (3) The preliminary scrutinies must continue until all such envelopes have been dealt with under this Division.

97 Rules for conduct of preliminary scrutiny

- (1) Before beginning a preliminary scrutiny, the DRO must produce, unopened, all *certificate envelopes that have been received by the DRO and that have not already been dealt with in a preliminary scrutiny.
- (2) The DRO must divide the envelopes into groups as follows:
 - (a) a group consisting of the envelopes that meet the requirements of subsection (3);
 - (b) a group consisting of the envelopes that do not meet those requirements.
- (3) An envelope meets the requirements of this subsection if the DRO is satisfied that:
 - (a) in the case of an envelope, other than an envelope sent under section 63 to an *elector who was registered on the grounds

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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specified under paragraph 184A(2)(e) or (f) of the CEA—the certificate has been signed by the voter in accordance with paragraph 69(1)(a); and

- (b) in the case of an envelope sent under section 63 to an elector who was registered on the grounds specified under paragraph 184A(2)(e) or (f) of the CEA—the certificate has been signed on behalf of the voter in accordance with paragraph 69(1)(a); and
 - (c) in the case of an envelope purporting to contain a ballot-paper recording a vote cast at a *station in *Antarctica—the envelope is signed in accordance with subsection 90(1).
- (4) The DRO must, without opening the envelopes, exclude from further scrutiny the ballot-papers contained in envelopes that do not meet the requirements of subsection (3).

Note: The operation of this subsection may be affected by subsection (12).

- (5) The DRO must:
- (a) seal up in parcels the envelopes that have been excluded from further scrutiny under subsection (4); and
 - (b) must write on each parcel a description of its contents, the name of the *Division and the date.
- (6) The DRO must divide the envelopes that meet the requirements of subsection (3) into groups as follows:
- (a) in one group, the *certificate envelopes of persons who are on the *list of electors for the State or Territory or whose claims for enrolment are claims to which subsection 102(4A) of the CEA applies;
 - (b) in another group, the certificate envelopes to which subsection (7) applies;
 - (c) in another group, the certificate envelopes of persons who are not on the list of electors for the State or Territory and to which subsection (7) does not apply.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (7) This subsection applies to a *certificate envelope if the DRO is satisfied:
- (a) that the person who signed the certificate envelope is not on the *list of electors for the State or Territory; and
 - (b) after making enquiry:
 - (i) that the person was, at the close of the Rolls for the election, entitled to be on the list of electors for the State or Territory; and
 - (ii) that the omission of the person's name from the list was due to an error made by an officer or to a mistake of fact.
- (8) Subparagraph (7)(b)(ii) does not apply if:
- (a) the error or mistake of fact occurred before the last general election of the members of the House of Representatives; or
 - (b) the address shown as the person's address on the *certificate envelope is different from the address at which the person was last *enrolled.
- (9) The DRO must exclude from further scrutiny the envelopes referred to in paragraph (6)(c).
- Note: The operation of this subsection may be affected by subsection (12).
- (10) If 2 or more *certificate envelopes have been received in the name of one *elector, the DRO must decide which one (if any) of the envelopes should be accepted for further scrutiny. The DRO must exclude all those not accepted from further scrutiny.
- Note: The operation of this subsection may be affected by subsection (12).
- (11) The DRO must, without opening the envelopes, seal up in separate parcels:
- (a) the envelopes excluded under subsection (9); and
 - (b) the envelopes excluded under subsection (10).
- The DRO must write on each parcel a description of its contents, the name of the *Division and the date.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(12) If:

- (a) an envelope has been subjected to a preliminary scrutiny; and
- (b) has been excluded under subsection (4) or (9) or has been accepted or excluded under subsection (10);

the envelope must be subjected to a fresh preliminary scrutiny under this section. It is only if an envelope is excluded under a fresh preliminary scrutiny that it is to be excluded from further scrutiny.

(13) The DRO must:

- (a) seal up in a parcel or parcels the envelopes that have not been excluded from further scrutiny; and
- (b) write on each parcel a description of its contents, the name of the *Division and the date; and
- (c) keep the parcel or parcels in safe custody until the further scrutiny.

98 Preliminary scrutiny may be adjourned

The DRO may, from time to time, adjourn a preliminary scrutiny to a specified date, time and place.

99 Correction of formal errors

If an officer who receives a *vote certificate is satisfied that the certificate contains a formal error, the officer may amend the certificate to correct the error.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 3—Further scrutiny

100 Further scrutiny after close of poll

The further scrutiny must not begin until after the *close of the poll.

101 Conduct of further scrutiny

- (1) The further scrutiny must be conducted, and the vacancies filled:
 - (a) under section 102, if that section applies; or
 - (b) otherwise, under this section.
- (2) As soon as practicable after the *close of the poll, the DRO must:
 - (a) produce all the envelopes referred to in subsection 97(13);
and
 - (b) remove the ballot-papers from the envelopes; and
 - (c) make a *scrutiny of those ballot-papers; and
 - (d) reject all informal ballot-papers and place them in a separate parcel; and
 - (e) arrange the unrejected ballot-papers so scrutinised under the names of the respective candidates by placing in one parcel under the name of each candidate all the ballot-papers on which a first preference is indicated for that candidate; and
 - (f) count the first preference votes given for each candidate on such ballot-papers, and *transmit the following information, in an expeditious manner, to the AEO:
 - (i) the number of first preference votes given for each candidate; and
 - (ii) the total number of ballot-papers rejected as informal;
and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (g) seal up the parcels and endorse on each parcel a description of its contents, and permit any scrutineers present, if they so desire, to countersign the endorsement; and
 - (h) transmit with the least possible delay the parcels of unrejected ballot-papers marked using *voting method B to the AEO and inform the AEO, in writing and in some expeditious manner, of the transmission.
- (3) Where, for the purposes of the succeeding provisions of this section:
- (a) the number of ballot-papers or votes in any category is required to be ascertained; or
 - (b) a quota, a transfer value or the order of standing of continuing candidates in a poll is required to be determined; or
 - (c) a candidate is required to be identified;
- the AEO must ascertain the number, determine the quota, transfer value or order, or identify the candidate, as the case may be.
- (4) The number of first preference votes given for each candidate and the total number of all such votes must be ascertained and a quota determined by dividing the total number of first preference votes by 1 more than the number of candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by 1, and any candidate who has received a number of first preference votes equal to or greater than the quota must be elected.
- (5) Unless all the vacancies have been filled, the number (if any) of votes in excess of the quota (in this section referred to as **surplus votes**) of each elected candidate must be transferred to the continuing candidates as follows:
- (a) the number of surplus votes of the elected candidate must be divided by the number of first preference votes received by the candidate and the resulting fraction is the **transfer value**;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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

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

(6) Unless all the vacancies have been filled, the surplus votes (if any) of any candidate elected under subsection (5), or elected subsequently under this subsection, must be transferred to the continuing candidates in accordance with paragraphs (5)(a) and (b), and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer must be elected.

(7) Where a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under subsection (5) or (6) of the surplus votes of a particular elected candidate, no votes of any other candidate are to be transferred to the continuing candidate.

(8) For the purposes of the application of paragraphs (5)(a) and (b) in relation to a transfer under subsection (6) or (14) of the surplus votes of an elected candidate, each ballot-paper of the elected candidate that was obtained by the candidate on a transfer under this section must be dealt with as if any vote it expressed for the elected candidate were a first preference vote, as if any other candidate previously elected or excluded had not been a candidate and as if the subsequent preferences of the voter had been altered accordingly.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (9) Where, after the counting of first preference votes or the transfer of surplus votes (if any) of elected candidates, no candidate has, or fewer than the number of candidates required to be elected have, received a number of votes equal to the quota:
- (a) the candidate who stands lowest in the poll must be excluded;
or
 - (b) if a bulk exclusion of candidates may be effected under subsection (11), those candidates must be excluded;
- and the ballot-papers of the excluded candidate or candidates must be distributed in accordance with subsection (10).
- (10) Where a candidate is, or candidates are, excluded in accordance with this section, the ballot-papers of the excluded candidate or candidates must be transferred as follows:
- (a) the total number of ballot-papers:
 - (i) expressing a first preference for an excluded candidate;
or
 - (ii) received by an excluded candidate on distribution from another excluded candidate at a transfer value of 1 vote;being ballot-papers expressing the next available preference for a particular continuing candidate must be transferred at a transfer value of 1 vote to the continuing candidate and added to the number of votes of the continuing candidate;
 - (b) the total number (if any) of other ballot-papers obtained by an excluded candidate or the excluded candidates, as the case may be, must be transferred beginning with the ballot-papers received by that candidate or those candidates at the highest transfer value and ending with the ballot-papers received at the lowest transfer value, as follows:
 - (i) the total number of ballot-papers received by the excluded candidate or candidates, as the case may be, at a particular transfer value and expressing the next available preference for a particular continuing candidate must be multiplied by that transfer value;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (ii) the number so obtained (disregarding any fraction) must be added to the number of votes of the continuing candidate;
 - (iii) all those ballot-papers must be transferred to the continuing candidate.
- (11) The procedure for a bulk exclusion, and the circumstances in which such an exclusion may be made, are as follows:
 - (a) a continuing candidate (in this subsection called ***Candidate A***) must be identified, if possible, who, of the continuing candidates who each have a number of notional votes equal to or greater than the vacancy shortfall, stands lower or lowest in the poll;
 - (b) a continuing candidate (in this subsection called ***Candidate B***) must be identified, if possible, who:
 - (i) stands lower in the poll than Candidate A, or if Candidate A cannot be identified, has a number of notional votes that is fewer than the vacancy shortfall; and
 - (ii) has a number of notional votes that is fewer than the number of votes of the candidate standing immediately higher than him or her in the poll; and
 - (iii) if 2 or more candidates satisfy subparagraphs (i) and (ii)—is the candidate who of those candidates stands higher or highest in the poll;
 - (c) in a case where Candidate B has been identified and has a number of notional votes fewer than the leading shortfall—Candidate B and any other continuing candidates who stand lower in the poll than that candidate may be excluded in a bulk exclusion;
 - (d) in a case where Candidate B has been identified and has a number of notional votes equal to or greater than the leading shortfall:
 - (i) a continuing candidate (in this subsection called ***Candidate C***) must be identified who:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (A) has a number of notional votes that is fewer than the leading shortfall; and
 - (B) if 2 or more candidates satisfy sub-subparagraph (A)—is the candidate who of those candidates stands higher or highest in the poll; and
- (ii) Candidate C and all other continuing candidates who stand lower in the poll than that candidate may be excluded in a bulk exclusion.
- (12) Where, apart from this subsection, the number of continuing candidates after a bulk exclusion under subsection (11) would be fewer than the number of remaining unfilled vacancies, subsection (11) is to operate to exclude only the number of candidates, beginning with the candidate who stands lowest in the poll, that would leave sufficient continuing candidates to fill the remaining unfilled vacancies.
- (13) Notwithstanding any other provision of this section (other than subsection (18)), where a candidate or candidates has or have been elected and there are surplus votes as a result of that election, paragraphs (11)(a), (b), (c) and (d) may be applied as if references in those paragraphs to notional votes were references to adjusted notional votes.
- (14) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer under subsection (9) or (15) of ballot-papers of an excluded candidate or candidates, as the case may be, must be elected, and, unless all the vacancies have been filled, the surplus votes (if any) of the candidate so elected must be transferred in accordance with paragraphs (5)(a) and (b), except that, where the candidate so elected is elected before all the ballot-papers of the excluded candidate or candidates, as the case may be, have been transferred, the surplus votes (if any) of the candidate so elected must not be transferred until the remaining ballot-papers of the excluded

