

## CHAPTER 4

### ELECTORAL ACT 1998

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[20<sup>TH</sup> April 1998]

AN ACT TO ENABLE PROVISION TO BE MADE FOR THE REGISTRATION OF VOTERS  
AND ELECTION OF MEMBERS OF THE HOUSE OF REPRESENTATIVES

~~[ENACTED by the Parliament of Fiji]~~

(Act No.18 of 1998)

Part I—PRELIMINARY

*Short title and commencement*

1.—(1) This Act may be cited as the Electoral Act 1998.

~~(2) This Act commences on a date appointed by the Minister and published in the~~  
*Gazette.*

*Interpretation*

2.—(1) In this Act, unless the contrary intention appears—

"approved form" means a form approved by the Commission or by the Supervisor;

"candidate" means a person who is nominated as a candidate for election as a  
member of the House of Representatives;

"clerk" means a person appointed under section 66(5) or section 108(1)(a) as the  
case may be;

"Commission" means the Electoral Commission continued in existence by section 78  
of the Constitution;

"communal electoral roll" means the Fijian electoral roll, the Indian electoral roll,  
the Rotuman electoral roll or the general electoral roll;

"communal seat" and "open seat" have the same meaning as in section 52(4) of the  
Constitution;

"constituency" means a constituency for the election of a member as determined by  
the Constituency Boundaries Commission under section 52 or 53 of the  
Constitution;

"Constituency Boundaries Commission" means the Constituency Boundaries  
Commission continued in existence by section 75 of the Constitution;



"counting centre" means a place appointed for the counting of votes in an election under section 110(2);

"counting day" means a day appointed for the counting of votes in an election under section 110(2);

"Court" means the High Court acting as the Court of Disputed Returns under section 73 of the Constitution;

"election" means an election of a member of the House of Representatives either to a communal seat or to an open seat;

"election officer" means the Supervisor, the Deputy Supervisor, the Assistant Supervisor, a registration officer, a registration clerk, a returning officer, a presiding officer, a postal ballot officer, an enumerator or any other clerk or person who is appointed to assist an election officer;

"electoral matter" means matter that is intended or likely to affect voting in an election;

"electoral roll" in respect of a constituency, means the electoral roll for that constituency created by the Supervisor under Part 4 and includes the main electoral roll and every supplementary electoral roll for the constituency;

"enrolled" in respect of a person who is a registered voter, means the person's name has been placed on an electoral roll pursuant to section 21(1);

"enumerator" means a person who conducts visits to homes in a constituency under section 29;

"Fijian electoral roll" means the electoral roll referred to in section 51(1)(a)(i) of the Constitution;

"general election" means a general election of the members of the House of Representatives;

"general electoral roll" means the electoral roll referred to in section 51(1)(a)(iv) of the Constitution;

"habitation index" means an index compiled under section 37;

"illiterate or incapacitated voters list" means the list compiled under section 78(2);

"Indian electoral roll" means the electoral roll referred to in section 51(1)(a)(ii) of the Constitution;

"issuing point" in relation to a polling station, means a place in the polling station at which ballot papers are issued to persons voting at the station;

"list of post-roll close deletions" means the list compiled under section 26(3);

"list of post-roll close registrants" means the list compiled under section 6(4);

"list of preferences" means a list of the candidates in an election, lodged under section 61, and showing an order of preference;

"lives" in relation to a place, means the place where a person can normally be found at night or, if the person works at night, the place where he or she normally sleeps;

"main electoral roll" means a main electoral roll printed under section 32(1);

"nomination day" in relation to an election, means the day appointed in the writ for the nomination of candidates for the election under section 44(2)(c),

"objection" means an objection made under section 22(2);

"open electoral roll" means the electoral roll referred to in section 51(1)(b) of the Constitution;

"Part I ballot paper" and "Part II ballot paper" have the meaning ascribed to them by section 57(4) and (5) respectively;

"place of living" means the place at which a person lives;

"place of nomination" in relation to an election, means the place appointed in the writ for the receipt of nominations of candidates for the election under section 44(2)(c);

"polling agent" means a person appointed under section 68(1);

"polling day" in relation to an election, means—

- (a) the day appointed in the writ for the polling to take place in that election if a poll is required; or
- (b) if the writ appoints dates between which the polling may take place, each day appointed by the returning officer under section 56(2)(e);

"polling station" means a building, structure, vehicle, vessel or enclosure, or a part of a building, structure, vehicle, vessel or enclosure, established at a place, pursuant to section 56(2)(d), for the purpose of taking votes during polling;

"postal ballot officer" means a person appointed under section 102;

"presiding officer" means, subject to section 66(6), any person performing the duties of a presiding officer at a polling station or at an issuing point at a polling station under this Act;

"qualified person" means a person who has a right to be registered as a voter under section 55 of the Constitution, and in relation to a communal electoral roll means a person who has a right to be registered on that roll under section 55(3), (4), (5) or (6) as the case may be;

"register of voters" in relation to a constituency, means the register of voters for the constituency referred to in section 39;

"registered officer" in relation to a registered political party, means the person specified under the Electoral (Registration of Political Parties) Regulations 1991 as the registered officer of the party;

"registered political party" means a political party registered on the Register of Political Parties;

"registered voter" means a qualified person who was registered as a voter under the Electoral Decree 1991 immediately before the commencement of this Act, or who is registered as a voter under this Act;

"Register of Political Parties" means the Register of Political Parties established under the Electoral (Registration of Political Parties) Regulations 1991 ;

"registration clerk" means a person appointed as such under section 3(8);

"registration officer" means a person appointed as a registration officer under section 3(1) and any other person performing the functions of a registration officer under this Act;

"regulations" means regulations made under section 164;

"returning officer" means a person appointed as a returning officer for a constituency under section 3(1) and any other person performing the functions of a returning officer under this Act;

"roll" means a main or supplementary electoral roll;

"roll number" means the roll number of a voter as provided for by section 34(5);

"Rotuman electoral roll" means the electoral roll referred to in section 51 (1)(a)(iii) of the Constitution;

"serial number" means the number assigned to a person under section 12(2);

"session" in relation to the Parliament, has the same meaning as in the Constitution;

"Supervisor" means the Supervisor of Elections;

"supplementary electoral roll" means a supplementary electoral roll printed under section 33(1);

"tendered ballot paper" means a ballot paper referred to in section 76(1);.

"tendered vote list" means the list compiled under section 76(3);

"type" in relation to a constituency means the type of seat, whether communal or open, for which the election in that constituency will be held;

"voter" means a person who exercises or seeks to exercise his or her right to vote in an election;

"witnessing officer" means:

(a) a returning officer, assistant returning officer or postal ballot officer;

(b) any person before whom a statutory declaration may be made, other than a member of Parliament or a candidate;

(c) any other person whom the Supervisor authorises, in writing, to witness the marking of a postal ballot paper; or

(d) in the case of a postal ballot paper that is marked overseas—a person referred to in section 101;

"writ" means a writ issued for the election of a member or members of the House of Representatives under section 60(1) of the Constitution;

"writ day" in relation to an election in a constituency, means the day of the issue of the writ for that election.

(2) For the purposes of this Act—

(a) 2 or more terms of imprisonment that are required to be served consecutively are to be regarded as a single term of imprisonment for the aggregate period of those terms; and

(b) account is not to be taken of a sentence of imprisonment imposed as an alternative to, or in default of, the payment of a fine.

(3) Where under this Act public notice is required to be given of any matter, either in a newspaper or by broadcast, it must be published or broadcast, as the case may be, in English, Fijian and Hindustani.

*Appointment of election officers*

3.—(1) The Supervisor must appoint for each constituency—

- (a) a registration officer;
- (b) an assistant registration officer;
- (c) a returning officer; and
- (d) an assistant returning officer.

