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FOREWORD

This booklet is issued by the Western Australian Electoral Commission (the Commission) as a guide for scrutineers.

Please read this guide in conjunction with provisions of the *Electoral Act 1907* (E), the *Electoral Regulations 1996* (R), the *Constitution Act 1889* (CA) and the *Constitution Acts Amendment Act 1899* (CAA) referred to in this guide. Copies of the legislation are available from the State Law Publisher and online from the Commission's web site. www.waec.wa.gov.au

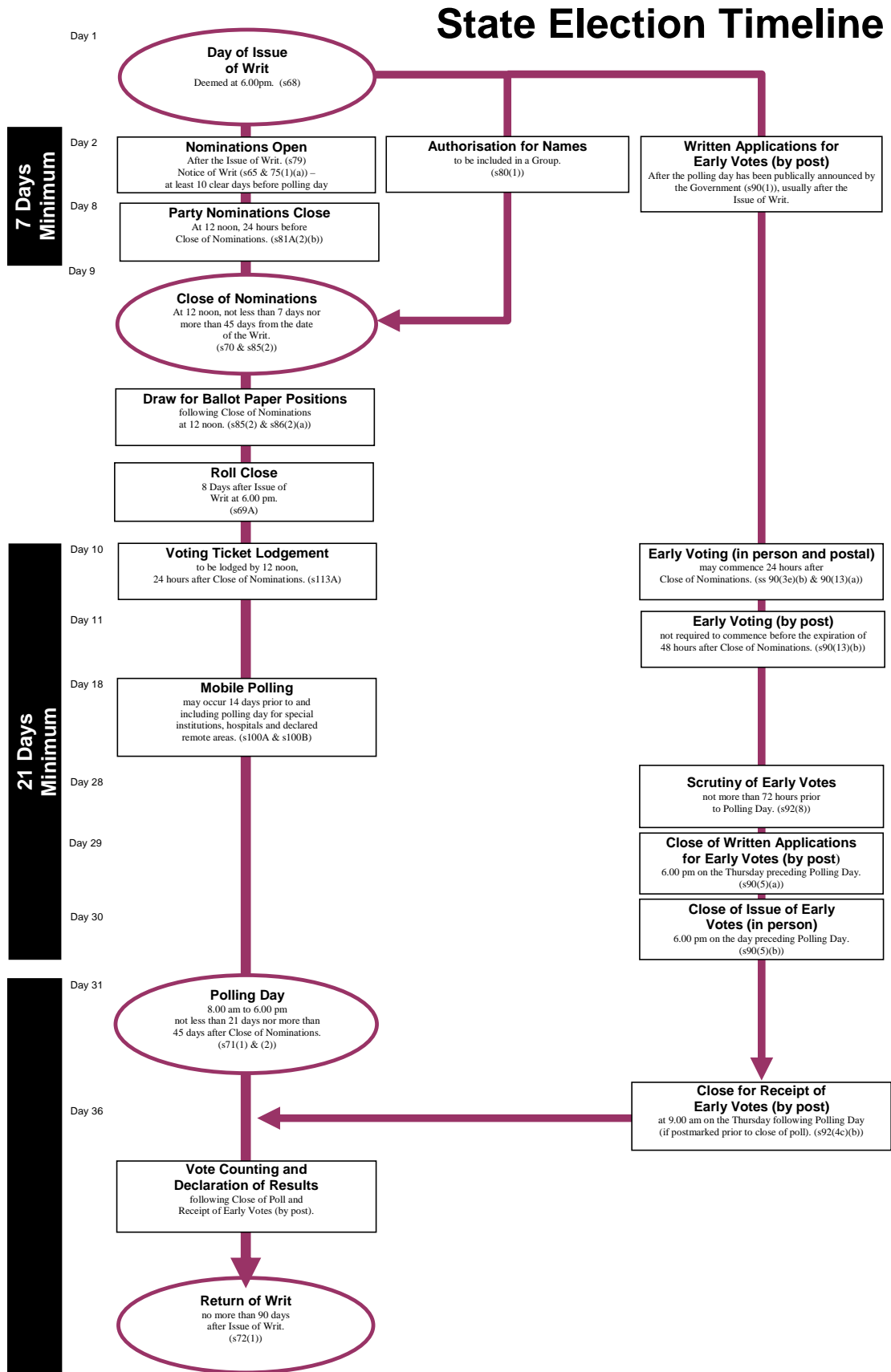
The Commission can assist you by providing information, but cannot provide legal advice to scrutineers. If any doubt arises regarding your legal position, seek advice from your own legal adviser.



Warwick Gately AM
ELECTORAL COMMISSIONER

November 2009

1 STATE ELECTION TIMELINE



2 ROLE AND APPOINTMENT OF SCRUTINEERS

Scrutineers are appointed by candidates to represent them during the various stages of the election process and to check that elections are conducted according to the *Electoral Act 1907*.

