

Torres Strait Regional Authority Election Rules 2017

I, The Hon. Sen. Nigel Scullion, Minister of Indigenous Affairs, make the following Rules

Dated 18 September 2017

The Hon. Sen. Nigel Scullion

Minister of Indigenous Affairs

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Part 1 Preliminary

1 Name

This instrument is the Torres Strait Regional Authority Election Rules 2017.

2 Commencement

This instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

Note: The Register may be accessed at http://www.legislation.gov.au/.

3 Authority

This instrument is made under under section 143G of the *Aboriginal and Torres Strait Islander Act 2005*

4 Definitions

In this instrument:

***Act*** means the *Aboriginal and Torres Strait Islander Act 2005*.

***approved form*** means a form that:

a) is approved by the Electoral Commissioner in writing; and

b) has been published by the Electoral Commissioner.

***authorised witness*** means a voter whose name appears on the Roll for:

(a) a State; or

(b) the Australian Capital Territory; or

(c) the Northern Territory.

***casual vacancy*** means the vacancy in the TSRA left by a former member

***Chairperson*** means the Chairperson of the TSRA.

***collection district***, of a particular number, means the area with that number shown on a map published by the Australian Bureau of Statistics on 24 August 2005.

***compartment***, in relation to a polling booth, means a compartment constructed in the polling booth in accordance with rule 65.

***courier service*** means a service approved by the Returning Officer that provides for the collection, at the request of a person using the service, of an article from a place in Australia specified by or on behalf of the person and the conveyance (whether by aircraft or otherwise) and delivery of the article to another place in Australia that is so specified.

***day of nomination*** has the meaning given by rule 21.

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

***election*** means an election for a member of the TSRA for a ward.

**Electoral Act** means the Commonwealth Electoral Act 1918.

***Electoral Commission*** means the Australian Electoral Commission established by section 6 of the Electoral Act.

***Electoral Commissioner*** means the Electoral Commissioner referred to in section 18 of the Electoral Act.

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

***electoral paper*** means a paper, document, form or notice provided for or required under the Act or these Rules relating to an election

***former member*** means an elected member of the TSRA:

(a) who has died or resigned from the TSRA; or

(b) in relation to whom the TSRA has made a declaration under subsection 143R (1), (1A) or (3) of the Act; or

(c) whom the Minister has removed from office under subsection 143S (5) or (6) or 143T (1) of the Act.

***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 rule 22.

***issuing point***, in relation to a polling booth, means a place within the polling booth at which ballot‑papers are issued to persons voting at the booth.

***liaison officer*** means an Aboriginal and Torres Strait Islander liaison officer appointed under rule 4.

***nomination period*** means the period beginning 60 days before the day fixed for polling under section 142Y of the Act and ending at the hour of nomination.

***officer*** means an officer referred to in section 4 of the Electoral Act.

***place of nomination*** has themeaning given by rule 20.

***polling booth*** means a polling booth provided under rule 62.

***polling day*** means the day or days fixed for polling by the Minister under subsection 142Y(s) of the Act.

***polling place*** means a place appointed as a polling place under section 142Z of the Act.

***postal vote*** means a vote cast before polling day, by means of post.

***postal voter card*** means a postal voter card issued under subrule 36 (1).

***pre‑poll vote*** means a vote cast before the close of the poll, by the voter attending inperson at the office of the Returning Officer or of a pre‑poll voting officer.

***pre‑poll voter card*** means a pre‑poll voter card in the approved form, issued under subrule 54 (1).

***pre‑poll voting officer*** means a person appointed under rule 51.

***registered medical practitioner*** means a person registered or licensed as a medical practitioner under a law of a State or Territory, being a law that provides for the registration or licensing of medical practitioners.

***Returning Officer*** means a person appointed under rule 11.

***Roll*** means an Electoral Roll under the Electoral Act.

**s*enior liaison officer*** means a senior Aboriginal and Torres Strait Islander liaison officer appointed under rule 12.

***special hospital*** means a special hospital declared under rule 77.

***Subdivision*** has the same meaning as in the Electoral Act.

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

***unsuccessful candidate,*** for a casual vacancy, means a person:

(a) who was nominated for election in the most recently held election for the ward for which the former member was elected; and

(b) whose nomination was accepted by the Returning Officer for the most recently held election for the ward for which the former member was elected; and

(c) whose nomination was not withdrawn or cancelled before the hour of nomination; and

(d) who was not elected.

***voter*** means a person who is entitled to vote in an election.

***voter card*** means a voter card in the approved form.

5 Interpretation

(1) Without limiting the generality of the definition of electoral matter in section 4, matter is to be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on:

(a) the election; or

1. an issue submitted to, or otherwise before, the voters in connection with the election.

(2) For the purposes of these Rules a person is enrolled in respect of a ward if, at 5 pm on the fifteenth day before the day of the poll:

(a) the person’s name appears on the Roll at an address located in the ward; or

(b) the person’s name is entered on the Roll:

(i) under section 96 of the Electoral Act; and

(ii) for a Subdivision where part of that Subdivision is in the ward; or

(c) where the person has made a request under section 104 of the Electoral Act — the person’s address as shown on the request is in the ward.

(4) A reference in these Rules to a senior liaison officer is a reference to the person appointed by the Returning Officer to be the senior liaison officer for that election.

(5) A reference to a voter, in a provision of these Rules that creates an offence, includes a reference to a person who is not entitled to vote but attempts to do so.

6 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**7 TSRA wards**

For paragraph 142TA (1) (a) of the Act, the following TSRA wards are specified:

(a) the Badu Island ward;

(b) the Bamaga ward;

(c) the Boigu Island ward;

(d) the Dauan Island ward;

(e) the Erub Island ward;

(f) the Hammond Island ward;

(g) the Iama Island ward;

(h) the Kubin ward;

(i) the Mabuiag Island ward;

(j) the Masig Island ward;

(k) the Mer Island ward;

(l) the Ngurapai and Muralag ward;

(m) the Port Kennedy ward;

(n) the Poruma Island ward;

(o) the Saibai Island ward;

(p) the Seisia ward;

(q) the St Pauls ward;

(r) the TRAWQ ward;

(s) the Ugar Island ward;

(t) the Warraber Island ward.

8 TSRA ward boundaries

For paragraph 142TA (1) (b) of the Act, this rule sets the boundaries for the TSRA wards mentioned in rule 7.

| Item | Ward | Boundary |
| --- | --- | --- |
| 1 | Badu Island | Boundary of collection district 3010201 |
| 2 | Bamaga | Boundary of collection district 3012805 |
| 3 | Boigu Island | Boundary of collection district 3010101 |
| 4 | Dauan Island | Boundary of collection district 3010102 |
| 5 | Erub Island | Boundary of collection district 3010110 |
| 6 | Hammond Island | Boundary of collection district 3010211 |
| 7 | Iama Island | Boundary of collection district 3010108 |
| 8 | Kubin | Boundary of collection district 3010208 |
| 9 | Mabuiag Island | Boundary of collection district 3010109 |
| 10 | Masig Island | Boundary of collection district 3010106 |
| 11 | Mer Island | Boundary of collection district 3010107 |
| 12 | Ngurapai and Muralag | Boundary of collection districts 3010210 and 3010206, excluding Goodes Island and Friday Island |
| 13 | Port Kennedy | Boundary of collection districts 3010302 and 3010303 |
| 14 | Poruma Island | Boundary of collection district 3010209 |
| 15 | Saibai Island | Boundary of collection district 3010103 |
| 16 | Seisia | Boundary of collection district 3012801 |
| 17 | St Pauls | Boundary of collection district 3010207 |
| 18 | TRAWQ | Boundary of collection district 3010301 |
| 19 | Ugar Island | Boundary of collection district 3010111 |
| 20 | Warraber Island | Boundary of collection district 3010203 |

9 Designated number for TSRA wards

For paragraph 142TA (1) (c) of the Act, the designated number for each TSRA ward mentioned in rule 7 is 1.

10 Electoral Commissioner may give directions

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

**11 Returning Officer**

Where:

(a) a TSRA election is required to be held under section 142Y of the Act; or;

(b) a casual vacancy occurs in a TSRA ward;

the Electoral Commissioner must appoint a person over the age of 18 years to be the Returning Officer for these Rules.

12 Aboriginal and Torres Strait Islander liaison officers

(1)Before polling commences in an election, the Returning Officer in consultation with the TSRA must appoint:

(a) persons to be Aboriginal and Torres Strait Islander liaison officers; and

(b) a person (not being a liaison officer) to be the senior Aboriginal and Torres Strait Islander liaison officer.

(2) A liaison officer or a senior liaison officer must:

(a) be an Aboriginal person or a Torres Strait Islander; and

(b) be over the age of 18 years; and

(c) reside in the Torres Strait area; and

(d) not be:

1. a candidate for election in the election for which he or she is a liaison officer or a senior liaison officer; or

(ii) a member of the staff of, or a consultant to, the TSRA.

13 Liaison officer to be present during polling

A liaison officer must be present at all times during polling at:

(a) a polling booth; or

(b) a special hospital; or

(c) a prison; or

(d) a mobile polling booth.

Part 2 Nominations

14 Qualifications of person nominated

(1) No person is capable of being elected as a member of the TSRA unless duly nominated.

(2) To entitle a person to be nominated as a member of the TSRA, he or she must have the qualifications specified in section 142V of the Act.

15 Manner of nomination

(1) A nomination must:

(a) be in the approved form; and

(b) set out the name, occupation, place of living and postal address of the candidate; and

(c) be signed by not less than 4 voters, other than the candidate, who are enrolled in respect of the ward for which the candidate is nominated.

(2) For the purposes of this rule, the name of a candidate includes:

(a) the surname, and at least one given name, under which the candidate is enrolled in respect of the ward; and

(b) if the candidate so wishes any other name, or nickname, by which the candidate is commonly known.

(3) A nomination must include a statement of the form in which the candidate’s name is to be printed on the ballot‑papers for the election.

(4) For the purposes of subrule (3), a commonly accepted variation of the candidate’s enrolled given name may be used if approved by the Returning Officer.

16 To whom nominations made

A nomination of a person for election as the member of the TSRA for a ward must be made to the Returning Officer.

17 Requirements for nomination

A nomination is not valid unless:

(a) the person nominated:

(i) consents to act if elected; and

(ii) declares:

1. that he or she is qualified under section 142V of the Act to stand for election; and
2. that he or she is not, and does not intend to be, a candidate in any other election to be held on the same day as the election to which the nomination relates; and

(iii) is enrolled for the ward for which he or she is nominating when the declaration is made; and

(b) the nomination paper, or a copy received by electronic mail or facsimile transmission, is received by the Returning Officer within the nomination period.

18 Form of consent to act

The consent of the person nominated to act if elected and the declaration referred to in subrule 17 (a) (ii) is sufficient if he or she signs the form of consent and declaration at the foot of the nomination paper, but the Returning Officer receiving the nomination may accept any other form of consent and declaration, whether accompanying the nomination paper or not, that he or she deems satisfactory, and such acceptance is final.

19 Rejection of nomination

1. Subject to subrule (2), a nomination must be rejected by the officer to whom it is made if, and only if, the provisions of rules 7, 8, 9 and 10 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 made is satisfied that the provisions of rules 15, 16, 17 and 18 have been substantially complied with.

20 Place of nomination

The place of nomination is the office of the Returning Officer.

21 Day of nomination

The day of nomination is 31 days before the day or days fixed for the poll.

22 Hour of nomination

The hour of nomination is 5 pm on the day of nomination.

23 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.