(2) The Supervisor may, in making appointments under subsection (1)—

- (a) appoint more than one registration officer for a constituency; and
- (b) appoint a person to be a registration officer or returning officer for more than one constituency, in which case the Supervisor must appoint an assistant registration officer or an assistant returning officer as the case may be for each constituency concerned.

(3) An assistant registration officer for a constituency may exercise all the powers and perform all the duties and functions of the registration officer for the constituency and, subject to subsection (4), an assistant returning officer for a constituency may exercise all the powers and perform all the duties and functions of the returning officer for that constituency.

(4) An assistant returning officer—

- (a) is not a proper returning officer for purposes of section 40(1); and
- (b) must not exercise any power or perform any function of a returning officer under section 50, 52 or 54 or under Division 6 of Part 5 unless the returning officer is unavoidably prevented from exercising the power or performing the function.

(5) Where a returning officer has been appointed returning officer for more than one constituency under subsection (2)(b), the limitation set out in subsection (4)(h) does not apply.

(6) The Supervisor must appoint persons overseas to whom applications for registration as voters may be made overseas (in this section referred to as "overseas registration officers".)

(7) An overseas registration officer may exercise all the powers and perform all the duties and functions of a registration officer in respect of applications for registration as a voter and other applications under Part 3 made overseas.

(8) Registration officers may appoint such registration clerks to assist them as they consider necessary and as the Supervisor approves.

(9) Every person appointed under this section must, before taking up office, make a declaration in the approved form.

(10) Public notice must be given in the Gazette of all appointments made under this section.

#### *Powers of Supervisor*

4. Subject to this Act, the Supervisor—
- (a) may issue to election officers such instructions as the Supervisor from time to time considers necessary to ensure the effective execution of their duties;
  - (b) may correct any error, omission or duplication on any application, electoral roll or other document made or issued under this Act which appears to have been made inadvertently;
  - (c) must take all reasonable steps to encourage all qualified persons to become registered on the appropriate electoral rolls.

## PART 2—CONSTITUENCY BOUNDARIES

### *Naming of constituencies*

5. Whenever the Constituency Boundaries Commission determines the boundaries of a constituency under section 52 or 53 of the Constitution, the Constituency Boundaries Commission shall determine a name for the constituency.

### *Submissions*

6.—(1) Whenever the Constituency Boundaries Commission proposes to make a determination of a boundary under section 52 or 53 of the Constitution or of a name under section 5 of this Act, it must, by notice published in the Gazette, in a daily newspaper and by radio broadcast, invite submissions from political parties, members of the House of Representatives and any other person or body wishing to make a submission to it.

(2) The invitation for submissions must specify a period of not less than 60 days for the making of submissions.

### *Proposed boundaries and objections*

7.—(1) When, following the receipt of any submissions under section 6, the Constituency Boundaries Commission proposes to determine a boundary and name of a constituency, it must publish in the Gazette and in a daily newspaper a notice specifying—

- (a) the places where members of the public may inspect, without charge:
  - (i) a map or maps showing the provisional boundary and name of the constituency; and
  - (ii) a summary, in respect of each constituency, of the reasons for the provisional boundary and name; and
- (b) the last day on which the Constituency Boundaries Commission will receive written objections to the provisional boundary and name.

(2) If any objections are received under subsection (1), the Constituency Boundaries Commission must publish in the *Gazette* and in a daily newspaper a notice:

- (a) specifying the places where the objections are available for public inspection; and
- (b) specifying the last day on which the Constituency Boundaries Commission will receive written counter-objections to those objections, being not less than 21 days after the date of publication of the notice.

(3) Public notice of the publication of notices under subsections (1) and (2) must also be given by radio broadcast.

#### *Determinations*

**8.—**(1) After considering any objection and counter-objection lodged under section 7, the Constituency Boundaries Commission must by order determine the boundary and name of every constituency.

(2) A determination under subsection (1) shall be published in the *Gazette* and in a daily newspaper.

(3) The boundaries and names determined under subsection (1) shall be the boundaries and names of the constituencies for the purpose of the next general election following the commencement of this Act, and those boundaries and names continue until the next determination by the Constituency Boundaries Commission under this Part.

(4) The Constituency Boundaries Commission must forward to the Supervisor and to the Speaker of the House of Representatives a copy of every determination made by it under this Part.

(5) The first determination of boundaries of constituencies made by the Constituency Boundaries Commission after the enactment of the Constitution Amendment Act 1997, whenever made, is deemed to have been made in accordance with this Part.

### Part 3—REGISTRATION OF VOTERS

#### *Residence in Fiji Islands*

**9.**—(1) For the purposes of section 55(1)(c) or (7) of the Constitution (which require a person to be resident in the Fiji Islands for 2 years) the following reasons for absence are prescribed—

- (a) service of the State in a civil or military capacity;
- (b) service with an international organisation of which the State is a member;
- (c) duties performed outside the Fiji Islands for an employer carrying on business in the Fiji Islands;
- (d) the undergoing of education or training overseas;
- (e) temporary absence on holiday or for medical treatment or for any other purpose if such absence does not constitute a change of residence.

(2) For the purposes of this Act, a person who is absent from the Fiji Islands for reasons prescribed in subsection (1) is to be taken as having been resident in the Fiji Islands for the period of absence.

(3) A dependent of a person absent from the Fiji Islands for reasons prescribed in subsection (1) who resided with the person during his or her absence is also to be taken as having been resident in the Fiji Islands for the period of that absence.

#### *Living in constituency*

**10.**—(1) A qualified person is entitled to be enrolled as a voter for a particular constituency of either type if he or she—

- (a) lives in the constituency; and
- (b) has lived there for a period of 3 months immediately before enrolment.

(2) A qualified person who is not entitled to be enrolled for any constituency of a particular type under subsection (1) is entitled to be enrolled as a voter for the constituency of that type in which he or she last lived for at least 3 months.



(3) A qualified person who is not entitled to be enrolled for any constituency of a particular type under subsection (1) or (2) is entitled to be enrolled as a voter for the constituency of that type in which either of his or her parents last lived for at least 3 months.

*Compulsory registration*

**11.**—(1) Every qualified person must apply in accordance with this Part for registration as a voter—

(a) on one of the communal electoral rolls; and

(b) on the open electoral roll.

(2) The time within which a qualified person must apply for registration as a voter is—

(a) if he or she was a qualified person immediately before the commencement of this Act—by such date as the Supervisor appoints by notice published in the *Gazette*;

(b) if he or she becomes a qualified person on or after the commencement of this Act—within 6 months after the date on which he or she becomes a qualified person;

(c) if he or she becomes a qualified person by virtue of attaining the age of 21—by the writ day in the first election after attaining that age in which he or she would be eligible to vote under this Act.

(3) Subject to this section, a qualified person who fails to apply for registration in accordance with this Part and by the relevant date specified in subsection (2) commits an offence and is liable on conviction to a fine of \$50.

(4) A person who has been convicted of an offence under subsection (2) who fails within 30 days after such conviction to apply for registration as a voter in accordance with this Part commits a further offence and is liable on conviction to a fine of \$500 or to imprisonment for 1 month.

(5) It is a defence to a prosecution for an offence under subsection (2) if the defendant proves that he or she had a reasonable excuse for not applying for registration as a voter within 6 months from the date on which he or she became a Qualified person.

(6) A person who has reached the age of 20, and who would be a qualified person if aged 21, may apply in accordance with this Part for registration as a voter, and upon reaching the age of 21 he or she will be registered as a voter without any further application.

(7) At least once a year, the Supervisor must publish a notice in a daily newspaper, and broadcast a notice over the radio, calling upon every qualified person who is not already registered as a voter to apply for registration.

