



State Electoral Office

**Guide for Parties, Groups
and Candidates
at State Elections**

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INTRODUCTION

This booklet has been prepared with the aim of explaining the various legal and administrative procedures and requirements related to the conduct of State Parliamentary elections.

It is not intended the booklet regarded as the source of definitive answers to every situation which arises during elections.

The State Electoral Office and Returning Officers will provide assistance to parties, groups and candidates but it is not their function to provide advice in regard to interpretation of the legislation in particular circumstances eg whether statements are “misleading”. In these instances recourse should be had to independent legal advice.

Publications explaining the role of scrutineers and the operation of the Election Funding Authority Act will also be available from Returning Officers or the State Electoral Office.

Names and post office box addresses of Returning Officers for each district will be available from the State Electoral Office. The Returning Officers do not formally take up duty in their electorate office until the issue of the writs which, for the 2003 general election, is expected in the first week of March.

The State Electoral Office is located at Level 20, 207 Kent Street, Sydney (telephone 9200 5999 or 1300 135 736 – facsimile 9241 6011).

NOMINATION OF CANDIDATES

1. GENERAL

In order to contest an election persons wishing to become candidates must lodge with the Returning Officer a duly completed nomination form not later than 12 noon on the day of nomination. For Legislative Assembly elections a Returning Officer is appointed for each electoral district. The Electoral Commissioner is Returning Officer for Legislative Council elections.

Nomination forms cannot be lodged until after the election is formally announced. This is done by the issue of a writ to Returning Officers. Basically the writ is a document which sets out the day of nomination, the date of polling day and the date by which the election must be completed. These details are published in newspapers throughout the State immediately upon the writ being issued.

Whilst there is no prescribed time between the issue of the writ and nomination day usually this period is 3 or 4 days.

It cannot be stressed too strongly that care must be taken to ensure all details on the nomination form are completed otherwise it may be rejected. In addition the form should be lodged with the appropriate Returning Officer at the earliest opportunity so that there is time for candidates to remedy any deficiencies which may be found to exist – any such deficiencies cannot be remedied after 12 noon on the day of nomination.

Problems have arisen when:-

- The candidate or nominators have moved address and they have not re-enrolled.
- The candidate does not have the correct amount for a deposit.
- The deposit is not in the form of cash or a bank cheque.
- Nominations are received at the last minute, are defective and the candidate has no time to correct the mistake before the close of nominations.
- Candidates nominate in names for which they are not enrolled.

The conditions under which State Public Servants may contest State Elections are prescribed by the Constitution (Public Service) Amendment Act 1916. Basically this Act does not require a State Public Servant to resign before an election but should they be elected as a member of either house they must resign from the Public Service upon the declaration of the poll.

Conditions relating to Commonwealth Public Servants are governed by Commonwealth Legislation and any Commonwealth Public Service proposing to nominate is advised to consult his/her department to ascertain his/her position with regard to leave. The question of resignation before nomination is a matter on which they will need to obtain their own legal advice.

The Constitution Act 1902 sets out the circumstances where a person is disqualified from being elected to either the Legislative Assembly or Legislative Council. These provisions generally relate to **persons being in receipt of some benefit from the New South Wales Government**. Should candidates be unsure of whether they are disqualified from being elected legal advice should be sought.

2. LEGISLATIVE ASSEMBLY NOMINATIONS

The Parliamentary Electorates and Elections Act 1912 provides that only a person who is enrolled in New South Wales may be nominated as a candidate.

There are two methods whereby a person may be nominated as a candidate for a Legislative Assembly electoral district – by 15 persons enrolled in the electoral district to be contested or by a party registered under the Act.

Nomination forms are obtainable from the State Electoral Office, Level 20, 207 Kent Street, Sydney telephone 9200 5999 – or from district Returning Officers. The addresses of Returning Officers will be published in the Daily Telegraph and the Sydney Morning Herald the day after the writ is issued.

(a) Nomination by 15 electors

A candidate may be nominated by 15 electors who are enrolled in the electoral district to be contested. An elector cannot nominate more than one candidate. As mentioned earlier it is not necessary that the person nominated be enrolled for this electoral district. The nomination form has “RO.21” printed on the top right of the front page.

In completing the nomination form care must be taken to ensure:-

- The name of the electoral district which the person nominated proposes contesting is shown;
- The full name, occupation and place of residence **as enrolled** of the person nominated is shown;
- The date of the nomination is shown;
- The signatures, full names, residence as enrolled, occupation and electoral district of at least 15 nominators are shown. Details of the name and address should be printed so that they are easily read;

To be on the safe side the details of more than 15 nominators should be provided in case some cannot be found on the roll for the district.