Scrutineers are required to wear name tags as provided by the Returning Officer (or Polling Place Manager), after being appointed by written notice to the Returning Officer or Polling Place Manager. This must be signed by a candidate (or any candidate in a group). The appointment must bear the name and address of the scrutineer, be signed, witnessed, and handed to the Returning Officer (or Polling Place Manager, as appropriate). The Commission supplies forms to candidates for this purpose.

Scrutineers must never:

- interfere with or attempt to interfere with the free exercise of the franchise of any elector;
- wilfully make a false statement in any objection to any claim or to any name on the roll;
- disclose any knowledge officially acquired that concerns the vote of any elector;
- fail to obey lawful directions of the Returning Officer or Polling Place Manager; nor
- remove any identification required by the Returning Officer or Polling Place Manager.
- wear or display any badge or emblem of a candidate or political party.

Penalties are prescribed for these offences.

3 POLLING PLACES

A polling place is defined as any building or structure in which the polling at elections is appointed to take place.

The Commissioner may, by notice in the *Government Gazette*:

- appoint polling places for each district;
- appoint general polling places for all districts;
- appoint polling places in any institution or hospital;
- declare any institution or hospital to be a special institution or hospital where mobile polling takes place;

- declare any part of the State a remote area where mobile polling can take place; and
- abolish any polling place.

General polling places permit electors from every district to vote without needing to complete an absent declaration. They are situated in places where there are many out-of-district electors, such as holiday resorts in summer.

4 HOSPITALS, INSTITUTIONS AND REMOTE AREAS

Mobile polling can take place in declared special institutions, hospitals, and remote areas of the State, up to and including 14 days prior to polling day. These special institutions, hospitals, and remote areas are published in the *Government Gazette*. Generally this voting will be conducted within the last four days prior to polling day. At least 48 hours notice will be provided to candidates of the times that voting will take place at these locations.

A hospital may be declared a normal polling place and may also function as a mobile polling place on polling day and the days preceding polling day.

Information for electors may be left at the general office of a special institution or hospital by candidates and political parties. During mobile polling at an institution, hospital or remote area, when accompanying polling officials with a mobile portable ballot box, scrutineers may distribute literature (including “how-to-vote” cards) but may not otherwise influence, canvass, solicit or petition voters.

5 OPERATION OF POLLING PLACES

A presiding officer, known by the title of Polling Place Manager, supervises staff and ensures the smooth operation of the polling place. The Polling Place Manager is then responsible for the scrutiny of ballot papers and the counting of votes commencing after 6.00 pm on polling day.

6 DURING POLLING AT A POLLING PLACE

On polling day scrutineers may:

- enter and leave the polling place at any time and be replaced by another appointed scrutineer;
- affix a seal to the ballot box after the Polling Place Manager has examined the ballot box and determined that it is empty;
- observe the questioning of electors as to their name, whether they have voted earlier and where they live;
- accompany the Polling Place Manager and another polling officer when assistance is given in marking the ballot paper of an elector;

Note: only an electoral official or nominated person assisting can mark the elector's ballot paper when assistance is being provided, never a candidate or scrutineer.

- observe an electoral official assisting an elector to vote when the elector is unable, because of physical disability, to enter the polling place; and
- request that an elector, who claims to vote, make a declaration in the prescribed form, a provisional vote, before being permitted to vote, if that person is believed to be ineligible to vote.

Scrutineers must not:

- canvass for votes or solicit the vote of an elector within a polling place or within six metres of the entrance; nor
- bring any election material into the polling place.

Penalties are prescribed for these offences.

7 DURING THE COUNT OF VOTES

For each polling place, no more than two scrutineers may be appointed to represent each candidate at the scrutiny and count of votes after the close of the poll for the Legislative Assembly, and no more than three scrutineers can represent candidates in a group for the Legislative Council.

The following guide should be used during these processes.

Scrutineers may:

- observe the scrutiny of votes;
- observe all proceedings at the count of votes;
- make submissions regarding the formality of any ballot paper. The Polling Place Manager conducting the count will then endorse the paper as 'admitted' or 'rejected', according to the decision to admit or reject the ballot paper;
- observe the sealing and affix a seal to a packet containing the used ballot papers sealed by the Polling Place Manager;
- when the Polling Place Manager sends a list of contents of packets to the Returning Officer the scrutineer may countersign the list;
- request the Returning Officer to re-count the ballot papers contained in any parcel. The Returning Officer may, if he or she thinks fit, grant the request; and
- if the count is adjourned, observe the sealing of packets and the scrutineers may then affix his or her own seal on the ballot box.