1. 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:
   1. must comply with paragraph (1) (b) by producing a copy of the nomination paper on which the person’s place of living and address are obliterated; and
   2. must not read out the place of living of the person.

24 Withdrawal of consent to nomination

A candidate may withdraw his or her consent to his or her nomination at any time before the hour of nomination by lodging with the Returning Officer a notice of withdrawal, and thereupon the nomination is cancelled.

25 Where poll to be held

Where, under subsection 143A (2) of the Act, a poll is to be held, the proceedings in the election are, subject to the provisions of these Rules relating to voting before polling day, adjourned to polling day.

26 Death of candidate after nomination

If, after the nominations for an election have been declared and before the fixed day or days for polling day any candidate dies and only one candidate remains, that candidate is to be declared to be elected at the declaration of Poll.

27 Failure of election

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

**Part 3 Conduct of the election**

**Division 1 General**

**28 Persons not to vote more than once**

A voter is not entitled to vote:

(a) more than once at any election; or

(b) at more than one election held on the same day.

*Note*   For offences in relation to voting, see subrule 149 (1).

**29 Photographs of candidates**

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:
   1. copies to be made of the photograph; and
   2. copies of the photograph to be displayed during the time voting is in progress at all places where voting takes place.
2. The photograph provided under subrule (l) must:
   1. be of a quality which will allow effective reproduction; and
   2. depict only the head and shoulders of the candidate.

**30 Undertaking by officers and scrutineers**

1. Every officer and scrutineer performing functions under these rules must make an undertaking in the approved form.
2. An omission by an officer or scrutineer to sign an undertaking under subrule (1) is not to be a ground for setting aside an election.

**31 Ballot‑boxes to be securely fastened**

Each ballot‑box must be capable of being securely fastened.

**32 Official mark**

The official mark for the authentication of ballot‑papers is a water mark in the paper thereof consisting of a representation of a shield having therein the letters ‘CA’ intertwined.

**Division 2 Postal voting**

**33 Grounds for applying for postal vote**

A voter may apply to the Returning Officer for a postal vote on a ground set out in Schedule 2.

**34 Application for postal vote**

(1) An application must:

(a) be in writing in the approved form; and

(b) contain a declaration by the applicant that he or she is entitled to apply for a postal vote; and

(c) be signed by the applicant in the presence of an authorised witness.

(2) An application must not be made until after the publication in the Gazette of a notice under subsection 142Y (2) of the Act in relation to the election.

(3) A voter must not make a false statement in:

(a) an application; or

(b) a declaration relating to an application.

Penalty:   10 penalty units.

(4) A person must not induce a voter to make a false statement in:

(a) an application; or

(b) a declaration relating to an application.

Penalty:   10 penalty units.

**35 Duty of an authorised witness**

(1) A person must not sign as an authorised witness to the signature of a voter on an application for a postal vote unless the person:

(a) is satisfied as to the identity of the voter; and

(b) has seen the voter sign the application; and

(c) is satisfied that the statements in the application are true:

(i) from personal knowledge; or

(ii) from questioning of the voter or by other means.

Penalty:   10 penalty units.

(2) A person who signs as an authorised witness must write on the application the date on which he or she has signed it.

**36 Issue of postal voter cards and ballot‑papers**

(1) Subject to subrule (2), on receiving an application for a postal vote that is properly made, signed and witnessed, the Returning Officer must:

(a) allocate a number to the application; and

(b) record the same number on the postal voter card issued to the applicant; and

(c) post to the applicant:

(i) a postal voter card attached to an envelope; and

(ii) a postal ballot‑paper; and

(iii) an outer envelope addressed to the Returning Officer.

(2) If the Returning Officer receives an application after the last mail clearance at the nearest post office on the last Thursday before polling day, the Returning Officer must not post a postal voter card or ballot‑paper to the applicant.

(3) Before posting a postal voter card and postal ballot paper, the top of the front of the ballot paper must be marked with the initials of the polling official who issued the ballot paper, or caused it to be issued.

**37 Inspection of applications**

(1) If the Returning Officer issues a postal voter card and postal ballot‑paper, the Returning Officer must write the date of issue on the application to which they relate.

(2) Subject to subrule (3), all applications for postal votes received by the Returning Officer must be open to public inspection at his or her office during ordinary office hours:

(a) on and from the third day after polling day; and

(b) until the time when the election can no longer be questioned.

(3) Before making applications available for public inspection, the Returning Officer must remove from the applications the address of any person whose address has been excluded from the Roll under section 104 of the Electoral Act.

**38 Form of postal voter cards**

A postal voter card and postal ballot‑paper must be in the approved form.

**39 Postal voting**

(1) Subject to subrule (8), the following requirements for postal voting must be substantially given effect:

(a) the voter must show his or her unsigned postal voter card and unmarked postal ballot‑paper to an authorised witness;

(b) the voter must sign the postal voter card in the presence of the authorised witness;

(c) the authorised witness must:

(i) sign the postal voter card as an authorised witness; and

(ii) write the date of the witnessing;

(d) the voter must mark his or her vote on the ballot‑paper in the presence of the authorised witness but so that the witness cannot see the vote, fold the ballot‑paper, place it in the envelope addressed to the Returning Officer and seal the envelope;

(e) the voter must have the postal voter card certified by an Aboriginal person or a Torres Strait Islander who is an office‑bearer of an Aboriginal or Torres Strait Islander Corporation to the effect that the voter is an Aboriginal person or a Torres Strait Islander;

(f) the voter must enclose the following documents (the postal voting papers) in the outer envelope:

(i) the envelope containing the ballot‑paper;

(ii) the postal voter card;

(g) subject to subrule (6), the voter must post or deliver the outer envelope containing the postal voting papers to the Returning Officer.

(2) A person who is a candidate at an election must not certify a postal voter card under paragraph (1) (e).

(3) If the voter cannot read, or experiences a disability, which means that he or she is unable to vote without assistance, a person chosen by the voter may, according to the directions of the voter:

(a) complete the postal voter card for him or her; and

(b) do for the voter any act required by paragraph (1) (d), (e) or (f).

(4) Directions under subrule (3) may be given by reference to a how‑to‑vote card.

(5) In the case of a ballot‑paper that:

(a) if posted before the close of a poll — would be unlikely to reach the Returning Officer within 6 days after polling day; or

(b) if delivered to the Returning Officer — would be unlikely to reach him or her before the close of the poll;

the voter may take the steps set out in subrule (6).

(6) For subrule (5), the voter may:

(a) before the close of the poll:

(i) address the postal voting papers to the Returning Officer; and

(ii) send the papers to the officer; or

(b) deliver the postal voting papers to a pre‑poll voting officer or a presiding officer.

(7) The Returning Officer, a pre‑poll voting officer or a presiding officer to whom postal voting papers are delivered under subrules (5) and (6) must deal with the papers in accordance with rule 41.

(8) In subrule (1), authorised witness, in relation to a particular election, does not include a candidate in the election.

**40 Unauthorised interference**

Except at a voter’s request, a person must not:

(a) interfere with the voter in relation to the marking of his or her postal ballot‑paper; or

(b) do anything that would enable the person or any other person to find out what is marked on the postal ballot‑paper.

Penalty:   10 penalty units.

**41 Procedure for dealing with postal voter cards etc**

If a pre‑poll voting officer or a presiding officer receives an envelope and a postal voter card, he or she must:

(a) endorse on the envelope:

(i) ‘Received by me’; and

(ii) the date and time of receipt of the envelope; and

(b) sign the endorsement and add the words ‘Pre‑poll Voting Officer’ or ‘Presiding Officer’, as the case may be; and

(c) make a record of:

(i) the name of the voter ; and

(ii) the name of the ward to which the postal voter card appears to relate; and

(d) until dealing with the envelope and postal voter card in accordance with paragraph (e), keep the envelope and postal voter card in a ballot‑box; and

(e) send:

(i) the envelope and postal voter card; and

(ii) the record;

to the Returning Officer in accordance with his or her instructions.

**42 Opening postal ballot‑papers**

An envelope that appears to contain a postal ballot‑paper on which a vote has been recorded must not be opened by a person other than:

(a) the Returning Officer; or

(b) an officer acting on the direction of the Returning Officer.

Penalty:   10 penalty units.

**43 Failure to post or deliver postal vote application or ballot‑paper**

If a person is entrusted by a voter, and undertakes, to post or deliver:

(a) an application for a postal vote; or

(b) an envelope apparently containing a postal ballot‑paper; or

(c) a postal voter card;

the undertaking must be given effect as soon as is practicable.

Penalty:   10 penalty units.

**44 Inducing voter to hand over marked ballot‑paper**

A person must not induce a voter to hand over to the person a postal ballot‑paper on which the voter has marked his or her vote.

Penalty:   10 penalty units.

**45 Commencement of preliminary scrutiny of postal votes**

(1) The Returning Officer may begin a preliminary scrutiny of postal votes on the last Monday before the poll.

(2) However, the actions mentioned in paragraph 46 (4) (e) must not be taken before the close of the poll.

**46 Conduct of preliminary scrutiny of postal votes**

(1) The Returning Officer must conduct as many preliminary scrutinies as he or she considers appropriate until:

(a) all applications for postal voter cards and postal ballot‑papers have been produced by him or her; and

(b) all envelopes containing postal votes received by him or her up to the end of the sixth day after the close of the poll have been dealt with in accordance with this rule; and

(c) any envelopes containing postal votes received before the close of the poll by any pre‑poll voting officer or presiding officer have been dealt with in accordance with this rule.

(2) At the first preliminary scrutiny, the Returning Officer must produce:

(a) all applications for postal voter cards and postal ballot‑papers; and

(b) unopened — all envelopes containing postal votes; and

(c) all postal voter cards;

that he or she has received.

(3) At a subsequent preliminary scrutiny (if any), the Returning Officer must produce:

(a) all applications for postal voter cards and postal ballot‑papers; and

(b) unopened — all envelopes containing postal votes; and

(c) all postal voter cards;

that he or she has received and that have not previously undergone scrutiny.

(4) Subject to subrule (8), the Returning Officer must, in conducting a preliminary scrutiny:

(a) compare the signature of the voter on each postal voter card with the signature of the voter on the application for the postal voter card, and allow the scrutineers to inspect both signatures; and

(b) accept for further scrutiny the ballot‑paper enclosed in the corresponding envelope if satisfied that:

(i) the voter is enrolled in respect of the ward to which the vote relates; and

(ii) the signature on the postal voter card is that of the voter who signed the application for the postal voter card; and

(iii) the signature appears to have been witnessed by an authorised witness; and

(iv) the vote contained in the envelope was recorded before the close of the poll; and

(v) the postal voter card has been certified under paragraph 39 (1) (e) and is valid; and

(c) if not satisfied as to a matter specified in subparagraph (b) (i), (ii), (iii) or (iv):

(i) disallow the ballot‑paper without opening the envelope in which it is contained; and

(ii) place the envelope in a parcel with all the other envelopes containing ballot‑papers which have been disallowed under this paragraph, seal the parcel and endorse on the parcel a description of the contents, the name of the ward and the date; and

(d) 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 49; and

(e) separate the postal voter card from each envelope accepted for further scrutiny, placing the envelopes in one parcel and postal voter cards in another and then:

(i) seal the parcel of postal voter cards and endorse on the parcel a description of contents, the name of the ward to which the vote relates and the date; and

(ii) extract the ballot‑paper from inside each envelope separated from the postal voter card, without further examining the envelope or permitting anyone else to do so; and

(iii) place the extracted ballot‑papers by themselves in a ballot‑box for further scrutiny; and

(iv) place all those envelopes from which ballot‑papers have been extracted in another parcel, seal the parcel and endorse on the parcel a description of the contents, the name of the ward and the date.

