



Tasmanian House of Assembly
Election 1996

Information for Candidates

Section 1 - Information

Section 2 - Extracts from Relevant Legislation

November 1995

Introduction

Purpose of this booklet

This information booklet is intended to assist intending candidates at the 1996 Tasmanian House of Assembly General Election.

For ease of reading, some sections of the Electoral Act 1985 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.

As this is the first Candidate Information booklet produced for Tasmanian House of Assembly Elections, any comments or suggestions for improvement are welcome.

Unless otherwise specified section references in subject headings are from the Electoral Act 1985.

Role of the Tasmanian Electoral Office and Returning Officers

Candidates should be aware that the role of the Tasmanian Electoral Office and Returning Officers is to administer the election in accordance with the Electoral Act 1985. 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, groups 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.

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

Purchasing the *Electoral Act 1985* and the *Constitution Act 1934*

The *Electoral Act 1985* and other relevant legislation can be purchased from the Tasmanian Government Bookshop. The details as at publication of this booklet are as follows:

Address:	Postal address:
Government Bookshop (ph 002 33 3289)	Printing Authority of Tasmania
2 Salamanca Place	GPO box 307c
Hobart	Hobart 7001

Legislation	Price
<i>Electoral Act 1985</i>	\$19.00 + postage
<i>Constitution Act 1934</i>	\$11.00 + postage

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Section 1

Information

Providing legal advice to candidates or parties is outside the role of the Tasmanian Electoral Office and Returning Officers.

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

Issued: 3 October 1995

The writ

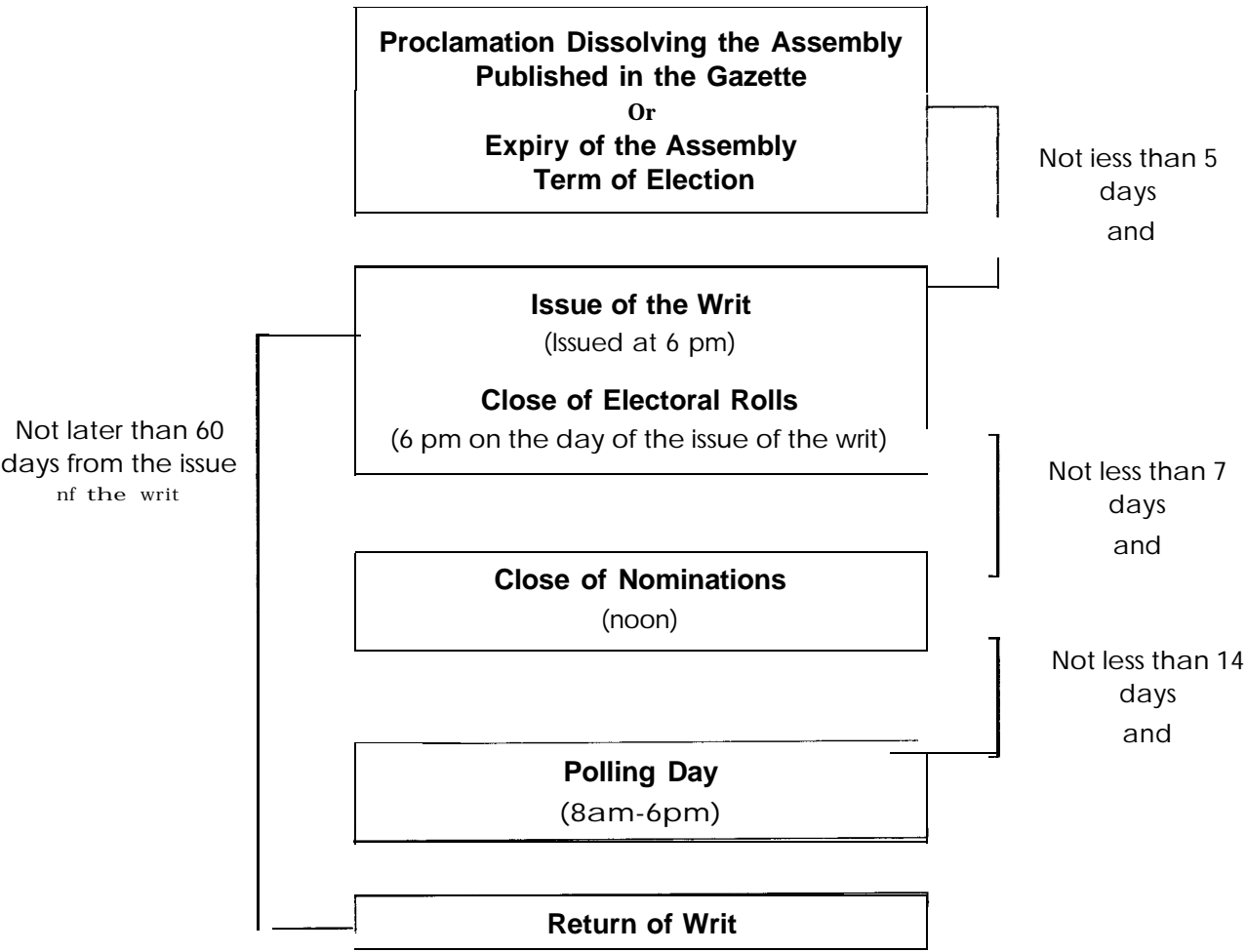
House of Assembly elections commence with the proclamation dissolving the Assembly- and conclude with the return of the writ.

What is the writ?

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.

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 time table (House of Assembly (sections 48,69-76,87 & 116))



* This period allows electors time to enrol or update their enrolment. All enrolment changes must be with divisional offices before Close of Rolls (faxes accepted).

Nomination

Sections 86 ^ 87

How to Nominate

Complete a nomination form and lodge it with the Returning Officer.

A nomination requires:

- . at least two nominators;
- the candidate’s consent to be nominated;
- that the candidate:
 - is an elector, or
 - . **is entitled to have his/her name on the roll for a House of Assembly division in respect of which he/she is nominated.**
- that the candidate declare (see back of nomination form):
 - **he/she is qualified to be elected as a member of the Assembly; and**
 - . **he/she is not disqualified from being elected under the** Constitution Act 1934.
- that the nomination form be received by the Returning Officer after the issue of the writ and before noon on nomination day; and
- that the sum of \$200 be deposited with the Returning Officer on behalf of the nominated candidate at the time of delivery of the nomination form, **in cash or in the form of a banker’s cheque.**

Deposit: The deposit must be received by the Returning Officer by noon on nomination day.

Personal cheques: Please note that personal cheques are not acceptable.

Constitution Ad 1934 section 14)

Qualifications of members

To be elected as a member, a person must be an Actor or be entitled to have his/her name on the roll, 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.

No person who is of unsound mind or who is in prison under any conviction is capable of being elected.

(Constitution Act 1934 section 29)

Entitlement to enrol **as an elector**

A person is eligible to enrol for the House of Assembly if he/she:

- . is 18 years of age or older;
- has resided in Tasmania continuously for at least 6 months at any one time; and
- . is:
 - an Australian **citizen; or**
 - . **not an Australian citizen (eg. British Subject), but who was enrolled on any Australian electoral roll on 25 January 1984.**

People disqualified from nomination (section 85)

A person cannot be nominated as a candidate for a House of Assembly election if they:

- are a member of the Legislative Council;
- have already been nominated (and that nomination has not been withdrawn) for another House of Assembly division;
- have already been nominated for a Legislative Council division for which the election has not yet been held; or
- are a member of the Parliament of the Commonwealth.

