



Australian Capital Territory

Electoral Legislation Amendment Act 2008

A2008-13

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Australian Capital Territory

Electoral Legislation Amendment Act 2008

A2008-13

An Act to amend the *Electoral Act 1992* and the *Referendum (Machinery Provisions) Act 1994*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Electoral Legislation Amendment Act 2008*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

This Act amends the *Electoral Act 1992*.

Note This Act also amends the following legislation:

- *Electoral Regulation 1993* (see sch 2)
- *Referendum (Machinery Provisions) Act 1994* (see sch 3).

**4 Offences against Act—application of Criminal Code etc
Section 3A, note 1, new dot points**

insert

- s 292 (Dissemination of unauthorised electoral matter)
- s 296 (Advertorials)
- s 315A (Ballot papers—photographs)

**5 Meaning of *electoral matter*
New section 4 (3)**

insert

- (3) However, a publication of the Assembly (including a committee of the Assembly) is not *electoral matter*.

**6 Investigation of objections
Section 49 (2) (a)**

omit

; and

substitute

; or

**7 Entitlement
New section 72 (1A)**

insert

- (1A) A person is also entitled to be enrolled for an electorate if—
- (a) the person is not entitled to be enrolled on the Commonwealth roll only because the person is serving a sentence of imprisonment; and
 - (b) the person's address is in the electorate.

**8 Enrolment etc
Section 76 (3) and (4)**

substitute

- (3) A claim must be—
- (a) signed as required for an enrolment claim under the Commonwealth Electoral Act; and
 - (b) given to the commissioner.
- Note 1* If a form is approved under s 340A for a claim, the form must be used.
- Note 2* For how documents may be given, see the Legislation Act, pt 19.5.
- (4) The identity of the claimant must be verified in the same way as the identity of a claimant for an enrolment under the Commonwealth Electoral Act must be verified.

9 Section 87

substitute

87 Definitions—pt 7

In this part:

address of a person who is, or is nominated to be, the registered officer of a political party means—

- (a) the person's home address; or
- (b) the person's business address (other than a post office box); or
- (c) an address of the party (other than a post office box).

related—2 political parties are taken to be **related** if—

- (a) one is a part of the other; or
- (b) both are parts of the same political party.

**10 Application for registration of political party
New section 89 (1) (g) and (1A)**

insert

- (g) if the party's name, or any abbreviation of the party's name that the party intends to use for this Act, includes the name of a particular living person—be accompanied by a written notice, signed by the person, that—
 - (i) states an address for the person or indicates that the person's address is suppressed; and
 - (ii) states that the person consents to the use of the person's name in the party's name or abbreviation.

- (1A) However, a notice is not required under subsection (1) (g) if the use of the person's name in the party's name or abbreviation does not suggest that there is a connection between the party and the person.

Example

a name that suggests the party is opposed to the named person

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**11 Notification and publication of applications
Section 91 (2) (b)**

substitute

- (b) state that a copy of each of the following is available for public inspection at the commissioner's office:
- (i) the application;
 - (ii) the party's constitution;
 - (iii) if the application was accompanied by a notice under section 89 (1) (g)—the notice; and

12 Section 91 (5)

substitute

- (5) The commissioner must make a copy of each of the following available for public inspection at the commissioner's office:
- (a) the application;
 - (b) the party's constitution;
 - (c) if the application was accompanied by a notice under section 89 (1) (g)—the notice.

**13 Refusal of applications for registration
New section 93 (1) (d)**

insert

- (d) the party's name, or any abbreviation of the party's name that the party intends to use for this Act, includes the name of a particular living person and the application is not accompanied by the notice (if required) under section 89 (1) (g).

