

Electoral Act 2002

Act No. 23/2002

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Victoria

No. 23 of 2002

Electoral Act 2002[†]

[Assented to 12 June 2002]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose and outline of Act*

- (1) The purpose of this Act is to reform the law relating to elections in Victoria.
- (2) In outline this Act—
 - establishes the Victorian Electoral Commission consisting of one member, the Electoral Commissioner;

- provides for the appointment of the Electoral Commissioner, the Deputy Electoral Commissioner, election managers and election officials and the employment of staff;
 - sets out the Commission's responsibilities, functions and powers;
 - sets out the enrolment process and provides for the collection and dissemination of enrolment information;
 - provides for the registration of political parties;
 - sets out election procedures and arrangements for holding elections;
 - specifies who is entitled to vote and how voting may occur;
 - provides for the scrutiny and counting of votes;
 - provides for the Court of Disputed Returns;
 - sets out offences, requires compulsory voting and enables the issuing of infringement notices;
 - repeals provisions of **The Constitution Act Amendment Act 1958** and consequentially amends certain other Acts;
 - provides for election expenditure.
- (3) Sub-section (2) is intended only as a guide to readers as to the general scheme of this Act.

2. Commencement

- (1) Subject to sub-section (2), this Act comes into operation on a day to be proclaimed.
- (2) If this Act does not come into operation before 1 January 2003, it comes into operation on that day.

3. Definitions

In this Act—

"address" does not include a post-office box;

"Antarctica" means the Australian Antarctic Territory including—

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

"Antarctic elector" means an elector who is, in the course of the elector's employment, in Antarctica on election day;

"Assembly" means the Legislative Assembly;

"authorised officer" means a person appointed to be an authorised officer for the purpose of issuing infringement notices under section 167;

"authorised witness" means a person, not being a candidate at an election, who is—

- (a) wherever the vote is recorded—
 - (i) an elector; or
 - (ii) named on the roll for a State or Territory of the Commonwealth; or
 - (iii) an election official; and

- (b) if the vote is recorded outside Victoria or in another country outside Australia—
- (i) an Australian citizen; or
 - (ii) an officer of the naval, military or air forces of Australia or of that other country; or
 - (iii) a person employed in the Public Service of Victoria or of the Commonwealth or of a State or Territory of the Commonwealth or of that other country; or
 - (iv) a Justice of the Peace for, or a minister of religion or registered medical practitioner resident in, a State or Territory of the Commonwealth or that other country; or
 - (v) a High Commissioner, Trade Commissioner or Agent-General for the Commonwealth or Victoria or an officer in the service of the Commonwealth or Victoria on the staff of a High Commissioner, Trade Commissioner or Agent-General; or
 - (vi) a member of any police force in that other country;

"ballot material" means ballot-papers, electoral rolls and electoral papers;

"by-election" means an election at which a member of the Assembly or the Council is to be elected to fill the place of a member of the Assembly or Council whose seat has become vacant otherwise than by the expiration or dissolution of the Assembly;

"candidate" means a person who is nominated under section 69 to stand for election to Parliament;

"Commission" means the Victorian Electoral Commission established under section 6;

"Commonwealth subdivision" means a subdivision of an electoral division for the election of a member of the House of Representatives under the Commonwealth Electoral Act 1918;

"Council" means the Legislative Council;

"declaration vote" means a vote on a ballot-paper marked under section 106, 108, 109 or 110;

"district" means electoral district;

"election" means—

- (a) a simultaneous election; or
- (b) a by-election; or
- (c) a supplementary election; or
- (d) a re-election;

"election day" means the day named as the election day in the writ for an election;

"elector" means a person whose name appears on the register of electors;

"electoral advertisement, handbill, pamphlet or notice" means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting;

"electoral claim" means an application or declaration made under this Act;

"Electoral Commissioner" means the Electoral Commissioner appointed under section 12;

"electoral paper" includes any electoral claim and any prescribed form;

"electoral roll" means a list prepared under section 29 of the names and addresses of electors who are eligible to vote at a particular election;

"eligible overseas elector" means an elector who is enrolled under section 22(3);

"eligible political party" means a political party that is established on the basis of a written constitution (however described) that sets out the aims of the party and has at least 500 members who are—

- (a) electors; and
- (b) members in accordance with the rules of the political party; and
- (c) not members of another registered political party or of a political party applying for registration;

"exit poll" means the canvassing of electors at large as to how they have voted at an election for the purpose of obtaining and publicly disseminating information about voting trends at the election;

"general postal voter" means a person whose application to be a general postal voter is accepted under section 24;

"how-to-vote card" means any card, handbill, pamphlet or notice that—

- (a) is or includes a representation or partial representation or purported representation or purported partial

representation of a ballot-paper for use in an election; or

- (b) lists the names of any or all of the candidates for an election with a number indicating an order of voting preference against the names of any or all of those candidates;

"infringement penalty" means the amount stated in an infringement notice issued under section 167 as payable in respect of the offence to which the notice relates;

"itinerant elector" means an itinerant elector who is enrolled under section 22(4);

"name", in Parts 4 and 5, includes in respect of a political party—

- (a) the full name of a political party; or
- (b) the initials for, or acronym of, the full name of a political party; or
- (c) the abbreviation of the full name of a political party;

"Order in Council" means an Order of the Governor in Council published in the Government Gazette;

"organisation" includes—

- (a) a body corporate; or
- (b) an association or other body of persons; or
- (c) an association that consists of 2 or more organisations within the meaning of the preceding paragraphs; or
- (d) a part of an organisation within the meaning of a preceding paragraph;

"part", in relation to an organisation, includes—

(a) a branch or division of the organisation;
or

(b) a part of a part of the organisation;

"political party" means an organisation whose object or activity is to promote the election of a member of the party to Parliament;

"prescribed offence" means an offence specified in section 166(1);

"President" means the President of the Council and includes any person acting as the President of the Council;

"principal place of residence" includes the place of living to which a person, when temporarily living elsewhere, has a fixed intention of returning for the purpose of continuing to live at that place;

"printed electoral material" means an advertisement, handbill, pamphlet or notice that contains electoral matter;

"province" means electoral province;

"publish" means publish by any means including by publication on the Internet;

"register of electors" means the register of electors for Victoria established and maintained under section 21 that contains the names and addresses of all electors and the particulars required under the Act;

"Register of Political Parties" means the Register of Political Parties established under section 43;

"registered how-to-vote card" means a how-to-vote card registered under section 77 or 79;

"registered medical practitioner" means—

- (a) a registered medical practitioner within the meaning of the **Medical Practice Act 1994**; or
- (b) a person registered or licensed as a medical practitioner under the law of any other State or of a Territory of the Commonwealth, being a law that provides for the registration or licensing of medical practitioners;

"registered political party" means a political party that is registered under Part 4;

"relevant period", in relation to an election, means the period that—

- (a) starts on the day a writ is issued for the election; and
- (b) ends at 6 p.m. on election day.

"secretary", in relation to a political party, means the person who holds the office (however described) the duties of which involve responsibility for the carrying out of the administration, and for the conduct of the correspondence, of the party;

"silent elector" means an elector whose address is not on an electoral roll because of a request made under section 31;

"simultaneous election" means an election at which all the members of the Assembly and half the members of the Council have to be elected;

"Speaker" means the Speaker of the Assembly and includes any person acting as the Speaker of the Assembly;

"Tribunal" means the Victorian Civil and Administrative Tribunal established under the **Victorian Civil and Administrative Tribunal Act 1998**;

"voting centre" means a place appointed by the Commission for voting at an election as—

- (a) an early voting centre;
- (b) a mobile voting centre;
- (c) an election day voting centre.

4. Electoral matter

- (1) In this Act, **"electoral matter"** means matter which is intended or likely to affect voting in an election.
 - (2) Without limiting the generality of the definition of "electoral matter", matter is to be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on—
 - (a) the election; or
 - (b) the Government, the Opposition, a previous Government or a previous Opposition, of the State; or
 - (c) the Government, the Opposition, a previous Government or a previous Opposition, of the Commonwealth or any other State or a Territory of the Commonwealth; or
 - (d) a member or a former member of the Parliament or the Parliament of the Commonwealth, any other State or a Territory of the Commonwealth; or
 - (e) a political party, a branch or division of a political party or a candidate in the election; or
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- (f) an issue submitted to, or otherwise before,
the electors in connection with the election.

5. *Extraterritorial operation of Act*

This Act extends to election officials appointed
for the purposes of this Act outside Victoria.

PART 2—VICTORIAN ELECTORAL COMMISSION**6. *Victorian Electoral Commission***

- (1) There is established by this Act the Victorian Electoral Commission.
- (2) The Commission—
 - (a) is a body corporate with perpetual succession;
 - (b) represents the Crown in right of the State of Victoria;
 - (c) has a common seal;
 - (d) may sue and be sued in its corporate name;
 - (e) is, subject to this Act, capable of taking, purchasing, leasing, holding, selling and disposing of real and personal property for the purpose of performing its functions and exercising its powers under this Act;
 - (f) is capable of doing and suffering all acts and things that bodies corporate may by law do and suffer and which are necessary or expedient for the purpose of performing its functions and exercising its powers under this Act.
- (3) The common seal of the Commission—
 - (a) must be kept as the Commission directs;
 - (b) must not be used except as authorised by the Commission.

7. *Constitution of Commission*

The Commission consists of one member being the person who is appointed as the Electoral Commissioner.

8. Responsibility and functions of the Commission

- (1) The Commission is responsible for the administration of the enrolment process and the conduct of parliamentary elections in Victoria.
 - (2) The functions of the Commission are—
 - (a) to perform such functions as are conferred on the Commission by this or any other Act, other than functions which are expressly conferred on a specified person or body or the holder of a specified office;
 - (b) to report to each House of Parliament within 12 months of the conduct of each election on the administration of that election;
 - (c) to conduct an election under the **Local Government Act 1989** if appointed to do so by a Council under clause 1(2)(c) of Schedule 2 of that Act;
 - (d) to provide goods and services to persons or organisations on payment of any relevant fees, to the extent that the Commission is able to do so by using information or material in its possession or expertise acquired in the performance of its functions;
 - (e) to provide administrative and technical support to the Electoral Boundaries Commission established under section 3 of the **Electoral Boundaries Commission Act 1982**;
 - (f) to promote public awareness of electoral matters that are in the general public interest by means of the conduct of education and information programs;
 - (g) to conduct and promote research into electoral matters that are in the general public interest;
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- (h) to consider, and report to the Minister on, electoral matters that are in the general public interest referred to the Commission by the Minister;
 - (i) to administer this Act.
- (3) The Commission must notify the Minister when the Commission has been engaged to conduct an election or poll for an organisation for which it has not previously conducted an election or poll.
 - (4) The Commission must report to each House of Parliament on all elections and polls referred to in sub-section (3) within the first sitting week of each House of the Parliament immediately after 1 January and 1 July each year.

9. *Powers of the Commission*

- (1) Subject to this Act, the Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its responsibilities and functions.
- (2) Without limiting the generality of sub-section (1), the Commission may, subject to this Act, make and issue directions for or with respect to the enrolment process, elections and election procedures.

10. *Commission not subject to direction or control*

The Commission is not subject to the direction or control of the Minister in respect of the performance of its responsibilities and functions and the exercise of its powers.

11. *Election manual and guidelines*

- (1) The Commission must publish an election manual for the purposes of this Act.
 - (2) The election manual must include directions issued by the Commission.
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- (3) The Commission may publish guidelines relating to the performance of its responsibilities and functions and the exercise of its powers.

12. *The Electoral Commissioner*

- (1) The Governor in Council may appoint an officer to be called the Electoral Commissioner.
- (2) The Electoral Commissioner—
- (a) holds office for a period of 10 years; and
 - (b) may be re-appointed for one or more periods each of which does not exceed 10 years as is specified in the instrument by which the Electoral Commissioner is re-appointed.
- (3) A person who—
- (a) is a member of a registered political party; or
 - (b) has been a member of a political party at any time during the period of 5 years immediately preceding the date of the proposed appointment—
- cannot be appointed to be the Electoral Commissioner.
- (4) The office of the Electoral Commissioner becomes vacant—
- (a) upon acceptance by the Governor in Council of the Electoral Commissioner's resignation in writing; or
 - (b) upon the Electoral Commissioner becoming a bankrupt; or
 - (c) upon the Electoral Commissioner nominating for election for the Parliament of Victoria or of the Commonwealth or of any other State or Territory of the Commonwealth; or
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- (d) upon the Governor in Council determining that the Electoral Commissioner is physically or mentally incapable of carrying out the duties of office; or
 - (e) upon the passing of a resolution by both Houses of Parliament requesting the Electoral Commissioner's removal from office; or
 - (f) upon the Electoral Commissioner being convicted of an indictable offence or being sentenced to imprisonment for any offence.
- (5) Nothing in the **Public Sector Management and Employment Act 1998** applies to or in relation to the office of the Electoral Commissioner or to any person holding that office.
- (6) The Governor in Council may by Order in Council fix the terms and conditions of employment which are applicable to the Electoral Commissioner.

13. Deputy Electoral Commissioner

- (1) The Governor in Council may appoint an officer to be called the Deputy Electoral Commissioner.
- (2) The Deputy Electoral Commissioner—
 - (a) holds office for a period of 10 years; and
 - (b) may be re-appointed for one or more periods each of which does not exceed 10 years as is specified in the instrument by which the Deputy Electoral Commissioner is re-appointed.
- (3) A person who—
 - (a) is a member of a registered political party; or

- (b) has been a member of a political party at any time during the period of 5 years immediately preceding the date of the proposed appointment—

cannot be appointed to be the Deputy Electoral Commissioner.

- (4) The office of the Deputy Electoral Commissioner becomes vacant—
 - (a) upon acceptance by the Governor in Council of the Deputy Electoral Commissioner's resignation in writing; or
 - (b) upon the Deputy Electoral Commissioner becoming a bankrupt; or
 - (c) upon the Deputy Electoral Commissioner nominating for election for the Parliament of Victoria or of the Commonwealth or of any other State or Territory of the Commonwealth; or
 - (d) upon the Governor in Council determining that the Deputy Electoral Commissioner is physically or mentally incapable of carrying out the duties of office; or
 - (e) upon the passing of a resolution by both Houses of Parliament requesting the Deputy Electoral Commissioner's removal from office; or
 - (f) upon the Deputy Electoral Commissioner being convicted of an indictable offence or being sentenced to imprisonment for any offence.
- (5) Nothing in the **Public Sector Management and Employment Act 1998** applies to or in relation to the office of the Deputy Electoral Commissioner or to any person holding that office.

- (6) The Governor in Council may by Order in Council fix the terms and conditions of employment which are applicable to the Deputy Electoral Commissioner.
- (7) If the Deputy Electoral Commissioner is unable, whether on account of illness or otherwise, to perform the duties of the office of Deputy Electoral Commissioner, the Governor in Council may appoint an eligible person to act as Deputy Electoral Commissioner during that period of inability.

14. *Suspension from office*

- (1) The Governor in Council may suspend the Electoral Commissioner or the Deputy Electoral Commissioner from office—
 - (a) on the ground of neglect of duty; or
 - (b) on the ground of misconduct; or
 - (c) on any other ground which in the opinion of the Governor in Council makes the Electoral Commissioner or the Deputy Electoral Commissioner unfit for office.
 - (2) If the Governor in Council suspends the Electoral Commissioner or the Deputy Electoral Commissioner from office, the Minister must within 2 hours of the suspension being made give notice in writing of the suspension to—
 - (a) the President; and
 - (b) the Speaker; and
 - (c) the Leader of each political party in each House of the Parliament.
 - (3) If Parliament is not sitting at the time when the Governor in Council suspends the Electoral Commissioner or the Deputy Electoral Commissioner from office, the Parliament must be
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summoned to meet as soon as practicable after a petition signed by—

(a) not less than 20 members of the Assembly;
or

(b) not less than 30 members of Parliament all or any of whom are members of the Council—

objecting to the suspension and requesting that Parliament be summoned is addressed and given to the Speaker or the President.

(4) An Electoral Commissioner or a Deputy Electoral Commissioner who is suspended must be restored to office unless—

(a) a statement setting out the grounds of suspension is placed before each House of Parliament during the first 7 sitting days of that House following the suspension; and

(b) each House of Parliament within 20 days of the statement being placed before it passes a resolution requesting the removal of the Electoral Commissioner or the Deputy Electoral Commissioner from office.

15. *Other terms and conditions*

(1) If the Electoral Commissioner or the Deputy Electoral Commissioner is at the time of appointment an officer within the meaning of the **State Superannuation Act 1988**, the Electoral Commissioner or the Deputy Electoral Commissioner continues subject to that Act to be an officer within the meaning of that Act.

(2) The Electoral Commissioner or the Deputy Electoral Commissioner must not without the consent of the Governor in Council directly or indirectly engage in any paid employment outside of the office of Electoral Commissioner or Deputy Electoral Commissioner.

- (3) If the Electoral Commissioner or the Deputy Electoral Commissioner directly or indirectly engages in any paid or unpaid employment outside of the office of Electoral Commissioner or Deputy Electoral Commissioner, the Electoral Commissioner or the Deputy Electoral Commissioner must immediately advise the Minister.
- (4) The Minister must ensure that a statement giving details of employment advised under sub-section (3) is placed before each House of Parliament during the first 7 sitting days of that House after the Minister is so advised.
- (5) Subject to this Act, the person who immediately before the commencement of this section—
 - (a) holds the office of Electoral Commissioner, continues to hold that office until the end of the period when the term of appointment to the office would have expired; and
 - (b) holds the office of Deputy Electoral Commissioner, continues to hold that office until the end of the period when the term of appointment to the office would have expired.

16. *Functions, powers and duties*

- (1) The Electoral Commissioner—
 - (a) constitutes the Commission under section 7; and
 - (b) has the functions, powers and duties delegated to the Electoral Commissioner by the Commission.
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- (2) The Deputy Electoral Commissioner—
- (a) has the functions, powers and duties delegated to the Deputy Electoral Commissioner by the Commission or the Electoral Commissioner; and
 - (b) if the Electoral Commissioner is absent or unavailable to discharge the duties of his or her office or the office of Electoral Commissioner is temporarily vacant, has the duty to act in the office of Electoral Commissioner in which case the Deputy Electoral Commissioner has all the functions, powers and duties specified in sub-section (1).
- (3) The Electoral Commissioner and the Deputy Electoral Commissioner must before commencing the duties of office take an oath or make an affirmation to perform faithfully and impartially the duties of office.
- (4) The oath or affirmation is to be administered by the Speaker.

17. Staff

- (1) Any employees that are necessary for the purposes of this Act may be employed under Part 3 of the **Public Sector Management and Employment Act 1998**.
- (2) A person employed for the purposes of this Act must not nominate for election for the Parliament of Victoria or of the Commonwealth or of any other State or Territory of the Commonwealth.

18. Election managers and election officials

- (1) The Commission may appoint, for the purposes of this Act, appropriate persons to be—
 - (a) election managers; or
 - (b) election officials.
 - (2) A person appointed under this section must not while holding the appointment nominate for election for the Parliament of Victoria or of the Commonwealth or of any other State or Territory of the Commonwealth.
 - (3) If a person appointed under this section does not comply with sub-section (2), the appointment of that person is revoked by virtue of this sub-section.
 - (4) The powers and duties of a class of persons appointed under this section are—
 - (a) the powers and duties specified by or under this Act in respect of that class of persons; and
 - (b) any other powers and duties not inconsistent with this Act as may be specified by the Commission in the instrument of appointment of persons of that class.
 - (5) The Commission must pay persons appointed under this section the remuneration and allowances determined by the Commission.
 - (6) A reference in a provision of this Act which—
 - (a) provides for the giving of a document to; or
 - (b) confers a power or function on—the election manager is to be taken to be a reference to the election manager appointed for the election for the province or district to which the provision applies.
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- (7) A reference in a provision of this Act which—
- (a) provides for the giving of a document to; or
 - (b) confers a power or function on—
- an election official is to be taken to be a reference to an election official of a class appointed for the election for the province or district to which the provision applies.
- (8) In the case of a simultaneous election, the election manager for a district is also responsible for exercising all the duties and powers in relation to the conduct of the election for a province in so far as any part of any province lies within that district (whether an election is to be conducted for both or not) until—
- (a) the votes from each voting centre have been counted; and
 - (b) the votes relating to the election for any province have been forwarded to the election manager for that province.
- (9) If any duty or power is performed or exercised by the election manager for a district, the election manager for the province is not required to perform that duty or to exercise that power.