Scrutineers must not assist with the unfolding or counting of ballot papers during the scrutiny, or otherwise touch ballot papers at any time.

8 PARTY WORKERS DURING POLLING

Party workers can only enter the polling place in order to cast their vote. Before entering the polling place, all material that may persuade an elector to vote must be removed from the party worker including hats, badges and T-shirts.

Party workers can assist by handing out *how-to-vote* cards and other printed information to electors but not within six metres of the entrance to any polling place.

9 POLLING DAY OFFENCES

Party workers, candidates, scrutineers and the public are not permitted to engage in the following activities which constitute offences under the *Electoral Act 1907*:

- impersonating any person to secure a ballot paper to which the impersonator is not entitled;
- fraudulently destroying or defacing any nomination or ballot paper;
- forging or uttering, knowing the same to be forged, any nomination or ballot paper;
- fraudulently putting any ballot or other paper into the ballot box;
- fraudulently taking any ballot paper out of any polling place;
- supplying ballot papers without authority;
- unlawfully destroying, taking, opening or otherwise interfering with ballot boxes or ballot papers;
- voting more than once at the same election; and
- wilfully defacing, mutilating, destroying or removing any notice, list or other document affixed by any Returning Officer or by his or her authority.

Penalties are also prescribed for these offences.

9.1 Prohibitions Outside a Polling Place – Six Metre Rule

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

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

The entrance to a polling place will be determined by the Polling Place Manager.

9.2 Prohibitions Outside Declared Institutions and Hospitals

All acts which are prohibited within six metres of a normal polling place are at all times prohibited **in the grounds** of a declared institution or hospital, or **within six metres from the entrance or the entrance to the grounds**, whichever entrance is the furthest distance away from the hospital or institution.

9.3 Restrictions Relating to Petitions, Opinion Polls or Surveys in or near Polling Places

Collecting, canvassing for, soliciting or inviting signatures or comments for the purpose of any petition, opinion poll or survey (or display or distribution of any information for such purpose) may be prohibited in an area up to 100 metres from the entrance to a polling place.

If a restriction is deemed necessary the Commissioner will declare the polling area of that polling place in the *Government Gazette*.

10 VOTING METHODS

Under the *Electoral Act 1907*, there are several ways in which an elector may cast a vote.

10.1 Early Voting

An elector who cannot attend a polling place for a valid reason may apply for an early ballot paper either by going to an early vote issuing place and requesting an early ballot paper in person or by completing a *Early Vote (by post)* application form.

10.1.1 Application for an Early Vote (by post)

Applications for an early vote by post are available from:

- The Western Australian Electoral Commission;
- Post Offices;
- Court Houses;
- Divisional Returning Officers for the Australian Electoral Commission; and
- Political Parties.

When the application is received by the Commission, voting packages will be sent to the elector. Applications close on the Thursday before the election.

10.1.2 Application for an Early Vote (in person)

Electors who are eligible for an early vote may go to an issuing point from 24 hours after the close of nominations to cast a vote in person. Early voting (in person) closes at 6.00 pm on the evening before polling day.

10.1.3 Checking Early Votes

Initial checking of early votes received can commence in the three days prior to polling day. Processing takes place at the Counting Centre and involves:

- checking the declaration forms for completion;
- confirming eligibility of the electors;
- removing the declarations;
- opening the ballot paper envelopes; and
- placing the ballot papers in a sealed ballot box without inspection.

10.2 Ordinary Voting

Ordinary ballot papers are issued to those people enrolled for the district in which the polling place is situated, or at any district where the polling place is a general polling place. The elector's name must appear on the electoral roll without being marked as having already voted.

The majority of electors will attend a polling place within their own electoral district and cast a vote on polling day.

The *Electoral Act 1907* provides that certain questions must be put to all electors to establish their identity and make sure that they have not voted previously in the election. The questions can be asked in less formal language if necessary.

An elector must be asked:

QUESTION 1.

Have you cast an early vote for this election or already voted today?

If **YES**, the elector is not entitled to vote again.

If **NO**, the elector is asked question 2

QUESTION 2.

What is your full name?

QUESTION 3.

Where do you live?

If the elector lives in the local district they can be marked off the roll and given ballot papers.

The elector is still entitled to vote if he or she is on the electoral roll for one address but has moved to another address within the same district.

Electors must notify the Commission within three months of moving from one district to another or lose their entitlement to vote. If it is more than three months since an elector has lived in the old district, he or she will not be eligible to vote.

If the elector does not live in the local district they may be entitled to an absent vote.

10.3 Absent Voting

An absent vote is given to an elector who is enrolled in another district and is temporarily out of that district. Absent ballot papers may be issued for an outside district in any polling place within the State.

The elector's name will not appear on the electoral roll for the polling place district, as only the local roll is held.