14 Section 93 (2) (h)

omit

**15 Grouping of candidates' names
Section 115 (2) and (3)**

omit

**16 Approval of computer program for electronic voting and
vote counting
Section 118A (1) and (2)**

substitute

- (1) The commissioner may approve 1 or more computer programs for any of the following:
- (a) to allow electronic voting in an election;
 - (b) to perform steps in the scrutiny of votes in an election.
- (2) The commissioner may approve a program under subsection (1) (a) only if the program will—
- (a) allow an elector to show consecutive preferences starting at '1'; and
 - (b) give an elector an opportunity to correct any mistakes before processing the elector's vote; and

- (c) allow an elector to make an informal vote showing no preference for any candidate; and
 - (d) not allow a person to find out how a particular elector cast his or her vote.
- (2A) The commissioner may approve a program under subsection (1) (b) only if—
- (a) the proper use of the program would give the same result in the scrutiny of votes in an election as would be obtained if the scrutiny were conducted without using the program; and
 - (b) the program—
 - (i) will not allow a person to find out how a particular elector cast his or her vote; and
 - (ii) is designed to pause while the commissioner makes a determination by lot required by schedule 4; and
 - (iii) can produce indicative distributions of preferences at any time after the close of the poll and before the declaration of the poll.

17 **Definitions for div 10.4**
Section 136 (1), definition of *eligible elector*

omit

18 **Applications for postal voting papers**
Section 136A (1) and (2)

substitute

- (1) In this section:
- eligible elector***, for an election, means an elector who is entitled to vote at the election and—
- (a) who expects to be unable to attend—

- (i) at a polling place on polling day; or
 - (ii) at a place where a vote may be made before an officer under section 136B before polling day; or
- (b) whose address is a suppressed address.
- (2) An eligible elector for an election (or a person authorised by the eligible elector) may apply to an authorised officer for declaration voting papers for postal voting (*postal voting papers*) for the election.
 - (2A) The application may be made orally or in writing.
 - (2B) The application must include a declaration that the applicant is an eligible elector for the election.
 - (2C) The application must be received by an authorised officer before 8 pm on the day before polling day.

19 Section 136A (3)

omit

from a person claiming to be an eligible voter

substitute

from, or on behalf of, a person claiming to be an eligible elector

**20 Ordinary or declaration voting in ACT before polling day
Section 136B (1)**

substitute

- (1) In this section:

eligible elector, for an election, means an elector who is entitled to vote at the election and—

- (a) who expects to be unable to attend at a polling place on polling day; or

- (b) whose address is a suppressed address.

relevant period means the period—

- (a) beginning on the 3rd Monday before polling day or, if that Monday is a public holiday in the ACT, the next business day; and
- (b) ending at 8 pm on the day before polling day.

21 Section 136B (5)

substitute

- (5) If this section applies, the officer must issue a ballot paper for the relevant electorate to the person if satisfied that the certified list of electors for the electorate—
 - (a) states the person's name; and
 - (b) states an address for the person or indicates that the person's address is suppressed; and
 - (c) has not been marked so as to indicate that a ballot paper has already been issued to the person.

22 Section 136B (7)

omit

a claimant

substitute

the person

23 Section 136B (8) (b)

omit

elector

substitute

person

24 Section 136B (17)

omit

elector

substitute

person

25 Section 136B (19)

substitute

(19) If an authorised officer issues declaration voting papers to the person, the officer must—

- (a) give the person a written statement indicating the consequences of casting a declaration vote under this section; and
- (b) record the person's name.

Note If a form is approved under s 340A for a statement, the form must be used.

26 Section 136B (20) (b)

omit

elector

substitute

person

**27 Declaration voting outside ACT on or before polling day
Section 136C (1)**

substitute

(1) In this section:

eligible elector, for an election, means an elector who is entitled to vote at the election and—

- (a) who expects to be unable to attend at a polling place on polling day; or
- (b) whose address is a suppressed address.

relevant period means the period—

- (a) beginning on the 3rd Monday before polling day or, if that Monday is a public holiday in the ACT, the next business day; and
- (b) ending at 6 pm in the ACT on polling day.