The nomination form (sections 18,86 & 87)

The Act refers to the nomination form as: the nomination paper in accordance with the prescribed form In this booklet the nomination paper is called the nomination form.

The nomination form consists of two sections:

- the candidate’s and nominators’ details and signatures on the front; and
- the candidate’s declarations on the back.

These declarations must:

- be endorsed on the nomination form; and
- be made and signed by the candidate in the presence of an elector, who is to witness the candidate’s signature.

For a candidate who is in Australia, the witness can be a person whose name appears on a Tasmanian or Commonwealth electoral roll. For a candidate who is outside Australia, the witness can be a person specified in section 18 of the Act (see legislation section).

The nomination form must be signed by at least 2 electors who are entitled to vote at the House of Assembly division election concerned.

A candidate for any Assembly or Legislative Council election is not eligible to witness a nomination form.

The Returning Officer has the discretion to accept a nomination containing a formal defect or error provided that the nomination substantially complies with the provisions of the Act.

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

More than two nominator-s: Providing one or two extra nominators on the form will help avoid last minute difficulties with identification,

An elector can nominate only one candidate for an Assembly election.

Name on ballot paper: Please state (in the box provided on the front of the nomination form) the form of given names to appear on the ballot **paper**.

BACK OF NOMINATION FORM example

Declarations required by Section 87(l)(b) of the Electoral Act 1985

1 I declare that I am qualified under the Constitution Act 1934 to be elected as a member of the House of Assembly by virtue of the following qualifications: cross out whichever box is inapplicable

(a)

I am an elector for Assembly.

I am entitled under the provisions of the Electoral Act 1985 to have my name placed on the roll for a House of Assembly division.

(b) I have been resident in Tasmania for: (cross out whichever box is inapplicable)

a period of 5 years at any one time.

or

a period of 2 years immediately preceding the date of the election.

2 I further declare that, for the reasons set out below, I am not disqualified under the Constitution Act 1934 from election as a member of the House of Assembly:-

(a) I am not the holder of a pension payable out of the Public Account during the pleasure of the Crown (section 32 of the Constitution Act 1934)

(b) (cross out whichever box is inapplicable)

I am not the holder of an office of profit or emolument by virtue of an appointment made under the Tasmanian State Service Act 1984 by -
(i) the Governor or the Governor-in-Council;
or
(ii) a State instrumentality (section 32 of the Constitution Act 1934).

or

he holder of an office of profit or emolument being
[appointment held under the Tasmanian State Service Act 1984, the Governor, the Governor-in-Council or a State instrumentality]
but I am aware that, by reason of the operation of the Constitution (State Employees) Act 1944, this does not disqualify me from being elected if I cease to hold that office forthwith on my election and I propose, if elected, to cease to hold that office accordingly.

(c) (cross out whichever box is inapplicable)

I am not a party to any contract or agreement with the Government of the State or with a State instrumentality, being a contract of such a kind as would disqualify me from being elected (section 33 of the Constitution Act 1934).

or

am a party to a contract or agreement with
for
agreement]
but I am aware that this does not disqualify me from being elected if the contract or agreement is effectually terminated or rescinded within 6 months after my election and I propose, if elected, to have it terminated or rescinded accordingly.

Declared at Launceston . . in Tasmania this 10th day of November 1995..

(Signature of candidate)

J. Citizen

Before me,

(Signature of Witness)

AApple

(Print Given Names)

(Print Surname)

Alfred

Apple

(witness must be an elector)

Candidate's consent to be nominated

(section XX)

Candidates should indicate their consent to be nominated where provided at the foot of the front of the nomination form.

If a candidate is unable to indicate consent on the actual nomination form; the Returning Officer may accept consent in another written form.

Candidates outside Tasmania may signify their consent:

- by letter sent to the Returning Officer by post;
- by letter attached to the nomination form; or
- by message sent to the Returning Officer by electronic means (including fax),,

provided the Returning Officer receives the consent before noon on nomination day.

Deposit and refund of \$200

(section 87 & 92)

As mentioned in "The nomination procedure", each nomination must include a deposit of \$200. The Returning Officer will refund the sum if the nominated candidate has:

- been elected;
- not been elected but, when excluded, had obtained at least one-fifth of a quota (approximately 1500 votes);
- withdrawn his/her nomination as a candidate as provided by section 93; or
- died before the election day.

Grouping candidates

(section 89)

Candidates may lodge (or have lodged on their behalf) with the Returning Officer a request to have their names included in a group on the ballot paper by using the prescribed Form.

A claim to group particular candidates is not acceptable if:

- a candidate included in the claim is already included in any other claim; or
- * the nomination of a candidate included in the claim is withdrawn.

Upon lodgement of a claim, the Returning Officer shall notify each of the candidates that he/she has been included in the group and of the name(s) of the other candidate(s) included in the group.

Any group application may be withdrawn before noon on nomination day.

The form for grouping candidates must be signed by either:

- all candidates in the group; or
- a claimant on behalf of candidates.

Note: For registered parties, the claimant should be the endorsement representative.

Obtaining forms: All electoral forms can be obtained from the Returning Officers or the Tasmanian Electoral Office.

Registered party candidates

(sections 90 & 91)

For a candidate to be included in a group on the ballot paper under the name of a registered party, the candidate’s name must be included on two additional forms:

- the form to group candidates on the ballot paper, as mentioned in “Grouping candidates” (Form 24); and
- the form endorsed by the endorsement representative requesting that the candidates be grouped under the party name (Form 11).

Work closely with the Endorsement Representative of your registered political party: Party candidates should work closely with their endorsement representative to ensure that their nomination is successful.

Withdrawal of nomination

(section 93)

A candidate may withdraw his/her nomination by delivering written notification to the Returning Officer by close of nominations.

A candidate within a group/party can only withdraw his/her nomination with the consent of the remaining candidates of the group/party.

Withdrawal of nomination: Withdrawal of a nomination must be signed by the candidate and received by noon of nomination day.

Close of nominations

(section 94)

The “nomination day” means the day on or before which candidates must be nominated as required by the Electoral Act 1985.

At noon on nomination day, the Returning Officer will cease to accept nominations and as soon as practicable after that time, publicly announce:

- that a poll will take place;
- the names of the candidates; and
- the groupings of the candidates.

A similar announcement including a statement specifying the date of the poll, a list and description of the divisional polling places will be published in a newspaper circulated in the Division.

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 Emplpyees) 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 seek their own legal advice concerning their particular situation.

Electoral rolls

Printed electoral rolls (as at the close of rolls) will be available for candidates and parties from the Tasmanian Electoral Office or from the Returning Officers. Please note that these rolls may take some days to prepare.

Death of a candidate

(section 94)

If a candidate dies after the close of nominations and before polling day:

- the nomination deposit will be refunded to the candidate's legal personal representatives.
- any votes received by the deceased candidate will be treated as if they had been recorded for the elector's next preference.

If a candidate dies on or after polling-day, he/she continues in the scrutiny, and if elected, a vacancy is deemed to have occurred.

Advertising

All electoral matter to carry authorisation (sections 243,215)

All printed, published or distributed advertisement, how-to-vote card, handbill, pamphlet, poster, direct mail or notice containing any electoral matter must have printed on it (in legible characters):

- the name and address of the person who instructed printing; and
- the name of the printer and the address where it was printed.

