

TASMANIA

LOCAL GOVERNMENT ELECTORAL BILL 2025

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LOCAL GOVERNMENT ELECTORAL BILL 2025

*(Brought in by the Minister for Local Government, the
Honourable Kerry John Vincent)*

A BILL FOR

An Act to provide for the holding of elections to elect persons to a council, to regulate the conduct of those elections, to provide for the enrolment of electors for the purposes of those elections and to provide for related matters

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Local Government Electoral Act 2025*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Interpretation

In this Act, unless the contrary intention appears –

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absolute majority means –

- (a) if no councillors are suspended, more than half of the total number of councillors to be elected to a council; or
- (b) if one or more councillors are suspended, more than half of the total number of councillors to be elected to a council after subtracting the number of councillors who are suspended;

approved means approved by the Tasmanian Electoral Commission;

ballot material means –

- (a) a ballot paper; and
- (b) instructions for the completion of the ballot paper; and
- (c) instructions for the manner in which the ballot paper is to be returned;

by-election means a by-election held in accordance with section 83;

candidate means a person whose notice of nomination for an election has been accepted under section 44(3);

certificate of election means a certificate of the result of an election published by the

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Electoral Commissioner in accordance with section 79(2);

closing day means the day and time fixed in accordance with section 40 on and at which polling for an election is to close in respect of all or specified electoral area;

continuing candidate means a person who, at the time of lodging a notice of nomination –

- (a) holds the office of councillor; and
- (b) has held that office continuously since the day on which the certificate of election was issued in relation to the person's election to the office of councillor, whether the person was elected at –
 - (i) an ordinary election; or
 - (ii) a recount of votes under section 80; or
 - (iii) a recount to fill a casual vacancy under section 82; or
 - (iv) a by-election;

corporate body nominee means a natural person whose nomination by a corporate body has been accepted by the Electoral Commissioner in accordance with section 44;

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council means a council established by section 18 of the *Local Government Act 1993*;

council committee means a council committee established under section 23 of the *Local Government Act 1993*;

councillor means a person elected to a council and includes the Lord Mayor, Deputy Lord Mayor, mayor, deputy mayor and alderman;

declaration of a poll means a declaration under section 78;

deputy mayor includes the Deputy Lord Mayor;

Director means the Director of Local Government appointed under 334 of the *Local Government Act 1993*;

disclosure period means the period commencing on the day on which the certificate of election was issued following the last ordinary election for the relevant electoral area and ending at the close of nominations for the following election;

election period means the period commencing on the day on which the notice of election for an election is published and ending on the declaration of a poll for that election;

elector, in relation to an election in an electoral area, means –

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- (a) a person, natural person or corporate body nominee who is included on the Local Government Electoral Roll for the electoral area; or
- (b) a person who is enrolled on the State roll, within the meaning of the *Electoral Act 2004*, for an address located within the electoral area;

electoral area means the municipal area or electoral district in which an election is to be held;

electoral advertising, in relation to an election, means any paid or unpaid matter that is communicated, or intended to be communicated, to the public, at the explicit direction or with the express authorisation of a candidate or intending candidate, for the dominant purpose of promoting the candidate's or intending candidate's campaign –

- (a) including, but not limited to, communication by any of the following means:
 - (i) notices, signs or posters;
 - (ii) pamphlets or handbills;
 - (iii) “how to vote” cards;

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- (iv) direct mail (including letterboxing);
- (v) print media;
- (vi) broadcast media;
- (vii) internet or social media;
- (viii) unsolicited automated telephone calls (including “robocalls”);
- (ix) direct electronic messages (including email, SMS or other messages via social media or messaging apps); but

(b) does not include communication made by or on behalf of any of the following, where the dominant purpose of the communication is to inform the public about the election or to promote public participation in the election process:

- (i) the Electoral Commissioner;
- (ii) the Tasmanian Electoral Commission;
- (iii) a council;
- (iv) the Local Government Association of Tasmania,

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continued under section
326 of the *Local
Government Act 1993*;

- (v) the Crown or an
instrumentality of the
Crown;

Electoral Commissioner means the person
holding that office under the *Electoral Act
2004*;

electoral district means an electoral district
referred to in section 17 of the *Local
Government Act 1993*;

electoral expenditure, in relation to an
election, means any expenditure,
including expenditure on electoral
advertising, that is incurred or authorised
for the dominant purpose of creating or
communicating a particular electoral
matter, or electoral matter generally, in
relation to the election but does not
include expenditure incurred to the extent
that the expenditure is by a person who –

- (a) is providing a communication
service, or communication
platform, that is used to create or
communicate electoral matter; or
- (b) is providing a service for another
person who is engaged, on a
commercial basis, to create or
communicate electoral matter;

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electoral material means –

- (a) physical, digital or electronic ballot papers; and
- (b) a voting declaration in accordance with section 51(3);

electoral matter means any matter relating to an election, including electoral advertising, and any paid or unpaid matter that is communicated, or intended to be communicated, to the public for the dominant purpose of influencing the way that electors vote in the election, including, but not limited to, material that expressly or implicitly expresses support for or opposition to any of the following:

- (a) a candidate or intending candidate;
- (b) a registered political party;
- (c) a group of candidates;

electoral officer means a person appointed as an electoral officer in accordance with section 36;

electoral officer in charge means an electoral officer appointed under section 36 to be in charge of –

- (a) an issuing and receiving place; or
- (b) a polling place; or

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(c) a pre-poll polling place; or

(d) a mobile polling place;

Local Government Electoral Roll means a roll kept under section 17;

financial year means a period of 12 months starting on 1 July in one year and ending on 30 June in the next year;

general manager means the person appointed as a general manager under section 61 of the *Local Government Act 1993* and includes a person nominated under section 12;

gifts or donations means a gift or donation, monetary or in kind, (including but not limited to goods, services, discounts or benefits) –

(a) with a value of \$50 or more; and

(b) where the donor knew, or ought reasonably to have known, that all or part of the gift or donation was given for the purpose of supporting the candidate's campaign;

gifts and donations register means a register of gifts and donations kept and maintained by the Tasmanian Electoral Commission in accordance with section 113;

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initial gifts and donations return means a return, in an approved form, disclosing the nature, source and value of any gifts and donations received by a candidate during the disclosure period;

intending candidate means a person who has publicly declared the person's intention to nominate for an election in accordance with section 43;

issuing and receiving place means a place, vehicle or other mobile facility appointed by the Electoral Commissioner under section 31 in respect of an electoral area as a location where supplementary ballot material may be issued and ballot material may be received;

list of electors means the list prepared and kept under section 20;

mayor includes the Lord Mayor;

mobile polling place means a place appointed as a mobile polling place by the Electoral Commissioner under section 32;

municipal area means an area as defined in section 16 of the *Local Government Act 1993* and includes a proposed municipal area as defined in that Act;

nomination period means the period beginning at 9 a.m. on the 8th Monday immediately before the closing day and ending at noon

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on the 6th Monday immediately before the closing day;

notice of election means a notice published by the Electoral Commissioner in accordance with section 41;

notice of nomination means a notice of nomination referred to in section 43;

ordinary election means an election under Part 2 that is not a by-election;

place means any premises or place where electoral processes or ballot material handling occurs, including but not limited to issuing and receiving places, polling places, pre-poll polling places and mobile polling places;

polling period means a period of one or more days determined by the Electoral Commissioner for the purposes of an election;

polling place means a place appointed as a polling place by the Electoral Commissioner under section 32;

pre-poll polling place means a place appointed as a pre-poll polling place by the Electoral Commissioner under section 32;

public office means –

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- (a) in the case of a municipal area, the place at which a council carries on its administrative activities; or
- (b) in the case of a proposed municipal area, the place at which a council or councils of that proposed municipal area carry out their administrative activities;

registered party means a registered party within the meaning of the *Electoral Act 2004*;

regulations means the regulations made under this Act;

relevant period means the period starting on the 30th day before the date of notice of election and ending at the end of the polling period;

returning officer means a person appointed as a returning officer by the Electoral Commissioner in accordance with section 35;

review means a review carried out by the Tribunal under section 22;

roll closure day means the day on which the Local Government Electoral Roll for an electoral area is closed under section 19;

scrutineer means a person appointed to be a scrutineer under section 64;

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simple majority means the majority of councillors of a council present and able to vote at a meeting of the council or council committee;

Tribunal means the tribunal established under the *Tasmanian Civil and Administrative Tribunal Act 2020*;

Tasmanian Electoral Commission means the Tasmanian Electoral Commission established by section 6 of the *Electoral Act 2004*.

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Part 2 – Election of Mayors, Deputy Mayors and Councillors

**PART 2 – ELECTION OF MAYORS, DEPUTY
MAYORS AND COUNCILLORS**

Division 1 – Election of mayors and deputy mayors

4. Election of mayor by electors

The mayor of a council is to be elected by the electors of the electoral area.

5. Eligibility for nomination as mayor

- (1) A person is eligible to nominate as a candidate for the office of mayor if the person is eligible to nominate as a candidate for the office of councillor under Part 6.
- (2) A person may not accept the office of mayor unless the person is a councillor.
- (3) The provisions of section 43 relating to notices of nominations apply to a person who is eligible to nominate as a candidate for the office of mayor.

6. Election of mayor by councillors in certain cases

If there is no nomination for the office of mayor of a council, the councillors of the council are to elect one of their number to the office in the prescribed manner.

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7. Election of deputy mayor by councillors and term of office of deputy mayor

- (1) A councillor, who is not the mayor, is eligible to nominate as a candidate for the office of deputy mayor.
- (2) The councillors are to elect one of their number, who has nominated as a candidate under subsection (1), to the office of deputy mayor.
- (3) The election of a councillor to the office of deputy mayor under subsection (2) is to be –
 - (a) held in a prescribed manner; and
 - (b) held during the first or second ordinary meeting of the council held after the date of issue of the certificate of election in respect of an ordinary election for the election of the councillors participating in the election; and
 - (c) determined by a simple majority of councillors; and
 - (d) for the term of the council or for a lesser period that is agreed to by a simple majority of councillors.
- (4) If the office of deputy mayor becomes vacant for any reason, the councillors are to elect one of their number to the office of deputy mayor in the prescribed manner for the balance of the term.
- (5) If the deputy mayor is acting as mayor or is temporarily absent for any period, the councillors

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may appoint one of their number to act as deputy mayor during that period.

8. Term of office of mayor

- (1) The mayor is to be elected for a period of 4 years and hold office from the date of issue of the certificate of election in respect of an ordinary election for that office until the date of issue of the next certificate of election in respect of an ordinary election for that office.
- (2) If the office of mayor becomes vacant for any reason, the deputy mayor is to act in that office –
 - (a) until the certificate of election for the by-election for that vacancy is issued; or
 - (b) if the vacancy is within 6 months before the notice of the election is to be given, until the certificate of election for that election is issued.

Division 2 – Election of councillors

9. Election of councillors

- (1) A councillor is to be elected –
 - (a) if a municipal area is not divided into electoral districts, by the electors in that municipal area; or
 - (b) if a municipal area is divided into electoral districts, by the electors of the

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electoral district in respect of which the
councillor is to be elected.

- (2) The election of councillors is to be held in accordance with this Act.
- (3) The number of persons to be elected as councillors by each municipal area is specified in Column 3 of Schedule 3 to the *Local Government Act 1993* next to the name of that municipal area.
- (4) The Governor, on the recommendation of the Minister, may amend or substitute Column 3 of Schedule 3 to the *Local Government Act 1993*, or substitute that Column of that Schedule, in an order made under section 214E of that Act.

10. Term of office of councillors

- (1) A councillor is to be elected for a period of 4 years and holds office from the date of issue of the certificate of election in respect of an ordinary election for that office until the date of issue of the next certificate of election in respect of an ordinary election for that office.
- (2) The Governor, on the recommendation of the Minister, may make an order determining or altering the term of office of a councillor of a council elected –
 - (a) at an election following the dismissal of all the councillors of that council; or
 - (b) at a deferred poll.

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11. Resignations

- (1) A councillor may resign from office at any time.
- (2) A resignation is to be made in writing and forwarded to the general manager.
- (3) Except as provided in subsection (6), on the date of receipt by the general manager of the resignation of a councillor –
 - (a) the resignation takes effect; and
 - (b) the office of councillor becomes vacant.
- (4) On receipt of a resignation, the general manager is to advise the council and the Electoral Commissioner of the resignation.
- (5) A councillor who has resigned as mayor or deputy mayor may continue in office as councillor.
- (6) A councillor who holds the office of a mayor or deputy mayor and resigns as councillor ceases to hold such office.

12. Acting general manager

The Electoral Commissioner may nominate a natural person to exercise the powers and perform the functions of a general manager under this Part in relation to an election for a proposed municipal area.

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Part 2 – Election of Mayors, Deputy Mayors and Councillors

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13. Prescribed procedures for certain elections

Regulations may provide for different procedures than specified in this Act for the purpose of an election for an existing municipal area or proposed municipal area to be held as a result of an order made under 214E of the *Local Government Act 1993*.

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Part 3 – Electors and Local Government Electoral Rolls

**PART 3 – ELECTORS AND LOCAL GOVERNMENT
ELECTORAL ROLLS**

14. Entitlement for electors to vote in election

Each elector is entitled to one vote in an election for an electoral area.

15. Entitlement to be enrolled on Local Government Electoral Roll

(1) In this section –

occupier, in relation to land in an electoral area, means –

- (a) a natural person, or a corporate body, that holds a current lease of the land in the person's or body's own name; or
- (b) a natural person, or a corporate body, that holds a current licence in the person's or body's own name to occupy the land, including, but not limited to, a private purposes licence within the meaning of section 86AA of the *Local Government Act 1993*; or
- (c) a natural person whose ordinary place of residence is within the electoral area and who has resided in Tasmania for a continuous period of at least 12 months.

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- (2) A person may apply to the Electoral Commissioner for an entitlement to be enrolled on the Local Government Electoral Roll for an address within an electoral area if, at the time of making the application –
- (a) in the case of an applicant who is a natural person, the natural person has resided in Tasmania for a continuous period of at least 12 months immediately before the date of making the application; and
 - (b) in the case of an applicant who is a corporate body, the corporate body has maintained a registered office or principal place of business in Tasmania for a continuous period of at least 12 months immediately before the date of making the application; and
 - (c) the applicant –
 - (i) is an owner or occupier of land in the electoral area; and
 - (ii) has attained the age of 18 years; and
 - (iii) is not currently serving a term of imprisonment.
- (3) An application under subsection (2) must –
- (a) be in an approved form; and
 - (b) include any information or documents that provide evidence that the applicant

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- meets all of the requirements set out in subsection (2)(a), (b) and (c); and
- (c) include any other approved information or approved documents; and
 - (d) be signed by the applicant; and
 - (e) be lodged with the Electoral Commissioner.
- (4) Without limiting the information or documents that may be included in an application for the purposes of subsection (3)(b), the application may include any one or more of the following documents in the name of the applicant:
- (a) a residential tenancy agreement as defined in the *Residential Tenancy Act 1997*;
 - (b) a private purposes licence within the meaning of section 86AA of the *Local Government Act 1993*;
 - (c) an account for the supply of electricity;
 - (d) an account for water services;
 - (e) an account for gas services;
 - (f) an account for telecommunication services.
- (5) On receipt of an application under subsection (2), the Electoral Commissioner must –
- (a) approve the application, if the Electoral Commissioner is reasonably satisfied that

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the applicant meets all of the requirements set out in subsection (2)(a), (b) and (c), and notify the applicant in writing of that approval; or

- (b) refuse to approve the application, if the Electoral Commissioner is not reasonably satisfied that the applicant meets all of the requirements set out in subsection (2)(a), (b) and (c), and notify the applicant in writing of that refusal.