*Applications for registration*

**12.—**(1) An application for registration as a voter (in this section referred to as "an application") must be made to a registration officer on the approved form and must state—

- (a) the applicant's full name (in the order specified in the form), current place of living, occupation (if any), date of birth and sex;
- (b) the applicant's postal address, if different from his or her place of living;
- (c) on which one of the communal electoral rolls the applicant applies to be enrolled (in addition to the open electoral roll);
- (d) such other particulars as are specified in the form.

(2) The application form given to a person applying under subsection (1) must have a unique identifying number assigned by or on behalf of the Supervisor which, upon the registration of the person as a voter—

- (a) must be entered on the appropriate electoral roll or rolls together with the other particulars of the person; and
- (b) is the serial number for the person until a new serial number is entered under this section or is otherwise assigned to the person by the Supervisor.

(3) Subject to section 14, every person making an application under this Part must sign his or her name or, if he or she is illiterate, place on the application his or her mark and the thumbprint of his or her left thumb in ink.

(4) A person who is illiterate and does not have a left thumb must place on the application—

- (a) his or her mark and the thumbprint of his or her right thumb in ink; or
- (b) if he or she does not have a right thumb, his or her mark and the print in ink of any of his or her fingers.

(5) An application must contain a declaration, made before a person prescribed under section 15, that the particulars in the application are true.

(6) An application must be signed and dated by the person before whom the declaration required under subsection (5) is made and must be forwarded by the applicant

to the Supervisor or a registration officer, either directly or through an election officer.

(7) The Supervisor or a registration officer may reject an application that is not completed in accordance with this section.

*Applicants resident overseas*

**13.—**(1) An applicant for registration as a voter to whom section 9 applies must attach to his or her application a declaration made before a person prescribed under section 15 that he or she intends to resume residence in the Fiji Islands immediately after section 9 ceases to apply to him or her.

(2) Nothing in this section prevents the Supervisor from requiring from any applicant to whom section 9 applies such other evidence of eligibility to be registered as a voter as the Supervisor thinks fit.

(3) The Supervisor or a registration officer may reject an application that is not completed in accordance with this section.

*Physically disabled persons*

**14.—**(1) If a person making an application for registration as a voter is physically disabled, an application may be signed on his or her behalf—

(a) by a person who has received a power of attorney from the applicant and who states on the application that the applicant is physically disabled; or

(b) by a voter who signs by direction of the applicant and who states on the application—

(i) that the applicant is physically disabled; and

(ii) that the application is signed at the direction of the applicant.

(2) A person who, under this section, signs an application on behalf of the applicant must make and attach to the application a statutory declaration—

(a) that the applicant is physically disabled; and

(b) that the application is being signed—

(i) under a power of attorney from the applicant; or

(ii) at the direction of the applicant.

(3) For the purposes of this section, a person is physically disabled if, and only if, he or she is, because of a physical disability, incapable of complying with section 12(3) or (4).

### *Declarations*

**15.** The Commission may prescribe the persons before whom declarations under section 12(5) or section 13(1) may be made, and may prescribe different persons in respect of declarations made in or outside the Fiji Islands.

### *Changes of address*

**16.—(1)** A registered voter who changes his or her place of living—

- (a) within a constituency of a particular type; or
- (b) from one constituency of a particular type to another constituency of that type, must within 3 months after the change, notify the Supervisor in the approved form of the address of his or her new place of living.

(2) A person who fails to notify the Supervisor as required by subsection (1)(u) or (h) commits an offence and is liable on conviction to a fine of \$50.

### *Effect of failure to notify change of address*

**17.—(1)** A registered voter who is enrolled in respect of a constituency of a particular type who has changed the address of his or her place of living in that constituency is not disqualified from voting at an election in that constituency by reason only that he or she has not given notice of the change of address as required by section 16(1).

(2) A registered voter enrolled in respect of a constituency of a particular type who has changed the address of his or her place of living to another constituency of that type is not disqualified from voting at an election in the first-mentioned constituency by reason only that he or she has not given notice of the change of address as required by section 16(1)b.

(3) Subsection (2) applies for a period of 6 months from the date when the registered voter changed the address of his or her place of living, after which the voter cannot vote in the first-mentioned constituency.

### *Effect of registration*

**18.—(1)** A qualified person who has applied in accordance with this Part for registration as a voter on—

- (a) one of the communal electoral rolls; and
  - (b) the open electoral roll,
- and whose application has not been rejected, becomes a registered voter from the date his or her name is placed on those electoral rolls under section 21(1).

(2) A person who—

(a) has a right to be registered on more than one of the communal electoral rolls;  
and

(b) has been registered on one of those rolls in respect of any constituency, may not transfer to another of those rolls until the expiration of 6 years from the date of such registration.

(3) The Commission may make regulations relating to the manner and timing of an application to transfer to another communal electoral roll pursuant to section 55 of the Constitution.

#### Part 4—ELECTORAL ROLLS

##### *Electoral rolls*

**19.**—(1) The Supervisor may create a separate electoral roll for each constituency.

(2) In creating separate electoral rolls under subsection (1), the Supervisor must ensure that those rolls, if placed together, would constitute for the Fiji Islands the 5 electoral rolls referred to in section 51(1) of the Constitution.

(3) Where separate electoral rolls have been created under this section, a reference in this Act to an electoral roll for a constituency means the electoral roll so created for that constituency.

##### *Form of rolls*

**20.** Each electoral roll must include—

(a) the full name, sex, place of living and occupation of every registered voter who lives in the constituency to which it relates; and

(b) the serial number allotted to each registered voter.

##### *Preparation of rolls*

**21.**—(1) Subject to this Act, the name of every person from whom an application for registration as a voter is received in the approved form and who appears qualified to be so registered must be placed on—

(a) the appropriate communal electoral roll; and

(b) the open electoral roll, for the constituency in which the applicant lives.

(2) A registration officer may make such enquiries as are necessary to satisfy himself or herself that an applicant for registration as a voter is qualified to be registered before forwarding the application to the Supervisor.

(3) Before placing any person's name on an electoral roll, the Supervisor may make such enquiries as are necessary to satisfy himself or herself—

- (a) in respect of any electoral roll, that the person is qualified to be registered;
- (b) in respect of a communal electoral roll, that the person has a right to be registered on it in accordance with section 55(3), (4), (5), (6) or (6A) of the Constitution, as the case may be.

#### *Objections*

**22.**—(1) A copy of the electoral roll created for each constituency must be open for inspection at all reasonable hours at the office of the registration officer for that constituency and at such other places as the Supervisor specifies.

(2) A person whose name appears on an electoral roll may make an objection to the inclusion of the name of any other person on that roll .

(3) An objection must be in writing and must—

- (a) identify the full name as it appears on the electoral roll, together with the place of living, occupation, sex, serial number and roll number of—
  - (i) the person making the objection (in this Part referred to as "the objector");
  - and
  - (ii) the registered voter concerned (in this Part referred to as "the voter");
- (b) set out the grounds of the objection;
- (c) set out the facts giving rise to the objection;
- (d) contain a statutory declaration that the objector has made a conscientious effort to ascertain the truth of those facts and that they are true to the best of his or her knowledge and belief; and
- (e) be delivered to the registration officer of the constituency in respect of which the voter is enrolled.

(4) On receiving an objection under this section, the registration officer must make such enquiries as he or she considers necessary.

(5) If—

- (a) an objection does not comply with subsection (3); or
- (b) the registration officer considers that an objection is frivolous, the registration officer must, subject to subsection (6), dismiss it and advise the objector in writing accordingly.

(6) A registration officer must not dismiss an objection solely on the ground that it does not comply with paragraph (3)(a) if he or she is satisfied as to the identity of the objector and the voter.