19. Delegations

- (1) Subject to sub-section (2), the Commission may, by instrument under its common seal, delegate to—
- (a) the Electoral Commissioner; or
 - (b) the Deputy Electoral Commissioner; or
 - (c) a member of staff employed under section 17; or

- (d) an election manager or election official appointed under section 18—
any function or power of the Commission under this Act or any other Act or under the regulations.
 - (2) The Commission cannot delegate—
 - (a) its power of delegation; or
 - (b) the power to review an election manager's decision in respect of the registration of a how-to-vote card if an appeal has been made against the decision; or
 - (c) the power to allow or disallow a ballot-paper on a recount.
 - (3) The Electoral Commissioner may by instrument delegate to—
 - (a) the Deputy Electoral Commissioner; or
 - (b) a member of staff employed under section 17; or
 - (c) an election manager or election official appointed under section 18—
any function or power of the Electoral Commissioner under this Act or any other Act or under the regulations other than this power of delegation.
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PART 3—ENROLMENT PROCEDURES AND INFORMATION

Division 1—Register of Electors

20. *Arrangement with Commonwealth*

The Governor in Council may arrange with the Governor-General of the Commonwealth for—

- (a) a joint enrolment process; and
- (b) the exchange of information necessary for the preparation, maintenance and revision of the register of electors and the rolls—

under this Act and the Commonwealth Electoral Act 1918.

21. *Register of electors for Victoria*

The Commission must establish, maintain and regularly update a register of electors for Victoria.

22. *Entitlement to enrolment of electors for Assembly and Council*

- (1) A person who is qualified to enrol as an elector for the Assembly and Council under the **Constitution Act 1975** and has lived at an address in Victoria that is the person's principal place of residence for at least one month immediately before the date of the person's claim for enrolment as an elector is entitled in respect of living at that address to enrol on the register of electors.
- (2) A person who is serving a sentence of imprisonment or detention imposed by a court upon a conviction for an offence is deemed to be enrolled for the address at which the person lived as the person's principal place of residence at the time of the conviction.

- (3) Despite sub-section (1), if a person's name appears on a roll maintained under the Commonwealth Electoral Act 1918 for a Commonwealth subdivision in respect of an address in Victoria and that roll is annotated to indicate that the elector is an eligible overseas elector under section 94 or 95 of the Commonwealth Electoral Act 1918, the person is entitled to be enrolled on the register of electors for that address.
- (4) Despite sub-section (1), if a person's name appears on a roll maintained under the Commonwealth Electoral Act 1918 in respect of an address in a Commonwealth subdivision in Victoria with which the person has established a connection under section 96 of that Act and that roll is annotated to indicate that the elector is an itinerant elector under section 96 of that Act, the person is entitled to be enrolled on the register of electors for that address.
- (5) A person who has attained 17 years of age is entitled to enrol on the register of electors if—
 - (a) the person would be entitled to enrol under sub-section (1) had the person attained 18 years of age; and
 - (b) the person has made a claim under section 23(2).
- (6) An Antarctic elector is deemed to be enrolled for the address at which the Antarctic elector lived as his or her principal place of residence immediately before leaving Victoria for Antarctica.

23. *Claims for enrolment and notice of change of address*

- (1) A person who is entitled to enrol on the register of electors (other than under section 22(3), 22(4) or 22(5)) and whose name is not on the register of electors must within 21 days of becoming so entitled—
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- (a) complete and sign a claim for enrolment in the prescribed form in accordance with the directions on the form; and
- (b) forward the claim for enrolment to the Commission.

Penalty: 1 penalty unit.

- (2) A person who is entitled to enrol on the register of electors under section 22(5) may—

- (a) complete and sign a claim for provisional enrolment in the prescribed form in accordance with the directions on the form; and
- (b) forward the claim for provisional enrolment to the Commission.

- (3) A claim for enrolment under sub-section (1) or (2) must be witnessed by an elector.

- (4) If a person who is enrolled on the register of electors changes the address of his or her principal place of residence, the person must notify the Commission in writing of the person's new address within 21 days after becoming entitled to be enrolled on the register of electors in respect of living at that new address.

Penalty: 1 penalty unit.

- (5) If a person forwards to the Commission—

- (a) a claim for enrolment under sub-section (1) or (2); or
- (b) a notice of change of address—

proceedings must not be instituted against that person for any offence against sub-section (1) or (4) allegedly committed before the forwarding of that claim or notice.

- (6) The Commission must process a claim for enrolment under sub-section (1) or (2) or a notice of change of address in accordance with the regulations.
- (7) The Commission—
 - (a) may accept or reject a claim for enrolment under sub-section (1) or (2); and
 - (b) must advise the person in writing of a decision to reject the claim.

24. *General postal voters*

- (1) A person may apply to the Commission in the prescribed form to be a general postal voter if the person is—
 - (a) an elector whose principal place of residence is not within 20 kilometres, by the nearest practicable route, of an election day voting centre; or
 - (b) an elector who by reason of being seriously ill or infirm is unable to travel to an election day voting centre; or
 - (c) an elector who, because he or she will be at a place (other than a hospital) caring for a person who is seriously ill or infirm, is unable to travel from that place to an election day voting centre; or
 - (d) an elector who—
 - (i) is serving a sentence of imprisonment; or
 - (ii) is otherwise in lawful custody or detention; or
 - (e) a silent elector; or

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- (f) an elector who because of his or her religious beliefs or membership of a religious order—
- (i) is precluded from attending an election day voting centre; or
 - (ii) for the greater part of the hours of voting on election day, is precluded from attending an election day voting centre.
- (2) An application in the prescribed form to the Commission to be a general postal voter may be made by a person on behalf of an elector certified in writing by a registered medical practitioner to be so physically incapacitated that the elector cannot sign the elector's name.
- (3) The certificate referred to in sub-section (2) must be forwarded to the Commission with the application under sub-section (2) to which it relates.
- (4) An application to be a general postal voter received by the Commission during the period that—
- (a) starts at 8 p.m. on the day of the close of the roll; and
 - (b) ends at 6 p.m. on election day—
- must not be considered until after the expiration of that period.
- (5) The Commission must process an application to be a general postal voter in accordance with the regulations.
- (6) The Commission—
- (a) may accept or reject an application under sub-section (1) or (2); and
 - (b) must advise the person in writing of a decision to reject the application.
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25. Power to refuse to include inappropriate names on register

- (1) The Commission may refuse to include a person's name on the register of electors if—
- (a) the Registrar of Births, Deaths and Marriages has determined that the name is a prohibited name within the meaning of the **Births, Deaths and Marriages Registration Act 1996**; or
 - (b) the Commission considers that—
 - (i) the name is fictitious, frivolous or obscene; or
 - (ii) the name is not the name by which the person is usually known; or
 - (iii) the name was not registered as the person's name under the **Births, Deaths and Marriages Registration Act 1996** or the **Registration of Births Deaths and Marriages Act 1959**; or
 - (iv) the name is not written in the alphabet used for the English language; or
 - (v) it is contrary to the public interest to include the name.
- (2) If the Commission decides to refuse to include a person's name on the register of electors under sub-section (1), the Commission must—
- (a) notify the person in writing of that decision; and
 - (b) advise the person that the person is entitled at any time within one month after the receipt of the notice to appeal to the Tribunal for an order directing that the person's name be included on the register of electors.
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26. Information to be supplied to Commission

- (1) The Registrar of Births, Deaths and Marriages must within 3 days after the end of each month forward to the Commission a list setting out the name, date of birth, sex and the last-known place of residence at the date of the death, of each person of the age of 17 years or more whose death was registered by the Registrar of Births, Deaths and Marriages during the month.
- (2) The Registrar of Births, Deaths and Marriages must within 3 days after the end of each month forward to the Commission a list of changes of names of persons under Part 4 of the **Births, Deaths and Marriages Registration Act 1996** during the month showing—
 - (a) the previous recorded or registered name of each person; and
 - (b) the name under which that person is registered in the register of changes of name; and
 - (c) the address of that person.
- (3) The Secretary to the Department of Justice must as soon as practicable after the beginning of each month forward to the Commission a list specifying the name, date of birth, sex and last known place of residence, of each person who during the preceding month has been convicted in Victoria and is serving a sentence of 5 years imprisonment or more for an offence against the law of Victoria, the Commonwealth or another State or a Territory of the Commonwealth.
- (4) The Commission may by notice in writing require—
 - (a) an Agency Head within the meaning of the **Public Sector Management and Employment Act 1998**; or

- (b) a Chief Executive Officer appointed by a Council under section 94 of the **Local Government Act 1989**; or
- (c) a chief executive officer of a public statutory authority; or
- (d) a member of the police force; or
- (e) a distribution company or a retailer within the meaning of the **Electricity Industry Act 2000**; or
- (f) an elector or a person qualified to be an elector—

to provide the information requested in the notice, being information that in the opinion of the Commission is required in connection with the preparation, maintenance or review of the register of electors.

- (5) A person who is requested by notice under subsection (4) to provide information must provide that information within 21 days after the date specified in the notice.

27. Review of register of electors

- (1) The Commission must regularly review the register of electors.
- (2) The Commission must ensure that the details entered in the register of electors are accurate.

28. Register of electors not available for public inspection

The Commission must ensure that the register of electors is not available for public inspection.

Division 2—Electoral Rolls

29. *Electoral rolls*

- (1) An electoral roll—
 - (a) must be prepared by the Commission as soon as practicable after the close of the roll in relation to an election; and
 - (b) must be prepared by the Commission when so required under any other Act; and
 - (c) may be in a form determined by the Commission.
- (2) Despite section 23(2), a person who will not attain 18 years of age on election day for an election is not entitled to be included on an electoral roll prepared by the Commission in relation to the election.
- (3) The Commission must not include on an electoral roll prepared under sub-section (1)(a)—
 - (a) the names of any electors who have been added to the register of electors after the close of the roll; or
 - (b) any changes to particulars which have been changed on the register of electors after the close of the roll.

30. *Correction of errors in electoral rolls*

- (1) If any accidental or unavoidable impediment, misfeasance or omission has happened in the preparation or printing of any electoral roll under this Part, the Governor in Council may by Order in Council—
 - (a) take the measures necessary for removing the impediment or rectifying the misfeasance or omission; or

- (b) declare the electoral roll to be valid despite the impediment, misfeasance or omission.
- (2) The Order in Council must state specifically the nature of the impediment, misfeasance or omission.

31. *Request to be silent elector*

- (1) A person may lodge a request in the prescribed form that the address of the person's principal place of residence not be shown on any electoral roll if the person considers that having that address on an electoral roll places or would place the personal safety of the person or of members of the person's family at risk.
- (2) A request must—
 - (a) give particulars of the relevant risk; and
 - (b) be verified by statutory declaration by the person making the request.
- (3) If the Commission is satisfied that having the address of the person making the request shown on any electoral roll places or would place the personal safety of the person or members of the person's family at risk, the Commission must ensure that the address of the person is not entered on any electoral roll.
- (4) The Commission must notify the person in writing of a decision to grant or refuse a request made by a person under sub-section (1).

32. *Inspection of list of electors and electoral rolls*

- (1) The Commission must prepare every 6 months a list of the names of electors (other than silent electors) in alphabetical order and their addresses.
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- (2) The Commission must ensure that copies of the latest list of electors are available for public inspection free of charge at the office of the Commission during office hours.
 - (3) The Commission must ensure that copies of the latest print of any electoral roll are available for public inspection free of charge at any place and during times determined by the Commission.

Division 3—Enrolment Information

33. *Provision of enrolment information to political parties, members and candidates*

- (1) The Commission must provide to each registered political party, free of charge, a list specifying electors and their particulars—
 - (a) once during each Assembly; and
 - (b) as soon as practicable after a redivision under the **Electoral Boundaries Commission Act 1982**; and
 - (c) on receiving a request from the registered political party not more than 11 times each year.
 - (2) The Commission must provide to each member of the Assembly and each member of the Council, free of charge, a list specifying electors for the district or province for which the member was elected and the electors' particulars—
 - (a) once during each Assembly; and
 - (b) on receiving a request from the member not more than once each year.
 - (3) Following a redivision under the **Electoral Boundaries Commission Act 1982**, the Commission must provide each member of the Assembly, free of charge, a list specifying electors
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for the district for which the member was elected and a list specifying electors for the district whose name and boundary is published under section 15 of that Act after the redivision and that, in the opinion of the Commission, most resembles the district for which the member was elected and the particulars of the electors on both lists—

- (a) as soon as practicable after the redivision; and
- (b) on receiving a request from the member not more than once each year until the Assembly is dissolved.

(4) Following a redivision under the **Electoral Boundaries Commission Act 1982**, the Commission must provide each member of the Council, free of charge, a list specifying electors for the province for which the member was elected and a list specifying electors for the province whose name and boundary is published under section 14 of that Act after the redivision and that, in the opinion of the Commission, most resembles the province for which the member was elected and the particulars of the electors on both lists—

- (a) as soon as practicable after the redivision; and
- (b) on receiving a request from the member not more than once each year until the dissolution of the second Assembly after the member has been elected.

(5) On the request of a member of the Assembly or Council, the Commission must provide to the member at least 6 times each year free of charge—

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- (a) a list specifying electors whose addresses for which they are enrolled were in the district or province represented by the member immediately before a list was last provided under this sub-section but are now no longer in that district or province and the particulars of those electors; and
 - (b) a list specifying electors whose addresses for which they are enrolled were not in the district or province represented by the member immediately before a list was last provided under this sub-section but are now in that district or province and the particulars of those electors.
- (6) On the request of any candidate for an election, the Commission must provide to the candidate, free of charge, a copy of the electoral roll for the election in a form determined by the Commission.
 - (7) The Commission must not provide particulars of silent electors under this section.

34. *Provision of enrolment information to others*

- (1) After receiving a request from any person or organisation not referred to in section 33 for a list of electors and their particulars, the Commission must—
 - (a) identify the public interest in providing the requested information; and
 - (b) consult with the Privacy Commissioner appointed under the **Information Privacy Act 2000** on the public interest in protecting the privacy of personal information; and
 - (c) taking into account the advice of the Privacy Commissioner, make a finding whether or not the public interest in providing the requested information outweighs the public

interest in protecting the privacy of personal information in the particular circumstances.

- (2) Subject to sub-section (3), if the Commission has made a finding under sub-section (1) that the public interest in providing the requested information outweighs the public interest in protecting the privacy of personal information, the Commission may—
- (a) provide to the person or organisation a list specifying electors and their particulars; and
 - (b) charge a fee that covers the cost to the Commission of providing the list.
- (3) The Commission must obtain from the person or organisation to be provided with information under this section an undertaking that the person or organisation will—
- (a) only use the information for the purpose for which the Commission agreed to provide the information; and
 - (b) not copy the information or give it to any other person or organisation; and
 - (c) return the information to the Commission or destroy the information after using it for the purpose for which the Commission agreed to provide the information.
- (4) If the Commission provides enrolment information under this section—
- (a) to a person or organisation that conducts medical research; or
 - (b) to a person or organisation that provides a health screening program—

the Commission may include in the enrolment information the age ranges of electors in a form determined by the Commission.

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- (5) The Commission must not provide particulars of silent electors under this section.
 - (6) The Commission must make available for public inspection, free of charge, at the office of the Commission, any finding made under subsection (1).

35. *Report to Parliament*

As soon as practicable after 30 June each year, the Commission must cause a report to be laid before each House of Parliament on the provision of enrolment information under section 34 and on any finding made under that section during the previous 12 months ending on that date.

36. *Use of enrolment information*

- (1) A registered political party, person or organisation must not use enrolment information that is provided by the Commission under section 33 or 34 except for the purpose that is a permitted purpose in relation to the party, person or organisation to which the information was provided.

Penalty: In the case of a natural person,
600 penalty units;

In the case of a body corporate or
registered political party, 3000 penalty
units.

- (2) The permitted purposes in relation to a registered political party or a candidate are—
 - (a) any purpose in connection with an election;
and
 - (b) monitoring the accuracy of information contained on an electoral roll or on the register of electors.

- (3) The permitted purposes in relation to a member of the Assembly or the Council are—
- (a) any purpose in connection with an election; and
 - (b) monitoring the accuracy of information contained on an electoral roll or on the register of electors; and
 - (c) exercising the functions of a member in relation to the member's constituents.
- (4) The permitted purpose in relation to a person or organisation (other than a registered political party, a candidate or a member of the Assembly or the Council) is the purpose for which the Commission agreed to provide the information.

37. *Prohibition of disclosure or commercial use of enrolment information*

- (1) For the purposes of this section, enrolment information is protected information in relation to a person if the person knows, or has reasonable grounds for believing, that the information has been provided under section 33 or 34.
- (2) A person must not disclose protected information unless the disclosure would be a use of the information for a permitted purpose under section 36.

Penalty: In the case of a natural person,
600 penalty units;

In the case of a body corporate or registered political party, 3000 penalty units.

- (3) A person must not use protected information for a commercial purpose.

Penalty: In the case of a natural person,
600 penalty units;

In the case of a body corporate or
registered political party, 3000 penalty
units.

Division 4—Enrolment Objections and Tribunal Reviews

38. *Objections to enrolment*

- (1) An elector may object to the enrolment of a person on the ground that—
- (a) the person is not entitled to be enrolled; or
 - (b) the address for which a person is enrolled is not the person's principal place of residence.
- (2) An elector's objection under sub-section (1) must—
- (a) be in writing and in the prescribed form; and
 - (b) be signed by the elector; and
 - (c) set out the ground for the objection; and
 - (d) be lodged with the Commission.
- (3) If no objection to a person's enrolment has been received under sub-section (1) and the Commission has reason to believe that the person is not entitled to be enrolled or that the address for which the person is enrolled is not the person's principal place of residence, the Commission must—
- (a) object to the enrolment of the person; and
 - (b) set out the ground for that objection.

- (4) An objection on the ground that the address for which a person is enrolled is not the person's principal place of residence is not a sufficient ground of objection unless the objection alleges that the person objected to does not live at the address and has not lived at the address for at least one month immediately before the date of the objection.

39. Notice of objection

- (1) If an objection is made under section 38, the Commission must notify the person whose enrolment is objected to of the objection.
- (2) Notice under sub-section (1)—
- (a) must be in the prescribed form; and
 - (b) may be given to the person objected to by being posted to the person.

40. Answer to objection

The person objected to under section 38 may orally or in writing in the manner specified in the notice of objection answer the objection.

41. Determination of objection

- (1) The Commission must determine the objection—
- (a) immediately on receipt of the answer of the person objected to; or
 - (b) if no answer is received within a period of 20 days after the posting of the notice, then immediately after the expiration of that period.
- (2) If it appears to the Commission that the person objected to is not entitled to be enrolled at the address in respect of which the objection has been made, the Commission must remove the person's name from the register of electors.
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42. Review by Tribunal

- (1) Any person—
- (a) who has forwarded a claim for enrolment or a claim for provisional enrolment and has not been enrolled; or
 - (b) who has forwarded a notice regarding his or her change of address of enrolment and whose address has not been changed on the register of electors; or
 - (c) whose name the Commission refused to include on the register of electors under section 25; or
 - (d) whose name has been removed from the register of electors by the Commission after an objection under section 38—

may apply to the Tribunal for review of the Commission's decision.

