



Tasmanian
Electoral Commission

Tasmanian House of Assembly
ELECTIONS

Information for Candidates

Section 1 – Information

Section 2 – Extracts from relevant legislation

December 2005

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Introduction

Using this booklet

This information booklet is designed to assist intending candidates for Tasmanian House of Assembly elections.

For ease of reading, some sections of the *Electoral Act 2004* have been paraphrased. However, it is important to note that this booklet has **no legal status and should not be substituted for the Act itself**.

The word candidate is used in a general sense in this booklet to mean either an 'intending candidate' or a 'candidate' as defined in the Act.

Unless otherwise specified, section references in subject headings are from the *Electoral Act 2004*.

Useful tips— Shaded boxes throughout the booklet highlight practical advice for candidates.

Tasmanian Electoral Commission (TEC) website

This booklet and a variety of information, forms and results relating to Tasmanian elections are available on the Tasmanian Electoral Commission website at www.electoral.tas.gov.au.

New Electoral Act 2004

A new Electoral Act commenced in Tasmania in February 2005. The Act preserves the fundamental principles in Tasmania's unique electoral systems but seeks to present these principles in a clear, precise and accessible way.

The Act created the Tasmanian Electoral Commission with statutory power to oversee elections and electoral processes. There have been many changes to specific requirements and procedures. Candidates and other interested persons should familiarise themselves with the new Act.

Approved forms and procedures

The Tasmania Electoral Commission (TEC) has the statutory responsibility to approve various electoral forms and procedures required under the *Electoral Act 2004*. This allows electoral processes to incorporate the use of appropriate modern technology and practice as it becomes available.

Interpretation of the new Electoral Act 2004

Candidates should be aware that the role of the Tasmanian Electoral Commission and returning officers is to **administer** the election in accordance with the *Electoral Act 2004*. While interpretation of the Act forms part of the daily function of returning officers, it is not their role to provide legal advice to candidates or parties.

It is in the best interests of candidates to obtain legal interpretations from their own legal advisers.

Section 2 - Extracts from relevant legislation

A section containing legislation follows the information section. Please note that only some of the relevant extracts have been included and candidates should refer to the original Acts for further provisions.

Purchasing the *Electoral Act 2004* and the *Constitution Act 1934*

The *Electoral Act 2004* and other legislation can be purchased from the Printing Authority Bookshop. Please contact the Bookshop for current prices of legislation.

Address

Government Bookshop (03 6233 3289)
123 Collins Street Hobart

Postal address

Printing Authority of Tasmania
GPO Box 307 Hobart 7001

The Tasmanian Legislation website gives free public access to Tasmanian legislation at www.thelaw.tas.gov.au.

Returning Officers

Divisional Returning Officers, or other senior officers of the Australian Electoral Commission (AEC) are usually appointed as Returning Officers for Tasmanian House of Assembly elections. Current contact details are as follows:

Division of Bass

Ms Susie Rogers

Address: Ground floor, 87 George Street, Launceston

Postal Address: PO Box 712 Launceston 7250

Phone 03 6331 6226 Fax 03 6334 2725

Division of Braddon

Mr Andy Brockbank

Address: 1st floor, Harris Building, 49 Cattley Street, Burnie

Postal Address: PO Box 468 Burnie 7320

Phone 03 6431 6188 Fax 03 6431 2457

Division of Denison

Maree Ward

Address: 2nd floor, AMP Building, 86 Collins Street, Hobart

Postal Address: GPO Box 1335 Hobart 7001

Phone 03 6235 0560 Fax 03 6234 8227

Division of Franklin

David Molnar

Address: 2nd floor, AMP Building, 86 Collins Street, Hobart

Postal Address: GPO Box 1556 Hobart 7001

Phone 03 6235 0550 Fax 03 6234 8227

Division of Lyons

Mr Davin Foulkes

Address: Ground floor, 87 George Street, Launceston

Postal Address: PO Box 123 Launceston 7250

Phone 03 6334 2600 Fax 03 6334 2725

Section 1

Information

Providing legal advice to candidates or parties is outside the role of the Tasmanian Electoral Commission and returning officers.

It is in the best interests of candidates to obtain interpretation of the relevant legislation from their own legal advisers.

House of Assembly divisions and polling places

House of Assembly divisions

There are five House of Assembly divisions: Bass, Braddon, Denison, Franklin and Lyons.

These divisions have the same boundaries as the five Commonwealth House of Representatives divisions for Tasmania.

There are twenty-five members of the House of Assembly, with five members elected for each of the divisions using the Hare Clark voting system of multi-member proportional representation. Members are elected for a term of up to four years.

Maps

Maps of House of Assembly divisions are available from offices of the Tasmanian Electoral Commission or the Australian Electoral Commission.

The maps of each division can also be viewed on the Tasmanian Electoral Commission website at www.electoral.tas.gov.au.

Polling places

Generally the same polling places are used for the Commonwealth House of Representatives and Tasmanian House of Assembly elections. These are located in community and town halls, school buildings and sometimes at the office of the returning officer.

Polling places are appointed by the Tasmanian Electoral Commission.

While the names of polling places reflect their locations, the exact addresses cannot be confirmed until an election is announced.

Full addresses will be published in each of the three daily Tasmanian newspapers close to polling day and on the TEC website. These lists will indicate which polling places have access for disabled electors.

The writ

What is the writ?

sections 63, 64, 67, 68, & 71

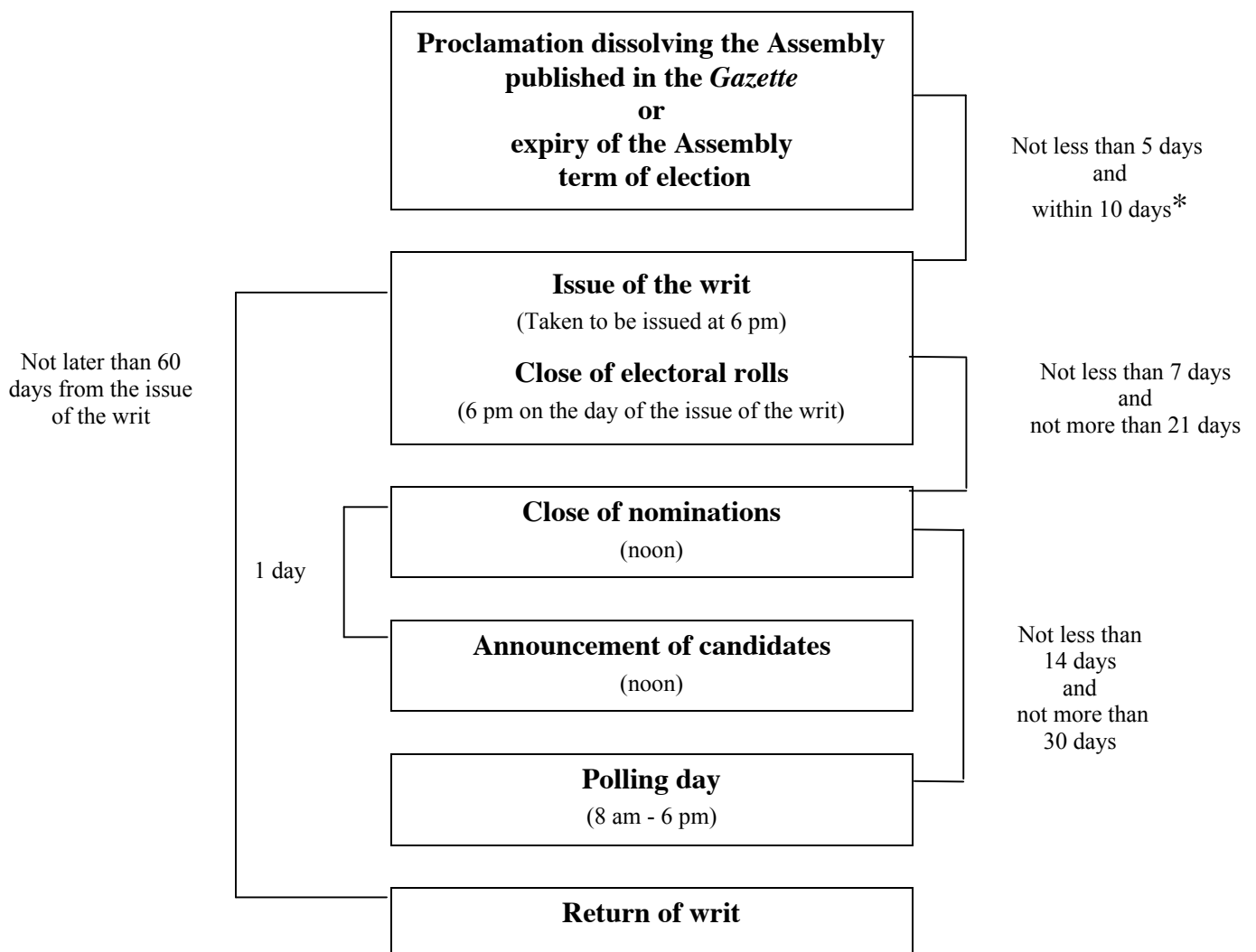
The writ is a document which commands an electoral officer to hold an election and specifies the dates for the close of nominations, polling day, and the return of the writ for that election.