A definition of electoral matter for the purposes of, and contained in section 243 has been included in the legislation section.

Candidate consent: It is an offence to distribute electoral matter which contains the name of a candidate without their written consent. (section 245)

Post office box addresses should not be used 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 authorisations

Two examples of suitable authorisations are shown below.

Where the item is commercially produced:

Authorised by: John Citizen, 1 Long Road, Hobart
Printed by: My Printers, 1 Main Street, Hobart

Where the item has been produced in-house:

Authorised and Printed by: John Citizen,
Parliament House, Hobart

Newspaper advertisements (section 243)

If payment is made for a report of a candidate speech to be published in a newspaper, the word 'Advertisement' must be legibly printed at the head of the report, or at the head of each column of the report.

Radio and television announcements (section 245)

Any broadcast or televised announcement commenting on any electoral matter during the election period must include the true name and address of the author(s) of the announcement.

Broadcasting blackout

(commonwealth Broadcasting Services Act 1992)

The *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 (cg. 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 Copyright Act 1968.

False information

(section 209)

It is an offence to print, publish or distribute any “how to vote” card, electoral advertisement, notice, handbill, pamphlet or card:

- . containing an untrue or incorrect statement;
- or
- containing a representation of a ballot-paper or a representation apparently intended to represent a ballot-paper, and having on it any directions, intended or likely to mislead or improperly interfere with an elector in or in relation to the recording of his/her vote.

Polling day restrictions of electoral matter

(section 246)

Additional restrictions relating to the distribution and publication of electoral matter apply for polling day. Section 246 of the Act is included in the Legislation Section and provides that it is an offence to:

- distribute any: advertisement, how-to-vote card, handbill, pamphlet, poster, or notice containing any electoral matter on polling-day;
- publish or cause to be published in a newspaper an advertisement containing any electoral matter on polling-day.

A definition of “electoral matter” in relation to polling day for the purposes of section 246, and contained in 244(7) has been included in the Legislation Section.

Consent **required for how-to-vote cards:** It is an offence to include a candidate’s name on how-to-vote cards without his/her written consent.

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

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

Restrictions within 100 metres of a polling place

(section 133)

A person is not permitted to:

- canvass for votes;
- 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 including declared insitutions during polling) or the Returning Officer's office when open for pre-poll voting.

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.

Posters

Electoral posters must adhere to the restrictions mentioned above. Permission to display posters must always be obtained from the owner of the land concerned.

Before placing posters on public property (eg. electricity poles, fences or trees) it is advisable to obtain permission from the bodies that are responsible for this property.

- 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 which could jeopardise public safety (eg near ‘stop’ signs, traffic lights, intersections or any other position where the visibility-of road users could be obstructed).

The ballot paper

Structure

(section 106)

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

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

Names of candidate

(section 106)

Each candidate is identified on the ballot paper, first by his/her surname followed by his/her preferred form of given name(s).

A box is provided on the nomination form for the candidate to indicate his/her preference for the form of his/her given name(s) on the ballot paper (subject to Section 106 (3)(iii) of the Act).

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

Robson rotation

(Schedule 2)

The rotation of candidates’ names on the ballot paper is determined by Robson Rotation.

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

Voting Instructions: All voters should be encouraged to read the instructions on the ballot paper carefully before casting their vote. The ballot paper directs each voter to “Mark your vote on this ballot-paper by placing the numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 [up to the number of candidates on the ballot paper]“.

Methods of voting

Ordinary voting

An ordinary vote is a vote cast at a polling place on the day of the election, where the electors name is marked off the certified list of voters.

Postal voting (section 138)

An elector may vote by post if he/she is unable to vote on polling day, because he/ she:

- will not be in Tasmania;
- will not be within 8 kms of a polling place;
- will be travelling and unable to get to a polling place;
- is seriously ill;
- has religious beliefs which will preclude attendance at a polling place.

It is an offence to:

- attempt to persuade or induce a person to make an application for a postal vote certificate and postal ballot paper; or
- be associated with a person who attempts to persuade of induce a person to make such an application.

Postal vote applications: Applications can be obtained from the Returning Officers, the Tasmanian Electoral Office, or any Tasmanian post office.

Return of postal applications: Applications for a postal vote must be received by the Returning Officer for the division for which the elector is enrolled before 6 o'clock in the afternoon:

- on Thursday before polling day if the application is sent from within Tasmania
- on Wednesday before polling day if the application is sent from within Australia,
- or Monday before polling day if the application is sent from outside Australia.

Pre-poll voting (sections 152 & 161)

Electors unable to attend a polling place on polling day may also be eligible to cast a pre-poll (or an in-person postal) vote in the office of any of the Returning Officers.

Institution voting (section 15,110 & Division 9)

Mobile polling is provided at declared institutions eg. hospitals, or nursing homes. Closer to the election period, Returning Officers can provide a list of these institutions and the dates and times they will be visited.

Absent voting

(Division 10)

An elector unable to attend a polling place in the Assembly division in which he/she is enrolled may cast an absent vote at any polling place in any other division in Tasmania.

Declaration voting

(sections 127 & 128)

If a person claims to be entitled to vote and:

- the name of that person cannot be found on the roll;
- he/she has turned 18 years old since the issue of the writ; or
- the roll is marked and indicates that the person has already voted;

that person may vote if he/she makes the required declaration.

The elector’s ballot paper is placed in an envelope bearing his/her declaration which will be sent unopened to the Returning Officer. 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.

Formality & Informality

Formal votes

(section 129)

For a vote to be formal the elector must record a vote for at least 7 candidates, by numbering 1,2,3,4,5, 6, and 7 in the order of the elector’s preference.

Informal votes

(section 187)

A ballot paper will be treated as informal if:

- no vote has been recorded on it;**
- the elector has not voted in the directed manner;**
- 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 1-7 is repeated;**
- a number from 1-7 has been omitted; or**
- it has not been:**
 - authenticated by the initials or signature of the required officer, or**
 - authenticated by an official mark or stamp as prescribed.**

A ballot-paper will not be treated as informal merely because:

- of any marking on it, provided that the responsible electoral officer considers that the elector’s intention is clear;
- the elector has written in Roman numerals.

A repetition or omission of a preference after the number 7 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 am - 6 pm) (section 116)

The hours of polling on election day are from 8 am to 6 pm. 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.

Polling day distribution and publication of electoral matter

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

Polling places (section 1.32)

In this booklet, locations where polling is to take place are referred to as polling places, rather than polling-booths as in the Act.

At polling places, people are not permitted to:

- remove ballot papers;
- enter a voting compartment while another person is voting;
- obstruct or delay proceedings.

Assisting voters at a polling place (section 130)

Electors who need assistance to vote may appoint another person to mark the ballot paper for them (in their presence) according to their instructions. If the person appointed to assist the elector is the officer-in-charge of the polling place, a scrutineer or another electoral officer must be present.

