

May 2010

A Guide for Candidates

Legislative Assembly



WESTERN AUSTRALIAN Electoral Commission

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FOREWORD

This guide is issued by the Western Australian Electoral Commission (the Commission) to assist prospective and nominated candidates.

Please read this guide in conjunction with provisions of the *Electoral Act 1907* (E), the *Electoral Regulations 1996* (R), the *Constitution Act 1889* (CA), the *Constitution Acts Amendment Act 1899* (CAA), the *Public Sector Management Act 1994* (PSM) and the *Commonwealth Broadcasting Act 1992* referred to in this guide. Copies of Western Australian legislation are available from the State Law Publisher www.slp.wa.gov.au. Candidates should check for any subsequent amendments.

The Commission can assist you by providing information, but cannot provide legal advice to candidates. If any doubt arises regarding your legal position, seek advice from your own legal adviser.



Warwick Gately AM

ELECTORAL COMMISSIONER

May 2010

1 LEGISLATIVE ASSEMBLY – THE ELECTION PROCESS

Members of the Legislative Assembly are elected for a four-year term. When the expiry of the full term is between the last day of August prior to an election year and the first day of February in an election year, the Legislative Assembly continues up to and including the last day of January.

When the expiry of the full term is between the last day of January and the first day of September in any year, the Legislative Assembly ceases and determines on the last day of January in that year.

The Legislative Assembly can however, be prorogued or dissolved by the Governor earlier than this. The Governor has 21 days after the dissolution or expiry of Parliament, to instigate the issue of writs for a general election (refer *Electoral Act 1907*, *Constitution Act 1889* and *Constitution Acts Amendment Act 1899*).

2 WRIT

When an election is required, the Governor causes a writ to be issued. It directs the Electoral Commissioner to proceed with an election in a district and states:

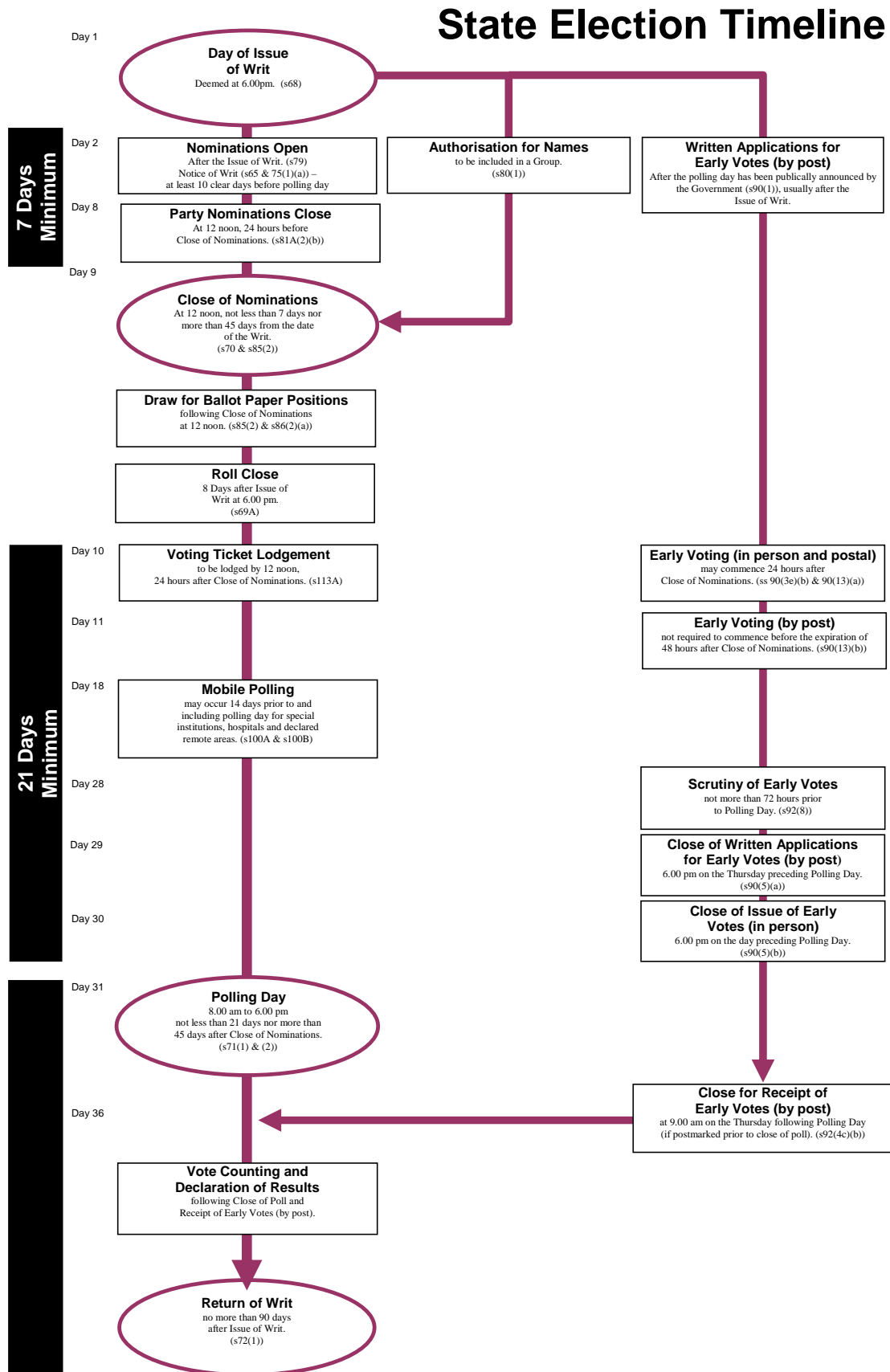
- nomination close date;
- polling date; and
- date for the return of the writ by the Electoral Commissioner.

3 RETURNING OFFICERS

The Electoral Commissioner appoints Returning Officers who are responsible for the organisation and conduct of elections in their respective districts.

The names and contact details of Returning Officers are available from the Commission and on the Commission's web site, www.waec.wa.gov.au prior to an election.

3.1 State Election Timeline



4 REGISTERED POLITICAL PARTIES

Eligible political parties may apply to be registered by the Electoral Commissioner. Registration enables the use of a party name or abbreviation on the ballot paper. Unregistered parties cannot use a party name on ballot papers. Registered political parties may lodge nomination forms for their candidates directly with the Commission.