- The person nominated signs and dates his/her consent to the nomination and indicates whether the word “Independent” is to be printed on the ballot-papers adjacent to his/her name. If the person nominated indicates that he/she does not wish “Independent” to appear nothing will appear adjacent to his/her name on the ballot-papers;
- Details of the nominated persons telephone number are provided and an indication made whether it is to be made available to the media;
- The person nominated has indicated the surname and one of their given names which is to appear on the ballot-papers (recognised abbreviations of given name are acceptable eg Bill for William; Betty for Elizabeth);

(b) Nomination by a Registered Party

A candidate may be nominated by a party registered under the Act. The nomination form has "RO.21A" printed on the top right corner of the front page.

These nominations **must** be made and signed by the Registered Officer or Deputy Registered Officer of the party. The candidate must also sign signifying his/her consent to the nomination.

In completing the nomination form care must be taken to ensure:-

- The full name, occupation and place of residence **as enrolled** of the person nominated is shown;
- The district which the person nominated proposes to contest is shown;
- The indication of whether the registered name of the party or its registered abbreviation is to be shown on the ballot-paper has been completed;
- The Registered Officer or Deputy Registered Officer has stated his/her full name, signed and dated the nomination. The name of the registered party must also be shown;
- The person nominated has signed and dated consent to the nomination;
- Details of the nominated person's telephone number are provided and an indication made of whether it is to be made available to the media;
- The person nominated has indicated the surname and one of their given names which is to appear on the ballot-papers (recognised abbreviations of given names are acceptable eg Bill for William; Betty for Elizabeth).

(c) Nomination Deposit

All nominations must be accompanied by a deposit of \$250 **in cash or bank cheque**. Personal cheques or those drawn on Credit Unions or Building Societies are unacceptable.

(d) Refund of Nomination Deposit

After the election the deposit will be refunded to the candidate or some person authorised by the candidate in writing to receive it where the candidate is elected or receives at least 4% of the total number of first preference votes at the election.

(e) Checking Nomination

The enrolment details contained in the form are checked by the State Electoral Office to ensure they are correct prior to nominations being accepted.

This may take a short time but candidates or their representative should, wherever possible, remain in the Returning Officers office until such time as the results of the check are known. In this way prompt action may be taken to amend the form.

It must be remembered that no amendments can be made after noon on nomination day.

(f) Withdrawal of a Nomination

A candidate may withdraw a nomination by signed notice to the Returning Officer delivered before noon on nomination day – a candidate cannot withdraw after that time.

(g) Multiple Nominations

Where a candidate nominates as a candidate for more than one electoral district or for an electoral district or districts and for the Legislative Council all nominations are void unless all but one have been withdrawn prior to noon on nomination day.

3. LEGISLATIVE COUNCIL NOMINATIONS

The Parliamentary Electorates and Elections Act 1912 provides that only a person who is enrolled in New South Wales may be nominated as a candidate.

There are two methods whereby a person or persons may be nominated – by 15 persons enrolled in New South Wales or by a party registered under the Act. Nomination forms are available from the State Electoral Office.

(a) Nomination by 15 electors

A candidate may be nominated by 15 electors who are enrolled in New South Wales. An elector cannot nominate more than one candidate. The nomination form to be used has “RO.221” printed on the top right of the front page.

In completing the nomination form care must be taken to ensure:-

- The full name, occupation and place of residence **as enrolled** of the person nominated is shown;
- The person nominated has signed in the space adjacent to these details;
- The date of the nomination is shown;
- The signatures, full names, residence as enrolled, occupation and electoral district of at least 15 nominators are shown. Details of the names and addresses should be printed so that they are easily read;

To be on the safe side the details of more than 15 nominators should be provided in case some cannot be found on the roll.

- The person nominated signs and dates his/her indication of whether the word “Independent” is to be printed on the ballot-papers adjacent to his/her name. If the person nominated indicates that he/she does not wish “Independent” to appear nothing will appear adjacent to his/her name on the ballot-papers;
- Details of the nominated persons telephone number are provided;
- The person nominated has indicated the surname and one of their given names which is to appear on the ballot-papers (recognised abbreviations of given name are acceptable eg Bill for William; Betty for Elizabeth);

(b) Nomination by a Registered Party

A candidate or candidates may be nominated by a party registered under the Act. These nominations **must** be made and signed by the Registered Officer or Deputy Registered Officer of the party. The person nominated **must** also sign the form.

There are three forms which may be used depending on the needs of the party:-

- A form where only one candidate is nominated. This form has “**RO.220**” printed on the top right of the front page;
- A form where the registered party endorses candidates who are to be grouped. This form has “**RO.221A**” printed on the top right of the front page;
- A form where two or more registered parties endorse candidates who are to form one group. This form has “**RO.221B**” printed on the top right of the front page.