- (6) If the Electoral Commissioner approves an application under subsection (5)(a) and the applicant is a natural person, the natural person is entitled to be enrolled on the Local Government Electoral Roll for the relevant address within the electoral area.

- (7) If the Electoral Commissioner approves an application under subsection (5)(a) and the applicant is a corporate body, the corporate body is entitled to be enrolled on the Local Government Electoral Roll for the relevant address within the electoral area.

16. Nomination of natural persons to vote on behalf of corporate bodies

- (1) Subject to this section, if a corporate body is entitled to be enrolled on the Local Government Electoral Roll under section 15(7), the corporate body may nominate one natural person to vote on its behalf at an election held for the electoral area.

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- (2) The natural person nominated under subsection (1) must, at the time of the nomination –
- (a) be a director or the secretary of the corporate body; and
 - (b) not already be enrolled on the on the State roll within the meaning of the *Electoral Act 2004* for an address in the electoral area to which the nomination relates; and
 - (c) have attained the age of 18 years; and
 - (d) not already be a corporate body nominee for another corporate body in the same electoral area to which the nomination relates; and
 - (e) not be currently serving a term of imprisonment.
- (3) A nomination under subsection (1) is to be –
- (a) in an approved form; and
 - (b) include any approved information or approved documents; and
 - (c) signed by the natural person nominated; and
 - (d) lodged with the Electoral Commissioner.
- (4) The Electoral Commissioner must do one of the following in respect of a nomination lodged under subsection (3):

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- (a) accept the nomination of the natural person as a nominee for the corporate body, unless paragraph (b) or (c) applies;
 - (b) reject the nomination of the natural person as a nominee of the corporate body if satisfied that the corporate body does not have a registered office or principal place of business at an address in the electoral area;
 - (c) reject the nomination of the natural person as a nominee of the corporate body if satisfied that the nominated natural person –
 - (i) has not attained the age of 18 years; or
 - (ii) is already a corporate body nominee for another corporate body in the electoral area; or
 - (iii) is not a director or the secretary of the corporate body; or
 - (iv) is currently serving a term of imprisonment; or
 - (v) is subject to an order under the *Guardianship and Administration Act 1995* that affects the nominee's ability to vote on behalf of the corporate body.

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- (5) A nomination accepted by the Electoral Commissioner under subsection (4) remains valid until –
- (a) a new nomination is made by the corporate body; or
 - (b) the corporate body revokes the nomination; or
 - (c) the Electoral Commissioner is satisfied that –
 - (i) the corporate body no longer has a registered office or principal place of business on land in the electoral area; or
 - (ii) the corporate body nominee no longer meets the eligibility requirements specified under subsection (4)(b) or (c).
- (6) A corporate body may nominate only one natural person as a corporate body nominee to vote on its behalf at an election held for an electoral area, regardless of whether the corporate body has more than one registered office or principal place of business on land in that electoral area.

17. Local Government Electoral Roll

- (1) The Electoral Commissioner is to keep, in a manner determined by the Electoral Commissioner, a Local Government Electoral Roll for each electoral area, which is to include –

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- (a) the persons entitled to be enrolled under section 15(2) and the address or location of the land in respect of which each such person is entitled to be enrolled on the Local Government Electoral Roll; and
 - (b) the natural persons entitled to be enrolled under section 15(6) and the relevant address for each natural person within the electoral area; and
 - (c) the corporate body nominees for the corporate bodies entitled to be on the Local Government Electoral Roll under section 15(7) and the address or location of the land in respect of which the corporate body is entitled to be enrolled on the Local Government Electoral Roll; and
 - (d) any other matter or information that the Electoral Commissioner considers necessary or appropriate for the proper maintenance or operation of the Local Government Electoral Roll.
- (2) The Electoral Commissioner is to make any alterations and additions to the Local Government Electoral Roll that are necessary to ensure that the roll remains accurate and up to date.
- (3) The Electoral Commissioner may remove or withhold from the Local Government Electoral Roll an address or location of land if satisfied that the removal or withholding is necessary to protect the safety of –

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- (a) a person, natural person or corporate body nominee; or
- (b) a family member of a person, natural person or corporate body nominee.

18. Inspection of Local Government Electoral Roll

- (1) A person may inspect the Local Government Electoral Roll at any reasonable time and free of charge.
- (2) A person, natural person or corporate body nominee who is included under section 17 on a Local Government Electoral Roll for an electoral area may object, by notice in writing to the Electoral Commissioner, to –
 - (a) an error in the details recorded on the Local Government Electoral Roll in relation to that person, natural person or corporate body nominee; or
 - (b) the omission of the person's, natural person's or corporate body nominee's name from the Local Government Electoral Roll.
- (3) On receipt of an objection, the Electoral Commissioner –
 - (a) must review the Local Government Electoral Roll; and
 - (b) may decide to make any corrections to the Local Government Electoral Roll that the Electoral Commissioner determines are

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necessary to ensure the accuracy of the
Local Government Electoral Roll.

19. Closure of Local Government Electoral Roll

- (1) The Electoral Commissioner is to determine the day and time at which the Local Government Electoral Rolls are to be closed for an election, having regard to the method or methods of conducting the election determined under section 30.
- (2) The Electoral Commissioner must publish the determination made under subsection (1) on the Electoral Commissioner's website as soon as practicable after making it.
- (3) If the Electoral Commissioner does not make a determination under subsection (1), the Local Government Electoral Rolls are to be closed at 6:00 p.m. on the 7th Thursday before the closing day for the election.

20. List of electors

- (1) The Electoral Commissioner is to –
 - (a) prepare and keep a list of electors from the Local Government Electoral Roll as at the closing day; and
 - (b) is to certify that the list is correct.
- (2) A list of electors prepared under subsection (1) forms one list but may consist of 2 or more parts.

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- (3) The Electoral Commissioner is to provide the relevant returning officer with a copy of the certified list of electors.
- (4) Until after the closing day—
 - (a) no additional names or details may be included on the list of electors except names omitted in error; and
 - (b) no other alterations or cancellations may be made to the list of electors except to correct any error.
- (5) The returning officer on request is to provide each candidate in an electoral area with one copy of the list of electors free of charge as soon as practicable after the roll closure day determined under section 19.
- (6) A person, body or organisation must not, without reasonable excuse, use information obtained from a list of electors provided under subsection (5), unless the information is used for purposes connected with an election.

Penalty: Fine not exceeding 100 penalty units.

21. Inspection of list of electors

Any person may, at any reasonable time and free of charge, inspect the list of electors.

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22. Reviews

- (1) A corporate body or person may apply to the Tribunal for a review of the Electoral Commissioner's –
 - (a) refusal of an application under section 15(5)(b); or
 - (b) rejection of a nomination under section 16(4)(b) or (c); or
 - (c) decision to make or not to make a correction under section 18(3).
- (2) The determination of the Tribunal does not affect the conduct or outcome of an election held before the determination is made.
- (3) If the Tribunal sets aside or varies a decision made by the Electoral Commissioner under section 18(3) after the roll closure day, the Local Government Electoral Roll is not to be amended until it is reopened under this Act.
- (4) If the variation by the Tribunal would entitle the objector to vote at an election in the relevant electoral area, the objector may vote at the forthcoming election in that electoral area.

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PART 4 – COMPULSORY VOTING

23. Compulsory voting in elections for certain persons

- (1) Subject to subsection (2), a person who, at the time of an election for an electoral area, is enrolled on the State roll, within the meaning of the *Electoral Act 2004*, for an address within the electoral area, must vote at the election.

Penalty: Fine not exceeding 0.2 penalty units.

- (2) Subsection (1) does not apply if the person satisfies the Tasmanian Electoral Commissioner that the person had a valid and sufficient reason for failing to vote in the election.
- (3) Without limiting subsection (2), a person is taken to have had a valid and sufficient reason for the purposes of that subsection if the person –
- (a) was medically, physically or otherwise incapacitated from voting on the day of the election; or
 - (b) ceased to be enrolled on the State roll within the meaning of the *Electoral Act 2004* or otherwise was not entitled to vote at any time on the day of the election; or
 - (c) abstained from voting in the election because voting was contrary to the person's genuinely held religious beliefs.
- (4) Proceedings for an offence under subsection (1) may only be instituted by the Tasmanian Electoral Commissioner, the Director of Public

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Prosecutions or a person authorised in writing by
either the Commissioner or the Director.

24. Notice of failure to vote

- (1) As soon as practicable after each election held in an electoral area, the Electoral Commissioner must compile a list of persons who –
 - (a) were required under section 23 to vote in the election; and
 - (b) appear not to have voted in that election.
- (2) As soon as practicable after compiling the list under subsection (1), the Electoral Commissioner must serve a notice of failure to vote on each person on the list, unless the Commissioner is satisfied that the person provided a valid and sufficient reason for not voting in accordance with section 23(2).
- (3) A notice under subsection (2) must –
 - (a) be in an approved form; and
 - (b) specify a date (the *response date*) that is at least 21 days after the day on which the notice is served; and
 - (c) include a statement about compulsory voting in accordance with subsection (4).
- (4) The statement about compulsory voting must inform the person that –

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- (a) the person appears to have failed to vote in the election; and
- (b) it is an offence for the person to fail to vote in an election without a valid and sufficient reason; and
- (c) on or before the response date the person may respond in writing to the Electoral Commissioner –
 - (i) explaining why the person believes they voted in the election; or
 - (ii) stating the reason why the person failed to vote in the election; and
- (d) as an alternative to providing a response, the person may pay the failure to vote penalty in accordance with section 28.

25. Second notice of failure to vote if no response from person

- (1) If an person has not provided a written response or payment by the response date specified in the failure to vote notice issued under section 24(2), the Electoral Commissioner must, as soon as practicable, send a second notice of failure to vote to the person by post.
- (2) The second notice of failure to vote must –
 - (a) be in an approved form; and

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- (b) specify a date (the *second response date*) that is at least 14 days after the date on which the notice is sent to the person by post; and
 - (c) include a statement about compulsory voting in accordance section 24(4); and
 - (d) include a statement that –
 - (i) no response or payment has been received by the Electoral Commissioner; and
 - (ii) failure to respond or pay by the second response date may result in an infringement notice being issued under section 29.

26. Consideration and determination of notices

- (1) If the Electoral Commissioner receives, on or before the response date specified in a failure to vote notice under section 24 or the second response date specified in a second notice of failure to vote under section 25, written reasons from an person setting out any explanation for the failure to vote, the Commissioner must determine whether those reasons are valid and sufficient.
- (2) If the Electoral Commissioner determines that the person has a valid and sufficient reason for failing to vote at an election, no further action under this Part is to be taken in respect of that election for that person.

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- (3) If the Electoral Commissioner determines that the person does not have a valid and sufficient reason for failing to vote at an election, the Commissioner must, as soon as practicable, serve a determination notice on the person by post.
- (4) A determination notice under subsection (3) must –
 - (a) be in an approved form; and
 - (b) specify a date (the **determination response date**) that is at least 14 days after the date on which the notice is sent by post to the person; and
 - (c) include a statement that –
 - (i) the Electoral Commissioner has not accepted the reasons provided by the person for failing to vote in the election; and
 - (ii) it is an offence to fail to vote in an election without a valid and sufficient reason; and
 - (iii) the person may, on or before the determination response date, pay to the Electoral Commissioner the notice of failure to vote penalty in accordance with section 28, to avoid the issue of an infringement notice under section 29.

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27. Service of notices under this Part

- (1) A notice under this Part is taken to be effectively served on a person if it is –
 - (a) delivered personally to the person; or
 - (b) addressed to the person and left at, posted to, the person's last known postal or residential address as recorded on the Local Government Electoral Roll or otherwise notified to the Electoral Commissioner; or
 - (c) transmitted by electronic transmission to an email address nominated by the person, whether in correspondence or otherwise, for the purpose of receiving notices under this Part.
- (2) A person is deemed to have consented to the service of a notice under this Part by electronic transmission if –
 - (a) the person has provided the Tasmanian Electoral Commission with a document containing the person's email address; and
 - (b) the person has not indicated, in writing or otherwise, that the email address is not to be used for the service under this Part.
- (3) A notice served by electronic transmission under subsection (1)(c) is taken to have been received at the time at which the transmission has

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entered the recipient's electronic inbox or electronic message repository, unless –

- (a) the sender receives a notification that the transmission failed; or
 - (b) the Tasmanian Electoral Commission is aware, or ought reasonably to be aware, that the email address is not current or operative.
- (4) A notice sent by post under subsection (1)(b) is taken to have been served on the date of posting (or if the postal item is delivered, on the date of delivery), unless the postal item is returned to sender.

28. Payment of failure to vote penalty

- (1) An person may, on or before the applicable response date or determination response date under this Part, whichever is earlier, pay to the Electoral Commissioner a penalty of 0.2 penalty units in respect of the person's failure to vote in the election.
- (2) If the penalty referred to in subsection (1) is paid –
 - (a) the person's liability under section 23(1) is discharged; and
 - (b) no proceedings for an offence against section 23(1) may be instituted against the person in respect of that failure to vote; and

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- (c) an infringement notice under section 29 may not be issued to the person in respect of the failure to vote.

29. Infringement notices

- (1) The Electoral Commissioner may issue an infringement notice to a person if –
 - (a) a second failure to vote notice has been served under section 25; and
 - (b) by the second response date specified in that second failure to vote notice, the person has not –
 - (i) submitted written reasons to the Electoral Commissioner as to why the person believes they voted in the election; or
 - (ii) submitted written reasons to the Electoral Commissioner explaining why the person failed to vote in the election; or
 - (iii) paid the penalty under section 28.
- (2) The Electoral Commissioner may also issue an infringement notice to a person if –
 - (a) a determination notice has been served under section 26(3); and
 - (b) the person has not paid the penalty under section 28 by the determination response date specified in the determination notice.

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- (3) An infringement notice must –
- (a) be issued in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and
 - (b) specify whether it is issued on the ground that –
 - (i) the person failed to respond to the second failure to vote notice under section 25; or
 - (ii) the person failed to pay the penalty under section 28.
- (4) A notice issued under section 24 or 25 is not an infringement notice for the purposes of the *Monetary Penalties Enforcement Act 2005*.
- (5) The penalty payable for an infringement notice is 0.4 penalty units.
- (6) If the person pays the amount specified in the infringement notice within the time allowed, their liability under section 23(1) is discharged and no further proceedings may be taken in respect of that failure to vote in that election.