House of Assembly elections commence with the proclamation dissolving the Assembly and conclude with the return of the writ.

The Governor issues five writs for a House of Assembly general election. Each writ is directed to the returning officer for the House of Assembly division concerned.

Election timetable (House of Assembly)

sections 63, 64, 67-74, 77, 87 & 94



* This period allows electors time to enrol or update their enrolment. All enrolment changes must be received by the AEC or the TEC before the close of rolls (faxes can be accepted).

Nomination

How to nominate & nomination forms

sections 75, 76 & 77

To nominate for election, an approved nomination form must be completed and lodged, posted or sent by facsimile to the returning officer for the division or, in the case of a party nomination, the returning officer or the Electoral Commissioner.

The nomination form must be received before noon on nomination day.

The nomination form for House of Assembly elections will vary according to whether a candidate is a non-party candidate, a party candidate or a candidate who wishes to appear in a group (not under a heading of a registered party).

Individual non-party candidate

A valid nomination for an individual non-party candidate requires:

- at least 10 nominators (electors within the division)
- the candidate's consent to be nominated;
- the candidate to declare (see nomination form)
 - he/she is qualified to be elected as a member of the House of Assembly; and
 - he/she is not disqualified from being elected under the *Constitution Act 1934*.

The nomination form must be completed and lodged with the appropriate returning officer after the issue of the writ and before noon on nomination day.

Nominations must be accompanied by the sum of \$400 to be deposited with the returning officer on behalf of the nominated candidate at the time of delivery of the nomination form. The deposit must be in legal tender (cash) or in a cheque drawn by an authorised deposit-taking institution or other financial institution on itself.

It is the responsibility of the candidate to ensure that the nomination form and the deposit are received by the returning officer before the close of nominations.

Candidate, or group of candidates, nominated by a registered party

A valid nomination for a candidate, or group of candidates, nominated by a registered party requires:

- the registered officer of the party to nominate the candidate(s);
- a statement, signed by the registered officer, that the party has endorsed the candidate(s);
- each candidate's consent to be nominated;
- each candidate to declare (see nomination form)
 - he/she is qualified to be elected as a member of the House of Assembly; and
 - he/she is not disqualified from being elected under the *Constitution Act 1934*.

The nomination form must be completed and lodged with the appropriate returning officer or the Electoral Commissioner after the issue of the writ and **before noon** on nomination day.

Nominations must be accompanied by the sum of \$400 for each candidate. The deposit must be in legal tender (cash) or in a cheque drawn by an authorised deposit-taking institution or other financial institution on itself.

It is the responsibility of the candidates or nominator to ensure that the nomination form and the deposit(s) are received by the returning officer or the Electoral Commissioner before the close of nominations.

Group candidate(s)

A valid nomination for one or more candidates to appear in a group not under a heading of a registered party requires:

- at least 100 nominators (electors within the division);
- each candidate's consent to be nominated;
- each candidate to declare (see nomination form)
 - he/she is qualified to be elected as a member of the House of Assembly; and
 - he/she is not disqualified from being elected under the *Constitution Act 1934*.

The nomination form must be completed and lodged with the appropriate returning officer after the issue of the writ and before noon on nomination day.

Nominations must be accompanied by the sum of \$400 for each candidate. The deposit must be in legal tender (cash) or in a cheque drawn by an authorised deposit-taking institution or other financial institution on itself.

It is the responsibility of the candidate(s) to ensure that the nomination form and the deposit are received by the returning officer before the close of nominations.

Nomination forms are available from the Tasmanian Electoral Commission or at www.electoral.tas.gov.au

No personal cheques: Please note that personal cheques are not acceptable payment of the deposit.

Qualifications of members

Constitution Act 1934, section 14

To be elected as a Member a person —

- must be an elector, or be entitled to have his/her name placed on the roll for a House of Assembly division; **and**
- must have:
 - resided in Tasmania for 5 years at any one time; or
 - resided in Tasmania for 2 years immediately preceding his/her nomination.

Persons ineligible for nomination

section 76

A person is ineligible to be nominated as a candidate for an Assembly election if he or she is:

- a member of the Legislative Council; or
- a candidate for election in another division of either House for which the writ has not been returned; or
- a member of the Parliament of the Commonwealth.

Nominations invalid due to change of name

section 84 & 85

The Electoral Commission may determine that a nomination for an Assembly election is invalid on the ground that the candidate has changed his or her name to a name which —

- is a party name; or so nearly resembles a party name that it is likely to be confused with, or mistaken for, a party name; or
- includes the word “independent” or a word of similar import; or

- is the name of a public body; or so nearly resembles the name of a public body that it is likely to be confused with, or mistaken for, the name of the public body; or
- is obscene or offensive.

The Commission may also determine that a nomination in respect of a person as a candidate for an Assembly election is invalid on the ground that the person has changed his or her name to a name which the Commission considers could cause confusion.

If the Commission determines that a nomination is invalid on a ground mentioned above it must advise the person of the reasons and of any right to appeal to the Supreme Court under section 85.

A person aggrieved by such a determination may appeal to the Supreme Court in accordance with section 85, provided that their nomination was received before 5 pm on the fourth business day before nomination day.

Lodge nomination early: Lodging your nomination form early will give you time to fix any possible problems with your form.

More nominators: Providing one or two extra nominators on the form will help avoid last minute difficulties with identification.

Name on ballot paper: Please state (in the box provided on the nomination form) the names as they are to appear on the ballot paper – eg John Walter Citizen may wish his name to appear on the ballot paper as CITIZEN John (see ‘Ballot paper’ section for more information).

Candidate’s consent to be nominated

section 77

Candidates should sign, where provided on the nomination form, to indicate their consent to be nominated.

If a candidate is unable to indicate consent on the actual nomination form, the returning officer may accept consent in another approved method.

For current approved methods please contact the Tasmanian Electoral Commission.

Refund of \$400 nomination deposit

sections 77(8) & 86

As mentioned in “How to nominate & nomination forms”, each nomination must include a deposit of \$400 for each candidate. The returning officer will refund the sum if the nominated candidate has:

- been elected;
- not been elected but, at any stage of the scrutiny obtained a number of votes which is not less than 20% of a quota;
- withdrawn his/her nomination as a candidate as provided by section 83; or
- died before polling day.

If an election fails, the deposit will be returned to the candidate.

Withdrawal of nomination

section 83 & approved form

A candidate may withdraw his/her nomination by notice signed by the candidate and lodged with the returning officer (or Commissioner where appropriate) before noon on nomination day.

A 'party candidate' must also provide a signed statement by the registered officer of the party that he or she consents to the withdrawal of the nomination.

A 'group candidate' must also provide a signed statement from each other candidate nominated in the group, that he or she consents to the withdrawal of the nomination.

Close of nominations

section 3, 67(1)(a), 73(1)(a) & 77

The "nomination day" is the day fixed in the writ, on or before which candidates for election are to be nominated as required by the *Electoral Act 2004*.

Nominations must be received by the returning officer (or Commissioner where appropriate) before noon on nomination day.

Announcement of candidates

section 87

At noon on the day after nomination day, the returning officer will publicly announce the names of the candidates and the groups, if any, they are included in.

Draws for positions on ballot paper

section 89(2)

As soon as practicable after the announcement of candidates, the returning officer is to conduct:

- a draw to determine the columns in which each group will appear on all ballot papers; and
- draws to determine the positions of candidates within each column on the first batch of ballot papers.

Holders of an office of profit under the Crown, State public servants & Government contractors

Constitution Act 1934 (sections 32 & 34), and others

The *Constitution Act 1934*, *Constitution (State Employees) Act 1944* and the *Crown Servants' Reinstatement Act 1970* contain a number of provisions concerning the nomination and election of holders of an office of profit under the Crown, State public servants and Government contractors.

Some sections of these Acts are included in the Legislation Section. However candidates are strongly advised to seek their own legal advice concerning their particular situation.

Electoral rolls

sections 40(5), 41(1) & 166

Following a request from a candidate on the approved form, a printed copy of the electoral roll (as at the close of rolls) will be provided to the candidate by the returning officer.

Please note that it can take 3-4 days after the close of rolls for printed rolls to be prepared and distributed.

Section 41(1) provides that a candidate may only use the roll for a purpose connected with an election or referendum, or monitoring the accuracy of information on the roll. Section 166 provides that it is an offence to use, without reasonable excuse, information from a roll provided under section 40, except for a purpose permitted under section 41.