In completing any of these forms care must be taken to ensure:-

- The full name, occupation and place of residence **as enrolled** of the person nominated is shown;
- The indication of whether the registered name of the party or its registered abbreviation is to be shown on the ballot-paper has been completed;
- The Registered Officer or Deputy Registered Officer has stated his/her full name, signed and dated the nomination. The name of the registered party must also be shown;
- Each person nominated has signed the nomination;
- The person nominated has indicated the surname and one of their given names which is to appear on the ballot-papers (recognised abbreviations of given names are acceptable eg Bill for William; Betty for Elizabeth).

(c) Nomination Deposit

The nomination deposit is \$500 for each candidate. The only exception is that the deposit for candidates making up a group having 11-21 members is fixed at \$5,000.

The amount of the deposit must be paid by **cash or bank cheque**. Personal cheques or those drawn on a Credit Union or Building Society are unacceptable.

Set out below are examples of the nomination deposit provisions:-

- Group having 7 candidates - deposit of \$3,500 (\$500 x 7)
- Group having 16 candidates - deposit of \$5,000 (each candidate notionally lodging \$312.50 i.e. \$5,000)
- Group having 25 candidates - deposit of \$12,500 (\$500 x 25)

(d) Refund of Nomination Deposit

After the election the deposit will be refunded to the candidate or some person authorised by the candidate in writing to receive it where:-

- The candidate is elected; or
- One of the candidates in the group of which he or she is a member is elected; or

- The total number of first preference votes in his or her favour or in favour of members of the group in which he or she is a member is at least 4% of the total number of first preference votes at the election.

(e) Checking Nomination

The enrolment details contained in the form are checked by the State Electoral Office to ensure they are correct prior to nominations being accepted.

This may take a short time but candidates or their representative should, wherever possible, remain at the State Electoral Office until such time as the results of the check are known. In this way prompt action may be taken to amend the form.

It must be remembered that no amendments can be made after noon on nomination day.

(f) Withdrawal of a Nomination

A candidate may withdraw a nomination by signed notice to the Electoral Commissioner delivered before noon on nomination day. However a person who is a member of a group cannot withdraw a nomination unless all others in the group consent by signing a withdrawal notice.

A candidate cannot withdraw after noon on nomination day.

(g) Multiple Nominations

Where a candidate nominates as a candidate for an electoral district or districts and for the Legislative Council all nominations are void unless all but one have been withdrawn prior to noon on nomination day.

GROUPING OF CANDIDATES – LEGISLATIVE COUNCIL ELECTION

Two or more candidates nominated for the Legislative Council election wishing to form a group must lodge with the Electoral Commissioner a claim form to have their names included in a group on the ballot-paper. The claim form has “RO.222” printed on the top right corner and is available from the State Electoral Office. The claim must be lodged with the Electoral Commissioner **no later than noon on nomination day**.

It is important to note that:-

- The order of the names of the candidates in the group shown on the ballot-paper will be the same as they appear on the claim form; and
- The claim must be signed by each of the candidates in the proposed group. The Registered Officer or Deputy Registered Officer of a party **cannot** sign the claim form even though the candidates in the proposed group are endorsed by the party.

The claim form also includes a request for a group voting square for the group to be shown above the line on the ballot-papers. It must be noted that a group voting square is only available to groups comprising at least 15 candidates.

Thus less than 15 candidates may form a group but they cannot have a group voting square.

REGISTRATION UNDER THE ELECTION FUNDING ACT

Legislative Assembly

Attached to the nomination form in respect of candidates nominating for election to the Legislative Assembly is an application form for registration as a candidate under the provisions of the Election Funding Act 1981.

This form must be completed and handed to the Returning Officer at the same time the nomination form is lodged or **no later than nomination day**

The application must be signed by either the candidate or his or her Official Agent appointed under the Act. It is strongly suggested the candidate sign the application as it is often the case that an Official Agent is not appointed by the candidate until after registration has been effected.

It should also be understood that the appointment of an Official Agent lapses after each election.

Legislative Council

Candidates or groups nominating for the Legislative Council election must also register under the provisions of the Election Funding Act 1981 no later than nomination day. The application form for individual candidates is attached to the nomination form. The application form for groups seeking registration is available from the State Electoral Office.

The completed form must be lodged with the State Electoral Office no later than nomination day.