28 Section 136C (5) and (7)

omit

elector

substitute

person

29 Section 136C (7) (a) and (b)

omit

claimant

substitute

person

30 Section 136C (8) (b)

omit

elector

substitute

person

**31 Soliciting applications for postal declaration votes
New section 143 (1A)**

before subsection (1), insert

(1A) A person commits an offence if the person—

- (a) applies for declaration voting papers for postal voting for an election for someone else; and
- (b) does not have the other person's consent to make the application.

Maximum penalty: 30 penalty units.

32 Section 143 (3)

omit

**33 Notice of casual vacancy
New section 191 (2) (c)**

insert

- (c) state the time and place for a recount, if required under section 194, of the ballot papers counted for the former MLA at the last election at which he or she was elected.

**34 Determination of candidate to fill vacancy
Section 194 (2)**

substitute

- (2) If there is more than 1 candidate in relation to a casual vacancy, the commissioner must, after making a declaration under section 193 (1) (a), conduct the recount in accordance with schedule 4, part 4.3.
- (2A) The recount must be conducted, as far as practicable, at the time and place stated for the recount in the notice under section 191 (2).

35 Section 198, definition of *gift*, paragraph (d)

omit

or non-party group

36 Section 198, definition of *non-party group*

omit

**37 Disclosure periods
Section 201 (2), definition of *disclosure day*,
paragraphs (d) and (e)**

omit

**38 Appointed agents
Section 203 (1)**

omit

non-party group,

39 Section 203 (2) (b) (ii)

omit

**40 Non-appointed agents
Section 204 (3)**

omit

**41 Registers of reporting agents
Section 205 (1)**

omit

agents

insert

reporting agents

42 Section 205 (2)

omit

non-party group and

43 Section 206

substitute

206 Who eligible votes are cast for

For this division, an eligible vote cast for a party candidate is taken to be cast for the party and not for the candidate.

**44 Entitlement to funds
Section 207 (2)**

omit

, non-party group

**45 Making of payments
Section 212 (2)**

omit

46 Section 212 (3)

omit

and was not a member of a non-party group

**47 Death of candidate
Section 214 (2)**

substitute

- (2) If a candidate mentioned in subsection (1) was not endorsed by a party for the election, the payment may be made to the legal personal representative of the candidate.