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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candidate or candidates, as the case may be, have been transferred in accordance with paragraphs (10)(a) and (b) to continuing candidates.

- (15) Subject to subsection (17) where, after the transfer of all of the ballot-papers of an excluded candidate or the excluded candidates, as the case may be, no continuing candidate has received a number of votes greater than the quota:
- (a) the continuing candidate who stands lowest in the poll must be excluded; or
 - (b) if a bulk exclusion of candidates may be effected under subsection (11), those candidates must be excluded;
- and the ballot-papers of the excluded candidate or candidates must be transferred in accordance with subsection (10).
- (16) Where a candidate is elected during a transfer of ballot-papers under subsection (9) or (15), no other ballot-papers of an excluded candidate or candidates, as the case may be, are to be transferred to the candidate so elected.
- (17) In respect of the last vacancy for which two continuing candidates remain, the continuing candidate who has the larger number of votes must be elected notwithstanding that that number is below the quota, and if those candidates have an equal number of votes the AEO is to determine which of the 2 candidates is elected.
- (18) Notwithstanding any other provision of this section, where the number of continuing candidates is equal to the number of remaining unfilled vacancies, those candidates must be elected.
- (19) For the purposes of this Act:
- (a) the order of election of candidates must be taken to be in accordance with the order of the count as a result of which they were elected, the candidates (if any) elected on the count of first preference votes being taken to be the earliest elected; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (b) where 2 or more candidates are elected as a result of the same count, the order in which they must be taken to have been elected must be in accordance with the relative numbers of their votes, the candidate with the largest number of votes being taken to be the earliest elected. However if any 2 or more of those candidates each have the same number of votes, the order in which they must be taken to have been elected must be taken to be in accordance with the relative numbers of their votes at the last count before their election at which each of them had a different number of votes, the candidate with the largest number of votes at that count being taken to be the earliest elected, and if there has been no such count the AEO must determine the order in which they must be taken to have been elected.
- (20) Subject to subsections (21) and (22), where, after any count under this section, 2 or more candidates have surplus votes, the order of any transfers of the surplus votes of those candidates must be in accordance with the relative sizes of the surpluses, the largest surplus being transferred first.
- (21) Subject to subsection (22), where, after any count under this section, 2 or more candidates have equal surpluses, the order of any transfers of the surplus votes of those candidates must be in accordance with the relative numbers of votes of those candidates at the last count at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count being transferred first. However if there has been no such count the AEO must determine the order in which the surpluses must be dealt with.
- (22) Where, after any count under this section, a candidate obtains surplus votes, those surplus votes must not be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 101

- (23) Where a candidate is elected by reason that the number of first preference votes received by the candidate, or the aggregate of first preference votes received by the candidate and all other votes obtained by the candidate on transfers under this section, is equal to the quota, all the ballot-papers expressing those votes must be set aside as finally dealt with.
- (24) A ballot-paper must be set aside as exhausted where on a transfer it is found that the paper expresses no preference for any continuing candidate.
- (25) In any case to which section 110 applies, a vote indicated on a ballot-paper opposite the name of a deceased candidate must be counted to the candidate next in the order of the voter's preference, and the subsequent preferences of the voter are taken to be altered accordingly.
- (26) For the purposes of this section:
- (a) a transfer under subsection (5), (6) or (14) of all the surplus votes of an elected candidate; or
 - (b) a transfer under paragraph (10)(a) of all ballot-papers of an excluded candidate or excluded candidates, received by that candidate, or one of those candidates:
 - (i) as the first preference vote; or
 - (ii) on distribution from another excluded candidate at a transfer value of 1 vote; or
 - (c) a transfer under paragraph (10)(b) of all ballot-papers received by the excluded candidate or candidates, as the case may be, at a particular transfer value;
- each constitutes a separate transfer.
- (27) In this section:
- adjusted notional vote*** in relation to a continuing candidate, means, in a case where a candidate or candidates has or have been elected, the sum of:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 101

- (a) the number of notional votes of the continuing candidate; and
- (b) the number, before the transfer of any of the surplus votes, of those surplus votes.

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

leading shortfall in relation to a particular stage during the *scrutiny in an election, means the shortfall of the continuing candidate standing highest in the poll at that stage.

notional vote in relation to a continuing candidate, means the aggregate of the votes obtained by that candidate and the votes obtained by each other candidate who stands lower in the poll than him or her.

shortfall in relation to a continuing candidate at a particular stage during the scrutiny in an election, means the number of votes that the candidate requires at that stage in order to reach the quota referred to in subsection (4).

vacancy shortfall in relation to a particular stage during the scrutiny in an election, means the aggregate of the shortfalls of that number of leading candidates equal to the number of remaining unfilled vacancies, the leading candidates being ascertained by taking the continuing candidate who stands highest in the poll, the continuing candidate who stands next highest in the poll, and so on in the order in which the continuing candidates stand in the poll.

- (28) In this section, a reference to votes, or ballot-papers, as the case may be, of or obtained or received by a candidate includes votes, or ballot-papers, as the case may be, obtained or received by the candidate on any transfer under this section.
- (29) For the purposes of this section, at any time after the counting of first preference votes the order of standing of the continuing candidates in the poll must be determined as follows:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 102

- (a) subject to paragraph (b), the continuing candidates stand in the poll in the order of the relative number of votes of each continuing candidate, with the continuing candidate with the greatest number of votes standing highest in the poll and the continuing candidate with the fewest number of votes standing lowest in the poll;
 - (b) if 2 or more continuing candidates have the same number of votes, those candidates stand in the poll in the order of the relative number of votes of each of those candidates at the last count at which each of them had a different number of votes, with the continuing candidate with the greater or greatest number of votes at that count standing higher in the poll and the continuing candidate with the fewer or fewest number of votes at that count standing lower in the poll, but if there has been no such count the AEO must determine the order of standing of those candidates in the poll.
- (30) When the last vacancy is filled, the *scrutiny must immediately cease and any exclusion in progress must not be completed.

102 Computerised scrutiny of votes

Determination that computerised scrutiny applies

- (1) This section applies to the *scrutiny in an election for a particular State or Territory if the Electoral Commissioner, before the *close of the poll, makes a written determination that this section applies to the scrutiny of votes for that State or Territory.

Determining election result

- (2) Each DRO must deal as follows with all ballot-papers received by him or her:
- (a) reject any ballot-papers that are informal because of paragraphs 105(1)(a), (b) or (c), and place the rejected ballot-papers in one or more parcels;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 102

- (b) arrange the ballot-papers that are not Part A invalid within the meaning of subsection 105(6) into parcels by placing under the name of each candidate all the ballot-papers on which a first preference is indicated for that candidate;
- (c) reject any of the ballot-papers which are informal because of paragraph 105(1)(d), and place the rejected ballot-papers in one or more parcels;
- (d) place in a parcel or parcels all the ballot-papers received by the DRO, other than:
 - (i) the ballot-papers referred to in paragraph (b); and
 - (ii) the ballot-papers rejected as informal;
- (e) seal up all the parcels and endorse on each parcel a description of the contents, and permit any scrutineers present, if they so desire, to countersign the endorsement;
- (f) as soon as possible, *transmit the parcel or parcels referred to in paragraph (d) to the AEO;
- (g) transmit the following information to the AEO:
 - (i) the number of first preference votes given for each candidate on ballot-papers referred to in paragraph (b);
 - (ii) the total number of ballot-papers rejected as informal.