The application must be signed by either the individual candidate or, in the case of a group, by all the candidates in the group. The Official Agent appointed by the candidate or the group may also complete the application. However, it is strongly suggested the candidate or candidates sign the application as it is often the case that an Official Agent is not appointed by the candidate or group until after nomination day – in these instances the registration is invalid.

Groups nominated by parties registered under Part 4A of the Parliamentary Electorates and Elections Act 1912 need not apply for registration as the party is deemed to be registered under the Election Funding Act 1981.

Effect of Registration

Under the provisions of the Election Funding Act candidates and groups are required to lodge a declaration with the Election Funding Authority setting out **details of contributions received and expenditure incurred in relation to their election campaign**. In addition candidates and groups who qualify for the return of their deposit are eligible to receive funding. Failure to lodge an application for registration form by nomination day will result in the candidate or group being ineligible to receive funding irrespective of the number of votes received at the election. Also non-registration does not remove the obligation on the candidate or group to lodge the declaration mentioned above.

It should also be noted that failure to register prevents a candidate or group having how-to-vote material registered for distribution on polling day.

A full explanation of the obligations of candidates and groups under the Election Funding Act is contained in a Handbook issued by the Authority which is available from Returning Officers or the Authority which is located at Level 20, 207 Kent Street, Sydney.

BALLOT-PAPERS

1. DRAW FOR POSITION ON BALLOT-PAPER

(a) Legislative Assembly

The order of appearance of candidates on the ballot-paper is determined by a draw conducted by the Returning Officer. This draw is held in the Returning Officer's office usually within an hour after the close of nominations. Candidates or their representative may be present to witness the draw.

In conducting the draw the Returning Officer is required to place the name requested to appear on the ballot-paper for each candidate on separate slips of paper, all of the same size. These slips are enclosed in individual plastic cylinders which are then sealed and placed in a small ballot box. The ballot box is then closed and the Returning Officer shakes and rotates the box. Any other persons present may also shake and rotate the box. The box is handed to an assistant who holds it, so that the contents cannot be seen, whilst the Returning Officer withdraws the cylinders one at a time. The name of the candidate in the first cylinder extracted will appear first on the ballot-paper. Other names will appear in descending order as drawn from the box.

The Returning Officer will list the candidates in the order of the draw and the candidate or his or her representative is invited to sign this list for verification purposes.

(b) Legislative Council

A draw similar to that mentioned above in relation to Legislative Assembly candidates is held by the Electoral Commissioner to determine the order of the appearance of groups and ungrouped candidates on the Legislative Council ballot-paper. This draw is usually conducted at the State Electoral Office at 2pm on nomination day. The major difference is that the first group drawn will be "Group A" on the ballot-paper; the second "Group B" and so on. Where there are more than 26 groups those drawn after the 26th draw will be identified by a symbol determined by the Electoral Commissioner.

Candidates who are not included in any group are shown in a column on the right hand side of the ballot-paper in the order determined by a separate draw.

The groups which have applied and are eligible for a group voting square will have that square shown above the line over their group. Nothing will be shown above the line over a group not eligible for or who did not apply for a group voting square.

2. PARTY AFFILIATION ON BALLOT-PAPERS

(a) Legislative Assembly

Candidates nominated by registered parties may have the registered name of the party or the registered abbreviation of that name printed on the ballot-paper adjacent to their name on the ballot-paper. An indication of their choice is included on the nomination form.

Candidates not endorsed by a registered party may have the word "Independent" printed adjacent to their name on the ballot-paper. An indication of their wishes is included on the nomination form.

(b) Legislative Council

Candidates nominated by registered parties may have the registered name of the party or the registered abbreviation of that name printed on the ballot-paper adjacent to their names. An indication of their choice is included on the nomination form.

Where a group of candidates nominated by a registered party or parties form a group and request a group voting square the registered name/s or registered abbreviation/s of that name or names may be printed on the ballot-paper adjacent to the group voting square. An indication of whether the full name of the party or the abbreviation is to be shown is included on the nomination form.

Candidates not nominated by a registered officer of a party may have the word "Independent" printed adjacent to their name on the ballot-paper. An indication of their choice is included in the nomination form. However, if these candidates form a group the legislation does not allow for the word "Independent" or any other word to be printed on the ballot-paper adjacent to their names or a group voting square.

REGISTERED PARTIES INFORMATION SHEET

Prior to a general election a party registered under Part 4A of the Parliamentary Electorates and Elections Act 1912 is required to provide the following details to the Electoral Commissioner so that an information sheet can be prepared:-

- The name of the registered party;
- The name and address of the registered officer of the party;
- A statement (not exceeding 500 words) setting out the platform or objectives of the party provided by the registered officer of the party.

These details must be provided so that the Electoral Commissioner is able to prepare and publish information sheets no later than 28 January 2003.