**48 Disclosure of gifts
Section 217 (3)**

omit

\$1 500

substitute

\$1 000

**49 Disclosure of gifts—non-party groups
Section 218**

omit

**50 Certain loans not to be received
Section 218A (1)**

omit

non-party group,

51 Section 218A (1)

omit

\$1 500

substitute

\$1 000

52 Section 218A (5)

omit

53 Section 218A (7), definition of *relevant person*, paragraph (b)

omit

54 Section 218A (7), definition of *relevant person*, paragraphs (c), (d) and (e)

omit

gift

substitute

loan

**55 Nil returns
Section 219**

omit

or 218

56 Section 221 heading

substitute

221 Disclosure of gifts made to candidates

57 Section 221 (1)

omit

\$1 500

substitute

\$1 000

58 Section 221 (1)

omit

non-party group or

59 Section 221A (1)

omit

\$1 500

substitute

\$1 000

60 Section 221A (2) (b)

omit

\$1 500

substitute

\$1 000

61 Section 221A (6), definition of *gift*, paragraph (b)

omit

member of a non-party group,

**62 Advice about obligations to make returns
Section 221B (1)**

omit

or MLA

substitute

, MLA or associated entity

63 Section 221B (1)

omit

\$1 500

substitute

\$1 000

**64 Anonymous gifts
Section 222 (1)**

omit

non-party group,

65 Section 222 (2) (b)

omit

non-party group or

66 Section 222 (3)

omit

non-party group,

67 Section 222 (6)

omit

68 Section 222 (7), definition of *prescribed amount*

omit

, candidate or non-party group

substitute

or candidate

69 Section 222 (7), definition of *prescribed amount*

omit

\$1 500

substitute

\$1 000

70 Section 222 (7), definition of *relevant person*, paragraph (b)

omit

**71 Definitions for div 14.5
Section 223, definition of *electoral expenditure*, paragraph (b)**

omit

newspaper or periodical

substitute

news publication

72 Section 223, definition of *electoral expenditure*, paragraph (e)

omit

printed

73 Section 223, definition of *participant*, paragraph (a)

omit

, non-party group

74 Section 224 (2)

omit

75 Section 224 (4)

omit

non-party group,

76 Section 224 (5)

omit

\$1 500

substitute

\$1 000

**77 Nil returns
Section 225 (2)**

omit

**78 Returns by broadcasters and publishers
Section 226 (1) (b), (2) (a) and (3) (b)**

omit

newspaper or periodical

substitute

news publication

79 **Meaning of *defined particulars* for div 14.6**
Section 228, definition of *defined particulars*

after

sum

insert

or amount

80 **Annual returns by parties and MLAs**
Section 230 (6) (b)

omit

newspaper or periodical

substitute

news publication

81 **Section 230 (6) (e)**

substitute

(e) producing any electoral matter to which section 292
(Dissemination of unauthorised electoral matter) applies;

82 **New section 230 (6A)**

insert

(6A) However, subsection (4) (b) or (c) does not require disclosure of any amount paid, or to be paid, by or on behalf of an MLA using funds provided by the Legislative Assembly to assist the MLA in exercising his or her functions as an MLA.

83 **Returns by parties under Commonwealth Electoral Act**
Section 231A

omit

**84 Annual returns by associated entities
Section 231B (2) (a)**

omit

section 232 (1)

substitute

section 232 (3)

**85 Returns by associated entities under Commonwealth
Electoral Act
Section 231C**

omit

86 Section 232

substitute

232 Amounts received

- (1) If the sum of all amounts received by, or on behalf of, a party or MLA from a particular person or organisation during a financial year is \$1 000 or more, the return by the party or MLA under section 230 (Annual returns by parties and MLAs) must state—
 - (a) the amount of the sum; and
 - (b) the defined particulars.
- (2) In working out the sum for subsection (1), an amount received of less than \$1 000 need not be counted.
- (3) If an associated entity receives 1 or more amounts from a particular person or organisation during a financial year, the return by the entity under section 231B (Annual returns by associated entities) must state—
 - (a) the sum of the amounts; and

- (b) the defined particulars.
- (4) Subsection (3) does not apply to any of the following amounts:
- (a) for an associated entity licensed under the *Liquor Act 1975*—an amount received that—
 - (i) is for the supply of liquor or food in accordance with the licence; and
 - (ii) is not more than reasonable consideration for the supply;
 - (b) for an associated entity licensed under the *Gaming Machine Act 2004*—an amount received for the playing of gaming machines in accordance with the licence;
 - (c) an amount prescribed by regulation.
- (5) For subsections (1) and (3), if the sum or amount was received as a loan, the return must state the information required by section 218A (2) (Certain loans not to be received).

**87 Outstanding amounts
Section 234**

omit

\$1 500

substitute

\$1 000

**88 Offences
Section 236 (3)**

omit

**89 Noncompliance with pt 14
Section 241 (2) (b)**

omit

90 **Definitions for div 17.3**
Section 291, definition of *address*

omit

91 **Section 291, definition of *reportage or commentary***

omit

newspaper or periodical

substitute

news publication

92 **Sections 292 to 296**

substitute

292 **Dissemination of unauthorised electoral matter**

- (1) A person commits an offence if—
- (a) the person disseminates electoral matter; and
 - (b) the matter does not include—
 - (i) the name of the person who authorised the matter or its author; and
 - (ii) a statement to the effect that the named person authorised, or is the author of, the matter; and
 - (iii) if the matter is published for a registered party, a candidate for election or a person who has publicly indicated that he or she intends to be a candidate for election—a statement to the effect that the matter is published for the party, candidate or person.

Maximum penalty: 10 penalty units.

- (2) In this section:

statement means a statement in a form in which the matter is disseminated.