Candidates can only enter a polling place to vote (section 114)

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

Photographers: Prior arrangements to photograph or film inside a polling place should normally be made **through the Returning Officer. In any case, photographers are only permitted into a polling place at the discretion of the officer-in-charge. Photographs of candidates casting their vote may be taken by party workers or the press provided that no votes can be identified.**

After close of the poll

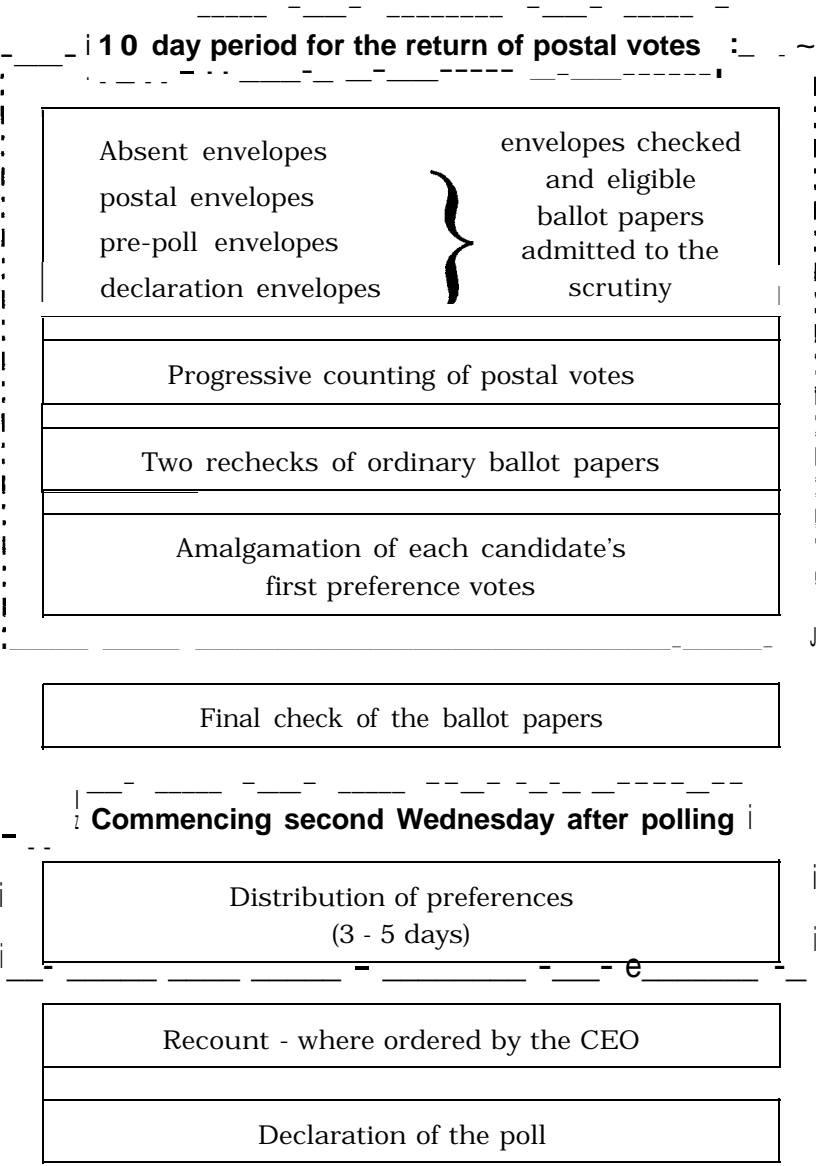
After the close of the poll, a provisional count is conducted at each polling place.

A tally room will be provided with areas for candidates, parties, media and the public. The provisional primary votes for each Division will appear on tally boards progressively when available from polling places.

Tally room location: The location will be publicised prior to polling day.

Post election and scrutiny timetable

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



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 all receipts (including donations) and expenditure.

Scrutineers

Role of the scrutineer

(sections 114 & 186)

Candidates are not permitted to take part in the conduct of polling other than casting their own vote. The role of the scrutineer is to represent the candidate at places where voting or counting take place.

During the preliminary counting at a polling place, a scrutineer may object to the admission of a ballot paper. Any such objection may be put to the officer-in-charge of the scrutiny. The officer-in-charge shall then decide whether the paper should be admitted or rejected to the provisional count. Queried ballot papers are marked and all ballot papers are returned to the Returning Officer for rechecking.

Polling place count only provisional: The counting at each polling place provides provisional figures to give a clear indication to the parties and the public how the votes have been cast. A thorough check of all votes occurs during the 10 days after polling day.

Appointment of scrutineers

(sections 113, 56, 166, 185 & 188)

A candidate may appoint scrutineers to represent him/her. Only one scrutineer for a candidate is entitled to be present at any one time at the following places:

- at each polling place (during voting and counting);
- observing pre-poll voting at the office of the Returning Officer;
- accompanying an electoral officer during voting at a declared institution.

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.

A signed authorisation is required when appointing scrutineers.

Entry to the polling place scrutiny: Scrutineers wishing to witness the scrutiny (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.

Scrutineers information booklet: Further information on the role and rights of scrutineers can be found in the Scrutineers Information Booklet.

Disputing elections and returns

Application to dispute an election or return

(sections 214 & 215)

The only way to dispute the validity of an election, or the return of a person as a member of the House of Assembly, is by an application to the Supreme Court within 90 days after the return of the writ for the election.

An application may be made by:

- the Director of Public Prosecutions or his representative;
- an elector who voted, or who had a right to vote at that election; and
- a candidate at that election.

Determination of a disputed election application

(section 222)

The Supreme Court may find:

- that an elected candidate was not duly elected;
- that an unsuccessful candidate was duly elected;
- that an election was void; or
- the Court may dismiss the application.

Finding of corrupt or illegal practice

(section 223)

If the Supreme Court finds that a person has engaged in any corrupt or illegal practice, the Crown Advocate or the Chief Electoral Officer (as the case may be) determines whether there is sufficient evidence to support a criminal prosecution.

Immaterial errors do not invalidate election

(section 257)

An election is not to be declared void merely on account of:

- any irregularity or delay in the declaration of nominations, polling for the election, or return of the writ for the election; or
- the absence of, or an omission or error by, an electoral officer which is not proved to have affected the result of the election.

Filling a vacancy in the House of Assembly

House of Assembly vacancies are usually filled by recount.

A recount takes place when a vacancy occurs which is not due to:

- the dissolution of the House of Assembly or the expiration of its term; or
 - the failure or partial failure of an election for an assembly division,
- and the Chief Electoral Officer considers that it is practicable to do so.

What is a recount? (section 231)

In a recount, the electors who elected the vacating member, determine that member's replacement. Therefore only the ballot papers received by the vacating member are distributed in the recount.

Candidates contesting a recount (section 231)

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

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

A candidate need not be living in Tasmania to nominate for a recount.

“Nomination to contest a recount (section 231)

The Chief Electoral Officer will publish a notice that the seat has become vacant.

If a candidate wishes to be included in a recount, he/she can nominate by providing written consent by hand, post or other electronic means.

The nomination must be received by the Chief Electoral Officer at or before noon, on the **10th day after the notice of vacancy was published.**

Notification to candidates (Schedule 5)

Each person nominated will receive a notice of the time and place at which the recount will take place. Recounts proceed within 7 days of the close of nominations.

Scrutineers (section 232)

A candidate for the recount may appoint one scrutineer to represent him/her.

By-elections (section 233)

Where all eligible candidates of the vacating member's party are unavailable, the Parliamentary leader of that party may request that a new election be held.