Processing of ballot-papers received by Australian Electoral Officer

- (3) The AEO must scrutinise all the ballot-papers received by him or her, and must reject the informal ones.

Determining election result

- (4) The AEO must then ascertain the successful candidates, and their order of election, by using a computer to apply the principles set out in subsections 101(8) to (30) (inclusive). A tie at any step in the process is to be resolved in the same way as a tie in the corresponding step is resolved under section 101.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 102

Rights of scrutineers

- (5) For proceedings under subsections (3) and (4) of this section, the requirements of subsection 94(2) are met if the scrutineers have access to:
- (a) a record of the preferences on the ballot-papers that have been received by the AEO and whose details have been stored in the computer (including informal ballot-papers, and formal ballot-papers that are not sequentially numbered); and
 - (b) a record of the ballot-papers that are notionally transferred, or exhausted, at each count; and
 - (c) a record of the progress of the count of the votes, at each count.

Modified rules for recount

- (6) If ballot-papers that are to be recounted under section 112 are in the possession of the AEO immediately before the recount begins, the AEO must deal with those ballot-papers as follows:
- (a) open the parcels (or those ballot-papers that are in parcels) in the presence of an officer of the Australian Public Service and of any scrutineer who attends;
 - (b) scrutinise all the ballot-papers, and make a decision on each one either to admit it or reject it;
 - (c) after scrutinising all the ballot-papers, restore the ones that were in parcels to their original covers, and place the remaining ballot-papers in a parcel or parcels;
 - (d) seal up all the parcels and write on each cover:
 - (i) the number of ballot-papers contained in the cover; and
 - (ii) a statement that all the ballot-papers have been the subject of decisions by the AEO;
 - (e) sign the cover of each parcel and permit other persons who were present when the ballot-papers were scrutinised to add their signatures.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Resolution of tie on re-calculation

- (7) If:
- (a) a re-calculation by computer occurs following a recount; and
 - (b) during the re-calculation, the same tie that occurred on the previous calculation by computer occurs again;
- for the purposes of the re-calculation that tie is to be resolved in favour of the candidate in whose favour it was resolved during the previous calculation.

103 Scrutiny prior to receipt of ballot-papers

Where the AEO is satisfied that the votes on ballot-papers not dealt with under section 96 cannot, having regard to the number of those ballot-papers, possibly affect the result of the election, the AEO may, subject to the concurrence of the Electoral Commissioner, proceed with the *scrutiny before those ballot-papers have been dealt with under section 96.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 4—Rules for formality of votes etc.

104 Action on objections to ballot-papers

- (1) If a scrutineer objects to a ballot-paper as being informal, the officer conducting the *scrutiny must mark the ballot-paper “admitted” or “rejected” according to the officer’s decision to admit or reject the ballot-paper.
- (2) Nothing in this section prevents the officer conducting the *scrutiny from rejecting any ballot-paper as being informal although it is not objected to.

105 Informal ballot-papers

- (1) A ballot-paper is informal if:
 - (a) subject to subsection (2), it is not authenticated by the presence of the official mark; or
 - (b) subject to subsection (3), it has upon it any mark or writing (not authorised by this Act or the regulations to be put upon it) by which, in the opinion of the officer conducting the *scrutiny, the voter can be identified; or
 - (c) no mark has been placed on the ballot-paper by or on behalf of the voter; or
 - (d) in the case of a ballot-paper on which a mark has only been placed, by or on behalf of the voter, on Part A, it is Part A invalid (see subsection (6)); or
 - (e) in the case of a ballot-paper on which a mark has only been placed, by or on behalf of the voter, on Part B, it is Part B invalid (see subsection (6)); or
 - (f) in the case of a ballot-paper on which marks have been placed, by or on behalf of the voter, on both Part A and Part B, it is both Part A invalid and Part B invalid.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (2) A ballot-paper to which paragraph (1)(a) applies is not informal because of that paragraph if the officer conducting the *scrutiny is satisfied that it is an authentic ballot-paper on which a voter has marked a vote.
- (3) Paragraph (1)(b) does not apply to any mark or writing placed upon the ballot-paper by an officer, even though the placing of the mark or writing upon the ballot-paper is a contravention of this Act.
- (4) A ballot-paper is not informal for any reason other than the reasons specified in this section, but is to be given effect to according to the voter's intention so far as that intention is clear.
- (5) For the purposes of this Part the *preference squares are taken to be in an order (called the **Part B order**), as follows:
 - (a) the square printed on the ballot-paper for the purpose of the indication of a first preference is taken to stand highest in the order;
 - (b) the square printed on the ballot-paper for the purpose of the indication of a second preference is taken to stand second highest in the order;and so on.
- (6) In this section:
 - (a) a ballot-paper is to be taken to be **Part A invalid** if and only if it does not have a *preference mark in one and only one square on Part A; and
 - (b) a ballot-paper is to be taken to be **Part B invalid** unless at least one of the *preference squares satisfies the following conditions:
 - (i) the square has a *candidate number marked in it; and
 - (ii) no other candidate number has been marked in that square; and
 - (iii) the candidate number referred to in subparagraph (i) has not been marked in another square; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 7 The scrutiny

Division 4 Rules for formality of votes etc.

Section 106

- (iv) none of the squares (if any) which stand higher in the Part B order than the square referred to in subparagraph (i) (if any) has had marked in it 2 or more candidate numbers; and
- (v) none of the squares which stand higher in the Part B order than the square referred to in subparagraph (i) (if any) has had marked in it a candidate number which has been marked in 2 or more squares; and
- (c) for the purposes of paragraph (b), any marking on a ballot-paper of the candidate number of a deceased candidate referred to in section 110 is to be ignored.

106 Ballot-papers marked on both Part A and Part B

Where:

- (a) a ballot-paper is formal; and
- (b) marks have been placed, by or on behalf of the voter, on both Part A and Part B of the ballot-paper;

then:

- (c) if the ballot-paper is Part A invalid within the meaning of subsection 105(6), it is taken for the purposes of sections 101, 102, 107 and 108, not to have been marked on Part A; and
- (d) if the ballot-paper is Part B invalid within the meaning of subsection 105(6), it is taken for the purposes of sections 101, 102, 107 and 108, not to have been marked on Part B; and
- (e) if the ballot-paper is neither Part A invalid nor Part B invalid, it is taken for the purposes of sections 101, 102, 107 and 108, not to have been marked on Part B.

107 Ballot-papers marked on Part A

- (1) For the purposes of sections 101 and 102, if a formal ballot-paper has a *preference mark in the square opposite the name of a

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

*grouped candidate, the voter is taken to have expressed preferences in accordance with the registered *group voting ticket of the candidate's group, and no other preferences.

- (2) For the purposes of sections 101 and 102, if a formal ballot-paper:
- (a) has a *preference mark in the square opposite the name of an *ungrouped candidate; and
 - (b) that candidate has an individual voting ticket registered for the purposes of the election;
- the voter is taken to have expressed preferences in accordance with that individual voting ticket, and no other preferences.
- (3) For the purposes of sections 101 and 102, if a formal ballot-paper:
- (a) has a *preference mark in the square opposite the name of an *ungrouped candidate; and
 - (b) that candidate does not have an individual voting ticket registered for the purposes of the election;
- then:
- (c) the preference mark is taken to express a first preference for the candidate; and
 - (d) the voter is taken not to have expressed any other preferences.

108 Ballot-papers marked on Part B

- (1) Subject to subsections (2) and (3), if a ballot-paper has been marked on Part B, the voter is, for the purposes of sections 101 and 102, taken to have expressed preferences for the candidates whose *candidate numbers have been marked in the *preference squares as follows:
- (a) a first preference is taken to have been indicated for the candidate whose candidate number has been marked in the square, of those in which a candidate number has been marked, which stands highest in the Part B order;

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 109

- (b) a second preference is taken to have been indicated for the candidate whose candidate number has been marked in the square, of those in which a candidate number has been marked, which stands next highest in the Part B order; and so on.
- (2) If the *candidate numbers of 2 or more candidates have been marked in a square, no preferences are taken to have been indicated for either or any of those candidates, nor for any candidates whose candidate numbers have been placed in squares which stand lower in the Part B order than the square in which the 2 or more candidate numbers were marked.
- (3) Where the *candidate number of a candidate has been marked in 2 or more squares (*duplicated squares*), no preferences are taken to have been indicated for that candidate, nor for any candidates whose candidate numbers have been placed in:
- (a) whichever of the duplicated squares stands highest in the Part B order; or
- (b) any squares which stand lower in the Part B order than the square referred to in paragraph (a).
- (4) For the purposes of this section, any marking on a ballot-paper of the *candidate number of a deceased candidate referred to in section 110 is to be ignored.

109 Errors not to forfeit vote

No omission in the *list of electors of any given name, or entry of a wrong given name or address, and no mistake in the spelling of any surname, warrants the rejection of any vote if the voter is sufficiently identified in the opinion of the DRO. No *elector is to be disqualified from voting under the name appearing on the list of electors because his or her surname has been changed by marriage.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

110 Vote not informal merely because candidate dies

Where a candidate dies between the *hour of nomination and the *close of the poll, and the number of candidates remaining is greater than the number of candidates to be elected, a ballot-paper is not to be informal by reason only:

- (a) of the inclusion on the ballot-paper or the *list of candidates of the name of the deceased candidate; or
- (b) of the marking of any number opposite that name; or
- (c) of the marking of the *candidate number of the deceased candidate on the ballot-paper.