The sheets will be available for public inspection at the State Electoral Office, public libraries and any other place determined by the Electoral Commissioner. The sheets will also be available on the internet at www.seo.nsw.gov.au

In preparing the information sheets the Electoral Commissioner may reduce the length of the information supplied if longer than 500 words or may omit information supplied if he is of the opinion its publication might be unlawful or defamatory.

MARKING BALLOT-PAPERS

1. LEGISLATIVE ASSEMBLY

In Legislative Assembly elections the voter must place the number “1” in the square opposite the name of the candidate for whom he or she desires to give their first preference vote. They may if they wish vote for additional candidates by placing consecutive numbers beginning with the number “2” in squares opposite those candidates in order of their preference.

2. LEGISLATIVE COUNCIL

(a) Above the Line

A person voting above the line must indicate a first preference for a group by placing “1” in the group voting square. That ballot-paper is taken to have recorded on it a first preference vote for the first candidate in the group and subsequent preferences for others in the group in the order of their appearance within the group.

A person has the option of marking a second or subsequent preference above the line by placing “2” and subsequent numbers in group voting squares. In these cases the person is taken to have indicated preferences to candidates in the second or subsequent group/s in their order of appearance within the group/s.

For example assume groups A, B and H each have 15 candidates therein and an elector marks “1” in the group voting square for group B; “2” in the square for group H and “3” in the square for group A. The elector is deemed to have voted “1” – “15” for the candidates in group B; “16” – “30” for candidates in group H and “31” – “45” for candidates in group A.

A group which requests a group voting square is required to nominate one other group also having a group voting ticket square for whom a second preference vote is taken to be recorded on all ballot-papers on which only a first preference vote is recorded for the first mentioned group if that group ceases to have 15 candidates.

This provision is designed to overcome the situation of a group having, for example, 15 candidates and a group voting square where one of the candidates therein dies between nomination day and polling day. The nominated group would receive preferences beyond the 14th preference depending on the number of candidates in that group.

(b) Below the Line

A person voting below the line must indicate preferences for 15 candidates by placing consecutive numbers beginning with “1” in the squares opposite those candidates in the order of preference for them.

The person may vote for additional candidates by placing consecutive numbers beginning with “16” in the squares opposite candidates in order of their preference.

(c) Ballot-papers marked above and below the line

Where a ballot-paper is marked both above and below the line if the below the line markings are formal the mark/s above the line are disregarded. If the below the line marks are informal regard is had to the above the line mark/s and they are counted, if formal.

(d) Use of "✓" or "X"

In some circumstances ballot-papers marked with a "✓" or a "X" are formal in both Legislative Assembly and Legislative Council elections. However, it is an offence to encourage voting by using these marks and to distribute material advocating voting in this fashion.

TYPES OF VOTING

1. POLLING DAY

Polling places are open on polling day from 8am until 6pm.

Votes may be cast by:-

- persons enrolled for the electoral district in which the polling place is located;
- persons enrolled in an electoral district other than the one in which the polling place is located. These votes are referred to as “absent votes”.
- a person whose name does not appear on the electoral roll but claims it should be;
- a person who is shown as having voted previously at the election who claims this is not the case. This and the preceding type of vote are referred to as “section votes”;
- persons whose address has been omitted from the roll for security reasons. These votes are known as “silent votes”.

2. POSTAL VOTES

Returning Officers may commence issuing postal ballot-papers as soon as they are received – usually the Monday after nominations close.

Persons in the following circumstances may apply to the Returning Officer for a postal vote are:-

- (a) will not throughout the hours of polling on polling day be within the State,
- (b) will not throughout the hours of polling on polling day be within eight kilometres by the nearest practicable route of any polling booth open for the purposes of an election,
- (c) will throughout the hours of polling on polling day be travelling under conditions which will preclude them from voting at any polling booth,
- (d) is seriously ill or infirm, and by reason of such illness or infirmity will be precluded from attending at any polling booth to vote, or, in the case of a woman, will, by approaching maternity, be precluded from attending at any polling booth to vote,
- (e) is, at a place other than a hospital, caring for a person who is seriously ill or infirm or approaching maternity and by reason of caring for the person will be precluded from attending at any polling booth to vote,
- (f) is, by reason of their membership of a religious order or their religious beliefs:
 - (i) precluded from attending at a polling booth, or
 - (ii) precluded from voting throughout the hours of polling on polling day or throughout the greater part of those hours,

(g) is, by reason of their being kept in a prison precluded from attending at any polling booth to vote, or

(h) will, by reason of being engaged for fee, gain or reward in any work throughout the hours of polling on polling day, be precluded from attending at any polling booth to vote.