(5) For the purpose of subparagraph (4) (b) (i), a voter who appears not to be enrolled in respect of the ward is taken to be so enrolled if the Returning Officer is satisfied, after making any necessary inquiries, that the voter was, at the time of voting, entitled to be enrolled in respect of the ward and was not so enrolled because of an error or mistake by an officer made:

(a) since the close of the Roll for the last election; or

(b) if the last election was held less than 6 months before the election to which the scrutiny relates — since the close of the Roll for the election before the last election.

(6) In subrule (5):

election means:

(a) a general election for the House of Representatives; or

(b) a Senate election not held concurrently with a general election for the House of Representatives; or

(c) a referendum not held concurrently with a general election.

(7) When the Returning Officer proposes to conduct a preliminary scrutiny, he or she must:

(a) before 4.00 pm on the day before the day on which the scrutiny is to be conducted, prominently display at his or her office a notice setting out:

(i) the day on which; and

(ii) the time or times at which;

the scrutiny is to be conducted; and

(b) as far as is reasonably practicable — conduct the scrutiny accordingly.

(8) For the purpose of subparagraph (4) (b) (iv), an envelope that bears a postmark dated after polling day is taken to contain a vote that was not recorded before the close of the poll.

**47 Mistakes**

(1) A postal vote must not be rejected solely because only the surname, rather than the full name, of a candidate has been written on the ballot‑paper, if no other candidate has the same surname.

(2) If a voter’s intention is clear, the Returning Officer must not reject a vote solely because of a spelling mistake.

**48 Correction of formal errors**

An officer who receives:

(a) an application for a postal vote; or

(b) a postal voter card;

who is satisfied that the application or postal voter card contains a formal error, may amend the application or postal voter card, as the case may be, to correct the error.

**49 Further investigation of postal votes by a regional panel**

(1) If a postal vote card is referred to a senior liaison officer under subparagraph 46 (4) (d) (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 voter 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 voter 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 voter whether or not, having regard to the panel’s determination, the postal vote will be admitted for further scrutiny.

**Division 3 Pre‑poll voting**

**50 Grounds for applying for pre‑poll vote**

A voter may apply for a pre‑poll vote on a ground set out in Schedule 2.

**51 Pre‑polling voting officers**

The Returning Officer may appoint a person to be a pre‑poll voting officer for the purposes of these Rules.

**52 Applying for a pre‑poll vote**

(1) Application for a pre‑poll vote may be made to:

(a) the Returning Officer; or

(b) a pre‑poll voting officer.

(2) An applicant must:

(a) apply in person; and

(b) tell the officer to whom he or she applies:

(i) the ward for which the applicant is enrolled; and

(ii) any matters necessary for the officer to establish the applicant’s entitlement to vote in relation to the ward.

**53 Place and time for applying**

(1) An application to the Returning Officer may be made only at his or her office during:

(a) ordinary office hours; or

(b) the hours of polling on polling day.

(2) An application to a pre‑poll voting officer may be made only:

(a) at a place declared by the Electoral Commissioner by notice published in the Gazette, to be a pre‑poll voting office; and

(b) on a day, and during the hours, fixed by the Electoral Commissioner by notice published in the Gazette.

(3) Application cannot be made after the close of the poll in the ward for which the voter is enrolled.

**54 Pre‑poll voting**

(1) An officer to whom a voter properly applies for a pre‑poll vote (in this rule called the issuing officer) must issue to the voter:

(a) a pre‑poll voter card attached to an envelope; and

(b) a ballot‑paper.

(2) Before issuing the ballot‑paper, the issuing officer must initial, in writing, the top of the front of the ballot‑paper.

(3) The following requirements for pre‑poll voting must be substantially given effect:

(a) the voter must sign the pre‑poll voter card in the presence of the issuing officer;

(b) the issuing officer must sign the pre‑poll voter card as witness and write on the pre‑poll voter card the date of his or her signing it;

(c) the voter must mark his or her vote on the ballot‑paper in the presence of the issuing officer but so that the officer cannot see the vote, fold the ballot‑paper and hand it to the officer;

(d) the issuing officer must immediately:

(i) place the ballot‑paper in the envelope attached to the pre‑poll voter card; and

(ii) seal the envelope;

(e) the voter must have the pre‑poll voter card certified by:

(i) an Aboriginal person or a Torres Strait Islander who is an office‑bearer of an Aboriginal or Torres Strait Islander Corporation to the effect that the voter is an Aboriginal person or a Torres Strait Islander;

(f) 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 49;

(g) if paragraph (f) 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 voter s;

(h) 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;

(i) pre‑poll voter cards received by the Returning Officer must be open to public inspection at his or her office during ordinary office hours on and from the third day after polling day until the time when the election can no longer be questioned;

(j) before making a pre‑poll voter card available for inspection, the Returning Officer must remove from the pre‑poll voter card the address of any person whose address has been excluded from the Roll under section 104 of the Electoral Act.

(4) A person who is a candidate at an election must not certify a pre‑poll voter card under paragraph (3) (e).

(5) If the voter cannot read, or experiences a disability, which means that he or she is unable to vote without assistance, a person chosen by the voter may do any of the following acts for the purposes of subrule (3) in accordance with the voter’s directions:

(a) read the pre‑poll voter card to the voter;

(b) fill in the pre‑poll voter card with the necessary particulars;

(c) mark the voter’s vote on the ballot‑paper;

(d) fold the marked ballot‑paper and return it to the issuing officer;

(e) have the pre‑poll voter card certified in accordance with paragraph (3) (e).

(6) Directions under subrule (5) may be given by reference to a how‑to‑vote card.

(7) A voter to whom a pre‑poll voter card and ballot‑ paper have been issued is not entitled:

(a) to remove the pre‑poll voter card or ballot‑paper from the office of the officer who issued it; or

(b) to vote at a polling booth on polling day.

**55 Form of pre‑poll voter card**

A pre‑poll voter card must be in the approved form.

**56 Record of issue of pre‑poll voting papers**

The issuing officer must:

(a) record on the pre‑poll voter card:

(i) the date of issue of the voter card and ballot‑paper; and

(ii) the name and address of the applicant; and

(iii) the ward for which the person claims to be enrolled; and

(iv) an identification number; and

(b) record the same identification number on the envelope attached to that voter card.

**57 Opening of pre‑poll voting envelope**

A person other than:

(a) the Returning Officer; or

(b) an officer acting on the direction of the Returning Officer;

must not open an envelope containing a ballot‑paper on which a pre‑poll vote has been marked.

Penalty:   10 penalty units.

**58 Obligations of persons present when pre‑poll vote is cast**

A person who is present when a voter signs a pre‑poll voter card or marks a ballot‑paper in the presence of an officer:

(a) must obey all proper directions of the officer; and

(b) except at the request of the voter, must not:

(i) communicate with the voter in relation to his or her vote; or

(ii) assist or interfere with the voter in relation to the voter’s vote; and

(c) must not do anything that would enable him or her to find out what is marked on the ballot‑paper.

Penalty:   10 penalty units.

**59 Mistakes**

(1) A pre‑poll vote must not be rejected solely because only the surname, rather than the full name, of a candidate has been written on the ballot‑paper, if no other candidate has the same surname.

(2) If a voter’s intention is clear, the Returning Officer must not reject a vote solely because of a spelling mistake.

**60 Correction of formal errors**

An officer who receives a pre‑poll voter card and who is satisfied that the voter card contains a formal error, may amend the voter card to correct the error.

**61 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 54 (3)(f) (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 voter 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 voter 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 voter whether or not, having regard to the panel’s determination, the pre‑poll vote will be admitted for further scrutiny.

**Division 4 The Poll**

**62 Arrangements for polling**

(1) If the proceedings on the day of nomination stand adjourned to polling day, the Returning Officer must immediately make all necessary arrangements for taking the poll and in particular must:

(a) provide and furnish proper polling booths and ballot‑boxes; and

(b) provide ballot‑papers and all necessary forms, envelopes and materials.

(2) If the proceedings on the day of nomination stand adjourned to polling day, the Returning Officer must immediately appoint a presiding officer to preside at each polling place and all necessary assistant presiding officers.

(3) In any emergency on polling daydue to the absence of any assistant presiding officer or liaison officer, or to any unforeseen and continued pressure at the polling which cannot be met by the duly appointed officers, the presiding officer may appoint any person to act as assistant presiding officer or liaison officer and the person so appointed or acting is to be deemed to have been duly appointed if the Returning Officer afterwards ratifies the appointment by appointing that person to be assistant presiding officer or liaison officer, as the case may be.

(4) No person under the age of 18 years may be appointed to be a presiding officer or assistant presiding officer.

(5) Any assistant presiding officer may, subject to the direction of the presiding officer, exercise all or any of the powers of the presiding officer, and is, in respect of the exercise of those powers, to be taken to be the presiding officer.

**63 Substitute**

Any presiding officer may appoint a substitute to perform his or her duties during his or her temporary absence, and such substitute may, while so acting, exercise all of the powers of the presiding officer under these Rules that are necessary to exercise during the absence and is, in the exercise of those powers, deemed to be the presiding officer.

**64 Use of licensed premises as polling booth**

Premises licensed for the sale of intoxicating liquor may be used as a polling booth only if the Electoral Commissioner declares, in writing, that he or she is satisfied that, during the hours of polling on polling day:

(a) intoxicating liquor will not be available for sale or consumption on the part of the premises proposed for use for the purpose of a polling booth; and

(b) the part of the premises proposed for use for the purposes of a polling booth will be segregated from the part of the premises where intoxicating liquor will be available for sale or consumption; and

(c) access to the part of the premises proposed for use for the purpose of a polling booth will not involve passing through the part of the premises where intoxicating liquor will be available for sale or consumption.

**65 Separate voting compartments**

Polling booths must have separate voting compartments, constructed so as to screen the voter s from observation while they are marking their ballot‑papers, and each voting compartment must be furnished with a pencil for the use of voters.

**66 Ballot‑boxes**

Each polling booth must be provided with the necessary ballot‑boxes.

**67 Ballot‑papers**

(1) Ballot-papers are to be in an approved form.

(2) Ballot‑papers must be printed on white paper and must use black type face of a kind ordinarily used in Commonwealth Government publications.

**68 Printing of ballot‑papers**

In printing the ballot‑papers to be used in an election:

(a) the order of the names of the candidates on the ballot‑paper is to be determined by the Returning Officer in accordance with rule 69; and

(b) where similarity in the names of two or more candidates is likely to cause confusion, the names of those candidates may be arranged with such description or addition as will distinguish them from one another; and

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

**69 Determination of order on ballot‑papers**

Where under rule 68 a person is required to determine in accordance with this rule the order of the names of candidates on ballot‑papers to be used in an election:

(a) the person must, immediately after the declaration of nominations for the election, at the place of nomination and before all persons present at that place:

(i) prepare a list of the names in such order as he or she considers appropriate; and

(ii) read out that list; and

(iii) place a number of balls equal to the number of candidates 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 another person who must call out the number on each ball as it is passed to him or her; and

(vi) as each number is called out in accordance with subparagraph (v), write the number opposite to a name in the list prepared in accordance with subparagraph (i) so that the number called out first is opposite to the first name 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 each ball as it is passed to him or her; 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 to each number the name set out opposite to that number in the list prepared in accordance with subparagraph (i); and

(b) the order in which the names are set out in the list prepared in accordance with subparagraph (a) (x) is the order of the names determined by the person under this rule.