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**PART 5 – METHOD OF ELECTION, ISSUING AND
RECEIVING PLACES, POLLING PLACES AND
ELECTION OFFICIALS**

***Division 1 – Method of election, issuing and receiving places,
polling places and assistance to electors***

30. Method of election

- (1) Subject to subsection (2) and before the publication of the notice of election, the Electoral Commissioner must determine the method by which the election is to be conducted.
- (2) For the purposes of subsection (1), the Electoral Commissioner must determine that an election is to be conducted by any one or more of the following methods:
 - (a) voting by post, including provision for the hand delivery of completed postal ballots to issuing and receiving places or by attending any pre-poll polling place;
 - (b) voting by attendance at any polling place, pre-poll polling place or mobile polling place;
 - (c) any alternative voting procedures;
 - (d) arrangements to facilitate voting by electors who are interstate or overseas.
- (3) The Electoral Commissioner may only determine that an election is to be conducted by the method

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of attendance voting referred to in subsection (2)(b) if satisfied that –

- (a) the available postal services are inadequate to ensure the reliable conduct of the election by postal ballot; or
 - (b) the estimated cost of conducting the election by postal ballot would exceed the estimated cost of conducting the election by attendance voting.
- (4) The Electoral Commissioner must, at least 6 months before the day on which the notice of election is published –
- (a) notify the Minister for Local Government, in writing, of the method or methods by which the election is to be conducted; and
 - (b) publish a statement on the Electoral Commissioner’s website setting out the method or methods of voting to be used for the election, including any alternative voting procedures.

31. Appointment of issuing and receiving places

- (1) Subject to the method of conducting an election determined by the Electoral Commissioner under section 30 and this section, the Electoral Commissioner may appoint a place, vehicle or other mobile facility within, or in close proximity to, an electoral area as a location where ballot

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material may be issued, and ballot material may be received, for an election for the electoral area.

- (2) The Electoral Commissioner may appoint a hospital, convalescent home, nursing home or other similar place at which a mobile facility may be operated for the purposes of issuing and receiving ballot material for an election in an electoral area.
- (3) In determining the number and location of issuing and receiving places under subsection (1), the Electoral Commissioner must have regard to –
 - (a) the size and geography of the electoral area; and
 - (b) the population distribution and density of electors in the electoral area; and
 - (c) the accessibility of locations to electors, including those in remote areas; and
 - (d) any other matter that the Electoral Commissioner considers relevant to ensure equitable access to voting in the election.
- (4) The Electoral Commissioner is to determine the hours during which each issuing and receiving place is to operate.
- (5) The Electoral Commissioner is to publish a notice setting out –

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- (a) the location and type of each issuing and receiving place; and
- (b) the hours during which each issuing and receiving place is to operate –

by any means that the Electoral Commissioner considers appropriate, including on a website maintained by or on behalf of the Electoral Commissioner.

- (6) An election is not invalid merely because an issuing and receiving place is not operating during the hours determined under subsection (4).
- (7) Once a notice of election is given under this Act, each issuing and receiving place appointed under this section remains an issuing and receiving place for the purposes of that election unless revoked by the Electoral Commissioner in accordance with this Act.
- (8) The Electoral Commissioner may appoint, in respect of an electoral area for an election, an issuing and receiving place located outside the boundaries of the electoral area.

32. Appointment of polling places, pre-poll polling places and mobile polling places

- (1) Subject to the method of conducting an election determined by the Electoral Commissioner under section 30 and this section, the Electoral Commissioner may appoint a polling place, pre-poll polling place or mobile polling place as a

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place at which electors may attend in person to cast their votes in an election for an electoral area.

- (2) The Electoral Commissioner may appoint polling places, pre-poll polling places or mobile polling places within, or where appropriate outside, the boundaries of an electoral area for an election.
- (3) The Electoral Commissioner may appoint a hospital, convalescent home, nursing home or other similar place as a location at which a mobile polling place may be operated for the purposes of conducting attendance voting for an election in an electoral area.
- (4) The Electoral Commissioner must have regard to the matters listed in section 31(3) when appointing places as polling places, pre-poll polling places or mobile polling places.
- (5) The Electoral Commissioner is to determine the hours during which each polling place, pre-poll polling place or mobile polling place is to operate.
- (6) The Electoral Commissioner is to publish a notice setting out –
 - (a) the location of each polling place, pre-poll polling place or mobile polling place; and
 - (b) the hours during which each polling place, pre-poll polling place or mobile polling place is to operate –

by any means that the Electoral Commissioner considers appropriate, including on a website

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maintained by or on behalf of the Electoral Commissioner.

- (7) An election is not invalid merely because a polling place, pre-poll polling place or mobile polling place is not operating during the hours determined under subsection (5).
- (8) Unless it is necessary to do so due to circumstances beyond the control of the Electoral Commissioner, the Electoral Commissioner may terminate the appointment of a place as a polling place, pre-poll polling place or mobile polling place only if –
 - (a) the termination is made before the notice of election is published or after the closing day for the election in the electoral area; and
 - (b) notice of the termination is published in the *Gazette* as soon as practicable after the termination is made.

33. Arrangements for operation of polling places, pre-poll polling places and mobile polling places

The Electoral Commissioner is to make any arrangements that the Electoral Commissioner considers necessary for the operation of a polling place, pre-poll polling place or mobile polling place including but not limited to making the following arrangements:

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- (a) providing an appropriate number of electoral officers and electoral officers in charge, at each polling place, pre-poll polling place or mobile polling place;
- (b) providing at each polling place, pre-poll polling place or mobile polling place an appropriate number or amount of –
 - (i) certified copies of the Local Government Electoral Roll; and
 - (ii) ballot material; and
 - (iii) electoral material; and
 - (iv) voting screens; and
 - (v) ballot boxes which can be securely fastened;
- (c) ensuring the security of ballot material and voting equipment at all times.

34. Assistance to certain electors at polling places, pre-poll polling places and mobile polling places

- (1) The Electoral Commissioner may approve procedures that are reasonable and appropriate to assist an elector at a polling place, pre-poll polling place or mobile polling place who is unable to vote without assistance.
- (2) If an elector is to be assisted in voting at a polling place, pre-poll polling place or mobile polling place, an electoral officer or an electoral officer in

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charge must advise any scrutineers present of the approved procedure by which the elector will be voting.

***Division 2 – Returning officers, electoral officers and
electoral officers in charge***

35. Appointment of returning officers

- (1) For the purposes of conducting an election under this Act, the Electoral Commissioner is to appoint a person as the returning officer for the election for the electoral area.
- (2) The Electoral Commissioner may issue directions to the returning officer in relation to –
 - (a) the conduct of an election; and
 - (b) the functions and powers of the returning officer for the election.
- (3) The returning officer is to comply with any directions issued by the Electoral Commissioner under subsection (2).
- (4) If the returning officer is absent or unable to act, or if the office becomes vacant, the Electoral Commissioner is to appoint a substitute person to act as the returning officer as soon as practicable.

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36. Appointment of electoral officers and electoral officers in charge

- (1) The returning officer, in consultation with the Electoral Commissioner, may, by instrument in writing, appoint persons to act as electoral officers to assist in the conduct of an election in an electoral area.
- (2) The returning officer, in consultation with the Electoral Commissioner, may appoint an electoral officer as the electoral officer in charge of one of the following places for an election in a electoral area:
 - (a) an issuing and receiving place;
 - (b) a polling place;
 - (c) a pre-poll polling place;
 - (d) a mobile polling place.
- (3) If an electoral officer in charge is absent, unable to act, or if the position becomes vacant, the returning officer, in consultation with the Electoral Commissioner, may appoint another person to act as the electoral officer in charge of the issuing and receiving place, polling place, pre-poll polling place or mobile polling place.
- (4) An electoral officer appointed under this section is, for the purposes of this Act, a worker within the meaning and for the purposes of the *Workers Rehabilitation and Compensation Act 1988* and

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*the Asbestos-Related Diseases (Occupational
Exposure) Compensation Act 2011.*

37. Powers of electoral officers in charge

- (1) An electoral officer in charge is responsible for maintaining order and ensuring the peace at the issuing and receiving place, polling place, pre-poll polling place or mobile polling place.
- (2) The electoral officer in charge may require a person who the officer reasonably suspects has committed an offence under this Part to leave the issuing and receiving place, polling place, pre-poll polling place or mobile polling place, and may use such force as is reasonably necessary to remove the person.
- (3) Any police officer must, if requested by an electoral officer in charge, assist in removing a person under subsection (2).

38. Returning officer, electoral officer and electoral officer in charge not prevented from voting

A returning officer, electoral officer and electoral officer in charge are not prevented from voting in an election by virtue of holding office in relation to that election.

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**39. Expenses of elections incurred by returning officers
and Electoral Commission**

All expenses reasonably incurred in connection with conducting an election in an electoral area by a returning officer and the Electoral Commissioner are to be paid by the council of the electoral area within 30 days of receiving an invoice or request for payment.

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Part 6 – Notices of Elections and Nominations

**PART 6 – NOTICES OF ELECTIONS AND
NOMINATIONS**

40. Closing day and polling period

- (1) Subject to the method of conducting an election determined by the Electoral Commissioner under section 30, and this section, the day and time on and at which the poll for an election in respect of all councils is to close in any year is 6:00 p.m. on the last Tuesday in October in that year, unless the Governor by order made under this section or section 214E of the *Local Government Act 1993* –
 - (a) fixes another day in another month or year as the closing day; or
 - (b) determines that an election in respect of all or specified councils is to be postponed.
- (2) If the day fixed for polling at an Australian parliamentary or Tasmanian parliamentary election falls within the polling period for an election in an electoral area, the Electoral Commissioner may determine the earliest practicable alternative closing day for the election in the electoral area.
- (3) The Governor, by order, may –
 - (a) fix a different day as the closing day for an election in respect of one or more specified councils; or

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-
- (b) determine that an election in respect of all or specified councils is to be postponed.
 - (4) If a notice of election has been issued and an election is being conducted, the Governor by order, may –
 - (a) fix a new closing day for that election; or
 - (b) declare the election to be abandoned and give reasons for the abandonment.
 - (5) The Electoral Commissioner may determine –
 - (a) the day on which a polling period is to commence; and
 - (b) the hours of operation for that polling period.
 - (6) If an elector is present at a polling place at the time at which polling is due to close at that polling place and the elector wishes to vote, the elector is to be given a reasonable opportunity to do so and the ballot paper completed by the elector is to be included in the poll.

41. Notice of election

- (1) The Electoral Commissioner is to, on the Saturday 12 weeks before closing day, cause a notice of election to be published prominently in a daily newspaper circulating in the relevant electoral area.

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- (2) A notice of election under subsection (1) must include the following information in relation to an election:
- (a) the date and time on and at which the Local Government Electoral Roll for the relevant electoral area will close;
 - (b) the number and nature of the vacancies to be filled;
 - (c) the qualifications for, and entitlement to vote;
 - (d) any additional information that the Electoral Commissioner considers appropriate to promote public understanding of the election process.
- (3) If two or more elections are to be held simultaneously within an electoral area, or across multiple electoral areas, the Electoral Commissioner may publish a single combined notice of election, provided that the notice satisfies the requirements of this section in respect of each election included in the notice.
- (4) The returning officer must ensure that a copy of the notice of election is displayed at the public office of the relevant council, in a location where it is clearly visible and accessible to the public during ordinary business hours.

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42. Eligibility for nomination as councillor

- (1) A person is eligible to nominate as a candidate for the office of councillor in respect of an electoral area if the person—
- (a) is enrolled on the Local Government Electoral Roll for an address in the electoral area or is enrolled on the State roll within the meaning of the *Electoral Act 2004* for an address in the electoral area; and
 - (b) is an Australian citizen; and
 - (c) is not a councillor of another council whose term of office is to end after the certificate of election is issued in respect of that other council's elections; and
 - (d) has not been barred by a court or the Tribunal under this Act, the *Local Government Act 1993* or any other Act from nominating as a candidate at any election; and
 - (e) is not an employee of the council in that electoral area; and
 - (f) has not been removed from the office of councillor because of inadequacy or incompetency; and
 - (g) is not an undischarged bankrupt; and
 - (h) is not undergoing a term of imprisonment.

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- (2) A person is not eligible to nominate as a candidate for the office of councillor if the person has been sentenced for a crime and the sentence is suspended or has not yet begun to be served.
- (3) If an electoral area is divided into electoral districts, a candidate is not required to be enrolled on a Local Government Electoral Roll in respect of the particular electoral district for which the candidate is nominated.
- (4) A person may not be a candidate for the office of councillor in more than one electoral district in an electoral area or in more than one electoral area.

43. Notices of nomination

- (1) In this section –

endorsed means formally nominated by a registered political party, within the meaning of the *Electoral Act 2004*, in accordance with the internal rules and nomination procedures of the party.

- (2) A person who is eligible under section 42 may give notice of the person's intention to nominate for the office of councillor in an electoral area.
- (3) A notice of nomination under subsection (2) must be lodged with the returning officer before the close of the nomination period –
 - (a) by the person so nominating; or

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- (b) if the person so nominating is endorsed by a registered political party, by a registered officer of the party.
- (4) A notice of nomination under subsection (2) must –
- (a) be in an approved form; and
 - (b) include a declaration by the candidate of the candidate's intention to stand for election as a councillor for the electoral area; and
 - (c) include the candidate's personal details, including name, residential address and principal place of residence in Tasmania; and
 - (d) if the candidate is endorsed by a registered political party for the election, include a statement specifying the ballot-paper name of the party under which the candidate is formally endorsed, or a group name not associated with a registered political party, under which the candidate is endorsed; and
 - (e) include a statement that the candidate is lawfully eligible to nominate for the office of councillor; and
 - (f) include an attestation confirming whether the candidate has completed the approved pre-nomination training (if applicable); and

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- (g) include the signature of at least 30 electors, or 1% of electors (whichever is lesser), from the electoral area supporting the nomination; and
- (h) include the candidate's signature.

44. Determination and rejection of nominations for councillor

- (1) Subject to this section, upon receipt of a notice of nomination, the returning officer must determine whether the notice complies with the requirements of section 43 and this section and may –
 - (a) request the person, or the registered officer of a registered party within the meaning of the *Electoral Act 2004*, who lodged the notice of nomination, in writing to provide the returning officer with any additional information that the officer may require for the purposes of enabling that officer to determine whether the notice complies with the requirements of section 43 and this section; or
 - (b) accept the nomination of the person as a candidate for the office of councillor in the electoral area; or
 - (c) reject the nomination of the person as a candidate for the office of councillor in the electoral area.

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- (2) Upon receipt of a notice of nomination, and any additional information provided in accordance with subsection (1)(a), the returning officer must reject the nomination if, in the opinion of the returning officer –
- (a) the nominated candidate is not enrolled on either the Local Government Electoral Roll in respect of the electoral area or the State roll within the meaning of the *Electoral Act 2004*; or
 - (b) the ballot paper name of the registered political party, or the group name, with which the nominated candidate is endorsed, as specified in the statement submitted by the nominated candidate under section 43(4)(d) is –
 - (i) obscene or offensive; or
 - (ii) frivolous; or
 - (iii) intended or likely to mislead or confuse electors, including by resembling the name or ballot paper name of a registered political party within the meaning of the *Electoral Act 2004*; or
 - (c) the notice of nomination does not contain the requisite number of signatures in accordance with section 43(4)(g); or
 - (d) the notice of nomination is materially incomplete or not in the approved form; or

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- (e) the information provided in the notice of nomination is found to be false or misleading in a material way; or
 - (f) the nominated candidate is otherwise not lawfully eligible to nominate under the *Local Government Act 1993*, the *Electoral Act 2004* or any other applicable law.
- (3) The returning officer is to advise the person, or the registered officer of a registered party within the meaning of the *Electoral Act 2004*, who lodged the notice of nomination, in writing whether the nomination of the candidate has been accepted or rejected.
- (4) If the returning officer rejects a nomination under this section, the returning officer must notify the person, and where applicable the registered officer of the relevant registered party, in writing of the rejection and the reasons for it.
- (5) A decision of the returning officer under this section is final.

