



# Torres Strait Regional Authority Election Amendment Rules 2003 (No. 1)

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I, AMANDA ELOISE VANSTONE, Minister for Immigration and Multicultural and Indigenous Affairs, make these Rules under subsection 143G (1) of the *Aboriginal and Torres Strait Islander Commission Act 1989*.

Dated 12 December 2003

AMANDA VANSTONE  
Minister for Immigration and Multicultural and Indigenous Affairs

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## **1 Name of Rules**

These Rules are the *Torres Strait Regional Authority Election Amendment Rules 2003 (No. 1)*.

## **2 Commencement**

These Rules commence on gazettal.

## **3 Amendment of *Torres Strait Regional Authority Election Rules 1996***

Schedule 1 amends the *Torres Strait Regional Authority Election Rules 1996*.

## Schedule 1 Amendments

(rule 3)

### [1] Rule 15

*substitute*

### 15 Declaration of nominations

- (1) The Returning Officer must, within 24 hours after the hour of nomination but not before noon on the day after the day of nomination:
  - (a) attend at the place of nomination; and
  - (b) publicly produce all nomination papers received by him or her; and
  - (c) read out the names and places of residence of all candidates nominated.
- (2) However, if a nomination paper includes the place of residence or address of a person that, in accordance with the Electoral Act, is not shown on the Roll, the Returning Officer:
  - (a) must comply with paragraph (1) (b) by producing a copy of the nomination paper on which the person's place of residence and address are obliterated; and
  - (b) must not read out the place of residence of the person.

### [2] Rule 20, at the foot

*insert*

*Note* For offences in relation to voting, see subrule 118 (1).

### [3] Subrule 21 (1)

*substitute*

- (1) If, by the hour of nomination, a candidate provides a photograph of himself or herself to the Returning Officer, the Returning Officer must arrange for:
  - (a) copies to be made of the photograph; and
  - (b) copies of the photograph to be displayed during the time voting is in progress at all places where voting takes place.

### [4] Subparagraph 28 (1) (c) (i)

*omit*

envelope addressed to the Returning Officer; and

*insert*

envelope; and

- 
- [5]      **Subparagraph 28 (1) (c) (iii)**  
*omit*  
        envelope.  
*insert*  
        envelope addressed to the Returning Officer.
- [6]      **Subrule 28 (3)**  
*omit*  
        back  
*insert*  
        front
- [7]      **Paragraph 31 (1) (g)**  
*omit*  
        relevant Regional Returning.  
*insert*  
        Returning Officer.
- [8]      **Subparagraph 31 (6) (a) (i)**  
*substitute*  
        (i) address the postal voting papers to the Returning Officer; and
- [9]      **Subrule 31 (7)**  
*omit*  
        A Regional  
*insert*  
        The
- [10]     **Subrule 36A (1)**  
*omit*  
        relevant Regional
- [11]     **Subparagraph 37 (4) (b) (v)**  
*omit*  
        paragraph 31 (1) (e); and  
*insert*  
        paragraph 31 (1) (e) and is valid; and

**[12] Paragraph 37 (4) (c)**

*omit*

paragraph (b):

*insert*

subparagraph (b) (i), (ii), (iii) or (iv):

**[13] After paragraph 37 (4) (c)**

*insert*

- (ca) if not satisfied about a matter mentioned in subparagraph (b) (v):
- (i) separate the envelope containing the ballot-paper from the postal voter card; and
  - (ii) disallow the ballot-paper without opening the envelope that contains it and:
    - (A) place the envelope in a parcel with all the other envelopes containing ballot-papers which have been disallowed under this subparagraph; and
    - (B) seal the parcel and endorse on the parcel a description of the contents, the name of the ward and the date; and
  - (iii) refer the postal voter card to a senior liaison officer for further investigation under rule 39A; and

**[14] Paragraphs 37 (5) (a) and (b)**

*after*

since

*insert*

the close of the Roll for

**[15] After rule 39**

*insert in Division 2*

**39A Further investigation of postal votes by a regional panel**

- (1) If a postal vote card is referred to a senior liaison officer under subparagraph 37 (4) (ca) (iii), the officer must as soon as practicable within 9 days after the close of the poll arrange for a regional panel to determine whether the elector is an Aboriginal person or a Torres Strait Islander.
- (2) A regional panel is made up of:
  - (a) the senior liaison officer; and
  - (b) 2 other people who are Aboriginal persons or Torres Strait Islanders.