**70 Ballot‑papers to be initialled**

No ballot paper is to be delivered to any voter without being first initialled on the top of the front of the ballot paper by the issuing officer and an exact account is to be kept of all initialled ballot papers.

**71 Scrutineers at the polling**

(1) Scrutineers may be appointed by candidates to represent them at polling places during the polling, but so that not more than one scrutineer is to be allowed to each candidate at each polling booth or issuing point at a polling booth.

(2) Appointments of scrutineers must be made by notice in writing addressed to the Returning Officer or presiding officer and such notice must be signed by the candidate and must give the name and address of the scrutineer.

**72 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.

**73 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 a voter 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).

**74 Polling**

(1) The polling must be conducted as follows:

(a) before any vote is taken the presiding officer must exhibit the ballot‑box empty, and must then securely fasten its cover;

(b) the poll must open at 8.00am and must not close until all voters present in the polling booth at 6.00pm and desiring to vote, have voted;

(c) the doors of the polling booth must be closed at 6.00pm and no person is to be admitted after that hour to the polling booth for the purpose of voting.

(2) Paragraphs (l) (b) and (c) do not apply in relation to a polling booth in relation to which the Electoral Commissioner has, by notice in writing, determined that the booth is to be open during the hours specified in the notice.

(3) Where the Electoral Commissioner has determined the hours during which a polling booth is to be open under subrule (2):

(a) the polling booth must not close until all voters present in the polling booth at the hour specified in the notice for the close of that polling booth have voted; and

(b) a person must not be admitted to that polling booth for the purpose of voting after the hour specified in the notice for the close of the booth.

(4) In relation to the notice under subrule (2), the Electoral Commissioner must:

(a) cause the notice to be published in the Gazette; and

(b) take such steps as he or she thinks fit to give public notice of the contents of the notice.

**75 Where voters may vote**

(1) On polling daya voter is entitled to vote at any polling place for the ward in respect of which he or she is enrolled or to vote as an absent voter, on making a declaration in an approved form, at any other polling place at which a polling booth is open.

(2) Nothing in this rule authorises a voter to vote more than once at any election.

**76 Interpretation**

In rules 77 and 78, patient, in relation to a hospital, does not include a person attending the hospital as an out‑patient.

**77 Mobile polling booths — hospitals**

(1) The Electoral Commissioner may, by notice published in the Gazette, declare the whole or a specified part of a hospital, to be a special hospital for the purposes of taking votes under this rule in a specified election.

(2) A Returning Officer may appoint electoral visitors and liaison officers for the purposes of this rule.

(3) An electoral visitor may make arrangements with an appropriate person, or appropriate persons, on the staff of a hospital (being a hospital the whole or part of which is a special hospital) for the votes of patients in the special hospital to be taken under this rule.

(4) Subject to rule subrule (6) and rule 78, where:

(a) arrangements are in force under subrule (3) in relation to a special hospital; and

(b) a patient in the special hospital is a voter; and

(c) under the arrangements, the vote of the patient may be taken under this rule; and

(d) the patient wishes so to vote;

an electoral visitor, accompanied by a liaison officer, a polling official and such scrutineers, if any, as wish to accompany him or her, must take to the patient a ballot‑box, a ballot‑paper and such other things as are necessary to enable the vote of the patient to be taken.

(5) These Rules apply in relation to the taking of the vote of the patient as if, during the time when, for the purpose of enabling the vote of the patient to be taken, the electoral visitor is in the same room, ward or other place as the patient, that room, ward or other place were a part of a polling booth at a polling place.

(6) A visit or visits to a special hospital in accordance with subrule (4) must be made at such time or times between 8.00am and 6.00pm and on such day or days, being any of the 5 days preceding polling day, polling day, or a day to which the polling is adjourned, as are determined by the Returning Officer in relation to the special hospital.

(7) At any time when an electoral visitor is visiting a special hospital for the purposes of this rule, the special hospital is, for the purposes of, and in connection with, the taking of votes under this rule, deemed to be a polling booth at a polling place and the electoral visitor is, for those purposes, deemed to be the presiding officer at that booth.

(8) Paragraph 74 (1) (a) does not apply to an electoral visitor after the first visit made by him or her for the purposes of this rule.

(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.

**78 Provisions related to rule 77**

(1) Notwithstanding any arrangement in force under rule 77, a visit under that rule to a patient in a hospital must not be made if the presiding officer, electoral visitor or liaison officer, as the case may be, is informed by a registered medical practitioner or a member of the staff of the hospital that such a visit is forbidden, on medical grounds, by a registered medical practitioner.

(2) Literature relating to an election may be supplied to the general office of a hospital to which rule 77 applies, and any literature so supplied must be made available on request to patients entitled to vote under that rule.

(3) An electoral visitor who visits a hospital under rule 77 may, at the request of a voter who is a patient in the hospital, give the voter literature, including how‑to‑vote cards, made available by candidates in the election.

(4) So far as is practicable, a vote under rule 77 is to be taken as if it were taken under the other provisions of these Rules (including such of those provisions as relate to absent voting) and, in particular, in the application of these Rules for the purposes of subrule 77 (4), these Rules have effect as if:

(a) a person who, with the approval of an appropriate person on the staff of the hospital, enters or remains in a room, ward or other place in the hospital at a time when, under that subrule, it is to be treated as if it were a part of a polling booth were, for the purposes of rule 73, doing so by permission of the presiding officer there present; and

(b) paragraph 86 (a) were omitted and the following paragraph were substituted:

‘(a) mark his or her vote on the ballot‑paper in a manner that ensures the secrecy of his or her vote;’; and

(c) rule 89 were omitted.

(5) Subrule 150 (1) applies in relation to a special hospital within the meaning of rule 77 as if:

(a) the reference in that subrule to polling dayand to all days to which the polling is adjourned were a reference to the period commencing on the day of publication in the Gazette of the notice under subsection 142Y (2) of the Act and ending at the expiration of polling dayor, if the polling is adjourned, the expiration of the last day to which the polling is adjourned; and

(b) the references in that subrule to a polling booth were references to the special hospital.

(6) Where a voter has voted under rule 77 in an election, any postal ballot‑paper received by the Returning Officer that is, or that purports to be, a postal ballot‑paper of the voter must not be admitted in the scrutiny in relation to the election.

(7) Where an arrangement is in force under rule 77, the Returning Officer must, before 4.00 pm on the day before the day, or before the first day, on which votes are to be taken under that section, cause to be prominently exhibited at his or her office a notice setting out the hospital to which the arrangement relates and the day or days on which, and the time or times at which, votes are proposed to be taken under rule 77.

(8) As far as is reasonably practicable, votes taken under rule 77 must be taken on the day or days and at the time or times specified in the relevant notice under subrule (6), but any failure to take those votes in that manner does not invalidate the result of the election.

**79 Mobile polling booths — prisons**

(1) The Electoral Commissioner may make arrangements with the Controller‑General of Prisons for a State or Territory for taking the votes of persons confined in prisons in the State or Territory.

(2) The Returning Officer may appoint electoral visitors and liaison officers for the purposes of this rule.

(3) If arrangements in force under subrule (1) are applicable to a prison, an electoral visitor must visit the prison for the purpose of taking the votes of persons confined in the prison.

(4) When visiting a prison, an electoral visitor must:

(a) take to the prison a ballot‑box, ballot‑papers and anything else necessary for taking votes at the prison; and

(b) subject to subrule (5), be accompanied by a liaison officer, a polling official and any scrutineers that wish to attend.

(5) A visit to a prison must be made:

(a) on the day; and

(b) at the time; and

(c) in accordance with the conditions;

fixed by or under the arrangements applicable to the prison.

(6) In spite of arrangements in force under subrule (1), a visit to a prison may not be made if the electoral visitor is informed by the officer in charge of the prison or a member of the staff of the prison that the visit is forbidden by the officer in charge because of circumstances related to the security of the prison.

(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.

(8) An electoral visitor who visits a prison may, at the request of a voter confined in the prison, give the voter literature including how‑to‑vote cards, made available by candidates in the election.

**80 Mobile polling booths**

(1) In this rule:

leader means a person appointed under this rule to be the leader of a team.

booth means a place at which a visit is being made by a team under this rule.

team means a mobile polling team appointed under this rule.

(2) The Returning Officer may appoint persons to be members of mobile polling teams for the purposes of this rule and, in respect of each team, a person to be the leader.

(3) Each team must include a liaison officer.

(4) In relation to mobile polling, the provisions of this rule apply in addition to, and without derogation from, the application of any other provision of these Rules.

(5) The Returning Officer:

(a) may, subject to subrule (6), determine the places, days and times of visits to be made by a team for the purposes of this rule; and

(b) is to take such steps as he or she thinks fit to give public notice of those places, days and times.

(6) A day determined under subrule (5) is to be any of the 12 days preceding polling day, polling day, or a day to which the polling is adjourned.

(7) A team is to make a visit or visits as determined under subrule (5) but if, for reasonable cause, the team is unable, or the leader considers it inappropriate, to make such a visit, the leader may substitute another place, day or time for the visit and, if he or she does so, must:

(a) take such steps as he or she thinks fit to give public notice of the substituted place, day or time; and

(b) inform the Returning Officer.

(8) Any failure by a team to make a visit in accordance with this rule does not invalidate the result of the election.

(9) At any time when a team is at a booth for the purposes of taking votes under this rule in an election:

(a) the team must have:

(i) ballot‑boxes, ballot‑papers and such other things as are necessary for the votes of voters to be taken at the booth; and

(ii) the ‘how‑to‑vote’ cards (if any) supplied to it by the candidates; and

(b) every voter at the booth is entitled to have his or her vote taken under this rule; and

(c) for purposes of, and in connection with, the taking of votes under this rule:

(i) the booth is to be taken to be a polling place; and

(ii) the building, structure, vehicle or enclosure used by the leader for the purposes of taking votes under this rule is to be taken to be a polling booth at that polling place; and

(iii) the leader is to be taken to be the presiding officer at that polling booth; and

(d) so far as is practicable, a vote under this rule is to be taken as if it were taken under the other provisions (not being rule 77) of these Rules (including such of those other provisions as relate to absent voting); and

(e) rule 154 applies as if the reference to polling daywere a reference to the time of the visit.

(10) Paragraph 74 (1) (a) does not apply to a leader after the first visit made by him or her for the purposes of this rule.

(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.

(12) Where a voter has voted under this rule in an election, any postal ballot‑paper received by the Returning Officer that is, or that purports to be, a postal ballot‑paper of the voter must not be admitted in the scrutiny in relation to the election.

**81 Forwarding of votes**

(1) A presiding officer must:

(a) place in a parcel all the envelopes which purport to contain the ballot‑papers of those voter s who recorded votes at the polling place and all the envelopes handed in by persons who have cast postal votes, seal up the parcel and forthwith deliver it, or cause it to be delivered, to the Returning Officer; and

(b) forward to the Returning Officer advice in writing of the total number of envelopes enclosed in the parcel delivered or to be delivered to the Returning Officer.

(2) The Returning Officer must:

(a) extract the voter cards of persons who have cast absent votes from the records forwarded to him or her under rule 85 and subrules 77 (9), 79 (7) and 80 (11) and retain a copy of all such voter cards; and

(b) extract the envelopes of persons who have cast absent votes or postal votes from the ballot‑boxes forwarded to him or her under subrules 77 (9), 79 (7) and 80 (11); and

(c) extract the envelopes of persons who have cast absent votes or postal votes from the parcels forwarded to him or her under subrule (1); and

(d) until they are dealt with under other provisions of these Rules, keep the voter cards and envelopes in one or more securely fastened ballot‑boxes.