The elector will be asked the compulsory questions, as above, to determine eligibility before being given the ballot papers for his or her enrolled district. The elector will then be asked to sign a declaration of eligibility to vote.

The declaration is sent to the Commission attached to the envelope containing the ballot papers. It is used to confirm the elector's eligibility and mark the elector's name off the correct electoral roll.

If an elector has not lived in the electoral district for which he or she is enrolled for the past three months he or she is ineligible to vote. The electoral official should complete a *Certificate of Attendance* form. This will ensure that the elector does not receive a letter about not voting.

10.4 Provisional Voting

A provisional vote may be issued to an elector in a polling place in the following situations:

- the elector claims to have lived in the district and re-enrolled, yet the elector's name cannot be found on the electoral roll;
- the elector's entry on the electoral roll is already marked;
- the elector's claim to vote is challenged by a scrutineer; or
- the elector's name has been objected to by an enrolment officer.

The elector will be asked the compulsory questions to determine eligibility before being given ballot papers to complete and place into an envelope.

The elector will be asked to sign a declaration of eligibility. All electors who complete a provisional vote should also complete a new *Electoral enrolment* form.

All provisional declarations are checked at the Counting Centre before the final count of votes by the Returning Officer.

11 COUNT OF BALLOT PAPERS

Counting of ordinary votes commences immediately after the poll closes at 6.00 pm on polling day. Legislative Assembly ballot papers are always counted before Legislative Council ballot papers.

11.1 Count of Ballot Papers – Legislative Assembly

Scrutineers are entitled to be present at the scrutiny and count of votes. The ballot papers are firstly removed from the ballot box by the Polling Place Manager at each counting centre and then sorted into the order of first preference for each candidate. Ballot papers which are possibly informal are put to one side for checking by the Polling Place Manager.

When the count of the first preferences is finished, the results are recorded and phoned or faxed through to the Returning Officer for each district. The Returning Officer then communicates the result to the Tally Room in Perth.

Absent and provisional envelopes are counted and packaged then sent to the Commission's Counting Centre as soon as practicable after election night to be checked and counted.

11.2 Notional Distribution of Preferences – Legislative Assembly

Polling Place Managers are likely to be asked to complete a notional distribution of preferences on election night. This involves the distribution of preferences for minor candidates who will probably be excluded under the preferential system. When the results of all the polling places in the district are aggregated, it provides an informal and unofficial, but fairly accurate, means of predicting the likely result on election night.

The Commissioner will nominate two major candidates in each district for the notional distribution.

Steps of the Notional Distribution Procedure:

1. The bundles of votes for the two nominated major candidates are put to one side.
2. The ballot papers of one minor candidate at a time are carefully examined and each one is then allocated to whichever of the two major candidates has the lowest preference number opposite their name. Blank squares are treated as the highest number.
3. The new ballot papers allocated for the two selected candidates are counted and recorded and then set aside.
4. Steps 2 and 3 are repeated for each of the remaining minor candidate's bundles. The order of the distribution is important.
5. When ballot papers for all minor candidates have been distributed, the results are tallied by the Polling Place Manager and are then telephoned through to the Returning Officer.

This whole process should not take long, as the majority of the votes recorded in the polling place have usually been cast for the two predicted major candidates.

It may transpire that because of the local popularity of a candidate in some polling places, a minor candidate may have one of the bigger bundles of votes. This will not affect the process for the whole district and the preferences of the candidate are still to be distributed to the two nominated major candidates.

Exhausted Votes

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

Once the count of ordinary votes ends, the ballot papers, including those assessed as informal, are placed in sealed parcels and delivered to the Returning Officer.

11.3 Count of Ballot Papers – Legislative Council

There are two alternative methods of voting on Legislative Council ballot papers:

- **Ticket Vote (left hand side of ballot paper)**
By marking with a numeral '1', a tick or a cross in one square only on the ticket vote side. The elector automatically allocates preferences to all candidates according to the group, party or candidate's registered ticket vote claim as lodged with the Electoral Commissioner; and
- **Candidate Preference or Non-ticket Vote (right hand side of ballot paper)**
By marking all squares with consecutive numbers starting with the numeral '1' to indicate the order of preference for all candidates on the candidate preference vote side.

Where both the ticket vote and candidate preference vote sides of the ballot paper are marked as above, the candidate preference vote is counted and the ticket vote side is ignored. If, however, the candidate preference vote side is not filled out correctly, the ticket vote side is counted.

Scrutiny and Count

At each polling place, after the Legislative Assembly votes have been counted, the Polling Place Manager will empty all Legislative Council ballot boxes, sorting the ballot papers into ticket and non-ticket votes, and putting aside those that are informal. Ticket votes are then allocated to the first preference on the ticket. Then the first preference votes for each candidate are counted for the non-ticket votes. No further counting of Legislative Council ballot papers occurs at the polling place.