- (2) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

PART 4—REGISTRATION OF POLITICAL PARTIES**43. Register of Political Parties**

The Commission must establish and maintain a Register of Political Parties containing a list of the political parties that are registered under this Part.

44. Registered officer of a political party

- (1) Subject to sub-section (2), a reference in this Act to the registered officer of a registered political party is a reference to the person shown on the Register of Political Parties as the registered officer of that party.
- (2) A reference in this Part to the registered officer of a registered political party includes a reference to a person for the time being nominated by the registered officer of a political party as a deputy registered officer of the political party for the purposes of this Act.
- (3) A nomination under sub-section (2)—
 - (a) must be in writing, signed by the registered officer and lodged with the Commission; and
 - (b) must specify the name and address of the person nominated and be signed by that person; and
 - (c) may be revoked at any time by the registered officer by written notice lodged with the Commission.

45. Application for registration

- (1) An eligible political party may apply to the Commission to be registered if the political party had not made an application for registration within the previous 6 months that was refused by the Commission.
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- (2) An application for the registration of an eligible political party must—
- (a) be in writing, signed by the secretary of the political party; and
 - (b) set out the name of the political party; and
 - (c) set out the name and address of the person who is to be the registered officer of the political party for the purposes of this Act; and
 - (d) be accompanied by a copy of the constitution (however described) of the political party; and
 - (e) be accompanied by a statutory declaration made by the secretary stating that at least 500 members of the political party are—
 - (i) electors; and
 - (ii) members in accordance with the rules of the political party; and
 - (iii) not members of another registered political party or of a political party applying for registration; and
 - (f) be accompanied by a list, in a form determined by the Commission, of the names and addresses of at least 500 members of the political party who meet the requirements set out in paragraph (e); and
 - (g) be accompanied by a fee of \$500.

46. *Political party not to be registered during election*

During the period that starts on the day of the issue of the writ for an election and ends on the day on which the writ is returned—

- (a) the Commission must not—
 - (i) consider an application made under section 45; or
 - (ii) register an eligible political party; and
- (b) the Tribunal must not—
 - (i) review a decision made on an application under section 45; or
 - (ii) make an order in relation to an application under section 45.

47. *Political parties with certain names not to be registered*

The Commission must refuse an application for the registration of a political party if, in the opinion of the Commission, the name of the political party that the party wishes to use for the purposes of this Act—

- (a) comprises more than 6 words; or
 - (b) is obscene; or
 - (c) is not a proper abbreviation of the name of the political party; or
 - (d) is the name of another registered political party; or
 - (e) so nearly resembles the name of another registered political party that it is likely to be confused with, or mistaken for, that name; or
 - (f) comprises the words "Independent Party" or comprises or contains the word "Independent" and—
 - (i) the name of a registered political party; or
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- (ii) matter that so nearly resembles the name of a registered political party that the matter is likely to be confused with, or mistaken for, that name.

48. *Variation of application*

- (1) If, after initial consideration of an application for the registration of a political party, the Commission is of the opinion that—
 - (a) the Commission is required to refuse the application; and
 - (b) the political party might be prepared to vary the application in such a way that the Commission may accept the application—the Commission must give the political party written notice of that opinion, setting out the reasons for that opinion and the terms of sub-sections (2) and (3).
- (2) If the Commission has given notice under sub-section (1) in relation to an application, the Commission is not required to give further consideration to the application unless and until a request is lodged with the Commission under sub-section (3).
- (3) If notice is given under sub-section (1) in relation to an application for the registration of a political party, the political party may lodge with the Commission within 45 days after receiving the notice a written request, signed by the secretary of the political party, to—
 - (a) vary the application in a manner specified in the request; or
 - (b) proceed with the application in the form in which it was lodged.

- (4) If the Commission receives a request under sub-section (3) to vary an application, the Commission must consider the application in its varied form.
- (5) An application is deemed to have been withdrawn if the Commission does not receive a request under sub-section (3) to vary or proceed with an application within 45 days after notice under sub-section (1) is given.

49. *Publication of notice of application*

- (1) The Commission must publicly advertise and publish in the Government Gazette a notice of the application for registration of a political party.
 - (2) A notice under sub-section (1) in relation to an application must—
 - (a) set out the particulars specified in the application in accordance with section 45(2); and
 - (b) invite any person who believes that the application—
 - (i) does not relate to an eligible political party; or
 - (ii) is not in accordance with section 45; or
 - (iii) should be refused under section 47—to submit written particulars of the grounds for that belief to the Commission within 30 days after the day of the publication of the notice in the Government Gazette.
 - (3) Particulars submitted by a person under sub-section (2)(b) must—
 - (a) be signed by the person; and
 - (b) specify an address of that person.
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- (4) The Commission must not register a political party unless the Commission has—
 - (a) complied with sub-section (1); and
 - (b) considered any particulars submitted in response to the invitation referred to in sub-section (2)(b).
 - (5) Before considering any written particulars submitted under sub-section (2)(b), the Commission must—
 - (a) send a copy of the written particulars to the political party applying for registration; and
 - (b) give the political party applying for registration a notice in writing specifying that the political party may, within 14 days after the date of the notice, reply to the matters raised in the written particulars; and
 - (c) make details of any reply under paragraph (b) available for public inspection, free of charge, during ordinary office hours at the office of the Commission.

50. Registration

- (1) If the Commission determines that a political party that has applied for registration may be registered, the Commission must—
 - (a) register the political party by entering in the Register of Political Parties—
 - (i) the name of the political party; and
 - (ii) the name and address of the person who has been nominated as the registered officer of the political party for the purposes of this Act; and
 - (b) give written notice to the political party that the Commission has registered the political party; and
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- (c) if a person submitted particulars in response to the invitation referred to in section 49(2)(b) in relation to the application, give written notice to that person that the Commission has registered the political party, setting out the reasons for rejecting the grounds particulars of which were submitted by the person; and
 - (d) publish notice of the registration of the political party in the Government Gazette.
- (2) If the Commission determines that a political party that has applied for registration should not be registered, the Commission must give the political party written notice that its application has been refused, setting out the reasons for the refusal.

51. *Changes to Register of Political Parties*

- (1) A registered political party may apply to the Commission for a change to the Register of Political Parties by—
- (a) changing the name of the political party to a name specified in the application; or
 - (b) substituting for the name of the registered officer entered in the Register the name of a person specified in the application; or
 - (c) substituting for the address of the registered officer of the political party that is entered in the Register another address specified in the application.
- (2) An application under sub-section (1) for a change to the Register of Political Parties—
- (a) must be in writing, signed by the secretary of the political party; and
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- (b) in the case of an application to substitute the name of a person as the name of the registered officer of a political party, may also be signed by the registered officer; and
 - (c) in the case of a change of name of the political party, must be accompanied by a fee of \$500.
- (3) In the case of an application under sub-section (1) to change the name of the political party, sections 46 to 49 apply in relation to the application as if a reference in those sections to an application for registration were a reference to an application for that change.
- (4) If an application under sub-section (1) to substitute the name of a person for the name of the registered officer of a political party is not signed by the registered officer, the Commission must—
- (a) give the registered officer written notice of the application for the change and invite the registered officer, if the registered officer considers that there are reasons why the change should not be made, to submit written particulars of those reasons to the Commission within 7 days after the date on which the notice was given; and
 - (b) consider any particulars submitted in response to the invitation referred to in paragraph (a).
- (5) If the Commission determines that an application under sub-section (1) may be granted, the Commission must—
- (a) change the Register of Political Parties accordingly; and
 - (b) give written notice to the political party that the Commission has made the change; and
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- (c) in the case of a change to the name of the political party in respect of which a person submitted particulars in response to the invitation referred to in section 49(2)(b) by virtue of sub-section (3) of this section, give written notice to that person that the Commission has made the change, setting out in the notice to the person the reasons for rejecting the reasons particulars of which were submitted by the person; and
 - (d) in the case of an application to substitute the name of a person for the name of the registered officer of the political party, being an application in respect of which the registered officer submitted particulars under sub-section (4)(a), give written notice to that registered officer that the Commission has made the change setting out the reasons for rejecting the reasons particulars of which were so submitted; and
 - (e) publish notice of the change in the Government Gazette.
- (6) If the Commission determines that a political party's application under sub-section (1) should be refused, the Commission must give the political party written notice of that determination.

52. Commission to review registration of political parties

- (1) The Commission—
- (a) may review the registration of a political party from time to time; and
 - (b) must review the registration of a political party as soon as practicable after an election if the political party obtained an average of less than 4% of the first preference votes over all electorates contested by the political party.
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- (2) For the purposes of reviewing the registration of a political party under sub-section (1), the Commission may require a political party to provide the Commission with up to date information and documents of the kind referred to in section 45(2) within 30 days.

53. *Voluntary de-registration*

- (1) The Commission must de-register a political party if an application to do so is made to the Commission by the political party.
- (2) An application under sub-section (1) must be in writing, signed by the registered officer of the political party.

54. *De-registration of party not endorsing candidates*

If a registered political party has not endorsed at least one candidate for an election held within the last 5 years, the Commission must—

- (a) de-register the political party; and
- (b) give the person who was the registered officer of the political party immediately before its de-registration notice in writing of the de-registration; and
- (c) publish a notice of the de-registration in the Government Gazette.

55. *De-registration of political party on failure to provide information and documents*

If a registered political party has failed to comply with a request under section 52(2), the Commission must—

- (a) de-register the political party; and
- (b) give the person who was the registered officer of the political party immediately before its de-registration notice in writing of the de-registration; and

- (c) publish a notice of the de-registration in the Government Gazette.

56. De-registration of political party on other grounds

- (1) This section applies to a registered political party if the Commission is satisfied on reasonable grounds that—
 - (a) the political party has ceased to exist (whether by amalgamation with another political party or otherwise); or
 - (b) the political party has ceased to have at least 500 members who meet the requirements set out in section 45(2)(e); or
 - (c) the registration of the political party was obtained by fraud or misrepresentation.
 - (2) If this section applies to a registered political party, the Commission must—
 - (a) notify the registered officer of the political party in writing that the Commission is considering de-registering the political party under this section setting out the reasons of the Commission for considering doing so and the terms of sub-sections (3), (4), (5) and (6); and
 - (b) publish a notice in the Government Gazette that the Commission is considering de-registering the political party under this section, specifying the paragraph of sub-section (1) by reason of which the Commission is considering doing so.
 - (3) If a notice is given under sub-section (2) in relation to a political party, the registered officer of the political party or 10 members of the political party may, within one month after the date on which the notice was given, lodge with the Commission a statement in writing signed by the
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registered officer or by those members of the political party setting out reasons why the political party should not be de-registered under this section.

- (4) A statement that is lodged under sub-section (3) and is signed by 10 members of the political party must—
- (a) set out the names and addresses of those members; and
 - (b) contain a statement that they are members of that political party.
- (5) If a notice is given under sub-section (2) in relation to a political party and a statement is not lodged under sub-section (3) in response to that notice, the Commission must—
- (a) de-register the political party; and
 - (b) publish a notice of the political party's de-registration in the Government Gazette.
- (6) If, in response to a notice given under sub-section (2) in relation to a political party, a statement is lodged under sub-section (3), the Commission must—
- (a) consider that statement; and
 - (b) determine whether the political party should be de-registered for the reasons set out in that notice.
- (7) If, under sub-section (6), the Commission determines that a political party should be de-registered, the Commission must—
- (a) de-register the political party; and
 - (b) give the person who was the last registered officer of the political party written notice of the de-registration, setting out the reasons of the Commission for rejecting the reasons set

out in the statement lodged under sub-section (3); and

(c) publish a notice of the de-registration in the Government Gazette.

(8) If, under sub-section (6), the Commission determines that a political party should not be de-registered under this section, the Commission must give the registered officer of the political party written notice of the determination.

57. De-registration

If a political party is de-registered under section 53, 54, 55 or 56, the Commission must cause the particulars in the Register of Political Parties that relate to that political party to be cancelled.

58. De-registered political party is ineligible for registration

A political party—

- (a) that is de-registered under section 53, 54, 55 or 56; or
- (b) that has a name that so nearly resembles the name of the de-registered political party that it is likely to be confused with, or mistaken for, that name—

is ineligible for registration until after the simultaneous election that first occurs following the de-registration.

59. Inspection of Register of Political Parties

The Register of Political Parties must be open for public inspection, free of charge, at the office of the Commission.

60. Review of certain decisions

(1) In this section—

"person" includes a political party;

"reviewable decision" means a decision of the Commission—

- (a) to register a political party under this Part; or
 - (b) to refuse an application for the registration of a political party under this Part; or
 - (c) to grant an application under section 51(1); or
 - (d) to refuse an application under section 51(1); or
 - (e) to de-register a political party under section 56(7).
- (2) Any person whose interests are affected by a reviewable decision made by the Commission may apply to the Tribunal for review of the decision.
- (3) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
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PART 5—ELECTION PROCEDURES**Division 1—Writs****61. Writs for elections**

- (1) A writ for a simultaneous election must be issued by the Governor within 7 days after the expiration or dissolution of the Assembly.
- (2) A writ for a by-election must—
 - (a) for the election of a member of the Assembly, be issued by the Speaker;
 - (b) for the election of a member of the Council, be issued by the President—within one month after the occurrence of the vacancy.
- (3) If there is no Speaker or President to issue a writ under sub-section (2), the writ must be issued by the Governor within one month after the occurrence of the vacancy.
- (4) A writ issued under this section must be—
 - (a) in or to the effect of the form in Schedule 1; and
 - (b) directed to the Commission; and
 - (c) returnable to the person who issued the writ, on a day within 21 days after the election day appointed and named in the writ.

62. Vacancy occurring by reason of resignation to contest Commonwealth election

Despite anything to the contrary in this Act, if—

- (a) a vacancy occurs in the Assembly or the Council by reason of a member resigning his or her seat for the purpose of seeking
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election for the Parliament of the Commonwealth; and

- (b) the member tenders his or her resignation within the period of 21 days before the date of the issue of the writ for the Commonwealth election; and
- (c) the member notifies the Speaker or the President in writing of his or her intention to seek such election and his or her intention in the event of failing to secure such election to become again a candidate for the vacancy in the Assembly or the Council—

then the issue of the writ for the election of a member to fill the vacancy occurring in the Assembly or the Council must be delayed until the result of the Commonwealth election has been officially declared.

63. *Issue of writ and days appointed*

- (1) A writ is deemed to have been issued at 6 p.m. on the day on which the writ was issued.
- (2) The person issuing the writ for an election must in relation to that election appoint—
 - (a) the day for the close of the roll; and
 - (b) the final nomination day; and
 - (c) the election day.
- (3) The day appointed for the close of the roll must be 3 days after the date of the writ.
- (4) A roll closes at 8 p.m. on the day appointed for the close of the roll.
- (5) Subject to sub-section (6), the final nomination day must be a day within the period that—
 - (a) starts 10 days after the date of the writ; and
 - (b) ends 28 days after the date of the writ.

- (6) If a candidate for an election dies before noon on the final nomination day for the election, the final nomination day (except for the purposes of subsection (7)) is to be the next day.
- (7) The election day must be a Saturday within the period that—
 - (a) starts 15 days after the final nomination day; and
 - (b) ends 30 days after the final nomination day.

64. *Duties of Commission on receipt of writ*

If a writ for an election is received by the Commission under section 61, the Commission must—

- (a) indorse on the writ the date of its receipt; and
- (b) publicly advertise—
 - (i) receipt of the writ; and
 - (ii) the final nomination day and election day named in the writ; and
 - (iii) the office of the appropriate election manager.

Division 2—Voting Centres

65. *Appointment of voting centres*

- (1) The Commission must—
 - (a) appoint as many voting centres as the Commission considers necessary; and
 - (b) publicly advertise the location and time of operation of each voting centre, other than a mobile voting centre; and
 - (c) in the case of a mobile voting centre, notify each registered political party and the candidates for the district or province in
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which the mobile voting centre will be located of the mobile voting centre's location and time of operation.

- (2) The Commission may—
 - (a) designate appropriate voting centres as—
 - (i) early voting centres; and
 - (ii) mobile voting centres; and
 - (b) specify the class of elector that is entitled to vote at particular early voting centres or mobile voting centres.
- (3) The Commission must, in exercising its powers under this section, ensure that electors are provided with an accessible service that facilitates the opportunity to vote.
- (4) If how-to-vote cards relating to an election are supplied to the election manager, an election official at a mobile voting centre in relation to that election must—
 - (a) advise electors that how-to-vote cards have been supplied; and
 - (b) show electors how-to-vote cards if so requested.

66. *Use of licensed premises as voting centre*

- (1) Subject to this section, no part of any licensed premises within the meaning of the **Liquor Control Reform Act 1998** may be used for the purpose of a voting centre.
- (2) If the Commission considers that there are exceptional circumstances which so require, the Commission may, subject to any conditions, authorise the use of any premises which is, or of which any part is, a licensed premises within the meaning of the **Liquor Control Reform Act 1998** for the purpose of a voting centre.

- (3) If during any period, any part of a premises is used for the purpose of a voting centre under subsection (2), that part of the premises must not be—
- (a) used for the sale of liquor; or
 - (b) accessible from any other part of the premises which is being used for the sale of liquor.

67. Use of prescribed premises as voting centre

- (1) The Commission may use as an election day voting centre any room or hall in a prescribed premises.
- (2) The Commission must give 7 days' notice to the managers, trustees or owners of the prescribed premises.
- (3) The Commission must pay—
 - (a) reasonable costs for lighting, air conditioning and cleaning of the prescribed premises; and
 - (b) if, as a result of using the premises as a voting centre, the premises or any furniture in the premises is damaged, the full costs of repairing the damage.
- (4) If there is a dispute between the Commission and the managers, trustees or owners of the prescribed premises about the amount payable under subsection (3), the matter is to be determined by the Magistrates' Court.
- (5) In this section, "**prescribed premises**" means a school or building that is not used exclusively for religious services and that—
 - (a) is supported wholly or in part by—
 - (i) public funds; or
 - (ii) a perpetual endowment; or

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- (b) has been built with, or is supported wholly or in part by, a grant from the Consolidated Fund.

Division 3—Nominations and Candidates

68. *Commission to make particulars of candidates available*

Each day after the issue of the writ for an election, the Commission must make available at locations and times determined by the Commission—

- (a) the names and contact details of the candidates for the election; and
- (b) the name of any person who has ceased to be a candidate for the election.

69. *Nomination of candidates*

- (1) A person may only become a candidate for an election by nomination in accordance with this section.
- (2) If a candidate is endorsed by a registered political party, there must be delivered to the Commission, after the issue of the writ and before noon of the day before the final nomination day, a nomination form in the prescribed form that—
 - (a) specifies the candidate's name and address as it appears on the register of electors; and
 - (b) is signed by the candidate and by the registered officer of the registered political party; and
 - (c) includes a declaration signed by the candidate that the candidate is qualified under the **Constitution Act 1975** to be elected a member of the Assembly or the Council; and

- (d) includes a statement specifying the form in which—
- (i) the candidate's given name or given names; and
 - (ii) the registered political party's name—
- are to be printed on the ballot-papers for the election.
- (3) If a candidate is not endorsed by a registered political party, there must be delivered to the election manager, after the issue of the writ and before noon on the final nomination day, a nomination form in the prescribed form that—
- (a) specifies the candidate's name and address as it appears on the register of electors; and
 - (b) is signed by the candidate and by 6 persons entitled to vote at the election for which the candidate is nominated; and
 - (c) includes a declaration signed by the candidate that the candidate is qualified under the **Constitution Act 1975** to be elected a member of the Assembly or the Council; and
 - (d) includes a statement specifying the form in which the candidate's given name or given names is to be printed on the ballot-papers for the election.
- (4) There must be delivered with a nomination form referred to in sub-section (2) or (3) the sum of—
- (a) \$350 in respect of a candidate for election to the Assembly; or
 - (b) \$700 in respect of a candidate for election to the Council—
- paid in cash or by cheque drawn on account of an authorised deposit-taking institution within the
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meaning of the Commonwealth Banking Act 1959.