(3) The Returning Officer must:

(a) maintain a locked and sealed ballot‑box for each ward labelled so as to identify it as a ballot‑box containing absent votes, postal votes and pre‑poll votes; and

(b) keep in those ballot‑boxes, until the scrutiny, all envelopes purporting to contain a ballot‑paper recording an absent vote, a postal vote or a pre‑poll vote in relation to the wards, being, in the case of envelopes purporting to contain postal ballot‑papers, envelopes:

(i) delivered to the Returning Officer before the end of the period of 6 days after the close of the poll; or

(ii) received from a pre‑poll voting officer or a presiding officer where the envelope bearing the voter card bears evidence that it was received by the pre‑poll voting officer or presiding officer prior to the close of the poll.

(4) Before placing in the ballot‑box maintained under subrule (3) an envelope purporting to contain a postal ballot‑paper and delivered to the Returning Officer which is received after the close of the poll and which does not bear evidence sufficient to satisfy the Returning Officer that the vote contained in the envelope was recorded before the close of the poll, the Returning Officer must endorse on the envelope the date of its receipt and initial the endorsement.

**82 Questions to ask voter**

(1) The presiding officer must ask each person attending before him or her and claiming to vote in an election if they have voted before in the election.

(2) In addition to the question put under subrule (1) the presiding officer must ask each person claiming to vote as an absent voter in an election to identify the ward in respect of which the person is enrolled.

(3) A person’s claim to vote must be rejected if:

(a) the person refuses to answer fully any question put to him or her by the presiding officer; or

(b) the presiding officer establishes that the person has voted before in the election.

(4) If a person’s claim to vote is not rejected, the presiding officer must then hand to the person a voter card.

**83 Completion of voter card**

(1) Upon receiving a voter card, each voter must:

(a) insert his or her details on the voter card; and

(b) sign the voter card in the presence of the issuing officer; and

(c) give the voter card to the issuing officer for his or her signature.

(2) The issuing officer must:

(a) sign the voter card and write on it the date of his or her signing it; and

(b) separate the voter card from the voter card envelope; and

(c) hand to the voter the envelope and a ballot‑paper for the ward in respect of which the voter claims to be enrolled.

**84 Objection by scrutineer**

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

**85 Voter record**

(1) The particulars recorded on the voter cards completed at a polling place comprise the record of the name of each voter:

(a) who casts a vote at the polling place; and

(b) in the case of an absent voter — of the ward in respect of which the voter declares under rule 75 that he or she is enrolled.

(2) The voter cards completed at a polling place must, at the close of the poll, be forwarded to the Returning Officer.

(3) The presiding officer at a polling place must make a record of the name of each voter who casts a vote at the polling place and, in the case of an absent voter, of the ward in respect of which the voter declares under subrule 75 (1) that he or she is enrolled, and must, at the close of the poll, forward the record, duly certified by him or her, to the Returning Officer.

**86 Voting procedure**

Except as otherwise provided by these Rules, the voter upon receipt of the ballot‑paper must without delay:

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

(b) fold the ballot‑paper so as to conceal his or her vote; and

(c) insert the ballot‑paper into the voter card envelope; and

(d) seal the voter card envelope; and

(e) present the envelope to the liaison officer present in the booth.

**87 Function of liaison officers**

(1) The liaison officer must decide whether, on the balance of probability, the voter who has presented him or her with their voter card envelope under paragraph 86 (e) is an Aboriginal person or a Torres Strait Islander.

(2) For the purposes of subrule (1), the liaison officer may ask each person who has presented him or her with their voter card envelope such questions as the liaison officer considers necessary to establish that the person is an Aboriginal person or a Torres Strait Islander.

(3) Where a liaison officer decides that a person who has presented him or her with their voter card envelope is not an Aboriginal person or a Torres Strait Islander the liaison officer must record the details in the Record of Liaison Officer’s Objections and sign the record.

(4) The liaison officer must then hand the envelope back to the voter who must deposit the envelope in the ballot box.

(5) Where the liaison officer records details under subrule (3), the liaison officer must advise the voter :

(a) that the voter may seek a review of the liaison officer’s decision by a regional panel assembled under subrule 88 (5); and

(b) of the procedures by which the review process can be instigated; and

(c) that the voter’s ballot‑paper will not be admitted to the scrutiny unless the regional panel decides that the voter is an Aboriginal person or a Torres Strait Islander.

**88 Review by regional panel**

(1) If details have been recorded under subrule 87 (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 90, 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 (l); 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.

**89 Voter to quit booth**

The voter must quit the booth immediately after:

(a) the voter has placed his or her voter card envelope in the ballot‑box; and

(b) if the liaison officer has made a record under subrule 87 (3) in respect of the voter, and the voter wishes to request a review of the decision to which the record relates — the voter has completed his or her request for review under subrule 88 (1).

**90 Assisting certain voters**

(1) If any voter satisfies the presiding officer that his or her sight is so impaired or that he or she is so physically incapacitated or illiterate that he or she is unable to vote without assistance, the presiding officer must permit a person (other than a liaison officer) appointed by the voter to:

(a) complete the voter card for the voter ; and

(b) mark the voter’s vote on the ballot‑paper; and

(c) fold the ballot‑paper so that the vote cannot be seen; and

(d) place the ballot‑paper in the voter card envelope; and

(e) fasten the envelope.

(2) If necessary the person appointed by a voter under subrule (1) must accompany the voter and present the voter’s voter card envelope to the liaison officer in accordance with paragraph 86 (e).

(3) If necessary the person appointed by a voter under subrule (1) must receive the voter’s voter card envelope from the liaison officer and in company with the voter deposit the voter’s voter card envelope in the ballot‑box.

(4) If a voter to whom subrule (1) applies fails to appoint a person under   
subrule (1) or is claiming an absent vote, the presiding officer, in the presence of any scrutineers that are present, or, if there are no scrutineers present, then in the presence of:

(a) an assistant presiding officer; or

(b) if the voter so desires, in the presence of a person appointed by the voter , instead of an assistant presiding officer;

must carry out the steps as required under subrules (1), (2) and (3).

(5) Without limiting the generality of subrule (4), a voter to whom subrule (4) applies may indicate to the presiding officer the manner in which the voter wishes the presiding officer to mark his or her ballot‑paper for him or her by presenting to the presiding officer a statement in writing (which may be, or include, a how‑to‑vote card) that specifies the manner in which the ballot‑paper is to be marked.

(6) Where subrule (1) applies in relation to an absent voter , the presiding officer must:

(a) fill in the declaration referred to in subrule 75 (1) with the required particulars as requested by the voter ; and

(b) read the declaration to the voter ; and

(c) complete and attest the declaration; and

(d) cause the declaration to be witnessed by a scrutineer or, if no scrutineer is present, by an assistant presiding officer.

**91 Spoilt ballot‑papers**

(1) If a voter, before depositing his or her ballot‑paper in a ballot‑box:

(a) satisfies a presiding officer that the voter has spoilt the ballot‑paper by mistake or accident; and

(b) asks the presiding officer for a new ballot‑paper;

the presiding officer must give the voter a new ballot‑paper and immediately cancel the spoilt ballot‑paper.

(2) An officer who cancels a spoilt ballot‑paper must:

(a) write the word ‘spoilt’ on the back of the ballot‑paper; and

(b) place the ballot‑paper in an envelope, seal the envelope and indicate in writing on the envelope the type of ballot‑paper enclosed and that the ballot‑paper is spoilt; and

(c) sign the envelope.

(3) The envelopes containing ballot‑papers dealt with in accordance with subrule (2) must be sealed up in a parcel and delivered to the Returning Officer after the close of the poll.

**92 Marking of votes**

(1) Subject to subrule (2), a voter must mark his or her vote on the ballot‑paper by placing the number 1 in the square opposite the name of the candidate for whom he or she votes as his or her first preference, and may place the numbers 2, 3, 4 (and so on, as the case requires) in the squares opposite the names of some or all of the remaining candidates so as to indicate the order of his or her preference for them.

(2) Where a candidate dies between the date of nomination and polling day, and more than 1 candidate remains, a ballot‑paper is not informal only because:

(a) the ballot‑paper includes the name of the deceased candidate; or

(b) a consecutive number is marked opposite that name; or

(c) a number has not been placed opposite that name or of any resulting failure to indicate in consecutive order the voter’s preferences.

**93 Adjournment of polling**

The presiding officer may adjourn the polling from day to day in any case where polling is interrupted by:

(a) riot or open violence; or

(b) storm, tempest, flood or an occurrence of a like kind.

**94 Adjournment in other cases**

If from any cause a polling booth at a polling place is not opened on polling daythe presiding officer may adjourn the polling for a period not exceeding 21 days, and must as soon as practicable give public notice of the adjournment.

**95 Voting at adjourned polling**

Where for any reason polling is adjourned to a later day than the day fixed for polling at a polling place, there must be no absent voting at the adjourned polling at that polling place.

**96 When elections held in some wards only**

Where an election is held for a ward, it is not necessary to open polling booths at the polling places for a ward for which no election is being held.

**Part 4 The scrutiny**

**97 Scrutiny**

The result of the polling must be ascertained by scrutiny.

**98 Scrutineers**

(1) A candidate may appoint scrutineers to represent him or her 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) An appointment of a scrutineer must be made:

(a) in writing signed by the candidate; or

(b) by electronic mail or facsimile transmission and signed by the candidate before transmission;

addressed to the Returning Officer and including the name and address of the scrutineer.

(4)In this rule, ***counting centre*** means premises at which a scrutiny or counting of ballot‑papers is to be, or is being, conducted.

**99 Conduct of scrutiny**

The scrutiny must be conducted as follows:

(a) it must commence as soon as practicable after the close of the poll;

(b) such scrutineers as have been duly appointed under rule 99, and any persons approved by the officer conducting the scrutiny, may be present;

(c) all the proceedings at the scrutiny must be open to the inspection of the scrutineers;

(d) the scrutiny may be adjourned from time to time as may be necessary until the counting of the votes is complete.

**100 Scrutiny of votes**

(1) The scrutiny must, subject to:

(a) rule 46; and

(b) the provisions of these rules relating to:

(i) absent voting; and

(ii) postal voting; and

(iii) pre‑poll voting;

be conducted in the manner set out in this Part.

(2) The scrutiny of votes must be conducted by:

(a) the Returning Officer; or

(b) a person employed or engaged under Division 4 of Part II of the *Commonwealth Electoral Act 1918* appointed by the Returning Officer for that purpose;

in the presence of any scrutineers that choose to attend and any other persons approved by the Returning Officer.

(3)The officer conducting the scrutiny in relation to a ward must:

(a) open all parcels or ballot‑boxes in which voter cards and voter card envelopes for the ward have been placed; and

(b) place in one parcel the voter cards, together with the voter card envelopes to which they relate, that:

(i) do not bear the name of the voter; or

(ii) do not bear a properly completed certification by the voter, or a certification made on the voter’s behalf under rule 90, as the case may be, that he or she is an Aboriginal person or a Torres Strait Islander;

and seal the parcel and endorse on the parcel a description of the contents, the name of the ward and the date; and

(c) place in another parcel for further scrutiny the voter cards, together with the voter card envelopes to which they relate, to which no objection has been recorded by a liaison officer; and

(d) place in another parcel the voter cards, together with the voter card envelopes to which they relate, to which an objection has been recorded by a liaison officer and in relation to which a request for review of the liaison officer’s decision has been made to the senior liaison officer; and

(e) place in another parcel the voter cards, together with the voter card envelopes to which they relate, to which an objection has been recorded by a liaison officer and in relation to which no request for review of the liaison officer’s decision has been made and seal the parcel and endorse on the parcel a description of the contents, the name of the ward and the date; and

(f) place in another parcel the voter cards, together with the voter card envelopes to which they relate, that are not signed and dated by the issuing officer in accordance with subrule 83 (2).