- 
- (3) After making any investigations that it considers appropriate, the regional panel must determine whether the elector is an Aboriginal person or a Torres Strait Islander.
  - (4) The senior liaison officer must:
    - (a) by the close of business on the second Monday after polling day, tell the Returning Officer whether or not, having regard to the panel's determination, the postal vote should be admitted for further scrutiny; and
    - (b) send all relevant documents, including any documents given to the panel in the course of its investigation (if any), to the Returning Officer.
  - (5) The Returning Officer must tell the elector whether or not, having regard to the panel's determination, the postal vote will be admitted for further scrutiny.

**[16] Paragraphs 44 (3) (f) and (g)**

*substitute*

- (ea) if not satisfied about a matter mentioned in paragraph (e), the issuing officer must:
  - (i) separate the envelope containing the ballot-paper from the pre-poll voter card; and
  - (ii) disallow the ballot-paper without opening the envelope that contains it and:
    - (A) place the envelope in a parcel with all the other envelopes containing ballot-papers which have been disallowed under this subparagraph; and
    - (B) seal the parcel and endorse on the parcel a description of the contents, the name of the ward and the date; and
  - (iii) refer the pre-poll voter card to a senior liaison officer for further investigation under rule 50A;
- (f) if paragraph (ea) does not apply, the issuing officer must:
  - (i) separate the pre-poll voter card from the envelope that contains it and place the envelope in a ballot-box; and
  - (ii) place the pre-poll voter card in a folder provided for the purpose of keeping a record of pre-poll voters;
- (g) at the conclusion of polling, the issuing officer must:
  - (i) if the issuing officer is not the Returning Officer — forward the pre-poll voter cards and envelopes to the Returning Officer according to his or her directions; or
  - (ii) if the issuing officer is the Returning Officer — deal with the pre-poll voter cards and envelopes in accordance with Part 4;

**[17] After rule 50**

*insert in Division 3*

**50A Further investigation of pre-poll votes by a regional panel**

- (1) If a pre-poll voter card is referred to a senior liaison officer under subparagraph 44 (3) (ea) (iii), the officer must, as soon as practicable within 9 days after the close of the poll arrange for a regional panel to determine whether the elector is an Aboriginal person or a Torres Strait Islander.
- (2) A regional panel is made up of:
  - (a) the senior liaison officer; and
  - (b) 2 other people who are Aboriginal persons or Torres Strait Islanders.
- (3) After making any investigations that it considers appropriate, the regional panel must determine whether the elector is an Aboriginal person or a Torres Strait Islander.
- (4) The senior liaison officer must:
  - (a) by the close of business on the second Monday after polling day, tell the Returning Officer whether or not, having regard to the panel's determination, the pre-poll vote should be admitted for further scrutiny; and
  - (b) send all relevant documents, including any documents given to the panel in the course of its investigation, to the Returning Officer.
- (5) The Returning Officer must tell the elector whether or not, having regard to the panel's determination, the pre-poll vote will be admitted for further scrutiny.

**[18] Rule 59**

*omit*

back

*insert*

front

**[19] Rules 61 and 62**

*substitute*

**61 Provisions relating to scrutineers**

- (1) A scrutineer must not:
  - (a) engage in conduct that interferes with or attempts to influence any voter within the polling booth; or

- 
- (b) communicate with any person in the polling booth except so far as is necessary in the discharge of his or her functions.

Penalty: 10 penalty units.

- (2) A scrutineer must not be prevented from entering or leaving a polling booth during the polling.
- (3) During the absence of a scrutineer, a relieving scrutineer may act in his or her place.
- (4) However, only 1 scrutineer at a time for each candidate is entitled to be present in the polling booth or at an issuing point at the polling booth.
- (5) Subrule (6) applies to a scrutineer who:
- (a) commits a breach of this rule; or
  - (b) misconducts himself or herself; or
  - (c) fails to obey a lawful direction of the presiding officer.
- (6) The scrutineer may be removed from the polling booth by:
- (a) a member of the Australian Federal Police; or
  - (b) a member of the police force or service of a State or Territory; or
  - (c) a person authorised by the presiding officer to remove the scrutineer.

## **62 Persons present at polling**

- (1) A candidate must not in any way take part in the conduct of an election.
- (2) A person who is not the presiding officer, an assistant presiding officer, poll clerk, liaison officer or scrutineer, or an elector voting or about to vote, must not enter or remain in a polling booth during the polling.