4.1 Application for Registration of a Political Party

An application for registration of a political party must be submitted in an approved form to the Electoral Commissioner by the secretary of the party. Processing of applications ceases when the writ for an election is issued.

See Appendix 1 – Registration of Political Parties, for further information.

5 STANDING FOR ELECTION – LEGISLATIVE ASSEMBLY

5.1 Eligibility

People shall be capable of being elected at an election if they duly nominate and are qualified to be elected and not otherwise disqualified from being elected to the position they are seeking.

5.1.1 Qualifications

Any person is qualified to be elected as a member if he or she:

- has reached the age of 18; and
- is not subject to any legal incapacity; and
- is an Australian citizen; and
- has resided in Western Australia for one year; and
- is an elector entitled to vote at an election in a district.

5.1.2 Disqualifications

A person cannot nominate as a candidate in an election if, prior to and until the hour of nomination, he or she is, either by the *Electoral Act 1907* or any other Act, disqualified from being elected at that election as a member of the House of Parliament for which the election is being held.

A booklet, *Eligibility for Membership of State Parliament*, summarising qualifications and disqualifications can be obtained separately from the Commission, downloaded from the Commission's web site, or the Returning Officer.

A person may not nominate for more than one region or district at an election. The penalty for nominating when a candidate is not qualified is \$1000.

5.1.3 Public Employees Standing for Election

A member of the Judiciary or a Parliament of the Commonwealth or another State or Territory must resign his or her office in order to nominate. Holders of certain other senior positions must also resign in order to nominate.

State public sector employees may nominate but must take leave of absence for the election period commencing on the first working day after nomination. The Electoral Regulations authorise public employees to apply for and take leave and for public employers to grant leave for this period.

A State employee may be required to resign, by other legislation, before nominating for election. Subject to some conditions, a State employee may be entitled to re-enter public sector employment should he or she not be elected.

6 HOW TO NOMINATE

A nomination can be submitted on a form which can be obtained by contacting the Returning Officer for a district or from the Commission.

Nominations may be received at any time between 6.00 pm on the day of the issue of the writ and before 12.00 noon on the day that nominations close.

6.1 Candidates of Registered Political Parties

Candidates endorsed by registered political parties may have their nominations lodged with the Electoral Commissioner on their behalf by the party. Those nominations must be received by the Electoral Commissioner no later than 24 hours before the close of nominations.

Endorsed candidates may also lodge their nominations directly with the Returning Officer in accordance with section 6.2 below. A separate form signed by the party secretary confirming party endorsement will need to be lodged with the nomination.

6.2 Candidates Not Endorsed by Registered Political Parties

The Returning Officer will take nominations by arrangement during the period nominations are open and will also take nominations at the place of declaration of nominations from 11.00 am to 12.00 noon on the date of the close of nominations.

6.3 Candidate's Name on Legislative Assembly Ballot Papers

The form of a candidate's name to appear on the ballot paper is specified on the nomination form. It must include the candidate's surname and may include one or more of the candidate's given names which may be stated as one of the following:

- the given name;
- an initial standing for the given name; or
- a commonly accepted variation of the given name (including an abbreviation or truncation of the name or an alternative form of the name).

Be very clear about indicating names such as van de Klashorst, de Bono, l'Estrange as to what is the exact form and punctuation of the surname. The candidate's surname must be in full. It cannot be abbreviated or shortened.

Where two or more candidates' names are similar and are likely to cause confusion, the names of those candidates may be arranged with such description or addition as to distinguish them from one another by the Returning Officer.

6.4 Use of Registered Political Party Name on a Ballot Paper

Only candidates endorsed by a registered political party may apply to have the name of that party printed underneath their name on the ballot paper. The use of this political party name must be authorised by the secretary of the party or, in the case of a composite name of two registered political parties, by the secretaries of both parties, by endorsement on the form HO 2 *Centralised Nominations Lodgement Form and Receipt – Legislative Assembly* or RO 18 *Application for Registered Political Party Name on Ballot Paper – Legislative Assembly*.

Names are printed on ballot papers in the following format:

SMITH, Lee

Purple Party

6.5 Application for the Word *Independent* to Appear on the Ballot Paper

A candidate may apply to have the word *Independent* printed on the ballot paper by completing the section on the form RO 17 *Nomination Form and Receipt – Legislative Assembly*.

This will be shown on the ballot papers as:

SMITH, Lee

Independent

Candidates who are neither eligible to use a registered political party name, nor wish to be designated *Independent* on the ballot paper, will have no designation on the ballot paper.

This will be shown on the ballot paper as:

SMITH, Lee

7 DEPOSIT

Nominations are not valid unless a deposit of \$250 is paid before the close of nominations. Payments can only be made in money (including money order) or by a cheque drawn by a financial institution upon itself made payable to the Electoral Commissioner.

A personal cheque is **not** acceptable.

The deposit is returned:

- in an election with two candidates, if the total number of votes polled by the candidate is more than 4% of the total votes polled by both candidates;
- in an election with three or more candidates, if the total number of first preference votes polled by the candidate is more than 4% of the total number of first preference votes polled by all the candidates; or
- on the death of a candidate either before polling day or on polling day before the close of the poll.

Deposits not returned are forfeited to the Crown.

8 WITHDRAWAL OF NOMINATIONS

A candidate may withdraw a nomination up to the hour of close of nominations by notice in writing to the Returning Officer. A candidate may not withdraw a nomination after the close of nominations.

Upon withdrawal of nomination, the deposit is forfeited to the Crown.

9 REJECTION OF NOMINATIONS

If the Returning Officer or Electoral Commissioner is satisfied that the provisions of the Act have been substantially complied with, a nomination paper shall not be rejected because of a defect or error.

10 CLOSE OF NOMINATIONS

The date and place for the close of nominations will be published in *The West Australian* following the issue of the writ. Information will also be available from the Returning Officer or the Commission and on the Commission's web site www.waec.wa.gov.au.

The Returning Officer will be available at the place of declaration of nominations between 11.00 am and 12.00 noon on the day of close of nominations.

11 DEATH OF A CANDIDATE

11.1 Death of Candidate after Nomination

If a candidate dies after nomination day and before or on polling day, that is, before the hour of closing of the poll, the election is void. The deceased candidate's deposit shall be returned to his or her legal representative.