- (5) A given name of a candidate specified under subsection (2)(d) or (3)(d) may differ from the candidate's given name as it appears on the register of electors only to the extent that the given name is specified by—
- (a) an initial standing for that name; or
 - (b) a commonly accepted variation of the name (including an abbreviation or truncation of that name or an alternative form of that name); or
 - (c) a commonly used other name specific to the candidate by which the candidate is usually identified if the candidate produces evidence to the satisfaction of the Commission that the proposed name is a commonly used other name specific to the candidate by which the candidate is usually identified.
- (6) A person must not nominate as a candidate for more than one election to be held on the same day.
- (7) If a person nominates as a candidate for more than one election to be held on the same day—
- (a) all nominations of the person as a candidate for the elections to be held on that day are void; and
 - (b) the deposits paid in respect of the nominations are to be forfeited and paid into the Consolidated Fund.
- (8) The nomination form delivered by or on behalf of a candidate must not be made available to any person for inspection except in accordance with this Act.

70. Rejection of nominations

The Commission or election manager may only reject a nomination if—

- (a) the nomination form has not been properly completed in accordance with section 69; or
- (b) the deposit is not lodged with the nomination form in accordance with section 69; or
- (c) the candidate is not enrolled to vote as at the close of the roll for the election; or
- (d) the surname of the candidate specified under section 69 is not that under which the candidate is enrolled.

71. Retirement of candidate

- (1) A candidate for any election who is endorsed by a registered political party may withdraw the candidate's nomination by lodging with the Commission a notice of retirement at any time before noon on the day before the final nomination day.
- (2) A candidate for any election who is not endorsed by a registered political party may withdraw the candidate's nomination by lodging with the election manager a notice of retirement at any time before noon on the final nomination day.

72. Failed election

- (1) An election fails if—
 - (a) a candidate dies after noon on the final nomination day and before 6 p.m. on election day; or
 - (b) the successful candidate dies after 6 p.m. on election day and before being declared elected; or
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- (c) no candidate is nominated or declared elected.
 - (2) If an election has failed—
 - (a) the election manager must immediately advise the Commission that the election has failed; and
 - (b) the Commission must indorse the writ to that effect and return the writ; and
 - (c) the person who issued the writ for the election that has failed must issue a new writ in or to the effect of the form in Schedule 1 for a supplementary election.
 - (3) If there is no Speaker or President to issue a writ under sub-section (2)(c), the writ must be issued by the Governor.
 - (4) Despite anything to the contrary in this Act—
 - (a) a supplementary election must be held on the electoral roll that was prepared for the purpose of the election that has failed; and
 - (b) the Governor in Council may by Order in Council make such modifications and adaptations of any of the sections of this Act as are necessary by reason of the fact that the supplementary election will be held on a day later than the election day appointed for the election that failed.

Division 4—Arrangements for Holding Elections

73. When election is required

- (1) If there is more than one candidate for an election in a district or province, an election must be held.
- (2) As soon as practicable after noon on the final nomination day, the election manager must at the

election manager's office publicly display the names of the candidates for the election.

- (3) The election manager must advise the Commission of the names of the candidates for the election.

74. *Ballot-papers to be prepared*

- (1) As soon as practicable after noon on the final nomination day, the election manager must determine the order of names of candidates on ballot-papers to be used in an election by drawing the names of the candidates by lot in a manner determined by the Commission, either manually or by computer.
- (2) If in the opinion of the Commission a similarity in the names of 2 or more candidates is likely to cause confusion, the names of those candidates may be arranged with a description as is determined by the Commission to distinguish the names.
- (3) The Commission must cause ballot-papers to be printed—
 - (a) with the names of all the candidates at the election and of no other persons, in the form of Schedule 2; and
 - (b) in the order determined by the election manager.
- (4) If a person has been endorsed as a candidate in an election by a registered political party, the name of that party must be printed adjacent to the name of the candidate on the ballot-papers.

75. *Notification of election*

If an election is required to held under section 73, the Commission must publicly advertise—

- (a) that an election will be held; and
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- (b) the names of the candidates for the election and the order of the names of the candidates on the ballot-papers to be used in the election.

76. Provisions relating to scrutineers

- (1) A candidate may appoint one scrutineer for each election official issuing ballot-papers at a voting centre for the district or province for which the candidate is seeking election.
- (2) Subject to sub-section (3), a candidate may appoint scrutineers to represent the candidate at the scrutiny or counting of ballot-papers under sections 111, 113 and 114.
- (3) The number of scrutineers appointed under sub-section (2) must not be greater than the number of electoral officials who are engaged in the scrutiny and counting of ballot-papers.
- (4) An appointment of a scrutineer for the purposes of this Act must be—
- (a) in a form approved by the Commission; and
 - (b) produced for inspection on request by the election manager or election official.
- (5) A scrutineer must not—
- (a) interfere with or attempt to influence any elector within a voting centre; or
 - (b) communicate with any person in a voting centre except so far as is necessary in the discharge of the functions of the scrutineer; or
 - (c) handle any ballot-papers.

Penalty: 60 penalty units or 6 months imprisonment.

- (6) A scrutineer must not be prevented from entering or leaving a voting centre during its time of operation.
- (7) A scrutineer must wear a badge at a voting centre that—
 - (a) is supplied by the Commission; and
 - (b) identifies the scrutineer as a scrutineer.
- (8) A scrutineer may be removed from a voting centre by a member of the police force if the scrutineer—
 - (a) commits any breach of this section; or
 - (b) is guilty of misconduct; or
 - (c) fails to obey the lawful directions of the election manager or an election official.

Division 5—How-to-vote Cards

77. Submission of how-to-vote cards to election manager

- (1) A person may submit a how-to-vote card to the election manager for registration at any time within the period that—
 - (a) starts on the first working day after the final nomination day; and
 - (b) ends at noon on the 7th working day before election day.
 - (2) A person submitting a how-to-vote card to the election manager for registration must make a declaration in the prescribed form.
 - (3) Before noon on the next working day after receiving a how-to-vote card, the election manager must—
 - (a) register the how-to-vote card; or
 - (b) refuse to register the how-to-vote card—
and inform the applicant of the decision.
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- (4) In determining whether to register a how-to-vote card, the election manager must have regard to the following matters—
- (a) that the how-to-vote card clearly identifies the person, political party, organisation or group on whose behalf the card is to be distributed;
 - (b) that the how-to-vote card indicates the order of voting preference for all candidates listed on the card or contains a statement that a number must be placed against the name of each candidate;
 - (c) that the how-to-vote card contains the material required by section 83;
 - (d) that the how-to-vote card contains the prescribed endorsement.
- (5) The election manager must refuse to register a how-to-vote card if the election manager is satisfied that the card—
- (a) is likely to mislead or deceive an elector in casting the vote of the elector; or
 - (b) is likely to induce an elector to mark the vote of the elector otherwise than in accordance with the directions on the ballot-paper; or
 - (c) contains offensive or obscene material.
- (6) The election manager may provide such assistance to an applicant as the election manager considers appropriate before the submission of the how-to-vote card to the election manager for registration.

78. Review of election manager's decision

- (1) A person may apply to the Commission for a review of an election manager's decision under section 77(3) no later than noon on the next day after the election manager has advised the applicant for registration of the how-to-vote card of that decision.
- (2) The Commission must not later than noon on the next day after receiving an application for review under sub-section (1)—
 - (a) determine the application; or
 - (b) give the applicant and the election manager directions as to the changes required to obtain registration by the election manager.

79. Submission of how-to-vote cards to the Commission

- (1) The registered officer of a registered political party or a person appointed by the registered officer may submit a how-to-vote card to the Commission for registration at any time within the period that—
 - (a) starts on the first day after the final nomination day; and
 - (b) ends at noon on the 7th day before election day.
 - (2) A person submitting a how-to-vote card to the Commission for registration must make a declaration in the prescribed form.
 - (3) Before noon on the next day after receiving a how-to-vote card, the Commission must—
 - (a) register the how-to-vote card; or
 - (b) refuse to register the how-to-vote card—
and inform the applicant of the Commission's decision.
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- (4) In determining whether to register a how-to-vote card, the Commission must have regard to the following matters—
- (a) that the how-to-vote card clearly identifies the person, political party, organisation or group on whose behalf the card is to be distributed;
 - (b) that the how-to-vote card indicates the order of voting preference for all candidates listed on the card or contains a statement that a number must be placed against the name of each candidate;
 - (c) that the how-to-vote card contains the material required by section 83;
 - (d) that the how-to-vote card contains the prescribed endorsement.
- (5) The Commission must refuse to register a how-to-vote card if the Commission is satisfied that the card—
- (a) is likely to mislead or deceive an elector in casting the vote of the elector; or
 - (b) is likely to induce an elector to mark the vote of the elector otherwise than in accordance with the directions on the ballot-paper; or
 - (c) contains offensive or obscene material.
- (6) The Commission may provide such assistance to an applicant as the Commission considers appropriate before the submission of the how-to-vote card to the Commission for registration.
- (7) A how-to-vote card submitted under this section must be either—
- (a) a single how-to-vote card, that is, a how-to-vote card submitted with respect to one electoral district or province only; or
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- (b) a multiple electorate how-to-vote card, that is, a how-to-vote card submitted with respect to no less than every district or province for which the registered political party submitting the how-to-vote card has endorsed a candidate.

80. *Review of the Commission's decision*

- (1) Any person may apply to the Tribunal for review of the Commission's decision under section 78 or 79 no later than noon on the next working day after the Commission has advised the applicant of that decision.
- (2) The Tribunal must, not later than 5 p.m. on the next working day after receiving an application under sub-section (1)—
 - (a) determine the application; or
 - (b) give the applicant and the Commission directions as to the changes required to obtain registration by the Commission.

81. *Supply of how-to-vote cards*

- (1) If a how-to-vote card is registered under section 77, the applicant must immediately provide the election manager with 10 more cards than the number of election day voting centres in the district or province where the card is to be distributed.
 - (2) If a how-to-vote card is registered under section 79, the applicant must—
 - (a) immediately provide the Commission with 2 cards; and
 - (b) as soon as practicable, provide the election manager with 10 more cards than the number of election day voting centres in the district or province where the card is to be distributed.
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82. *How-to-vote cards available for inspection*

- (1) As soon as practicable after registering a how-to-vote card, the Commission must make available a copy of that card for inspection at the office of the Commission.
- (2) As soon as practicable after registering a how-to-vote card or receiving a copy of a how-to-vote card registered by the Commission, the election manager must make a copy of the how-to-vote card available for inspection—
 - (a) at the office of the election manager; and
 - (b) at each election day voting centre.

Division 6—Electoral Matter

83. *Printing and publication of electoral advertisements, handbills, pamphlets or notices*

- (1) A person must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, an electoral advertisement, handbill, pamphlet or notice unless—
 - (a) the name and address of the person who authorised the electoral advertisement, handbill, pamphlet or notice appears at its end; and
 - (b) in the case of an electoral advertisement, handbill, pamphlet or notice that is printed or published otherwise than in a newspaper, the name and place of business of the printer or publisher appears at its end.

Penalty: In the case of a natural person,
10 penalty units;

In the case of a body corporate,
50 penalty units.

- (2) For the purposes of sub-section (1)(b), a person who makes copies for distribution of an electoral advertisement, handbill, pamphlet or notice that is published on the Internet is deemed to be the printer of those copies.
- (3) Sub-section (1) does not apply in relation to—
- (a) a car sticker, an item of clothing, lapel button, lapel badge, fridge magnet, pen, pencil or balloon; or
 - (b) an article included in a prescribed class of articles.
- (4) Nothing in sub-section (3)(a) is to be taken, by implication, to limit the generality of regulations that may be made by virtue of sub-section (3)(b).

84. *Misleading or deceptive matter*

- (1) A person must not during the relevant period—
- (a) print, publish or distribute; or
 - (b) cause, permit or authorise to be printed, published or distributed—
- any matter or thing that is likely to mislead or deceive an elector in relation to the casting of the vote of the elector.
- Penalty: In the case of a natural person,
60 penalty units or 6 months
imprisonment;
- In the case of a body corporate,
300 penalty units.
- (2) A person must not during the relevant period—
- (a) print, publish or distribute; or
 - (b) cause, permit or authorise to be printed, published or distributed—
-

an electoral advertisement, handbill, pamphlet or notice that contains a representation or purported representation of a ballot-paper for use in that election that is likely to induce an elector to mark the elector's vote otherwise than in accordance with the directions on the ballot-paper.

Penalty: In the case of a natural person,
60 penalty units or 6 months
imprisonment;

In the case of a body corporate,
300 penalty units.

(3) In a prosecution of a person for an alleged offence against sub-section (1) or (2), it is a defence if the person proves that the person—

(a) did not know; and

(b) could not reasonably be expected to have known—

that the matter or thing was likely to mislead an elector when casting the elector's vote.

85. *Heading to electoral advertisements*

The proprietor of a newspaper must cause the word "advertisement" to be printed as a headline in letters not smaller than 10 point to each article or paragraph in the proprietor's newspaper containing electoral matter, the insertion—

(a) of which is, or is to be, paid for; or

(b) for which any reward or compensation or promise of reward or compensation is, or is to be, made.

Penalty: In the case of a natural person,
5 penalty units;

In the case of a body corporate,
25 penalty units.

86. Authors to be identified

- (1) A person must not during the relevant period—
- (a) print, publish or distribute; or
 - (b) cause, permit or authorise to be printed, published or distributed—

a newspaper, circular or pamphlet containing an article, report, letter or other matter containing electoral matter unless the author's name and address are set out at the end of the article, report, letter or other matter, or if only part of the article, report, letter or matter appears in any issue of a newspaper, circular or pamphlet at the end of that part.

Penalty: In the case of a natural person,
5 penalty units;

In the case of a body corporate,
25 penalty units.

- (2) This section does not apply to the publication in a newspaper of—
- (a) a leading article; or
 - (b) an article that consists solely of a report of a meeting and does not contain electoral matter, other than comment made by a speaker at the meeting.
- (3) It is sufficient compliance with sub-section (1) if a newspaper containing a letter containing electoral matter sets out the author's name and the suburb or locality in which the author's address is located.

PART 6—VOTING

Division 1—Entitlement to Vote

87. *Voting at elections*

- (1) A person is entitled to vote in an election in accordance with this Act if the person—
 - (a) is qualified to enrol as an elector under the **Constitution Act 1975**; and
 - (b) is enrolled as an elector under Part 3 of this Act; and
 - (c) in the case of an elector enrolled under section 22(1), is enrolled in respect of the address of the person's principal place of residence or the address of the place that was the person's principal place of residence during the period of 3 months immediately before election day.
- (2) An elector—
 - (a) whose name has been placed on the register under section 22(5); and
 - (b) who has not attained 18 years of age on election day—is not entitled to vote at the election.
- (3) An elector must vote at every election for which the elector is entitled to vote.
- (4) An elector may vote—
 - (a) on election day at an election day voting centre; or
 - (b) in accordance with any other manner provided under this Part, if the elector is entitled to use that manner of voting.

Division 2—Voting at an Election Day Voting Centre**88. *Ballot-box to be exhibited before voting***

Immediately before voting commences at an election day voting centre, an election official must—

- (a) exhibit for the inspection of the candidates, scrutineers and election officials who may be present, the ballot-box open and empty; and
- (b) after exhibiting the ballot-box in accordance with paragraph (a), close and securely fasten and seal the ballot-box ensuring that it is still empty.

89. *Hours of voting*

- (1) Subject to sub-section (2), voting at every election day voting centre must—
 - (a) commence at 8 a.m. on election day; and
 - (b) unless adjourned under section 97, close at 6 p.m. on the same day.
- (2) A person must be permitted to vote if the person is—
 - (a) in an election day voting centre at 6 p.m.; and
 - (b) entitled to vote at the election.

90. *Questions to be asked of voter*

- (1) Subject to sub-section (2), an election official must ask a person claiming to vote in an election at an election day voting centre before the person is given a ballot-paper—
 - (a) What is your full name?
 - (b) Where do you live?
 - (c) Have you voted before in this election?
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(2) The election official must not ask the question in sub-section (1)(b) if the elector is a silent elector or an itinerant elector.

(3) If the person claiming to vote in response to the question in sub-section (1)(b) states an address that is not the address in relation to the person shown on the electoral roll, the election official must ask the person—

Has (the address shown on the electoral roll) been your principal place of residence within the period of 3 months immediately before election day?

(4) The election official must reject a person's claim to vote if the person—

(a) refuses to answer fully the questions asked;
or

(b) answers the question specified in sub-section (1)(c) in the affirmative; or

(c) answers the question specified in sub-section (3) in the negative.

(5) The election official must not reject a claim to vote as a result of any mistake in the electoral roll if the voter is sufficiently identified in the opinion of the election official.

91. *Election official may require voter to make declaration as to identity*

(1) If an election official reasonably suspects that a person claiming to vote is impersonating an elector, the election official may request the person to—

(a) make a declaration in the prescribed form as to the person's name, address and date of birth; and

(b) sign the declaration.

- (2) A person who does not comply with a request made under sub-section (1) is prohibited from voting at the election and is guilty of an offence.

Penalty: 1 penalty unit.

- (3) If a scrutineer objects to the entitlement of a person to vote, the election official must record the objection.

92. *Elector to receive ballot-paper*

If a person is entitled to vote, the election official must—

- (a) give the person a ballot-paper that is initialled by the election official; and
- (b) record a mark against the person's name on the electoral roll to show that the person has received a ballot-paper.

93. *How votes to be marked by elector*

- (1) After receiving a ballot-paper, an elector must mark the elector's vote on the ballot-paper in accordance with this section.
 - (2) An elector must mark the elector's vote on the ballot-paper by placing—
 - (a) the number 1 opposite the name of the candidate for whom the elector votes as first preference; and
 - (b) contingent votes for all the remaining candidates by placing numbers 2, 3, 4 (and so on as the case requires) opposite their names so as to indicate by an unbroken numerical sequence the order of preference.
 - (3) If there are only 2 candidates, the requirements of sub-section (1) are sufficiently complied with in the case of any ballot-paper marked with the number 1 opposite the name of only one candidate to indicate the elector's first preference.
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- (4) If there are more than 2 candidates, the requirements of sub-section (1) are sufficiently complied with in the case of any ballot-paper marked with the numbers 1, 2, 3, 4 (and so on as the case requires) opposite the names of all the candidates on the ballot-paper except one.
 - (5) For the purposes of sub-section (4), the elector is to be taken to have indicated the order of preference for all the candidates and to have given the last contingent vote to the candidate opposite whose name no number is placed.
 - (6) Subject to sections 108 to 110, an elector must, after marking the elector's vote on the ballot-paper, deposit it in the ballot-box.

94. *Electors requiring assistance*

- (1) If an elector satisfies an election official that the elector requires assistance to vote, the election official must permit a person appointed by the elector to assist the elector to vote.
- (2) If an elector fails to appoint a person under sub-section (1), the election official must assist the elector to vote—
 - (a) in the presence of any scrutineer; or
 - (b) if there is no scrutineer present, then in the presence of—
 - (i) another election official; or
 - (ii) if the elector so desires, in the presence of a person appointed by the elector.
- (3) If an elector satisfies an election official that the elector is physically incapable of entering the voting centre, the election official may allow the elector to vote outside the voting centre, in close proximity to the voting centre.