The ballot papers are then sealed in a package and sent to the Deputy Returning Officer for the region who conveys them to the Regional Returning Officer. The Deputy Returning Officer is usually the Returning Officer for the Assembly district within which the polling place is located.

The Regional Returning Officer will then open the sealed packets of ballot papers and carry out a fresh scrutiny at the Counting Centre after polling day. The Returning Officer has the same powers as if the fresh scrutiny was the original scrutiny and may reverse any decision made by the Polling Place Manager or Deputy Returning Officer in regard to the formality of any ballot paper.

Computer Counting

A computer counting system is used for the final Legislative Council count. Under this system, ballot papers are scrutinised and formal candidate preference votes are sorted manually into batches for data entry.

Scrutineers may observe the data entry operators when they type in the details of the ballot papers. They are entered in batches of 50 ballot papers and may be re-keyed in for verification. The software can detect votes which are informal due to numerical errors or mis-numbering.

If the scrutineer wishes to query the input of a ballot paper he or she should record the batch number and ballot paper number from the information on the screen. This then can be later queried with the data entry supervisor and a decision made by the Returning Officer on the validity of the vote.

The data entry operators are not to be asked questions.

Ticket votes are sorted manually into each ticket group then groups are entered in single batches by the supervisor. Scrutiny of ticket vote ballot papers may occur at the sorting stage.

After all batches have been entered and verified the Returning Officer generates the count of all the ballot papers. This process can be observed by scrutineers.

11.4 Preference Count – Legislative Assembly

A full preference count normally takes place later in the week after the election.

Absent, early, postal and provisional ballot papers are forwarded to the Returning Officer after they have been processed at the Counting Centre for inclusion in the preference count.

The Returning Officer will advise the candidates prior to the count of the time and location of the scrutiny, which will allow time for them to appoint scrutineers to be present at the count.

All ballot papers are counted and distributed until there are two candidates remaining.

12 RE-COUNT

A scrutineer may request a re-count of votes. The Polling Place Manager or Returning Officer is not obliged to act on this, but will consider it.

The Returning Officer may decide to undertake a re-count on his or her own volition.

13 FORMALITY OF BALLOT PAPERS

For a ballot paper to be formal, it must contain a prescribed watermark or other authorised mark, or be initialled by the Polling Place Manager or his or her delegate.

Ballot papers which are not marked by an elector e.g. are blank, or contain markings which, in the opinion of the Returning Officer, could identify the elector are informal.

Ballot papers which are not marked in accordance with instructions may also be informal.

APPENDIX 1

Extracts from the Electoral Act 1907

Note: This is not an authorised version of this part of the *Electoral Act 1907*. The only authorised version is the hardcopy (printed) version published under authority of the Government Printer, available from the State Law Publisher, 10 William St, Perth WA 6000.

Scrutineers

- 114.** (1) Scrutineers may be appointed by candidates to represent them at polling places during the polling but —
- (a) at a single member election, not more than one scrutineer at a time shall be allowed to each candidate at each polling place, or section of a polling place, if divided;
 - (b) at an election in a region where the relevant number is more than one —
 - (i) not more than one scrutineer at a time shall be allowed to each group; and
 - (ii) not more than one scrutineer at a time shall be allowed to each candidate who is not included in any group,at each polling place, or section of a polling place, if divided.
- (2) The appointment of scrutineers shall be made by written notice to the Returning Officer or presiding officer, signed by the candidate, or any candidate included in the group in the case of an appointment under subsection (1)(b)(i), giving the names and addresses of the scrutineers, or without such notice by permission of the Returning Officer or presiding officer.
- (3) Every scrutineer shall, upon his appointment, make and subscribe a declaration in the presence of the Returning Officer or presiding officer in the prescribed form.

Persons present at polling

- 115.** (1) No candidate shall in any way take part in the conduct of an election; and no one, other than the Electoral Commissioner or an officer deputed by him, presiding officer, assistant presiding officer, the poll clerks, doorkeepers, scrutineers, and any member of the Police Force on duty at a polling place, and the electors voting or about to vote, and any person appointed under section 129 (1) (b) to be present while an elector's ballot paper is marked, shall be permitted to enter or remain in the polling place during the polling.
- (1a) A presiding officer, assistant presiding officer, poll clerk, doorkeeper or scrutineer in a polling place shall wear or display such identification as is provided or required by the Returning Officer.
 - (2) Where an election is conducted on the same day as a referendum the reference in subsection (1) to scrutineers shall be deemed to include a reference to scrutineers (if any) appointed under any Act for the purposes of the referendum.

Division (4a) — Scrutiny and Count (Assembly Elections)**Application**

136A. Subject to sections 146B(1), 146D, and 146E, this Division applies only in relation to an election in a district and the poll for such an election.