Example

Electoral matter disseminated in sound and video form could state the authoriser's name in sound or on-screen printed form.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

293 Exceptions for news publications

- (1) Section 292 does not apply to the dissemination of electoral matter contained in reportage or commentary in a particular news publication if the publication includes a statement to the effect that a person named in the statement has authorised publication of all electoral matter contained in reportage or commentary in the publication.
- (2) Section 292 does not apply to the dissemination of electoral matter contained in a letter to the editor in a particular news publication if—
- (a) the author's name and the place where the author lives are stated at the end of the letter; and
 - (b) the publication includes a statement to the effect that a person named in the statement has authorised publication of all electoral matter contained in letters to the editor in the publication.
- (3) For subsection (2) (a), it is sufficient to identify where the author lives by reference to—
- (a) the suburb or town of, or nearest to, the author's residence; and
 - (b) if the residence is outside the ACT—the State, other Territory or other country of the residence.

- (4) In this section:

letter to the editor includes electronic commentary of a similar kind.

294 Exceptions for dissemination of electoral matter on certain items

- (1) Section 292 does not apply to the dissemination of electoral matter on any of the following items unless the item includes a representation of a ballot paper:
- (a) a letter from an MLA that includes the name of the MLA and an indication that he or she is an MLA;
 - (b) a press release published by or for an MLA that includes the name of the MLA and an indication that he or she is an MLA;
 - (c) a report under the *Annual Reports (Government Agencies) Act 2004*;
 - (d) a publication of a government agency that includes—
 - (i) the name of the agency; and
 - (ii) the City of Canberra Arms; and
 - (iii) the words ‘Australian Capital Territory’, ‘Australian Capital Territory Legislative Assembly’, ‘ACT Legislative Assembly’, ‘Australian Capital Territory Government’ or ‘ACT Government’;
 - (e) a business or visiting card that promotes the candidacy of a person in an election;
 - (f) a letter or card on which the name of the sender appears;
 - (g) a T-shirt;
 - (h) a badge or button;
 - (i) a pen or pencil;
 - (j) a balloon;

(k) an item prescribed by regulation.

(2) In this section:

City of Canberra Arms—see the *City of Canberra Arms Act 1932*, section 4.

government agency means—

- (a) an administrative unit; or
- (b) a Territory instrumentality; or
- (c) a statutory office-holder and the staff assisting the statutory office-holder.

295 Exception for certain Commonwealth licence holders

Section 292 does not apply to the dissemination of electoral matter on radio or television by the holder of a licence under the *Broadcasting Services Act 1992* (Cwlth) that is subject to a condition relating to election advertisements.

296 Advertorials

- (1) This section applies to an advertisement in a news publication that—
 - (a) appears to be reportage or commentary; and
 - (b) includes electoral matter.
- (2) The proprietor of the news publication must ensure that the word ‘advertisement’ is included, in legible form, as a headline to the advertisement on each page on which the advertisement appears.

Maximum penalty: 10 penalty units.

**93 Evidence of authorisation of electoral matter
Section 306 (b)**

omit

newspaper or periodical

substitute

news publication

94 New section 315A

in division 17.6, insert

315A Ballot papers—photographs

- (1) A person commits an offence if—
- (a) the person takes a photograph of a ballot paper used by the person for voting in an election; and
 - (b) the photograph shows, or would be likely to show, how the person voted in the election.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if—
- (a) the person takes a photograph of a ballot paper used by another person (the *elector*) for voting in an election; and
 - (b) the photograph shows, or would be likely to show, how the elector voted in the election; and
 - (c) either—
 - (i) the person knows the identity of the elector; or
 - (ii) it would be possible for the person or someone else to find out the identity of the elector.

Maximum penalty: 10 penalty units.

- (3) In this section:
photograph includes a video recording.