(7) If an objection is not dismissed under subsection (5), the registration officer must send a notice by registered post or by personal service requiring the voter to answer the objection and must state the time within which the voter must answer the objection either in person or in writing.

(8) If the voter does not answer the objection within the time allowed, the registration officer must proceed to deal with the objection and may either dismiss or uphold it.

(9) If an objection is upheld, the registration officer must in writing notify the voter and the objector and his or her name must be removed from the relevant electoral roll and, if the objection is upheld in the period between the date fixed for the close of the rolls and polling day, the name of the voter must be removed from the register and entered on the list of post-roll close deletions.

(10) If an objection is dismissed, the registration officer must in writing notify the objector and the voter.

#### *Settling objections*

**23.** The registration officer must either uphold or dismiss an objection within 14 days after the objection is delivered and must immediately thereafter forward to the Supervisor particulars of the objection stating whether it has been upheld or dismissed, and giving reasons in each case.

#### *Review of decision of registration officer on objection*

**24.** —(1) If the objector or the voter is dissatisfied with the decision of the registration officer on an objection, the objector or voter may, within 14 days of the date of the decision or within such further period as the Commission (either before or after the expiration of that period) allows, apply in writing to the Commission for a review of the decision.

(2) An application for review under subsection (1) (in this section referred to as "an application") must give reasons for the application.

(3) Upon receipt of an application, the Commission must give written notice of it to the registration officer and to whichever of the objector or the voter is not the applicant for review.

(4) Within 14 days of the receipt of an application, the Commission must review the decision in question and must make a decision in writing—

(a) affirming the decision; or

(b) setting aside the decision and making a decision in substitution for it.

(5) The Commission must give written notice of its decision to the objector, the voter and the registration officer.

(6) If the effect of the decision of the Commission under subsection (4) is to uphold the objection, the name of the voter will remain removed from the relevant electoral roll and, if the registration objected to was in the period between the date fixed for the close of the rolls and polling day, the name of the voter will remain on the list of post-roll close deletions.

(7) If the effect of the decision of the Commission under subsection (4) is to dismiss the objection, the name of the voter must, if it was removed from the relevant electoral roll as a result of the objection, be reinstated on the relevant electoral roll and, if the decision of the Commission is made in the period between writ day and polling day, the name of the voter must be entered on the list of post-roll close registrants.

(8) In the exercise of its powers under this section, the Commission may inquire into any matter relevant to the objection and may require from the objector or the voter concerned such evidence relating to the objection as it thinks fit.

#### *Publication of rolls*

**25.—**(1) The Supervisor must, at least once in each year, publish the electoral roll for each constituency.

(2) The Supervisor may publish the electoral rolls in the form of main rolls and supplementary rolls.

#### *Revision of rolls*

**26.—**(1) In addition to any other powers of alteration conferred by this Act or the



Regulations, the Supervisor may revise the electoral roll for any constituency by—

- (a) correcting any mistake or omission in the particulars of the registration of a person;
- (b) amending the roll, on the application of a person who is a registered voter, to record a change in the person's name, place of living, postal address or occupation, or any other particulars contained on the roll in respect of the person;
- (c) removing the name of any person whose application for registration has not been signed or marked or is not accompanied by a declaration in accordance with section 12(5) or 13(1);
- (d) removing from the roll the name of any person whom the Supervisor has been notified pursuant to the Regulations or whom the Supervisor otherwise has good reason to believe—
  - (i) is dead;
  - (ii) has not been resident in the Fiji Islands for 2 years (except for a reason prescribed in section 9);
  - (iii) has ceased to be a citizen of the State;
  - (iv) has been adjudged or otherwise declared to be of unsound mind under any law in force in the Fiji Islands;
  - (v) is under sentence of death or is serving a sentence of imprisonment of 12 months or more; or
  - (vi) is otherwise disqualified from enrolment on that roll;
- (e) removing from the roll the name of every person who, as a result of a change in his or her place of living, is living in, and is enrolled as a voter in, another constituency of the same type;
- (f) in the case of a person to whom section 18(2) applies and who wishes to transfer to another communal roll, giving effect to the person's wishes, subject to section 18(2);
- (g) removing a superfluous entry, if the name of the same person appears more than once on the roll;

- (h) removing all entries relating to a particular person if the name of the person appears on more electoral rolls than the person is eligible to be enrolled on;
- (i) removing the name of every person who, on an inquiry made at the last address or place of living for that person of which the Supervisor was notified under this Act, cannot be found;
- (j) removing the name of every person who has been disqualified from voting by an order of a court under this Act;
- (k) reinstating the name of every person whose disqualification has expired or has been removed;
- (l) reinstating any name removed by mistake, clerical error or false information, and
- (m) if the name of a street or any other part of an address or place of living that appears on the roll is changed, substituting the changed name or other part of the address.

(2) Subject to this section, revisions of an electoral roll under subsection (1) may be made at any time.

(3) If the name of a person is removed from the electoral roll for any constituency in the period commencing on the date fixed for the close of the rolls and ending on the day before polling day, the Supervisor must, on removing the name, enter it on the list of post-roll close deletions for that constituency.

(4) If the name of a person is reinstated on an electoral roll in the period commencing on the date fixed for the close of the rolls and ending on the day before polling day, the Supervisor must, on reinstating that name, enter it on the list of post-roll close registrants for the constituency.

(5) Where the Supervisor takes action under subsection (3) or (4) in respect of the name of a person, he must take all reasonable steps to notify the person before the start of polling in the relevant constituency.

(6) An alteration under this section must not be made to the electoral roll for a constituency in the period beginning on polling day and ending on the day after the day of the return of the writ in that constituency.

(7) If more than one polling day has been appointed in relation to an election, references in this section to a polling day are to be read as references to the first polling day so appointed.

*Notice of deletions from roll*

**27.**—(1) At least once every 12 months and within 7 days after the date fixed for the close of the electoral roll in a constituency under section 28, the Supervisor must, for the purpose of notifying persons whose names have been removed from the roll since the last notice was published under this section, publish in the *Gazette* and in a daily newspaper a notice listing the names of all such persons.

(2) A notice published under this section must list beneath the name of the constituency the name, address, occupation and serial number of each person whose name has been removed from the relevant electoral roll.

(3) If the name of a person has been removed from the electoral roll for a constituency of a particular type but has been entered on the roll for another constituency of the same type, the Supervisor is not required to list that name in the notice under subsection (1).

*Date for close of rolls*

**28.** The date fixed for the close of the electoral roll for a constituency is 7 days after writ day in that constituency.

*Habitation visits*

**29.**—(1) For the purpose of compiling, maintaining or revising the electoral rolls, the Supervisor may appoint one or more enumerators to conduct in any constituency a visit to homes in that constituency.

(2) An enumerator may ask a person at or in a home such questions as are necessary to obtain any of the particulars required for a purpose specified in subsection (1).

(3) When an enumerator has visited a home under this section, he or she may affix to the home an adhesive label in an approved form signifying that the home has been visited

(4) While conducting a visit to a home under this section, an enumerator must carry a card or other document in an approved form identifying him or her as an enumerator.

(5) A person is not required to provide any information to a person who purports to be an enumerator unless that person first produces for scrutiny the identification referred to in subsection (4).

*Rolls after change of boundaries*

**30.**—(1) When the *gazetting* of a determination under section 8 alters the boundaries of any constituency of either type, the Supervisor must—

- (a) decide, on the basis of the then existing electoral rolls relating to that and adjacent constituencies of the same type, which voters on each roll are entitled to be enrolled in respect of each constituency to which the determination relates: and
- (b) compile for each constituency to which the determination relates a list of persons who appear to be entitled to be enrolled in that constituency (in this section referred to as the "compiled list").