Application forms are available from any Returning Officer or post office.

Applications sent from within Australia must be received no later than 6pm on the Wednesday before polling day.

Applications sent from outside Australia must be received no later than 6pm on the Monday before polling day.

Persons who are chronically ill, resident more than 20 kilometres from a polling place, absent from the State for a particular period or in a prison may be registered postal voters. These persons are automatically sent ballot-papers by the Returning Officer without having to apply.

Postal votes are also issued at various locations interstate and overseas. Details of these locations are available from the State Electoral Office at the time of an election.

All postal ballot-papers must be returned to the Returning Officer no later than 6pm on the Wednesday after polling day.

3. PRE-POLL VOTES

Pre-poll voting is available at the office of Returning Officers as soon as ballot-papers are available – usually the Monday after nominations close.

Persons may cast a pre-poll vote if the following grounds apply:-

(a) will not throughout the hours of polling on polling day be within New South Wales,

(b) will not throughout the hours of polling on polling day be within eight kilometres by the nearest practicable route of any polling booth open for the purposes of the elections,

(c) will throughout the hours of polling on polling day be travelling under conditions which will preclude them from voting at any polling booth,

(d) by reason of their membership of a religious order or their religious beliefs:

(i) is precluded from attending at a polling booth, or

(ii) will be precluded from voting throughout the hours of polling on polling day or throughout the greater part of those hours,

(e) will be, at a place other than a hospital, caring for a person who is seriously ill or infirm or approaching maternity and by reason of caring for the person will be precluded from attending at any polling booth to vote, or

(f) will, by reason of being engaged for fee, gain or reward in any work throughout the hours of polling on polling day, be precluded from attending at any polling booth to vote.

This type of voting is undertaken at the officer of Returning Officers during normal business hours until 6pm on the day before polling day.

In some districts additional locations where pre-poll votes may be issued are appointed by the Electoral Commissioner e.g. Sydney Airport. Full details of the location of these pre-poll voting locations and hours of operation are available from the State Electoral Office at the time of an election.

4. DECLARED INSTITUTIONS

Declared Institutions are convalescent homes, hospitals or similar institutions appointed by the Electoral Commissioner by notice in the Government Gazette. Polling officials visit these Declared Institutions on the Monday, Tuesday or Wednesday prior to polling day and take votes from patients or inmates.

Voting at Declared Institutions is restricted to patients and inmates of the facility and cannot be extended to staff, visitors or members of the public. In addition persons in retirement villages or self-care facilities within a complex which is a Declared Institution are not entitled to vote when polling officials visit those in the nursing home facility.

Returning Officers will advise the times of visits to Declared Institutions so that candidates may appoint a scrutineer to accompany polling officials. During the time polling officials are visiting a Declared Institution how-to-vote material cannot be handed out.

COUNTING BALLOT-PAPERS TO OBTAIN RESULT

Legislative Assembly

At the close of voting on polling day polling officials at each polling place will count the first preference votes for each candidate.

Once this count has been completed a notional distribution of preferences is undertaken. The purpose of this count is to give an indication of the likely result of a preference distribution, if required. This count is only indicative and has no bearing on the counting process undertaken by the Returning Officer after polling day or the ultimate result.

On the Sunday after polling day at the Returning Officers office the ballot-papers are checked and counted again to ensure accuracy of the figures. The total number of first preference votes recorded for each candidate are amalgamated polling place by polling place to arrive at their totals for the district.

Absent, postal, pre-poll, declared institution, silent and section votes are counted in the week after polling day so that final first preference figures are available on the Wednesday or Thursday.

If a candidate has a majority (50% + 1) of first preference votes he/she is elected and the Returning Officer will arrange to declare the poll by contacting all candidates.

If no candidate has a majority of first preference votes the Returning Officer conducts a preference count to determine the successful candidate. Once this count has been completed the Returning Officer will advise all candidates of arrangements to declare the poll.

On receipt of advice of the result of the election a candidate may apply to the Returning Officer for a recount setting out the grounds relied upon. Any such application must be notified to the Returning Officer within 24 hours of the completion of the count. A recount will not be undertaken unless the grounds justify such a course.

After the poll has been declared a two party preferred count is conducted. This count is solely for statistical purposes.

Legislative Council

After close of voting on polling day polling officials at each polling place will count first preference votes in the group voting squares above the line. These are the only votes which will be counted on polling night.

The Legislative Council ballot-papers from all polling places will be conveyed to a central sorting and counting centre in Sydney. The absent, postal, pre-poll, declared institution, silent and section ballot-papers will be sent to Sydney in the week after polling day.