11.2 Death of Candidate on Polling Day

Should it become known that a candidate has died on polling day, the Returning Officer shall immediately:

- close the poll for the election in that district but keep the polling place(s) open for early and absent votes for candidates for any other elections being held i.e. other districts in the Legislative Assembly or Legislative Council; and
- report the fact of the death and the time and close of the poll to the Electoral Commissioner.

11.3 Death of Candidate after Close of Poll

If, after the close of the poll on polling day and before the counting of votes has been completed, a candidate dies, and on completion of the count of votes it is found that this candidate would have been elected, no candidate shall be returned as elected at the election. A new writ shall forthwith be issued for a new election.

SUMMARY OF FORMS REQUIRED IN THE NOMINATION PROCESS

Nomination with Returning Officer

- RO 17 *Nomination Form and Receipt – Legislative Assembly*
- RO 18 *Application for Registered Political Party Name on Ballot Paper – Legislative Assembly*

Centralised Registered Political Party Nominations

- RO 17A *Centralised Nomination Form – Legislative Assembly*
- HO 2 *Centralised Nominations Lodgement Form and Receipt – Legislative Assembly*

12 DRAW FOR POSITION ON BALLOT PAPER

A draw to determine the order of candidates on the ballot paper is conducted by the Returning Officer at the designated place of declaration of nominations immediately after the close of nominations.

In the draw, the Returning Officer:

- places a slip bearing the name of each candidate in separate hollow opaque spheres, places all spheres in a ballot box, and securely fastens it;
- shakes and rotates the ballot box and permits any other person present to do likewise;
- opens the ballot box;
- takes out and opens one of the spheres to remove the slip enclosed and records the name; and
- repeats the procedure until all spheres have been removed.

The order of names derived from this process becomes the order in which they appear on the ballot paper.

Candidates and other interested persons are entitled to observe this process.

13 FUNDING AND DISCLOSURE REQUIREMENTS

All political parties, associated entities, individual candidates, groups and other persons are required to provide the Electoral Commissioner with details of gifts, other income and expenditure incurred for electoral and/or political purposes. In addition, since December 2006 candidates and political parties are entitled to public funding under the provisions of Part VI of the *Electoral Act 1907*.

A *Funding and Disclosure in Western Australia Guidelines* can be obtained separately from the Commission or downloaded from the Commission's web site. See Appendix 2 – Political Finance Legislation for more information.

13.1 Summary of Forms for Funding and Disclosure

Agents

PA 01 *Notice of Appointment of an Agent by a Political Party*

PA 02 *Notice of Appointment of an Agent by a Candidate*

Annual Returns

PD 01 *Annual Return by a Political Party*

PD 02 *Annual Return by an Associated Entity*

Disclosure

PD 03 *Disclosure of Gifts and Expenditure by a Candidate*

PD 05 *Disclosure of Gifts and Expenditure by a Other Persons*

PE 01 *Disclosure of Expenditure by a Political Party*

Funding Claims

PF 01 *Political Party Funding Claim*

PF 02 *Candidate Funding Claim*

14 SCRUTINEERS

Candidates may appoint scrutineers to represent them at polling places during polling day and at the scrutiny and count of votes at each place where the scrutiny and count are conducted.

The appointment of scrutineers is to be made in writing to the Returning Officer or Polling Place Manager and be signed by the candidate. The names and addresses of the scrutineers must also be given in the written notice. A form is available from the Returning Officer or the Polling Place Manager for this purpose.

A Guide for Scrutineers is also available from the Returning Officer or the Commission.

Every scrutineer **must complete** a declaration in **the presence** of the Returning Officer or Polling Place Manager. A form is available from the Returning Officer or the Polling Place Manager.

No more than one scrutineer at a time is allowed to represent a candidate at each polling place during the polling. Different limits apply during the scrutiny and count. The Returning Officer can advise on local arrangements.

15 ELECTORAL ADVERTISING AND PUBLICATIONS

15.1 Authorisation of Electoral Advertisements and Publications

Any publication of any electoral advertisement, handbill, pamphlet or electoral notice (other than an advertisement in a newspaper announcing the holding of a meeting), that appears during the relevant period (issue of writ to 6.00 pm on polling day), must have at the end of it, the name and address of the person authorising it.

If the material is printed, then it must include the name and place of business of the printer at the foot, unless the advertisement is in a newspaper announcing the holding of a meeting.

If advertising material is produced and printed, say on a home computer by one person, then the legislation provisions are satisfied by adding ‘authorised and printed by (name) (address)’ at the end of it.

Certain small items of a candidate or party promotional nature are exempt from the requirement to carry the authorisation and addresses.

These include:

- T-shirts, lapel buttons, lapel badges, pens, pencils or balloons;
- business or visiting cards that promote the candidacy of any person in an election;
- letters and cards;
 - that bear the name and address of the sender; and
 - that do not contain a representation or purported representation of a ballot paper for use in an election; or
- any other articles prescribed by regulations.

Any advertising on the Internet must also be authorised, in order to prevent any mischief that may arise from anonymous advertising.

15.2 Polling Places

The following activities are prohibited within six metres of the entrance to a polling place:

- canvassing for votes;
- soliciting the vote of any elector;
- inducing any elector not to vote for a particular candidate; and
- inducing any elector not to vote at the election.

A polling place may have several entrances, or an obvious entrance may be subject to local hazards. The declared entrance may not be the same at every election.

Candidates should ensure that party workers contact the Polling Place Manager of each polling place during the week before an election for information on the exact entrance, so that workers can then position themselves and their advertising correctly on polling day. The Returning Officer has a list of the names of Polling Place Managers.

15.3 Size of Advertisements

Although the *Electoral Act 1907* puts no limitations on the size of advertisements, candidates should consult with the local governments concerned on any by-laws relating to advertising. Many local governments have by-laws in place which preclude electoral advertising or limit the size of advertisements or restrict or control their placement.

15.4 Misleading or Deceptive Publications

A person must not, during the relevant period in relation to an election, print, publish or distribute or cause, permit or authorise to be printed, published or distributed:

- any matter or thing that is likely to mislead or deceive an elector in relation to the casting of the elector's vote;
- an advertisement, handbill, pamphlet or notice that contains a representation of a ballot paper for use in that election that is likely to induce an elector to mark a ballot paper otherwise than in accordance with the directions on the ballot paper.