45. Publication of candidate information package by Electoral Commission

As soon as practicable after the close of the nomination period for an election in an electoral area, the Electoral Commission must publish, on a website maintained by or on behalf of the Commission, and make available in printed form for distribution, including by mail drop where appropriate, a candidate information package containing the following information:

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- (a) the list of candidates for the election;
- (b) whether each candidate is –
 - (i) endorsed by a registered party within the meaning of the *Electoral Act 2004*; or
 - (ii) standing under a group name that is not associated with a registered party within the meaning of the *Electoral Act 2004*; or
 - (iii) standing as an independent candidate;
- (c) each candidate's personal statement.

46. Withdrawal of nomination or death of candidate

- (1) In this section –

notice of nomination period, in relation to a notice of nomination, means the period referred to in section 43(2) within which the notice of nomination must be lodged.

- (2) A candidate may withdraw the candidate's notice of nomination by lodging or posting a notice in an approved form, which must be received by the returning officer before the end of the notice of nomination period.
- (3) If a candidate dies before the end of the notice of nomination period –

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- (a) the candidate is not capable of being a candidate for the election; and
 - (b) the returning officer, with the approval of the Electoral Commissioner, may extend the notice of nomination period for the election by no more than 24 hours.
- (4) If a candidate for the office of mayor dies between the end of the notice of nomination period and the end of the polling period, the Electoral Commissioner is to –
 - (a) declare that election to be abandoned; and
 - (b) fix another day as the closing day for a new election in respect of that office.
- (5) If, on the death of a candidate for the office of councillor between the end of the notice of nomination period and the end of the polling period, the number of candidates remaining exceeds the number required to be elected –
 - (a) the returning officer is to give public notice of the death of the candidate in an approved manner; and
 - (b) a poll is to be conducted under Part 7; and
 - (c) the votes cast for the deceased candidate on the ballot papers are to be counted as votes cast for the candidate shown as the elector's next preference on the ballot papers.

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- (6) If, on the death of a candidate for the office of councillor between the end of the notice of nomination period and the end of the polling period, the number of candidates remaining does not exceed the number required to be elected –
- (a) those candidates are to be declared to be elected; and
 - (b) the returning officer is to proceed in the manner specified in section 47(1).
- (7) If a candidate dies after the end of the polling period and before the declaration of the poll, the returning officer is to conduct or continue to conduct a count of the votes as if the candidate had not died, but only for the purposes of determining the outcome of the election.
- (8) If a candidate referred to in subsection (7) received sufficient votes to be elected, the office to which the candidate would have been elected to is to be treated as if it were a casual vacancy.
- (9) If a candidate referred to in subsection (7) did not receive sufficient votes to be elected, the successful candidates are to be declared elected.

47. Election without poll

- (1) If, at the end of the nomination period, the number of candidates whose nominations have been accepted and not withdrawn does not exceed the number of vacancies to be filled in the election, those candidates are to be declared elected.

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- (2) If candidates are duly elected under subsection (1), the returning officer must –
 - (a) as soon as practicable, declare the result of the election in an approved manner; and
 - (b) issue a certificate of election to each candidate, which must not be issued before the closing day; and
 - (c) notify the Electoral Commissioner of the names of the candidates declared elected.
- (3) If the number of accepted nominations for an office is less than the number of vacancies to be filled –
 - (a) the Electoral Commissioner may call for new nominations for the unfilled vacancies; and
 - (b) the Electoral Commissioner is to determine and publish the period within which such nominations may be made, which must end no later than 12 noon on the 8th Monday before the closing day.

48. Election with poll

- (1) If, at the end of the nomination period, the number of candidates whose nominations have been accepted and not withdrawn exceeds the number of vacancies to be filled, a poll is to be conducted in accordance with Part 7.

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- (2) If a poll is required under subsection (1), the returning officer must, as soon as practicable, notify the Electoral Commissioner.
- (3) The Electoral Commissioner must cause a notice to be published in a daily newspaper circulating in the relevant electoral area and displayed at all public offices of the relevant council in the electoral area, stating –
- (a) the names, and localities of the residences, of the candidates; and
 - (b) the offices to be filled at the election; and
 - (c) the polling period; and
 - (d) the locations and opening hours of issuing and receiving places, polling places, pre-poll polling places and mobile polling places and the hours during which each is open; and
 - (e) the method by which the election is to be conducted, in accordance with section 30, including whether it is to be by postal voting, or attendance voting, during the polling period; and
 - (f) information about any alternative voting methods available; and
 - (g) any other matter that the Electoral Commissioner considers appropriate.
- (4) If more than one election is to be conducted at the same time for one or more electoral areas, the

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Electoral Commissioner may publish a single notice that satisfies the requirements of subsection (3) for all the relevant elections.

49. Display of notice of nominations

- (1) As soon as practicable after 12 noon on the day following the close of the nomination period, the returning officer must –
 - (a) display at the public office of the relevant council a notice specifying the name, and address if not removed or excluded from the Local Government Electoral Rolls under section 17, of each person whose nomination for the election has been accepted; and
 - (b) promptly advise the Electoral Commissioner of those details.
- (2) The returning officer must not publicly disclose any information about any nomination until after the end of the nomination period.

PART 7 – VOTING AND BALLOTS

Division 1 – Election conducted by voting by post

50. Application of Division

This Division applies if the Electoral Commissioner has determined under section 30(2)(a) that an election is to be conducted by voting by post.

51. Ballot material

- (1) Subject to this section, during the polling period, the Electoral Commissioner must send or deliver to each elector, at the address shown on the list of electors, the following:
 - (a) the ballot material for the election;
 - (b) a return envelope and any other approved envelope required for the return of the ballot;
 - (c) a voting declaration printed on the envelope to be completed by the elector;
 - (d) a written statement from the Electoral Commissioner specifying the latest date by which the elector must complete the voting procedure and return the ballot, so that the ballot is received before the closing day;
 - (e) any other document or information that the Electoral Commissioner considers

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appropriate for the proper conduct of the election.

- (2) Any envelope used for the issue or return of ballot papers must –
 - (a) be approved; and
 - (b) provide space on the return envelope for the voting declaration; and
 - (c) be designed to protect the secrecy of the vote.
- (3) A voting declaration is to be in an approved form and must state that the elector –
 - (a) is the person named on the return envelope; and
 - (b) has completed the enclosed ballot paper.
- (4) The Electoral Commissioner may include with the ballot material printed copies of each candidate's personal statement.
- (5) This section does not limit the Electoral Commissioner's obligations under section 45 to publish candidates' personal statements.

52. Voting procedures

- (1) An elector must vote in accordance with the instructions provided on the ballot material by –
 - (a) marking the ballot paper as instructed; and

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- (b) placing the completed ballot paper in the provided envelope or envelopes; and
 - (c) completing the voting declaration; and
 - (d) unless subsection (2) applies, returning the ballot so that it is received before the close of the polling period by –
 - (i) delivering it to the returning officer; or
 - (ii) delivering it to an electoral officer in charge of an issuing and receiving place.
- (2) If an elector is unable to return the ballot in person as described in subsection (1)(d), the elector may instead –
- (a) complete a voting declaration specifying the reasons for which the elector is returning the ballot by post; and
 - (b) ensure that the ballot is posted in sufficient time for it to be received by the Tasmanian Electoral Commission before the return mailing date specified on the envelope under section 60(1)(e).

53. Supplementary issue of ballot materials

- (1) Subject to this section, the Electoral Commissioner, the returning officer or an electoral officer in charge of an issuing and receiving place may issue supplementary ballot material to a person if satisfied that the person –

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- (a) is an elector in the electoral area and has not received the original ballot material; or
 - (b) is an elector in the electoral area and has spoiled any part of the original ballot material; or
 - (c) is entitled to vote in the electoral area in accordance with section 14; or
 - (d) will be absent from the person's address during the polling period and is unable to attend an issuing and receiving place to collect the original ballot material.
- (2) Supplementary ballot material may be issued to an elector –
 - (a) by means of the elector collecting the supplementary ballot material from an issuing and receiving place; or
 - (b) if the elector cannot attend an issuing and receiving place, by the Electoral Commissioner, returning officer or electoral officer in charge of an issuing and receiving place posting the supplementary ballot material to –
 - (i) the address shown on the list of electors for the elector; or
 - (ii) an alternative address nominated by the elector.

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- (3) Supplementary ballot material must not be issued by post if the Electoral Commissioner, returning officer or electoral officer in charge of an issuing and receiving place considers that the material is unlikely to be received by the elector before the return mailing date specified on the envelope under section 60(1)(e).
 - (4) A record, in an approved form, is to be kept of –
 - (a) the name and address of each person to whom supplementary ballot material is issued; and
 - (b) the reason for the issue of the supplementary ballot material to the person.

54. When ballot papers issued as supplementary ballot materials may be accepted

A ballot paper issued to a person under section 53 in respect of an electoral area may be accepted as a formal vote despite any of the following:

- (a) the person's name was omitted in error from the list of electors for the electoral area;
- (b) the person's name was omitted in error from a Local Government Electoral Roll;
- (c) the person's name was on the State roll within the meaning of the *Electoral Act 2004* for an address in the electoral area at any time since the closure of the roll for

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the most recent ordinary election for the area and the person has continuously resided in the electoral area since that time.

55. Certain postal vote ballot papers not to be accepted

A postal vote ballot paper is not to be accepted as a formal vote if, even when received on or before the close of the polling period –

- (a) it is contained in an envelope on which the voting declaration required under section 51 has not been completed by the elector in accordance with that section; or
- (b) it is not contained in an envelope approved under section 51; or
- (c) it is received from a person who is not entitled to vote in the election.

***Division 2 – Availability of postal voting at elections
conducted by voting by attendance***

56. Application of Division

This Division applies if the Electoral Commissioner has determined under section 30(2)(b) that an election is to be conducted by voting by attendance.

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57. Applications for postal voting

- (1) An elector who is entitled to vote at an election for an electoral area may apply to the Electoral Commissioner for approval to vote by postal vote in the election if the elector –
 - (a) is unable, or reasonably expects on reasonable grounds to be unable, to attend a polling place during the polling period; or
 - (b) is an elector whose address is not included on the Local Government Electoral Roll, or the State roll, within the meaning of the *Electoral Act 2004*, due to a determination by the Electoral Commissioner that the inclusion of the address would place the personal safety of the elector or a member of their household at risk.
- (2) An application under subsection (1) must –
 - (a) be in an approved form; and
 - (b) include details sufficient to identify the elector; and
 - (c) specify the address for which the elector claims to be enrolled; and
 - (d) specify the address to which postal vote materials are to be sent; and
 - (e) include a declaration by the elector stating that they are unable to attend a polling

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place or mobile polling place during the
polling period; and

- (f) be signed by the elector; and
 - (g) be lodged with a returning officer, or person approved by the Electoral Commissioner, before 4 p.m. on the eighth day before polling day.
- (3) The Electoral Commissioner may approve arrangements to obtain details of electors registered as general postal voters under the *Electoral Act 1918* of the Commonwealth.
- (4) An elector whose details are obtained under subsection (3) is deemed to have made a valid application under this section.
- (5) Subject to subsection (6), the Electoral Commissioner must make applications lodged in accordance with this section, and details of electors obtained for the purposes of subsection (4), available for public inspection at the Electoral Commissioner's office –
- (a) from the third day after polling day; and
 - (b) until the expiry of the applicable period for the preservation of electoral material under this Act.
- (6) If the address of an elector is not included on the Local Government Electoral Roll, or the State roll, within the meaning of the *Electoral Act 2004*, due to a determination by the Electoral Commissioner that the inclusion of the address

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would place the personal safety of the elector or a member of their household at risk, the Electoral Commissioner must redact all identifying address details from the publicly available version of an application made, or deemed to be made, under this section.

58. Issue of postal voting material

- (1) On receipt of an application under section 57(1) and if satisfied that the application complies with the requirements of that section, the Electoral Commissioner must issue to the elector the following postal vote materials that correspond to the electoral area for which the elector claims to be enrolled:
 - (a) a ballot paper initialled by an electoral official;
 - (b) approved instructions for the completion and return of the ballot paper;
 - (c) a postal vote declaration envelope in an approved form and any other approved return envelope;
 - (d) any other approved electoral material.
- (2) The Electoral Commissioner must issue the postal vote materials referred to in subsection (1) to the elector by –
 - (a) post or other approved delivery method to the address specified on the application

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made by the elector under section 57(1);
or

(b) delivery in person to the elector; or

(c) delivery to a person approved by the Electoral Commissioner to deliver the material to the elector.

(3) The Electoral Commissioner must keep a record, in an approved manner for an approved time, of all postal vote materials issued by the Electoral Commissioner under this section.

59. Re-issue of replacement postal voting material

(1) An elector may make a request to the Electoral Commissioner, in an approved form, before 4 p.m. on the eighth day before polling day for replacement postal vote materials issued under section 58 if the elector –

(a) has not received the postal vote materials;
or

(b) the postal vote materials have been damaged or destroyed.

(2) On receipt of a request under subsection (1), the Electoral Commissioner must issue replacement postal vote materials in accordance with section 58.

(3) The Electoral Commissioner must keep a record, in an approved manner for an approved time, of all postal vote materials re-issued by the Electoral Commissioner under this section.

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60. Postal voting procedures

- (1) Before the closing day, an elector who is issued the postal vote materials under section 58, or issued replacement postal vote materials under section 59, must vote by postal vote by –
 - (a) marking the ballot paper in accordance with the approved instructions; and
 - (b) placing the marked ballot paper in the declaration envelope provided; and
 - (c) completing and dating the declaration on the envelope stating that the elector voted on the enclosed ballot paper; and
 - (d) completing the statement on the declaration envelope affirming the elector's identity and eligibility to vote; and
 - (e) returning the envelope –
 - (i) by delivering it to an issuing and receiving place or pre-polling polling place before the closing day; or
 - (ii) by posting it to the returning officer so that it is received before the closing day.
- (2) The Electoral Commissioner may approve procedures to assist electors who are unable to vote without assistance.

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Part 7 – Voting and Ballots

Division 3 – Ballot papers

61. Ballot papers

- (1) Subject to subsection (3), the Electoral Commissioner is to approve the form and content of ballot papers for mayoral and council elections for each election, including the order of names of candidates for the office of mayor or councillor and any information essential to the conduct of the election, to be printed on the ballot paper.
- (2) Subject to subsection (3), the Electoral Commissioner is to approve the form and content of ballot papers for each councillor election, including the order of names of candidates for the office councillor and any information essential to the conduct of the election, to be printed on the ballot paper.
- (3) The Electoral Commissioner may approve variations to the layout or appearance of ballot papers approved under subsection (1) or (2) to ensure clarity or accessibility for electors, provided that the approved variation does not alter the substantive content of the ballot papers approved under subsection (1) or (2), including but not limited to the order of names of candidates for the office of councillor or mayor.
- (4) The Electoral Commissioner is to prepare and print ballot papers approved under subsections (1) and (2) for each election, including any variations to the layout or appearance approved under subsection (3).

62. Instructions of ballot papers

Instructions printed on the ballot paper for an election –

- (a) are to include a statement that the elector is to mark the ballot paper by numbering the boxes, starting from the number 1 and continuing in order, up to the same number of boxes as there are candidates, in accordance with the elector's preferences; and
- (b) are to include one of the following statements, depending on the number of councillors to be elected:
 - (i) if fewer than 5 councillors are to be elected – a statement that the elector's vote will not be counted unless the elector numbers at least the same number of boxes as the number of councillors to be elected;
 - (ii) if 5 or more councillors are to be elected – a statement that the elector's vote will not be counted unless the elector numbers at least 5 boxes.