(2) For the purposes of the printing of the main and supplementary electoral rolls, each compiled list is, if the Supervisor so directs, the electoral roll for the constituency to which it relates.

(3) If the Supervisor gives a direction under subsection (2), the electoral roll concerned, subject to any revision made to it, comes into force on the dissolution of the then existing House of Representatives.

(4) The compiled list must, in respect of each constituency, be compiled immediately before—

- (a) the next succeeding revision of the electoral roll under section 26 in respect of that constituency; or
- (b) if the Supervisor gives a direction under subsection (2), the printing of the main electoral roll in respect of that constituency, whichever is the earlier.

(5) If a compiled list is, under subsection (2), the electoral roll for the constituency to which it relates, any qualified person whose name has been—

- (a) included on the compiled list; or
- (b) excluded from the compiled list,  
may apply in writing to the Supervisor to have his or her name excluded from or included on the compiled list, as the case may be.

(6) The Supervisor may require from a person applying under subsection (5) such evidence in support of the application as the Supervisor sees fit.

(7) Every electoral roll to which subsection (3) applies continues in force, subject to any revision made to it, until a new roll for the constituency to which it relates is compiled and comes into force.

(8) The Supervisor must keep every electoral roll to which subsection (3) applies up to date by making such additions, alterations and deletions as become necessary.

*Rolls if the House dissolved after change of boundaries  
and before new rolls completed*

**31.**—(1) If the House of Representatives is dissolved in the period between the *gazetting* of a determination under section 8 and the completion of the compiled list under section 30(1)(b), the Supervisor must comply with section 30(1)(a) and (b), and each list so compiled is the electoral roll for the constituency to which it relates.

(2) An electoral roll established under subsection (1) continues in force, subject to any revisions, until a new roll for the constituency to which it relates is printed and comes into force.

(3) The Supervisor must keep every electoral roll established under subsection (1) up to date by making all such additions, alterations and deletions as become necessary.

*Main roll to be printed*

**32.**—(1) The Supervisor may, from time to time, cause to be printed a main electoral roll for a constituency of either type.

(2) The main electoral roll must contain a list of all persons whose names are on the electoral roll for the constituency to which it relates on the date the Supervisor fixes for the closing of that roll.

(3) The date fixed under subsection (2) must be specified by notice published in the *Gazette* and a daily newspaper and broadcast over the radio.

(4) Subject to sections 30 and 31, every main electoral roll printed for a constituency is, upon its publication, the main electoral roll for the constituency until a new main roll is printed and published or otherwise comes into force.

*Supplementary rolls to be printed*

**33.**—(1) The Supervisor may, from time to time, cause to be printed one or more supplementary electoral rolls for a constituency of either type.

(2) The supplementary electoral roll for a constituency must contain a list of all qualified persons—

(a) who have applied to be registered as voters;

(b) who live in that constituency; but

(c) whose names do not appear on the main roll or any existing supplementary

roll for that constituency.

(3) Subject to sections 30 and 31, every supplementary electoral roll for a constituency is, upon its publication, a supplementary electoral roll for that constituency until a new main roll is published or otherwise comes into force.

*Form of main roll and supplementary rolls*

**34.—**(1) Subject to this section, every main or supplementary electoral roll for a constituency must show the full names, address, occupation (if any), sex and serial number of each voter in that constituency, arranged alphabetically in order of last names.

(2) If a person is registered on an Indian electoral roll, his or her name must appear with the first name printed before the last name (if any), and the alphabetical order of his or her name in relation to the names of other voters must be determined accordingly.

(3) The names on each page of the main electoral roll and of every supplementary roll for a constituency must be numbered consecutively, beginning with the number 1 in the case of the first name on each page.

(4) The pages of every main or supplementary electoral roll printed for a constituency must be numbered consecutively, beginning with the number 1 in the case of the first page of the main roll and, in the case of a supplementary roll, with the number immediately following the number of the last page of the last printed roll of that constituency, whether main or supplementary.

(5) The serial number allotted to a voter in accordance with this Act, preceded by the number of the page of the main or supplementary roll on which his or her name appears, is deemed to be his or her roll number.

(6) A main or supplementary roll may contain, in addition to the matters referred to in subsections (1) and (2), such other particulars as the Commission, from time to time, determines.

*Statistical subdivision of rolls*

**35.—**(1) The Commission may by regulations require the Supervisor to divide the main or supplementary electoral roll for any constituency into such statistical subdivisions as the Commission approves.

(2) Any electoral roll subdivided under subsection (1) must be available for public

inspection at the office of the Supervisor, without payment, at any time when the office is open for business between 9.00am and 4.00pm.

(3) Any person may, on paying a prescribed fee, obtain copies of an electoral roll subdivided under subsection (1).

*Inspection and purchase of main and supplementary rolls*

**36.—**(1) Copies of the main or supplementary electoral roll for a constituency must be kept for public inspection at the offices of the Supervisor and of the registration officer for the constituency and at such other convenient places within the constituency as the Supervisor or the Commission specifies.

(2) Any person may, without payment, inspect the main and supplementary electoral rolls for a constituency at the office of the registration officer for the constituency, or at a place specified under subsection (1), at any time between 9.00am and 4.00pm on any day on which the office or place is open for business.

(3) Any person may, without payment, inspect at the Supervisors office at any time between 9.00am and 4.00pm on any day on which the office is open for business—

- (a) the main and supplementary electoral rolls for a constituency;
- (b) the most recent computer-compiled list held by the Supervisor showing the names and particulars of every person who has applied for registration as a voter, who lives in that constituency but whose name does not appear on the main electoral roll or a supplementary electoral roll;
- (c) the list of post-roll close deletions in that constituency;
- (d) the list of post-roll close registrants in that constituency;
- (e) his or her own application for registration as a voter.

(4) (a) The right to inspect under subsection (3) in respect of a constituency applies to the application for registration as a voter, any other application or any declaration made by a person—

- (i) whose name is on the electoral roll for that constituency; or
- (ii) who has applied to be registered as a voter pursuant to subsection 11(6), but who is not yet able to be registered as a voter.

(b) Paragraph (a) only applies if—

- (i) the person whose application or declaration is to be inspected consents to such inspection; or
- (ii) the Supervisor is satisfied that the application to inspect the application or declaration is prompted by a genuine and propel interest.

(5) The Supervisor or the registration officer for a constituency may, upon the written request of not less than 10 voters in that constituency, make available for public inspection, under the supervision of an election officer, at a public meeting in the constituency—

- (a) the main and supplementary electoral rolls for the constituency; and
- (b) the most recent computer-compiled list of voters in the constituency referred to in subsection (3)(b).

(6) The entitlement to inspect a computer-compiled list under this section does not include an entitlement to copy the list.

(7) If a person is entitled to inspect an application or declaration under this section the Supervisor or a registration officer must produce it for inspection not later than 2 working days after the request to inspect is made.

(8) A person may, on paying the prescribed fee, obtain copies of the main and supplementary electoral rolls for any constituency.

#### *Habitation indexes*

**37.—**(1) The Commission may by regulation require the Supervisor to compile, in respect of any constituency, an index—

- (a) listing, in accordance with the addresses of their places of living, the persons who are on the electoral roll for that constituency; and
- (b) showing, against the address and name of each person, the occupation, sex and serial number of the person.

(2) Where a habitation index is compiled under this section copies of the index in respect of a constituency must be kept for inspection by the public at the office of the registration officer for the constituency and at such other convenient places within the constituency as the Supervisor may direct.

(3) A person may, on paying the prescribed fee, obtain a copy of an index compiled under this section.