The Hare-Clark electoral system

Elections for the Tasmanian House of Assembly are conducted under a proportional representation system by single transferable vote. This system is commonly known as the Hare-Clark electoral system. A brief explanation follows:
To secure election, candidates must gain a quota of votes.

$$\text{Quota} = \frac{\text{Number of Valid Ballot Papers}}{\text{Number to be Elected} + 1} + 1 \quad (\text{any remainder is ignored}).$$

(In Tasmania, $\text{Quota} = \frac{\text{approx } 60,000}{8} + 1 = \text{approx } 7,500 \text{ or } 12.5\%$)

Once a candidate attains a quota he/she is declared elected.
If a candidate attains more than a quota his/her “surplus” votes are redistributed amongst the candidates still in the scrutiny. The surplus is transferred by redistributing the last parcel of ballot papers received by the elected candidate. All the ballot papers in the last parcel are passed on with a new ‘transfer’ value.

$$\text{Transfer Value} = \frac{\text{Surplus Votes}}{\text{Number of Ballot Papers in the Last Parcel}}$$

where $\text{Surplus Votes} = \text{Candidate Total Votes} - \text{Quota}$

This reduces the value of the elected candidate’s total votes to the quota.
If none of the remaining candidates has a surplus, the candidate with the least number of votes is excluded and their votes are redistributed at the value they were received by the excluded candidate.
This exclusion process continues until a candidate obtains a quota. Any surplus votes are again distributed and the exclusion, election and distribution process is repeated until seven candidates are elected.
If the exclusion of a candidate will mean that there are the same number of candidates remaining in the count as the number of positions to be filled, the candidate is declared to be excluded from the count, and the remaining candidates are declared elected in the order of their total votes at that point.

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 Office 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 Office 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 1985*, 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 1985* 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 Electors

section 29

- (1) Subject to the provisions of this Act and of the *Electoral Act 1985*, every person not under the age of 18 years, whether male or female -
 - (a) who has resided in Tasmania continuously for a period of at least 6 months at any one time; and
 - (b) who is -
 - i) an Australian citizen; or
 - ii) an alien, who was, immediately before the day fixed under section 2 (2) of the *Constitution Amendment Act 2983*, enrolled in this or any other State or any Territory of the Commonwealth as an elector for the Senate or the House of Representatives or as an elector for the legislature, or any House of the legislature, of any such other State or any such Territory,is entitled to be enrolled as an elector for the Assembly on the roll for the Assembly division in which the person lives and, when so enrolled, shall be qualified to vote at any election of Members to serve in the Assembly for that Assembly division.
- (2) Subject to the provisions of this Act and of the *Electoral Act 1907*, and the *Electoral Act 7985* every person who was, immediately before the day fixed under section 2 (2) of the *Constitution Amendment Act 2983*, enrolled as an elector for the Assembly is entitled to continue to be enrolled as such an elector and, while he continues to be so enrolled, is qualified to vote at any election of Members to serve in the Assembly for the Assembly division for which that person is enrolled.

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

section 33

- (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 7(5) of the Companies (Tasmania) Code, related for the purposes of that Code 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 authorising 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 authorised to borrow on behalf of the State;
 - (ca) for or in relation to the making of a loan by the Tasmanian Development Authority, 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
 - (f) for or in relation to the making of a loan by -
 - (ii) the Retirement benefits Fund Investment Trust,
 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 section 5 (1) of the Companies (Tasmania) Code;
- “member of the family”, used in relation to a Member or other person, means -
- (a) the spouse of that Member or person; and
 - (b) a child or stepchild (whether legitimate or illegitimate) of that Member or person;
- “prescribed service” means -
- (a) electricity;
 - (b) gas;
 - (c) water;
 - (d) public transport facilities;
 - (e) sewerage or drainage facilities;
 - (fb) 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 Commission;
 - (b) the Transport Commission;
 - (c) the Metropolitan Transport Trust;
 - (d) the Forestry Corporation;
 - (e) the Tasmanian Development Authority;
 - (f) the Retirement Benefits Fund Investment Trust;
 - (g) the Rivers and Water Supply Commission; and
 - (h) the Hobart Regional Water Board.

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 2970*

Introductionsection 2

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 authorized so to appoint by Her Majesty in right of this State or by or under an Act.

Reinstatement of certain former Crown employeessection 3

- (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 2994 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’ Refiring 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).**

Form of given name on the ballot paper

E lectora | Act 1985

Ballot papers for use at Assembly elections

section 106(3)

- (3) In causing ballot-papers to be printed for an Assembly election -
- (a) the Chief Electoral Officer is responsible for ensuring that -

i) each group is identified by the word “group” followed by a successive letter of the English alphabet, starting with the letter “A”, and in the event of there being more than 26 groups and all the letters of the English alphabet having been exhausted, by such other identifying symbol as is determined by the Chief Electoral Officer;

ii) the surname of each candidate for election is in conspicuous type;

iii) each candidate is identified, as is determined by the Chief Electoral Officer, by his given name or names, by the initial letter or letters of his given name or names, or by a combination of his given name or one or more of his given names and the initial letter or letters of his other given name or names (if any);

iv) the given name or names or the initial letter or letters of the given name or names of each candidate are in less conspicuous type than the type in which his surname is printed; and

v) a square is printed opposite the name of each candidate;

(b) a given name, or the initial of a given name, of a candidate may be printed on a line after the line on which his surname is printed; and

(c) where a similarity in the names of 2 or more candidates is likely to cause confusion - the Chief Electoral Officer may arrange the names with such description or addition as will enable them to be distinguished from each other.



Authorized witnesses

***Electoral Act* 1985**

Authorized witnesses

section 18

- (1) An elector whose name appears on an electoral roll for an Assembly division or a Council division or on a Commonwealth electoral roll for any other State or a Territory of the Commonwealth is an authorized witness for the purposes of this Act in relation to a person who, in Australia, makes an application to vote at an election.
- (2) The following persons are authorized witnesses for the purposes of this Act in relation to a person who, elsewhere than in Australia, makes an application to vote at an election:-

(R) an elector referred to in subsection (1);

(6) an officer of the naval, military, or air force of the Commonwealth or of some other part of the Sovereign's dominions;

(c) a person employed in the Public Service of the Commonwealth or of a Territory of the Commonwealth or of some other part of the Sovereign's dominions;

(d) a justice of the peace for any part of the Sovereign's dominions.
- (3) A person is not eligible to be an authorized witness at or in connection with an election if he is a candidate at the election or any other election that is to be held contemporaneously with that election.

Offences

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

Electoral Act 1985

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

Offences relating to the conduct of polling

section 133

- (1)

A person shall not, on polling-day for an election, or on a day to which polling is adjourned, or on a day on which the office of a returning officer is open to enable electors to vote before polling-day, prevent the access, or obstruct the approaches, to a polling-booth or the office of the returning officer, as the case may be.

Penalty: **Fine not exceeding 10 penalty units.**
- (2)

A person shall not, within 100 metres of, or within, a polling-booth at which polling for an election is being conducted or, where the office of a returning officer is open to enable electors to vote before polling-day, within 100 metres of, or within, that office -

(a)

canvass for votes;

(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 2 penalty units.**
- (3)

A person shall not induce or attempt to induce an elector who, by virtue of this Act, is required to vote at an election not to vote at that election.

Penalty: **Fine not exceeding 10 penalty units.**
- (4)

A person shall not, without the permission of the officer in charge of the polling-booth, re-enter a polling-booth at which polling for an election is being conducted after having been removed from the booth for misconduct or failure to comply with a lawful direction given by an electoral officer or a police officer who is on duty at the booth.