Power to appoint scrutineers

- 137.** (1) Each candidate may appoint scrutineers to represent him at the scrutiny and count of votes at each place where such scrutiny and count are conducted.
- (2) An appointment under subsection (1) shall be made in writing and addressed to the Returning Officer, or Assistant Returning Officer, as the case may be.
- (3) For each place where the scrutiny and count of votes are conducted, each candidate may appoint not more than –
- (a) 2 scrutineers; or
 - (b) if counting of votes takes place simultaneously at 2 or more locations in that place, one scrutineer for each of those locations.

unless the Returning Officer, or Assistant Returning Officer, as the case may be, allows a greater number.

Submissions by scrutineers

- 138.** (1) A scrutineer may make submissions in relation to any ballot paper that the ballot paper is informal or not informal, and the officer conducting the count shall endorse the paper as “rejected” or “admitted” according to his decision to admit or reject the ballot paper.
- (2) Where an officer makes an endorsement referred to in subsection (1) the officer shall initial the endorsement.
- (3) Subject to sections 144(2b) and 146 a decision of an officer on a submission under subsection (1) is final unless reversed under Part V.
- (4) Nothing in this section prevents the officer conducting the count from rejecting any ballot paper as being informal or from admitting a ballot paper to the count in the absence of a submission by a scrutineer.

Informal ballot papers

139. A ballot paper shall be informal —

- (a) if it is not initialled by the presiding officer, or, in the case of an early ballot paper, not initialled by the issuing officer, but where a ballot paper is not initialled by the presiding officer or the issuing officer, if it is printed on official paper the fact that it is not so initialled shall not of itself render the ballot paper informal; or
- (b) *[deleted]*

- (c) if it has upon it any mark or writing not authorised by this Act which, in the opinion of the Returning Officer, will enable any person to identify the elector; or
- (d) where there are only 2 candidates, if it does not indicate the candidate for whom the elector votes, or, where there are more than 2 candidates, if it does not indicate the order of the elector's preference for all candidates, but the operation of this paragraph is subject to section 140A; or
- (e) if no mark is indicated on it, or the surname of any candidate is omitted from it, or no name of any candidate is written on it.

Effect to be given to elector's intention

- 140.** (1) A ballot paper shall not be informal for any reason other than the reasons enumerated in section 139.
- (2) Without limiting the generality of subsection (1), where the vote of an elector is marked on a ballot paper in a manner other than the prescribed manner but the ballot paper clearly indicates the elector's intention as necessary under section 139(d) and is not informal under section 139(a), (c) or (e), that ballot paper —
- (a) shall not be informal; and
 - (b) shall be given effect to according to the elector's intention.
- (3) In subsection (2) **“prescribed manner”** means —
- (a) where there are only 2 candidates on the ballot paper, the manner required by section 128(1);
 - (b) where there are more than 2 candidates on the ballot paper, the manner required by section 128(3).

Some ballot papers with non-consecutive preferences can be formal

- 140A** (1) Where a ballot paper in an election in which there are more than 2 candidates —
- (a) has the numeral “1” in the square opposite the name of a candidate;
 - (b) has other numerals in the squares opposite the names of the remaining candidates or all but one of the remaining candidates; and
 - (c) but for this subsection, would be informal under section 139(d),
then —
 - (d) the ballot paper shall not be informal under section 139(d);
 - (e) the numeral “1” shall be taken to express the elector’s first preference;

- (f) where numerals in squares opposite the names of candidates are in a sequence of consecutive numbers beginning with the numeral “1” the elector shall be taken to have expressed a preference by the other numeral, or to have expressed preferences by the other numerals, in that sequence; and
 - (g) the elector shall not be taken to have expressed any other preference.
- (2) In considering, for the purposes of subsection (1), whether numerals are in a sequence of consecutive numerals, any numeral that is repeated shall be disregarded.
 - (3) If a ballot paper does not have a numeral in the square opposite the name of a candidate but a preference for that candidate is marked on the ballot paper in some other manner that clearly indicates the elector’s intention, the ballot paper shall be regarded, for the purposes of this section, as having the numeral appropriate to that preference marked in the square opposite the name of that candidate.

Counting places and Assistant Returning Officers

- 141.** (1) Subject to subsection (3) each polling place appointed under section 100(1)(a), or (c) shall be a counting place.
- (2) The Returning Officer may, by notice published in a newspaper circulating in the region or district, appoint such other counting places as he considers necessary for the region or district.
 - (3) The Returning Officer may, by notice published in a newspaper circulating in the region or district, declare that subsection (1) does not apply to a polling place specified in the notice.
 - (4) The Returning Officer shall appoint Assistant Returning Officers to count, at counting places referred to in subsection (1) or appointed under subsection (2), votes cast at one or more polling places.
 - (5) This section does not limit section 134(3).