Penalty: 5 penalty units.

- (3) Subrule (2) does not apply if the person has the permission of the presiding officer.

*Note* A defendant bears an evidential burden in relation to the matter in subrule (3) (see section 13.3 of the *Criminal Code*).

## **[20] Subrule 66 (9)**

*substitute*

- (9) At the end of the last visit made by an electoral visitor for this rule, he or she must, as soon as practicable and in the presence of a polling official and any scrutineers who may be in attendance:
- (a) if the Returning Officer has directed the electoral visitor to do so:
    - (i) open each ballot-box used by him or her for this rule; and
    - (ii) place the contents in a sealed parcel; and
    - (iii) write on the parcel a description of its contents; and

- (iv) send the parcel to the Returning Officer; or
- (b) in any other case — publicly close, fasten, seal and take charge of each ballot-box and send each sealed ballot-box, together with the voter cards corresponding to the envelopes in the ballot-boxes, to the Returning Officer.

**[21] Subrule 68 (7)**

*substitute*

- (7) At the end of a visit by an electoral visitor to a prison, the visitor must, as soon as practicable and in the presence of the polling official and any scrutineers who are in attendance:
  - (a) if the Returning Officer has directed the electoral visitor to do so:
    - (i) open each ballot-box used by him or her for this rule; and
    - (ii) place the contents in a sealed parcel; and
    - (iii) write on the parcel a description of its contents; and
    - (iv) send the parcel to the Returning Officer; or
  - (b) in any other case — publicly close, fasten, seal and take charge of each ballot-box and send each sealed ballot-box, together with the voter cards corresponding to the envelopes in those ballot-boxes, to the Returning Officer.

**[22] Subrule 69 (11)**

*substitute*

- (11) At the end of the last visit made by a leader for this rule, he or she must, as soon as practicable and in the presence of a member of his or her team and any scrutineers who may be in attendance:
  - (a) if the Returning Officer has directed the leader to do so:
    - (i) open each ballot-box used by him or her for this rule; and
    - (ii) place the contents in a sealed parcel; and
    - (iii) write on the parcel a description of its contents; and
    - (iv) send the parcel to the Returning Officer; or
  - (b) in any other case — publicly close, fasten, seal and take charge of each ballot-box and send each sealed ballot-box, together with the voter cards corresponding to the envelopes in those ballot-boxes, to the Returning Officer.

**[23] Paragraph 76 (5) (a)**

*omit*

the senior liaison officer; and

*insert*

a regional panel assembled under subrule 77 (5); and



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**[24] Paragraph 76 (5) (c)**

*omit*

senior liaison officer

*insert*

regional panel

**[25] Rule 77**

*substitute*

**77 Review by regional panel**

- (1) If details have been recorded under subrule 76 (3), the voter affected may request a review of the decision by a regional panel.
- (2) A request under subrule (1) must:
  - (a) be in writing and may be in the approved form; and
  - (b) be given to the presiding officer before the person leaves the polling booth after casting his or her vote.
- (3) If a presiding officer has assisted or has permitted a person to be assisted in voting under rule 79, the presiding officer must assist the person in complying with subrule (2).
- (4) If a person requests a review under subrule (1), the person may, within 7 days after the request is given under subrule (2), provide further information to the senior liaison officer to support his or her claim to be an Aboriginal person or a Torres Strait Islander.
- (5) On receiving:
  - (a) the request under subrule (1); and
  - (b) the further information (if any) provided by a person under subrule (4); the senior liaison must assemble a regional panel to review the person's claim to be an Aboriginal person or a Torres Strait Islander and decide whether, on the balance of probabilities, the person is an Aboriginal person or a Torres Strait Islander.
- (6) A regional panel is made up of:
  - (a) the senior liaison officer; and
  - (b) 2 other people who are Aboriginal persons or Torres Strait Islanders.
- (7) The senior liaison officer must, in writing, inform the person of the decision of the regional panel under subrule (5).
- (8) Subject to subrule (9), the senior liaison officer must, as soon as practicable, inform the Returning Officer of the decision of the regional panel in relation to each request for review.

- (9) The review by the regional panel under subrule (5) must be completed not later than 9 days after the close of the poll.

**[26] Subparagraph 89 (5) (b) (ii)**

*omit*

date.