Publish

Includes publish by radio, television or other electronic means.

Relevant period

Means the period commencing when the notice of the issue of the writ is published in the *Government Gazette* and ending at the latest time on polling day at which an elector can enter a polling place to cast a vote.

15.5 Broadcasting or Televising of Election Advertisements

The Australian Broadcasting Authority is responsible for the administration of the *Commonwealth Broadcasting Services Act 1992* and provides specific guidelines for broadcasting or televising election advertisements. The Authority should be contacted for further details.

16 PERSONS PERMITTED IN A POLLING PLACE DURING POLLING

Only the Electoral Commissioner or an officer deputed by him or her, polling and electoral officers, scrutineers, any member of the police force on duty at a polling place and electors voting or about to vote, are permitted to enter or remain in the polling place during polling day.

Candidates are not permitted in polling places other than for the purpose of casting their own vote.

17 ELECTORAL OFFENCES

All candidates should read carefully Part VII of the *Electoral Act 1907* which describes in detail offences which are prohibited.

The Electoral Act is available from the State Law Publisher, Ground Floor, 10 William Street, Perth or their web site www.slp.wa.gov.au.

18 COUNTING

Preliminary vote counting takes place at polling places and at the Counting Centre in Perth. The final count takes place once the Returning Officer has received all absent, provisional and early votes. The result of the poll is declared by the Returning Officer.

The counting process for the distribution of preferences is described at Appendix 3. The legislation relating to the counting process is at Appendix 4.

Candidates may appoint, in writing, a scrutineer to represent them at the count in the polling place, the location for the full distribution of preferences and at the Counting Centre.

18.1 Counting at Polling Places

First preferences on Legislative Assembly ballot papers are counted at the polling place on election night after the close of the poll at 6.00 pm under the supervision of the Polling Place Manager.

The result of the count is telephoned by the Polling Place Manager to the Returning Officer for the district. These results are then immediately telephoned or faxed to the Tally Room by the Returning Officer where they are progressively aggregated for each district.

18.2 Checking Declaration Certificates for Early Votes (in person and by post)

The check of declaration certificates for early votes received in advance of election day may commence three days before polling day at the Counting Centre. Scrutineers may also be appointed for this process.

The declarations are validated and then separated from the ballot papers. The envelopes are opened and Legislative Assembly and Legislative Council ballot papers are separated but not inspected. The ballot papers are placed in sealed ballot boxes until the commencement of the count at 6.00 pm on election day.

The check of declarations, including absent and provisional votes made in polling places on polling day, continues until the Thursday after the election.

The latest time for the receipt of early votes (by post) after polling day is Thursday at 9.00 am. These must be postmarked on or before polling day.

18.3 Counting at the Counting Centre on Election Night

At 6.00 pm on election night, the ballot boxes held at the Counting Centre are opened and the votes are counted. These results are added to the tally for each district throughout election night and until all votes have been counted.

18.4 Results on the Internet

You will be able to view progressive results by connecting to the Commission's web site on www.waec.wa.gov.au or www.electionswa.com after 6.00 pm on election night.

Results will be available at polling place level with district, regional and party summaries, and will be updated every few minutes up to the close of counting on election night. Updates should be available regularly as counting proceeds.

18.5 Counting at the Counting Centre after Polling Day

Absent and provisional ballot papers received at polling places and remaining early votes are sent to the Counting Centre after polling day. The declarations are checked and validated then detached from the envelopes. The envelopes are then opened and ballot papers are removed from the envelopes and counted. Voting figures for each district are regularly updated.

18.6 Determination of the Poll

Absent, provisional and early Legislative Assembly ballot papers are sent to the appropriate district Returning Officers after they have been checked and counted at the Counting Centre.

Once the Returning Officer has received all the ballot papers for the district, he or she will contact all the candidates to notify them of the time and place for the count for the full distribution of preferences.

Candidates may appoint, in writing, up to two scrutineers to represent them at the count which usually takes place about a week following polling day. After the count, the Returning Officer declares the poll and returns a statement, endorsed with the name of the elected member of the Legislative Assembly, to the Electoral Commissioner.

19 RE-COUNTS

A re-count may be conducted when the election result is very close.

At any time before the declaration of the result of the election the Returning Officer may, on the written request of any candidate setting forth the reasons for the request or by his own volition, re-count the votes on the ballot papers.

The decision to conduct a re-count lies with the Returning Officer, who is under no obligation to respond to any requests for a re-count.

Note: A Returning Officer, when conducting a re-count has the same powers as if the re-count was the original scrutiny and may reverse any decision to allow or disallow any ballot paper.

20 DISPUTED RETURNS

The validity of any election or return may be disputed by petition. The petition must be addressed to the Court of Disputed Returns.

A petition disputing an election or return shall:

- set out the facts;
- be in the format required by the Act;
- be signed by a candidate at the election in dispute;
- be signed by two witnesses;
- be filed in the Central Office of the Supreme Court within 40 days after the return of the writ; and
- include a deposit of \$100 lodged with the Principal Registrar of the Supreme Court as security for costs.

21 COMPLAINTS AND QUERIES

Candidate complaints or queries should be directed to the Returning Officer in the first instance.

If you are not satisfied with the response from the Returning Officer you may seek a review of the decision. You should put your concerns in writing addressed to the Electoral Commissioner or follow the feedback links on the Commission's web site www.waec.wa.gov.au. If your concern relates to electoral material, you will need to supply original examples of those documents with your complaint.

During the election period the Commission will also have information on its web site www.waec.wa.gov.au.

APPENDIX 1

Registration of Political Parties

1 REGISTRATION OF POLITICAL PARTIES

1.1 Background

Legislation for the registration of political parties is contained in Part IIIA of the *Electoral Act 1907*. Eligible political parties may now become registered by the Electoral Commissioner, enabling the use of a party name or abbreviation on the ballot paper. Unregistered parties will not be able to use a party name on ballot papers.

During an election period i.e. from the day of the issue of the writ until the last day for the return of the writ, no action will be taken on the registration of political parties.