63. Marking of ballot papers

- (1) In an election for mayor or for a single councillor, an elector –

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- (a) must mark the ballot paper by placing the number 1 in the box next to the name of the candidate of the elector's first preference; and
 - (b) may mark the ballot paper further by placing consecutive numbers, in order of preference, in the boxes next to the names of the remaining candidates.
- (2) In an election –
 - (a) if more than one councillor but fewer than 5 councillors are to be elected –
 - (i) the elector must mark the ballot paper by placing consecutive numbers, starting from number 1, in the boxes next to the names of the candidates, up to the number of councillors to be elected; and
 - (ii) the elector may place further consecutive numbers in the boxes next to the names of the remaining candidates; or
 - (b) if 5 or more councillors are to be elected –
 - (i) the elector must mark the ballot paper by placing the numbers 1 to 5, in order of preference, in the boxes next to the names of the candidates; and
 - (ii) the elector may place further consecutive numbers in the boxes

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next to the names of the remaining
candidates.

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Part 8 – Scrutineers and Presence at Polling Places

**PART 8 – SCRUTINEERS AND PRESENCE AT
POLLING PLACES**

64. Appointment of scrutineers

- (1) A candidate at an election may appoint one or more persons who are not candidates at that election to be scrutineers on the candidate's behalf.
- (2) The appointment of a scrutineer is to be –
 - (a) made in an approved form; and
 - (b) signed by both the candidate and the person appointed as scrutineer.

65. Presence of scrutineers

- (1) A scrutineer is entitled to be present at each of the following places:
 - (a) any issuing and receiving place open to electors during the polling period;
 - (b) any place where ballot material is issued, received, sorted, checked or counted;
 - (c) any polling place.
- (2) The returning officer is to determine the number of scrutineers who may be present on behalf of a candidate at each place referred to in subsection (1).
- (3) Before a scrutineer acts in that capacity at a place referred to in subsection (1), the scrutineer is to

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produce to an electoral officer evidence of their appointment as a scrutineer under section 64(1).

- (4) Upon production of evidence under subsection (3), the electoral officer is to issue the scrutineer with an identity badge, which the scrutineer is to wear or display visibly while scrutineering at any place referred to in subsection (1).

66. Scrutineering

- (1) A scrutineer may bring to the attention of an electoral officer any matter that the scrutineer reasonably believes may be contrary to the election procedures or may affect the integrity of the election.
- (2) A scrutineer must not –
- (a) fail to comply with any reasonable direction given to the scrutineer by an electoral officer; or
 - (b) interfere with, or attempt to influence, an elector or other person present; or
 - (c) communicate with any person except as necessary to perform the scrutineer's duties as a scrutineer; or
 - (d) touch or interfere with any ballot material except with the express authority of an electoral officer; or
 - (e) otherwise behave in a manner that amounts to misconduct.

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Penalty: Fine not exceeding 10 penalty units.

67. Persons entitled to be present at certain places

Except as otherwise authorised under this Act, the only persons entitled to be present at any place referred to in section 65(1) are –

- (a) electors for the purpose of casting their votes, or returning a postal vote envelope, in an election for an electoral area; and
- (a) the electoral officers appointed for that place; and
- (b) scrutineers appointed under section 64 and acting in accordance with section 66; and
- (c) any other person authorised by the Electoral Commissioner, the returning officer or an electoral officer for that place.

PART 9 – ALTERNATIVE VOTING PROCEDURES

68. Interpretation of Part

In this Part –

accessibility and inclusion organisation
means –

- (a) an organisation or peak body that focuses on advocacy, support or services for people with diverse needs (whether arising from disability, impairment or other circumstances); and
- (b) any other group or body approved for the purposes of this definition;

alternative voting procedures means voting procedures approved by the Tasmanian Electoral Commission under this Part;

remote voting area means –

- (a) the Australian Antarctic Territory, including Macquarie Island and the Territory of Heard Island and McDonald Islands; and
- (b) a ship in transit to or from a place mentioned in paragraph (a) that has been declared by the Tasmanian Electoral Commission to be an Antarctic ship; and

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Part 9 – Alternative Voting Procedures

- (c) an area within Tasmania declared by the Tasmanian Electoral Commission to be a remote voting area; and
- (d) an area outside of Tasmania but within Australia declared by the Tasmanian Electoral Commission to be a remote voting area; and
- (e) an area outside of Australia declared by the Tasmanian Electoral Commission to be a remote voting area.

69. Tasmanian Electoral Commission may approve alternative voting procedures

- (1) Subject to subsections (2), (3) and (4), the Tasmanian Electoral Commission may approve alternative voting procedures considered necessary and appropriate in the circumstances, including, but not limited to, electronic voting methods such as online voting or voting by telephone, to enable –
 - (a) electors, or classes of electors, in a remote voting area, to vote at an election by an alternative method; and
 - (b) electors, or classes of electors, who the Tasmanian Electoral Commission is satisfied do not have a reasonable opportunity to vote at an election under any other provisions of this Act, to vote at an election by an alternative method; and

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- (c) any other electors, or classes of electors, who the Tasmanian Electoral Commission is satisfied have a reasonable opportunity to vote at an election under any other provisions of this Act, to vote at an election by methods not already provided for under any other provisions of this Act.
- (2) The Tasmanian Electoral Commission may act under subsection (1) –
- (a) on its own motion; or
- (b) on the request of an accessibility and inclusion organisation.
- (3) Before acting under subsection (1)(b) the Tasmanian Electoral Commission is to, as far as is practicable, consult with any accessibility and inclusion organisation that the Commission considers necessary and appropriate.
- (4) The Tasmanian Electoral Commission must not approve any proposed alternative voting procedure under subsection (1) unless the Commission is satisfied that –
- (a) the approval is warranted, having regard to –
- (i) the practicality, security and integrity of the proposed alternative voting procedure; and
- (ii) the resources required to establish, implement and maintain the

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proposed alternative voting
procedure; and

(iii) the technological capacity, cost-effectiveness and operational feasibility of the proposed alternative voting procedure; and

(iv) the risks and mitigations associated with the proposed alternative voting procedure; and

(b) as far as practicable, the proposed alternative voting procedure provides for –

(i) the authentication and verification of the vote of an elector; and

(ii) the preservation of the secrecy of the vote of an elector; and

(iii) the security of data transmission.

(5) The Tasmanian Electoral Commission is to approve procedures to enable votes cast in accordance with approved alternative voting procedures to be securely transmitted or forwarded to the Commission in a manner that ensures accuracy, accountability and compliance with all applicable laws.

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70. Entitlement to vote by approved alternative voting procedures

An elector enabled to vote at an election under approved alternative voting procedures is entitled to vote in accordance with those procedures.

71. Counting of votes cast by approved alternative voting procedures

A vote cast by an elector in accordance with approved alternative voting procedures and transmitted or forwarded to the Tasmanian Electoral Commission in accordance with procedures approved under section 69(5), is to be counted as a postal vote for the purposes of the election.

72. Confidentiality of votes cast under approved alternative voting procedures

A person who becomes aware of how an elector voted at an election using approved alternative voting procedures must not disclose that information to any other person, except in accordance with a procedure approved under section 69(5).

Penalty: Fine not exceeding 10 penalty units.

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73. Publication of approved alternative voting procedures

The Tasmanian Electoral Commission is to publish on its website a statement, in an approved form, setting out –

- (a) the approved alternative voting procedures and the electors or classes of electors to whom they apply; and
- (b) a summary of any consultation undertaken by the Tasmanian Electoral Commission under section 69(3); and
- (c) information about compliance with this Division; and
- (d) any other information approved for publication relating to access by electors to approved alternative voting procedures.

74. Independent auditing of approved alternative voting procedures

- (1) The Tasmanian Electoral Commission must engage an independent person (the ***independent auditor***) to conduct audits of any information technology used under any approved voting procedures.
- (2) Audits under this section are to be conducted and the results of those audits must be provided to the Tasmanian Electoral Commission –
 - (a) at least 7 days before voting opens in each ordinary election at which approved

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alternative voting methods will be used;
and

- (b) within 60 days after the last declaration of the result of an election at which approved alternative voting methods were used.
- (3) Without limiting the content of the audit, the independent auditor must determine whether test votes cast in accordance with the approved alternative voting procedures were accurately reflected in the corresponding test ballot-papers produced under those procedures.
- (4) The independent auditor may make recommendations to the Tasmanian Electoral Commission to reduce or eliminate a risk that could affect the security, accuracy or secrecy of voting in accordance with the approved alternative voting procedures.

75. Independent monitoring of approved alternative voting procedures

- (1) The Tasmanian Electoral Commission may appoint one or more independent persons (an independent monitor) to monitor and observe the approved alternative voting procedures used at an election, including the counting of votes cast and the general operation of the approved alternative voting procedures.
- (2) An independent monitor must report to the Tasmanian Electoral Commissioner and may make recommendations about the approved alternative voting procedures, including but not

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limited to the effectiveness, security and
accessibility of the procedures.

Consultation Draft

PART 10 – DETERMINATION OF RESULTS OF ELECTIONS

76. Counting votes

- (1) At the end of the polling period, the electoral officer in charge is to –
 - (a) seal any ballot box at the issuing and receiving place or polling place; and
 - (b) deliver any ballot box as directed by the returning officer.
- (2) The counting of votes is to be carried out by the returning officer in accordance with –
 - (a) Part 2 of Schedule 1, if the ballot paper approved under Section 61(1) is used; or
 - (b) Part 3 of Schedule 1, if the ballot paper approved under Section 61(2) is used.
- (3) In order to ensure the secrecy of the votes, the Electoral Commission may approve the combining or mixing of ballot papers received at an issuing and receiving place or a polling place with the ballot papers received at another issuing and receiving place or polling place.

77. Informal ballot papers

- (1) A ballot paper is informal if any of the following apply:

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- (a) the ballot paper is not correctly authenticated by at least one of the following methods:
 - (i) the initials of the electoral officer who issued the ballot paper;
 - (ii) the signature of that electoral officer;
 - (iii) an approved security mark;
 - (b) no vote has been recorded on the ballot paper;
 - (c) subject to subsection (3), the vote is marked on the ballot paper otherwise than in accordance with section 63;
 - (d) there is a mark or writing on the ballot paper that, in the opinion of the returning officer or electoral officer in charge, could reasonably identify the elector who marked the ballot paper.
- (2) Despite subsection (1), a ballot paper is not to be treated as informal or rejected at the counting of votes if, in the opinion of the returning officer or electoral officer in charge, the elector's intention is clearly indicated.
- (3) If –
- (a) an elector has marked one or more numbers on the ballot paper to indicate preferences that are higher than the

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maximum number that the elector is required to mark under section 63; and

- (b) one or more of those higher numbers is either omitted or duplicated; and
- (c) the ballot paper would otherwise be formal –

then those omitted or duplicated numbers, and any higher numbers following the first such omission or duplication, are to be disregarded, and the ballot paper is to be treated as formal.

- (4) A decision under this section to treat a ballot paper as informal may be reviewed on written request to the returning officer, or electoral officer in charge, by a candidate or the candidate's scrutineer.
- (5) On receipt of a written request under subsection (4), a returning officer, or electoral officer in charge, must consider the request and may confirm or overturn the decision to treat a ballot paper as informal.
- (6) If a person who made a request under subsection (4) is dissatisfied with the decision made under subsection (5), the person may request a review by the Tasmanian Electoral Commission.
- (7) The Tasmanian Electoral Commission's decision on the review of a decision to treat a ballot paper as informal under this section is final.

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78. Declaration of poll

- (1) As soon as practicable after the counting of all votes is completed, the returning officer is to –
 - (a) declare the names of the candidates elected at the election; and
 - (b) issue a certificate stating the result of the election.
- (2) If elections of councillors and the mayor are conducted at the same time, the returning officer is to declare the results in the following order:
 - (a) councillor;
 - (b) mayor.

79. Certificate of election

- (1) The returning officer is to forward the certificate of the result of the election to the Electoral Commissioner.
- (2) The Electoral Commissioner is to cause a copy of the certificate of election to be published in a daily newspaper circulating generally in the relevant electoral area.
- (3) Any elector or candidate may dispute the result of an election by lodging an application with the Supreme Court within 90 days after the date on which the certificate of election is published under subsection (2).

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- (4) A dispute is to be heard and determined in the approved manner.

80. Recount of votes

- (1) A candidate at the election may, at any time before the declaration of a poll, request a recount of the votes cast at the election.
- (2) The returning officer may –
 - (a) agree to recount the votes; or
 - (b) refuse to recount the votes.
- (3) If the returning officer refuses to recount the votes, the candidate may apply to the Tasmanian Electoral Commission for a review of that decision.
- (4) The Tasmanian Electoral Commission may direct the returning officer to conduct a recount of the votes.
- (5) A recount of votes under this section is final and conclusive of the results of the election and no further request for a recount of those votes may be made.

81. Keeping of physical, digital and electronic electoral material

- (1) The returning officer is to parcel, seal and store –
 - (a) all physical electoral material in an approved manner; and

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- (b) any digital or electronic electoral material in an approved manner.
- (2) The returning officer is to give, in the approved manner, to the Electoral Commissioner the following:
 - (a) all used ballot papers;
 - (b) all digital or electronic electoral material;
 - (c) any other sealed parcels of electoral material or other material, digital, electronic or otherwise, that the Electoral Commissioner may require.
- (3) The Electoral Commissioner is to keep –
 - (a) all used ballot papers referred to in subsection (2)(a) in respect of councillors until the certificate of election is issued for the next ordinary election for those councillors; and
 - (b) the parcels of electoral material referred to in subsection (2)(b) in respect of councillors until the certificate of election is issued for the next ordinary election for those councillors; and
 - (c) all other electoral materials, electronic, digital or otherwise, for as long as is necessary to allow any dispute relating to the election to be determined.

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- (4) Ballot papers and any digital or electronic voting material may only be examined for the purpose of –
- (a) filling a vacancy; or
 - (b) another purpose approved by the Electoral Commissioner.

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Part 11 – Casual Vacancies and By-elections

**PART 11 – CASUAL VACANCIES AND BY-
ELECTIONS**

82. Casual vacancies

- (1) A casual vacancy in the office of a councillor is to be filled by a recount to fill a casual vacancy conducted in accordance with Schedule 2, using the physical, digital or electronic ballot papers from the election at which the councillor causing the vacancy was elected.
- (2) For the purpose of a recount to fill a casual vacancy, only the physical, digital or electronic ballot papers that contributed to the election of the vacating councillor are to be included, and only in respect of candidates who –
 - (a) remain eligible to hold office as councillor at the time of the recount; and
 - (b) have given written consent, in the approved form, to be included in the recount.
- (3) The Electoral Commissioner is not to carry out a recount to fill a casual vacancy if the vacancy occurs during the period commencing 6 months before, and ending on the Thursday before, the day on which the notice of election for a forthcoming election is to be given –
 - (a) beginning 6 months before the date on which the notice of election is to be given for a forthcoming ordinary election; and

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- (b) ending on the Thursday before that day.
- (4) Despite subsection (3), the Electoral Commissioner is to conduct a recount to fill a casual vacancy if the number of councillors holding office is, as a result of the vacancy, insufficient to constitute a quorum.
- (5) The Electoral Commissioner is to notify that a recount to fill a casual vacancy is to be conducted by –
- (a) delivering, in person or by post, written notice to each eligible candidate; or
 - (b) publishing an advertisement in a daily newspaper circulating generally in the relevant electoral area.
- (6) An eligible candidate who wishes to be included in a recount to fill a casual vacancy must –
- (a) consent in writing using the approved form; and
 - (b) lodge the form with the Electoral Commissioner by noon on the 8th day after the date on which a notice is given under subsection (5).
- (7) The term of office of a councillor elected by means of a recount to fill a casual vacancy ends on the date of issue of the certificate of election for the next ordinary election.
- (8) The Electoral Commissioner must not disclose to any person the results, of a recount in respect of a

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hypothetical casual vacancy, that may be obtained by performing an electronic calculation based on any electronic records of ballot papers, completed by electors or former electors, that are held in an electronic form by the Electoral Commissioner.