(4) A voter card must not be rejected under subrule (3) solely because it has not been signed and dated by the issuing officer if, before the declaration of the poll, the Returning Officer certifies that the name of the voter appears on a record of voters made by a presiding officer under subrule 85 (3).

(5) On receiving advice from the senior liaison officer under subrule 88 (7) in relation to the eligibility of voter s whose voter cards and voter card envelopes are held in the parcel referred to in paragraph (3) (d), the officer conducting the scrutiny must:

(a) in relation to the voter card and voter card envelope of a voter whom the senior liaison officer is satisfied is an Aboriginal person or a Torres Strait Islander:

(i) take the liaison officer’s objection to be cancelled; and

(ii) place the voter card and voter card envelope with the voter cards and voter card envelopes held for further scrutiny under paragraph (3) (c); and

(b) in relation to the voter cards and voter card envelopes of those voter s whom the senior liaison officer is not satisfied are Aboriginal persons or Torres Strait Islanders:

(i) place the voter cards and voter card envelopes in a parcel; and

(ii) seal the parcel and endorse on the parcel a description of the contents, the name of the ward and the date; and

(c) in relation to the voter cards and voter card envelopes of those voter s 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.

(6) Subject to subrule (7), the officer conducting the scrutiny must deal with the voter cards and voter card envelopes in the parcels referred to in paragraphs (3) (c) and (5) (a) as follows:

(a) the officer must select the voter cards and voter card envelopes of persons whom he or she is satisfied are enrolled in respect of the ward, placing the voter cards in one parcel and the envelopes in another, and then:

(i) seal the parcel of voter cards and endorse on the parcel a description of the contents, the name of the ward and the date; and

(ii) extract the ballot‑paper from inside each envelope selected; and

(iii) without inspecting or unfolding the ballot‑paper or allowing any other person to do so, immediately deposit the folded ballot‑paper in a ballot‑box for further scrutiny; and

(iv) seal the parcel of envelopes and endorse on the parcel a description of the contents, the name of the ward and the date;

(b) the officer must place in another parcel the voter cards and voter card envelopes of persons whom he or she is satisfied are not enrolled in respect of the ward, seal the parcel and endorse on the parcel a description of the contents, the name of the ward and the date.

(7) Where an officer conducting the scrutiny in relation to a ward (in this subrule referred to as the ***relevant ward***) who is dealing with a voter card under subrule (6):

(a) is satisfied that the voter who signed the voter card is not enrolled in respect of the relevant ward; and

(b) is satisfied that, if the voter were enrolled in respect of the relevant ward, the ballot‑paper would be accepted under subrule (6) for further scrutiny; and

(c) is satisfied after making such inquiry as may be necessary, that the voter was at the time of voting, entitled to be enrolled in respect of the relevant ward and was not so enrolled by reason of an error or mistake by an officer made:

(i) since the close of the Roll for the last election; or

(ii) if the last election was held less than 6 months before the election to which the scrutiny relates — since the close of the Roll for the election before the last election;

the officer must accept the ballot‑paper and scrutinise it in accordance with paragraph (6) (a).

(8) In paragraph (7) (c):

election means:

(a) a general election for the House of Representatives; or

(b) a Senate election not held concurrently with a general election for the House of Representatives; or

(c) a referendum not held concurrently with a general election.

(9) Subject to subrule (11), the further scrutiny referred to in subparagraph (6) (a) (iii) must not be conducted until all of the envelopes containing voter s’ ballot‑papers for the ward have been received.

(10) Subject to subrule (11), all ballot‑papers for the ward that are accepted for further scrutiny must be amalgamated before the further scrutiny is begun.

(11) The further scrutiny must begin no later than 13 days after polling day.

(12) At the further scrutiny, the officer conducting the scrutiny must:

(a) open the ballot‑box referred to in subparagraph (6) (a) (iii) and examine the ballot‑papers it contains; and

(b) reject all ballot‑papers that are informal under subsection 143D (2) of the Act and place them in a parcel, seal the parcel and endorse on the parcel a description of the contents, the name of the ward and the date; and

(c) arrange the formal ballot‑papers under the names of the respective candidates by placing in one parcel under the name of each candidate all the ballot‑papers marked in accordance with subrule 92 (1) on which a first preference is indicated for that candidate; and

(d) deal with the ballot‑papers in accordance with Schedule 2A to the Act.

**101 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 100 (3) to (6).

*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 100 (6) (a) (iii) and examine the ballot‑papers it contains;

(b) reject all ballot‑papers that are informal under subsection 143D (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 92 (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 3 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 106.

*Rights of scrutineers*

(7) For proceedings under subrules (4) and (5) of this rule, the requirements of paragraph 99 (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 109 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 109, 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.

**102 Combination of manual and computer scrutiny permitted**

A scrutiny of votes may be conducted partly under rule 100 and partly under rule 101, as long as the requirements of at least 1 of those rules are met in relation to the scrutiny.

**103 Scrutiny of postal and pre‑poll ballot‑papers**

Subject to rule 46 the scrutiny of postal and pre‑poll ballot‑papers must be conducted as nearly as practicable in the manner provided in rule 100.

**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 his or her decision to admit or reject the ballot‑paper.

(2) Nothing in this rule prevents the officer conducting the scrutiny from rejecting any ballot‑paper as being informal although it is not objected to.

**105 Officers not to mark ballot‑papers so that voter can be identified**

Except as authorised by these Rules, an officer must not place on 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.

**106 Counting of votes**

(1) For the purposes of Schedule 2A to the Act, a candidate is taken to have an absolute majority of votes if:

(a) the number of first preference votes given to the candidate is more than half of the total number of first preference votes given to all candidates in the count; or

(b) after an exclusion, the number of votes given to that candidate is more than half of the total number of votes given to all unexcluded candidates.

(2) If 2 or more candidates have an equal number of votes, and 1 of those candidates is required to be identified for exclusion, the officer conducting the scrutiny must:

(a) exclude the candidate who had the least number of votes at the last count at which those candidates did not have an equal number of votes; or

(b) if there has been no such count — decide by lot which candidate is excluded.

(3) If 2 unexcluded candidates have an equal number of votes and there are no other unexcluded candidates, the officer conducting the scrutiny must decide by lot which candidate is elected.

**107 Exhaustion of ballot paper**

For the purposes of Schedule 2A to the Act, a ballot paper must be set aside as exhausted if, at any stage of the count, the ballot paper expresses no preference for an unexcluded candidate.

**108 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.

**109 Recount**

(1) Before proceeding to recount any ballot‑papers, the Returning Officer must send to each candidate notice of the time and place fixed for the recount.

(2) The Returning Officer must, at the time and place fixed for the recount, in the presence of the scrutineer or scrutineers in attendance and of an officer of the Australian Public Service, open every sealed parcel of ballot‑papers to be recounted, and must count the votes therein.

(3)Each parcel of ballot‑papers to be recounted must be opened separately without destroying or rendering illegible any endorsement on the parcel and every care must be taken to prevent the ballot‑papers in the parcel from being mixed with the ballot‑papers in any other parcel.

(4)After a parcel has been opened and the votes therein counted, the Returning Officer must replace the ballot‑papers in their original cover, which he or she must reseal, refasten, and then place in a new cover, which he or she must seal and fasten and make thereon an endorsement of the fact and date of the recount, and the Returning Officer and such persons authorised to be present at the recount as choose to add their signatures must sign the endorsement.

(5) When any ballot‑papers are, at a recount, reserved for the decision of the Electoral Commissioner, the Returning Officer must, in the presence of the scrutineer or scrutineers in attendance, place the ballot‑papers in a properly fastened and sealed parcel bearing his or her signature and the signature or signatures of the scrutineer or scrutineers, together with an endorsement stating the number of ballot‑papers contained in it, the name of the ward, and the date.

*Note*   For sending ballot‑papers to the Electoral Commissioner electronically, see rule 110.

(6) The Returning Officer must then place the parcel in a fastened and sealed outer cover fully addressed to the Electoral Commissioner and at once transmit the parcel to the Electoral Commissioner by hand, registered post or courier service.

(7) On receipt of the parcel, the Electoral Commissioner must, in the presence of an officer of the Australian Public Service, and, if any candidate so desires, in the presence of a person appointed by such candidate, open the parcel and scrutinise the ballot‑papers and must mark each ballot‑paper ‘Admitted’ or ‘Rejected’, according to his or her decision to admit or reject such ballot‑papers.

(8)When the Electoral Commissioner has given his or her decision on the ballot‑papers, he or she must restore them to their original cover, refasten and reseal the cover and endorse on it:

(a) the number of ballot‑papers contained therein;

(b) a statement that the ballot‑papers have been the subject of decision by him or her; and

(c) his or her signature and the date;

and request the persons in whose presence he or she scrutinised the ballot‑papers to add their signatures, and must then place the parcel in a new cover which he or she must fasten, seal and at once return by hand, registered post or courier service to the Returning Officer.

(9) After scrutiny of the ballot‑papers (whether carried out under this rule or rule 96A), the Electoral Commissioner must advise the Returning Officer, in writing, of the number of ballot‑papers admitted or rejected by him or her, and the Electoral Commissioner’s decision must be accepted by the Returning Officer in completing his or her recount of the ballot‑papers.

(10) The receipt of every parcel of ballot‑papers must be acknowledged in writing by the Electoral Commissioner and the Returning Officer respectively.

**110 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 109 (5) to (7) do not apply to ballot‑papers that are sent to the Electoral Commissioner under subrule (1).

**111 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.

**112 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 Electoral Commissioner.

(2)The Electoral Commissioner must decide whether any ballot‑paper, reserved for his or her decision under this rule, is to be allowed and admitted or disallowed and rejected.

**Part 5 The declaration of the Poll**

**113 Declaration of Poll**

The Returning Officer must, as soon as practicable after the result of the election has been ascertained:

(a) publicly declare the result of the election and the name of the candidate elected; and

(b) advise the candidates of the result of the election and of the date, time and place of the public declaration;

(c) make out a statement setting out the result of the election and the name of the candidate elected and transmit the statement to the Electoral Commissioner.

**114 Correction of errors**

Any delay, error or omission in the printing, preparation, issue, transmission or return of any Roll or ballot‑papers may be remedied, removed, rectified and supplied by notice in writing by the Electoral Commissioner published in the *Gazette* specifying the matter dealt with, and providing for the course to be followed, and that course is valid and sufficient.

**115 Extension of time**

(1) Subject to section 142Y of the Act and in spite of any other provision of these Rules, before or after the day appointed for any election the Minister may, by notice published in the *Gazette*, extend the time for holding the election, or for holding the election in a specified ward or part of a ward, or meeting any difficulty which might otherwise interfere with the due course of the election.

(2) If the Minister extends the time for an election under subrule (1), the Electoral Commissioner may, by notice in writing, fix a date or dates for polling.

(3) Public notice must be immediately given in the ward for which the election is to be held of any extension of the time for holding the election.

**Part 6 Casual Vacancies**

**Division 1 Preliminary**

**116 Interpretation**

In this Part , unless the contrary intention appears:

***declaration day*** means the day 21 days after the date shown on the notice sent by the Returning Officer under rule 120.

**117 Notice to TSRA**

If the Minister:

(a) receives the resignation of an elected member of the TSRA under section 143Q of the Act; or

(b) removes an elected member of the TSRA from office under subsection 143S (5) or (6) or 143T (1) of the Act;

the Minister must notify the TSRA in writing of the casual vacancy.