Death of a candidate at election

section 90 & 86(3)

If a candidate dies:

- before noon on nomination day, nominations may be lodged until noon on the day after nomination day and candidates are to be announced as soon as practicable thereafter;
- after noon on nomination day and before polling day, and there are more than 5 candidates remaining, the election is to proceed and the votes cast for the deceased candidate are to be counted as votes cast for the candidate next in order of the elector's preference.
- on or after polling day, the count for the election is to be conducted, and if the deceased candidate receives sufficient votes to be elected, a vacancy is taken to have occurred.

If a candidate dies before polling day, the nomination deposit will be refunded to the candidate's personal representatives.

Advertising

Campaign material to be authorised

sections 4, 190 & 191

Please read these sections which are printed in full at the back of this booklet. Also see exemptions on next page.

In summary these sections require that, between the issue of the writ for an election and the close of poll for that election:

- any printed **electoral matter** must have the name and address of the responsible person printed at the end in legible characters; and
- any **electoral matter** which is published on the internet must also have the name and address of the responsible person appearing at the end.

'**Electoral matter**' is defined in section 4 of the *Electoral Act 2004*.

'Address' is defined in section 190 as the address, other than a post office box or an electronic address—

- (a) at which the person resides; or
- (b) at or through which the person can be readily contacted.

'Responsible person' means the person who is taking responsibility for causing electoral matter to be printed, published or distributed.

Post office box addresses or electronic addresses are not permitted for authorisation of electoral matter.

Authorisation: If you are unsure whether a particular item requires authorisation, it is advisable to authorise it to avoid committing an offence under the Act.

Examples of suitable authorisations

Authorised by: John Citizen, 1 Long Road, Hobart

or

Authorised by: John Citizen, Parliament House, Hobart

Consent required to use candidate name, photograph or likeness

section 196

Between the issue of the writ for an election and the close of poll, it is an offence to print, publish or distribute any advertisement, "how to vote" card, handbill, pamphlet, poster or notice which contains the name, photograph or a likeness of a candidate or intending candidate at that election without the written consent of the candidate.

Authorisation not required on specific items

sections 192, 193, & 194

Electoral matter does not require authorisation if it is printed on—

- (a) an item of clothing, lapel button or lapel badge; or
- (b) a pen, pencil or balloon; or
- (c) a business card or visiting card that promotes the candidacy of a person in an election; or
- (d) a letter or card on which the name and address of the sender appears; or
- (e) any other approved item.

Further, the requirement to authorise electoral matter may not apply to reportage and commentary in a newspaper or periodical, or a letter to the editor of a newspaper or periodical if particular information is provided – refer to sections 193 and 194 of the Act.

The word ‘advertisement’ to appear at the top of paid advertisements or advertorials in newspapers and periodicals

section 195

If payment, reward or compensation is made, or is to be made for the insertion of an advertisement, article or paragraph published in a newspaper or periodical, the proprietor must cause the word ‘advertisement’ to be printed as a headline, in letters not smaller than 10 point.

False information

section 197

It is an offence to print, publish or distribute any printed electoral matter, or publish any electoral matter on the internet, or broadcast electoral matter on radio or television, that is intended to, is likely to or has the capacity to mislead or deceive an elector in, or in relation to, the recording his or her vote.

This section applies to the more mechanical aspects of obtaining and marking a ballot paper and depositing it in a ballot box and not to the formation of a judgment as to who to vote for. **That is, the truth or otherwise of the material is not covered by this section.**

How-to-vote material: Voters should not be misled into only voting 1 and having their vote rejected as informal.

If requesting voters to vote 1 for a candidate you should ensure that voters are made aware that they must vote for at least 5 candidates (1 to 5) to cast a valid vote.

Radio and television advertisements

There are Commonwealth requirements in relation to radio or television advertising, but no additional restrictions in the *Electoral Act 2004*, except in relation to false information (see above)

The Commonwealth *Broadcasting Services Act 1992* provides that broadcast political advertisements must include certain ‘required particulars’. The Act can be found at www.austlii.edu.au

Queries concerning the Commonwealth provisions should be directed to Commercial Television Australia (CTVA – formerly FACTS) or Commercial Radio Australia Ltd (formerly FARBS) through your local TV or radio station.

Alternatively contact the Australian Communications and Media Authority (ACMA).

Guidelines on the requirements under the *Broadcasting Services Act 1992* in relation to broadcasting political matter are available from the ACMA website at www.acma.gov.au (from the homepage go to the following links—Radio&TV; Content regulation; Television; Content requirements; Political matter).

Broadcasting blackout

The Commonwealth *Broadcasting Services Act 1992* prohibits broadcasters from broadcasting political advertisements from midnight on the Wednesday prior to polling day, to the close of the polls.

This does not prohibit news coverage of the election, discussion of political issues, or interviews with candidates.

Use of published materials without permission

Reproduction of published materials (eg. newspaper photos, headlines or articles) is likely to require the permission of the authors and publishers. Candidates should clarify the status of material with the publisher to avoid breaching the Commonwealth *Copyright Act 1968*.

Polling day restrictions on electoral matter

section 198

Additional restrictions relating to the distribution and publication of electoral matter apply for polling day.

It is an offence to distribute any advertisement, 'how-to-vote' card, handbill, pamphlet, poster, or notice containing any electoral matter on polling-day.

It is also an offence to publish or cause to be published in a newspaper:

- an advertisement for or on behalf of, or relating in any way to, a candidate or a party; or
- a matter or comment relating to a candidate or a questions arising from, or an issue of, the election campaign.

How-to-vote cards in any form, cannot be distributed on polling day.

Electors using how-to-vote cards: Electors may bring how-to-vote cards to assist them in voting, but cards must not be displayed or left in a polling place.

Restrictions within 100 metres of a polling place

section 177

A person is not permitted to—

- canvass for votes; or
- solicit the vote of an elector; or
- induce or attempt to induce an elector not to vote for a particular candidate or particular candidates;

within 100 metres of a polling place.

Removing signs before polling day: Make sure that all of your signs within 100 metres of any polling place are removed prior to polling day.

Justices of the Peace

Candidates who are Justices of the Peace are advised to take note of the Attorney General's current policy which states that—

The fact that a person is a justice of the peace should **not** be mentioned in or on any papers relating to the candidature of the justice in Federal, State or Local Government elections whether by the use of the letters "J.P." or otherwise.

This has been interpreted to include all electoral campaign material.

Placement of posters

Electoral posters must be authorised, as mentioned above. Permission to display posters on private property must always be obtained from the owner of the land concerned.

Before placing posters on public property (eg. fences or trees) it is advisable to obtain permission from the responsible bodies such as local government (individual councils), the Department of Infrastructure, Energy & Resources-Transport Division etc.

Many Tasmanian councils have specific planning schemes and by-laws regulating the placement and size of election posters. Candidates are advised to check with their relevant councils prior to erecting posters.

Permission: Candidates considering affixing signs in public places or to vehicles should ensure they do not breach any council or police restrictions.

Safety: Signs should not be placed in positions that could jeopardise public safety for example, near 'stop' signs, traffic lights, intersections or any other position where the visibility of road users could be obstructed.

Offence to place electoral matter on electricity poles

It is an offence under section 190(1)(a) of the *Electricity Supply Industry Act 1995* to attach anything to a power pole without proper authority.

The penalty for an offence under this section is a fine of up to \$5,000 for an individual or \$10,000 for a body corporate.

Queries or complaints related to material being attached to electricity power poles should be directed to Aurora Energy.

The ballot paper

Structure

section 97

The names of candidates will be listed in vertical columns across the ballot paper, either under a registered party name, as a group or in a column of ungrouped candidates.

The order of party and group lists is determined by ballot. The ungrouped candidates are always listed in the final column.

Names of candidate

section 80, 84 & 99

Each candidate is identified on the ballot paper by his or her ballot paper name as specified on the nomination form.

The Commissioner may approve a ballot paper name, other than a form of the candidate's name, if satisfied that the person is commonly known by that name.

Where the names of 2 or more candidates are similar and are likely to cause confusion, the Commissioner may arrange the names with additional information so that each candidate can be distinguished.

Robson rotation

Section 97, Schedule 3 & Regulations

The rotation of candidates' names within each column on the ballot paper is determined by Robson rotation.

This system rotates the names of the candidates so that each name receives an equal share of the favoured positions at the top and bottom of the column.

The returning officer will conduct a draw to determine the random order of candidate names for the first rotation.

Voting instructions

Section 100

Voters are instructed to number the boxes from 1 to X in order of choice. (X is the number of candidates) These instructions stress the importance of an elector voting for all candidates and thus ensuring they have had the maximum say in electing candidates.

At the bottom, voters are instructed that their vote will not count unless they number at least 5 boxes.