1.2 Eligibility for Registration

Any new political parties are eligible for registration if they have at least 500 members who are electors and have a constitution that specifies the promotion of the election to the Parliament of the state of an endorsed candidate or candidates. Members include members of related parties when one is a part of the other or both are parts of the same political party.

1.3 Names of Political Parties

The name must not be more than six words, be obscene or offensive, an existing party name or nearly resemble a party name, include the words ‘royal’ or ‘independent’ or otherwise cause confusion if registered. The name must not be a public body name, or nearly resemble a public body name.

1.4 Applications for Registration

An application for registration is to be submitted on the approved form by the secretary of the party to the Electoral Commissioner. The application is to include the following information:

- the name of the political party;
- if desired, an abbreviation of the party name for use on ballot papers;
- the name and address of the secretary;
- the names and addresses of at least 500 members who are electors;

- a copy of the party’s constitution; and
- any other prescribed information.

Applications for registration will be determined in the order in which they are received.

Details of the application will be published by the Electoral Commissioner in a notice in the Western Australian *Government Gazette* and a newspaper circulating in the State inviting electors to submit any reasons for objection to the registration. Objections are to be submitted within one month after the day of publication of the *Government Gazette* notice.

1.5 Registration

If the Electoral Commissioner is satisfied that the application complies with the requirements of the Act after considering all relevant information and public submissions, the party will be registered, by entering the details in the *Register of Political Parties*. The party’s registration will be notified in the *Government Gazette* and the party secretary will be notified in writing. If the application is refused, the Electoral Commissioner will give the party secretary written notice of the reasons for the refusal.

1.6 Public Access to the Register

Public inspection of the register is available without fee at the office of the Electoral Commissioner. The names and addresses of the 500 members will not be entered in the register and will not be subject to public inspection.

As soon as practicable after the issue of the writ for an election, the Electoral Commissioner is required to publish in the *Government Gazette* the names of all political parties and their secretaries included in the Register.

1.7 Amendments to the Register

The secretary of a registered political party may make an application to the Electoral Commissioner to amend the information or replace documents in the register. However this still has to be in accordance with the provisions of the Act.

1.8 Cancellation of Registration

The Electoral Commissioner may cancel the registration of a political party at the written request of the secretary or for any of the following reasons:

- the party no longer exists;
- it is not a parliamentary party and does not have at least 500 members who are electors;
- a registered party has failed to endorse a candidate in a general election subsequent to registration;
- registration was obtained by fraud or misrepresentation; and
- a return required under Part VI (political finance) by the agent for that party has been outstanding for more than 12 months.

The Electoral Commissioner is required to give written notice of the intention to cancel registration (other than if obtained by fraud or misrepresentation) to the secretary of the political party and also publish a notice in the *Government Gazette* and a newspaper circulating in the State. Persons may, within 14 days after the *Government Gazette* notice, object to the proposed cancellation in writing.

The Electoral Commissioner is to consider any objection before taking further action on the cancellation.

1.9 Review of Decisions

Any person affected by the Electoral Commissioner's decision on registration, refusal of registration, cancellation of a registration or amendment of registration may apply in writing to the Supreme Court for a review of the decision. This must be within one month of the Electoral Commissioner's decision.

The Supreme Court will review the decision and make an order either confirming or directing the Electoral Commissioner to vary the decision or set it aside and substitute another.

APPENDIX 2

Political Finance Legislation

1 POLITICAL FINANCE LEGISLATION

1.1 Guidelines Available

The Commission has produced a political finance booklet entitled *Funding and Disclosure in Western Australia Guidelines*. This is available from the Commission's web site www.waec.wa.gov.au. A copy is also available from the Returning Officer on nomination.

A summary of the funding and disclosure responsibilities appears below.

1.2 Background and Relevant Legislation

Political Finance legislation came into force in Western Australia on 9 November 1996 as Part VI of the *Electoral Act 1907*. Part VI of the *Electoral Act 1907* requires all political parties, associated entities, individual candidates, groups and other persons to submit a return to the Electoral Commissioner disclosing details of gifts and/or income received and electoral expenditure incurred for electoral and political purposes. This Part was amended in 2006 to allow for funding of electoral expenditure incurred by eligible political parties and candidates at State elections.

The six divisions of Part VI cover the following areas:

- definitions and references;
- agents;
- electoral funding;
- disclosure of gifts and other income;
- disclosure of electoral expenditure; and
- offences, investigations and miscellaneous provisions.

The *Electoral (Political Finance) Regulations 1996* set out how records and other information should be recorded and kept.

1.3 Agents

All political parties must appoint an agent. When a candidate has been endorsed by a political party the party agent is automatically appointed to be the candidate agent. Candidates that are not endorsed by a political party may appoint an agent or accept responsibility for compliance with the Act themselves.

1.4 Gifts

Acceptance of donations from unidentified persons or sources equal to or more than \$2,100 is prohibited under the Act. Gifts of \$2,100 or more must be disclosed, including the name and address of the donor.

1.5 Annual Returns

All party agents for political parties and financial controllers of associated entities are required to lodge a return annually by 30 November, disclosing all gifts and other income received for the previous financial year.

1.6 Election Related Returns

After an election, the agent of a political party must lodge a return setting out details of specified electoral expenditure in relation to an election which was incurred with the authority of the political party. Associated entities are not required to disclose expenditure incurred in an election.

Candidate and group agents are required to complete a return setting out all election-related gifts received during the disclosure period, and expenditure incurred in relation to the election, whether or not incurred during the election period. This ends 30 days after polling day, and for previous candidates, commences 30 days after polling day in the previous election, or for new candidates from one year prior to the day of nomination in the present election. For groups it commences from the hour of nomination.

Should no expenditure be incurred, a return must nevertheless be lodged with a nil or similar statement against the relevant items.

Persons other than political parties, associated entities, candidates and groups who incur expenditure for political purposes, are required to disclose all gifts received and expenditure incurred during the disclosure period for the election. This is the same period as for previous candidates above. If the total amount of expenditure does not exceed \$500, a return is not required.

Election returns must be sent to the Electoral Commissioner within 15 weeks after polling day. A penalty is prescribed for non-compliance.

1.7 Electoral Funding

Public funding of candidates and political parties was introduced in 2006 to provide for reimbursement of electoral expenditure at State election events.

The amount paid will be the amount spent by the party and/or candidate within the categories of electoral expenditure in relation to an election, or the entitled amount. The lesser amount of the two will be the amount paid.