*Supply of electoral information on disk*

**38.** If a person in writing requests the Commission to supply a copy of a habitation index or of an electoral roll held on computer tape, disk or diskette, the Commission may, if it holds the material in the requested form and if it is satisfied that the material is required for a purpose related to an election or poll or for the purposes of study or research, supply the material in the requested form upon payment to the Commission of the prescribed fee.

*Register for returning officer*

**39.—(1)** The Supervisor must supply to the returning officer for each constituency in which an election is being held, at least one day before the polling day or the first polling day, as the case may be, in that constituency, as many copies as the returning officer requires of the register of voters for that constituency, as described in this section.

(2) The register of voters for a constituency comprises—

- (a) the main electoral roll and every supplementary roll for the constituency or, if any such roll has not been printed, a list of the names and particulars that, if the roll had been printed, would have appeared on it;
- (b) a list showing the name and date of birth of every person enrolled in the constituency as shown on that person's application form;
- (c) a copy of the list of post-roll close deletions for the constituency; and
- (d) a copy of the list of post-roll close registrants for the constituency.

(3) If a person whose name appears on the register of voters for a constituency is not entitled to be enrolled in the constituency because—

- (a) he or she secured enrolment pursuant to an application in which he or she made a false statement or declaration; or
- (b) an objection to his or her registration as a voter has been upheld, the returning officer for the constituency, upon receipt of a certificate from the Supervisor setting out the facts, must, before the close of polling, delete, or cause to be deleted, the name of that person from the register.

(4) An alteration of a register of voters under this Act or the Regulations must not obliterate the original entry, and the reason for the alteration and the date of the alteration must be annotated against the alteration, together with the initials of the Supervisor or the

returning officer for the constituency or of the person who made the alteration on behalf of the Supervisor or the returning officer, as the case may be.

## Part 5—CONDUCT OF ELECTIONS

### *Division I—Writs*

#### *Writs*

**40.**—(1) The President, acting in accordance with section 60(1) of the Constitution, must issue writs to the proper returning officers in every election.

(2) In a general election, if a person is appointed as returning officer for more than one constituency, a writ may relate to all the constituencies for which he or she is returning officer.

#### *Speaker to act on vacancy*

**41.**—(1) If it appears to the Speaker of the House of Representatives that a member's place has become vacant, the Speaker must publish in the Gazette a notice of the vacancy and of the cause of the vacancy and forward a copy to the President.

(2) If the vacancy arises from death or resignation, the President must, subject to section 63 of the Constitution and to subsections (4) and (5) of this section, issue a writ to fill the vacancy.

(3) If the vacancy arises from a cause other than death or resignation, then, as soon as practicable after the end of 14 days from the date of publication of the notice required by subsection (1), the Speaker must, in writing, advise the President of the fact and the President must, subject to section 63 of the Constitution and to subsections (4) and (5) of this section, issue a writ to fill the vacancy.

(4) If an election petition has been presented against the election or return of a member under section 73 of the Constitution, a writ must not be issued for a by-election to fill the place of the member unless the Court determines that the member was not duly elected or returned.

(5) If an application is made to the Court pursuant to section 73(1)(b) of the Constitution in respect of a member whose place is alleged to have become vacant, a writ must not be issued for a by-election to fill the alleged vacancy unless the Court determines that a vacancy does exist.

*Writs when life of Parliament extended*

**42.** If, after the issue of writs for a general election but before the first polling day in the election, the term of the House of Representatives is extended under section 188(4) of the Constitution, the election has failed and the returning officers must deal with the writs as required by section 62.

*Writs when Parliament prorogued or dissolved*

**43.** If after the issue of a writ for a by-election but before the declaration of the election of a member pursuant to the writ the President issues a proclamation—

- (a) proroguing the Parliament and declaring that the House of Representatives will be dissolved with effect from a date specified in the proclamation; or
  - (b) dissolving the House of Representatives with immediate effect;
- the election has failed and the returning officer must deal with the writ as required by section 62.

*Requirements for writs*

**44.—**(1) The President must forward every writ to the Supervisor for transmission to the returning officer to whom it is addressed and the Supervisor must publish a copy in the *Gazette*.

(2) Every writ must be in the approved form and must—

- (a) specify that one member is to be returned for the constituency, or each of the constituencies, to which it relates at the election;
- (b) specify the date on or before which the writ is returnable to the President;
- (c) specify the date on which, and the place at which, the returning officer is to receive nominations of candidates for the election; and
- (d) specify the date on which, or the dates between which, the poll will be held if the election is contested.

(3) Writs for a general election must—

- (a) be issued on the same day; and
- (b) specify the same nomination day, in respect of every constituency.

(4) When a writ specifies dates between which the poll may be held, it must require the returning officer to appoint a date or dates within that period upon which the poll will be held

and must permit the returning officer to appoint different dates and different times for different polling stations.

*Notification of writ*

**45.**—(1) The Supervisor must, upon receipt of a writ, initial it and mark on it the date of receipt.

(2) The Supervisor may cause notice of the writ to be sent by facsimile transmission to the returning officer to whom the writ is addressed informing the returning officer in respect of each constituency to which it relates of—

- (a) the nomination day;
- (b) the place of nomination; and
- (c) the polling day or the dates between which the poll may be held.

*Division 2—Nominations*

*Nomination day*

**46.**—(1) The Supervisor must, upon receipt of a writ for an election in any constituency, publish in the Gazette and in a daily newspaper a notice in the approved form of—

- (a) the nomination day; and
- (b) the place of nomination,  
in respect of the constituency.

(2) A notice under subsection (1) must specify a period of 7 hours between the hours of 8.00am and 4.00pm that is appointed for the receipt of nominations.

*Candidates must be nominated*

**47.** A person is not eligible to be elected as a member for any constituency unless duly nominated as a candidate in the election.

*Persons not eligible to be nominated*

**48.**—(1) A person is not eligible to be nominated as a candidate unless he or she is a registered voter, and a person who has been disqualified from voting by an order of a court under section 140(1) shall for this purpose be regarded as not registered to vote.

(2) A person is not eligible to be nominated as a candidate for election pursuant to section 51(1)(a)(i) of the Constitution unless he or she is registered on the Fijian electoral roll.

(3) A person is not eligible to be nominated as a candidate for election pursuant to section 51(1)(a)(ii) of the Constitution unless he or she is registered on the Indian electoral roll.

(4) A person is not eligible to be nominated as a candidate for election pursuant to section 51(1)(a)(iii) of the Constitution unless he or she is registered on the Rotuman electoral roll.

(5) A person is not eligible to be nominated as a candidate for election pursuant to section 51(1)(a)(iv) of the Constitution unless he or she is registered on the general electoral roll.

*Forfeiture of deposits of candidates making multiple nomination*

**49.** If—

- (a) a deposit is required by section 51(1)(a) and accompanies a nomination; and
- (b) the nomination is invalid under section 58(5) of the Constitution, the deposit is forfeited and must be paid into the Consolidated Fund.

*Receipt of nominations*

**50.—**(1) On the nomination day in a constituency, the returning officer must attend at the place of nomination during the 7 hours between the hours of 8.00am and 4.00pm specified by the Supervisor under section 46(2).

(2) A candidate must be nominated in writing on one nomination paper in the approved form and the nomination must be signed by—

- (a) not less than 7 persons entitled to vote in the constituency for which the candidate seeks election (in this section called "proposers"); or
- (b) the registered officer of the registered political party by which the candidate has been endorsed for that election.

(3) If a person (other than the registered officer of a registered political party) signs the nomination paper of more than one candidate in the same constituency, the signature is not valid for the second or later nomination delivered in accordance with subsection (8).