Voting instructions: All voters should be encouraged to read the instructions on the ballot paper carefully before casting their vote.

Methods of voting

Ordinary voting

section 108

An ordinary vote is a vote cast at an ordinary polling place on polling day. The elector's name is marked off a certified copy of the election roll.

Pre-poll voting

sections 108 & 115

Electors unable to attend a polling place on polling day may vote at a pre-poll polling place. The elector's name is marked off a certified copy of the election roll.

Mobile voting

sections 108 & 114

On or before polling day, a mobile polling team will visit appointed institutions, such as hospitals and nursing homes. Closer to the election period, returning officers can provide a list of these institutions and the dates and times that they will be visited. The elector's name is marked off a certified copy of the election roll.

Absent voting

section 115 & 118

An elector who is unable to attend a polling place in the division in which he/she is enrolled may cast an absent 'declaration vote' at any ordinary or pre-poll polling place in another division. The elector signs a declaration on an envelope and the ballot paper is enclosed in the envelope for sending to the appropriate division.

Interstate voting

section 132(a)

An elector who is interstate may cast an absent 'declaration vote' at a pre-poll polling place arranged by the Commissioner and provided by another Electoral Authority.

Polling Place locations for ordinary, pre-poll and interstate voting will be advertised in daily newspapers prior to each election and on our website at www.electoral.tas.gov.au

Person not on roll or already marked off roll

sections 116, 117 & 118

A person may request a 'declaration vote' if he or she claims to be entitled to vote and his or her name cannot be found on the roll, or the roll is marked and indicates that the person has already voted;

The elector signs a declaration on an envelope and the ballot paper is enclosed in the envelope for sending to the appropriate division. If the returning officer is satisfied that the elector is entitled to vote, the envelope will be opened and the ballot paper will be admitted to the scrutiny.

Postal voting

sections 125-130

An elector may vote by post if he or she:

- expects to be unable to attend a polling place on polling day; or
- is an elector whose address is not shown on the roll pursuant to section 36(5)).

Postal vote applications can be obtained from electoral offices, Tasmanian post offices or www.electoral.tas.gov.au.

Return of applications for postal votes:

Applications for a postal vote must reach a returning officer, or a person approved for the purpose, before—

- if the postal vote is to be sent *within Australia*
 - 6.00pm on the Thursday before polling day; or
- if the postal vote is to be sent *outside Australia*
 - 6.00pm on the Tuesday before polling day.

Use of postal vote applications by candidates and political parties:

Candidates and parties who are using bulk supplies of postal vote applications are requested to obtain these from the Tasmanian Electoral Commission or the offices of returning officers.

Please do not remove large numbers of applications from post offices as this may result in electors being unable to obtain an application in time and being denied a vote.

Return of postal votes

An elector who has applied for and received a postal vote must, **before the close of polling**, complete the ballot paper, place it in the declaration envelope, sign the declaration; and

- post it to the returning officer; or
- deliver it to a polling place before close of polling.

To allow for the return of postal votes from interstate or overseas through the postal system, envelopes may be received by the returning officer until 10.00am on the second Tuesday after polling day

Overseas and Antarctic voting

sections 131 -136

The *Electoral Act 2004* provides for the approval of special procedures to enable electors to vote while overseas, or on Australian Antarctic stations or ships.

Procedures have been approved for the Antarctic.

Overseas voters may still vote by postal vote. Special procedures may be approved and advertised in the future.

For further information contact the Tasmanian Electoral Commission.

Formality & informality

Formal votes

section 102(1)

To cast a valid vote, the elector must record a vote for at least 5 candidates, by numbering boxes 1, 2, 3, 4 and 5 in the order of the elector's preference.

Informal votes

section 103

A ballot paper is informal if:

- no vote has been recorded on it;
- it is not marked in accordance with section 102(1) (see above);
- it contains any unauthorised marking or writing which will (in the opinion of the electoral officer responsible) enable a person to identify the elector concerned;
- a number from 1-5 is repeated;
- a number from 1-5 has been omitted; or
- it has not been:
 - authenticated by the initials of the election official; or
 - authenticated by an approved mark.

A ballot paper will not be treated as informal if in the opinion of the returning officer the elector's intention is clear;

A repetition or omission of a preference after the number 5 does not make the ballot paper informal. The preferences preceding the error on such ballot papers will be included in the scrutiny.

Election day

Hours of polling (8.00am – 6.00pm)

sections 94 & 3

Each ordinary polling place is to be open for polling from 8am on polling day until the close of poll at 6pm. While electors may not be admitted after 6 pm, if an elector is in the polling place before 6 pm, and wishes to vote, the poll will not close until that elector has voted.

The Commissioner is to determine the times during which each pre-poll polling place and mobile polling place is to be open for polling.

Polling day distribution and publication of electoral matter

See the "Advertising" chapter in this booklet for polling day restrictions.

Polling places

sections 91-93

A polling place is a place appointed by the Commission at which electors may vote. It may be an ordinary polling place, a pre-poll polling place or a mobile polling place.

Assistance to certain electors at a polling place

section 113 & 169

If an elector requires assistance when voting, he or she should refer to the officer in charge as to the appropriate approved method of voting.

For further information on procedures approved to assist voters, please refer to www.electoral.tas.gov.au or phone the Tasmanian Electoral Commission.

Candidates can only enter a polling place to vote

section 120

Candidates are not permitted to take part in any way in the conduct of polling at a polling place other than to cast their vote.

Photographers: Prior arrangements to photograph or film inside a polling place should be made through the returning officer and will also be at the discretion of the officer-in-charge. Party workers or media may take photos of candidates casting their vote provided that the votes cannot be seen.

After close of the poll

After the close of the poll, a provisional count of the first preference votes is conducted at each polling place.

A tally room is provided for candidates, parties, media and the public.

Progressive results will be available at the tally room, and at our website www.electoral.tas.gov.au, which also has previous election results.

Post election and scrutiny timetable

The following outlines the tasks to be undertaken after polling day.

10 day period for the return of postal votes

Postal vote declaration envelopes, and
Declaration vote envelopes
— Declarations checked and eligible
ballot papers admitted to the scrutiny

Progressive counting of postal votes

Two re-checks of ordinary ballot papers

Amalgamation of first preference votes
for each candidate

Final check of the ballot papers

Commencing 2nd Tuesday after polling day

Distribution of preferences
(2 - 4 days)

Recount — if the returning officer decides; or
the Commission directs

Declaration of the poll

Candidate expenditure, and disclosure of donations by (Commonwealth) registered parties

There are **no** expenditure regulations or restrictions on candidates for House of Assembly elections.

However, while there are no Tasmanian provisions concerning disclosure of gifts to political parties, **all** parties registered under the *Commonwealth Electoral Act 1918* **must** lodge with the Australian Electoral Commission an annual return showing relevant receipts and expenditure.

Scrutineers

Role of the scrutineer

sections 105 & 106

Candidates are not permitted to take part in the conduct of polling other than by casting their own vote. The role of a scrutineer is to represent the candidate.

A scrutineer may observe the issuing, sorting, checking and counting of ballot material and may bring to the attention of an election official any matter he or she believes may not be in accordance with the provisions of the Act.

If a scrutineer brings a matter to the attention of an election official, that official is to—

- consider the request; and
- take any action he or she considers appropriate; and
- if requested by the scrutineer, record details of the request and the action taken.

If a scrutineer leaves a polling place another scrutineer may replace them.

Scrutineers may also be present at further scrutiny of the ballot papers and the distribution of preferences.

Polling place count only provisional: The counting at each polling place provides provisional figures which indicate how the votes have been cast. A thorough check of all votes occurs during the 10 days after polling day.

Appointment of scrutineers

section 104

The appointment of a scrutineer must be made in an approved form which is signed by the candidate.

This appointment must be provided to an election official by the scrutineer before commencing his or her functions as a scrutineer.

Further, the scrutineer is required by the *Electoral Act 2004* to sign a declaration that—

- he or she will perform these functions in accordance with the Act; and
- preserve the secrecy of the voting.

Copies of the forms are available from returning officers and the Tasmanian Electoral Commission.

Entry to the polling place scrutiny: Scrutineers wishing to witness the counting of ballot papers in a polling place should arrange access with the officer-in-charge well before the close of poll. Scrutineers are entitled to enter or leave a polling place at any time, before or after 6 pm.

Disputing elections and returns

Application to dispute an election or return

sections 205, 206 & 209

The validity of an election, a recount or the return of a person as a Member of the House of Assembly may be disputed by an application made to the Supreme Court within 90 days after the return of the writ for the election.

An application may be made by:

- a candidate at the election;
- an elector entitled to vote at the election;
- the Commission.