*insert*

date; and

**[27] After paragraph 89 (5) (b)**

*insert*

- (c) in relation to the voter cards and voter card envelopes of those voters who chose not to have the objection referred to the senior liaison officer for investigation:
- (i) place the voter cards and voter card envelopes in a parcel; and
  - (ii) seal the parcel and write on the parcel a description of the contents, the name of the ward and the date.

**[28] Subparagraphs 89 (7) (c) (i) and (ii)**

*after*

since

*insert*

the close of the Roll for

**[29] After rule 89**

*insert*

**89A Computerised scrutiny of votes**

*Computerised scrutiny available*

- (1) The scrutiny may be conducted by complying with this rule.

*Processing of voter cards and voter card envelopes by Returning Officer*

- (2) The Returning Officer must deal with voter cards and voter card envelopes in the way required by subrules 89 (3) to (6).

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*Processing of ballot-papers by Returning Officer*

- (3) The Returning Officer must deal as follows with all ballot-papers received by him or her:
  - (a) open the ballot-box mentioned in subparagraph 89 (6) (a) (iii) and examine the ballot-papers it contains;
  - (b) reject all ballot-papers that are informal under subsection 110 (2) of the Act and place them in a parcel, seal the parcel and write on the parcel a description of the contents, the name of the ward and the date;
  - (c) arrange the formal ballot-papers by placing in 1 parcel under the name of each candidate all the ballot-papers marked in accordance with subrule 81 (1) on which a first preference is shown for that candidate;
  - (d) seal each parcel, write on each parcel a description of the contents, and let any scrutineers present countersign the endorsement.

*Rejection of informal ballot-papers received by Returning Officer*

- (4) The Returning Officer must:
  - (a) scrutinise all the ballot-papers received by him or her; and
  - (b) reject the informal ballot-papers.

*Determining election result*

- (5) The Returning Officer must then determine the successful candidate or candidates and, if more than 1 member is to be elected, their order of election, by applying the principles set out in Schedule 2 or 2A to the Act (whether using a computer or not).
- (6) 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 rule 93.

*Rights of scrutineers*

- (7) For proceedings under subrules (4) and (5) of this rule, the requirements of paragraph 88 (c) are met if the scrutineers have access to:
  - (a) a record of the preferences on the ballot-papers that have been received by the Returning Officer 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 re-count*

- (8) If ballot-papers that are to be re-counted under rule 96 are in the possession of the Returning Officer immediately before the re-count begins, the Returning Officer must deal with those ballot-papers as follows:
  - (a) open the parcels (for those ballot-papers that are in parcels) in the presence of a person appointed or engaged under the *Public Service Act 1999* 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 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 scrutiny by the Returning Officer;
  - (e) sign the cover of each parcel and let other persons who were present when the ballot-papers were scrutinised add their signatures.
- (9) Subrule (10) applies if:
  - (a) a re-calculation by computer occurs following a re-count; and
  - (b) during the re-calculation, the same tie that occurred on the previous calculation by computer occurs again.
- (10) For the purposes of the re-calculation, the tie is to be resolved in favour of the candidate in whose favour it was resolved during the previous calculation.
- (11) If a re-count is required under rule 95, the Returning Officer must conduct the re-count by using a computer to apply the principles set out in Schedule 2 or 2A to the Act.

**89B Combination of manual and computer scrutiny permitted**

A scrutiny of votes may be conducted partly under rule 89 and partly under rule 89A, as long as the requirements of at least 1 of those rules are met in relation to the scrutiny.

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**[30] Rule 95**

*substitute*

**95 Re-count at elections**

At any time before the declaration of the result of an election, the Returning Officer or the Electoral Commissioner may, if he or she thinks it appropriate, on the written request of a candidate setting out the reasons for the request or of his or her own initiative, direct or conduct a re-count of the ballot-papers in any parcel or in any other category determined by the Returning Officer or the Electoral Commissioner.

**[31] Subrule 96 (5), at the foot**

*insert*

*Note* For sending ballot-papers to the Electoral Commissioner electronically, see rule 96A.

**[32] Subrule 96 (9)**

*omit*

The Electoral Commissioner

*insert*

After scrutiny of the ballot-papers (whether carried out under this rule or rule 96A), the Electoral Commissioner

**[33] After rule 96**

*insert*

**96A Sending ballot-papers electronically**

- (1) Ballot-papers that, at a re-count, are reserved for the decision of the Electoral Commissioner may be sent to the Electoral Commissioner electronically.
- (2) Subrules 96 (5) to (7) do not apply to ballot-papers that are sent to the Electoral Commissioner under subrule (1).