All ballot-papers will be data entered and verified over a period of a couple of weeks. During this time details of first preference votes for each group and candidate will be available on a progressive basis.

Once all data has been entered the computer will do the final count.

CHALLENGING THE RESULT OF AN ELECTION

A candidate may only challenge the result of an election by petition to the Court of Disputed Returns. The petition must be filed in the Supreme Court within 40 days of the date for the return of the writ.

The legislation in relation to petitions to the Court of Disputed Returns is set out in sections 154A – 175J of the Parliamentary Electorates and Elections Act 1912.

Any candidates considering a petition should consult their solicitors and be guided by their advice.

SCRUTINEERS

Candidates are able to appoint scrutineers to observe the issue and counting of ballot-papers and to generally safeguard the interests of the candidate.

Scrutineers must be enrolled as electors in New South Wales. **Candidates cannot act as scrutineers at an election which they contest.** It should be noted that candidates may only enter a polling place for the purpose of casting their own vote.

At Legislative Assembly elections a candidate may appoint scrutineers by completing the appointment form which is available from the Returning Officer. The scrutineer must hand this form to the senior polling official prior to commencing his/her duties.

At Legislative Council elections a person scrutineering for a group of candidates must be appointed by the candidate at the head of the group on the ballot-paper. Appointment forms are available from the State Electoral Office. The use of a signature stamp is acceptable as the signature of the candidate at the head of the group. Candidates who are ungrouped may appoint scrutineers in the same manner as individual candidates at Legislative Assembly elections.

Each candidate may have present one scrutineer for each table issuing votes on polling day. After the close of the poll candidates may have one scrutineer present for each pair of polling officials counting votes. Scrutineers may draw to the attention of polling officials or the Returning Officer issues relating to the formality or otherwise of ballot-papers or other concerns they may have about the conduct of the election.

Scrutineers should make a note of any decisions by polling officials or the Returning Officer and report these to his or her candidate for any action deemed appropriate.

Scrutineers may be present while pre-poll votes are being taken in the Returning Officer's office or at other pre-poll centres.

They may also accompany polling officials whilst taking votes at declared institutions. The Returning Officer will advise candidates of the times and arrangements of these visits.

Unlike Federal elections there is no prescribed distance at which scrutineers and campaign workers are required to remain from a polling place. However, they are not permitted to interfere with the free entry and departure of electors.

A separate booklet for the guidance of scrutineers has been prepared and is available from Returning Officers or the State Electoral Office.

ELECTION CAMPAIGN ADVERTISING MATERIAL

1. POSTERS

Most candidates and parties use signs in the form of posters in support of election campaigns. These posters take various forms eg.

- Signs attached to buildings;
- Signs attached to motor vehicles;
- Banners;
- Signs attached to wooden stakes.

Posters are not permitted to exceed 8,000 square centimetres in area. Posters in excess of this size may not be exhibited except:-

- (a) at the office or committee room of a candidate or party providing the poster merely indicates that the office or room is that of the candidate or party and specifies the name of the candidate or the party – in other words it cannot convey any political statement;
- (b) by way of projection onto a screen in a cinema or public hall;
- (c) in a hall or room about to be used for a political meeting by or on behalf of a candidate;
- (d) at the electoral office of a member of State Parliament.

Posters of any size may not be exhibited on any property:-

- belonging to the Crown;
- belonging to a statutory body representing the Crown;
- belonging to a local authority;

From the foregoing it will be seen that it is unlawful to attach posters to electric light poles or to affix them to trees or structures on school or other public premises.

Posters cannot be exhibited on unoccupied premises unless permission has first been obtained from the owner. The Returning Officer, his appointee or any member of the police force may remove illegal posters, as mentioned above, whereupon they will be destroyed. As a general rule, when the Returning Officer receives a complaint concerning an illegal poster the candidate or party will be advised and requested to arrange for its removal. In the absence of removal the Returning Officer may cause the poster to be removed and destroyed.

It is also important to remember that a poster must show the name and address of the person authorising the printing and the name of the printer and the address at which it was printed.

2. MISLEADING INFORMATION

The legislation prohibits the printing, publishing or distribution of material which misleads electors in the proper method of casting a vote eg directing that two candidates each be given a first preference vote. These provisions do not extend to the truth or otherwise of statements contained in material seeking to influence electors in deciding for which candidate or party they should vote.

There is also a prohibition on candidates and parties printing, publishing or distributing electoral advertising material which uses the name, abbreviation, derivative or acronym of the name of a registered party in a way which may mislead an elector eg a candidate would not be able to distribute election advertising material on which was printed the logo of a registered party in a fashion which could lead electors to think the candidate was endorsed by the party when this is not the case.