The count of votes by Assistant Returning Officers

- 142.** The procedure at the count of votes by the Assistant Returning Officers shall be as follows: —
- (1) Each Assistant Returning Officer shall open all ballot boxes received at his counting place.
 - (2) The Assistant Returning Officer shall count all the votes on the ballot papers found in the boxes opened by himself, rejecting all informal ballot papers, and ascertain —
 - (a) the number of votes for each candidate, if there are only 2 candidates; or
 - (b) if there are more than 2 candidates, the number of first preference votes given for each candidate,
- and shall make and keep a record of the total number of votes for each candidate counted by him from each of such ballot boxes.

-
- (3) *[deleted]*
- (4) Each Assistant Returning Officer shall certify in writing, addressed to the Returning Officer, the number of votes or first preference votes, as the case may be, given for each candidate in the ballot papers contained in the ballot boxes counted at his counting place.
- (5) An Assistant Returning Officer may communicate to the Returning Officer by telegraph the number of votes or first preference votes, as the case may be, recorded for each candidate at the counting place for which he is appointed, and the Returning Officer, in ascertaining the result of the poll, may act upon the information so received.
- (6) Each Assistant Returning Officer shall —
- (a) enclose —
 - (i) in one packet, all the used ballot papers in his possession;
 - (ii) in another packet, all the unused ballot papers in his possession; and
 - (iii) in another packet, all copies of rolls, books, communications from officers, or other papers or documents used or received at or in connection with the election, that are in his possession;
 - and
 - (b) seal up the several packets and endorse the same with a description and the number of the contents thereof respectively, and the name of the counting place and the date of the polling, and sign the endorsement, and forthwith forward the said packets to the Returning Officer.
 - (c) The packet containing the used ballot papers shall be sealed before the scrutineers, if any, present at the count, and any scrutineer who desires so to do shall be permitted by the Assistant Returning Officer to affix his seal upon such packet.

Appointment of Assistant Returning Officers for counting early, absent and provisional votes

- 142A.**(1) The Electoral Commissioner may appoint Assistant Returning Officers for the purpose of counting, under the direction of the Electoral Commissioner, votes cast at general polling places, early and absent votes and provisional votes cast under section 119(4a), 122(2), or 122A.
- (2) Each such Assistant Returning Officer shall certify in writing addressed to the Returning Officer of the district concerned, the number of votes or first preference votes, as the case may be, given for each candidate on the ballot papers used for voting at general polling places, early and absent voters' ballot papers and ballot papers used for provisional voting under section 119(4a), 122(2), or 122A counted by him.

- (3) Any such Assistant Returning Officer may communicate to the Returning Officer of the district concerned, the number of votes or first preference votes, as the case may be, given for each candidate on the ballot papers used for voting at general polling places, early and absent voters' ballot papers and ballot papers used for provisional voting under section 119(4a), 122(2) or 122A counted by him, and the Returning Officer in ascertaining the result of the poll may act upon the information so received.
- (4) Each such Assistant Returning Officer shall, as soon as possible after completing the count of the votes on such ballot papers used for voting at general polling places, early and absent voters' ballot papers and ballot papers used for provisional voting under section 119(4a), 122(2), or 122A, transmit the same in the prescribed manner to the Returning Officer of the district concerned.

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 communications 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.

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- (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 section 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 section 119(4a), 122(2), or 122A and early 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.
- (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.

Division (4b) — Scrutiny and Count (Council Elections)

Application and construction

- 146A.(1) This Division applies only in relation to an election in a region and the poll taken for such an election.
- (2) Where in relation to an election in a region the relevant number is one and there are only 2 candidates, a reference in this Division and Schedule 1 to —
- (a) the indication of an elector's first preference for a candidate, shall be read and construed as a reference to the indication of the candidate for whom the elector votes;
 - (b) first preference votes given for a candidate, shall be read and construed as a reference to votes given for the candidate.

Appointment of Assistant Returning Officers and counting places

- 146B.(1) Sections 141 and 142A apply to and in relation to an election in a region as if references in those sections to a district were references to a region.
- (2) In the case of a conjoint election appointments of Assistant Returning Officers and counting places under section 141, and of Assistant Returning Officers under section 142A, for the purposes of an election for the Assembly have effect for the purposes of the corresponding election for the Council.