83. By-elections

- (1) A by-election for a vacancy in the office of councillor is to be held if –
 - (a) it is not possible to carry out a recount of votes; or
 - (b) not all the offices have been filled at an election.
- (2) Subject to subsection (3), the Electoral Commissioner may fix a day as the closing day for a by-election.
- (3) The Electoral Commissioner must not fix a closing day for a by-election if doing so would cause the polling period or polling date for the by-election to fall within the polling period for an Australian or Tasmanian parliamentary election.
- (4) A by-election is not to be held during the period specified in section 82(3).
- (5) Except as provided in subsection (6), a by-election is to be held in accordance with this Act as if it were an election.
- (6) The Electoral Commissioner, in consultation with the relevant general manager in relation to a by-election, may determine –

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- (a) the day on which notice of the by-election is to be given; and
 - (b) the nomination period; and
 - (c) the closure of Local Government Electoral Rolls.
- (7) The deputy mayor is eligible to nominate at a by-election as a candidate for the office of mayor without having to resign the office of deputy mayor and, if so elected, ceases to hold the office of deputy mayor.
- (8) If a mayor vacates office as both mayor and councillor, the vacancy in the office of councillor is to be filled by a by-election held concurrently with the by-election for the office of mayor.
- (9) The term of office of a councillor or mayor at a by-election to fill a casual vacancy is the remainder of the term of office of the councillor or mayor who caused the vacancy.

84. Adjournment of poll

- (1) The Tasmanian Electoral Commission may adjourn the conduct of a poll for a period not exceeding 30 days if satisfied that the adjournment is necessary to ensure the proper conduct of the poll.
- (2) The Tasmanian Electoral Commission, by public notice, is to specify –
- (a) the period of the adjournment; and

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(b) the reasons for the adjournment.

85. Non-application of Part

This Part does not apply in relation to vacancies in the offices of councillors of a council that arise due to the dismissal of all the councillors under this, or any other, Act.

PART 12 – OFFENCES RELATING TO ELECTIONS

86. Offences relating to polling

(1) A person must not –

- (a) vote at an election if the person is not entitled to vote at the election; or
- (b) obtain or attempt to obtain more ballot papers at an election than the number to which the person is entitled.

Penalty: Fine not exceeding 5 penalty units.

(2) A person must not –

- (a) obstruct an elector while the elector is marking a ballot paper; or
- (b) use any word or action to directly or indirectly assist in discovering the name of a person for whom an elector has voted or intends to vote.

Penalty: Fine not exceeding 10 penalty units.

(3) A person must not –

- (a) personate, or attempt to personate, another elector; or
- (b) vote, offer to vote, or attempt to vote, more than once in the person's own name at the same election; or

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- (c) attempt to vote using a ballot paper that has been issued or delivered to another person; or
- (d) during the polling period, enter the residence of an elector and attempt to induce the elector to vote, or not to vote, for a particular candidate; or
- (e) steal, misdirect, conceal, destroy, tamper with or otherwise interfere with any of the documents sent or delivered for the purposes of this Act.

Penalty: Fine not exceeding 50 penalty units.

87. Offences at issuing and receiving places, polling places and certain other places

(1) In this section –

place means a place referred to in section 65(1);

(2) An electoral officer, electoral officer in charge or a police officer acting under the direction of an electoral officer in charge, may require a person who is –

- (a) not an elector voting or about to vote at a place; or
- (b) not entitled under section 67 to be present at a place –

to leave the place.

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- (3) A person referred to in subsection (2) who is required to leave a place, by an electoral officer, electoral officer in charge or a police officer acting under the direction of an electoral officer in charge under that subsection, must immediately leave the place.

Penalty: Fine not exceeding 10 penalty units.

- (4) A person must not at a place –
- (a) act in a disorderly manner; or
 - (b) refuse or fail to comply with a lawful direction given by the electoral officer in charge of the place or a police officer; or
 - (c) display or leave any printed, written, electronic, or other material that contains directions, instructions, or suggestions, as to how an elector should or might vote at the election.

Penalty: Fine not exceeding 10 penalty units.

- (5) Except in accordance with a procedure approved under section 34, a person must not enter or occupy a screened private voting area at a place while another person is occupying that screened private voting area.

Penalty: Fine not exceeding 10 penalty units.

- (6) A person must not, without lawful authority –
- (a) occupy a screened private voting area at a place for longer than is necessary for marking the person's ballot paper; or

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- (b) obstruct, delay, or interfere with the efficient conduct of polling or ballot processing at any place; or
- (c) remove any ballot material from any place.

Penalty: Fine not exceeding 10 penalty units.

88. Offences in violation of secrecy of ballot

A person must not –

- (a) at an election, attempt to find out, or directly or indirectly aid in finding out, the person for whom a vote is given; or
- (b) disclose any knowledge of the person for whom an elector has voted at an election, if that knowledge was obtained in the course of performing duties at the election.

Penalty: Fine not exceeding 10 penalty units.

89. Bribery, treating and undue influence

(1) In this section –

election conduct, in relation to a person, means any one or more of the following:

- (a) whether or not the person votes at an election;
- (b) the way in which the person votes at an election;

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- (c) whether or not the person nominates as a candidate at an election;
- (d) whether or not the person withdraws the person's nomination as a candidate at an election;
- (e) whether the person expresses support for, or opposition to, a candidate or group of candidates at an election;

relevant period means the period commencing on the day on which the notice of election is published and ending at the close of the poll.

- (2) A person must not, during the relevant period, directly or indirectly promise, offer, give, solicit or receive any property or benefit of any kind, with the intention of influencing a person's election conduct at an election.

Penalty: Fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 5 years, or both.

- (3) Without limiting subsection (2), a person commits an offence against this section if, during the relevant period, the person supplies or offers to supply to another person food, drink or entertainment with the intention of influencing that person's election conduct at an election.

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- (4) For the purposes of this section, the following do not constitute an offence under this section:
- (a) a declaration of public policy or a promise of public action;
 - (b) the voluntary provision of transport of electors to or from polling places for the purpose of voting, where no payment or other benefit is given or arranged for the elector in consideration for the transport.
- (5) A candidate or intending candidate must not, during the relevant period, directly or indirectly offer, promise or give a gift, donation or prize to or for the benefit of –
- (a) any specific club, association or body; or
 - (b) clubs, associations or bodies generally –
- if the gift, donation or prize is made with the intention of influencing a person's election conduct at an election.
- Penalty: Fine not exceeding 50 penalty units.
- (6) In proceedings for an offence against subsection (5), it is a defence if the accused person proves on the balance of probabilities that gifts, donations or prizes similar in nature and value have, over a period preceding the relevant period, been regularly given by the accused to the relevant club, association or body.

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- (7) An offence against subsection (2) is an indictable offence under the *Criminal Code* and may be prosecuted on indictment.
 - (8) Despite subsection (7), if both the defendant and the prosecutor consent, the Magistrates Court may deal with an offence against subsection (2) summarily, if the Court is satisfied that it is proper to do so.
 - (9) If, under subsection (8), the Magistrates Court deals with an offence against subsection (2) summarily and finds the person guilty, the Court may impose a fine not exceeding 20 penalty units or imprisonment for a term not exceeding 12 months, or both.

90. Electoral intimidation

- (1) In this section –

election conduct has the same meaning as in section 89.
- (2) A person must not, by violence or intimidation, influence or attempt to influence a person's election conduct at an election.

Penalty: Fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 5 years, or both.
- (3) A person who contravenes subsection (2) is guilty of the crime of *electoral intimidation*, punishable on indictment under the *Criminal Code*.

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- (4) Despite section 389 of the *Criminal Code*, a person convicted of the crime of electoral intimidation is liable to the penalty specified in subsection (2).

91. False or misleading statements

- (1) A person must not, in giving any information, making a notification under this Act, filing a return or making an application under this Act—
- (a) make a statement knowing it to be false or misleading; or
 - (b) omit any matter from a statement knowing that without that matter the statement is misleading.
- (2) A person must not contravene or fail to comply with subsection (1).
- (3) An offence against subsection (1) is an offence punishable on indictment under the *Criminal Code*.
- (4) Despite an offence against subsection (1) being punishable on indictment under the *Criminal Code*, a court of summary jurisdiction may hear and determine proceedings in respect of the offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (5) In accordance with subsection (4), a court of summary jurisdiction finds a person guilty of an offence against subsection (1), the penalty that

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the court may impose is a fine not exceeding 300 penalty units or a term of imprisonment not exceeding 12 months, or both.

92. Continuing offences

(1) If –

- (a) by or under a section, or a subsection of a section, of this Act an act or thing is required or directed to be done within a particular period or before a particular time; and
- (b) failure to do that act or thing within the period, or before the time, referred to in paragraph (a) constitutes an offence; and
- (c) that act or thing is not done within the period, or before the time, referred to in paragraph (a) –

the following provisions of this subsection have effect:

- (d) the obligation to do that act or thing continues, notwithstanding that that period has expired or that time has passed, until that act or thing is done;
- (e) if a person is convicted of an offence that is constituted by failure to do that act or thing within that period or before that time, as the case may be, that person is guilty of a separate and further offence in respect of each day after the day of the

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conviction during which the failure to do that act or thing continues;

- (f) the fine applicable to each such separate and further offence is an amount not exceeding 0.5 penalty units.

(2) Where –

- (a) by or under a section, or a subsection of a section, of this Act an act or thing is required or directed to be done but no period within which or time by which that act or thing is to be done is specified; and
- (b) failure to do that act or thing constitutes an offence; and
- (c) a person is convicted of an offence in respect of a failure to do that act or thing –

that person is guilty of a separate and further offence in respect of each day after the day of the conviction during which the failure to do that act or thing continues, and the fine applicable to each such separate and further offence is an amount not exceeding 0.5 penalty units.

- (3) Charges against the same person for any number of offences under subsection (1)(e) or subsection (2) may be joined in the same complaint if those offences relate to a failure to do the same act or thing.
- (4) If a person is convicted of more than one offence under subsection (1)(e) or more than one offence under subsection (2), the court may impose one

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penalty in respect of all the offences of which the person is so convicted under that subsection, but that penalty is not to exceed the sum of the maximum penalties that could be imposed if the penalty were imposed in respect of each offence separately.

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Part 13 – Investigatory powers

PART 13 – INVESTIGATORY POWERS

93. Interpretation of Part

In this Part –

authorised officer means a person authorised in writing by the Electoral Commissioner to exercise powers under this Part.

94. Application of Part

- (1) The powers under this Part are in addition to, and do not limit, any other powers under this Act or any other law.
- (2) This Part applies to investigations relating to an election conducted under this Act.

95. Power to enter and inspect places

- (1) An authorised officer may enter and inspect any place, at any reasonable time, where the authorised officer reasonably suspects electoral material, ballot material or any records or documents relevant to an election under this Act are kept or may be found.
- (2) The authorised officer, entering and inspecting a place under subsection (1), may examine, make copies of and take possession of, any electoral material, ballot material, records, documents or equipment relating to the conduct of the election at the place.

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96. Power to require production of documents or information

- (1) An authorised officer may require a person to –
 - (a) produce any electoral material, documents or records in the person's possession or control relevant to an election; and
 - (b) provide information relevant to an election.
- (2) The authorised officer may examine and copy any electoral material, documents or records produced by a person under subsection (1).

97. Power to seize and detain

- (1) An authorised officer may seize and detain any ballot material, electoral material or documents if the officer reasonably believes the material or documents are relevant to an investigation under this Act.
- (2) An authorised officer must provide a receipt, for any ballot material, electoral material or documents seized and detained under subsection (1), specifying the following:
 - (a) the name of the authorising officer;
 - (b) the date on which the material or documents were seized;
 - (c) a description of the material or documents seized.

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Part 13 – Investigatory powers

98. Power to require attendance and questioning

- (1) An authorised officer may require a person to attend and answer questions relevant to an investigation under this Act.
- (2) A person referred to in subsection (1) must attend and answer questions if required to do so under the subsection.

Penalty: Fine not exceeding 200 penalty units.

- (3) A person required to attend and answer questions under subsection (1) may be accompanied by a legal representative.

99. Obstruction offences

A person must not –

- (a) obstruct, hinder or delay an authorised officer in the exercise of the officer's powers under this Part; or
- (b) refuse or fail to comply with a lawful requirement or direction under this Part.

Penalty: Fine not exceeding 200 penalty units.

100. Warrants

- (1) If an authorised officer is unable to enter a place under section 95, the Electoral Commissioner may apply to a magistrate for a warrant authorising entry and search of the place.

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-
- (2) On receipt of an application under subsection (1), a magistrate may issue a warrant if satisfied that there are reasonable grounds to suspect a breach of this Act.

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Part 14 – Electoral advertising and publication of electoral matter

**PART 14 – ELECTORAL ADVERTISING AND
PUBLICATION OF ELECTORAL MATTER**

101. Electoral advertising

- (1) A person must not, during the relevant period, use electoral advertising to promote or procure the election of any candidate at an election unless the use of the electoral advertising is approved.

Penalty: Fine not exceeding 100 penalty units.

- (2) If a court convicts under this section a candidate who is successful at an election, the court must declare that candidate's election void, unless the court is satisfied that the offence did not materially affect the result of the election.

- (3) A person, within the relevant period, must not print, publish, keep on display, broadcast or distribute electoral advertising that refers to the offering, promising or giving by a candidate or intending candidate of a gift, donation or prize to any specific club, association or body, or to clubs, associations or bodies generally.

Penalty: Fine not exceeding 50 penalty units.

- (4) A person must not use or keep on display the arms of a council, or a logo of a council, in any electoral advertising.

Penalty: Fine not exceeding 20 penalty units.

- (5) Subsection (4) does not apply to –

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- (a) any matter printed, published or distributed by or on behalf of the Electoral Commissioner in the exercise or performance of the Commissioner's powers or functions; or
- (b) any electoral advertising by means of a broadcast by television.