(4) A nomination is not valid unless the candidate indicates his or her consent by signing the nomination paper and making a declaration on the nomination paper that—

- (a) to the best of his or her knowledge and belief, he or she is qualified under the Constitution and the other laws of the Fiji Islands to be elected as a member for the constituency to which the nomination relates; and
- (b) he or she is not, and does not intend to be, a candidate in any other election the poll for which is to be held on the same day or between the same dates as the election to which the nomination relates.

(5) The nomination paper must set out—

- (a) the full name;
- (b) the address of the place of living;
- (c) the occupation; and
- (d) the roll number,

of the candidate and, if subsection (2)(a) applies, of each proposer.

(6) In the nomination paper, the candidate must specify—

- (a) an office or place within the constituency; or
- (b) an office or place within 25 kilometres of the place of nomination, as his or her address for service.

(7) Delivery at the office or place specified under subsection (6) of any notice, claim, writ of summons, electoral petition or other document addressed to the candidate is deemed to be service on the candidate of the document.

(8) The nomination paper must be delivered to the returning officer for the constituency by the candidate, or by a person appointed by the candidate in writing, at the place of nomination and during the time appointed for receiving nominations in that constituency.

(9) A nomination must not be rejected because of any formal defect or error in the nomination if the returning officer to whom the nomination paper is delivered is satisfied that this section has been substantially complied with.

*Deposits and petitions of support*

**51.**—(1) A nomination is not valid unless it is accompanied by—

- (a) \$500 in legal tender or a banker's cheque; or
- (b) a certificate of the Supervisor that the candidate has given him or her a petition of demonstrated support in accordance with this section.

(2) A petition of demonstrated support must be in the approved form.

(3) A petition of demonstrated support—

- (a) must be received by the Supervisor at least 10 days before nomination day; and
- (b) must contain signatures of voters who are enrolled in the constituency in which the candidate proposes to stand numbering not less than—
  - (i) in the case of a constituency for which a poll has not previously been held—such number as is prescribed; and

- (ii) in any other case—250, or 5% of the number of valid ballot papers counted in the last preceding election in the constituency, whichever is less.

(4) A certificate given by the Supervisor under this section is valid only for the election to which it relates.

(5) A person who signs a petition of demonstrated support under this section is free to vote in the election for candidates in any order of preference.

*Nominations to be displayed*

**52.** The returning officer for a constituency must, if satisfied that a nomination complies with the requirements of sections 50 and 51, cause a copy of the nomination paper to be prominently displayed at the place of nomination in the constituency.

*Withdrawal of candidate*

**53.** A candidate may withdraw his or her candidature by giving notice in writing to the returning officer for the constituency before 2.30pm on the day following nomination day, after which a candidate may not withdraw his or her candidature.

*Objections to nominations*

**54.—(1)** Subject to this section, a person registered to vote in a constituency may object to the nomination of any candidate for that constituency as not eligible to be nominated on the ground—

- (a) that the candidate is not qualified to be nominated; or
- (b) that the nomination paper of the candidate does not comply with the requirements of this Part.

(2) An objection under subsection (1) (in this section referred to as "an objection") must be in writing and must—

- (a) set out the full name as it appears on the electoral roll, the address and the roll number of the person objecting;
- (b) set out the ground or grounds of the objection;
- (c) set out the facts giving rise to the ground or grounds of objection; and
- (d) contain a statutory declaration that the objector has made a conscientious effort to ascertain the truth of those facts and that they are true to the best of his or her knowledge.

(3) An objection must be delivered by the person objecting, in person to the returning officer for the constituency, between the hours of 9.00am and 1.00pm or 2.00pm and 4.00pm on the day following nomination day in the constituency.

(4) If the ground for objection to the nomination of a candidate is solely that the nomination paper of the candidate does not comply with the requirements of this Act, the returning officer for the constituency must straightaway decide on its validity, and for that purpose may ask the candidate whose nomination is objected to any relevant question.

(5) Every candidate must attend at the place of nomination during the hours specific in subsection (3) or must inform the returning officer for the constituency of the telephone number or facsimile number at which he or she can be contacted during those hours.

(6) If an objection of the kind described in subsection (4) is made against a candidate who is not in attendance, the returning officer for the constituency must proceed to deal with the objection and may decide it as he or she sees fit.

(7) A decision by a returning officer under subsection (4) or (6) is final and can only be questioned in proceedings on an election petition under Part 7.

(8) If the objection to the nomination of a candidate is on the ground, or includes the ground, that the candidate is not qualified to be nominated, the returning officer for the constituency must notify the Supervisor straightaway, and the Supervisor must arrange for the Commission to make a decision on the objection as soon as possible.

(9) Any challenge to a decision by the Commission under subsection (8) must be dealt with by the Court on an election petition under Part 7.

#### *Proceedings after objections*

**55.**—(1) If in any constituency after the expiry of the time provided for the withdrawal of candidature under section 53 and after the returning officer for that constituency has decided any objection under section 54(4) or (6), one candidate only remains nominated, the returning officer must—

- (a) declare the candidate to be duly elected;
- (b) endorse on the writ the name of the person so elected; and
- (c) forward the writ to the Supervisor.



(2) If the election in any constituency is contested, the returning officer for that constituency must transmit by facsimile transmission or other expeditious means to the Supervisor—

- (a) the names of the candidates in the order in which their names should be printed in the ballot papers; and
  - (b) the number of ballot papers required for the election,
- and must confirm the information by letter.

*Division 3—Preparations for poll*

*Notice of poll*

**56.**—(1) If an election for a constituency is contested, the returning officer for the constituency must, as soon as practicable, give notice of the poll in the Gazette, in the newspapers and on the radio.

(2) The notice given under subsection (1) must contain the following information—

- (a) particulars of the candidates as described in their respective nomination papers, with the last name ( if any) of each candidate appearing before the first name;
- (b) the name or names of the person or persons who nominated each candidate under section 50(2);
- (c) the order in which the names of the candidates will be printed in the ballot paper;
- (d) the place or places at which polling stations for the constituency will be established for the purpose of taking votes during polling; and
- (e) the date or dates and hours between which the returning officer or an assistant returning officer or presiding officer will attend at the various polling stations to take votes.

(3) Where the election is being held for more than one type of constituency, each polling station must be appointed to receive votes in both types of constituency.

(4) A copy of the notice given under subsection (1) must, as soon as practicable, be exhibited at all post offices and court houses in the constituency to which it relates.

(5) The order in which the names of the candidates in an election will be printed in the ballot paper is determined in accordance with section 58.

*Voting by ballot*

**57.**—(1) The votes in a poll must be taken by ballot and the ballot of each voter must consist of a paper prepared in accordance with this Act.

(2) Following the receipt by the Supervisor of the names of the candidates who are duly nominated for election in a constituency, the Supervisor must cause to be printed a sufficient number of ballot papers for the ballot of each voter at the poll in that constituency.

(3) Opposite each candidate's name on a ballot paper and opposite the name of each registered political party or independent candidate, if any, which or who has recorded a list of preferences, as provided for by section 61, a square must appear for the marking of votes by voters.

(4) Where no registered political party or independent candidate has lodged a list of preferences in respect of a constituency, the ballot papers for that constituency must, so far as practicable, be in the form set out in Part I of the Schedule and will be known as "Part I Ballot Papers".

(5) Where one or more registered political parties or independent candidates has lodged a list of preferences in respect of a constituency, the ballot papers for that constituency must, so far as practicable, be in the form set out in part II of the Schedule and will be known as "Part II Ballot Papers".

(6) Ballot papers must be capable of being folded and must be bound in books with serially numbered counterfoils.

(7) Subject to section 161, ballot papers must be kept at all times in safe custody.