95. Provision for persons unable to write

- (1) Subject to sub-section (2), a person who is required under this Part to sign the person's name and who is unable to write may make the person's distinguishing mark and have it witnessed by another person.
- (2) Sub-section (1) does not apply if—
 - (a) the person is required to sign as a witness or as an election official; or
 - (b) the person is required to sign in the person's own handwriting.

96. Spoilt ballot-papers

- (1) If at any election an elector satisfies an election official that the elector has spoilt the elector's ballot-paper, the elector may, on giving the spoilt ballot-paper to the election official, receive a new ballot-paper.
- (2) The election official must immediately cancel the spoilt ballot-paper by writing the word "Spoilt" on it and retain it.

97. Provisions relating to adjournments

- (1) If from any cause voting does not open or the holding of an election is interrupted or obstructed at any election day voting centre, the Commission must adjourn the holding of the election at the election day voting centre—
 - (a) for a period of not more than 7 days; and
 - (b) if necessary and subject to sub-section (2), further adjourn the holding of the election until the interruption or obstruction has ceased.
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- (2) The holding of an election must not be adjourned to a day later than the day before the day named as the return day in the writ for the election.
- (3) The Commission must publicly advertise any adjournment.
- (4) The provisions of this Act with respect to absent voting do not apply in the case of an adjournment.

Division 3—Early Voting and Postal Voting

98. *Electors who may apply to vote early or by post*

For the purposes of this Division, a person may make an application under section 99 or 101 if the person is—

- (a) an elector who will not be within Victoria during the hours of voting on election day; or
- (b) an elector who will be travelling on election day under conditions which preclude the elector from voting at an election day voting centre;
- (c) an elector who will not be within 8 kilometres, by the nearest practicable route, of an election day voting centre; or
- (d) an elector who, by reason of being seriously ill or infirm or of approaching maternity, will be unable to travel to an election day voting centre; or
- (e) an elector who, because he or she will be at a place (other than a hospital) caring for a person who is seriously ill or infirm or approaching maternity, will be unable to travel from that place to an election day voting centre; or
- (f) an elector who will be a patient in a hospital during the hours of voting on election day; or

- (g) an elector who on election day will be—
 - (i) serving a sentence of imprisonment; or
 - (ii) otherwise in lawful custody or detention; or
- (h) an elector who is a silent elector; or
- (i) an elector who because of his or her religious beliefs or membership of a religious order—
 - (i) will be precluded from attending an election day voting centre; or
 - (ii) for the greater part of the hours of voting on election day, will be precluded from attending an election day voting centre; or
- (j) an elector who will be required by the elector's employer to remain at the elector's place of employment under conditions which prevent the elector from voting at an election day voting centre.

99. *Application to vote early*

- (1) An elector may apply to an election manager or an election official at an early voting centre during the operating times advertised under section 65 to vote within the period that—
 - (a) starts at 2 p.m. on the final nomination day; and
 - (b) ends at 6 p.m. on the day immediately before election day.
- (2) In relation to voting at an early voting centre, sections 90 to 96 apply, so far as relevant.

100. *Interstate and overseas voting centres*

- (1) This section applies to electors voting at an overseas or interstate early voting centre appointed by the Commission.
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- (2) An elector voting in accordance with this section may use such means of electronic voting as is provided at the early voting centre.
 - (3) The procedures applying in respect of electronic voting are as prescribed.

101. *Application to vote by post*

- (1) After the issue of a writ for an election, an elector may apply to the Commission in writing to vote by post.
 - (2) A written application to vote by post—
 - (a) must be in the prescribed form; and
 - (b) must be signed by the applicant in the presence of an authorised witness; and
 - (c) may be physically attached to, or form part of, other written material issued by a person or organisation; and
 - (d) may be sent through the post or transmitted by electronic means.
 - (3) An application to vote by post is deemed to be in accordance with sub-section (2) if it contains errors or omissions that, in the opinion of the Commission, are immaterial.
 - (4) The Commission must not consider an application if it is received by the Commission after 6 p.m. on the Thursday immediately preceding election day.
 - (5) For the purposes of the Commonwealth Copyright Act 1968, if a person other than the owner of the copyright in the application form to vote by post reproduces the application form, the person is not taken to have infringed the copyright in the application form.
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102. Duty of authorised witness in witnessing signature

- (1) An authorised witness must not witness the signature of an elector on a written application to vote by post unless—
- (a) the authorised witness is satisfied as to the identity of the applicant; and
 - (b) the authorised witness has seen the applicant sign the application; and
 - (c) the authorised witness is satisfied that the statements contained in the application are true.

Penalty: 5 penalty units.

- (2) An authorised witness witnessing a written application to vote by post must—
- (a) sign the authorised witness's name in the authorised witness's own handwriting on the application; and
 - (b) add the title or capacity in respect of which the authorised witness acts and the date.

103. Application to vote by post made outside Australia

An application to vote by post made outside Australia is to be taken to comply with section 102 if—

- (a) the application is accompanied by a signed statement made by the applicant specifying why the applicant was unable to have the application witnessed in accordance with section 102; and
- (b) the election official is satisfied that the applicant made reasonable efforts to comply with section 102; and

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- (c) the application is accompanied by a photocopy of a part of the applicant's passport—
 - (i) certified by the applicant to be a true copy; and
 - (ii) showing—
 - (A) the country, date of issue and number of the passport; and
 - (B) the applicant's name, date of birth and signature; and
 - (C) a photograph of the applicant.

104. *Issue of declaration and ballot-paper to postal voters*

- (1) If the Commission receives an application to vote by post in accordance with section 101 and is satisfied that the application is properly signed by the applicant and is properly witnessed, the Commission must—
 - (a) deliver or post to the applicant—
 - (i) a declaration in the prescribed form; and
 - (ii) a ballot-paper; and
 - (b) record the name of the elector to whom the declaration and ballot-paper has been issued and the date of issuing.
- (2) If the Commission receives an application to vote by post—
 - (a) that in the opinion of the Commission is not in accordance with section 101; or

(b) after 6 p.m. on the Thursday immediately preceding election day—

the Commission must take reasonable steps to inform the applicant that the application is defective or was received after the specified time.

105. *Issue of declaration and ballot-paper to general postal voters*

As soon as practicable after the final nomination day, the Commission must deliver or post to each general postal voter—

- (a) a declaration in the prescribed form; and
- (b) a ballot-paper.

106. *Directions for postal voting*

- (1) This section applies to voting by post—
 - (a) by electors whose application to vote by post under section 101 has been accepted; and
 - (b) by electors who are general postal voters.
 - (2) The following directions are to be substantially observed—
 - (a) the elector must show the ballot-paper (unmarked) and the declaration to an authorised witness;
 - (b) the elector must then, in the presence of the authorised witness, sign the elector's name on the declaration;
 - (c) the authorised witness must—
 - (i) then sign the authorised witness's name on the declaration; and
 - (ii) add the title under which the authorised witness acts and the date;
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- (d) the elector must then, in the presence of the authorised witness but so that the authorised witness cannot see the vote, mark the elector's vote on the ballot-paper in the manner prescribed by section 93(2), fold the ballot-paper, place it and the declaration in the envelope provided by the Commission and fasten the envelope;
- (e) the elector must then—
- (i) post the envelope to the Commission before 6 p.m. on election day; or
 - (ii) deliver the envelope to the Commission or an election official at a voting centre before 6 p.m. on election day;
- (f) if the elector requires assistance to vote, a person appointed by the elector, or the authorised witness if so requested by the elector, must assist the elector to vote.
- (3) For the purpose of sub-section (2)(e), a ballot-paper is to be taken to have been posted before 6 p.m. on election day if—
- (a) the postmark on the envelope is dated any day on or before election day; or
 - (b) in the case of no postmark being legible, the declaration is witnessed on or before election day.
- (4) An envelope received in accordance with this section must be dealt with in accordance with the regulations.

Division 4—Specific Provisions**107. *Provision of silent elector's address***

A silent elector is not required to provide the address for which the elector is enrolled on any application or declaration under this Act.

108. *Vote of person whose name is not on electoral roll but who is entitled to vote*

- (1) This section applies if a person—
 - (a) claims to be entitled to vote at an election; and
 - (b) the name of that person is not on, or cannot be found on, the relevant electoral roll.
 - (2) A person to whom this section applies may, subject to this Act and the regulations, cast a provisional vote under this section if the person signs a declaration in the prescribed form.
 - (3) An election official must give a person to whom this section applies a written statement in the prescribed form specifying—
 - (a) the person's rights under this section; and
 - (b) the steps that will be taken if the person votes under this section.
 - (4) If the person makes the declaration in the prescribed form, the election official must initial a ballot-paper and give it to the person.
 - (5) If a person votes under this section, the person must after voting return the folded ballot-paper to the election official.
 - (6) The election official must in the presence of the voter and any scrutineer—
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- (a) enclose the folded ballot-paper in an envelope bearing the declaration of the voter; and
 - (b) immediately securely fasten the envelope and deposit it in the ballot-box.

109. Provisions as to voting by absent voters

- (1) This section applies with respect to voting at an election by absent voters.
- (2) An election official must request a person claiming to vote as an absent voter at an election day voting centre before the person is given a ballot-paper to make a declaration that contains the following questions—
 - (a) What is your full name?
 - (b) Where do you live?
 - (c) Has (the address shown on the electoral roll) been your principal place of residence within the period of 3 months immediately before election day?
 - (d) What is your date of birth?
 - (e) Have you voted before in this election?
- (3) A silent elector or itinerant elector is not required to answer the question in sub-section (2)(b) or (2)(c).
- (4) The election official must reject a person's claim to vote if the person—
 - (a) refuses to answer fully the questions asked; or
 - (b) answers the question specified in sub-section (2)(c) in the negative; or
 - (c) if asked, answers the question specified in sub-section (2)(e) in the affirmative.

- (5) If the election official is satisfied from the answers to the questions that the person is entitled to vote, the person may vote as an absent voter if the person signs the declaration in the prescribed form.
- (6) If the person signs the declaration in the prescribed form, the election official must initial the ballot-paper and give it to the person.
- (7) If a person votes under this section, the person must after voting return the folded ballot-paper to the election official.
- (8) The election official must in the presence of the voter and any scrutineers—
 - (a) enclose the folded ballot-paper in an envelope bearing the declaration of the voter and addressed to the election manager for the province or district for which the voter claims to be entitled to vote; and
 - (b) immediately securely fasten the envelope and deposit it in the ballot-box.
- (9) If the claim of any person to vote under this section is refused—
 - (a) the election official must note in writing the claim and the reasons for refusal; and
 - (b) the election official must sign the note in the presence of any scrutineer; and
 - (c) any of the scrutineers may also sign the note.

110. *Elector claiming to vote whose name on roll has been marked*

- (1) An elector at a voting centre—
- (a) who is recorded as having received a ballot-paper; and
 - (b) who claims to be entitled to vote under section 87 and not to have received a ballot-paper—

must be permitted to vote if the elector makes a declaration in the prescribed form before the election official at the voting centre.

- (2) The ballot-paper of an elector voting under this section must—
- (a) be dealt with in accordance with the regulations; and
 - (b) not be scrutinised or counted unless the election manager is satisfied that the elector is entitled to vote in the election.
- (3) For the purposes of Part 7, dealing under this section with a ballot-paper used in an election is to be taken to be part of the scrutiny in relation to the election.
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PART 7—ELECTION RESULTS**111. *Preliminary scrutiny of declaration votes***

- (1) This section applies to the preliminary scrutiny of declaration votes.
- (2) The preliminary scrutiny must be conducted in accordance with the regulations.
- (3) The decision of the election manager as to the allowance or disallowance of a declaration vote is subject to review only by the Court of Disputed Returns.
- (4) A declaration vote must be disallowed if it was received by the election manager more than 9 days after election day.
- (5) A declaration vote under section 106 must be disallowed if it was not made in accordance with that section.

112. *Rejection of ballot-papers*

- (1) A ballot-paper must be rejected as informal—
 - (a) if it has not been initialled by an election official; or
 - (b) if it is not so initialled, does not bear the prescribed official mark; or
 - (c) if it is not marked in accordance with section 93.
 - (2) Except as otherwise expressly provided, a ballot-paper must not be rejected for any reason other than the reasons specified in this section.
 - (3) Subject to this section, a ballot-paper must be given effect to according to the elector's intention so far as the elector's intention is clear.
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**113. Procedure to ascertain number of votes when
2 candidates only**

- (1) This section specifies the procedure to ascertain the number of votes for each candidate at an election where there are only 2 candidates.
- (2) Immediately after 6 p.m. on election day, the election manager and an election official at a voting centre must, subject to the inspection of any scrutineer—
 - (a) open each ballot-box; and
 - (b) count all first preference votes (other than declaration votes) given for each candidate; and
 - (c) certify a list of the number of first preference votes given for each candidate verified by the signature of at least one other election official and the signature of any scrutineer who consents to sign; and
 - (d) in accordance with the directions of the Commission—
 - (i) make out an account of the ballot-papers; and
 - (ii) make and seal up in parcels all the ballot material—

kept or used at the voting centre during the election.
- (3) An election official must transmit the sealed parcels to the election manager.
- (4) The election manager must as soon as practicable—
 - (a) ascertain from the lists made out under this section the number of first preference votes given for each candidate; and

- (b) add to the first preference votes ascertained under paragraph (a) the first preference votes for each candidate from the allowed declaration votes so as to ascertain the number of first preference votes given for each candidate.
- (5) The candidate who has received the greatest number of first preference votes is to be declared elected by the election manager under section 121.

114. Procedure to ascertain the number of votes where more than 2 candidates

- (1) This section specifies the procedure to ascertain the number of votes for each candidate at an election where there are more than 2 candidates.
 - (2) In this section, "**absolute majority of votes**" means a number of votes greater than one-half of the total number of ballot-papers (excluding ballot-papers which are required to be rejected under section 112).
 - (3) Sub-sections (2) to (4) of section 113 are to be followed.
 - (4) The candidate who has received the greatest number of first preference votes if that number constitutes an absolute majority of votes is to be declared elected by the election manager under section 121.
 - (5) If no candidate has an absolute majority of votes, the election manager must—
 - (a) open all the sealed parcels containing used ballot-papers; and
 - (b) arrange the ballot-papers together with the ballot-papers specified in section 113(4)(b) by placing in a separate parcel all those on which a first preference is indicated for the same candidate; and
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- (c) omit the ballot-papers which require to be rejected; and
 - (d) declare the candidate who has obtained the fewest first preference votes to be a defeated candidate; and
 - (e) distribute the ballot-papers counted to the defeated candidate amongst the non-defeated candidates next in order of the voters' preference.
- (6) After the distribution, the number of votes given to each non-defeated candidate must again be ascertained.
 - (7) If no candidate then has an absolute majority of votes, the process of declaring the candidate who has the fewest votes to be defeated and distributing the ballot-papers amongst the non-defeated candidates next in order of the voters' preference is to be repeated and the votes recounted after every redistribution until one candidate has obtained an absolute majority of votes.
 - (8) The candidate who obtains an absolute majority of votes is to be declared elected by the election manager under section 121.
 - (9) If on any count 2 or more candidates have an equal number of votes and one of them has to be declared defeated, the candidate whose name is drawn by the election manager by lot in a manner determined by the Commission, either manually or by computer, is to be declared defeated.
 - (10) If on the final count 2 candidates have received an equal number of votes, section 117 applies.
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- (11) If the Commission so directs in writing, the procedure referred to in sub-section (5) is to include a scrutiny of preferences (other than first preferences) on such of the ballot-papers as is required by the direction, conducted in the manner specified in the direction.

115. *Use of electronic counting equipment*

- (1) The election manager may use electronic counting equipment approved by the Commission to assist in the counting of votes at an election.
- (2) The Commission may issue directions modifying the procedure specified in sections 113 and 114 to facilitate the use of electronic counting equipment.

116. *Indicative two candidate preferred distribution of preferences*

If the election manager has counted all votes on ballot-papers, the election manager may, if directed to do so by the Commission, proceed in a manner specified in the direction, with a scrutiny of second and later preferences shown on the ballot-papers.

117. *Determination of tied election*

- (1) This section applies if on the final count 2 or more candidates have an equal number of votes.
- (2) The election manager must declare that the election is tied.
- (3) Within the period of 14 days after the declaration that the election is tied, the Commission or a candidate who has the same number of votes as another candidate at the election may petition the Court of Disputed Returns.
- (4) The Court of Disputed Returns may declare that—
- (a) one candidate is elected; or

(b) the election is void and a re-election must be held.

(5) If a petition is not made in accordance with sub-section (3), the election is by force of this section declared void and a re-election must be held.

(6) A re-election must be held on the electoral roll that was prepared for the purposes of the election that has been declared void.

118. *Adjournment of count of votes*

(1) The count of the votes may from time to time be adjourned as the election manager considers necessary until the count has been completed.

(2) Each adjournment must be announced by the election manager to the scrutineers and the election officials assisting.

119. *Preference distribution for information purposes*

After a candidate is declared elected in accordance with section 121, the Commission may, for the purpose of obtaining information, require the election manager who conducted the scrutiny to examine the second and later preferences of candidates and the distribution of those preferences.

120. *Recount of ballot-papers before declaration of election*

(1) Before a candidate has been declared elected, the election manager in the presence of any scrutineer appointed by each candidate may open any sealed parcel containing allowed ballot-papers and recount those ballot-papers.

(2) A recount under sub-section (1)—

(a) may be conducted at the election manager's discretion; or

- (b) may be conducted at the request of a candidate specifying reasons; or
 - (c) must be conducted if directed by the Commission.
- (3) The election manager conducting a recount—
- (a) has the same powers as the election manager has in an ascertainment of the number of votes for each candidate at the election; and
 - (b) may reverse any decision made in the ascertainment in relation to the allowance and admission or disallowance and rejection of any ballot-paper.
- (4) The election manager conducting a recount—
- (a) may reserve any ballot-paper for the decision of the Commission; or
 - (b) at the request of any scrutineer, must reserve any ballot-paper for the decision of the Commission.
- (5) The Commission must—
- (a) decide whether any ballot-paper reserved under sub-section (4) is to be allowed and admitted or disallowed and rejected; and
 - (b) endorse the decision on the ballot-paper.

121. Declaration of result

- (1) If the number of persons who have become candidates at an election does not exceed the number of members to be elected, the election manager must, immediately after noon on the final nomination day, publicly declare the candidate to be elected and announce the name of the candidate elected.
 - (2) As soon as practicable after election day, the election manager must publicly declare the result
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of the election and announce the name of the candidate elected.

- (3) As soon as possible after declaring the result of the election, the election manager must advise the Commission of the result of the election and the name of the candidate elected.
- (4) The Commission must publicly advertise the result of the election.
- (5) The Commission must—
 - (a) indorse on the writ for the election the name of each candidate declared elected; and
 - (b) return the writ within the time specified in the writ to the person who issued the writ.

122. *Ballot material to be secured and stored*

All ballot material used in respect of an election must be dealt with, kept and stored in accordance with the regulations.

123. *Election information*

- (1) The number of first preference votes given for each candidate and the details of distribution of preference votes must be available from the office of the Commission.
- (2) After an election, the Commission must ensure that—
 - (a) each registered political party that so requests; and
 - (b) each member of Parliament who is not a member of a registered political party and who makes a request in respect of the member's electorate—

is provided with electoral information containing the names and the addresses of electors who voted (other than silent electors and itinerant electors),

whether they voted personally or by post and, if they voted at a voting centre for the electoral district for which the electors were enrolled, the location of that voting centre.

- (3) Electoral information provided under subsection (2) must only be used in connection with an election.
- (4) A person who uses, or permits the use of, electoral information for any purpose other than in connection with an election is guilty of an offence.

Penalty: In the case of a natural person,
600 penalty units;

In the case of a body corporate or a registered political party, 3000 penalty units.