Power to appoint scrutineers

- 146C.(1) Where the relevant number is more than one —
- (a) each group may appoint not more than 3 scrutineers to represent the candidates included in that group at the scrutiny and count of votes at each place where such scrutiny and count are conducted under section 146G or 146H;
 - (b) each group may appoint scrutineers, not exceeding in number such number as the Returning Officer determines, to represent the candidates included in that group at the scrutiny and count of votes under section 146I;
 - (c) each candidate who is not included in any group may appoint not more than 2 scrutineers to represent the candidate at the scrutiny and count of votes at each place where such scrutiny and count are conducted under section 146G or 146H;

- (d) each candidate who is not included in any group may appoint scrutineers, not exceeding in number such number as the Returning Officer determines, to represent the candidate at the scrutiny and count of votes under section 146I.
- (2) Where the relevant number is one —
 - (a) each candidate may appoint not more than 2 scrutineers to represent the candidate at the scrutiny and count of votes at each place where such scrutiny and count are conducted under section 146G or 146H;
 - (b) each candidate may appoint scrutineers, not exceeding in number such number as the Returning Officer determines, to represent the candidate at the scrutiny and count of votes under section 146I.
- (3) An appointment under subsection (1) or (2) shall be made in writing and addressed to the Returning Officer, Deputy Returning Officer or Assistant Returning Officer, as the case may be.

Submissions by scrutineers

146D. Section 138 applies to and in relation to ballot papers used in an election in a region as if the references in section 138(3) to sections 144(2b) and 146 were references to sections 146I(1) and 146J.

Informal and formal ballot papers

- 146E.(1)** Section 139 applies to and in relation to ballot papers used in an election in a region as if the reference in section 139(d) to section 140A were a reference to section 146E(3).
- (2) Subsections (1) and (2) of section 140 apply to and in relation to ballot papers used in an election in a region and in subsection (2) of that section, as applied by this section, **“prescribed manner”** means —
 - (a) where there are only 2 candidates on the ballot paper, the manner required by section 128(1);
 - (b) where there are more than 2 candidates on the ballot paper, the manner authorised by section 128(2)(a).
- (3) A ballot paper shall not be informal under section 139(d) if the elector has marked his vote on the ballot paper under section 128(2)(b).
- (4) If a ballot paper —
 - (a) has been marked under section 128(2)(b); but
 - (b) has also been marked so as to indicate the order of the elector's preference in such a manner that it would not be informal under section 139(d) even if it were not marked under section 128(2)(b),

the elector shall, for the purposes of subsection (5) and section 146F, be deemed not to have marked his vote on the ballot paper under section 128(2)(b).

- (5) If a ballot paper has been marked under section 128(2)(b) any indication of preferences on the ballot paper otherwise than under section 128(2)(b) shall be disregarded for the purposes of this Division.
- (6) For the purposes of this section and section 146F an elector shall not be taken to have marked his vote under section 128(2)(b) if the elector has placed a preference mark in 2 or more voting ticket squares printed on the ballot paper.
- (7) In subsection (6) “**preference mark**” means the numeral “1”, a tick or a cross.

Prohibition of canvassing near polling place

- 192.** (1) The following acts are, on polling day, and on all days to which the polling is adjourned, prohibited in a polling place or within 6 metres from the entrance thereto, namely —
- (a) canvassing for votes; or
 - (b) soliciting the vote of any elector; or
 - (c) inducing any elector not to vote for any particular candidate; or
 - (d) inducing any elector not to vote at the election.
- (2) Subject to subsection (3), where a polling place has been appointed by the Electoral Commissioner under the provisions of section 100, at any institution or hospital, the acts referred to in subsection (1) are, at all times, prohibited in the institution or hospital, in the grounds thereof, or within 6 metres from the entrance to the institution or hospital or from the entrance to the grounds thereof, whichever entrance is the furthest distance away from the institution or hospital itself.
- (3) Literature relating to political parties may be left at the general office of an institution or hospital referred to in subsection (2) so that such literature may be available on request by any elector who is for the time being resident in the institution or hospital wherein the polling place is appointed to be by reason of illness or infirmity or in the case of a woman, by reason of approaching maternity.
- (3a) A scrutineer accompanying a mobile portable ballot box under section 100A or 100B may distribute to persons recording their votes at the mobile portable ballot box literature (which may be, or include, “how-to-vote” cards) that suggests a manner in which ballot papers might be marked.

Prohibition on dissemination of certain matter

192A. During the hours of polling at any election —

- (a) no candidate shall use or permit to be used; and
- (b) no other person shall use

any 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; and

- (c) no person shall make any public demonstration having reference to the election.

Penalty: \$1000.

Restrictions as to petitions etc.

193. (1) On polling day, or on a day to which polling is adjourned, a person shall not in —

- (a) a polling place; or
- (b) a polling area declared under section 100(1)(i) in relation to a polling place,

collect, canvass for, solicit or invite signatures or comments for the purpose of any petition, opinion poll or survey, or display or distribute any information for such a purpose.

- (2) In subsection (1) “**polling place**” does not include a polling place appointed under section 100(1)(c).