Candidates and registered political parties can lodge claims with the Electoral Commissioner within 20 weeks of polling day in a form provided by the Commission. Candidates endorsed by registered political parties can only claim for funding through the party agent, and this amount is paid to the political party. Independent candidates or their agents can claim for funding on an individual basis.

1.8 The Role of the Western Australian Electoral Commission

The Electoral Commissioner is responsible for maintaining a register of political party agents and obtaining any relevant information from parties, associated entities, candidates, groups and other persons for the purposes of funding and disclosure.

The Electoral Commissioner is empowered to check all returns and claims, obtain any information relevant to funding and disclosure requirements and to interview people and scrutinise bank or other financial accounts where donations are deposited. This is part of the audit process to confirm compliance with the legislation. Audits are generally

conducted for each financial year, and a sample of returns lodged during that year is chosen for audit.

The public may view returns free of charge at the Commission's office. The returns are available four weeks after the required lodgement date. Annual returns are available the first working day after 28 December and election-related returns from 19 weeks after polling day.

APPENDIX 3

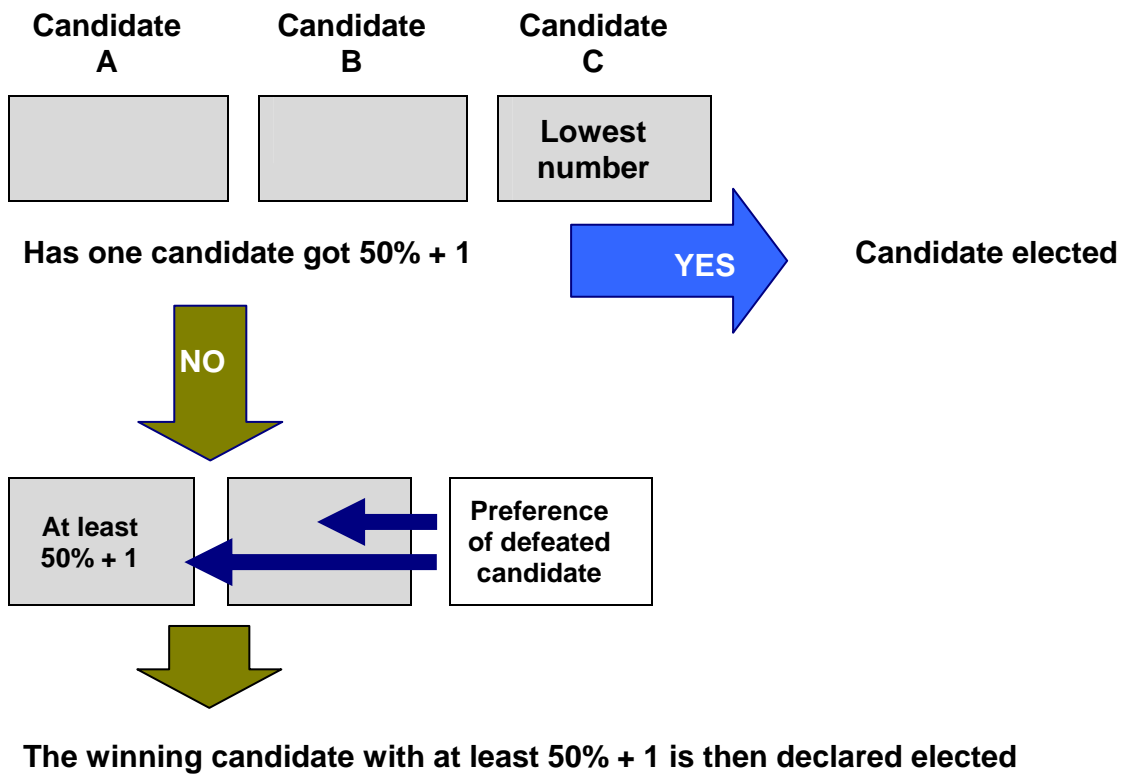
Count of Votes Distribution of Preferences

1 DISTRIBUTION OF PREFERENCES

When a formal ballot paper contains numerals, other than continuing numerals, the ballot paper should be included in the count up to the last preference i.e. in an election with four candidates, if the ballot paper is marked 1, 2, 5, 6 it is formal to the second preference. The ballot paper concerned is put aside as exhausted after the second preference and has no further impact on the count.