Determination of a disputed election application

section 215

The Supreme Court may make an order that:

- an election is void and a by-election is to be held; or
- a person who has been declared elected was not duly elected; or
- a person who has not been declared elected was duly elected; or
- the application be dismissed in whole or part

Immaterial errors not to void election

section 238

An election may not be declared void merely on account of:

- any irregularity or delay in the declaration of nominations, polling for the election or the return of the writ for the election;
- the absence of a returning officer or an election official which, in the opinion of the Supreme Court, did not affect the result of the election; or
- an omission or error by the Commission, the Commissioner, a returning officer or an election official which in the opinion of the Supreme Court, did not affect the result of the election.

Filling a vacancy in the House of Assembly

House of Assembly vacancies are usually filled by recount.

When a vacancy occurs, a new member is elected by a recount process based on votes cast at the previous general election. Only unsuccessful candidates at the general election are eligible to contest the recount.

Only the ballot papers which were used to elect the vacating member are distributed in the recount. These votes are distributed to contesting candidates. The candidates receiving the least votes are excluded until a candidate receives a majority (50% + 1).

Eligibility to contest a recount

section 227

A person is entitled to nominate himself or herself for the vacant seat so long as he or she:

- was a candidate at the last full divisional election; and
- was not elected at, that election; and
- is still qualified under the *Constitution Act 1934* to be elected to the Assembly.

Nomination to contest a recount

section 226 & 228

The Commissioner will publish a notice in at least one approved newspaper that the seat has become vacant.

If a candidate wishes to be included in a recount, he/she must nominate in an approved form.

The nomination must be received by the Commissioner before noon, on the **10th day after the notice of vacancy was published.**

Announcement of candidates

section 229

As soon as practicable after the close of nominations for a recount, the Commissioner is to publicly announce the names of the persons who are to contest the recount.

By-elections

section 232

Where all eligible candidates of the vacating member's party are unavailable, the registered officer of that party may request that a by-election be held.

The Hare-Clark electoral system

The Hare-Clark electoral system is a Single Transferable Vote (STV) method of proportional representation used in multi-member electorates. Single transferable vote means that a ballot paper moves between candidates as determined by the elector's preferences.

Where does the name Hare-Clark come from?

Thomas Hare was an Englishman who, in 1856, proposed the idea of a proportional representation election system which was further developed and became known as the Hare system. Andrew Inglis Clark, Tasmanian Attorney-General, introduced a modified version of the Hare system into Tasmanian law in 1896. This system is now known as the Hare-Clark electoral system.

How is a candidate elected?

A candidate is elected when his/her total number of votes equals or exceeds the quota.

What is the quota?

The quota is the lowest number of votes a candidate needs to be certain of election.

To calculate the quota, the number of formal votes is divided by one more than the number of candidates to be elected. This figure is then rounded up to the next whole number.

For a House of Assembly election in which five members per division are elected, the quota is one sixth or 16.7% of the formal votes.

Representation in the Parliament

Under Hare-Clark, parties, groups and independents are elected to the House of Assembly in proportion to their support in the electorate. The composition of the House of Assembly closely reflects the proportion of primary votes on a State-wide basis.

Need for parties to stand extra candidates

Parties and groups usually nominate more candidates than they expect to be elected, in order to provide a pool of candidates to contest any recount to fill a vacancy.

As a result, the voters are provided with a choice of candidates within each party, as well as a choice of candidates across parties, groups and independents.

Hare-Clark — a broad description of how votes are counted

The first step is to distribute all ballot papers to the candidates according to the first preference of each ballot paper. The quota is then calculated from the total formal vote.

If any candidate(s) receives more votes than the quota, he or she is declared elected, and the excess (surplus) votes are passed on to continuing candidates. Following the distribution of each surplus, any candidate(s) who has reached the quota is declared elected, and any resulting surplus again passed on.

Once all surplus votes have been distributed, the candidate with the fewest votes is excluded and all of his or her votes passed on to continuing candidates. Further candidates are excluded until another candidate reaches the quota.

The process of distributing surplus votes and excluding candidates continues until five candidates reach the quota. In some cases the final candidate(s) will be elected without reaching the quota as all other candidates have been either elected or excluded.

Do you always need a quota to be elected?

In House of Assembly elections, it is common that the last elected member in a division is elected without obtaining a quota. In some cases the last two elected members in a division are elected without each obtaining a quota.

During the distribution of preferences, some votes are “lost” from the count. A small number are lost due to rounding of fractional numbers. A more significant number of votes are “exhausted” toward the end of the count, as many ballot papers do not show a preference for any remaining candidate.

Where the contest for the last seat is close, it is common for the remaining two candidates to both have less than a quota. The candidate with the least votes is excluded, and the other candidate elected without reaching the quota. The more votes that are lost during the scrutiny, the more likely that not all elected members will obtain the quota.

A less common situation occurs where the three remaining candidates (each with less than a quota) are contesting the last two seats. In this case, the candidate with the least votes is excluded, and the other two candidates elected without either reaching the quota.

*The Tasmanian Legislation WebSite gives free public access
to Tasmanian legislation at www.thelaw.tas.gov.au.*

Section 2

Extracts from relevant legislation

The extracts from relevant legislation on the following pages have been reproduced with great care. However, the Tasmanian Electoral Commission does not take responsibility for any error which may be contained in this section. Officially published legislation is the only guaranteed source.

Providing legal advice to candidates or parties is outside the role of the Tasmanian Electoral Commission and returning officers.

It is in the best interests of candidates to obtain interpretation of the relevant legislation from their own legal advisers.

Holders of an office of profit under the Crown, State public servants and Government contractors: some relevant provisions

Constitution Act 1934

Qualifications of Members

section 14

- (1) Every person who, under the provisions of the *Electoral Act 2004*, is an elector, or is entitled to have his name placed on the roll for a division for the House in respect of which he is nominated as a candidate for election shall, unless he is disqualified by virtue of this Act, or the *Electoral Act 2004* be capable of being elected as a Member of that House if he -
 - (a) has resided in Tasmania continuously for a period of 5 years at any one time; or
 - (b) has resided in Tasmania for a period of 2 years immediately preceding his nomination as such a candidate.
- (2) No person who is of unsound mind or is in prison under any conviction shall be capable of being elected as a Member of either House or be entitled to vote at any election of Members thereof.
- (3) No person shall be capable of being a Member of both Houses at the one time.

Assembly and Council electors

section 28

Subject to the provisions of this Act and the *Electoral Act 2004*, every person who is aged 18 years or more and is an Australian citizen is entitled to be enrolled on the State roll as an elector –

- (a) for the Assembly division in which the person lives; and
- (b) for the Council division in which the person lives –

and, when so enrolled, is qualified to vote at any election of a Member to serve in either of those divisions.

Commonwealth membership

section 31

- (1) No Member of either House of the Parliament of the Commonwealth shall be capable of sitting as a Member of either House of this State.
- (2) If a member of either House of this State becomes a Member of either House of the Parliament of the Commonwealth, his place in the State House shall become vacant upon the day the returning officer declares him elected a Member of either House of the Parliament of the Commonwealth.
- (3) If any Minister of the Crown of this State accepts office as a Minister of the Crown under the Commonwealth his office as a Minister of the Crown of this State shall, upon such acceptance, become vacant.

Office of profit

section 32

- (1) Except as otherwise expressly provided, if any Member of either House shall accept any pension payable, out of the Public Account, during the pleasure of the Crown or any office of profit or emolument by the appointment of -
 - (a) the Governor or the Governor in Council; or
 - (b) a State instrumentality,his seat shall thereupon become vacant.
- (2) The provisions of subsection (1) do not apply to a person by reason only that he holds the office of Minister of the Crown or Secretary to Cabinet for this State.

- (3) No judge of the Supreme Court, and no person holding any office of profit or emolument to which the provisions of subsection (1) apply, shall be capable of being elected to, or of holding, a seat in either House.
- (4) In this section -
- " Public Account" means the Public Account as defined in the *Public Account Act 1957*;
- " State instrumentality" means a State instrumentality as defined in section 33 (6).