Penalty: **Fine not exceeding 5 penalty units or imprisonment for a term not exceeding 3 months.**
- (5)

A person shall not -

(a)

in a polling-booth at which polling for an election is being conducted, act in a disorderly manner or refuse or fail to comply with a lawful direction given by an electoral officer or a police officer who is on duty at the booth; or

(b)

display or leave in any such booth 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 2 penalty units.**
- Crimes relating to false claims and applications**

section 204
- (1)

A person who, in any claim or application under this Act, makes a statement or declaration which is, to his knowledge, false or misleading in a material particular is guilty of a crime and, subject to subsection (2) and section 211, is liable to be punished on indictment under the *Criminal Code*.
- Inform&ion for Candidates

(1 1/95)

33

- (2) Notwithstanding section 389 of the *Criminal Code*, a person who is convicted of a crime under subsection (1) is liable to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 12 months.

Crimes relating to voting at election, &c.

section 205

- (1) If, at or in connection with an election, a person -
- (a) fraudulently destroys or defaces a nomination paper or ballot-paper that is used or to be used in connection with the election;
 - (b) forges a ballot-paper or alters a ballot-paper knowing it to be forged;
 - (c) in respect of a matter for which a declaration is required by a provision of this Act, forges such a declaration or utters such a declaration knowing it to be forged;
 - (d) fraudulently removes a ballot-paper from a polling-booth;
 - (e) fraudulently deposits a ballot-paper, or any other paper purporting to be a ballot-paper, in a ballot-box that is used at the election;
 - (f) without lawful authority, supplies a ballot-paper to a person for the purpose of enabling that or some other person to vote at the election;
 - (g) without lawful authority, takes, opens, destroys, or interferes with a ballot-box or ballot-paper that is used or to be used at the election;
 - (h) having had a question put to him in accordance with section 121, gives an answer which, to his knowledge, is false or misleading;
 - (i) makes in respect of a matter for which a declaration is required by a provision of this Act a declaration which, to his knowledge, is false or misleading in a material respect;
 - (j) personates an elector for the purpose of voting at the election;
 - (k) votes twice at the election or, having voted at the election, applies again at the election for a ballot-paper in his own name;
 - (l) applies to vote under this Act in the name of a fictitious person or in the name of any other person, whether living or dead;
 - (m) votes at the election after having voted at an election in respect of another Assembly or Council division held contemporaneously with the first-mentioned election; or
 - (n) deposits more than one ballot-paper in a ballot-box that is being used for the purposes of an election,
- he is guilty of a crime and, subject to subsection (2) and section 211, is liable to be punished on indictment under the *Criminal Code*.
- (2) Notwithstanding section 389 of the *Criminal Code*, a person who is convicted of a crime under subsection (1) is liable to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 12 months.

- (1)** A person who -
- (a) directly or indirectly, by himself or by any other person on his behalf -
 - i) gives or lends, agrees to give or lend, offers, promises, or procures, or promises or endeavours to procure, any money or valuable consideration to or for an elector, or a person on behalf of an elector, in order to induce the elector to vote, or refrain from voting, at an election or to induce him to indicate the order of his preference for any particular candidate or candidates after recording his first choice on a ballot-paper at an election; or
 - ii) knowingly does an act referred to in subparagraph (i) on account of such an elector having voted, or refrained from voting, at an election or, having at an election, indicated the order of his preference as mentioned in that subparagraph;
 - (b) directly or indirectly, by himself or by any other person on his behalf -
 - i) gives or procures, or agrees to give or procure, offers or promises, or promises to procure or endeavour to procure, an office or employment to or for an elector or other person;
 - ii) retains or dismisses an elector or other person in or from an office or employment in order to induce the elector to vote or refrain from voting at an election or to induce him, at an election, to indicate the order of his preference as mentioned in paragraph (a)(i); or
 - iii) knowingly does an act referred to in subparagraph (i) on account of an elector having voted or refrained from voting at an election or having, at an election, indicated the order of his preference as mentioned in paragraph (u)(i);
 - (c) directly or indirectly, by himself or by any other person on his behalf, makes any gift, loan, agreement, offer, promise, or procurement of the kind referred to in paragraph (n)(i) to or for a person in order to induce the person to procure or endeavour to procure -
 - i) the return of a person as a member of the Assembly or the Council;
 - ii) the vote of an elector at an election;
 - iii) the candidature of a person at an election;
 - iv) the withdrawal of such a candidature; or
 - v) the opposition to a candidate at an election;
 - (d) on account of or in consequence of any gift, loan, agreement, offer, promise, or procurement of the kind referred to in paragraph (u)(i), procures or engages, promises, or endeavours to procure the return of a person as a member of the Assembly or the Council or the vote of any elector at an election;
 - (e) advances or pays, or causes to be advanced or paid, money to or for the use of a person with the intention of having the money or any part of it expended in bribery at an election;
 - (f) knowingly pays money, or causes money to be paid, to a person in discharge or repayment of money wholly or partially expended in bribery at an election;
 - (g) before, during, or after an election, directly or indirectly, by himself or by any other person on his behalf, receives money or any valuable consideration on account of a person -
 - i) having voted or refrained from voting; or
 - ii) having induced any other person to vote or refrain from voting, at the election; or
 - (h) before or during an election, directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for money or any valuable consideration, office, employment for himself or any other person for -
 - i) voting or agreeing to vote;
 - ii) refraining or agreeing to refrain from voting; or
 - iii) inducing any other person to vote or to refrain from voting, at an election,
- is guilty of the crime of electoral bribery and, subject to subsection (2), is liable to be punished on indictment under the Criminal Code.

- (2) Notwithstanding section 389 of the *Criminal Code*, a person convicted of a crime under subsection (1) is liable to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 2 years, or both.
- (3) The declaration by a candidate or by a person on behalf of a candidate of a policy or proposed policy or of a public action or proposed public action does not of itself constitute, or is to be regarded as being an ingredient of, the crime of electoral bribery.

Treating

section 207

- (1) A candidate at an election who corruptly, by himself or by or with any other person, at any time before or during the election, directly or indirectly -
 - (a) gives or provides;
 - (b) causes to be given or provided;
 - (c) is an accessory to the giving or providing; or
 - (d) pays or actively allows a person to pay on his behalf, wholly or in part, any expenses incurred for,

food, drink, entertainment, or hospitality to or for any person, in order to ensure or promote his election, or for the purpose of corruptly influencing that person or any other person to record or refrain from recording his vote at the election, or on account of that person having voted or refrained from voting at the election, is guilty of the crime of treating at an election, and, subject to subsection (4) and section 211, is liable to be punished on indictment under the *Criminal Code*.
- (2) Subject to subsection (3), a person who, being a candidate at an election, directly or indirectly, offers, promises, or gives to or for a club or an association or any other body, whether of the same kind as a club or an association or not, a gift, donation, or prize is guilty of the crime of treating at an election and, subject to subsection (4) and section 211, is liable to be punished on indictment under the *Criminal Code*.
- (3) In proceedings for a crime under subsection (2) in relation to a gift, donation, or prize offered, promised, or given to or for any purpose to a club or an association or any other body, whether of the same kind as a club or an association or not, it is a defence for the defendant to show that gifts, donations, or prizes similar in nature and in amount or value are regularly given by him to the club, association, or other body for a similar purpose.
- (4) Notwithstanding section 389 of the *Criminal Code*, a person convicted of a crime under subsection (1) or (2) is liable to a fine not exceeding 25 penalty units or to imprisonment for a term not exceeding 6 months, or both.