111 Mistakes

- (1) A vote must not be rejected because only the surname of a candidate has been written on the ballot-paper if no other candidate has the same surname.
- (2) A vote must not be rejected because of a mistake in the spelling of a candidate's name if the *elector's intention is clear.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 5—Recount and disputed votes

112 Recount

- (1) At any time before the declaration (under paragraph 116(1)(a)) of the result of an election the AEO may, on the written request of any candidate setting forth the reasons for the request, or of the officer's own motion, direct or conduct a recount of the ballot-papers contained in any parcel or in any other category determined by the AEO.
- (2) If the AEO refuses a request of a candidate under subsection (1), the candidate may, in writing, appeal to the Electoral Commissioner to direct a recount of the ballot-papers to which the request relates, and the Electoral Commissioner has a discretion either to direct a recount of the ballot-papers or refuse to direct a recount.

113 Conduct of recount

- (1) At the time and place fixed for the recount and in the presence of any scrutineers who attend and of an officer of the Australian Public Service, the officer conducting the recount must open every sealed parcel of ballot-papers to be recounted and count the votes in the parcel.
- (2) A parcel containing ballot-papers to be recounted must be opened without destroying or rendering illegible any writing on the parcel and the contents of the parcel must not be allowed to become mixed with ballot-papers from any other parcel.
- (3) After the votes in a parcel have been counted, the officer conducting the recount must replace the ballot-papers in their original cover, reseal and refasten the cover, place the resealed parcel in a new cover, and seal and fasten the new cover.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 113

- (4) The officer conducting the recount must write on the new cover a statement of the fact and date of the recount of the votes in the cover and, along with such of the persons present who choose to add their signatures, must sign the statement.
- (5) The officer must place any ballot-papers reserved for the decision of the AEO in a sealed and fastened parcel bearing the signatures of the officer and the scrutineers who choose to add their signatures and a note of the number of ballot-papers in the parcel, the name of the *Division and the date.
- (6) The officer must place the parcel in a sealed and fastened outer cover addressed to the AEO and, without delay, send the parcel to the AEO by hand, registered post or *courier service.
- (7) The AEO must open the parcel in the presence of an officer of the Australian Public Service and of any scrutineer who attends and must:
 - (a) scrutinise the ballot-papers; and
 - (b) mark each ballot-paper “admitted” or “rejected” according to his or her decision.
- (8) After scrutinising all the ballot-papers, the AEO must restore them to their original cover, refasten and reseal the cover, and write on the cover:
 - (a) the number of ballot-papers contained in the cover; and
 - (b) a statement that all ballot-papers have been the subject of decisions by him or her.
- (9) The AEO must sign the cover, along with such other persons present when the ballot-papers were scrutinised as choose to add their signatures.
- (10) The AEO must then enclose the parcel in a new cover, fasten and seal the cover and send the parcel to the officer conducting the recount by hand, registered post or *courier service.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 114

- (11) The AEO must inform the officer conducting the recount in writing of the numbers of ballot-papers admitted or rejected by him or her, and the officer must complete the recount on the basis of the AEO's decision.
- (12) The receipt of a parcel of ballot-papers by the officer conducting the recount or the AEO must be acknowledged in writing.

114 Powers of officer conducting recount

The officer conducting a recount has the same powers as if the recount were the *scrutiny, and may reverse any decision in relation to the scrutiny as to the allowance and admission or disallowance and rejection of any ballot-paper.

115 Reservation of disputed ballot-papers

- (1) The officer conducting a recount may, and at the request of any scrutineer must, reserve any ballot-paper for the decision of the AEO.
- (2) The AEO must decide whether any ballot-paper so reserved is to be allowed and admitted or disallowed and rejected.
- (3) In the event of the validity of the election being disputed, the *Court may consider any ballot-papers which were reserved for the decision of the AEO, but must not order any further recount of the whole or any part of the ballot-papers in connection with the election unless it is satisfied that the recount is justified.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 8—Notice of election results etc.

116 Notice of election results

- (1) The AEO must, as soon as practicable after the result of the election has been ascertained:
 - (a) at the *place of nomination or at another place specified in writing by the AEO for the purpose of this section, declare the result of the election and the names of the candidates elected; and
 - (b) by a signed notice, certify the names of the candidates elected, and send the notice to the Electoral Commissioner.
- (2) The Electoral Commissioner must, as soon as practicable after receiving a notice under subsection (1):
 - (a) give to the Minister a copy of the notice, certified by the Electoral Commissioner; and
 - (b) cause to be published in the *Gazette* a copy of the notice.

117 Notice of recount results

- (1) The AEO must, as soon as practicable after the result of a recount under paragraph 167(d) has been ascertained:
 - (a) at the *place of nomination or at another place specified in writing by the AEO for the purpose of this section, declare the name of the candidate elected as a result of the recount; and
 - (b) by a signed notice certify the name of the candidate elected, and send the notice to the Electoral Commissioner.
- (2) The Electoral Commissioner must, as soon as practicable after receiving a notice under subsection (1):

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (a) give to the Minister a copy of the notice, certified by the Electoral Commissioner; and
- (b) cause to be published in the *Gazette* a copy of the notice.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 9—Casual vacancies

118 Casual vacancy to be filled under this Part

- (1) If a person elected as a *delegate dies or resigns before the Convention ends, the vacancy caused by the death or resignation of the person (the *former delegate*) may be filled as set out under this Part.
- (2) A delegate may resign by giving the Chairman of the Convention a signed notice of resignation.

119 Candidate from same group may be declared elected

- (1) If the former delegate was, at the time of his or her election, a *grouped candidate, the Chairman of the Convention may request the Electoral Commissioner to determine whether the vacancy can be filled under this section.
- (2) A vacancy may be filled under this section if:
 - (a) another candidate, or other candidates, in the *group to which the former delegate belonged was not elected; and
 - (b) the candidate, or one of those candidates (as the case requires), is available and willing to fill the vacancy.
- (3) If the Electoral Commissioner determines that the vacancy may be filled under this section, he or she must declare elected the candidate ascertained under subsection (4).
- (4) The candidate ascertained for the purposes of subsection (3) is:
 - (a) if there is only one candidate who, in the opinion of the Electoral Commissioner, meets the requirements of paragraphs (2)(a) and (b)—that candidate; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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- (b) if there is more than one such candidate—the candidate whose name appeared higher in the *list of candidates than all the other such candidates.
- (5) The Electoral Commissioner must give written notice to the Chairman of the Convention of:
 - (a) the name of the candidate who has been declared elected under this section; or
 - (b) the fact that the vacancy cannot be filled under this section.

120 Chairman may appoint or otherwise fill vacancy

- (1) If the vacancy is not filled under section 119, it may be filled under this section.
- (2) If the former delegate:
 - (a) has resigned; and
 - (b) after resigning, nominates a person to fill the vacancy caused by the resignation; and
 - (c) the nomination is in writing and is given to the Chairman of the Convention; and
 - (d) the nominated person was a candidate at the election at which the former delegate was elected, but is not a *delegate; and
 - (e) the nominated person is available and willing to fill the vacancy left by the former delegate;the Chairman must appoint the nominated person to fill the vacancy.
- (3) If the Chairman does not appoint a person under subsection (2), the vacancy may be filled in a manner to be determined by the Chairman.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 10—Electoral offences

Division 1—Interpretation

121 Interpretation

In this Part, *relevant period*, in relation to an election, means the period commencing on the day the Minister gives notice under section 14 and ending at the *close of the poll.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 2—Duties of officers

122 Officers and scrutineers to observe secrecy

A person who is, or has been, an officer or a scrutineer must not, except for the purposes of Part 6, either directly or indirectly, divulge or communicate any information with respect to the vote of an *elector acquired by him or her in the performance of functions, or in the exercise of powers, under this Act or the regulations in a manner that is likely to enable the identification of the elector.

Penalty: Imprisonment for 6 months.

123 Officers not to mark ballot-papers so that voter can be identified

Except as authorised by this Act or the regulations, an officer must not place upon any ballot-paper any mark or writing which would enable any person to identify the voter by whom it is used.

Penalty: 10 penalty units.

124 Officers not to influence vote

- (1) A person who, being an officer other than an Antarctic officer, does any act or thing during the relevant period for the purpose of influencing the vote of another person, is guilty of an offence.

Penalty: Imprisonment for 6 months.

- (2) A person who, being an Antarctic officer during the relevant period in relation to an election, does any act or thing for the purpose of influencing the vote of another person, is guilty of an offence.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Penalty: Imprisonment for 6 months.

- (3) In this section, *Antarctic officer* means:
- (a) an *Antarctic Returning Officer; or
 - (b) an *Assistant Antarctic Returning Officer; or
 - (c) a person appointed to act as an Antarctic Returning Officer or as an Assistant Antarctic Returning Officer.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 3—Offences relating to the printing and publishing of electoral advertisements etc.

125 Printing and publication of electoral advertisements, notices etc.

- (1) A person must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, an electoral advertisement, handbill, pamphlet or notice during the relevant period unless:
 - (a) either:
 - (i) the name and address (not being a post-office box) of the person who authorised the advertisement, handbill, pamphlet or notice appears at the end of it; or
 - (ii) the name of the person who authorised the advertisement, handbill, pamphlet or notice is apparent on the face of the advertisement, handbill, pamphlet or notice, as the case may be; and
 - (b) in the case of an electoral advertisement, handbill, pamphlet or notice that is printed otherwise than in a newspaper—the name and place of business of the printer appears at the end of it.
- (2) A person must not produce, publish or distribute or cause, permit or authorise to be produced, published or distributed an electoral *video recording unless the name and address (not being a post office box) of the person who authorised the video recording appears at the end of it.
- (3) Subject to subsection (4), a person must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement that takes up the whole or part of each of 2 opposing pages of a newspaper unless, in addition to fulfilling the requirement under subparagraph (1)(a)(i) that the name and address of the person who authorised the electoral

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

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advertisement appear at the end of it, such name and address also appears on the other page, or the part of the other page, taken up by the electoral advertisement.