Contractors

- (1) Subject to this section, any person who shall directly or indirectly himself or by any person whatsoever in trust for him or for his use or benefit or on his account, undertake, execute, hold, or enjoy in the whole or in part, any contract or agreement with the Government of the State shall be incapable of being elected or of sitting or voting as a Member of either House during the time he shall execute, hold, or enjoy any such contract or any part or share thereof or any benefit or emolument arising from the same, and if any Member shall enter into any such contract or agreement or having entered into it shall continue to hold it, his seat shall be vacant.
- (2) Subsection (1) does not render a person incapable of being elected or of sitting or voting as a Member of either House or render the seat of a Member vacant by reason only of the making, entering into, or acceptance of a contract or agreement by a corporation (not being a prescribed corporation) consisting of more than 30 members where the contract or agreement is made, entered into, or accepted for the general benefit of the corporation.
- (2A) For the purposes of subsection (2), a prescribed corporation is a corporation –
- (a) in which a Member or other person to whom that subsection relates holds one-fifth or more of –
- (i) the total number for the time being of the issued shares of all classes; or
 - (ii) the total amount of the stock for the time being;
- (b) in which the Member or other person is entitled to exercise, or to control the exercise, of one-fifth or more of the total voting rights; or
- (c) that is, by virtue of section 50 of the Corporations Act, related for the purposes of that Act to any corporation to which paragraph (a) or paragraph (b) of this subsection relates.
- (2B) For the purposes of subsection (2A), shares or stock held, or voting rights exercisable, by a member of the family of the Member or other person shall be deemed to be shares or stock held, or voting rights exercisable, by that Member or person.
- (3) The provisions of subsection (1) shall not apply in respect of any contract or agreement –
- (a) for the purchase or lease of any land of the Crown under and in pursuance of any Act authorizing the same;
 - (b) for the sale or surrender of any land resumed or acquired by the Crown for any public purpose under the provisions of any Act if the purchase money or consideration has been determined by arbitration or by a judicial tribunal or has been approved by a resolution of both Houses;
 - (c) for or in respect of a loan to the Treasurer or any person authorized to borrow on behalf of the State;
 - (ca) for or in relation to the making of a loan by Tasmania Development and Resources, if the loan is made upon the like conditions and at the same rate of interest (if any) as would be applicable if the loan were made to any other private person;
 - (cb) for or in relation to the education of a person who is wholly or partly dependent on a Member (including, but without prejudice to the generality of this paragraph) –
 - (i) the conveyance of such a person to or from a college, school, or other educational establishment;

- (ii) the granting or payment to such a person of any allowance in connection with a course of studies; and
- (iii) the granting, tenure, or enjoyment of any bursary, scholarship, award, or exhibition – if the contract or agreement is entered into or made by the Member as a private citizen and upon and subject to the same conditions as would be applicable if it had been entered into or made with any other private person;
- (d) for the provision or supply of any prescribed service or the sale or supply, by public auction or public tender, of any goods or the provision for any insurance or indemnity which the State or any State instrumentality on its behalf supplies or undertakes to, for, or for the use of, the public generally if the same –
 - (i) is entered into by the Member as a private citizen; and
 - (ii) is subject to the like conditions, and for a consideration of the like amount, or calculated upon a like basis, as would be applicable respectively to such contract or agreement if the same were made by the State or such State instrumentality with any other private person; or
- (e)
- (f) for or in relation to the making of a loan by –
 - (i)
 - (ii) the Retirement Benefits Fund Board – if the loan is made upon the like conditions and at the same rate of interest as would be applicable if the loan were made to any other private person.
- (4) Subsection (1) does not operate so as to render a person incapable of being elected, or of sitting or voting, as a Member of either House by reason of his having entered into any contract or agreement to which that subsection relates if, but only if –
 - (a) the contract or agreement was entered into by the Member before the date on which he was nominated for election; and
 - (b) not later than 6 months after the date of his election as a Member the contract or agreement is effectually terminated or rescinded.
- (5) For the purposes of this section, a contract or agreement with the Government of the State is a contract or agreement –
 - (a) that is entered into by or on behalf of the State, or by any Minister of the Crown in his capacity as such, or by any Department; or
 - (b) that is entered into by or on behalf of a State instrumentality.
- (6) In this section –
 - "agricultural operations" includes horticulture, dairy farming, bee keeping, poultry farming, and the use of land as grazing land or pasture land;
 - "corporation" means a corporation within the meaning of the Corporations Act;
 - "member of the family", used in relation to a Member or other person, means –
 - (a) the spouse or partner of that Member or person; and
 - (b) a child or stepchild (whether legitimate or illegitimate) of that Member or person;
 - "partner" means the person with whom a person is in a personal relationship, within the meaning of the Relationships Act 2003;
 - "prescribed service" means –
 - (a) electricity;
 - (b) gas;
 - (c) water;
 - (d) public transport facilities;
 - (e) sewerage or drainage facilities;

- (f) medical, surgical, dental, or hospital treatment;
- (g) professional or technical services in connection with the carrying on of agricultural operations; and
- (h) any other service that is declared, by resolution of both Houses, to be a prescribed service for the purposes of this section;

"State instrumentality" means any person or body of persons (whether incorporated or unincorporated) constituted, established, or appointed under an Act or in the exercise of the prerogative rights of the Crown to administer or control any department, business, or undertaking on behalf of the State, and (without affecting the generality of this definition) includes –

- (a) the Hydro-Electric Corporation;
- (b) the Transport Commission;
- (c)
- (d) the Forestry corporation;
- (e) Tasmania Development and Resources;
- (f)
- (fa)
- (fb) the Retirement Benefits Fund Board;
- (g) the Rivers and Water Supply Commission; and
- (h) the Hobart Regional Water Authority.

Constitution (State Employees) Act 1944

Employees in employ of State may be elected to Parliament section 2

- (1) Nothing contained in subsection (3) of section 32 of the *Constitution Act 1934* shall extend to any person otherwise qualified who holds any office of profit or emolument in the public service of the State, or in any business or undertaking carried on by any person, body, or authority on behalf of the State.
- (2) Any person to whom subsection (1) applies shall -
 - (a) forthwith on being elected to a seat in either House of Parliament cease to hold such office; and
 - (b) be entitled to leave of absence for a period not exceeding two months for the purpose of contesting a Parliamentary election, but shall not be entitled to any salary during his absence from duty for that purpose: Provided that this paragraph shall not affect any right of any such person to leave of absence under any Act or any regulations or by-laws thereunder.

Crown Servants' Reinstatement Act 1970 section 2

Interpretation

In this Act "Crown servant" means a person who -

- (a) holds an office of profit under the Crown; and
- (b) was appointed thereto by the Governor or a person empowered or authorised so to appoint by Her Majesty in right of this State or by or under an Act.

- (1) Where a person who -
 - (a) was a Crown servant;
 - (b) resigned his office in order to become a candidate at an election of members of a House of Parliament of the Commonwealth not more than one month before nominations closed for that election;
 - (c) was a candidate at that election; and
 - (d) failed to be elected,applies, within 2 months after the declaration of the result of that election, for appointment to the office from which he so resigned, he may be reappointed thereto on his mere application and without the fulfilment of any conditions otherwise required for making the appointment.
- (2) Where a person is so reappointed, he shall, subject to subsection (3), hold that office in all respects as if he had been absent on leave without pay or other emolument therefrom for the period from the day on which his resignation took effect to the day before the day on which he was reappointed.
- (3) If a person so reappointed became entitled, by reason of his resignation to become a candidate, to an allowance under section 20 of the *Long Service Leave (State Employees) Act 1994* the person is to for the purpose of subsection (2) be treated, in respect of the period in respect of which the amount of the allowance is calculated under subsection (2) of that section, or so much thereof as had expired before his reappointment took effect, as if absent, not on leave without pay or other emolument, but on long service leave under that Act.
- (4) If a person's reappointment as mentioned in subsection (3) takes effect before the expiration of the period therein mentioned, the whole period shall for the purposes of subsection (2) be deemed to have expired on the day before his reappointment took effect.
- (5) No person has a right of appeal against an appointment under this section.
- (6) Subject to the *Public Servants' Retiring and Death Allowances Act 1925* and the *Retirement Benefits Act 1993*, where the rights of a person so reappointed have been changed on his resignation, in respect of pension, pay in lieu of leave or otherwise, all necessary payments, repayments, and entries shall be made to put him in the same position as if he had been absent on leave as mentioned in subsection (2).

Ballot papers

Electoral Act 2004

Part 5 - Division 4 – Ballot papers

Design of Assembly ballot papers

section 98

- (1) The ballot paper names of the candidates for Assembly elections are to be printed in columns with a box printed next to each name.
- (2) Each group of candidates nominated under section 77(3) to appear on a ballot paper under a heading of the ballot paper name of a registered party is to be listed in a separate column on the ballot paper under that name.
- (3) Each group of candidates nominated under section 77(4) to appear on a ballot paper as a group is to be listed in a separate column on the ballot paper under a heading “Group” followed by a capital letter representing the position of the column.
- (4) The first column on the ballot paper (when reading from left to right) is Column A, and each subsequent column to the right of Column A is designated by a successive letter of the English alphabet.
- (5) If more than 26 columns are required, the Commission is to determine the headings to be used.
- (6) The order in which the columns mentioned in subsections (2) and (3) are to be printed on the ballot paper is to be the order determined under section 89(2)(b).
- (7) Candidates nominated under section 77(2) are to be listed in a column under the heading “ungrouped”, and that column is to be printed on the ballot paper in a position to the right of the columns mentioned in subsections (2) and (3).
- (8) The Commissioner may, if he or she considers it impractical to print the ballot paper names of all candidates nominated under section 77(2) in a single column, print those names in more than one column with –
- (9) The ballot paper names of the candidates within each column are to be printed on each batch of ballot papers in the order specified in Schedule 3.
- (10) Ballot papers are to be collated in an approved manner so that each ballot paper is followed by a ballot paper having the ballot paper names in a different order within each column.