102. Publication of electoral matter

- (1) The purpose of this section is to ensure transparency, accountability and traceability in the communication of electoral matter to the public during a council election.
- (2) This section applies to the electoral matter communicated during the election period in relation to a council election.
- (3) This section does not apply to the communication of electoral matter where –
 - (a) it is a private communication between individuals not intended for public distribution; or
 - (b) it is an unpaid communication by a natural person expressing personal political views, including on social media, provided that the communication is not –
 - (i) made on behalf of a candidate or registered party; or
 - (ii) an express endorsement of a candidate; or

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- (c) it is communicated orally in a live and unrecorded public meeting; or
 - (d) it is published by or on behalf of any of the following entities:
 - (i) the Electoral Commissioner;
 - (ii) the Tasmanian Electoral Commission;
 - (iii) a council;
 - (iv) the Local Government Association of Tasmania continued under section 326 of the *Local Government Act 1993*;
 - (v) the Crown or an instrumentality of the Crown; or
 - (e) it is a letter to the editor published in a newspaper or periodical where –
 - (i) the author's name and locality are published; or
 - (ii) the publisher keeps a record of the author's full name and address for 6 months; or
 - (f) it is media reporting or commentary, provided it does not constitute paid advertising.
- (4) A person must not, during the election period, print, publish or distribute, or permit or authorise

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the printing, publishing or distribution of, any electoral matter –

- (a) unless the electoral matter includes the following particulars at the end of the electoral matter:
 - (i) if the electoral matter is published by the candidate, the full name and address, other than a post office box or electronic address, at which the candidate resides or at or through which the candidate may be readily contacted;
 - (ii) if the electoral matter is published by an official agent of a candidate, the full name and address, other than a post office box or electronic address, at which the official agent resides or at or through which the official agent may be readily contacted; and
- (b) if the electoral matter –
 - (i) contains incorrect or misleading information about whether a person is a candidate at an election, or a member of, or endorsed by, a registered political party within the meaning of the *Electoral Act 2004*; or
 - (ii) uses the name, or a derivative of the name, of a registered political party within the meaning of the

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Electoral Act 2004 in a way that is intended, or likely, to mislead; or

- (iii) is calculated to, or likely to, result in an elector completing an informal ballot paper; or
- (iv) contains a statement, whether express or implied, to the effect that voting is not compulsory; or
- (v) contains a statement that is intended, or is likely, to mislead an elector into believing that the material is an official communication from the Tasmanian Electoral Commission, the Electoral Commissioner or another recognised electoral authority.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 6 months, or both.

PART 15 – ELECTORAL EXPENDITURE

103. Interpretation

(1) In this Part –

annual increment, in relation to the maximum electoral expenditure limit, means the cumulative increase, calculated from 1 July 2027, in accordance with the following:

- (a) in the case of Hobart City Council, Clarence City Council, Glenorchy City Council, Kingborough Council or Launceston City Council – \$500 for each financial year commencing on or after 1 July 2027; and
- (b) in the case of any other council not referred to in paragraph (a) – \$300 for each financial year commencing on or after 1 July 2027;

final campaign return means a final campaign return prepared and lodged by a candidate or official agent in accordance with section 106;

maximum electoral expenditure limit, in relation to a financial year, means –

- (a) for a candidate for election to the Hobart City Council, Clarence

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City Council, Glenorchy City Council, Kingborough Council or Launceston City Council – \$16 000 plus the applicable annual increment for that financial year; and

- (b) for a candidate for election to any other council not referred to in paragraph (a) – \$10 000 plus the applicable annual increment for that financial year;

official agent, in relation to a candidate, means a natural person appointed by the candidate under section 104(2) to be the official agent of the candidate;

publisher’s advertising return means a publisher’s advertising return prepared and lodged by a person in accordance with section 107.

- (2) For the avoidance of doubt, “cumulative increase” in the definition of *annual increment* in subsection (1) means the aggregate amount obtained by multiplying the specified amount (\$500 or \$300) by the number of financial years commencing on or after 1 July 2027 and up to and including the financial year in question.
- (3) For the purposes of this Division, the maximum electoral expenditure limit applicable to a candidate for election is the limit calculated for the financial year in which the election is held,

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regardless of the date within that financial year on which the election occurs.

104. Incurring of electoral expenditure

- (1) A person must not incur, or authorise, any electoral expenditure with a view to promoting or procuring the election of a candidate unless the person is –

- (a) the candidate; or
- (b) the candidate’s official agent.

Penalty: Fine not exceeding 100 penalty units.

- (2) A candidate may appoint, in an approved form, a natural person to be the official agent of the candidate for the purposes of this Division.

- (3) A person must not incur, or authorise, any electoral expenditure for or on behalf of a registered party with a view to promoting or procuring the election of a candidate.

Penalty: Fine not exceeding 100 penalty units.

- (4) For the avoidance of doubt, this section does not prevent a person, official agent or registered party from making a gift or a donation to a candidate’s election campaign, provided that such gifts or donations are not electoral expenditure and are recorded and disclosed in accordance with the provisions of Part 16.

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105. Exceeding electoral expenditure limit

A candidate, or an official agent, must not incur, or authorise, electoral expenditure that exceeds the maximum electoral expenditure limit applicable to the candidate for the financial year in which the election is held.

Penalty: Fine not exceeding 50 penalty units.

106. Final campaign return

- (1) A candidate, or an official agent, must lodge a final campaign return with the Electoral Commissioner, setting out the electoral expenditure incurred by the candidate, or official agent, for an election, within 45 days after the date on which the certificate of election is published for the election.

Penalty: Fine not exceeding 30 penalty units.

- (2) The final campaign return must –
- (a) be in an approved form; and
 - (b) contain the following information:
 - (i) the name and address of the candidate;
 - (ii) the name and address of the official agent, if applicable; and
 - (c) relate to the period beginning on the day on which nominations under this Act close for all candidates and ending on the

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day on which the certificate of election is published for the election; and

- (d) be accompanied by any invoice, account or receipt in respect of any electoral expenditure incurred by the candidate, or official agent, that is set out in the final campaign return; and
 - (e) be signed by the candidate, or official agent, and include a declaration that the information contained in the final campaign return is complete and accurate to the best of the candidate's, or official agent's, knowledge.
- (3) The Electoral Commissioner may, on written application in an approved form, by a candidate or official agent, extend the period for lodgement of the final campaign return under subsection (1) by not more than 30 days, if satisfied that –
 - (a) the final campaign return cannot reasonably be lodged by the candidate or official agent within the original 45-day period; and
 - (b) the delay is not due to the neglect or default of the candidate or official agent.
- (4) If a court convicts a candidate or official agent under subsection (1), the court must declare the candidate's election void unless satisfied that the failure of the candidate, or official agent, to lodge the final campaign return did not materially affect the result of the election.

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107. Publisher’s advertising return

- (1) Within 45 days after the day on which a certificate of election is published for an election, any person who prints, publishes or broadcasts electoral advertising must sign and declare before a justice or a commissioner for declarations, and lodge with the Electoral Commissioner, a publisher’s advertising return, in an approved form, setting out electoral advertising printed, published or broadcast by the person for the election.

Penalty: Fine not exceeding 30 penalty units.

- (2) A publisher’s advertising return under subsection (1) is to be accompanied by any invoice, account or receipt in respect of any electoral expenditure incurred by the person that is set out in the return.

108. Final campaign return and publisher’s advertising return available for inspection

- (1) The Electoral Commissioner is to give a copy of any final campaign return, or publisher’s advertising return, lodged with the Electoral Commissioner under this Division to the general manager.
- (2) The Electoral Commissioner and the general manager are to—
 - (a) keep final campaign returns, and publisher’s advertising returns, or copies of the returns, lodged with the Electoral

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Commissioner or given to the general manager, for a period of 12 months; and

- (b) during that period of 12 months, make those returns, or copies of those returns, available for inspection, free of charge, by a member of the public.
- (3) At the end of the 12-month period referred to in subsection (2)(a), the Electoral Commissioner and the general manager must destroy the final campaign returns, and publisher's advertising returns, or copies of the returns, unless proceedings concerning the relevant election have been instituted and remain ongoing, in which case the returns must be retained until the final determination of such proceedings.

109. Electoral Commissioner's powers to require information and documents

- (1) For the purpose of verifying any final campaign returns or publisher's advertising returns lodged under this Division, the Electoral Commissioner may require any person, who the Electoral Commissioner reasonably believes possesses relevant information or documents, to provide further information or explanation that the Commissioner considers necessary.
- (2) In addition to the powers of the Electoral Commissioner under subsection (1), the Electoral Commissioner may require any person whom the Electoral Commissioner reasonably believes to be in possession of information or records relating to electoral expenditure to –

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- (a) provide that information; or
 - (b) produce those records for inspection at a specified time and place; or
 - (c) answer any question relating to the electoral expenditure; or
 - (d) make a statement providing an explanation of the information or records.
- (3) The Electoral Commissioner may make and retain copies of any records produced under subsection (2).
- (4) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1) or (2).

Penalty: Fine not exceeding 200 penalty units.
- (5) Any information, answer or statement given by a person in response to a requirement under this section may not be used in evidence against the person except in proceedings under subsection (7) in relation to that information, answer or statement.
- (6) Before requiring a person to comply with subsection (1) or (2), the Electoral Commissioner must provide the person with written notice specifying the nature of the information or documents required, the time and place for compliance and the consequences for failure to comply.

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- (7) A person must not provide information, produce records, answer questions or make statements which the person knows to be false or misleading.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months.

- (8) In any proceedings for an offence under this Division, a copy of a record or part of a record made under subsection (3) is admissible in evidence and, in the absence of evidence to the contrary, is presumed to be the same as the original record.
- (9) In this section, **records** includes books, accounts, minutes, registers, deeds, writings, documents, electronic communications, digital data or any other sources of information compiled, recorded or stored in any form by any means.
- (10) The Electoral Commissioner must ensure that any information or record obtained under this section is treated confidentially and is not disclosed except as permitted under this Act or any other Act.

PART 16 – GIFTS AND DONATIONS

110. Disclosure of gifts and donations accepted during election period by candidates or intending candidates

- (1) During the election period a candidate, or intending candidate, must, within 7 days after accepting any gift or donation, disclose the gift or donation to the Tasmanian Electoral Commission.

Penalty: Fine not exceeding 200 penalty units.

- (2) The disclosure of a gift or donation under subsection (1) must be made in an approved form and must include the following information:
- (a) the full name of the donor;
 - (b) the locality of residence, if the donor is a natural person;
 - (c) the donor's business name and business address, if the donor is not a natural person;
 - (d) the date on which the candidate accepted the gift or donation;
 - (e) the nature and estimated value of the gift or donation;
 - (f) a declaration signed by the candidate, or intending candidate, stating that the information is true and correct to the best

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of the candidate's, or intending
candidate's, knowledge.

- (3) A candidate, or intending candidate, must not knowingly or recklessly make a false or misleading disclosure under this section.

Penalty: Fine not exceeding 100 penalty units.

- (4) A gift or donation with a value of less than \$50 is not required to be disclosed under this section, unless the gift or donation is one of a series of gifts or donations from the same donor that, when aggregated within the election period, exceeds \$50.

111. Disclosure of gifts and donations accepted during disclosure period by continuing candidates and candidates

- (1) A continuing candidate must, within 7 days after the acceptance of the continuing candidate's notice of nomination, submit to the Tasmanian Electoral Commission an extract from the gifts and donations register kept under section 56B of the *Local Government Act 1993* containing all entries relevant to the continuing candidate during the disclosure period.

Penalty: Fine not exceeding 100 penalty units.

- (2) A candidate who is not a continuing candidate must, within 7 days after the acceptance of the candidate's notice of nomination, submit to the Tasmanian Electoral Commission an initial gifts and donations return for the disclosure period.

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Penalty: Fine not exceeding 100 penalty units.

- (3) A continuing candidate, or a candidate who is not a continuing candidate, must not knowingly or recklessly make a false or misleading submission under this section.

Penalty: Fine not exceeding 100 penalty units.

112. Unlawful gifts and donations

- (1) A person, other than a candidate or intending candidate, must not accept a gift or donation if the person knows, or ought reasonably to know, that all or part of the gift or donation is intended to be subsequently given to a candidate or intending candidate for campaign purposes.

Penalty: Fine not exceeding 50 penalty units.

- (2) A candidate or intending candidate must not accept a gift or donation if –
- (a) the gift or donation is in the form of cash and either has a value of more than \$50, or forms part of a series of cash gifts or donations from the same donor, which, when aggregated within the election period, exceed \$50; or
 - (b) the gift or donation has a value of more than \$50 and is not accompanied by the donor information required for disclosure under section 110; or
 - (c) the gift or donation is made by a person known, or reasonably believed, to be a

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foreign donor within the meaning of the
Electoral Disclosure and Funding Act
2023.

Penalty: Fine not exceeding 50 penalty units.

- (3) A person who receives a gift or donation under subsection (1), or a candidate or intending candidate who receives a gift or donation under subsection (2), must within 6 weeks after accepting the gift or donation take one of the following actions:
- (a) return the gift or donation to the donor;
 - (b) pay, or transfer, to the State an amount equal to the value of the gift or donation.

Penalty: Fine not exceeding 50 penalty units.

- (4) The person or candidate must notify the Tasmanian Electoral Commission in writing within 7 days after taking action under subsection (3).

113. Gifts and donations register

- (1) The Tasmanian Electoral Commission must keep and maintain a gifts and donations register containing all information disclosed, or submitted, to the Commission under sections 110 and 111 that complies with the requirements of those sections.
- (2) The Tasmanian Electoral Commission must retain all information kept in the gifts and donations register for at least 5 years from the

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date on which the information was disclosed, or submitted, to the Commission under section 110 or 111.

114. Publication of information contained in gifts and donations register

- (1) The Tasmanian Electoral Commission must publish on its website, within 7 days after receiving a disclosure or submission under section 110 or 111, the information contained in the disclosure or submission.
- (2) The Tasmanian Electoral Commission must ensure that the information published under this section remains publicly accessible until the certificate of election is issued for the election to which the information relates.
- (3) Nothing in this section limits the Tasmanian Electoral Commission's ability to update, amend or correct information, and publish any corrected or updated information as soon as practicable after the correction or update is made, including to reflect the outcome of investigation or errors.
- (4) The Tasmanian Electoral Commission may redact personal information from any document published under this section where necessary to protect the safety or privacy of a person, having regard to public interest in transparency and electoral integrity.

PART 17 – MISCELLANEOUS

115. Formal defects not to invalidate elections

An election is not invalid by reason only –

- (a) of any defect in the title, or want of title, of the person by or before whom the election, or any polling in it, has been held or conducted; or
- (b) of any formal error or defect in any notice, advertisement, notification, list, declaration, application, statement or envelope, or in any publication of any of them; or
- (c) that any such publication was out of time; or
- (d) of any delay in holding the election; or
- (e) of the failure to provide any electoral material; or
- (f) of any defect, impediment or omission of a merely formal nature.

116. Ministerial order in respect of elections

The Minister, by order and on the recommendation of the Electoral Commissioner, may –

- (a) provide for such matters as the Minister considers desirable to enable a particular

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election or elections, at a particular time,
to be held; or

- (b) validate a defect or an informality in an election or an irregularity in the holding of an election that appears to the Minister not to affect materially the result of the election.

117. Invalidity of election not to affect proceedings

The invalidity of an election or a court's declaration that a candidate's election is void does not affect –

- (a) any action or other proceedings by or against the council; or
- (b) any decision made by the council or council committee.

118. Instituting proceedings

- (1) The returning officer is to report all alleged offences under this Part to the Electoral Commissioner.
- (2) The Electoral Commissioner is to determine whether or not proceedings are to be instituted in respect of any offence under this Part.

119. Declaration of office

- (1) Any person elected as councillor must make an approved declaration of office in an approved manner.
- (2) A person elected as a councillor who has not made a declaration of office under subsection (1) must not –
 - (a) act in the office of councillor, mayor or deputy mayor; or
 - (b) take part in the proceedings of any meeting of the council or a committee.
- (3) A council is to acknowledge the making of a declaration of office under subsection (1) at its meeting and the general manager is to record that fact in the minutes of that meeting.