The legislation also prohibits the use of the word "Independent" and the name, abbreviation, derivative or acronym of a registered party in a way that suggests or indicates an affiliation with that party eg independent candidates cannot describe themselves as "Independent Liberal" or "Independent Labor".

The maximum penalty for a breach of these provisions is a fine of \$1,100 or six months imprisonment or both.

3. AUTHORISATION OF ADVERTISING MATERIAL

Electoral advertising material, including posters, must include details of the name and address of the person authorising the printing of the material and the name of the printer and the address at which it was printed.

Where candidates or parties print material using their own resources they should state thereon "*Authorised and printed by of*".

Advertisements placed in newspapers do not require the inclusion of details of the printer as these are shown in the newspaper.

The maximum penalty for a breach of these provisions is a fine or \$550 or six months imprisonment.

4. DISTRIBUTION OF ADVERTISING MATERIAL ON POLLING DAY

Electoral advertising material, including "how-to-vote" cards, cannot be distributed or handed out on polling day unless such material has been registered with the Electoral Commissioner. This restriction does not apply to posters.

Application forms for use by candidates seeking registration of material are available from Returning Officers or the State Electoral Office. Application forms for use by parties seeking registration of material are only available from the State Electoral Office.

Applications must be lodged with the Electoral Commissioner no later than the eighth day before polling day – for the 2003 general election this date is Thursday, 13 March 2003. The application must be accompanied by a draft or sample of the material (preferably in quadruplicate). Where the material is to indicate preferences these must be specified and cannot be altered after closing time for lodgement of the application.

Applications must be made by the candidate, his or her Official Agent appointed under the Election Funding Act or by the registered officer of a party where the candidate is an endorsed candidate of that party.

A number of versions of the material may be registered, however, it is not required that all be distributed eg a candidate may register four documents the only difference being the order of preferences and then only distribute one version on polling day.

Candidates are advised to ensure the material is registered before being printed. The State Electoral Office will provide advice in this regard prior to formally issuing a certificate. Material registered remains confidential until 8am on polling day when it is available for inspection at Returning Officers' offices.

The Electoral Commissioner is required to **refuse** the application for registration in the following circumstances:

- where the material contains express or implied directions or suggestions as to how to vote in accordance with the ticket of a party, group or candidate the party must be registered under Part 4A of the Parliamentary Electorates and Elections Act and the group and candidate must be registered under the Election Funding Act; or
- where the material contains express or implied representations or indications that a candidate is a member of or supports a political party or group unless the party is registered under Part 4A of the Parliamentary Electorates and Elections Act or the group is registered under the Election Funding Act and the candidate's affiliation with the party or group is included in the Register of Candidates kept under the latter Act; or
- where in an electoral district the material suggests how to vote in accordance with the ticket of a particular party or group but the party or group has no candidate in that district; or
- where in an electoral district the material suggests how to vote in accordance with the ticket of a particular party or group but directs that the first preference be given to a candidate or group not endorsed by that party; or
- where the material suggests how to vote for a particular party or group in a Legislative Council election but the party or group has not endorsed a candidate at that election; or
- where the material suggests how to vote or in accordance with the ticket of a party or group in a Legislative Council election and the material directs that a candidate or candidates not endorsed by that party or group be given the first or highest preference or preferences; or
- where the material suggests how to vote in accordance with the ticket of a candidate for an electoral district or the Legislative Council and the candidate is not a candidate for that electoral district or in the Legislative Council election, respectively; or
- where the material is likely to mislead due to the use of matter falsely suggesting affiliation with a party or group; or
- where the material contains obscene or offensive words.

The maximum penalty for a breach of this provision is a fine of \$1,100 or six months imprisonment.

5. ADVERTISING IN THE ELECTRONIC MEDIA

Under the Broadcasting Act any political advertising on radio and television must cease after the Wednesday preceding polling day.

6. ALLEGED BREACHES OF LEGISLATION

Any alleged breaches of the legislation should be reported to the Returning Officer in the first instance. The Returning Officer will investigate the complaint and endeavour to arrange for any apparent breach to be remedied.

Neither the Returning Officer or the State Electoral Office is empowered to institute proceedings for alleged breaches of the legislation. However, if details of the alleged breach are provided in writing they may be referred to the appropriate agency for consideration as to whether proceedings should be instituted.

Alternatively, there is nothing to prevent an aggrieved candidate from commencing proceedings on his own behalf for a breach of the legislation.

It should be borne in mind by all parties and candidates that the Court of Disputed Returns may exercise the power to declare a person elected was not duly elected or to declare an election void where illegal practices were committed in connection with the election.