Printing of names on ballot papers

section 99

- (1) The surname or family name of each candidate for election is to be in more conspicuous type than the remaining part of the ballot paper name.
- (2) The surname or family name of each candidate for election may be on a different line to the remaining part of the ballot paper name.
- (3) As far as practicable the ballot paper names of candidates are to be printed in the same fonts and styles.
- (4) As far as practicable the ballot paper names of parties are to be printed in the same fonts and styles.
- (5) If the Commissioner considers that a similarity in the ballot paper names of 2 or more candidates is likely to cause confusion, a description or addition is to be included with each such name to enable them to be distinguished from each other.

Instructions on ballot papers

section 100

Instructions on the ballot paper are to indicate that –

- (a) the elector is to number the boxes from 1 to a number (being the number of candidates) in order of choice; and
- (b) the elector's vote will not count unless the elector numbers –
 - i. in the case of an Assembly ballot paper, at least five boxes; and
 - ii. in the case of a Council ballot paper, at least the number of boxes required under section 102(2)(a).

Electoral Matter

Electoral Act 2004

Part 1 - Preliminary

Electoral matter

section 4

- (1) For the purposes of this Act –
- "electoral matter" means matter which is intended to, is likely to or has the capacity to affect voting in an election.
- (2) Without limiting subsection (1), matter is to be taken to be intended or likely to affect voting in an election if it –
- (a) contains an express or implicit reference to, or comment on –
- (i) the election; or
 - (ii) the Government, the Opposition, a previous Government or a previous Opposition; or
 - (iii) the Government or Opposition, or a previous Government or Opposition, of the Commonwealth or a State or Territory; or
 - (iv) a member or former member of the Parliament of the Commonwealth or a State or of the legislature of a Territory; or
 - (v) a party, a branch or division of a party or a candidate or group of candidates in the election; or
 - (vi) an issue submitted to, or otherwise before, the electors in connection with the election; or
- (b) contains –
- (i) a photograph of a candidate in an election; or
 - (ii) a drawing or printed matter which purports to depict a candidate in an election or which purports to be a likeness or representation of any such candidate.

Offences

Penalty unit: As at November 1995, a penalty unit was 100 dollars (section 4 *Penalty Units and Other Penalties Act 1987*).

Electoral Act 2004

It is important to note that only some of the offences contained in the Act are included in this section.

Part 7 - Division 2 – Offences relating to polling places

Offences within polling place

section 175

- (1) Any person present in a polling place –
- (a) who is not entitled under [section 120](#) to be present; and
 - (b) who refuses to leave the polling place immediately on being required to do so by an election official, or by a police officer acting under the direction or authority of the officer in charge of the polling place –
- is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units.

- (2) A person must not, in a polling place –
- (a) act in a disorderly manner; or
 - (b) refuse or fail to comply with a lawful direction given by the officer in charge of the polling place or a police officer; or
 - (c) display or leave a card or paper which has on it directions or instructions as to how an elector should or might vote at the election.

Penalty: Fine not exceeding 10 penalty units.

- (3) Except in accordance with a procedure approved under [section 113](#), a person must not enter a voting screen at a polling place while another person is occupying that voting screen.

Penalty: Fine not exceeding 10 penalty units.

- (4) A person must not, without lawful authority –
- (a) occupy a voting screen at a polling place for a longer period than is necessary for the purpose of marking his or her ballot paper; or
 - (b) obstruct or unnecessarily delay the proceedings at a polling place; or
 - (c) remove a ballot paper from a polling place.

Penalty: Fine not exceeding 10 penalty units.

Persons removed from polling place not to re-enter without permission

section 176

A person must not, without the permission of the officer in charge of the polling place, re-enter a polling place which is open for polling after having been removed from the polling place under section 119.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 1 month, or both.

Offences within 100m of polling place

section 177

A person must not, within 100 metres of, or within, a polling place which is open for polling –

- (a) canvass for votes; or
- (b) solicit the vote of an elector; or
- (c) induce or attempt to induce an elector not to vote for a particular candidate or particular candidates.

Penalty: Fine not exceeding 10 penalty units.

Offence relating to polling places access

section 178

A person must not, while a polling place is open for polling, prevent access, or obstruct the approaches, to that polling place.

Penalty: Fine not exceeding 50 penalty units.

Election official not to act improperly

section 179

A returning officer or an election official must not –

- (a) influence the vote of an elector at an election or, except by recording his or her own vote, influence the result of an election; or
- (b) disclose any information acquired in the course of performing his or her functions under this Act concerning the way in which a particular elector voted at an election.

Penalty: Fine not exceeding 300 penalty units or imprisonment for a term not exceeding 12 months, or both.

Part 7 - Division 4 - Corrupt practices

False or misleading statements or declarations

section 183

(1) A person must not, in giving any information, filing a return or making an application under this Act–

- (a) make a statement or declaration knowing it to be false or misleading; or
- (b) omit any matter from a statement or declaration knowing that without that matter the statement or declaration is misleading.

(2) A person who contravenes or fails to comply with subsection (1) is guilty of a crime, punishable on indictment under the *Criminal Code*.

(3) Notwithstanding section 389 of the *Criminal Code*, a person who is convicted of a crime under subsection (2) is liable to a penalty of a fine not exceeding 300 penalty units or imprisonment for a term not exceeding 12 months, or both.

Signing electoral papers

section 184

(1) Subject to subsection (2), a person, if required by this Act to sign an electoral paper, must not sign it other than with his or her personal signature.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

(2) Where a person is unable to sign his or her name in writing, the person is to be taken to have signed an electoral paper if the person makes a mark on the paper by way of signature in the presence of a witness who is to sign the electoral paper as a witness.

(3) A person must not sign the name of any other person on an electoral paper.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

(4) Nothing in this section affects the liability of a person to be proceeded against for the crime of forgery, but, if he or she is proceeded against for that crime, he or she is not liable to be punished more than once in respect of the same act.

Witnessing electoral papers

section 185

A person who –

- (a) signs his or her name as a witness on a blank electoral paper; or
- (b) signs his or her name as a witness on an electoral paper which has been wholly or partly completed unless it has been signed by the person intended to sign it; or
- (c) signs his or her name as a witness on an electoral paper unless he or she has seen the person, whose signature he or she purports to witness, sign it; or

- (d) writes on an electoral paper as his or her own name –
 - (i) the name of another person; or
 - (ii) any name not being his or her own name –

is guilty of an offence.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

Offences relating to voting

section 186

(1) A person must not, at or in connection with an election, directly or indirectly, personally or by any other person on his or her behalf –

- (a) destroy a nomination form or ballot paper except in accordance with section 150; or
- (b) forge a ballot paper or utter a ballot paper knowing it to be forged; or
- (c) forge a declaration required by this Act or utter such a declaration knowing it to be forged; or
- (d) without authority, remove a ballot paper from a polling place; or
- (e) fraudulently deposit a ballot paper, or a paper purporting to be a ballot paper, in a ballot box used at the election; or
- (f) without authority, supply a ballot paper to a person to enable a person to vote at the election; or
- (g) without authority, take, open, destroy or interfere with a ballot box, declaration vote envelope, postal vote declaration envelope or ballot paper used or to be used at the election; or
- (h) make a statement, or give an answer to a question, referred to in section 110 which the person knows is false or misleading; or
- (i) impersonate an elector for the purpose of voting at the election; or
- (j) vote more than once at the election; or
- (k) having voted at the election, apply for another ballot paper in respect of the election; or
- (l) apply to vote under this Act in the name of a fictitious person or in the name of any other person, whether living or dead; or
- (m) deposit more than one ballot paper in a ballot box that is being used for the purposes of the election; or
- (n) vote at the election after having voted at an election in respect of another division held contemporaneously with the first-mentioned election.

(2) A person who contravenes or fails to comply with subsection (1) is guilty of a crime, punishable on indictment under the *Criminal Code*.

(3) Notwithstanding section 389 of the *Criminal Code*, a person who is convicted of a crime under subsection (2) is liable to a penalty of a fine not exceeding 300 penalty units or imprisonment for a term not exceeding 12 months, or both.

Electoral bribery

section 187

(1) A person must not directly or indirectly –

- (a) promise or offer; or
- (b) give; or
- (c) ask for or receive –

any property or benefit of any kind with the intention of influencing a person's election conduct at an election.