PART 8—COURT OF DISPUTED RETURNS

Division 1—Constitution and Powers

124. *The Court of Disputed Returns*

- (1) The Supreme Court is the Court of Disputed Returns for the purposes of this Act.
- (2) The Supreme Court sitting as a Court of Disputed Returns may be constituted by a single Judge.
- (3) The Court of Disputed Returns must sit as an open court.

125. *Powers of Court*

The powers of the Court of Disputed Returns in proceedings in relation to a petition include—

- (a) the power to adjourn;
 - (b) the power to compel the attendance of witnesses and the production of documents;
 - (c) the power to grant to any party to a petition leave to, in the presence of a person employed by the Commission, inspect the ballot material (other than ballot-papers) used at or in connection with any election and to make copies of the ballot material;
 - (d) the power to examine witnesses on oath;
 - (e) the power to declare that any candidate who was declared elected was not elected;
 - (f) the power to declare that any candidate who was not declared elected was elected;
 - (g) the power to declare any election void;
 - (h) the power to dismiss or uphold the petition in whole or in part;
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- (i) the power to award costs;
- (j) the power to punish any contempt of its authority by fine or imprisonment.

126. Court must act fairly

The Court of Disputed Returns must act fairly and according to the substantial merits of the petition in the proceedings.

127. General procedure

The Court of Disputed Returns—

- (a) is bound by the rules of natural justice; and
- (b) is not bound by the rules of evidence or any practices or procedures applicable to courts of record, except to the extent that it adopts those rules, practices or procedures; and
- (c) must conduct each proceeding with as little formality and technicality as the requirements of the Act permit.

128. Legal practitioner

A party to a petition must not be represented by a legal practitioner unless—

- (a) all the parties consent to the party being represented by a legal practitioner; or
- (b) the Court of Disputed Returns grants leave for the party to be represented by a legal practitioner.

129. Decisions to be final

A decision of, or order made by, the Court of Disputed Returns—

- (a) is final; and
 - (b) cannot be appealed against or otherwise called in question.
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130. *Costs*

The Court of Disputed Returns may—

- (a) award costs against an unsuccessful party to the petition; and
- (b) recommend that costs be paid by the State.

131. *Other costs*

- (1) All other costs awarded by the Court of Disputed Returns, including any balance above the deposit payable by the petitioner, are recoverable as if the order of the Court were a judgment of the Supreme Court.
- (2) The order may be entered as a judgment of the Supreme Court and enforced accordingly.

132. *Consequences of Court's declarations*

- (1) If the Court of Disputed Returns declares that a person declared elected was not elected, the person ceases to be a member of Parliament from the date determined by the Court of Disputed Returns.
- (2) If the Court of Disputed Returns declares that a person not declared elected was elected, the person is declared to be elected from the date determined by the Court of Disputed Returns.
- (3) If the Court of Disputed Returns declares that an election is void, a re-election must be held.
- (4) A re-election must be held on the electoral roll that was prepared for the purposes of the election that has been declared void.

Division 2—Disputing Validity of Election**133. Method of disputing elections**

The validity of an election can only be disputed by means of a petition to the Court of Disputed Returns.

134. Who may dispute an election

An election may be disputed under section 133 by—

- (a) a candidate for the election in dispute; or
- (b) a person who was entitled to vote at the election in dispute; or
- (c) the Commission.

135. Requirements of petition

- (1) Subject to sub-section (2), a petition must—
 - (a) set out the facts relied on to dispute the election; and
 - (b) set out the order sought from the Court of Disputed Returns; and
 - (c) be signed by the petitioner before 2 witnesses whose occupations and addresses are stated; and
 - (d) be filed with the Prothonotary of the Supreme Court within 40 days after the return of the writ; and
 - (e) be accompanied by the sum of \$100 as security for costs.
 - (2) Sub-sections (1)(c) and (1)(e) do not apply in relation to a petition made by the Commission.
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136. *Right of Commission to be represented*

- (1) The Commission may, by leave of the Court of Disputed Returns—
 - (a) enter an appearance in a proceeding in which the validity of an election is disputed; and
 - (b) be represented and heard at the proceeding.
- (2) If leave is granted under sub-section (1), the Commission is to be taken to be a party respondent to the petition.

137. *Evidence that person not permitted to vote*

The Court of Disputed Returns must not admit the evidence of a person that the person was not permitted to vote in an election during the hours of voting on election day unless the person satisfies the Court of Disputed Returns that the person did everything required by this Act or the regulations.

138. *Inquiries by Court of Disputed Returns*

In proceedings in relation to a petition, the Court of Disputed Returns—

- (a) must inquire whether the petition complies with section 135; and
- (b) may inquire whether persons who voted were entitled to do so and whether their votes were improperly admitted or rejected; and
- (c) must not inquire into the correctness of any electoral roll or the register of electors.

139. Election not to be void unless result affected

The Court of Disputed Returns must not declare an election to be void on account of any act, matter or thing which in the opinion of the Court of Disputed Returns did not affect the result of the election.

140. Voiding election for certain offences

Despite section 139, if the Court of Disputed Returns finds that a person declared elected has committed at any election an offence against section 151 or 152, the Court of Disputed Returns must declare the election void.

141. Copies of petition and order of Court to be sent to Clerk of Parliaments

Immediately after—

- (a) the filing of a petition; or
- (b) the making of an order of the Court of Disputed Returns—

the Prothonotary of the Supreme Court must forward a copy of the petition or order of the Court of Disputed Returns to the Clerk of the Parliaments.

142. Deposits applicable for costs

- (1) If costs are awarded against the person who filed the petition, the deposit accompanying the petition in accordance with section 135(1)(e) must be applied towards payment of the costs.
- (2) A deposit that is not applied towards payment of the costs in accordance with sub-section (1) must be returned to the person who filed the petition.

Division 3—Referral of Qualification or Vacancy

143. *Reference of question as to qualification or vacancy*

- (1) The Assembly may by resolution refer to the Court of Disputed Returns any question in relation to—
 - (a) the qualification of a person to be, or continue to be, a member of the Assembly;
or
 - (b) a vacancy in the Assembly.
- (2) The Council may by resolution refer to the Court of Disputed Returns any question in relation to—
 - (a) the qualification of a person to be, or continue to be, a member of the Council; or
 - (b) a vacancy in the Council.
- (3) The Court of Disputed Returns has jurisdiction to hear and determine a question referred under this section.

144. *Speaker or President to state case*

If the Assembly or the Council refers a question to the Court of Disputed Returns, the Speaker or the President must give the Court of Disputed Returns—

- (a) a statement of the question that the Court of Disputed Returns is to hear and determine;
and
- (b) any proceedings, papers, reports or documents relating to the question in the possession of the Assembly or the Council.

145. Parties to the reference

- (1) The Court of Disputed Returns may—
 - (a) allow any interested person to be heard on the hearing of the reference; or
 - (b) direct that notice of the reference is to be served on a specified person.
- (2) A person specified in sub-section (1) is a party to the reference.

146. Powers of Court of Disputed Returns

- (1) The powers of the Court of Disputed Returns on the hearing of a reference include—
 - (a) any of the powers conferred by section 125 so far as they are applicable;
 - (b) the power to declare that a person was not qualified to be a member of Parliament;
 - (c) the power to declare that a person was not capable of being elected, or of sitting, as a member of Parliament;
 - (d) the power to declare that there is a vacancy in Parliament.
 - (2) Sub-section (3) applies if the Court of Disputed Returns is satisfied that an act, matter or thing, whether occurring before or after the commencement of this Act, has or may have caused a person to be disqualified from election to either House of the Parliament or the seat of a member of either House of the Parliament to become vacant.
 - (3) Despite sub-section (1), the Court of Disputed Returns may declare an act, matter or thing referred to in sub-section (2) never to have occurred or arisen if the Court is satisfied that the act, matter or thing—
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- (a) has ceased to have effect; and
 - (b) was in all the circumstances of a trifling nature; and
 - (c) occurred or arose without the actual knowledge or consent of a person referred to in sub-section (2) or was accidental or due to inadvertence.
- (4) The declaration of an act, matter or thing never to have occurred or arisen does not affect the determination of a petition to the Court of Disputed Returns under section 133 relating to the validity of an election.

147. *Order to be sent to Clerk of the Parliaments*

After the hearing and determination of a reference, the Prothonotary of the Supreme Court must immediately forward to the Clerk of the Parliaments a copy of the order or declaration of the Court of Disputed Returns.

PART 9—ENFORCEMENT AND OFFENCES**Division 1—Offences****148. False information**

- (1) Subject to this Act, a person must not provide orally or in writing any false or misleading information under this Act (other than Part 12).

Penalty: 600 penalty units or 5 years imprisonment.

- (2) Subject to this Act, a person must not make a statement knowing that it is false or misleading in a material particular in any declaration, application or claim under this Act (other than Part 12).

Penalty: 600 penalty units or 5 years imprisonment.

149. Forging or uttering electoral papers

A person must not—

- (a) forge any electoral paper; or
- (b) utter any forged electoral paper knowing it to be forged; or
- (c) forge the signature of any person on any electoral paper.

Penalty: 600 penalty units or 5 years imprisonment.

150. Voting offences

A person must not in respect of an election—

- (a) vote in the name of another person (including a dead or fictitious person); or
 - (b) vote more than once; or
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- (c) apply for a ballot-paper in the name of another person.

Penalty: 600 penalty units or 5 years imprisonment.

151. Bribery

- (1) A person must not—

- (a) ask for, receive or obtain; or
(b) offer to ask for, receive or obtain; or
(c) agree to ask for, receive or obtain—

any property or benefit of any kind, whether for the person or any other person, on an understanding that the person's election conduct will be in any manner influenced or affected.

Penalty: 600 penalty units or 5 years imprisonment.

- (2) A person must not, in order to influence or affect any person's election conduct, give or confer, or promise or offer to give or confer, any property or benefit of any kind to the person or any other person.

Penalty: 600 penalty units or 5 years imprisonment.

- (3) In this section, "**person's election conduct**" means—

- (a) the way in which the person votes at an election; or
(b) the person's nomination as a candidate for an election; or
(c) the person's support of, or opposition to, a candidate or a political party at an election; or

(d) the doing of any act or thing by the person the purpose of which is, or the effect of which is likely to be, to influence the preferences set out in the vote of an elector.

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

152. *Interference with political liberty*

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

Penalty: 600 penalty units or 5 years imprisonment.

(2) A person must not, by violence or intimidation, influence the vote of a person at an election.

Penalty: 600 penalty units or 5 years imprisonment.

153. *Tampering*

Except as authorised by or under this Act, a person must not—

(a) open any sealed envelope containing a ballot-paper; or

(b) break the seal or open any sealed parcel of ballot material; or

(c) deal with any ballot material.

Penalty: 600 penalty units or 5 years imprisonment.

154. *Secrecy of vote*

Except as authorised by or under this Act, a person who is present when an elector votes must not—

- (a) ascertain or disclose by word, act or other means, the vote of the elector; or
- (b) directly or indirectly require, induce or attempt to induce the elector to show how the elector intends to vote; or
- (c) communicate with or assist the elector while voting or look at the elector's vote or ballot-paper.

Penalty: 120 penalty units or 1 year imprisonment.

155. *Prohibition of publicly disseminating exit poll results during the hours of voting*

A person must not during the hours of voting—

- (a) publicly disseminate; or
- (b) cause, permit or authorise the public dissemination of—

the results of an exit poll carried out at an election day voting centre.

Penalty: 60 penalty units or 6 months imprisonment.

156. *Distribution of printed electoral material*

- (1) A person must not during the hours of voting within 400 metres of the entrance of, or within the building used as, a voting centre—

- (a) hand out, distribute or otherwise make available; or
- (b) authorise the handing out, distribution or otherwise making available—

to any person of any printed electoral material other than a registered how-to-vote card.

Penalty: 60 penalty units or 6 months imprisonment.

- (2) A person must not—
- (a) print, publish or distribute; or
 - (b) cause, permit or authorise to be printed, published or distributed—
- a how-to-vote card which is not a registered how-to-vote card and which contains a representation or purported representation of an endorsement in the prescribed manner.
- Penalty: 60 penalty units or 6 months imprisonment.
- (3) In a prosecution of a person for an alleged offence against sub-section (1) or (2), it is a defence if the person proves that the person did not know, and could not reasonably be expected to have known, that the card was not a registered how-to-vote card.
- (4) Sub-section (1) does not apply to—
- (a) the handing out, distribution, sale or otherwise making available of a newspaper by or on behalf of a newsagent, newspaper seller or distributor if the handing out, distribution, sale or making available is in the course of the newsagent's, newspaper seller's or distributor's employment or business; or
 - (b) the handing out, distribution or otherwise making available of any printed electoral material in any room or building used as a campaign room or an office by a candidate in the election to which the material relates or by the political party which has endorsed that candidate in that election; or

- (c) printed electoral material in the form of any poster or notice which is affixed or attached to any vehicle, building, hoarding or structure (whether moveable or fixed).

157. *Power to request handing over of how-to-vote cards*

- (1) An election manager or election official may on election day request a person reasonably suspected by the election manager or election official of contravening section 156—
 - (a) to produce for inspection any how-to-vote cards in the person's possession; and
 - (b) to hand over all how-to-vote cards other than registered how-to-vote cards.
- (2) A person who fails to comply with a request under sub-section (1) is guilty of an offence.

Penalty: 10 penalty units.

158. *Conduct near voting centres*

- (1) This section applies during the hours of voting in respect of a voting centre, within 3 metres of the entrance of, or within the building used as, a voting centre.
- (2) While this section applies, a person must not—
 - (a) canvass for votes; or
 - (b) solicit the vote of any elector; or
 - (c) induce any elector not to vote for any particular candidate; or
 - (d) induce any elector not to vote at the election; or
 - (e) exhibit any notice or sign (other than an official notice) relating to the election; or

- (f) conduct an exit poll; or
- (g) if the person is a person employed under section 17 or appointed under section 18 or a scrutineer in the performance of duties or the exercise of powers under this Act, wear or display any badge, emblem or political slogan of any candidate or political party.

Penalty: 5 penalty units.

(3) If—

- (a) a building used as a voting centre is situated in grounds within an enclosure; and
- (b) there is displayed an official notice stating that those grounds are, for the purposes of this section, part of the voting centre—

those grounds are part of the voting centre.

159. *Prohibition of use of public address systems during hours of voting*

A person must not during the hours of voting in respect of a voting centre, within 400 metres of the entrance of, or within the building used as, a voting centre—

- (a) use or permit to be used a loud speaker, public address system or amplifier (whether fixed or mobile), broadcasting van, sound system, radio apparatus or any other apparatus or device for the broadcasting or dissemination of any matter intended or likely to affect the result of the election; or
- (b) make any public demonstration having reference to the election.

Penalty: 1 penalty unit.

160. Offence to impersonate

A person must not impersonate a person employed under section 17 or appointed under section 18 in the performance of duties or the exercise of powers under this Act.

Penalty: 10 penalty units.

161. Offence by certain persons

- (1) A person employed under section 17 or appointed under section 18 must not contravene a provision of this Act which applies to the person and for which no other penalty is specified.
- (2) A person employed under section 17 or appointed under section 18 must comply with a direction given to the person by the Commission.
- (3) A person who wilfully contravenes sub-section (1) or (2) is guilty of an offence.

Penalty: 60 penalty units or 6 months imprisonment.

- (4) A person who negligently contravenes sub-section (1) or (2) is guilty of an offence.

Penalty: 10 penalty units.

Division 2—Enforcement of Compulsory Voting

162. Commission to prepare list of non-voters

The Commission must after every election prepare a list of the names of the electors who were entitled to vote at the election and did not vote.

163. Notice to electors who have not voted

- (1) Subject to sub-section (3), within 6 months after an election, the Commission must send by post to each elector whose name appears on the list prepared under section 162 at the elector's latest known address, a notice in the prescribed form—
 - (a) notifying the elector that the elector has failed to vote at the election; and
 - (b) requiring the elector to state the true reason for failing to vote.
- (2) The notice must specify—
 - (a) the full name of the elector as appearing on the list; and
 - (b) the elector's latest known address; and
 - (c) the address in respect of which the elector was enrolled; and
 - (d) a date (not being less than 21 days after the date of the posting of the notice) before or on which the form forwarded with the notice completed and signed by the elector is to be received by the Commission.
- (3) Sub-section (1) does not apply if the Commission is satisfied that an elector—
 - (a) is dead; or
 - (b) was absent from Victoria on election day; or
 - (c) was ineligible to vote at the election; or
 - (d) was issued with a ballot-paper for the purpose of voting; or
 - (e) was an itinerant elector, eligible overseas elector or Antarctic elector; or

- (f) was notified under section 104(2); or
- (g) had a valid and sufficient excuse for not voting.

164. Replies by or on behalf of electors

- (1) An elector to whom a notice has been sent under section 163 must—
 - (a) complete the form forwarded with the notice by stating in it the true reason why the elector failed to vote; and
 - (b) sign the form; and
 - (c) post or deliver the form so as to reach the Commission not later than the date specified in the notice.
- (2) If an elector is unable to comply with sub-section (1) by reason of—
 - (a) the absence of the elector from the elector's residence; or
 - (b) the elector's physical incapacity—any other elector who has personal knowledge of the facts may, subject to the regulations, comply with sub-section (1) on behalf of the elector.
- (3) Compliance with sub-section (2) is deemed to be sufficient compliance by the elector with sub-section (1).
- (4) If the Commission receives a form which complies with this section, the Commission must record on the list prepared under section 162 opposite the name of the elector to whom the form refers—
 - (a) a note to that effect; and

- (b) whether or not in the opinion of the Commission the reason contained in the form is a valid and sufficient reason for the failure of the elector to vote at the election.
- (5) If the Commission does not receive a form which complies with this section from an elector sent a notice, the Commission must record a note to that effect on the list opposite the name of the elector.

165. List to be evidence

The list prepared under section 162 indicating—

- (a) the names of electors who did not vote at the election; and
- (b) the names of electors from whom or on whose behalf the Commission received within the time allowed forms properly completed and signed; and
- (c) the names of electors from whom or on whose behalf the Commission did not within that time receive forms properly completed and signed; and
- (d) the opinions of the Commission—

or a copy of the list, or any extract certified by the Commission, is evidence of the contents and of the facts stated in the list or extract.

166. Offences

- (1) An elector who—
 - (a) fails to vote at any election without a valid and sufficient excuse for the failure; or
 - (b) fails to comply with section 164; or
 - (c) states in a form under section 164 a false reason for not having voted; or

- (d) in the case of an elector completing or purporting to complete a form on behalf of any other elector, states in the form a false reason why the other elector did not vote—

is guilty of an offence.

Penalty: 1 penalty unit.

- (2) Despite anything to the contrary in this Act, proceedings for the enforcement of the penalty under sub-section (1) may be commenced under this Division within 12 months after the date of the election by an authorised officer.

167. Power to serve infringement notice

- (1) An authorised officer may serve an infringement notice on a person who the authorised officer has reason to believe has committed a prescribed offence.
- (2) An infringement notice may be served—
- (a) by personally serving the infringement notice on the alleged offender; or
 - (b) by sending the infringement notice by post addressed to the alleged offender's latest known address.

168. Form of notice

An infringement notice must—

- (a) be in the prescribed form; and
- (b) state the penalty fixed under section 170 for the offence; and
- (c) state that if the amount of the penalty is tendered at the place referred to in the notice the matter will not be brought before the Magistrates' Court unless the notice is withdrawn before the end of the period specified in the notice as the time for payment of the penalty.

169. *Withdrawal of infringement notice*

- (1) The authorised officer may withdraw an infringement notice at any time within 28 days after the notice is served by serving a withdrawal notice on the alleged offender.
- (2) An infringement notice may be withdrawn even if the appropriate penalty has been paid.
- (3) If a notice of withdrawal is served, the Commission must refund the amount of any penalty paid on an infringement notice before it is withdrawn.