120. Vacancy of office on failure to make declaration

The office of a councillor becomes vacant if the councillor fails to make a declaration under section 119 within 60 days of the issue of the certificate of election for the election at which the councillor was elected.

121. Right to information

The provisions of the *Right to Information Act 2009* do not apply to any electoral material.

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122. Role of Electoral Commissioner

- (1) The Electoral Commissioner may –
 - (a) require any person to provide information or advice in relation to any matter arising under this Part; and
 - (b) use that information and advice for the purposes of this Part.
- (2) The Electoral Commissioner is to –
 - (a) prepare and publish information and statistics in respect of elections; and
 - (b) promote public awareness and understanding of elections; and
 - (c) encourage enrolment and voting for elections.

123. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Tasmanian Electoral Commission or Electoral Commissioner.

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(4) The regulations may –

- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
- (b) in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.

124. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Local Government; and
- (b) the department responsible to the Minister for Local Government in relation to the administration of this Act is the Department of Premier and Cabinet.

SCHEDULE 1 – COUNTING OF VOTES

Section 76

PART 1 – GENERAL

1. Interpretation

(1) In this Schedule –

absolute majority of votes, in relation to a candidate, is a number of votes which is greater than one-half of the total number of ballot papers, other than exhausted and informal ballot papers, on which electors have recorded their votes for the candidate;

informal ballot paper means a ballot paper which is informal as specified in section 77;

quota means the number of votes sufficient to elect a candidate;

second preference recorded for a candidate means the preference on a ballot paper recorded by the number “2” in the square opposite the name of the candidate on the ballot paper;

surplus means the number of votes which a candidate obtained at any stage of the counting of votes in excess of the quota;

transfer value means that portion of a vote which is unused by –

- (a) an elected candidate who has obtained a surplus; or
 - (b) a candidate excluded on account of being lowest on the poll and which is transferred to the candidate next in the order of the elector's preference.
- (2) For the purpose of the definition of “*transfer value*”, the transfer value is either one or a fraction of one.

PART 2 – MAYORAL OR COUNCILLOR ELECTIONS

2. First preferences

- (1) The number of first preferences recorded for each candidate is to be counted and all informal ballot papers are to be rejected.
- (2) The candidate who obtains an absolute majority of votes is to be elected.

3. Second and subsequent preferences

- (1) If no candidate has an absolute majority of votes, the candidate who has the fewest votes is to be excluded and each ballot paper counted to that candidate, unless exhausted, is to be counted to the unexcluded candidate next in the order of the elector's preference.

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- (2) The process specified in subclause (1) is to be repeated until one candidate has an absolute majority of votes.

4. Ballot paper counted and exhausted

- (1) Every ballot paper, not rejected as informal, is to be counted in every count until it becomes exhausted, when it is to be rejected in all further counts.
- (2) If a candidate is excluded, any ballot paper counted to the candidate is exhausted if there is not indicated on it a consecutive preference for one or more unexcluded candidates.

5. Returning officer to decide exclusion and election

- (1) If, on any count, 2 or more candidates have an equal number of votes and one of them has to be excluded, the returning officer is to decide which candidate is to be excluded by the drawing or casting of lots in the prescribed manner.
- (2) If, in the final count, 2 candidates have an equal number of votes, the returning officer is to decide which of them is to be elected by the drawing or casting of lots in the prescribed manner.

PART 3 – COUNCILLOR ELECTIONS

6. Quota

- (1) The quota is calculated in accordance with the following formula:
- (2) Any remainder in calculating the quota is to be disregarded.
- (3) Subject to clause 13(6), a candidate is not to be elected until the candidate obtains a number of votes equal to or greater than the quota.

7. First preferences

- (1) The number of first preferences recorded for each candidate is to be counted and all informal ballot papers are to be rejected.
- (2) A candidate who, after the first preferences have been counted, has a number of preferences equal to or greater than the quota is to be elected.

8. First preferences equal to quota

If the number of first preferences obtained by a candidate is equal to the quota, all the ballot papers on which a first preference is recorded for that candidate are to be set aside as finally dealt with.

9. First preferences in excess of quota

If the number of first preferences obtained by a candidate exceeds the quota, the proportion of those preferences in excess of the quota is to be transferred to the other candidates not yet elected next in the order of the electors' respective preferences in the following manner:

- (a) all the ballot papers on which a first preference is recorded for the elected candidate are to be re-examined and the number of second preferences, or in the case provided for in clause 10, third or next consecutive preferences, recorded for each unelected candidate are to be counted;
- (b) the surplus of the elected candidate is to be divided by the total number of votes obtained by the candidate on the counting of the first preferences and the resulting fraction is the transfer value;
- (c) the number of second or other preferences recorded for each unelected candidate is to be multiplied by the transfer value;
- (d) the resulting number of votes, truncated to 2 decimal places, is to be transferred to each unelected candidate and added to the number of votes obtained by the candidate on the counting of the first preferences.

10. Surplus

- (1) If, on the counting of the first preferences or on a transfer, more than one candidate has a surplus, the largest surplus is to be dealt with first.
- (2) If at that stage more than one candidate has a surplus, the then largest surplus is to be dealt with next, and so on.
- (3) If one candidate has obtained a surplus at a count or transfer previous to that at which another candidate obtains a surplus, the surplus of the former is to be dealt with first.
- (4) If 2 or more surpluses are equal, the surplus of the candidate who was the highest at the count or transfer at which they last had an unequal number of votes is to be dealt with first.
- (5) If the 2 or more candidates had an equal number of votes at all preceding counts or transfers, the returning officer is to decide which candidate's surplus is to be dealt with first.

11. Quota by transfer

- (1) If the number of votes obtained by a candidate is increased to a number which is equal to, or exceeds, the quota by a transfer, the candidate is to be elected.
- (2) Notwithstanding the fact that the candidate has reached the quota, the transfer is to be completed and all the votes to which the candidate is entitled from the transfer are to be transferred to the

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candidate, but no votes of any other candidate are to be transferred to the candidate.

- (3) If the number of votes obtained by a candidate is increased by a transfer to a number which is equal to the quota, all of the ballot papers on which the votes are recorded are to be set aside as finally dealt with.
- (4) If the number of votes obtained by a candidate is increased by a transfer to a number which exceeds the quota, the surplus is to be transferred to the candidates next in the order of the voters' respective preferences, in the following manner:
 - (a) the ballot papers on which are recorded the votes obtained by the elected candidate in the last transfer are to be re-examined and the number of third preferences, or in the case provided for in clause 10, next consecutive preferences, recorded for each unelected candidate counted;
 - (b) the surplus of the elected candidate is to be divided by the total number of ballot papers mentioned in paragraph (a) and the resulting fraction is the transfer value;
 - (c) the number of third or other preferences recorded for each unelected candidate is to be multiplied by the transfer value;
 - (d) the resulting number, truncated to 2 decimal places, is to be credited to each unelected candidate and added to the

number of votes previously obtained by the candidate.

12. Transfer of votes

- (1) If, after the first preferences have been counted and any surplus has been transferred, no candidate, or fewer than the number of candidates required to be elected, has or have obtained the quota –
 - (a) the candidate who at that time has the least number of first preference votes transferred is to be excluded; and
 - (b) all the votes obtained by that candidate are to be transferred to the candidates next in the order of the electors' respective preferences in the same manner as provided by clause 4.
- (2) The votes received by the excluded candidate are to be sorted into groups according to their transfer values when received by that candidate.
- (3) The groups are to be transferred at the transfer value at which they were received in the following order:
 - (a) firstly, the group with the highest transfer value;
 - (b) secondly, the remaining groups in descending order of transfer value.
- (4) Each transfer under subclause (3) is a separate transfer.

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13. Votes increased by transfer

- (1) If the number of votes obtained by a candidate by a transfer is increased to a number which is equal to, or exceeds, the quota, the candidate is to be elected.
- (2) Notwithstanding that the candidate has reached the quota, the transfer is to be completed and all the votes to which the candidate is entitled from the transfer are to be transferred to the candidate, but no other votes are to be transferred.
- (3) If the number of votes obtained by a candidate is increased by a transfer to a number of votes which is equal to, but does not exceed, the quota, all the ballot papers on which those votes are recorded are to be set aside as finally dealt with.
- (4) If the number of votes obtained by a candidate is increased by a transfer to a number which exceeds the quota, the surplus is to be transferred to the candidates next in the order of the electors' respective preferences in the same manner as provided by clause 11(4), but that surplus is not to be dealt with until all the votes of the excluded candidate have been transferred.
- (5) If there is a surplus, it is to be dealt with before any other candidate is excluded.
- (6) The process of excluding the candidate who has polled the next lowest number of votes and transferring the vote to other candidates is to be repeated until all the candidates, except the number required to be elected, have been

excluded and the unexcluded candidates who have not already been elected are then elected.

14. Order of preference

In determining which candidate is next in the order of an elector's preference –

- (a) any candidate who has been elected or excluded is not to be considered; and
- (b) the order of the elector's preference is to be determined as if the names of those candidates had not been on the ballot paper.

15. Exclusion of candidates

- (1) If it is necessary to exclude a candidate, and 2 or more candidates have an equal number of votes, having at that time the least number of first preference votes transferred to them, whichever of those candidates was the lowest on the poll at the last count or transfer at which they had an unequal number of votes is excluded first.
- (2) If the candidates had an equal number of votes at all preceding counts or transfers, the returning officer is to decide which candidate is to be excluded first by the drawing or casting of lots in the prescribed manner.

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16. Exhausted ballot paper

If, on a transfer, it is found that on a ballot paper there is no candidate opposite whose name a number is placed, other than a candidate whose name has already been elected or excluded, the ballot paper is to be set aside as exhausted.

17. Order of election

- (1) The order of election of councillors is the order in which the candidates receive a quota.
- (2) If more than one candidate receives a quota at the same count or transfer, the candidate with the highest number of votes is elected first, the candidate with the next highest number of votes is elected second and so on.
- (3) If under clause 13(6) one candidate is elected without a quota, that candidate is elected last.
- (4) If under clause 13(6) more than one candidate is elected without a quota and it is necessary to determine the order of election of those candidates for any reason, the votes received by the remaining unelected candidates are to be distributed until only one candidate has received less than a quota.

**SCHEDULE 2 – RECOUNT TO FILL CASUAL
VACANCY**

Section 82

PART 1 – GENERAL

1. Interpretation

In this Schedule –

completed ballot papers counted means –

- (a) if, after the first preferences were counted at the relevant election, the number of first preferences recorded for the vacating councillor was equal to or exceeded the quota, all the ballot papers on which those first preferences were recorded; and
- (b) in any other case, all the ballot papers counted for that councillor at the time of that councillor's election, including ballot papers relating to votes that were transferred to the councillor;

consenting candidate means a candidate not elected at the relevant election who consents to be included in a recount for a vacancy;

consent period means the period within which a consent form is to be lodged under section 82;

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quota means the number of votes sufficient to elect a candidate;

relevant election means the election last held to fill the office of the vacating councillor;

vacating councillor means a councillor who is vacating the office of councillor.

PART 2 – ORIGINAL ELECTION WAS FOR MORE THAN ONE COUNCILLOR

2. One consenting candidate

If there is only one consenting candidate, the Electoral Commissioner is to –

- (a) declare the candidate elected; and
- (b) notify the Minister in writing of the election of the candidate.

3. More than one consenting candidate

If there are 2 or more consenting candidates, the Electoral Commissioner, within 7 days after the end of the consent period, is to ascertain in accordance with this Schedule which consenting candidate is to be elected.

4. Transfer of votes

- (1) If –

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- (a) a vacating councillor was, by virtue of clause 13(6) of Schedule 1, elected at the relevant election after the candidate who was lowest on the poll at that election had been excluded from the counting; and
- (b) the votes obtained by the excluded candidate were not required to be transferred to the candidates next in the order of the electors' preferences –

so many of those votes as would have been transferred to that vacating councillor, if the votes of the excluded candidate had been transferred to the candidates next in the order of the electors' representative preferences, are taken to have been so transferred to, and to be obtained by, that vacating councillor and the completed ballot papers representing those votes are to be counted for that councillor.

- (2) The ballot papers counted for the vacating councillor are to be examined, and all the votes obtained by the councillor are to be transferred to and counted for the consenting candidates first or next in the order of the electors' respective preferences.
- (3) The votes received by the vacating councillor as first preferences are to be transferred at the transfer value as determined under subclause (6).
- (4) The other votes received by the vacating councillor that are not first preferences are to be transferred at the transfer value as determined under subclause (7).

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- (5) All the votes received by the vacating councillor are to be –
- (a) sorted into groups according to their transfer values; and
 - (b) transferred in the following order:
 - (i) firstly, the group with the highest transfer value;
 - (ii) secondly, the remaining groups in descending order of transfer value.
- (6) If the votes obtained as first preferences by the vacating councillor –
- (a) were sufficient to elect the councillor, the transfer value of those votes is the fraction determined by dividing the number of votes sufficient to elect the councillor by the total number of votes obtained by the councillor; or
 - (b) were insufficient to elect the councillor, the transfer value of those votes is one.
- (7) If the number of votes obtained by the vacating councillor at an individual count, other than the votes obtained as first preferences –
- (a) were not sufficient to elect the councillor, the transfer value of the votes obtained on that count is that at which they were obtained by the councillor; or

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(b) were sufficient to elect the councillor, the transfer value of the votes received at that count is that which would have been sufficient to elect the councillor immediately before that count.

(8) Each transfer under subclause (5) is a separate transfer.

5. Counting of votes

- (1) After the number of votes for each consenting candidate has been ascertained, the method of counting votes set out in Part 2 or 3 of Schedule 1 applies with the necessary modifications.
- (2) The Electoral Commissioner is to declare the consenting candidate who obtains an absolute majority of the votes within the meaning of that Schedule to be elected.
- (3) As soon as practicable after declaring a consenting candidate to be elected, the Electoral Commissioner is to notify the Minister in writing of the election of the candidate.

6. Exclusion of candidate

- (1) If it is necessary to exclude a consenting candidate, and 2 or more consenting candidates have an equal number of votes and are lowest on the poll, whichever of those candidates was lowest on the poll at the last count or transfer at which they had an unequal number of votes is excluded first.

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- (2) If the candidates had an equal number of votes at all preceding counts or transfers, the returning officer is to decide which consenting candidate is to be excluded first.

7. Previous election under Schedule

If a vacating councillor was elected under the provisions of this Schedule, the Electoral Commissioner is to –

- (a) examine the ballot papers that at the relevant election were counted for the councillor in whose place the vacating councillor was elected (including votes transferred to the last-mentioned councillor); and
- (b) ascertain which consenting candidate is to be elected in accordance with this Schedule.

8. Order of preferences

To determine which consenting candidate is first or next in the order of the electors' preferences –

- (a) the name of, and the first preferences recorded at the relevant election for, an excluded candidate who is a consenting candidate are not to be omitted from any completed ballot papers transferred to the vacating councillor, but the preferences are to be counted for that consenting candidate; and

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- (b) any candidates who were elected at the relevant election or who are not consenting candidates are to be disregarded and the order of the electors' preferences are to be determined as if the names of those candidates had not been included on the ballot papers.

9. Ballot papers exhausted

A complete ballot paper is exhausted if there is no candidate next to whose name a number has been placed other than a candidate —

- (a) who has already been elected; or
- (b) who is not a consenting candidate.