(2) For the purposes of subsection (1) –

“**election conduct**”, in relation to a person, means –

- (a) whether or not the person votes; or
 - (b) who the person votes for; or
 - (c) whether or not the person nominates as a candidate for election or withdraws his or her nomination; or
 - (d) whether the person expresses support for or opposes to a candidate or group of candidates; or
 - (e) whether or not the person lodges an application under section 205 or applies to withdraw an application under section 214; or
 - (f) the performance or exercise by a member of the Commission, a returning officer, an election official or a member of the staff of the Commission of his or her functions or powers under this Act.
- (3) A person who contravenes or fails to comply with subsection (1) is guilty of the crime of electoral bribery, punishable on indictment under the *Criminal Code*.
- (4) Notwithstanding section 389 of the *Criminal Code*, a person who is convicted of the crime of electoral bribery is liable to a penalty of a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.
- (5) The crime of electoral bribery does not include –
- (a) a declaration of public policy or promise of public action; or
 - (b) transporting electors to or from polling places for the purpose of voting.

Electoral treating

section 188

- (1) A person must not directly or indirectly –
- (a) supply food, drink or entertainment; or
 - (b) offer, promise or give a gift, donation or prize to or for any person, club, association or body –
- with the intention of influencing a person’s election conduct at an election.
- (2) For the purposes of subsection (1) –
- “**election conduct**”, in relation to a person, has the same meaning as in section 187.
- (3) A person who contravenes or fails to comply with subsection (1) is guilty of the crime of electoral treating, punishable on indictment under the *Criminal Code*.
- (4) Notwithstanding section 389 of the *Criminal Code*, a person who is convicted of the crime of electoral treating is liable to a penalty of a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.
- (5) In proceedings for an offence under subsection (1)(b) it is a defence to show that gifts, donations or prizes similar in nature and in amount or value are regularly given to the club, association or body for similar purposes.

Electoral intimidation

section 189

- (1) A person must not, by violence or intimidation, influence or attempt to influence a person’s election conduct at an election.
- (2) For the purposes of subsection (1) –
- “**election conduct**” has the same meaning as in section 187.
- (3) A person who contravenes or fails to comply with subsection (1) is guilty of the crime of electoral intimidation, punishable on indictment under the *Criminal Code*.
- (4) Notwithstanding section 389 of the *Criminal Code*, a person who is convicted of a crime of electoral intimidation is liable to a penalty of a fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 5 years, or both.

Part 7 - Division 5 – Offences relating to advertising and other campaigning

Interpretation for purposes of Division

section 190

In this Division, unless the contrary intention appears –

“**address**” means an address, other than a post office box or an electronic address –

- (a) at which the person resides; or
- (b) at or through which the person can be readily contacted;

“**responsible person**” means the person taking responsibility for causing electoral matter to be printed, published or distributed.

Campaign material to be authorised

section 191

Subject to sections 192, 193 and 194, a person must not between the issue of the writ for an election and the close of poll at that election –

- (a) print, publish or distribute, or permit or authorise another person to print, publish or distribute, any printed electoral matter without the name and address of the responsible person being printed, in legible characters, at the end of the electoral matter; or
- (b) publish, or permit or authorise another person to publish, any electoral matter on the internet without the name and address of the responsible person appearing at the end of the electoral matter.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

Authorisation not required on specified items

section 192

Section 191 does not apply to printed electoral matter which is printed on –

- (a) an item of clothing, lapel button or lapel badge; or
- (b) a pen, pencil or balloon; or
- (c) a business card or visiting card that promotes the candidacy of a person in an election; or
- (d) a letter or card on which the name and address of the sender appears; or
- (e) any other approved item.

Letters to the editor

section 194

(1) Section 191 does not apply to a letter to the editor of a newspaper or periodical if –

- (a) the name of the author and the locality of the author’s residence appears at the end; and
- (b) the editor of the newspaper or periodical –
 - (i) keeps, for 6 months after publication, a written record of the address of the author, as stated in the original of the letter sent to the editor, or as otherwise ascertained by the editor; and
 - (ii) provides, when requested by the Commission, a copy of a record kept under subparagraph (i).

(2) For the purposes of subsection (1)(a), it is sufficient to identify the locality of an author’s residence by reference to –

- (a) the suburb or town including, or nearest to, that residence; and
- (b) in the case of a locality outside Tasmania, the State, Territory or other country of that residence.

Advertisements and advertorials

section 195

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

- (a) the insertion of which is, or is to be, paid for; or
- (b) for which any reward or compensation or promise of reward or compensation is, or is to be, made.

Penalty: Fine not exceeding 50 penalty units.

Candidate names not to be used without authority

section 196

(1) A person must not between the issue of the writ for an election and the close of poll at that election print, publish or distribute any advertisement, "how to vote" card, handbill, pamphlet, poster or notice which contains the name, photograph or a likeness of a candidate or intending candidate at that election without the written consent of the candidate.

Penalty: Fine not exceeding 300 penalty units or imprisonment for a term not exceeding 12 months, or both.

(2) Subsection (1) does not apply to any matter printed, published or distributed by the Commission or the Commissioner in the course of promoting public awareness of elections and parliamentary matters.

Misleading and deceptive electoral matter

section 197

A person must not –

- (a) print, publish or distribute, or permit or authorise the printing, publishing or distribution of, any printed electoral matter that is intended to, is likely to or has the capacity to mislead or deceive an elector in or in relation to the recording of his or her vote; or
- (b) publish on the internet, or permit or authorise the publishing on the internet of, any electoral matter that is intended to, is likely to or has the capacity to mislead or deceive an elector in or in relation to the recording of his or her vote; or
- (c) broadcast on radio or television, or permit or authorise the broadcasting on radio or television of, any electoral matter that is intended to, is likely to or has the capacity to mislead or deceive an elector in or in relation to the recording of his or her vote.

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

Campaigning on polling day

section 198

(1) A person must not, on the polling day fixed for an election, or on a day to which the polling for an election has been adjourned –

- (a) distribute any advertisement, "how to vote" card, handbill, pamphlet, poster or notice containing any electoral matter; or
- (b) publish or cause to be published in a newspaper –
 - (i) an advertisement for or on behalf of, or relating in any way to, a candidate or party; or
 - (ii) a matter or comment relating to a candidate or a question arising from, or an issue of, the election campaign.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term of 3 months, or both.

(2) Subsection (1) does not apply to any matter printed, published or distributed by the Commission or the Commissioner in the course of promoting public awareness of elections and parliamentary matters.

Disputed Elections

Electoral Act 2004

Part 8 – Division 2 – Jurisdiction and powers of Supreme Court

Jurisdiction of Supreme Court to hear and determine application section 202

- (1) The Supreme Court has jurisdiction to hear and determine an application under section 205 or determine a question referred to it under section 220.
- (2) The Supreme Court is to be constituted by a judge sitting alone for the purpose of exercising the jurisdiction conferred by subsection (1).

Rules of Court section 203

Rules of Court, not inconsistent with this Act, may be made under the *Supreme Court Civil Procedure Act 1932* for the purposes of this Part.

Application of Supreme Court Rules section 204

The *Supreme Court Rules 2000* apply to proceedings before the Supreme Court under this Part to the extent that they are not inconsistent with the provisions of this Act or any Rules of Court made under section 203.

Part 8 - Division 3 – Disputed elections

Election may be disputed section 205

- (1) The validity of an election, a recount or the return of a person as a Member of the Assembly or the Council may be disputed by an application made to the Supreme Court and not otherwise.
- (2) The Supreme Court is not to determine an application that –
 - (a) is made by a person other than a person referred to in section 206; or
 - (b) does not comply with sections 207, 208 and 209.

Entitlement to lodge application section 206

- (1) The following are entitled to make an application under section 205:
 - (a) a candidate at the election or relevant election;
 - (b) an elector entitled to vote at the election or relevant election;
 - (c) the Commission;
 - (d) in the case of a recount, a person whose name was on the roll, for the division in which the recount was held, at the time of the recount.
- (2) For the purposes of subsection (1), in the case of a recount –
“**relevant election**” means the election last held to elect all the Members of the division in which the recount was held.

Form of application section 207

An application under section 205 is to –

- (a) be in the form prescribed by the rules; and
- (b) state the matters prescribed by the rules.

Application to be accompanied by deposit section 208

Except in the case of an application by the Commission, an application under section 205 is to be accompanied by a deposit of such amount as is prescribed by the rules as security for costs.

Time for lodging application

section 209

- (1) Except as provided in subsection (2), an application under section 205 may be lodged with the Registrar of the Supreme Court not later than 90 days after –
 - (a) the return of the writ for the election concerned; or
 - (b) in the case of a recount, the Governor is informed of the name of the elected candidate in accordance with section 230 or section 231(3)(b).
- (2) If a returning officer is unable to decide which candidate or candidates are to be declared elected, the Commission may make an application under section 205 before the return of the writ.

TASMANIAN ELECTORAL COMMISSION

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All electoral forms, including those mentioned in this booklet,
can be obtained from the Tasmanian Electoral Commission
or the returning officer appointed for each election.