1.1 Distribution of Preferences for Three Candidates

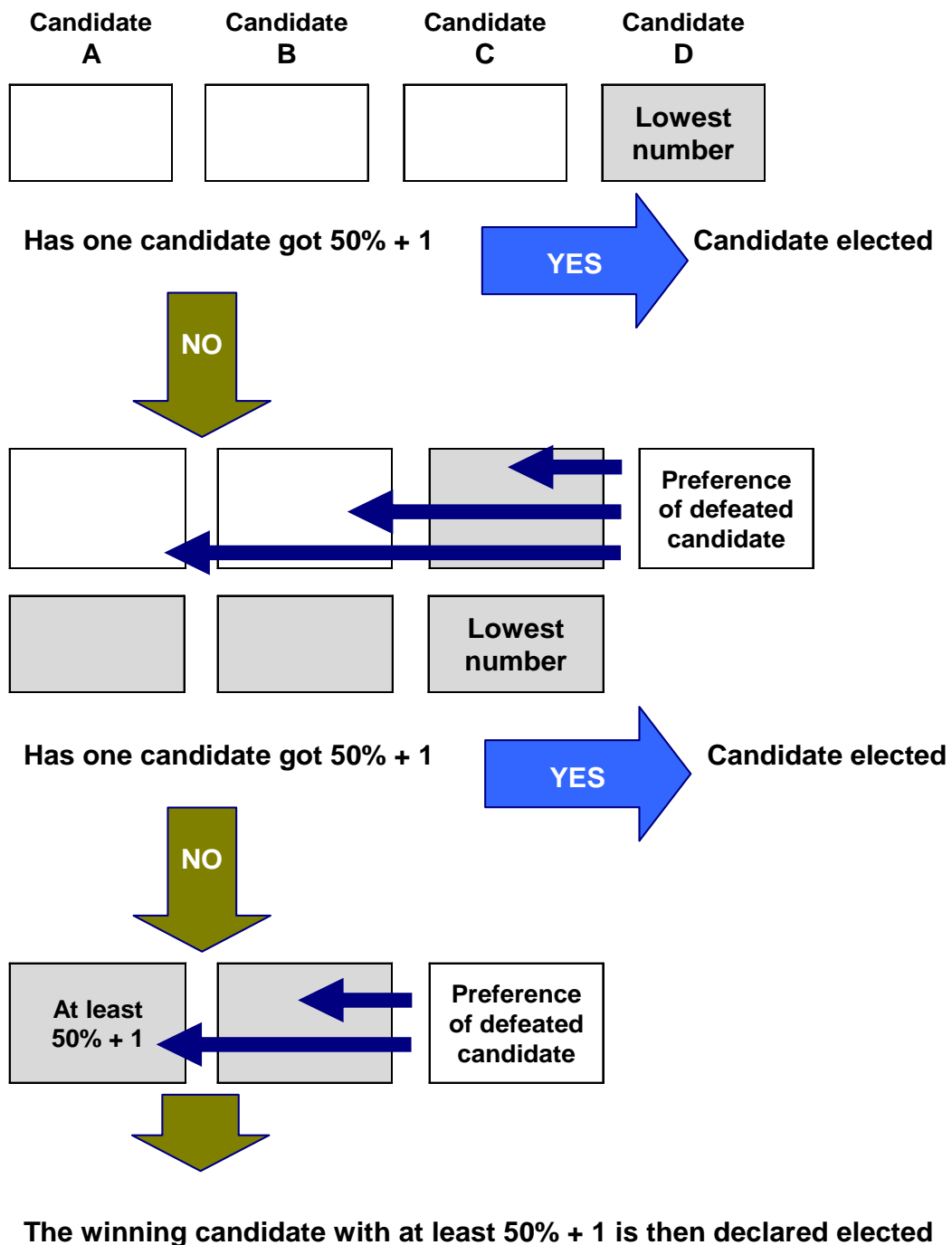
Example: Three Candidates



If there are three candidates and none has received an absolute majority, (50% + 1), of first preference votes, the candidate who has received the fewest first preference votes will be the 'defeated candidate'. The second preferences of the defeated candidate are then distributed to the other two continuing candidates. After the distribution the continuing candidate with the most votes is declared elected.

1.2 Distribution of Preferences for Four or More Candidates

Example: Four or More Candidates



Where no candidate has received an absolute majority of first preference votes, the candidate who has received the lowest number of first preferences is declared a 'defeated candidate'. These ballot papers are distributed to each continuing candidate in order of the voters' preferences. If after that distribution no candidate has an absolute majority of votes, the continuing candidate who has the fewest votes is declared a defeated candidate and the defeated candidate's ballot papers are distributed to the continuing candidates in the order of the voters' preferences. This process is repeated until one candidate has an absolute majority.

APPENDIX 4

Legislation Relating to the Count of Votes

ELECTORAL ACT 1907 — COUNTING OF VOTES AT LEGISLATIVE ASSEMBLY ELECTIONS

Returning Officer to ascertain result of poll

143. (1) The Returning Officer for the district shall, in manner hereinafter provided, ascertain the total number of votes given for each candidate.

[(2) repealed]

Counting of votes by Returning Officers

144. (1) The procedure at the count of the votes by the Returning Officer for each district shall, if there are only 2 candidates, be as follows: —

(a) The Returning Officer shall —

- (i) open all ballot boxes not opened by Assistant Returning Officers;
- (ii) count all the votes on the ballot papers found in such ballot boxes, rejecting all informal ballot papers, and ascertain the number of votes given for each candidate; and
- (iii) make and keep a record of the number of votes counted from each ballot box.

(b) The Returning Officer shall then —

- (i) ascertain from the communication received from Assistant Returning Officers the number of votes given for each candidate at polling places where the ballot boxes have been opened by Assistant Returning Officers and by persons voting at general polling places, absent voters and persons voting provisionally under section 119 (4a), 122 (2), or 122A and persons voting by early vote; and
- (ii) add the votes so given for each candidate to the votes counted by himself in favour of each such candidate, so as to ascertain, for the whole district, the number of votes given for each candidate respectively.

(c) The candidate who has received the largest number of votes shall be declared by the Returning Officer duly elected.

(d) If the candidates have an equal number of votes section 145 applies.

(2) The procedure at the count of the votes by the Returning Officer for each district, if there are more candidates than 2, shall be as follows: —

(a) The Returning Officer shall —

- (i) open all ballot boxes not opened by Assistant Returning Officers;
- (ii) arrange the ballot papers under the names of the respective candidates and place in a separate parcel all those on which a first preference is indicated for the same candidate, rejecting informal ballot papers; and
- (iii) count all the first preference votes given for each candidate respectively; and

- (iv) make and keep a record of the number of votes counted by him from each ballot box.
- (b) The Returning Officer shall then —
 - (i) ascertain from the communications received from Assistant Returning Officers the number of first preference votes given for each candidate at polling places where the ballot boxes have been opened by such Assistant Returning Officers and by persons voting at general polling places, absent voters and persons voting provisionally under sections 119 (4a), 122 (2), or 122A and persons voting by early vote; and
 - (ii) add the first preference votes so given for each candidate to the votes counted by himself in favour of each such candidate, so as to ascertain, for the whole district, the number of first preference votes polled by each candidate respectively.
- (c) The candidate who has received the largest number of first preference votes shall, if such number constitutes an absolute majority of votes, be declared by the Returning Officer duly elected.
- (d) If no candidate has an absolute majority of votes the Returning Officer —
 - (i) shall open the packets of ballot papers received from the Assistant Returning Officers, including ballot papers used for voting at general polling places, absent voters' ballot papers and ballot papers used for provisional voting under sections 119 (4a), 122 (2), or 122A and early vote ballot papers and deal with the ballot papers contained therein as prescribed by paragraph (a) (ii), adding such ballot papers to those previously counted by himself for each candidate; and
 - (ii) shall then declare the candidate who has obtained the fewest first preference votes to be a defeated candidate, and each ballot paper counted to him shall be distributed among the non-defeated candidates next in order of the elector's preference.
- (e) After such distribution the number of votes given to each non-defeated candidate shall again be ascertained.
- (ea) The candidate who then has obtained the largest number of votes shall, if such number constitutes an absolute majority of votes, be declared duly elected.
- (f) 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 each of his ballot papers amongst the non-defeated candidates next in order of the voter's preference shall be repeated, and the votes re-counted after every such redistribution until one candidate has obtained an absolute majority of votes, and such candidate shall then be declared duly elected.
- (fa) A ballot paper shall be set aside as exhausted where on a count it is found that the ballot paper expresses no preference for any non-defeated candidate.
- (g) If, after any count, the candidate with the fewest votes has to be declared to be defeated under paragraph (d) or (f), and 2 or more candidates (in this paragraph

called the “**tied candidates**”) have an equal number of votes (each other candidate having a larger number of votes) —