- (4) Subsection (3) does not apply to an advertisement of the kind referred to in that subsection:
- (a) that is contained within:
 - (i) a broken or unbroken border; or
 - (ii) broken or unbroken lines extending across, or partly across, the top and bottom of the advertisement; or
 - (iii) a broken or unbroken line extending along, or partly along, each side of the advertisement; or
 - (b) that is printed so that to read one or more lines of the text of the advertisement it is necessary to read across both pages.
- (5) A person who contravenes subsection (1), (2) or (3) is guilty of an offence.
- Penalty: 10 penalty units.
- (6) Subsection (1) does not apply in relation to:
- (a) a car sticker, T-shirt, lapel button, lapel badge, pen, pencil or balloon; or
 - (b) a business or visiting card that promotes the candidacy of any person in an election; or
 - (c) a letter and card:
 - (i) that bear the name and address (not being a post office box) of the sender; and
 - (ii) that do not contain a representation or purported representation of a ballot-paper for use in an election; or
 - (d) an article included in a prescribed class of articles.
- (7) Nothing in paragraph (6)(a), (b) or (c) is to be taken, by implication, to limit the generality of regulations that may be made by virtue of paragraph (6)(d).

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 10 **Electoral offences**

Division 3 Offences relating to the printing and publishing of electoral advertisements etc.

Section 126

- (8) In this section, *electoral advertisement, handbill, pamphlet or notice*, means an advertisement, handbill, pamphlet or notice that contains *electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting.
- (9) In this section, *electoral video recording* means a *video recording that contains *electoral matter.

126 Misleading or deceptive publications etc.

- (1) A person must not, during the relevant period in relation to an election, print, publish or distribute, or cause, permit or authorise to be printed, published or distributed, any matter or thing that the person knows, or ought reasonably to have known, is likely to mislead or deceive an *elector in relation to the casting of a vote.
- (2) A person must not, during the relevant period in relation to an election, print, publish or distribute, or cause, permit or authorise to be printed, published or distributed, an advertisement, handbill, pamphlet or notice that contains a representation or purported representation of a ballot-paper for use in that election that is likely to induce an *elector to mark his or her vote otherwise than in accordance with the directions on the ballot-paper.
- (3) A person who contravenes subsection (1) or (2) is guilty of an offence.
- Penalty: Imprisonment for 6 months.
- (4) If, in a prosecution for an offence against subsection (1), it is material to prove that a person ought reasonably to have known that a matter or thing that the person dealt with in a way specified in subsection (1) was likely to mislead or deceive an *elector in relation to the casting of a vote, the issue is to be decided having regard to:
- (a) the person's abilities, experience, qualifications, training and other attributes; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the circumstances of the alleged offence.

(5) In this section, *publish* includes publish by radio or television.

127 Heading to electoral advertisements

- (1) Subject to subsection (2), where an article or a paragraph:
- (a) appears in a newspaper during the relevant period; and
 - (b) contains *electoral matter; and
 - (c) is inserted for reward or compensation of any kind or promise of such reward or compensation;
- the proprietor of the newspaper must cause the word “advertisement” to be printed as a headline in letters not smaller than 10 point to the article or paragraph:
- (d) if the article or paragraph takes up one page or part of one page—on that page; or
 - (e) if the article or paragraph takes up the whole or part of each of 2 opposing pages—on each page.
- (2) Where an article or paragraph of the kind referred to in paragraphs (1)(b) and (c) that takes up the whole or part of each of 2 opposing pages of a newspaper:
- (a) is contained within:
 - (i) a broken or unbroken border; or
 - (ii) broken or unbroken lines extending across, or partly across, the top and bottom of the article or paragraph; or
 - (iii) a broken or unbroken line extending along, or partly along, each side of the article or paragraph; or
 - (b) is printed so that to read one or more lines of the text of the article or paragraph it is necessary to read across both pages;
- the proprietor of the newspaper must cause the word “advertisement” to be printed as a headline in letters not smaller than 10 point to the article or paragraph on one of the pages.

Penalty: 5 penalty units.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 4—Offences relating to electoral papers

128 Signature to electoral paper

- (1) Every electoral paper which by this Act or the regulations has to be signed by any person must be signed by that person with his or her personal signature unless the person is registered on the grounds specified under paragraph 184A(2)(e) or (f) of the CEA.
- (2) Where a person who is unable to sign his or her name in writing makes a mark as his or her signature to an electoral paper, the mark is taken to be his or her personal signature, if it is identifiable as such, and is made in the presence of a witness who signs the electoral paper as such witness.
- (3) Nothing in this section authorises any person to sign any electoral paper by a mark or otherwise than in his or her own handwriting in cases where the Act or the regulations require that the electoral paper be signed in the person's own handwriting.
- (4) A person must not make the signature of any other person on an electoral paper.

Penalty: 10 penalty units.
- (5) Subsection (4) does not affect the liability of any person to be proceeded against for forgery, but a person is not be liable to be punished twice in respect of the same offence.
- (6) In this section, *electoral paper* includes a document in a prescribed or an *approved form.

129 Witnessing electoral papers

- (1) A person must not:
 - (a) sign as witness any blank electoral paper; or

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 130

- (b) sign as witness any electoral paper which has been wholly or partly filled up unless it has been signed by the person intended to sign it; or
- (c) sign as witness any electoral paper unless he or she has seen the person, whose signature he or she purports to witness, sign it; or
- (d) write on any electoral paper as his or her own name:
 - (i) the name of another person; or
 - (ii) any name not being his or her own name.

Penalty: 10 penalty units.

- (2) In this section, *electoral paper* includes a document in a prescribed or *approved form.

130 Forging or uttering electoral papers

- (1) A person must not:
 - (a) forge any electoral paper, or
 - (b) utter any forged electoral paper, knowing it to be forged.

Penalty: Imprisonment for 6 months.

- (2) In this section, *electoral paper* includes a document in a prescribed or *approved form.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 5—Offences relating to ballot-papers and vote applications

131 Unlawfully marking ballot-papers

Except where expressly authorised by this Act, a person (other than the *elector to whom the ballot-paper has been lawfully issued) must not mark a vote or make any mark or writing on the ballot-paper of any elector.

Penalty: Imprisonment for 6 months.

132 Offence in respect of voting

Except at the request of the *elector, a person must not:

- (a) interfere with an elector in relation to the marking of a ballot-paper; or
- (b) do anything that would enable the person or any other person to find out how an elector marked a ballot-paper.

Penalty: 10 penalty units.

133 Failure to post or deliver certificate envelope

A person to whom an *elector entrusts an envelope apparently containing a ballot-paper for posting or delivery to an *officer must post or deliver the envelope as soon as practicable.

Penalty: 10 penalty units.

134 Failure to post or deliver request for voting material

A person to whom another person entrusts a request for *voting material for posting or delivery to an officer must post or deliver the request as soon as possible.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Penalty: 10 penalty units.

Note: A person requests *voting material under section 67.

135 Inducing elector to hand over marked ballot-paper

A person must not induce an *elector to hand over to the person a ballot-paper on which a vote has been recorded.

Penalty: 10 penalty units.

136 Opening of ballot-paper

A person other than:

- (a) the *appropriate DRO; or
- (b) an officer acting at the direction of the DRO;

must not open an envelope that purports to contain a ballot-paper on which a vote has been recorded.

Penalty: 5 penalty units.

137 Other offences relating to ballot-papers etc.

- (1) A person must not:
 - (a) impersonate any person for the purpose of securing a ballot-paper to which the impersonator is not entitled; or
 - (b) fraudulently destroy or deface any nomination paper or ballot-paper; or
 - (c) forge any nomination paper or ballot-paper or utter any nomination paper or ballot-paper knowing it to be forged; or
 - (d) supply ballot-papers without authority; or
 - (e) unlawfully destroy, take or otherwise interfere with ballot-boxes or ballot-papers; or
 - (f) wilfully vote more than once at the same election; or
 - (g) wilfully vote at more than one election; or
 - (h) make a statement:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 137

(i) in any claim, application, return or declaration (not being a statement made by the person in the person's nomination paper); or

(ii) in an answer to a question;

under this Act or the regulations that, to his or her knowledge, is false or misleading in a material particular.

Penalty: Imprisonment for 6 months.

(2) A person must not wilfully deface, mutilate, destroy or remove any notice, list or other document affixed by, or by the authority of, any officer.

Penalty: 5 penalty units.

(3) A person must not:

(a) make a statement in his or her nomination paper that the person knows, or ought reasonably to have known, is false or misleading in a material particular; or

(b) omit from a statement in his or her nomination paper any matter or thing without which the person knows, or ought to have known, the statement is misleading in a material particular.

Penalty: Imprisonment for 6 months.