**118 Request to the Electoral Commissioner**

(1) Subject to subrule (2), if:

(a) an elected member of the TSRA dies; or

(b) the TSRA receives notice from the Minister under rule 117; or

(c) the TSRA makes a declaration in relation to an elected member of the TSRA under subsection 143R (1) or (1A) of the Act, and:

(i) no action is taken by the person affected by the declaration under the *Administrative Appeals Tribunal Act 1975*; or

(ii) all action under that Act in relation to the declaration has been concluded; or

(d) the TSRA makes a declaration in relation to an elected member of the TSRA under subsection 143R (3) of the Act;

the TSRA must ask the Electoral Commissioner to arrange for the filling of the casual vacancy in accordance with these Rules.

(2) Subrule (1) does not apply if the Minister has fixed a day or days for polling under subsection 142Y (2) of the Act.

**119 Electoral Commissioner to fill casual vacancy**

(1) If the Electoral Commissioner receives a request under rule 118, the Electoral Commissioner must arrange for the filling of the casual vacancy in accordance with these Rules.

(2) If the Returning Officer has not completed the process of filling a casual vacancy when the Minister fixes a day for a poll, the Electoral Commissioner must not complete the arrangements referred to in subrule (1).

(3) If there is no unsuccessful candidate, the Electoral Commissioner must, as soon as practicable, notify the TSRA in writing accordingly.

**Division 2 Recount of Votes**

**120 Notice to unsuccessful candidates**

(1) If a casual vacancy for a ward is to be filled, the Returning Officer must give each unsuccessful candidate for the ward a written notice:

(a) stating:

(i) that the vacancy exists; and

(ii) that a recount is to be held to fill the vacancy; and

(b) a/;sking the unsuccessful candidate whether he or she wants to have his or her name included in the recount; and

(c) stating the address to which the unsuccessful candidate must send the declaration under rule 121.

(2) The notice under subrule (1) may be:

(a) delivered, or sent by prepaid post, to the unsuccessful candidate:

(i) at the address to which an objection to his or her enrolment must be sent under section 116 of the Electoral Act; or

(ii) if the unsuccessful candidate is no longer on a Roll, at the address to which an objection would have had to be sent under section 116 of the Electoral Act on the last occasion when he or she was enrolled; or

(b) given to the unsuccessful candidate by hand.

(3) The Returning Officer must also publish a notice in a newspaper circulating in the ward for which the former member was elected stating:

(a) that the vacancy exists; and

(b) the time and place that is fixed for the recount.

**121 Declaration by unsuccessful candidate**

(1) If an unsuccessful candidate wants to be included in the recount, the unsuccessful candidate must declare that he or she:

(a) is qualified under section 142V of the Act to be elected as a member for the ward for which the former member was elected; and

(b) consents to act if elected.

(2) A declaration made under subrule (1) must be:

(a) in the approved form; and

(b) signed by the unsuccessful candidate in the presence of an authorised witness.

(3) A declaration made under this rule must be given or sent to the Returning Officer:

(a) by hand; or

(b) by post; or

(c) by electronic mail or facsimile transmission.

**122 Time for receipt of declarations**

A declaration must be received at the address specified under paragraph 120 (1) (c) by 12.00 noon on declaration day.

**123 Rejection of declaration**

(1) Subject to subrule (2), a declaration must be rejected by the Returning Officer if, and only if, it does not comply with rules 121 and 122.

(2) A declaration must not be rejected because of a formal defect or error if it substantially complies with rule 121.

**124 Withdrawal of declaration**

(1) An unsuccessful candidate may withdraw his or her declaration before 12.00 noon on declaration day by lodging a notice of withdrawal with the Returning Officer.

(2) If a declaration is withdrawn under subrule (1), the unsuccessful candidate must not be included in the recount.

(3) A notice under this rule must be given or sent to the Returning Officer:

(a) by hand; or

(b) by post; or

(c) by electronic mail or facsimile transmission.

**125 Proceedings on declaration day**

At 12.00 noon on declaration day the Returning Officer must:

(a) attend at the address specified under paragraph 120 (1) (c); and

(b) produce all declarations received from unsuccessful candidates under rule 121; and

(c) announce the names and places of residence of those unsuccessful candidates.

**126 Further action in relation to declarations**

(1) If no unsuccessful candidate has made a declaration, the Electoral Commissioner must notify the TSRA in writing that he or she cannot proceed with the filling of the casual vacancy by recounting votes.

(2) If only 1 unsuccessful candidate has made a declaration, the Returning Officer must declare that unsuccessful candidate to be elected.

(3) If more than 1 unsuccessful candidate has made a declaration, a recount must be held.

(4) If the TSRA receives a notice from the Electoral Commissioner under subrule (1) or subrule 119 (3), the TSRA must notify the Minister that the vacancy cannot be filled by recounting votes.

(5) If the Returning Officer declares a candidate to be elected under subrule (2), the Returning Officer must, as soon as practicable after 12.00 noon on declaration day:

(a) make and sign a statement setting out the name of the person elected; and

(b) give a copy of the statement to the Electoral Commissioner.

(6) As soon as practicable after receiving the statement, the Electoral Commissioner must give a copy of the statement to the TSRA.

**127 Public notice of proceedings on declaration day**

(1) As soon as practicable after declaration day, the Returning Officer must arrange for a statement of the proceedings on declaration day to be published in a newspaper circulating in the ward for which the former member was elected.

(2) The statement must set out:

(a) the names and places of residence of the unsuccessful candidates (if any) from whom declarations have been received; and

(b) the further action taken, or to be taken, under subrule 126 (1), (2) or (3).

**128 Returning Officer to conduct recount**

If a recount is to be held, the Returning Officer must proceed to a recount of the votes cast in the most recently held election for the ward for which the former member was elected as soon as practicable after 12.00 noon on declaration day.

**129 Scrutineers at the recount**

(1) Each unsuccessful candidate whose name is included in the recount may appoint scrutineers to represent him or her at the recount.

(2) An unsuccessful candidate is not entitled to be represented at the recount by a number of scrutineers that is greater than the number of officers engaged in the recount.

(3) An appointment of a scrutineer must:

(a) be made in writing signed by the unsuccessful candidate; and

(b) state the name and address of the scrutineer; and

(c) be given or sent to the Returning Officer:

(i) by hand; or

(ii) by post; or

(iii) by electronic mail or facsimile transmission.

(4) Every scrutineer must sign an undertaking in the approved form.

(5) All proceedings at the recount must be open to the inspection of the scrutineers.

**130 Conduct of the recount**

The Returning Officer must conduct the recount in accordance with Schedule 3.

**131 Declaration of the recount**

(1) As soon as practicable after the result of the recount has been decided, the Returning Officer must:

(a) make and sign a statement setting out the result of the recount and the name of the person elected; and

(b) give a copy of the statement to the Electoral Commissioner; and

(c) arrange for a copy of the statement to be published in a newspaper circulating in the ward for which the former member was elected.

(2) As soon as practicable after receiving the statement, the Electoral Commissioner must give a copy of the statement to the TSRA.

**Division 3 By-elections**

**132 Conduct of by-elections**

(1) If the TSRA notifies the Minister under subrule 126 (4) that the Electoral Commissioner cannot proceed with the filling of a casual vacancy by recounting votes, a by-election must be held to fill the casual vacancy, unless the vacancy arises in a calendar year in which an election is to be held.

(2) The by-election must be conducted in accordance with these Rules as in force on the day on which the notice is published in the *Gazette* under subrule 133 (2) as if the by-election were an election for the ward for which the former member was elected.

**133 Timing of by-elections and location of polling places**

(1) The Minister must, by notice, fix a day or days for polling in a by-election.

(2) The Minister must issue the notice:

(a) within a period of not more than 12 months after the casual vacancy arises; and

(b) subject to subrule (3), before the beginning of the year in which the next election is to be held.

(3) If it is not possible to issue the notice before the beginning of the year in which the next election is to be held, the Minister must issue the notice as soon as practicable after the beginning of the year.

(4) The Minister must publish a copy of the notice in the *Gazette* at least 60 days before the day, or the first of the days, fixed in the notice.

(5) The Electoral Commissioner must, by notice, appoint by name the polling places he or she considers necessary for the by-election.

(6) The Electoral Commissioner must give a copy of the notice to the TSRA at least 14 days before the day, or the first of the days, fixed under subrule (1).

**Part 7 Electoral offences**

**134 Interpretation**

In this Part, ***relevant period***, in relation to an election under these Rules, means the period commencing on the publication in the *Gazette* of the notice under subsection 142Y (2) of the Act and expiring at the latest time on polling dayat which a voter could enter a polling booth for the purpose of casting his or her vote in the election.

**135 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 4, either directly or indirectly, divulge or communicate any information with respect to the vote of a voter acquired by him or her in the performance of his or her functions, or in the exercise of his or her powers, under these Rules in a manner that is likely to enable the identification of the voter.

Penalty:   10 penalty units.

*Note*   A defendant bears an evidential burden in relation to the exception in rule 135 (see subsection 13.3 (3) of the *Criminal Code*).

**136 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 for himself or herself 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 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 preferences set out in the vote of a voter;

will, in any manner, be influenced or affected.

Penalty:   10 penalty units.

(2) A person must not, with the intention of influencing or affecting:

(a) any vote of another person; or

(b) any candidature of another person; or

(c) any support of, or opposition to, a candidate by another person; or

(d) the doing of any act or thing by another person the purpose of which is, or the effect of which is likely to be, to influence the preferences set out in the vote of a voter;

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:   10 penalty units.

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

**137 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.

**138 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.

**139 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 (l) 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.

**140 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 a voter 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 a voter 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 a voter 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 a voter 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.

**141 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.

**142 Heading to electoral advertisements**

The proprietor of every newspaper must cause the word ‘advertisement’ to be printed as a headline in letters not smaller than 10 point or long primer to each article or paragraph in his or her newspaper containing electoral matter, the insertion of which is or is to be paid for or for which any reward or compensation or promise of reward or compensation is or is to be made.

Penalty:

(a) if the offender is a natural person — 5 penalty units; or

(b) if the offender is a body corporate — 10 penalty units.

**143 Authors of reports etc. to be identified**

(1) A person must not, during the relevant period in relation to an election under these Rules, print, publish or distribute, or cause, permit or authorise to be printed, published or distributed, a newspaper, circular, pamphlet or dodger containing an article, report, letter or other matter containing electoral matter unless the author’s name and address, or the authors’ names and addresses, as the case may be, are set out at the end of the article, report, letter or other matter, or where part only of the article, report, letter or matter appears in any issue of a newspaper, circular, pamphlet or dodger, at the end of that part.

Penalty:

(a) if the offender is a natural person — 5 penalty units; or

(b) if the offender is a body corporate — 10 penalty units.

(2) This rule does not apply to the publication in newspaper of:

(a) a leading article; or

(b) an article that consists solely of a report of a meeting and does not contain electoral matter, other than comment made by a speaker at the meeting.

(3) In this rule, ***address*** does not include a post‑office box.

**144 Cards in polling booth**

(1) A person must not, except for rule 73, 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*).

**145 Signature to electoral paper**

(1) Every electoral paper which under these Rules has to be signed by any person must be signed by that person with his or her personal signature.

(2) Where a person who is unable to sign his or her name in writing makes his or her mark as his or her signature to an electoral paper, the mark is to be deemed 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 rule authorises any person to sign any electoral paper by a mark or otherwise than in his or her own handwriting in cases where these Rules require him or her to sign the electoral paper in his or her own handwriting.