170. *Penalties to be paid for offences under infringement notices*

The penalty fixed for an offence for which an infringement notice has been issued is 50% of the penalty under section 166(1).

171. *Payment of penalty*

- (1) If the person pays the penalty shown on the infringement notice within the time shown in the notice or, if the authorised officer allows, at any time before the service of the summons in respect of the offence—
 - (a) further proceedings may not be taken in respect of the offence; and
 - (b) no conviction is to be recorded against the person for the offence.
- (2) A penalty paid under this section must be applied as if the offender had been convicted of the offence in the Magistrates' Court on a charge filed by the authorised officer who served the infringement notice.

172. *Infringement notice not to prejudice further proceedings*

- (1) If—
- (a) a person served with an infringement notice has not paid the penalty within the time specified in the infringement notice; or
 - (b) an infringement notice is withdrawn—
- proceedings may still be taken or continued for the alleged offence.
- (2) If proceedings have been taken or continued for an alleged offence because the person has not paid the penalty specified in the infringement notice and a conviction is imposed by the Magistrates' Court, the conviction must not be taken to be a conviction for any purpose except in relation to—
- (a) the making of the conviction itself; and
 - (b) subsequent proceedings which may be taken in respect of the conviction itself, including proceedings by way of appeal.

173. *Enforcement of infringement penalty*

Payment of the infringement penalty may be enforced in accordance with Part 2 of Schedule 7 to the **Magistrates' Court Act 1989** if—

- (a) the infringement notice is an infringement notice within the meaning of Schedule 7 to that Act; and
- (b) the infringement penalty has not been paid within the time specified in the infringement notice; and
- (c) the infringement notice has not been withdrawn; and
- (d) proceedings have not been taken under section 172.

Division 3—General Enforcement Provisions**174. Powers of election manager and election official**

- (1) Any election manager or election official has the power and authority—
 - (a) to maintain order and keep the peace at any election or voting at a voting centre; and
 - (b) to cause to be removed any person who—
 - (i) obstructs the approaches to a voting centre; or
 - (ii) wilfully or unnecessarily obstructs or delays the proceedings at a voting centre; or
 - (iii) behaves in a disorderly manner; or
 - (iv) remains in a voting centre for a longer time than is reasonably necessary for the purpose of voting; or
 - (v) causes a disturbance at any election.
- (2) Members of the police force must aid and assist an election manager or election official in the exercise of the powers conferred by this section.

175. Institution of proceedings for offences

- (1) The Commission may institute legal proceedings against any person committing an offence against this Act.
- (2) Nothing in sub-section (1) affects the right of any person other than the Commission to institute proceedings in respect of any offence against this Act.

176. Injunctions

- (1) Sub-section (2) applies if a person has engaged, is engaging or is proposing to engage, in any conduct that constituted, constitutes or would
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constitute a contravention of, or an offence against, this Act or any other law of Victoria in its application to elections.

- (2) If this sub-section applies, the Supreme Court may, on the application of—
- (a) in a case where the conduct relates to an election, a candidate in the election; or
 - (b) in any case, the Commission—
- grant an injunction restraining the person from engaging in the conduct.
- (3) If in the opinion of the Supreme Court it is desirable to do so, the Supreme Court may on an application under sub-section (2)—
- (a) before considering the application, grant an interim injunction restraining the person from engaging in conduct of the kind referred to in that sub-section pending the determination of the application; or
 - (b) grant an injunction requiring the person to do any act or thing.
- (4) Sub-section (5) applies if—
- (a) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
 - (b) the refusal or failure was, is, or would be, a failure to comply with, or an offence against, this Act or any other law of Victoria in its application to elections.
- (5) If this sub-section applies, the Supreme Court may, on the application of—
- (a) in a case where the refusal or failure relates to an election, a candidate in the election; or

- (b) in any case, the Commission—
grant an injunction requiring the person to do that act or thing.
- (6) The Supreme Court may discharge or vary an injunction granted under this section.
- (7) If the application is for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Supreme Court to grant the injunction may be exercised—
- (a) if the Supreme Court is satisfied that the person has engaged in conduct of that kind, whether or not it appears to the Supreme Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the Supreme Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind—
 - (i) whether or not the person has previously engaged in conduct of that kind; and
 - (ii) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.
- (8) If the application is for the grant of an injunction requiring a person to do a particular act or thing, the power of the Supreme Court to grant the injunction may be exercised—
- (a) if the Supreme Court is satisfied that the person has refused or failed to do that act or thing, whether or not it appears to the Supreme Court that the person intends to
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- refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
- (b) if it appears to the Supreme Court that, in the event that an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—
- (i) whether or not the person has previously refused or failed to do that act or thing; and
 - (ii) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.
- (9) If the application is made by the Commission, the Supreme Court must not require the Commission or any other person, as a condition of the granting of an interim injunction, to give any undertakings as to damages.
- (10) The powers conferred on the Supreme Court under this section are in addition to, and not in derogation of, any other powers of the Supreme Court, whether conferred by this Act or otherwise.

177. *Time for certain proceedings to be commenced*

Despite anything to the contrary in any Act, proceedings for an offence against this Act (other than Part 12) or the regulations which is not an indictable offence must be commenced within the period of 1 year after the commission of the alleged offence.

PART 10—GENERAL**178. *Evidentiary provisions***

- (1) A statement in writing purporting to be under the common seal of the Commission to the effect that a specified person has been generally or specifically appointed by the Commission for the purposes of this Act or in respect of specific provisions of this Act is evidence of the matters stated in the statement in the absence of evidence to the contrary.
- (2) A statement in writing purporting to be signed by the election manager in respect of an election to the effect that—
 - (a) the election specified in the statement was held; and
 - (b) a person specified in the statement was a candidate at that election—is evidence of the matters stated in the statement in the absence of evidence to the contrary.

179. *Offences by corporations*

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act, each person who is a director or is concerned in the management of the corporation is also guilty of the offence which relates to the contravention and liable to the penalty for that offence.
 - (2) It is a defence to a charge brought under subsection (1) against a person who is a director or is concerned in the management of a corporation if that person proves that—
 - (a) the contravention by the corporation occurred without the knowledge of the person; or
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- (b) the person was not in a position to influence the conduct of the corporation in relation to the contravention; or
 - (c) the person, being in a position to influence the conduct of the corporation in relation to the contravention, used all due diligence to prevent the contravention by the corporation; or
 - (d) the corporation would not have been found guilty of the offence by reason of it being able to establish a defence available to it under this Act.
- (3) A person who is a director of a corporation or who is concerned in the management of a corporation may, by virtue of sub-section (1), be proceeded against and be convicted of an offence in respect of a contravention referred to in that sub-section, whether or not the corporation has been proceeded against or been convicted in respect of the contravention.
- (4) If in any proceedings under this Act it is necessary to establish the intention of a corporation, it is sufficient to show that a servant or agent of the corporation had that intention.
- (5) In respect of any proceedings for an alleged offence by a corporation against this Act any statement made by an officer of the corporation is admissible as evidence against the corporation.
- (6) In this section—
- "officer"**—
- (a) in relation to a corporation within the meaning of the Corporations Act, has the same meaning as it has in the Corporations Act; and
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- (b) in relation to a corporation which is not a corporation within the meaning of the Corporations Act, means any person, by whatever name called, who is concerned or takes part in the management of the corporation.

180. Refunds of deposits

- (1) The Commission must refund the deposit paid under section 69 to a candidate who—
- (a) retired before the election was held; or
 - (b) died before 6 p.m. on election day; or
 - (c) was a candidate in a failed election; or
 - (d) was declared elected; or
 - (e) was not declared elected but received at least 4% of the total number of first preference votes in the election.
- (2) The deposit paid by a candidate to whom subsection (1)(b) applies must be refunded to the candidate's personal representative.

181. Appropriation of money

- (1) All fees and deposits payable under this Act and all penalties for offences against this Act when recovered must be paid into the Consolidated Fund.
- (2) Except as otherwise provided by section 215, the money required for the administration of this Act, including for refunds of deposits, is to be paid out of the Consolidated Fund, which is by virtue of this section appropriated to the necessary extent.

182. Specified day

Section 44(3) of the **Interpretation of Legislation Act 1984** does not apply if the time limited for the doing of any act or thing by or under this Act expires or falls on a day that is a holiday within the meaning of that section.

183. Supreme Court—limitation of jurisdiction

It is the intention of section 129 to alter or vary section 85 of the **Constitution Act 1975**.

184. Regulations

- (1) The Governor in Council may on the recommendation of the Commission make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
 - (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstance; and
 - (c) may impose penalties not exceeding 10 penalty units for a contravention of or an offence under the regulations; and
 - (d) may apply, adopt or incorporate (with or without modification) the provisions of any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person or body whether as formulated, issued, prescribed or published at the time the regulations are made, or at any time before then; and
 - (e) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Commission; and

- (f) may confer powers or impose duties in connection with the regulations on the Commission.
 - (3) The regulations may include savings, transitional or consequential provisions to facilitate the transition from **The Constitution Act Amendment Act 1958** to this Act.
 - (4) The regulations are subject to disallowance by a House of the Parliament.
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PART 11—TRANSITIONAL AND CONSEQUENTIAL

185. *Repeal*

- (1) Sections 2(3), 3, 4 and 47, Parts III and V (other than Division 19) and Schedules 5, 6 and 9 of **The Constitution Act Amendment Act 1958** are **repealed**.
 - (2) Except as in this Act expressly or by necessary implication provided—
 - (a) all persons, things and circumstances appointed or created by or under **The Constitution Act Amendment Act 1958** or existing or continuing under that Act immediately before the commencement of this Act shall under and subject to this Act continue to have the same status, operation and effect as they respectively would have had if this Act had not come into operation; and
 - (b) in particular and without affecting the generality of paragraph (a), this Act shall not disturb the continuity, status, operation or effect of any proclamation, Order, roll, writ, enrolment, entitlement, claim, election, determination, declaration, notice, exemption, approval, appointment, nomination, authorisation, application, grant, revocation, suspension, condition, certificate, registration, contract, agreement, consent, authority, proceeding, action, appeal, liability, right or other matter or thing made, done, effected, obtained, issued, granted, given, prescribed, fixed, accrued, incurred, acquired, existing or continuing before the commencement of this Act.
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186. Transitional provisions

- (1) If, immediately before the commencement of this Act, proceedings in respect of which the Electoral Commissioner was a party were pending or existing in any court or tribunal, then, on and after that commencement, the Commission is substituted for the Electoral Commissioner as a party to the proceedings and has the same rights and obligations in the proceedings as the Electoral Commissioner had.
- (2) On and after the commencement of this Act, any reference in any Act (other than this Act), regulation, subordinate instrument or other document whatsoever to—
 - (a) the Electoral Commissioner is to be construed as a reference to the Commission, unless the contrary intention appears; or
 - (b) **The Constitution Act Amendment Act 1958** is to be construed as a reference to this Act, unless the contrary intention appears.

187. Agricultural Industry Development Act 1990

- (1) In section 3 of the **Agricultural Industry Development Act 1990** insert the following definition—

' "**Victorian Electoral Commission**" means the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002**.'
 - (2) In section 58(1) of the **Agricultural Industry Development Act 1990**, for "Electoral Commissioner, or a person employed in the office of and nominated by the Electoral Commissioner," substitute "Victorian Electoral Commission".
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188. *City of Melbourne Act 2001*

In clause 2(1) of Schedule 1 of the **City of Melbourne Act 2001**—

- (a) in the definition of "name of a registered political party", for "**The Constitution Act Amendment Act 1958**" substitute "the **Electoral Act 2002**";
- (b) in the definition of "registered officer", for "**The Constitution Act Amendment Act 1958**" substitute "the **Electoral Act 2002**";
- (c) in the definition of "registered political party", for "**The Constitution Act Amendment Act 1958**" substitute "the **Electoral Act 2002**".

189. *Constitution Act 1975*

- (1) In section 5 of the **Constitution Act 1975**, for the definition of "Court of Disputed Returns" substitute—

' "**Court of Disputed Returns**" means the Court of Disputed Returns constituted under section 124 of the **Electoral Act 2002**;'.

- (2) For section 44(1) of the **Constitution Act 1975** substitute—

"(1) Subject to this Act, a person is qualified to be elected a member of the Council or the Assembly if, at the close of the roll in relation to the election for which the person is a candidate—

- (a) the person is enrolled on the register of electors within the meaning of the **Electoral Act 2002** and is entitled to vote at an election; and

- (b) the person's principal place of residence is in Victoria."
- (3) In section 48(2) of the **Constitution Act 1975**, for paragraph (b) **substitute**—
- "(b) is serving a sentence of 5 years imprisonment or more for an offence against the law of Victoria, the Commonwealth or another State or a Territory of the Commonwealth;"
- (4) In section 48(2) of the **Constitution Act 1975**, for "have the person's name placed on or retained on a roll of electors" **substitute** "be enrolled as an elector".
- (5) In section 48 of the **Constitution Act 1975**, sub-section (2A) is **repealed**.

190. Electoral Boundaries Commission Act 1982

- (1) In section 2 of the **Electoral Boundaries Commission Act 1982**—
- (a) in the definition of "province", for "Council." **substitute** "Council;"
- (b) **insert** the following definition—
- ' "**Victorian Electoral Commission**" means the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002**.'
- (2) In section 4 of the **Electoral Boundaries Commission Act 1982**—
- (a) in sub-section (1) **omit** "Electoral Commissioner and the";
- (b) in sub-section (2) **omit** "Electoral Commissioner or the";
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- (c) in sub-section (3) **omit** "Electoral Commissioner or the" (where twice occurring).
- (3) In section 4(6) of the **Electoral Boundaries Commission Act 1982**—
- (a) **omit** "Electoral Commissioner and the";
- (b) for "their office if they become bankrupt or apply" **substitute** "office if he or she becomes bankrupt or applies";
- (c) for "compound with their" **substitute** "compounds with his or her";
- (d) for "make an assignment of their property for their benefit" **substitute** "makes an assignment of his or her property for the creditors' benefit".
- (4) In sections 12(1)(b), 14 and 15 of the **Electoral Boundaries Commission Act 1982** for "Electoral Commissioner" **substitute** "Victorian Electoral Commission".
- (5) For section 17(1) of the **Electoral Boundaries Commission Act 1982** **substitute**—
- "(1) As soon as practicable after the Victorian Electoral Commission receives a copy of any statement of division of electors under this Act, the Victorian Electoral Commission must cause new electoral rolls to be prepared in accordance with the **Electoral Act 2002** for the new electoral provinces and electoral districts."

191. Essential Services Act 1958

- (1) In section 3 of the **Essential Services Act 1958**—
- (a) in the definition of "period of emergency", for "force." **substitute** "force;";

(b) **insert** the following definition—

' "**Victorian Electoral Commission**" means the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002**.'

(2) In sections 11(1) and 12(1) of the **Essential Services Act 1958**, for "Electoral Commissioner" **substitute** "Victorian Electoral Commission".

192. *Fundraising Appeals Act 1998*

In section 16 of the **Fundraising Appeals Act 1998**, for paragraph (e) **substitute**—

"(e) a political party registered under section 50 of the **Electoral Act 2002**";

193. *Gaming No. 2 Act 1997*

In section 3 of the **Gaming No. 2 Act 1997**, in the definition of "political party", for paragraph (a) **substitute**—

"(a) the **Electoral Act 2002**; or".

194. *Health Services Act 1988*

(1) In section 3(1) of the **Health Services Act 1988** **insert** the following definition—

' "**Victorian Electoral Commission**" means the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002**.'

(2) In section 51 of the **Health Services Act 1988**—

(a) in sub-section (9), for "Electoral Commissioner appointed by the Governor in Council under section 144 of **The Constitution Act Amendment Act 1958**" **substitute** "Victorian Electoral Commission";

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- (b) in sub-section (10), for "Electoral Commissioner" (wherever occurring), **substitute** "Victorian Electoral Commission".
- (3) In section 158 of the **Health Services Act 1988**—
- (a) in sub-section (2B), for "Electoral Commissioner appointed by the Governor in Council under section 144 of **The Constitution Act Amendment Act 1958**" **substitute** "Victorian Electoral Commission";
- (b) in sub-section (2C), for "Electoral Commissioner", **substitute** "Victorian Electoral Commission".

195. Juries Act 2000

- (1) In section 3(1) of the **Juries Act 2000**—
- (a) **omit** the definition of "Electoral Commissioner";
- (b) **insert** the following definition—
- ' "**Victorian Electoral Commission**" means the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002**;'.
- (2) In section 18(3)(a) of the **Juries Act 2000**, for "Electoral Commissioner" **substitute** "Victorian Electoral Commission".
- (3) **Insert** the following heading to section 19 of the **Juries Act 2000**—
- "Preparation of jury rolls by the Victorian Electoral Commission"*.
- (4) In section 19 of the **Juries Act 2000** for "Electoral Commissioner" (wherever occurring) **substitute** "Victorian Electoral Commission".
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196. Legal Practice Act 1996

- (1) Insert the following heading to section 370 of the **Legal Practice Act 1996**—

"Arrangements with Victorian Electoral Commission".

- (2) In section 370 of the **Legal Practice Act 1996**, for "Electoral Commissioner" **substitute** "Victorian Electoral Commission established under section 6 of the **Electoral Act 2002**".

197. Liquor Control Reform Act 1998

- (1) In Schedule 3 to the **Liquor Control Reform Act 1998**, in clause 1—

(a) in the definition of "repealed Act", for "**1987.**" **substitute** "**1987;**";

- (b) **insert** the following definition—

' "**Victorian Electoral Commission**" means the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002**.'

- (2) In Schedule 3 to the **Liquor Control Reform Act 1998**, in clause 17(2)(b), for "Electoral Commissioner" **substitute** "Victorian Electoral Commission".

- (3) In Schedule 3 to the **Liquor Control Reform Act 1998**, in clause 17(2)(e)—

(a) for "Electoral Commissioner" (where twice occurring) **substitute** "Victorian Electoral Commission";

- (b) in sub-paragraph (i), for "he or she" **substitute** "the Victorian Electoral Commission";

- (c) in sub-paragraph (ii), for "an electoral roll for the Legislative Assembly" **substitute** "the register of electors within the meaning of the **Electoral Act 2002**";
- (d) sub-paragraphs (iii) and (iv) are **repealed**;
- (e) for sub-paragraph (vi) **substitute**—
 - "(vi) the Governor in Council may make regulations for or with respect to any matter or thing necessary to be prescribed for the carrying out and giving effect to the provisions of this clause;
 - (vii) the regulations may include regulations based on the **Electoral Act 2002** and on regulations made under that Act with any alterations and adaptations that, in the opinion of the Governor in Council, are necessary."

198. Local Government Act 1989

- (1) In section 3(1) of the **Local Government Act 1989** insert the following definition—
 - ' "**Victorian Electoral Commission**" means the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002**;'.
- (2) **Insert** the following heading to section 21 of the **Local Government Act 1989**—
 - "Victorian Electoral Commission to prepare list"*.
- (3) In sections 21(1), 21(2), 21(3), 21(4) and 21(5) of the **Local Government Act 1989**, for "Electoral Commissioner" (wherever occurring) **substitute** "Victorian Electoral Commission".