(4) In a prosecution for an offence against subsection (3), if it is material to prove that a person ought reasonably to have known that:

(a) a statement in his or her nomination paper was false or misleading in a material particular; or

(b) by omitting from a statement in his or her nomination paper any matter or thing the statement would be misleading in a material particular;

the issue is to be decided having regard to:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 137

- (c) the person's abilities, experience, qualifications, training and other attributes; and
 - (d) the circumstances of the alleged offence.
- (5) In this section, a reference to a *nomination paper* includes a reference to a *facsimile of a nomination paper.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 6—Other offences

138 Influencing votes of hospital patients etc.

- (1) A person who is the proprietor of, or an employee of the proprietor of, a *hospital or *nursing home must not do anything for the purpose of influencing the vote of a patient in, or resident at, the hospital or nursing home.

Penalty: Imprisonment for 6 months.

- (2) The reference in subsection (1) to the *proprietor* of a *hospital or *nursing home includes a reference to a person who is a member or officer of a body corporate that is the proprietor of a hospital or nursing home.

139 Bribery

- (1) A person must not ask for, receive or obtain, or offer or agree to ask for, or receive or obtain, any property or benefit of any kind, whether for the same or any other person, on an understanding that:
- (a) any vote of the first-mentioned person; or
 - (b) any candidature of the first-mentioned person; or
 - (c) any support of, or opposition to, a candidate or a *group of candidates by the first-mentioned person; or
 - (d) the doing of any act or thing by the first-mentioned person the purpose of which is, or the effect of which is likely to be, to influence the preference set out in the vote of an *elector; or
 - (e) the order in which the names of candidates whose names are included in a group in accordance with a request under section 29 appear on a *list of candidates;
- will, in any manner, be influenced or affected.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Penalty: Imprisonment for 2 years.

- (2) A person must not, in order to influence or affect:
- (a) any vote of another person; or
 - (b) any candidature of another person; or
 - (c) any support of, or opposition to, a candidate, or a *group of candidates by another person; or
 - (d) the order in which the names of candidates whose names are included in a group in accordance with a request under section 29 appear on a *list of candidates;
- give or confer, or promise or offer to give or confer, any property or benefit of any kind to that other person or to a third person.

Penalty: Imprisonment for 2 years.

- (3) This section does not apply in relation to a declaration of public policy or a promise of public action.

140 Interference with political liberty etc.

- (1) A person must not hinder or interfere with the free exercise or performance, by any other person, of any political right or duty that is relevant to an election.

Penalty: Imprisonment for 6 months.

- (2) A person must not discriminate against another person on the ground of the making by the other person of a donation to a candidate, to a *group of candidates, or to an organisation that a candidate or group of candidates represent:
- (a) by denying him or her access to membership of any trade union, club or other body; or
 - (b) by not allowing him or her to work or to continue to work; or
 - (c) by subjecting him or her to any form of intimidation or coercion; or
 - (d) by subjecting him or her to any other detriment.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 141

Penalty: Imprisonment for 2 years.

141 False statements in relation to Rolls or lists of electors

A person who during the relevant period makes a statement to another person, either orally or in writing, with respect to:

- (a) the enrolment of the person; or
- (b) whether the person is or is not on the *list of electors;

that, to the knowledge of the first-mentioned person, is false or misleading in a material respect, is guilty of an offence.

Penalty: Imprisonment for 6 months.

142 Protection of the official mark

- (1) A person must not, without lawful authority:
 - (a) make any official mark on or in any paper; or
 - (b) be in possession of any paper bearing any official mark; or
 - (c) make use of or be in possession of any instrument capable of making on or in any paper an official mark.

Penalty: 10 penalty units.

- (2) A person who, without lawful authority, makes on or in any ballot-paper, or on or in any paper purporting to be a ballot-paper, an official mark, is to be taken to have a forged ballot-paper.
- (3) All paper bearing an official mark, and all instruments capable of making on or in paper an official mark, made, used, or in the possession of any person without lawful authority are forfeited to the Commonwealth, and may without warrant, be seized by a member of the Australian Federal Police or a member of the police force of a State or Territory and destroyed or dealt with as prescribed.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (4) In this section, the words *official mark* mean any prescribed or *approved mark to be placed or made on or in any electoral paper, and include any mark so nearly resembling an official mark as to be likely to deceive.
- (5) In this section the words *electoral paper* includes a document in a prescribed or *approved form.

143 Control of behaviour at counting centres

- (1) A person must not:
 - (a) commit misconduct in a counting centre; or
 - (b) while in a counting centre, disobey a lawful direction given by the person in charge of the counting centre; or
 - (c) enter or remain in a counting centre without the permission of the person in charge of the premises.

Penalty: 5 penalty units.

- (2) The person in charge of a counting centre is the AEO or DRO conducting the *scrutiny at the centre, or in the event of the absence of the AEO or DRO as the case may be, the person authorised by the AEO or DRO.
- (3) A person who contravenes subsection (1) may be removed from the counting centre by a *police officer or by an authorised person.
- (4) In this section:

authorised person means a person acting at the request of the person in charge of premises.

counting centre means premises being used for the purpose of the *scrutiny.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 7—Proceedings for offences

144 Prosecution of offences

- (1) Subject to subsection (2), an offence against section 139 is an indictable offence.
- (2) A court of summary jurisdiction may hear and determine proceedings in respect of an offence referred to in subsection (1) if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (3) Where, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence against section 139, the penalty that the court may impose is imprisonment for a period of 12 months.

145 Certificate evidence

On any prosecution under this Act the certificate of the Electoral Commissioner, AEO, or DRO that the election mentioned in the certificate was duly held and that the person named in the certificate was a candidate at the election is to be evidence of the matter stated.

146 Evidence of authorship or authorisation of material

- (1) In proceedings for an offence against this Act:
 - (a) an electoral advertisement, handbill, pamphlet, notice or *video recording that includes a statement that it was authorised by a specified person is admissible as evidence of that fact; and
 - (b) a printed electoral advertisement, handbill, pamphlet or notice that includes a statement that a specified person or firm was the printer is admissible as evidence of that fact.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(2) In this section:

electoral advertisement, handbill, pamphlet or notice and
electoral video recording have the same meaning as in section 125.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 11 **Disputed returns and elections**

Division 1 Interpretation

Section 147

Part 11—Disputed returns and elections

Division 1—Interpretation

147 Interpretation

In this Part:

bribery or *corruption* means a contravention of section 139.

illegal practice means a contravention of this Act or the regulations.

undue influence means a contravention of section 140 of this Act or section 28 of the *Crimes Act 1914*.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 2—Disputing elections or returns

148 Method of disputing elections or returns

- (1) The validity of an election or return may be disputed by petition addressed to the *Court and not otherwise.
- (2) A person may dispute an election or return only in relation to the election in which the person was entitled to vote.
- (3) The jurisdiction of the *Court to try petitions may be exercised by a single Judge.

149 Appeals

In spite of section 24 of the *Federal Court Act 1976*, an appeal does not lie to a Full Court from a judgment by a single Judge on a petition except in accordance with leave given by the *Court.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 3—Petitions

150 Requisites of petition

Subject to section 152, every petition disputing an election or return (in this Part called the *petition*) must:

- (a) set out the facts relied on to invalidate the election or return; and
- (b) set out those facts with sufficient particularity to identify the specific matter or matters on which the petitioner relies as justifying the grant of relief; and
- (c) contain a request asking for the relief the petitioner claims to be entitled to; and
- (d) be signed by a candidate at the election in dispute or by a person who was entitled to vote in the election; and
- (e) be attested by 2 witnesses whose addresses are stated; and
- (f) be filed in the *Court within 14 days after the date on which the Electoral Commissioner gives the Minister a copy of the notice under paragraph 116(2)(a) in respect of the election.

151 Deposit to be paid

When filing the petition, the petitioner must deposit with the Registrar of the *Court \$500 as security for costs.

152 Petition by Electoral Commission

- (1) The Electoral Commission is entitled to file a petition disputing an election or return.
- (2) Paragraphs 150(d) and (e) do not apply in relation to a petition filed by the Electoral Commission disputing an election or return but such a petition must be signed by the Electoral Commissioner for and on behalf of the Commission.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

153 No proceedings unless requirements complied with

No proceedings are to be had on the petition unless the requirements of sections 150, 151 and 152 are complied with.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 4—Proceedings on petitions

154 Right of Electoral Commission to be represented

The Electoral Commission is entitled, by leave of the *Court, to enter an appearance in any proceedings in which the validity of an election or return is disputed, and to be represented and heard thereon, and in such case is taken to be a party respondent to the petition.

155 Representation of parties before Court

A party to the petition may appear in person or be represented by counsel or a solicitor.

156 Inquiries by Court

- (1) The *Court must inquire whether or not the petition is duly signed, and so far as *Rolls, *lists of electors, lists of voters and voting are concerned may inquire into the identity of persons, and whether their votes were improperly admitted or rejected, assuming the Roll, list of electors and any list of voters who voted to be correct, but the Court must not inquire into the correctness of any Roll, list of electors or list of voters.
- (2) Where the *Court makes inquiries in relation to ballot-papers marked in *Antarctica pursuant to the provisions of Part 6, a statement of the particulars of the marking of the ballot-papers prepared by an AEO under subsection 90(3) is, unless the Court otherwise orders, conclusive evidence of the particulars stated.