95 **New part 30**

insert

Part 30 **Transitional—Electoral
Legislation Amendment Act 2008**

500 **Transitional—disclosure by candidates**

- (1) This section applies to a return under section 217 (Disclosure of gifts) if the *Electoral Legislation Amendment Act 2008* commences in the disclosure period to which the return relates.
- (2) The candidate's reporting agent is required to state the matters mentioned in section 217 (2) (c) to (e) for a gift by a person received in the disclosure period if—
- (a) the total of all gifts made to the candidate by the person before 1 July 2008 is \$1 500 or more; or
- (b) the person made a gift to the candidate on or after 1 July 2008 and the total of all gifts made to the candidate by the person in the disclosure period is \$1 000 or more.

500A **Transitional—disclosure by donors**

- (1) This section applies to a return under section 221 (Disclosure of gifts made to candidates) if the *Electoral Legislation Amendment Act 2008* commences in the disclosure period to which the return relates.

- (2) A person is required to give a return under that section in relation to gifts to a candidate or body in the disclosure period if—
 - (a) the total of all gifts made to the candidate or body by the person before 1 July 2008 is \$1 500 or more; or
 - (b) the person made a gift to the candidate or body on or after 1 July 2008 and the total of all gifts made to the candidate or body by the person in the disclosure period is \$1 000 or more.

500B Transitional—certain other disclosure thresholds

- (1) This section applies to amendments of provisions mentioned in subsections (2) to (5) made by the *Electoral Legislation Amendment Act 2008*, that change the amount of \$1 500 to the amount of \$1 000.
- (2) The amendment of section 218A (Certain loans not to be received) applies in relation to loans received on or after 1 July 2008.
- (3) The amendments of section 221A (1) and (2) (Annual returns of donations) applies in relation to gifts made on or after 1 July 2008.
- (4) The amendment of section 221B (1) (Advice about obligations to make returns) applies in relation to gifts received on or after 1 July 2008.
- (5) The amendment of section 222 (7) (Anonymous gifts) applies in relation to gifts accepted on or after 1 July 2008.

500C Transitional—annual returns by parties, MLAs and associated entities

- (1) This section applies to a return under—
 - (a) section 230 (Annual returns by parties and MLAs); or
 - (b) section 231B (Annual returns by associated entities).

-
- (2) The amendments made by the *Electoral Legislation Amendment Act 2008* in relation to the returns apply to a return for—
- (a) the 2008-09 financial year; and
 - (b) later financial years.

501 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Electoral Legislation Amendment Act 2008*.
- (2) A regulation may modify this part to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.

502 Expiry—pt 30

This part expires 2 years after the day it commences.

**96 Preliminary scrutiny of declaration voting papers
Schedule 3, clause 4**

substitute

An officer must produce at the centre each set of declaration voting papers that has not been dealt with at an earlier preliminary scrutiny.

**97 Exclusion of candidates
Schedule 4, clause 8 (2) (a) and (b)**

omit

all

98 Dictionary, definition of *address*

substitute

address—

- (a) of a person, for this Act generally—means the person's principal place of residence (including a place of residence from which a person who is an elector is temporarily absent and to which the person intends to return to live in); and
- (b) of a person who is, or is nominated to be, the registered officer of a political party, for part 7 (Registration of political parties)—see section 87.

99 Dictionary, definition of *eligible elector*

omit

100 Dictionary, definition of *group*

omit

section 115 (1) or (2), whichever is applicable.

substitute

section 115 (Grouping of candidates' names).

101 Dictionary, new definition of *news publication*

insert

news publication means a newspaper or periodical and includes an electronic publication of a similar kind.

102 Dictionary, definition of *non-party group*

omit

103 Dictionary, definition of *related*

omit

see section 87 (Meaning of *related* political parties)

substitute

see section 87 (Definitions—pt 7)

Schedule 1 Electoral Act 1992—technical amendments

(see s 3)

[1.1] Section 341 (2)

substitute

- (2) A regulation may create offences and fix maximum penalties of not more than 10 penalty units for the offences.

Explanatory note

This amendment brings language into line with current drafting practice.

[1.2] Schedule 4, clause 1 (1), definition of *count votes*

substitute

count votes—see clause 1A.