**[34] Rule 103, after the penalty**

*insert*

*Note* A defendant bears an evidential burden in relation to the exception in rule 103 (see subsection 13.3 (3) of the *Criminal Code*).

**[35] Subrule 104 (2)**

*omit*

in order to influence or affect:

*insert*

with the intention of influencing or affecting:

**[36] Rules 105 to 110**

*substitute*

**105 Interference with political liberty**

A person must not engage in conduct that interferes with the free exercise or performance, by another person, of a political right or duty that is relevant to an election under these Rules.

Penalty: 10 penalty units.

**107 Officers not to influence vote**

A person who is an officer must not engage in conduct with the intention of influencing the vote of another person.

Penalty: 10 penalty units.

**108 Printing and publication of electoral advertisements, notices etc**

- (1) A person must not print, publish or distribute or authorise to be printed, published or distributed, an electoral advertisement, handbill, pamphlet or notice unless:
  - (a) the name and address (not being a post-office box) of the person who authorised the electoral advertisement, handbill, pamphlet or notice appears at the end of it; and
  - (b) for 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.

Penalty: 10 penalty units.

- (2) Subrule (1) does not apply to a car sticker, T-shirt, lapel button, lapel badge, pen, pencil or balloon.

*Note* A defendant bears an evidential burden in relation to the exception in subrule (2) (see subsection 13.3 (3) of the *Criminal Code*).

- (3) In this rule:

***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.

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**109 Misleading or deceptive publications etc**

- (1) A person must not, during the relevant period in relation to an election under these Rules, print, publish or distribute, or authorise to be printed, published or distributed, anything that is likely to mislead or deceive an elector in relation to the casting of his or her vote.

Penalty: 10 penalty units.

- (2) A person must not, during the relevant period in relation to an election under these Rules, print, publish or distribute, 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.

Penalty: 10 penalty units.

- (3) In a prosecution of a person for an offence against subrule (1), it is a defence if the person proves that he or she did not know, and could not reasonably be expected to have known, that the thing was likely to mislead an elector in relation to the casting of his or her vote.

*Note* A defendant bears a legal burden in relation to the defence in subrule (3) (see section 13.4 of the *Criminal Code*).

- (4) In a prosecution of a person for an offence against subrule (2), it is a defence if the person proves that he or she did not know, and could not reasonably be expected to have known, that the representation or purported representation was likely to induce an elector to mark his or her vote otherwise than in accordance with the directions on the ballot-paper.

*Note* A defendant bears a legal burden in relation to the defence in subrule (4) (see section 13.4 of the *Criminal Code*).

- (5) In this rule:

***publish*** includes publish by radio or television.

**110 False statements about enrolment**

A person commits an offence if the person, on polling day:

- (a) makes a statement to a voter, either orally or in writing, about the enrolment of the voter; and
- (b) knows that the statement is false or misleading in a material respect.

Penalty: 10 penalty units.

**[37] Rule 113**

*substitute*

**113 Cards in polling booth**

- (1) A person must not, except for rule 62, display or leave in a polling booth a card or paper having on it a direction or instruction as to how a voter should vote or as to the method of voting.

Penalty: 5 penalty units.

- (2) This rule does not apply to an official instruction displayed by proper authority at a polling booth.

*Note* A defendant bears an evidential burden in relation to the exception in subrule (2) (see subsection 13.3 (3) of the *Criminal Code*).

**[38] Rule 116**

*substitute*

**116 False certification**

- (1) A person who:
- (a) certifies that a person is an Aboriginal person or a Torres Strait Islander; and
  - (b) knows that, or is reckless as to whether, the certification is false; commits an offence.

Penalty: 10 penalty units.

- (2) A person must not engage in conduct with the intention of inducing or attempting to induce another person to make a false certification that an elector is an Aboriginal person or a Torres Strait Islander.

Penalty: 10 penalty units.

**[39] Rules 118 and 119**

*substitute*

**118 Other offences relating to ballot-papers etc**

- (1) A person must not:
- (a) personate anyone with the intention of obtaining a ballot-paper to which the personator is not entitled; or
  - (b) personate anyone with the intention of voting; or
  - (c) fraudulently engage in conduct that destroys or defaces a nomination paper or ballot-paper; or
  - (d) fraudulently put a ballot-paper or other paper into the ballot-box; or



- 
- (e) fraudulently take a ballot-paper out of a polling booth or counting centre; or
  - (f) forge a nomination paper or ballot-paper or utter a nomination paper or ballot-paper knowing it to be forged; or

*Note* For forgery of official marks on ballot-papers, see subrule 122 (2).