(4) A person must not make the signature of any other person on an electoral paper*.*

Penalty:   10 penalty units.

(5) Subrule (4) does not affect the liability of any person to be proceeded against for forgery, but so that he or she is not to be liable to be punished twice in respect of the same offence.

(6) In this rule, ***electoral paper*** includes an approved form.

**146 Witnessing electoral papers**

(1) A person must not:

(a) sign his or her name as witness on any blank electoral paper; or

(b) sign his or her name as witness on any electoral paperwhich has been wholly or partly filled up unless it has been signed by the person intended to sign it; or

(c) sign his or her name as witness on 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 rule, ***electoral paper*** includes any approved form.

**147 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 a voter is an Aboriginal person or a Torres Strait Islander.

Penalty:   10 penalty units.

**148 Unlawfully marking ballot‑papers**

Except where expressly authorised by these Rules, a person (other than the voter to whom the ballot‑paper has been lawfully issued) must not mark his or her vote or make any mark or writing on the ballot‑paper of any voter.

Penalty:   10 penalty units.

**149 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 intentionof 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 153 (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 TSRA 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.

**150 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.

**151 Badges or emblems in polling booths**

An officer or scrutineer must not wear or display in a polling booth on polling dayany badge or emblem of a candidate or political party.

Penalty:   10 penalty units.

**152 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:   10 penalty units.

(2)In this rule the term ***electoral paper*** includes any approved form.

**153 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 149 (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.

**154 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

(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.

**155 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 154; 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 154.

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

**156 Defamation of candidate**

(1) A person must not make or publish any false and defamatory statement in relation to the personal character or conduct of a candidate.

Penalty:   10 penalty units.

(2)It is a defence to a prosecution for an offence under subrule (1) if the defendant proves that he or she had reasonable ground for believing and did in fact believe the statement made or published by him or her to be true.

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

**157 Publication of matter regarding candidates**

A person must not, in any matter announced or published by the person, or caused by him or her to be announced or published, on behalf of any association, league, organisation or other body of persons, without the written authority of a candidate:

(a) claim or suggest that the candidate in an election is associated with, or supports the policy or activities of, that association, league, organisation or other body of persons; or

(b) expressly or impliedly advocate or suggest that a voter should vote for the candidate.

Penalty:   10 penalty units.

**Part 8 Miscellaneous**

**158 Further elections**

(1) Where an election for a ward:

(a) is taken under rule 27 to have wholly failed; or

(b) is declared by the Court under section 143I of the Act and Schedule 4 to the Act to be absolutely void;

the Minister may determine that a further election for a member for the ward is to be held.

(2) Where a further election is to be held, the Minister, by notice in writing, published in the *Gazette*, is to fix a day or days for the polling in relation to that election.

(3)Where the day or days for the polling in a further election are fixed under subrule (2), the Electoral Commissioner must, by notice in writing published in the *Gazette*, appoint by name such polling places as it considers necessary for each ward in respect of which a further election is to be held.

(4) Where a further election is to be held, that election must be conducted in accordance with these Rules.

**159 Advice to voters not entitled to vote in respect of a ward**

Where the Returning Officer decides that a person who has cast a vote in relation to a ward is not a voter enrolled in respect of that ward, the Returning Officer must notify the person in writing of his or her decision as soon as practicable.

**160 Extension of time for acts by officers**

Where:

(a) an officer is required by a provision of the Act or these Rules to do an act at a particular time or within a particular period; and

(b) the officer refuses or fails to do the act at the time, or within the period, required by that provision;

the Electoral Commissioner may determine that the act may be done within such further time, not exceeding 48 hours, as the Electoral Commissioner fixes.

**161 Proof of posting**

Where these Rules provide for electoral papers to be transmitted to a voter , evidence that the electoral papers were properly addressed to the voter and posted is taken, in the absence of proof to the contrary, as evidence that the papers were duly served on and received by the voter to whom they were addressed on the day when in the ordinary course of post they should have been received at his or her address.

**162 Storage and destruction of electoral papers**

(1) After the scrutiny for an election is completed, the officer who conducted the scrutiny must:

(a) parcel, in separate sealed parcels, the following classes of electoral papers received in relation to the election:

(i) ballot-papers;

(ii) voter cards;

(iii) postal voter cards; and

(iv) pre-poll voter cards; and

(b) ensure the safe custody of the electoral papers as parcelled until the Electoral Commissioner authorises their destruction.

(2) The Electoral Commissioner may authorise the destruction of the electoral papers only when:

(a) a notice is published in the *Gazette* under s 142Y(2) of the Act for the next election; and

(b) The electoral papers are no longer required by the Electoral Commission for exercising a function under the Act or these Rules.

**163 Authorised official inquiry**

(1) The Returning Officer may, if authorised by the Electoral Commissioner, open a parcel referred to in rule 162 and remove material from the parcel.

(2) Any material that has, under this rule, been taken out of a sealed parcel, may be retained by the Returning Officer or dealt with in the manner directed by the Electoral Commissioner.

(3) Where the purpose has been satisfied for which any material was, under this rule, taken out of a sealed parcel, the Returning Officer must:

(a) as soon as practicable, replace that material in the parcel from which it was taken and refasten and reseal that parcel; and

(b) by endorsement on the parcel state that the parcel had been opened by him or her and the purpose for which it had been opened.

(4) A Returning Officer who opens a sealed parcel under this rule must not mark, alter or in any way deface or permit any other person to mark, alter or deface, any document taken out of the parcel and is responsible for every such document being replaced in the same condition as when it was taken out.

**164 Collection of statistical information**

All electoral papers used at an election may, at any time after an election can no longer be questioned, be dealt with as necessary for the purposes of collecting statistical information required for the conduct of future elections.

**165 Approved forms**

1. The Electoral Commissioner may approve forms for these Rules. The approved form must be in writing and must be published by the Electoral Commissioner.
2. If the Electoral Commissioner approves a form for a particular purpose, the approved form must be used for that purpose.

*Example: An approved form might have been published by the Electoral Commissioner on the Electoral Commission’s website.*

**166 Delegation**

Where under these Rules a power or function is conferred on the Electoral Commissioner, the Electoral Commissioner may by notice in writing delegate that power or function to the Deputy Electoral Commissioner or a member of the staff of the Electoral Commission.

Schedule 1—Repeals

Torres Strait Regional Authority Election Rules 1996

1 The whole of the instrument

Repeal the instrument

**Schedule 2—Grounds on which to apply for postal or pre‑poll vote**

(Rules 34 and 52)

l. Throughout the hours of polling on polling day, the voter will not be in the ward for which he or she is enrolled.

2. The voter, at any time during the hours of polling on polling day, will not be within 8 kilometres by the nearest practical route of any polling booth or station at which a mobile polling team is scheduled to visit (either before or on polling day) in the ward for which he or she is enrolled.

3.Throughout the hours of polling on polling day, the voter will be travelling under conditions that will prevent him or her from voting at any polling booth in the ward for which he or she is enrolled.

4. The voter will be unable to attend a polling booth on polling daybecause of:

(a) serious illness; or

(b) infirmity; or

(c) approaching childbirth. (In the case of a voter who will be a patient at a hospital on polling day, this paragraph applies regardless of the operation of rule 77).

5.On polling day, the voter will be unable to attend a polling booth because he or she will be at a place (other than a hospital) caring for a person who is:

(a) seriously ill; or

(b) infirm; or

(c) expected to give birth shortly.

6.Throughout the hours of polling on polling day, the voter will be a patient in a hospital (other than a special hospital) and unable to vote at the hospital.

7. Throughout the hours of polling on polling day, the voter will be a patient at a special hospital but will be unable to have his or her vote taken under rule 77.

8. Because of the voter’s religious beliefs or membership of a religious order, the voter:

(a) is precluded from attending a polling booth; or

(b) for the greater part of the hours of polling on polling day, is precluded from attending a polling booth.

9. On polling day, the voter (except a voter able to vote under rule 79) will be:

(a) serving a sentence of imprisonment; or

(b) otherwise in lawful custody or detention.

10. Throughout the hours of polling on polling day, the voter will be engaged in his or her employment or occupation and:

(a) if the voter is an employee — will not be allowed leave of absence to vote; or

(b) in any other case — the absence of the voter for the purpose of attending a polling booth to vote would be likely to cause loss to the person in his or her occupation.

Schedule 3—Procedure at the recount

(Rule 130)

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

*ballot-papers of the former member* means:

(a) if the former member obtained an absolute majority on first preferences—the ballot‑papers on which those first preferences are marked; or

(b) if the former member was elected after a transfer or transfers of ballot-papers—all the ballot‑papers counted to the former member at the time when he or she was elected.

*continuing unsuccessful candidate* means an unsuccessful candidate who:

(a) has made a declaration under rule 121; and

(b) is not excluded from the recount.

(2) In this Schedule, unless the contrary intention appears, a word or phrase defined or used in Schedule 2A to the Act has the same meaning as in that Schedule.

2. For the recount:

(a) a number marked on a ballot‑paper is taken to express a preference for a candidate if it is part of a sequence of consecutive unrepeated numbers beginning with 1 marked on the ballot‑paper; and

(b) preferences expressed for:

(i) the former member; and

(ii) unsuccessful candidates who have not made a declaration under rule 121;

must be disregarded; and

(c) the numbers on ballot‑papers that show preferences subsequent to those specified in paragraph (b) are taken to be altered accordingly.

3. For the recount, a continuing unsuccessful candidate has an absolute majority if, after any particular transfer conducted in the course of the recount, the number of votes credited to that candidate is more than 50% of the total number of votes credited at that stage of the recount to all the continuing unsuccessful candidates.

4. The Returning Officer must, at the time and place fixed for the recount, in the presence of the scrutineers in attendance (if any) and a person employed or engaged under Division 4 of Part II of the *Commonwealth Electoral Act 1918*:

(a) produce the ballot‑papers bearing votes credited to the former member; and

(b) deal with those ballot‑papers in accordance with this Schedule.

5. The ballot-papers of the former member must be transferred to the unsuccessful candidates who have made a declaration under rule 121 by transferring each of the former member’s ballot‑papers to the unsuccessful candidate for whom the highest available preference is shown on the ballot‑paper.

6. If an unsuccessful candidate who has made a declaration under rule 121 receives an absolute majority, that unsuccessful candidate must be declared to be elected.

7. If no unsuccessful candidate has an absolute majority after the process referred to in clause 5:

(a) the unsuccessful candidate with the fewest votes must be excluded; and

(b) each of his or her ballot‑papers must be transferred to the continuing unsuccessful candidate for whom the next available preference is shown on the ballot-paper.

8. If:

(a) after the process referred to in clause 5 or 7, 2 or more continuing unsuccessful candidates have an equal number of votes; and

(b) a further continuing unsuccessful candidate must be excluded;

the Returning Officer is to decide by lot which candidate is to be excluded.

9. If, after the process referred to in clause 7, no continuing unsuccessful candidate has received an absolute majority, the process described in clause 7 is to be repeated until:

(a) a continuing unsuccessful candidate has received an absolute majority of the votes of the former member; or

(b) there are only 2 continuing unsuccessful candidates.

10. If there are only 2 continuing unsuccessful candidates:

(a) the continuing unsuccessful candidate with the most votes must be declared to be elected; or

(b) if the continuing unsuccessful candidates have an equal number of votes—the Returning Officer is to decide by lot which candidate is to be elected.

11. A ballot-paper must be set aside as exhausted if, at any stage during the recount, it is found that the ballot‑paper expresses no preference for a continuing unsuccessful candidate.