- (4) In section 21(3A) of the **Local Government Act 1989**—
- (a) for "Electoral Commissioner" (where first occurring) **substitute** "Victorian Electoral Commission";
 - (b) for paragraph (a) **substitute**—
"(a) who are no longer entitled to be enrolled as an elector for the Council or Assembly by virtue of section 48(2)(d) of the **Constitution Act 1975** since the Victorian Electoral Commission last supplied such a list; and".
- (5) In sections 22(3)(a), 22(5) and 22(7) of the **Local Government Act 1989**, for "Electoral Commissioner" (wherever occurring) **substitute** "Victorian Electoral Commission".
- (6) In sections 23(1) and 24(2)(a) of the **Local Government Act 1989**, for "Electoral Commissioner" **substitute** "Victorian Electoral Commission".
- (7) **Insert** the following heading to section 26 of the **Local Government Act 1989**—
"Victorian Electoral Commission's expenses".
- (8) In section 26 of the **Local Government Act 1989**, for "Electoral Commissioner" (wherever occurring) **substitute** "Victorian Electoral Commission".
- (9) In clause 1(2)(c) in Schedule 2 of the **Local Government Act 1989**—
- (a) for "Victorian Electoral Commissioner" **substitute** "Victorian Electoral Commission";
 - (b) for "that Commissioner, Commission" **substitute** "that Commission".
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(10) In Schedule 2 of the **Local Government Act 1989**, in clause 15(3)(d)—

- (a) for "Victorian Electoral Commissioner" **substitute** "Victorian Electoral Commission";
- (b) for "that Commissioner, Commission" **substitute** "that Commission".

199. Magistrates' Court Act 1989

In clause 52 of Schedule 4 of the **Magistrates' Court Act 1989**, for "sections 241, 242 and 243 of **The Constitution Act Amendment Act 1958**" **substitute** "sections 151 and 152 of the **Electoral Act 2002**".

200. Murray Valley Citrus Marketing Act 1989

(1) In section 3(1) of the **Murray Valley Citrus Marketing Act 1989**—

- (a) in paragraph (b) of the definition of "total production area", for "Act.", **substitute** "Act;"
- (b) **insert** the following definition—

' "**Victorian Electoral Commission**" means the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002**.'

(2) In section 78(2) of the **Murray Valley Citrus Marketing Act 1989**, for "Electoral Commissioner, or a person employed in the office of and nominated by the Electoral Commissioner," **substitute** "Victorian Electoral Commission".

201. Ombudsman Act 1973

In section 13(3) of the **Ombudsman Act 1973**, for paragraph (ca), **substitute**—

"(ca) by the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002**";.

202. Shop Trading Reform Act 1996

In section 11(2) of the **Shop Trading Reform Act 1996**, for paragraph (b) **substitute**—

"(b) may include regulations based on the **Electoral Act 2002** and on regulations made under that Act with any alterations and adaptations that, in the opinion of the Governor in Council, are necessary";.

203. Victorian Institute of Teaching Act 2001

(1) In section 3 of the **Victorian Institute of Teaching Act 2001**—

(a) in paragraph (c) of the definition of "teacher", for "teacher." **substitute** "teacher;"

(b) **insert** the following definition—

' "**Victorian Electoral Commission**" means the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002**.'

(2) In section 59 of the **Victorian Institute of Teaching Act 2001**—

(a) in sub-section (6), for "Electoral Commissioner appointed by the Governor in Council under section 144 of **The Constitution Act Amendment Act 1958**" **substitute** "Victorian Electoral Commission";

(b) in sub-sections (7) and (8), for "Electoral Commissioner" (wherever occurring) **substitute** "Victorian Electoral Commission".

(3) In section 83(2)(c) of the **Victorian Institute of Teaching Act 2001**, for "Electoral Commissioner" **substitute** "Victorian Electoral Commission".

204. Vital State Projects Act 1976

(1) In section 2(1) of the **Vital State Projects Act 1976** insert the following definition—

' "**Victorian Electoral Commission**" means the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002**;'.

(2) In sections 9(1), 9(2), 9(3), 9(4) and 9(5) of the **Vital State Projects Act 1976**, for "Electoral Commissioner" **substitute** "Victorian Electoral Commission".

(3) In section 9 of the **Vital State Projects Act 1976**, for sub-sections (8) and (9) **substitute**—

"(8) The Victorian Electoral Commission must certify the result of the ballot under the common seal of the Commission and a copy of the certificate must be published in the Government Gazette.

(9) The Victorian Electoral Commission must not certify a ballot as having been held in accordance with this section unless the Commission is satisfied that the list of persons entitled to vote on the ballot supplied to the Commission was a true and correct list of those persons."

- (4) In section 12 of the **Vital State Projects Act 1976**, in paragraph (b), for "a certificate in writing purporting to be signed by the Electoral Commissioner" **substitute** "a certificate under the common seal of the Victorian Electoral Commission".

205. Water Act 1989

For section 87(8) of the **Water Act 1989** **substitute**—

- "(8) Without limiting section 324, regulations made under sub-section (7) may include regulations based on the **Electoral Act 2002** and on regulations made under that Act with any alterations and adaptations that, in the opinion of the Governor in Council, are necessary."
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PART 12—ELECTION EXPENDITURE

Division 1—Preliminary

206. Definitions

(1) In this Part—

"disposition of property" means any conveyance, transfer, assignment, settlement, delivery, payment, gift or other alienation of property including—

- (a) the allotment of shares in a company;
- (b) the creation of a trust in property;
- (c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, partnership or interest in property;
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of any debt, contract or chose in action, or of any interest in property;
- (e) the exercise by a person of a general power of appointment of property in favour of any other person;
- (f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of any other person;

"election period" in relation to an election, means the period that starts on the day on which the writ was issued for the election and ends at 6 p.m. on election day;

"electoral expenditure", in relation to an election, means expenditure incurred within the period of 12 months immediately before election day on—

- (a) the broadcasting of an advertisement relating to the election; or
- (b) the publishing in a journal of an advertisement relating to the election; or
- (c) the display at a theatre or other place of entertainment, of an advertisement relating to the election; or
- (d) the production of an advertisement relating to the election, being an advertisement that is broadcast, published or displayed as mentioned in paragraph (a), (b) or (c); or
- (e) the production of any material in relation to the election (not being material referred to in paragraph (a), (b) or (c)) that is required under section 83 to include the name and address of the author of the material or of the person authorising the material; or
- (f) the production and distribution of electoral matter that is addressed to particular persons or organisations; or

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- (g) fees or salaries paid to consultants or advertising agents for—
 - (i) services provided, being services relating to the election; or
 - (ii) material relating to the election; or
 - (h) the carrying out of an opinion poll, or other research, relating to the election;

"entitlement" means the amount determined in accordance with section 211;

"gift" means any disposition of property otherwise than by will made by a person to another person without consideration in money or money's worth or with inadequate consideration, including—

- (a) the provision of a service (other than volunteer labour); and
- (b) the payment of an amount in respect of a guarantee; and
- (c) the making of a payment or contribution at a fundraising function—

but excluding—

- (a) a payment under this Part; and
- (b) an annual subscription paid to a political party by a person in respect of the person's membership of the party;

"journal" means a newspaper, magazine or other periodical, whether published for sale or for distribution without charge;

"political donation" means a gift to a registered political party;

"property" includes money;

"registered", in relation to an election, means registered under Part 4, before the day of the issue of the writ for the election;

"relevant licence" means a licence granted under—

- (a) section 13 of the **Casino Control Act 1991**; or
- (b) section 33 of the **Gaming Machine Control Act 1991**;

"statement" means the statement given to the Commission under section 208.

- (2) A reference in this Part to things done by or with the authority of a registered political party must, if the registered political party is not a body corporate, be read as a reference to things done by or with the authority of members or officers of the registered political party on behalf of the registered political party.
 - (3) For the purposes of this Part—
 - (a) a body corporate and any other body corporate that is related to the first-mentioned body corporate are deemed to be the same person; and
 - (b) the question whether a body corporate is related to another body corporate is to be determined in the same manner as the question whether a corporation is related to another corporation is determined under the Corporations Act.
 - (4) For the purposes of this Part, an advertisement relates to an election if it contains electoral matter, whether or not consideration was given for the publication or broadcasting of the advertisement.
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207. Campaign committee to be treated as registered political party

(1) This Part applies as if a campaign committee of an endorsed candidate was the registered political party that endorsed the candidate.

(2) In sub-section (1)—

"campaign committee", in relation to a candidate, means a body of persons appointed or engaged to form a committee to assist the campaign of the candidate in an election;

"endorsed candidate" means a candidate who is endorsed by a registered political party.

Division 2—Election Expenditure

208. Statement of expenditure

(1) For the purposes of having an entitlement under section 211, the registered officer of a registered political party must, before the expiration of 20 weeks after election day, give the Commission a statement in an approved form specifying that the registered political party has spent or incurred in relation to the election—

(a) not less than the entitlement; or

(b) less than the entitlement, being the amount specified in the statement.

(2) For the purposes of having an entitlement under section 211, a candidate in the election who was not endorsed by a registered political party must, before the expiration of 20 weeks after election day, give the Commission a statement in an approved form specifying that the candidate has spent or incurred in relation to the election—

(a) not less than the entitlement; or

- (b) less than the entitlement, being the amount specified in the statement.

209. *Audit of statement*

- (1) A statement under section 208(1) must be given to the Commission with the certificate of a registered company auditor within the meaning of the Corporations Act.
- (2) A statement under section 208(2) must be given to the Commission with the certificate of an independent auditor advising that the statement has been audited in accordance with Australian Accounting Standards as specified in section 334(1) of the Corporations Act.
- (3) A certificate under sub-section (1) or (2) must state that the auditor—
- (a) was given full and free access at all reasonable times to all accounts, records, documents and papers relating directly or indirectly to any matter required to be specified in the statement; and
 - (b) examined the material referred to in paragraph (a) for the purpose of giving the certificate; and
 - (c) received all information and explanations that the auditor requested in respect of any matter required to be specified in the statement; and
 - (d) has no reason to believe that any matter stated in the statement is not correct.
- (4) A statement is to be taken not to have been given to the Commission unless the certificate required by this section is attached to the statement.
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210. Powers of Commission

- (1) If the Commission is satisfied on reasonable grounds that information provided in the statement or the certificate is materially incorrect, the Commission may by notice in writing request the auditor to provide further information as specified in the notice within 14 days of the date of the notice.
- (2) If the auditor fails to provide the requested information, the Commission may by notice in writing request the registered officer of the registered political party or the candidate to provide further information as specified in the notice within 14 days of the date of the notice.
- (3) If the registered officer of the registered political party or the candidate fails to provide the requested information, the Commission may—
 - (a) withhold any payment under section 212 until the requested information is provided; or
 - (b) if a payment has already been made under section 212, take proceedings to recover the payment under section 212(5).

211. Entitlement

- (1) This section sets out the entitlement.
- (2) The sum of \$1.20 is payable for each first preference vote given for a candidate in an election.
- (3) A payment under this section must not be made in respect of votes given in an election for a candidate unless the total number of first preference votes given for the candidate is at least 4% of the total number of first preference votes given in the election.

- (4) In this section "**first preference vote**" does not include a vote that has been rejected as informal.

212. Making of payments

- (1) An amount is only payable if the statement required to be given to the Commission has been given to the Commission.
- (2) The amount payable is—
- (a) if the statement specifies that not less than the entitlement has been spent or incurred in relation to the election, the whole of the entitlement; or
 - (b) if the statement specifies that an amount that is less than the entitlement has been spent or incurred in relation to the election, an amount equal to the amount specified in the statement.
- (3) If an amount is payable in respect of votes given in an election for a candidate endorsed by a registered political party, the Commission must make the payment to the registered officer of the registered political party within 30 days after the Commission has been given the statement.
- (4) If an amount is payable in respect of votes given in an election for a candidate who is not endorsed by a registered political party, the Commission must make the payment to the candidate within 30 days after the Commission has been given the statement.
- (5) If a payment is made and the recipient is not entitled to receive the whole or a part of the amount paid, that amount or that part of that amount may be recovered by the Commission as a debt due to the State by action against the person in a court of competent jurisdiction.
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213. Death of a candidate

- (1) A payment may be made despite the death of a candidate.
- (2) If a candidate to whom sub-section (1) applies was not endorsed in the election by a registered political party, the payment may be made to the legal personal representative of the candidate.

214. Indexation

- (1) In this section—

"index number", in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter;

"relevant amount" means the amount specified in section 211(2);

"relevant period" means the period of 6 months commencing on 1 July 2003 and each subsequent period of 6 months.

- (2) Subject to sub-section (3), if at any time, whether before or after the commencement of this Act, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published in respect of that quarter, the publication of the later index number is to be disregarded for the purposes of this section.
- (3) If at any time, whether before or after the commencement of this Act, the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this section after the change took place or takes place, regard must be had only to index numbers published in terms of the new reference base.

- (4) If the factor ascertained under sub-section (5) in relation to a relevant period is greater than 1, this Part has effect in relation to any election the election day of which occurs during that relevant period as if for each relevant amount there were substituted an amount, calculated to 3 decimal places, ascertained by multiplying by that factor—
- (a) in a case to which paragraph (b) does not apply, the relevant amount; or
 - (b) if, by virtue of another application or other applications of this section, this Part has had effect as if another amount was substituted, or other amounts were substituted, for the relevant amount, the substituted amount or the last substituted amount, as the case may be.
- (5) The factor to be ascertained for the purposes of sub-section (4) in relation to a relevant period is the number, calculated to 3 decimal places, ascertained—
- (a) if the relevant period commences on 1 July, by dividing the index number for the last preceding March quarter by the index number for the last preceding September quarter; or
 - (b) if the relevant period commences on 1 January, by dividing the index number for the last preceding September quarter by the index number for the last preceding March quarter.
- (6) If an amount or factor, if calculated to 4 decimal places, would end with a number greater than 4, the amount or factor is to be taken to be the amount or factor calculated to 3 decimal places and increased by 0.001.
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215. *Appropriation*

Amounts payable under this Part are payable out of the Consolidated Fund, which is by virtue of this section appropriated to the necessary extent.

Division 3—Capping of Political Donations

216. *Certain political donations prohibited*

- (1) It is unlawful for the holder of a relevant licence to make political donations to a registered political party during a financial year the total amount or value of which exceeds \$50 000.
- (2) For the purposes of calculating the total amount or value of the political donations made under subsection (1) by the holder of a relevant licence that is a company, any political donations made during the financial year to the same registered political party by a related company in relation to the company that is the holder of the relevant licence are to be included.
- (3) For the purposes of this section, a company is a related company if it is—
 - (a) a related body corporate within the meaning of section 50 of the Corporations Act; or
 - (b) a shareholder in the other company.

217. *Penalty*

- (1) If the holder of a relevant licence contravenes section 216, the amount by which the total amount or value of the political donations to a registered political party exceeds \$50 000 is forfeited to the State.

- (2) An amount forfeited under sub-section (1) may be recovered against—
- (a) if the registered political party is a body corporate, the registered political party; or
 - (b) in any other case, the registered officer of the registered political party.

Division 4—Miscellaneous

218. Offences

- (1) If the registered officer of a registered political party gives a statement that contains particulars that are, to the knowledge of the registered officer, false or misleading in a material particular, the registered officer is guilty of an offence.

Penalty: 120 penalty units.

- (2) If a candidate gives a statement that contains particulars that are, to the knowledge of the candidate, false or misleading in a material particular, the candidate is guilty of an offence.

Penalty: 60 penalty units.

- (3) If a person is convicted of an offence against sub-section (1) or (2), the court may, in addition to imposing a penalty under that sub-section, order the person to forfeit to the State an amount equal to the amount of any payment obtained by the person under this Part.

- (4) If a court has made an order under sub-section (3), a certificate signed by the appropriate officer of the court specifying the amount ordered to be refunded and the person by whom the amount is payable may be filed in a court having civil jurisdiction to the extent of that amount and is enforceable in all respects as a final judgment of that court.

- (5) A person who gives to another person who is required to give a statement any information that relates to the statement and that is, to the knowledge of the first-mentioned person, false or misleading in a material particular is guilty of an offence.

Penalty: 10 penalty units.

- (6) Despite anything to the contrary in this Act or any other Act, a prosecution in respect of an alleged offence against a provision of this section may be started at any time within 3 years after the alleged offence was committed.

219. *Recovery of payments*

- (1) An action in a court to recover an amount due or forfeited to the State under this Part may be brought in the name of the State by the Commission.
- (2) Any process in the action required to be served on the State may be served on the Commission.

220. *Records to be kept*

- (1) Subject to sub-section (2), a person who makes or obtains a document or other thing that is or includes a record relating to a matter particulars of which are, or could be, required to be specified in a statement relating to an election must retain that record for a period of at least 3 years commencing on the election day in that election.
- (2) Sub-section (1) does not apply to a record that, in the normal course of business or administration, would be transferred to another person.

221. Amendment of statements

- (1) If the Commission is satisfied that a statement contains a formal error or is subject to a formal defect, the Commission may amend the statement to the extent necessary to correct the error or remove the defect.
- (2) A person who has given a statement may request the permission of the Commission to make a specified amendment of the statement for the purpose of correcting an error or omission.
- (3) If the statement was given by a person as the registered officer of a registered political party, the request under sub-section (2) may be made either by—
 - (a) the person who gave the statement; or
 - (b) the person who is currently the registered officer of the registered political party.
- (4) A request under sub-section (2) must—
 - (a) be by notice in writing signed by the person making the request; and
 - (b) be lodged with the Commission.
- (5) If—
 - (a) a request has been made under sub-section (2); and
 - (b) the Commission is satisfied that there is an error in, or omission from the statement to which the request relates—

the Commission must permit the person making the request to amend the statement in accordance with the request.

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- (6) If the Commission decides to refuse a request under sub-section (2), the Commission must give to the person making the request written notice of the reasons for the decision.
 - (7) The amendment of a statement under this section does not affect the liability of a person to be convicted of an offence arising out of the giving of the statement.

222. *Provision of annual returns*

- (1) The registered officer of a registered political party must give to the Commission a copy of the annual return provided on behalf of the registered political party under section 314AC of the Commonwealth Electoral Act 1918 as soon as the annual return has been provided under that section.
- (2) The registered officer of the registered political party must certify that the copy is a true copy of the annual return provided on behalf of the registered political party under section 314AC of the Commonwealth Electoral Act 1918.

Division 5—Repeals

223. *Repeals*

Division 19 of Part V and the Sixteenth, Seventeenth and Eighteenth Schedules of **The Constitution Act Amendment Act 1958** are **repealed**.

SCHEDULES

SCHEDULE 1

FORM OF WRIT

STATE OF VICTORIA

To the Victorian Electoral Commission

I request that you cause [here insert an election or elections as the case requires] to be made according to the law of [here insert Members of the Legislative Assembly or Members of the Legislative Council or one Member of the Legislative Assembly or one Member of the Legislative Council for the Electoral District or Province of (here insert name of District or Province) to serve in the Legislative Assembly or the Legislative Council as the case requires].

I appoint the following dates for the purposes of the [election or elections as the case requires].

1. For the close of the roll the day of 20 .
2. For the final nomination day the day of 20 .
3. For holding the election at the different election day voting centres in the event of the election or elections being contested, the day of 20 .
4. For the return of the writ on or before the day of 20 .

[here insert the Governor's title or Speaker's title or President's title, as the case requires] at [here insert place] the day of 20 .

Signature

SCHEDULE 2

FORM OF BALLOT-PAPER

Ballot-Paper

District [or Province] of

Number the boxes from 1 to [2, 3, 4, 5 . . . as the case may be] in the order of your choice.

Number every box to make your vote count.

[Insert names of candidates and registered political parties as required by section 74]

Fold the ballot-paper and put it in the ballot-box or declaration envelope, as appropriate.



ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 21 March 2002

Legislative Council: 28 May 2002

The long title for the Bill for this Act was "to re-enact with amendments the law relating to Victorian elections, to amend **The Constitution Act Amendment Act 1958** and consequentially amend certain other Acts and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 21 March 2002

Legislative Council: 28 May 2002

Absolute majorities:

Legislative Assembly: 15 May 2002

Legislative Council: 30 May 2002