- (g) supply ballot-papers without authority; or
- (h) unlawfully engage in conduct that destroys, takes, opens or otherwise interferes with ballot-boxes or ballot-papers; or
- (i) vote more than once at the same election; or
- (j) vote at more than one Authority ward election held on the same day; or
- (k) make a statement in a claim, application, voter card, return or declaration, or in an answer to a question, under these Rules, knowing that the statement is false or misleading in a material respect.

Penalty: 10 penalty units.

- (2) A person must not engage in conduct that defaces, mutilates, destroys or removes a notice, list or other document affixed by the Returning Officer or by his or her authority.

Penalty: 5 penalty units.

## **119 Prohibition of canvassing near polling booths**

- (1) A person must not, on polling day, and on all days to which the polling is adjourned, at an entrance of or within a polling booth, or in any public or private place within 6 metres of an entrance of a polling booth:
  - (a) canvass for votes; or
  - (b) solicit the vote of a voter; or
  - (c) engage in conduct with the intention of inducing a voter not to vote for any particular candidate; or
  - (d) engage in conduct with the intention of inducing a voter not to vote at the election; or
  - (e) display a notice or sign (other than an official notice) relating to the election.

Penalty: 5 penalty units.

- (2) For subrule (1), grounds within an enclosure are taken to be part of a polling booth if:
  - (a) a building used as a polling booth is situated in the grounds; and
  - (b) the Returning Officer displays during the hours of polling at each entrance to the grounds a notice signed by him or her stating that the grounds are, for subrule (1), part of the polling booth.

**[40] Rules 122 to 124**

*substitute*

**122 Protection of the official mark**

- (1) A person must not:
- (a) engage in conduct that makes an official mark on or in any paper; or
  - (b) have in his or her possession any paper bearing an official mark; or
  - (c) make use of or have in his or her possession an instrument capable of making on or in any paper an official mark.

Penalty: 10 penalty units.

- (2) A person who engages in conduct that makes on or in a ballot-paper, or any paper purporting to be a ballot-paper, an official mark, is taken to have forged a ballot-paper.

*Note* Forgery of ballot-papers is dealt with by paragraph 118 (1) (f).

- (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 (proof of which lies upon him or her):
- (a) is to be forfeited to the Commonwealth; and
  - (b) may without warrant be seized by a member of the Australian Federal Police or a member of the police force or service of a State or Territory; and
  - (c) may be destroyed or dealt with as determined by the Electoral Commission.

- (4) In a prosecution for an offence under subrule (1), it is a defence if the person proves that he or she acted with lawful authority.

*Note* The defendant bears a legal burden in relation to the defence in subrule (4) (see section 13.4 of the *Criminal Code*).

- (5) In a prosecution for an offence constituted by conduct mentioned in subrule (2) it is a defence if the person proves that he or she acted with lawful authority.

*Note* The defendant bears a legal burden in relation to the defence in subrule (5) (see section 13.4 of the *Criminal Code*).

- (6) In this rule:

***official mark*** means an approved mark placed or made on or in an electoral paper, and includes a mark so nearly resembling an official mark as to be likely to deceive.

**123 Misconduct in polling booth**

- (1) A person who, in a polling booth on polling day:
- (a) engages in conduct that disrupts, or tends to disrupt, the operation of the poll; or

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(b) does not obey a direction of the presiding officer; commits an offence.

Penalty: 5 penalty units.

(2) Strict liability applies to whether the conduct disrupts, or tends to disrupt, the operation of the poll.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

(3) The person may be removed from the polling booth by:

- (a) a member of the Australian Federal Police; or
- (b) a member of the police force or service of a State or Territory; or
- (c) a person authorised by the presiding officer.

#### **124 Re-entry after removal from booth**

(1) A person commits a further electoral offence if the person:

- (a) has been removed from a polling booth by direction of the presiding officer under rule 123; and
- (b) re-enters the polling booth without the permission of the presiding officer.

Penalty: 10 penalty units.

(2) Strict liability applies to whether the direction mentioned in paragraph (1) (a) was given under rule 123.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

#### **[41] Subrule 125 (2), at the foot**

*insert*

*Note* The defendant bears a legal burden in relation to the defence in subrule (2) (see section 13.4 of the *Criminal Code*).