- (i) the Returning Officer shall make out in respect of each of the tied candidates a slip bearing the name of the candidate, and deal with the slips in accordance with Schedule 2; and
 - (ii) the candidate whose name is on the slip obtained by the Returning Officer in accordance with clause 5 of Schedule 2 shall be declared to be defeated.
- (h) If after any count 2 or more candidates have an equal number of votes and they are the only candidates, or the only non-defeated candidates, section 145 applies.
- (2a) Where there are more candidates than 2 then, notwithstanding that a candidate has been declared duly elected, the process of excluding the candidate who has the fewest votes and distributing that candidate's preferences to the candidate next in order of the elector's preference shall be continued until there are only 2 unexcluded candidates.
- (2b) At any time before a candidate has been declared duly elected the Returning Officer may, if he thinks fit, make a fresh scrutiny of all the ballot papers or any parcel of them and for that purpose has the same power in relation to the counting of the votes as on the first scrutiny and may reverse any decision given by an Assistant Returning Officer on the original scrutiny and if after such scrutiny one of the candidates is found to have obtained an absolute majority of votes shall declare that candidate duly elected.
- (3) In this section "**absolute majority of votes**" means a greater number than one-half of the whole number of ballot papers other than informal ballot papers.
- (3a) For the purposes of subsection (3), if at any stage of the count, ballot papers have been set aside under subsection (2)(fa), the whole number of ballot papers at that stage, shall be taken to be reduced by the number of those ballot papers set aside.
- (4) Where the Returning Officer is satisfied that the votes —
- (a) on any ballot papers issued at some remote polling place in connection with the election, which have not been received by him; and
 - (b) on any ballot papers used for voting at general polling places or absent voters' ballot papers or ballot papers used for provisional voting under section 119 (4a), 122 (2), or 122A or ballot papers used for voting by early vote which have not been received by him, cannot, having regard to the number of those ballot papers, possibly affect the result of the election, he may subject to the concurrence of the Electoral Commissioner —
 - (c) if there are only 2 candidates, declare the candidate who has received the largest number of votes on the ballot papers then received and counted to be duly elected; or
 - (d) if there are more than 2 candidates and one candidate has received an absolute majority of the votes on the ballot papers then received and counted, declare such candidate duly elected; or
 - (e) if no candidate has an absolute majority of the votes, then received and counted, proceed with the scrutiny;
- without awaiting the receipt of the ballot papers which have not been received by him.

Tied elections

- 145.** (1) If after any count 2 or more candidates have an equal number of votes and they are the only candidates, or the only non-defeated candidates, the Returning Officer shall re-count the votes on the ballot papers and, where appropriate, declare one of the candidates duly elected under section 144 (1) (c), (2) (ea) or (2) (f).
- (2) The Returning Officer conducting the re-count shall have the same powers as if the re-count were the scrutiny, and may reverse any decision in relation to the scrutiny as to the allowance or admission or disallowance or rejection of any ballot paper.
- (3) If after the re-count 2 or more candidates (in this section called "**the tied candidates**") have an equal number of votes and they are the only candidates, or the only non-defeated candidates, the Returning Officer shall notify the Electoral Commissioner of the result of the re-count.
- (4) On receipt of notification under subsection (3) the Electoral Commissioner shall file a petition addressed to the Court of Disputed Returns constituted under Part V —
- (a) setting out the results of the scrutiny and count and the re-count; and
- (b) requesting the Court to determine whether any of the candidates was duly elected and, if so, to declare that candidate duly elected.
- (5) Part V applies in respect of the petition as if it were a petition duly filed under sections 158 to 160 and, for the purposes of that application, the tied candidates shall be regarded as parties to the petition.
- (6) The Court shall endeavour to make its determination as soon as practicable after the petition is filed.
- (7) The Court may order that a new election be held in place of the election to which the petition relates if —
- (a) the tied candidates both or all jointly request the Court to do so; or
- (b) the Court is unable to declare any of the candidates duly elected, and, notwithstanding anything in this Act, except where the Court otherwise orders, the same roll as was used for that election shall be used for the new election.

Re-count

- 146.** (1) At any time before the declaration of the poll the Returning Officer may, if he thinks fit, at the request of any scrutineer, or of his own motion, re-count the ballot papers contained in any parcel.
- (2) The Returning Officer conducting the re-count shall have the same powers as if the re-count were the scrutiny, and may reverse any decision in relation to the scrutiny as to the allowance or admission or disallowance or rejection of any ballot paper.

APPENDIX 5

Material Available for Candidates

1 MATERIAL AVAILABLE FOR CANDIDATES

1.1 Prospective Candidates

Free of Charge

One copy of each of the following:

- publication *Guide for Candidates – Legislative Assembly*; and
- a district map, available from the Commission’s web site at www.waec.gov.au or the Commission office.

1.2 Nominated Candidates

Free of Charge

One copy of each of the following:

- publication *Eligibility for Membership of State Parliament*;
- publication *Guide for Candidates – Legislative Assembly*;
- publication *Scrutineers Guide*;
- publication *Formality of Ballot Papers Guide*;
- publication *Funding and Disclosure in Western Australia Guidelines*;
- a map of the electoral district being contested; and
- an electoral roll (in print format and in a format which can be manipulated) for the electoral district that the candidate is contesting, on CD-ROM.

To receive the roll candidates must complete form RM 27C *Candidate/Registered Party Application for the Supply of Enrolment Information* available from the Returning Officer. Candidates can receive a copy of the latest print of the roll (available in 2 working days from the date the application is received) and/or the final roll (available 2 weeks before polling day).

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