Explanatory note

This amendment is consequential on the relocation of the definition to new clause 1A by another amendment.

[1.3] Schedule 4, clause 1 (1), definition of *quota*

substitute

quota—

- (a) for this schedule generally—see clause 1B; and
(b) for part 4.3 (Casual vacancies)—see clause 12.

Explanatory note

This amendment is consequential on the relocation of the existing definition to new clause 1B by another amendment. This amendment also includes a signpost reference to the definition of the term for part 4.3 of schedule 4 in accordance with current drafting practice.

[1.4] Schedule 4, clause 1 (1), definition of *transfer value*

substitute

transfer value—

- (a) for this schedule generally—see clause 1C; and
- (b) for part 4.3 (Casual vacancies)—see clause 13.

Explanatory note

This amendment is consequential on the relocation of the existing definition to new clause 1C by another amendment. This amendment also includes a signpost reference to the definition of the term for part 4.3 of schedule 4 in accordance with current drafting practice.

[1.5] Schedule 4, clause 1 (2)

omit

Explanatory note

This amendment is consequential on the relocation of the definition of *transfer value* to new clause 1C by another amendment.

[1.6] Schedule 4, new clauses 1A to 1C

insert

1A Meaning of *count votes*—sch 4

- (1) For this schedule, *count votes*, in relation to a candidate, means the number of votes worked out as follows:

$$BP \times TV$$

- (2) However, any fraction is to be disregarded.
- (3) In this clause:

BP means the number of ballot papers to be dealt with at a count that record the next available preference for the candidate.

TV means the transfer value of those ballot papers.

1B Meaning of *quota*—sch 4

- (1) For this schedule, *quota* means the quota of an electorate for an election worked out as follows:

$$\frac{BP}{N+1} + 1$$

Note *Quota*, for pt 4.3 (Casual vacancies)—see cl 12.

- (2) However, any fraction is to be disregarded.
- (3) In this clause:

BP means the number of ballot papers for the election.

N means the number of positions to be filled at the election.

1C Meaning of *transfer value*—sch 4

- (1) For this schedule, the *transfer value* of a ballot paper is the transfer value worked out under this clause.

Note *Transfer value*, for pt 4.3 (Casual vacancies)—see cl 13.

- (2) For the allotment of votes from the surplus of a successful candidate, the *transfer value* of a ballot paper that specifies a next available preference is worked out as follows:

$$\frac{S}{CP}$$

- (3) For the allotment of votes under clause 9 (2) (c) (Votes of excluded candidates), the *transfer value* is—
- (a) for a ballot paper in relation to which votes were allotted to the excluded candidate under clause 3 (First preferences)—1; or
- (b) for a ballot paper in relation to which count votes were allotted to the excluded candidate under clause 6 (3) (Surplus votes) or clause 9 (2) (c) (Votes of excluded candidates)—the transfer value of the ballot paper when counted for that allotment.

(4) However, if the transfer value of a ballot paper worked out in accordance with subclause (2) would be greater than the transfer value of the ballot paper when counted for the successful candidate, the *transfer value* of that ballot paper is the transfer value of the ballot paper when counted for the successful candidate.

(5) In this clause:

CP means the number of ballot papers counted for the candidate at the count at which the candidate became successful and that specify a next available preference.

S means the surplus.

Explanatory note

This amendment updates the definitions by bringing them into line with current drafting practice.

[1.7] Schedule 4, part 4.4

substitute

Part 4.4 Deceased successful candidates

18 Application—pt 4.4

This part applies if a successful candidate dies on or after polling day but before the declaration of the result of the election.

19 Ballot papers for deceased successful candidate

- (1) The ballot papers counted for a deceased candidate must be dealt with in accordance with schedule 4, part 4.3 (Casual vacancies) as if they had been counted for a former MLA.
- (2) If 2 or more of the successful candidates die on or after polling day but before the declaration of the result of the election, the ballot papers counted for each deceased candidate must be dealt with in the order in which the candidates died.