Electoral intimidation

section 208

- (1) A person who -
 - (a) directly or indirectly, by himself or by any other person on his behalf -
 - i) makes use of; or
 - ii) threatens to make use of,any force, violence, or restraint on or towards any other person;
 - (b) inflicts or threatens the infliction by himself, or by or through any other person, of any injury, damage, harm, or loss on or to any other person; or
 - (c) in any other manner, intimidates any other person,in order to induce or compel that other person to vote or refrain from voting at an election, or on account of that person having voted or refrained from voting at an election, is guilty of the crime of electoral intimidation and, subject to subsection (3), is liable to be punished on indictment under the *Criminal Code*.



- (2) A person who, by abduction, duress, or any fraud or deception -
 - (a) impedes, prevents, or otherwise interferes with the free exercise of the right to vote by an elector at an election; or
 - (b) compels, induces, or prevails on an elector either to record or refrain from recording his vote at an election,is guilty of the crime of electoral intimidation and, subject to subsection (3), is liable to be punished on indictment under the *Criminal Cede*.
- (3) Notwithstanding section 389 of the *Criminal Code*, a person convicted of a crime under subsection (1) or (2) is liable to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 5 years, or both.

Printing, &c., false information

section 209

- (1) A person who -
 - (a) prints, publishes, or distributes any “how to vote” card, electoral advertisement, notice, handbill, pamphlet, or card containing a representation of a ballot-paper or a representation apparently intended to represent a ballot-paper, and having on it any directions intended or likely to mislead or improperly interfere with an elector in or in relation to the recording of his vote; or
 - (b) prints, publishes, or distributes any “how to vote” card, electoral advertisement, notice, handbill, pamphlet, or card containing an untrue or incorrect statement intended or likely to mislead or improperly interfere with an elector in or in relation to the recording of his vote,is guilty of the crime of disseminating false electoral information and, subject to subsection (3) and section 211, is liable to be punished on indictment under the *Criminal Code*.
- (2) Subsection (1) does not prevent the printing, publishing, or distributing of any “how to vote” card, not otherwise illegal, which contains instructions on how to vote for any particular candidate or candidates, so long as those instructions are not intended or likely to mislead an elector in or in relation to the recording of his vote.
- (3) Notwithstanding section 389 of the *Criminal Code*, a person convicted of a crime under subsection (1) is liable to a fine not exceeding 25 penalty units or to imprisonment for a term not exceeding 6 months, or both.

Corrupt withdrawal of election application

section 210

- (1) If-
 - (a) a person -
 - i) makes an agreement or arrangement; or
 - ii) enters into an undertaking, in relation to the withdrawal under section 221 of an election application under section 214; and
 - (b) the agreement, arrangement, or undertaking is for the withdrawal of the election application in consideration of -
 - i) a payment;
 - ii) the seat that is in dispute being vacated; or
 - iii) the withdrawal of any other such election application,he is guilty of the crime of corrupt withdrawal of an election application and, subject to subsection (2), is liable to be punished on indictment under the *Criminal Code*.
- (2) Notwithstanding section 389 of the *Criminal Code*, a person convicted of a crime under subsection (1) is liable to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 12 months, or both.

Certain crimes under this Act triable summarily

section 211

- (1) Where a person is brought before justices on a complaint for a crime under -
 - (a) section 204;
 - (b) section 205;
 - (c) section 207;
 - (d) section 209; or
 - (e) any other section of this Act prescribed by the regulations for the purposes of this section,the justices, instead of asking him to plead under section 56A of the *Justices Act 2959*, may, in the prescribed form of words, or words to similar effect, ask the person whether he is willing to be tried by the justices instead of by a jury.
- (2) Subject to subsection (3), if a person to whom subsection (1) applies, or if he is under the age of 16 years, his parent or guardian, does not object to his being tried by the justices, the section creating the offence shall be deemed to have created a simple offence and the complaint shall be dealt with accordingly.
- (3) If, in a case to which subsection (1) applies, the complainant, before the defendant is asked whether he objects to being tried by the justices, shows to the justices that the defendant -
 - (a) is under committal to the Supreme Court for trial or sentence; or
 - (b) has been charged with an offence for which he may be so committed, the examination into which is pending or not concluded,and requests that the procedure provided by this section should not apply, the justices may proceed as if this section had not been enacted.

Prosecutions for offences involving corrupt or illegal practices

section 212

- (1) Whenever the Director of Public Prosecutions has reason to believe that a person may have engaged in a corrupt practice at an election, whether as a result of a finding under section 222 by the Supreme Court or otherwise, he shall, unless that person has received a certificate of indemnity under section 219(4)(a) with respect to that corrupt practice, consider the matter with a view to determining whether or not there is sufficient evidence to support a prosecution against that person in respect of the corrupt practice and, if there is such evidence, whether such a prosecution should be instituted.
- (2) Whenever the Chief Electoral Officer has reason to believe that a person may have committed an illegal practice, whether as a result of a finding under section 222 by the Supreme Court or otherwise, he shall, unless that person has received an indemnity under section 219(4)(a) with respect to that offence, consider the matter with a view to determining whether or not there is sufficient evidence to support a prosecution against that person in respect of the offence and, if there is such evidence, whether such a prosecution should be instituted.

Signing electoral papers

section 241

- (1) An electoral paper which, by this Act, is required to be signed by a person shall be signed by that person with his personal signature.
- (2) Where a person who is unable to sign his name in writing makes his mark as his signature to an electoral paper, the mark shall, for the purposes of this Act, be deemed to be his personal signature if it is identifiable as such and is made in the presence of a witness who signs the electoral paper as such.

- (3) Subsection (2) does not apply to an application under section 138(1) for a postal vote certificate and a postal ballot-paper or to a postal vote certificate referred to in section 145(l)(c).
- (4) Subject to subsection (3), nothing in this section authorizes a person to sign an electoral paper otherwise than by a mark or in his own handwriting in a case where this Act requires him to sign the electoral paper in his own handwriting.
- (5) A person shall not sign the name of any other person on an electoral paper or make in an electoral paper a statement which, to his knowledge, is false or misleading.
Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.
- (6) Nothing in this section affects the liability of a person to be proceeded against for forgery, but, if he is proceeded against for that crime, he is not liable to be punished more than once in respect of the same act.

Witnessing electoral papers

section 242

A person who -

- (a) signs his name as a witness on a blank electoral paper;
- (b) signs his 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;
- (c) signs his name as a witness on an electoral paper unless he has seen the person, whose signature he purports to witness, sign it; or
- (d) writes on an electoral paper as his own name -
 - i) the name of another person; or
 - ii) any name not being his own name,

is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 3 months, or both.