157 Powers of Court

- (1) The *Court must sit as an open Court and its powers include the following:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (a) to adjourn;
 - (b) to compel the attendance of witnesses and the production of documents;
 - (c) to grant to any party to a petition leave to inspect, in the presence of a prescribed officer, the *Rolls and *list of electors and other documents (except ballot-papers) used at or in connection with any election and to take, in the presence of the prescribed officer, extracts from the Rolls, list and documents;
 - (d) to examine witnesses on oath;
 - (e) to declare that any person who was returned as elected was not duly elected;
 - (f) to declare any candidate duly elected who was not returned as elected;
 - (g) to declare the position of a candidate vacant;
 - (h) to declare an election absolutely void;
 - (i) to make any order, or give any direction, that the Court thinks is necessary or convenient for the purpose of giving effect to any declaration or other decision of the Court in the proceedings;
 - (j) to dismiss or uphold the petition in whole or in part;
 - (k) to award costs;
 - (l) to punish any contempt of its authority by fine or imprisonment.
- (2) The *Court may exercise all or any of its powers under this section on such grounds as the Court in its discretion thinks just and sufficient.
- (3) Without limiting the powers conferred by this section, the power of the *Court to declare that any person who was returned as elected was not duly elected, or to declare an election absolutely void, may be exercised on the ground that illegal practices were committed in connection with the election.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 158

- (4) The power of the *Court under paragraph (1)(k) to award costs includes the power to order costs to be paid by the Commonwealth where the Court considers it appropriate to do so.

158 Prompt resolution of disputes

The *Court must pursue the objective of trying petitions promptly.

159 Expedited hearing of petitions

At any stage of proceedings trying a petition, a party to the petition may apply to the *Court for an expedited hearing in accordance with the Rules of Court.

160 Real justice to be observed

The *Court must be guided by the substantial merits and good conscience of each case without regard to legal forms or technicalities, or whether the evidence before it is in accordance with the law of evidence or not.

161 Provision for Court to have regard to certain rejected ballot-papers

In making its decision on a petition, the *Court may have regard to any ballot-papers rejected at the preliminary scrutiny if the Court is of the opinion that the ballot-papers should not have been rejected.

162 Immaterial errors not to vitiate election

- (1) No election is to be avoided on account of any delay in the declaration of nominations, the dispatch of *voting material to *electors, or the giving to the Minister of a notice under subsection 116(2), or on account of the absence or error of or omission by any officer which did not affect the result of the election.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

- (2) Where any *elector was, on account of the absence or error of, or omission by, any officer, prevented from voting in any election, the *Court must not, for the purpose of determining whether the absence or error of, or omission by, the officer did or did not affect the result of the election, admit any evidence of the way in which the elector intended to vote in the election.

163 Errors relating to printing of ballot-papers

The *Court must not declare that a person returned as elected was not duly elected, or declare an election void, by reason only that:

- (a) in the case of a *first candidate—there was printed, on a ballot-paper used in the election the name of a *group opposite the name of the candidate; or
- (b) in the case of an *ungrouped candidate—there was printed, on a ballot-paper used in the election a name opposite the name of the candidate; or
- (c) the name of the group referred to in paragraph (a) or the name referred to in paragraph (b) so printed was misspelt or the name so printed was otherwise inaccurate or incorrect; or
- (d) there was not printed on a ballot-paper used in the election, the name of a group opposite the name of a first candidate; or
- (e) there was not printed on a ballot-paper used in the election, a name opposite the name of an ungrouped candidate; or
- (f) an officer failed to comply with the provisions of section 55, 56 or 57 in relation to the election.

164 Evidence that person not permitted to vote

On the trial of any petition the *Court must not admit the evidence of any witness that the witness was not permitted to vote in the election unless the witness satisfies the Court:

- (a) that the witness claimed to vote in the election; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 165

- (b) that the witness complied with the requirements of this Act and the regulations made thereunder relative to voting by electors in so far as he or she was permitted so to do.

165 Voiding election for illegal practices etc.

- (1) If the *Court finds that a successful candidate has committed or has attempted to commit bribery or undue influence, the election of the candidate must be declared void.
- (2) The *Court must not declare that any person returned as elected was not duly elected, or declare any election void:
- (a) on the ground of any illegal practice committed by any person other than the candidate and without the knowledge or authority of the candidate; or
- (b) on the ground of any illegal practice other than bribery or corruption or attempted bribery or corruption;
- unless the Court is satisfied that the result of the election was likely to be affected, and that it is just that the candidate should be declared not to be duly elected or that the election should be declared void.
- (3) The *Court must not declare that a person returned as elected was not duly elected, or declare any election void, on the ground that someone has contravened the *Broadcasting Services Act 1992* or the *Radiocommunications Act 1992*.

166 Costs

- (1) The *Court may award costs against an unsuccessful party to the petition.
- (2) If costs are awarded to any party against the petitioner, the deposit paid under section 151 is applicable in payment of the sum ordered, but otherwise the deposit must be repaid to the petitioner.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

167 Effect of decision

Effect must be given to any decision of the *Court as follows:

- (a) if any person returned is declared not to have been duly elected, the person must cease to be a *delegate to the Convention;
- (b) if any person not returned is declared to have been duly elected, the person may join the Convention as a delegate accordingly;
- (c) if an election is declared absolutely void a new election may be held;
- (d) if the position of a candidate is declared vacant and the Court has not made a declaration under paragraph 157(1)(f) in respect of the position, the Electoral Commissioner must cause a recount of the ballot-papers in the election of the candidate to be held.

Note 1: The *Court has power to make these declarations under section 157.

Note 2: Section 170 provides for the procedure on a recount of votes. Section 117 provides for the declaration of the result of the recount.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Division 5—Other matters relating to the Court and declarations of the Court

168 Court to report cases of illegal practices

When the *Court finds that any person has committed an illegal practice, the Registrar of the Federal Court must forthwith report the finding to the Minister.

169 Right of Electoral Commission to have access to documents

Unless the *Court orders otherwise, the filing of a petition does not deprive the Electoral Commission of any right to have access to a document for the purposes of the performance of its functions.

170 Procedure on a recount of votes

In a recount under paragraph 167(d), a vote for the candidate whose position has been declared vacant is to be counted to the candidate next in order of the voter's preferences. Subsequent preferences of the voter are taken to be altered accordingly.

171 Power to make Rules of Court

- (1) The Judges of the Federal Court, or a majority of them, may make Rules of Court for carrying this Part of this Act into effect and in particular for regulating the practice and procedure of the *Court, the forms to be used and the fees to be paid by parties.
- (2) If the *Legislative Instruments Act 1997* is in force on the day this Act commences, a Rule of Court made under this section is to be taken to have been made under the *Federal Court Act 1976*.
- (3) If the *Legislative Instruments Act 1997* is not in force on the day this Act commences, sections 48, 48A, 48B, 49 and 50 of the *Acts*

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Interpretation Act 1901 apply in relation to the Rules of Court as if references in those sections of that Act to regulations were references to Rules of Court.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Part 12—Miscellaneous

172 Correction of errors

Any delay, error, or omission in the printing, preparation, issue, transmission, or giving of any *Roll, *list of electors, *voting material, *candidate statement or notice, may be remedied, removed, rectified, and supplied by proclamation specifying the matter dealt with, and providing for the course to be followed, and such course is valid and sufficient.

173 Extension of time for holding elections

- (1) Despite any other provision of this Act, before or after the day fixed for the *close of the poll, the Minister may, by notice published in the *Gazette*, provide for extending the time for holding the elections, or for holding the election in a specified State or Territory, or for giving notice under this Part, or meeting any difficulty which might otherwise interfere with the due course of the election.
- (2) Any provisions made under subsection (1) are valid and sufficient and any date provided for in place of a date fixed by the Minister's notice under section 14 is taken to be the date so fixed. However, public notice must immediately be given in the State or Territory for which the election is to be held of any extension of the time for holding the election.

174 Extension of time for acts by officers

Where:

- (a) an officer is required by a provision of this Act or the regulations to do an act; and

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

(b) the officer refuses or fails to do the act at the time, or within the period, required by that provision;
the Commission may determine that the act may be done within such further time, not exceeding 48 hours, as the Commission fixes.

175 Delegation by Electoral Commission

- (1) The Electoral Commission may, by resolution, delegate to the Electoral Commissioner, the *Deputy Electoral Commissioner, an AEO, an officer or a member of the staff of the Electoral Commission all or any of its powers under this Act.
- (2) A delegation of power under this section:
 - (a) may be revoked by resolution of the Electoral Commission (whether or not constituted by the persons constituting the Electoral Commission at the time when the power was delegated); and
 - (b) continues in force notwithstanding a change in the membership of the Electoral Commission.
- (3) Section 34A of the *Acts Interpretation Act 1901* applies in relation to a delegation under this section as if the Electoral Commission were a person.
- (4) A certificate signed by the Chairperson of the Electoral Commission stating any matter with respect to a delegation of a power under this section is prima facie evidence of that matter.
- (5) A document purporting to be a certificate mentioned in subsection (4) is, unless the contrary is established, to be taken to be such a certificate and to have been duly given.

176 Delegation by Electoral Commissioner

The Electoral Commissioner may, by writing, delegate to the *Deputy Electoral Commissioner, an AEO or an officer or member

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 177

of the staff of the Electoral Commission all or any of the powers of the Electoral Commissioner under this Act.

177 Injunctions

- (1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of, or an offence against, this Act or any other law of the Commonwealth in its application to elections, the *Court may, on the application of:
 - (a) in a case where the conduct relates to an election—a candidate in the election; or
 - (b) in any case—the Electoral Commission;grant an injunction restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.
- (2) Where:
 - (a) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
 - (b) the refusal or failure was, is, or would be, a failure to comply with, or an offence against, this Act or any other law of the Commonwealth in its application to elections;the *Court may, on the application of:
 - (c) in a case where the refusal or failure relates to an election—a candidate in the election; or
 - (d) in any case—the Electoral Commission;grant an injunction requiring the first-mentioned person to do that act or thing.
- (3) Where an application is made to the *Court for an injunction under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

the kind referred to in that subsection pending the determination of the application.