Amendment [1.8]

- (3) If 2 or more of the successful candidates died at the same time, the commissioner must determine by lot the order in which the ballot papers for the deceased candidates are to be dealt with.
- (4) In applying schedule 4, part 4.3 for the purposes of this part:
continuing candidate means a candidate other than—
- (a) a successful candidate; or
 - (b) a candidate who died before the recount for this part began; or
 - (c) a candidate who is excluded for clause 15 (Recount—continuation).

Explanatory note

This amendment remakes the part to correct the operation of a definition and bring it into line with current drafting practice.

[1.8] Dictionary, note 2, new dot point

insert

- AAT

Explanatory note

This amendment inserts an additional term into the dictionary note.

[1.9] Dictionary, definition of AAT

omit

Explanatory note

This amendment omits an unnecessary definition. The term *AAT* is defined in the Legislation Act, dictionary, part 1.

[1.10] Dictionary, definition of *ballot paper*

substitute

ballot paper—

- (a) includes an electronic ballot paper; and
- (b) if a regulation is in force under section 114 (7) (Ballot papers)—means a ballot paper in the form prescribed by regulation; and
- (c) for schedule 4 (Ascertaining result of poll)—see schedule 4, clause 1.

Note A ballot paper is required to be in the form set out in sch 1 (see s 114 (1)).

Explanatory note

This amendment adds the signpost reference in paragraph (c) in accordance with current drafting practice.

[1.11] Dictionary, new definitions

insert

column, for schedule 2 (Ballot papers—printing of names and collation)—see schedule 2, clause 1.

continuing candidate—

- (a) for schedule 4 (Ascertaining result of poll) generally—see schedule 4, clause 1; and
- (b) for schedule 4, part 4.3 (Casual vacancies)—see schedule 4, clause 11 (2).

count, for schedule 4 (Ascertaining result of poll)—see schedule 4, clause 1.

count votes, for schedule 4 (Ascertaining result of poll)—see schedule 4, clause 1A.

envelope, for schedule 3 (Preliminary scrutiny of declaration voting papers)—see schedule 3, clause 1.

excluded candidate, for schedule 4 (Ascertaining result of poll)—see schedule 4, clause 1.

next available preference, for schedule 4 (Ascertaining result of poll)—see schedule 4, clause 1.

quota—

- (a) for schedule 4 (Ascertaining result of poll) generally—see schedule 4, clause 1B; and
- (b) for schedule 4, part 4.3 (Casual vacancies)—see schedule 4, clause 12.

reporting agent, for part 14 (Election funding and financial disclosure)—see section 198.

successful candidate, for schedule 4 (Ascertaining result of poll)—see schedule 4, clause 1.

surplus, for schedule 4 (Ascertaining result of poll)—see schedule 4, clause 1.

total votes, for schedule 4 (Ascertaining result of poll)—see schedule 4, clause 1.

transfer value—

- (a) for schedule 4 (Ascertaining result of poll) generally—see schedule 4, clause 1C; and
- (b) for schedule 4, part 4.3 (Casual vacancies)—see schedule 4, clause 13.

Explanatory note

This amendment inserts signpost definitions for terms defined for parts and schedules in accordance with current drafting practice.

Schedule 2 Amendments of Electoral Regulation 1993

(see s 3)

[2.1] Sections 2, 3 and 6

omit

[2.2] Dictionary

omit

Schedule 3 **Amendments of Referendum
(Machinery Provisions)
Act 1994**

(see s 3)

[3.1] **Schedule 1, modifications 1.11 and 1.12**

omit

[3.2] **Schedule 1, modification 1.22**

omit

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 23 August 2007.

2 Notification

Notified under the Legislation Act on 20 May 2008.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Electoral Legislation Amendment Bill 2008, which originated in the Legislative Assembly as the Electoral Legislation Amendment Bill 2007 and was passed by the Assembly on 9 May 2008 a.m.

Clerk of the Legislative Assembly

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