Printing, publishing, and distribution of electoral matter unlawful in certain cases

section 243

- (3) A person who prints, publishes, or distributes any matter to which this section applies containing any electoral matter, without -
 - (a) the name and address of the person on whose instructions the matter was printed; and
 - (b) the name of the printer and the address at which it was printed,
 being printed in legible characters on the paper, is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 3 months, or both.
- (2) In subsection (1), the expression “electoral matter” means any matter which is intended or likely to affect, or is capable of affecting, the result of an election or which is intended or likely to influence, or is capable of influencing, an elector in, or in relation to, the casting of his vote at an election, and, in particular, includes -
 - (a) the name of a candidate at an election;
 - (b) the name of the party (if any) of any such candidate;
 - (c) the name or address of the committee rooms of any such candidate or party;
 - (d) the photograph of any such candidate; and
 - (e) any drawing or printed matter which purports to depict any such candidate or to be a likeness or representation of any such candidate.

- (3) A person who publishes in a newspaper a report of a speech of a candidate at an election for the publication of which any sum of money or other consideration has been paid or promised by, or charged to, a person, is guilty of an offence and is liable on summary conviction to a fine not exceeding 5 penalty units, unless the word "Advertisement" is legibly printed at the head of the report or, if the report is printed in columns, at the head of each column.
- (4) If a person prints, publishes, or distributes a matter to which this section applies which contains the name of a candidate without the written consent of the candidate, that person is guilty of an offence and is liable on summary conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 12 months, or both.
- (5) In this section, the expression "matter to which this section applies" means any advertisement, "how to vote" card, handbill, pamphlet, poster, or notice.

Articles relating to forthcoming election to be signed

section 244

- (1) After the issue of the writ for an election and before the return of the writ to the Governor, an article commenting on any electoral matter printed and published in a publication to which this section applies shall be signed by the author or authors and shall state the true name and address of the author or, as the case may be, the true names and addresses of the authors -
 - (a) at the end of the article; or
 - (b) where part only of the article appears in an issue of the publication - at the end of that part.
- (2) A person who, being an author of an article referred to in subsection (1), fails to comply with that subsection is, subject to this section, guilty of an offence and is liable on summary conviction to a fine not exceeding 5 penalty units.
- (3) If an unsigned article commenting on an electoral matter is included in a newspaper or other periodical publication published after the issue of the writ for an election and before the return of the writ to the Governor, the editor and proprietor of the newspaper or other publication are, subject to this section, each guilty of an offence and are each liable on summary conviction to a fine not exceeding 5 penalty units.
- (4) This section does not require an article referred to in this section, which is printed and published in a newspaper or other periodical publication, to be signed by the author of the article, if the author is a person employed by the proprietor of the newspaper or other publication and informs the editor or proprietor of the newspaper or other publication that he objects on conscientious grounds to signing the article.
- (5) If, in any case to which subsection (4) relates, the article is signed by the editor or proprietor of the newspaper or other periodical publication, the provisions of this section with respect to the signing of articles shall be deemed to have been complied with.
- (6) This section does not apply to the publication in a newspaper or other periodical publication of-
 - (a) a leading article; or
 - (b) an article which consists solely of a report of a meeting and does not contain any comment on any electoral matter, other than comment made by a speaker at the meeting.
- (7) In this section -

"article" includes a report, a letter, and a commentary;

"electoral matter", in relation to an election, means -

 - (a) a matter relating to a candidate at the election;
 - (b) a matter relating to a political party involved directly or indirectly in the election; or
 - (c) a political issue that is before, or submitted to, the electors at the election;

"publication to which this section applies" means a newspaper, circular, pamphlet, or "dodger".

Offences relating to broadcasting, &c., of electoral matter

section 245

- (1)

After the issue of the writ for an election and before the return of the writ to the Governor, a person shall not -
(a) broadcast or televise; or
(b) permit to be broadcast or televised,
from any broadcasting station or television station any announcement commenting on any electoral matter unless that announcement includes the true name and address of the author, or, as the case may be, the true names and addresses of the authors, of the announcement.
Penalty: Fine not exceeding 5 penalty units.
- (2)

Where an announcement is broadcast or televised in contravention of subsection (1), the person who provided the announcement to the broadcasting station or television station concerned for broadcasting or televising is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$500, unless he proves that the true name and address of the author, or, as the case may be, the true names and addresses of the authors, were included in the announcement.
- (3)

This section does not apply to the inclusion in a summary of news of a report of a meeting which contains no comment, other than comment made by a speaker at the meeting, on an electoral matter.
- (4)

For the purposes of this section, an announcement shall be deemed to have been televised if it is transmitted from a television station in such a manner as to be capable of reception by a television receiver in the form of images or sound or in the form of images and associated sound.
- (5)

In this section -
“announcement” includes a statement and a commentary;
“broadcasting station” has the meaning assigned to that expression in the *Broadcasting and Television Act 1942* of the Commonwealth;
“electoral matter” has the meaning assigned to that expression in section 244(7);
“television receiver” and “television station” have the respective meanings assigned to those expressions in the *Broadcasting and Television Act 1942* of the Commonwealth.

Offences relating to acts on polling-day

section 246

- (1)

A person shall 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 matter to which this section applies containing any electoral matter; or
(b) 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 political party, or a matter or comment relating to a question arising from, or an issue of, the election campaign.
Penalty: Fine not exceeding 5 penalty units or imprisonment for a term not exceeding 3 months, or both.
- (2)

In this section -
“electoral matter” has the meaning assigned to that expression in section 244(7);
“matter to which this section applies” means any advertisement, “how to vote” card, handbill, pamphlet, poster, or notice.

Person not to incur electoral expense without authority**section 247**

A person who incurs or authorizes an electoral expense on behalf of a candidate without the candidate's written authority is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

Disqualification from being elected, & c.**section 250**

- (1) Any candidate or other person who is convicted of a corrupt practice or who is found by the Supreme Court under Part VIII of having engaged in a corrupt practice shall, for a period of 4 years from and including the date of the conviction or finding be incapable -
 - (a) of being elected to, and sitting as a member of, either the Assembly or the Council; and
 - (b) of being enrolled as an elector or of voting at any election under this Act.
- (2) Where the return of a person who was a candidate at an election is void by virtue of the operation of section 222(2) and the Supreme Court makes a determination under section 222(4) declaring the election to have been void, that person is not qualified to be a candidate at an election that is subsequently held in consequence of the first-mentioned election having been declared void.

TASMANIAN ELECTORAL OFFICE

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Divisional Returning Officers of the Australian Electoral Commission are appointed as Returning Officers for Tasmanian House of Assembly Elections. Their contact details are as follows:

Division of Bass - Returning Officer

Address: Ground floor, 87 George Street, Launceston
Postal Address: PO box 712 Launceston 7250
Phone 003 34 2200 Fax 003 34 2725

Division of Braddon - Returning Officer

Address: 49 Cattley Street, Burnie
Postal Address: PO Box 468 Burnie 7320
Phone 004 316188 Fax 004 312457

Division of Denison - Returning Officer

Address: Ground floor, AMP Building, 86 Collins Street, Hobart
Postal Address: PO Box 1335 Hobart 7001
Phone 002 35 0552 Fax 002 35 0570

Division of Franklin - Returning Officer

Address: Ground floor, AMP Building, 86 Collins Street, Hobart
Postal Address: PO Box 1335 Hobart 7001
Phone 002 35 0562 Fax 002 35 0570

Division of Lyons - Returning Officer

Address: Ground Floor 87, George Street, Launceston
Postal Address: PO Box 123 Launceston 7250
Phone 003 34 2600 Fax 003 34 2725

All electoral forms, including those mentioned in this booklet, can be obtained from the Returning Officers or the Tasmanian Electoral Office.