- (4) The *Court may discharge or vary an injunction granted under subsection (1), (2) or (3).
- (5) Where an application is made to the *Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised:
 - (a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (6) Where an application is made to the *Court for the grant of an injunction requiring a person to do a particular act or thing, the power of the Court to grant the injunction may be exercised:
 - (a) if the Court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 178

- (7) Where the Electoral Commission makes an application to the *Court for the grant of an injunction under this section, the Court must not require the Electoral Commission or any other person, as a condition of the granting of an interim injunction, to give any undertakings as to damages.
- (8) The powers conferred on the *Court under this section are in addition to, and not in derogation of, any other powers of the Court, whether conferred by this Act or otherwise.

178 Electoral matters to be sent free by post

All electoral papers provided for by this Act may be *transmitted through the post free of charge to any *elector or person claiming to be an elector and all papers so transmitted to an elector or person, if duly addressed, are, on proof of posting, unless the contrary be shown, to be taken to have been duly served on and received by the elector or person to whom they were addressed on the day when in the ordinary course of post they should have been received at the elector's or person's address.

179 Collection of statistical information

- (1) Where:
 - (a) the time for the filing of petitions disputing an election has ended without any petitions having been filed; or
 - (b) the *Court has disposed of any petitions disputing an election;the electoral documents used for the purposes of the election may be dealt with as necessary for the purpose of collecting statistical information relating to the election.
- (2) In this section, *electoral documents* includes:
 - (a) ballot-papers; and
 - (b) *vote certificates.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

180 Preservation of documents

- (1) In this section, *electoral documents* has the same meaning as in section 179.
- (2) The DRO for a *Division is responsible for the safe custody, in accordance with the directions of the Electoral Commissioner, of electoral documents used in the Division in connection with an election until the documents are destroyed.
- (3) An officer who conducts a *scrutiny must, after the completion of the scrutiny, parcel up and seal all electoral documents dealt with or used in the scrutiny.
- (4) Material removed from a parcel must:
 - (a) be retained by the DRO; or
 - (b) be dealt with according to the directions of the Electoral Commissioner.
- (5) When the purpose for which material was removed from a parcel has been satisfied, the DRO must:
 - (a) as soon as practicable, replace the material in the parcel and refasten and reseal the parcel; and
 - (b) write on the covering of the parcel a notation indicating that the parcel has been opened by the DRO and specifying the purpose for which it was opened.
- (6) A DRO who opens a parcel must not mark or alter, or permit any other person to mark or alter, a document removed from the parcel.
- (7) Subject to Part 11, the Electoral Commissioner may direct that electoral documents be destroyed if:
 - (a) not less than 6 months have elapsed since the date fixed under section 14 for the notification of the election results of the election in which the documents were used; and
 - (b) the documents are no longer required by the Electoral Commission for the performance of its functions.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Section 181

181 Minister's notice not a legislative instrument

- (1) Subsection (2) applies if the *Legislative Instruments Act 1997* is in force:
 - (a) on the date of the Minister's notice under section 14; or
 - (b) on the date the notice is published in the *Gazette*.
- (2) A notice of the Minister under section 14 is not a legislative instrument for the purposes of the *Legislative Instruments Act 1997*.

182 Regulations

The Governor-General may make regulations prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act, and in particular, prescribing penalties not exceeding 5 penalty units for any contravention of any regulation made under this Act.

183 Repeal

This Act is repealed at the end of 2 years after its commencement, unless repealed earlier.

*To find definitions of asterisked terms, see the Dictionary in Schedule 1.

Schedule 1—Dictionary

1 Definitions

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

AEO means:

- (a) in relation to a State or the *Northern Territory—an Australian Electoral Officer referred to in section 20 of the CEA; and
- (b) in relation to the *Australian Capital Territory—the Australian Electoral Officer appointed under section 19 of this Act.

Antarctica means the Australian Antarctic Territory and includes:

- (a) the Territory of Heard Island and McDonald Islands; and
- (b) Macquarie Island.

Antarctic elector means an *elector who:

- (a) is, in the course of his or her employment, in *Antarctica during the period between the *hour of nomination and the *close of the poll; and
- (b) has made a request under section 249 of the CEA that the elector be treated, while he or she is in Antarctica, as an Antarctic elector.

Antarctic Returning Officer, in relation to a *station, means the person appointed under section 247 of the CEA to be the Antarctic Returning Officer for that station, or a person acting as the Antarctic Returning Officer for that station.

appropriate DRO has the meaning given in section 64.

approved means approved by the Electoral Commissioner for the purposes of this Act by notice published in the *Gazette*.

Clause 1

Assistant Antarctic Returning Officer, in relation to a *station, means the person appointed under section 247 of the CEA to be the Assistant Antarctic Returning Officer for that station, or a person acting as the Assistant Antarctic Returning Officer for that station.

Assistant DRO means a person appointed as an Assistant Divisional Returning Officer under section 34 of the CEA.

Assistant Returning Officer means a person appointed as an Assistant Returning Officer under section 33 of the CEA.

Australia includes:

- (a) Norfolk Island; and
- (b) the Territory of Cocos (Keeling) Islands; and
- (c) the Territory of Christmas Island.

Australian Capital Territory includes the Jervis Bay Territory.

candidate number, in relation to a candidate, means the unique number given to the candidate under section 58.

candidate statement means a statement of a *group or a candidate included in a pamphlet printed under section 38.

CEA means the *Commonwealth Electoral Act 1918*.

certificate envelope means an envelope that is distributed by the Electoral Commission under Part 5 and that bears a *vote certificate.

close of the poll means 6 pm on the closing day of the poll.

closing day, in relation to the poll, means the day fixed by the Minister by notice under section 14 as the *closing day of the poll.

courier service means a service that provides for the collection, at the request of a person using the service, of an article from a place specified by or on behalf of that person and the delivery of the article to another place so specified, being a service approved by an AEO.

Court means the Federal Court of Australia.

delegate means a delegate to the Constitutional Convention.

Deputy Electoral Commissioner means the Deputy Electoral Commissioner referred to in section 19 of the CEA.

Division has the meaning given in subsections 4(1) and (5) of the CEA.

DRO means a Divisional Returning Officer referred to in section 32 of the CEA.

election means an election for a State or Territory under this Act.

elector means a person whose name appears on the *list of electors.

Electoral Commission means the Australian Electoral Commission established by section 6 of the CEA.

Electoral Commissioner means the Electoral Commissioner referred to in section 18 of the CEA.

electoral matter means matter which is intended or likely to affect voting in an election.

enrolled means enrolled on a *Roll.

facsimile in relation to a nomination paper, means:

- (a) a copy of a nomination paper that has been reproduced by facsimile telegraphy or any other means; or
- (b) a copy of a copy referred to in paragraph (a).

first candidate, in relation to a *group of candidates, means:

- (a) if an order was specified in a request under section 29 in respect of the group—the candidate whose name appears first in that order; and
 - (b) if an order was not specified in a request under section 29—the candidate whose name occurs first in an alphabetical listing of the names of the candidates in the group.
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Clause 1

group means a group of candidates who have made a request under section 29 for their names to be grouped in the *list of candidates.

grouped candidate means a candidate included in a *group.

hospital includes a convalescent home or an institution similar to a hospital or to a convalescent home.

hour of nomination has the meaning given by section 44.

list of candidates means a list printed under section 55.

list of electors means the list compiled for a State or Territory under section 9.

Northern Territory includes the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

nursing home means an institution (other than a *hospital) in which infirm, ill or disabled persons needing continuing nursing care are provided with accommodation and nursing care.

officer includes the Electoral Commissioner, the *Deputy Electoral Commissioner, an AEO, a DRO, an *Assistant Returning Officer, an Assistant DRO, an *Antarctic Returning Officer and an *Assistant Antarctic Returning Officer.

overseas elector means a person who is overseas at the time he or she votes in an election.

place of nomination has the meaning given by section 43.

police officer means a member of the Australian Federal Police or of the police force of a State or Territory.

preference mark means a tick, a cross or the number 1.

preference square means a square printed on Part B of the ballot-paper.

registered officer, in relation to a *registered political party, has the meaning given in section 4C of the CEA.

registered political party has the meaning given in subsection 4(1) of the CEA.

research personnel means personnel who are to be, or have been, engaged in the work of a research *station in *Antarctica operated, whether continuously or otherwise, by the Commonwealth.

Roll means an Electoral Roll under the CEA.

scrutiny has the meaning given in subsection 92(2).

station has the meaning given in section 76.

Territory means the *Australian Capital Territory or the *Northern Territory.

transmit includes transmit by radio-telephone or telex.

ungrouped candidate means a candidate who is not a *grouped candidate.

video recording includes a video recording that is recorded by means other than a videotape.

vote certificate means a vote certificate referred to in paragraph 63(b).

voting material has the meaning given in section 63.

voting method A, in relation to a vote cast by a person, means the method set out in subsection 70(2).

voting method B, in relation to a vote cast by a person, means the method set out in subsection 70(3).

- (2) A reference in this Act to the AEO, in relation to an election, or any matter arising from an election in a State or Territory, is a reference to the AEO for that State or Territory.

Clause 1

- (3) A reference in this Act to a DRO, in relation to an *elector or any other matter, is a reference to the DRO for the *Division for which the elector is *enrolled or in which the matter arises.
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*[Minister's second reading speech made in—
House of Representatives on 26 March 1997
Senate on 26 May 1997]*

(39/97)