*Nanes on ballot papers*

**58.**—(1) To determine the order in which names of candidates should appear on the ballot paper, the returning officer for the constituency must, immediately after the close of nominations, at the place of nomination and before all persons present at that place—

- (a) prepare a list of the names in such order as the returning officer consider appropriate;
- (b) read out the list;
- (c) place a number of balls equal to the number of candidates, being balls of equal size and weight and each of which is marked with a different number, in a

cylindrical container large enough to allow all the balls to move about freely when the container is rotated;

- (d) rotate the container and permit any other person present who wishes to do so to rotate the container;
- (e) cause a person who is blindfolded and has been blindfolded since before the rotation of the container in accordance with paragraph (d) to take the balls, or cause the balls to come out of the container one by one and, as each ball is taken or comes out, pass it to another person who must call out the number on the ball;
- (f) as each number is called out in accordance with paragraph (e) write the number opposite to the first name in the list prepared in accordance with paragraph (a) which does not have a number opposite to it;
- (g) place all the balls back in the container and repeat the process described in paragraphs (d) and (e);
- (h) prepare a list of the numbers called out in accordance with paragraph (e) in the order in which they were called out; and
- (i) write on the list of numbers prepared under paragraph (h) opposite to each number the name set out opposite to that number under paragraph (f).

(2) If 2 or more candidates have the same name, the names of those candidates may be identified by such description or addition as will distinguish them from one another.

(3) A reference in paragraph (1)(e) to another person is a reference to an election officer, other than the returning officer for the constituency;

(4) The only personal names which may appear on ballot papers are those of candidates, or any other name used to distinguish 2 candidates with the same name, as provided for by subsection (2).

(5) An identification of a candidate, such as occupation, title, honour or degree, must not appear on a ballot paper.

(6) Where a ballot paper for an election is a Part II ballot paper, the names of the registered political parties or independent candidates which or who have lodged a list of preferences in that election must appear in the same order as the symbols for each party or independent candidate appear pursuant to section 59 (2) (c).

*Symbols on ballot papers*

**59.**—(1) If a candidate is endorsed by a registered political party as described in section 60, the registered symbol of that party must be printed next to the name of the candidate on the ballot papers for use in the election.

(2) If a candidate is not endorsed by a registered political party, the Supervisor must—

- (a) ask the candidate to choose a symbol from a list of symbols supplied by the Supervisor;
- (b) allot the candidate the symbol chosen by the candidate or, if that symbol is not available, a symbol allotted by the Supervisor, and inform the candidate, by registered post or in writing served personally upon the candidate, of the symbol allotted to him or her; and
- (c) print the symbol adjacent to the name of the candidate on the ballot papers for use in the election.

(3) The symbols used or allotted under this section must, as far as practicable, be printed on the ballot papers in uniform size for all candidates.

(4) The Supervisor must as soon as possible after nomination day publish in the Gazette a list of the candidates in an election and their respective symbols.

(5) In this section, "registered symbol", in relation to a registered political party, means the symbol of the party entered in the Register of Political Parties.

*Verification of party endorsement*

**60.**—(1) For the purposes of this Act, a person is taken to be endorsed as a candidate in an election by a registered political party—

- (a) if the name of the candidate is included in a statement received by the Supervisor before 5.00pm on the day following the nomination day for the election which—
  - (i) is signed by the registered officer of the party; and
  - (ii) sets out the names of the candidates who are endorsed by the party in the election; or
- (b) if the Supervisor is satisfied, after making such inquiries as he or she thinks appropriate of the registered officer of the party or any other person, that the candidate is so endorsed.

(2) If a person is endorsed as a candidate in an election by 2 or more registered political parties, the person is taken to be endorsed only by the party specified by the person in a written notice received by the Supervisor before 5.00 pm on the day following the nomination day for the election.

*Listing of party preferences*

**61.**—(1) A registered political party may, in respect of any constituency in which it has endorsed a candidate under section 60, lodge with the Supervisor a list of the candidates showing the order of preference in which the registered party would like to see the candidates placed by voters in that constituency.

(2) An order of preference in respect of a constituency must be lodged with the Supervisor not more than 7 days after the close of nominations in that constituency.

(3) An order of preference must be in writing and signed by—

- (a) the registered officer of the registered political party concerned; and
- (b) the Chairman or some other member of the executive body of the party.

(4) An order of preference must include a certificate that the order was agreed in accordance with the rules of procedure of the party.

(5) Where a list of candidates has been lodged in respect of a constituency in accordance with this section the Supervisor must—

- (a) cause notice of the list to be published in a newspaper and broadcast over a radio station accessible in the constituency; and
- (b) cause the list to be affixed to the outside of every polling station in the constituency at least 1 hour before the poll opens at that polling station.

(6) If an order of preference in respect of a constituency has been lodged in accordance with this section, the ballot papers for that constituency must, so far as practicable, be in the form set out in Part II of the Schedule.

(7) If no order of preference has been lodged in respect of a constituency, the ballot papers for that constituency must, so far as practicable, be in the form set out in Part I of the Schedule.

(8) For purposes of this section, a candidate who has not been endorsed under section 60 (in this Act referred to as an "independent candidate") and who wishes to lodge an order of

preference may do so as if he or she were a registered political party and this section, other than subsections (3) and (4), will apply to such a candidate.

*Death of candidate after nomination*

**62.**—(1) If, after a candidate in an election has been duly nominated and before the close of the poll on polling day or, if the writ specifies dates between which the poll is to be held, the last polling day, the candidate dies and the returning officer for the constituency is satisfied of the fact of death, the election has failed and the returning officer must—

- (a) countermand the notice of the poll or, if polling has started, close the poll;
- (b) report the death to the Supervisor;
- (c) endorse on the writ the fact of death, the date and proof of the death and the date of the countermand of the notice of the poll; and
- (d) return the writ so endorsed to the Supervisor.

(2) If a writ is returned to the Supervisor under subsection (1), the presiding officer at each polling station in the constituency must take out all ballot papers placed in the ballot boxes, make them up into secure packages, and send them, together with all unused ballot papers, tendered ballot papers and the registers in use at the election, to the returning officer, who must forward them to the Supervisor, together with any postal ballot papers and applications for postal ballots relating to the election.

(3) Upon the return to the Supervisor of a writ that has been endorsed under this section, the Supervisor must endorse on it the date of its receipt by him or her.

(4) Where an election has failed in any constituency, a fresh writ must be issued forthwith for a new election in that constituency and, except as otherwise provided in this Act, proceedings in connection with the new election must be taken anew.

(5) A new copy of the register that was to be used at an election that has failed must be used at the new election without any amendment or addition.

(6) Where an election has failed, fresh nomination is not required of any candidate who was a duly nominated candidate for the failed election.

(7) An appointment of a polling place made in respect of a failed election continues in respect of the new election unless the returning officer makes a different appointment.

*Disqualification of candidate after nomination*

**63.**—(1) If after a candidate in an election has been nominated and before polling day or the first polling day the Commission declares the candidate to be disqualified from election, the Commission may, if it considers it practicable, order the name of the candidate to be omitted from the ballot papers in the election.

(2) If an order is made under subsection (1)—

(a) the Supervisor must cause to be printed a sufficient number of ballot papers for the poll with the name of the disqualified candidate omitted;

(b) any list of preferences lodged under section 61 becomes invalid.

(3) If ballot papers including the name of a disqualified candidate have been printed before an order under subsection (1) is made, they must be made up into secure packages and sent to the Supervisor.

(4) The returning officer must publish in the Gazette and a daily newspaper, and must broadcast over the radio, a notice of the order in which the names of the candidates will be printed on ballot papers as a result of an order under subsection (1).

(5) A postal ballot paper that includes the name of the disqualified candidate and that has already been issued to a voter is not invalidated by an order made under subsection (1) and, if the voter's vote is marked on the ballot paper and it is otherwise valid, it must be included, in the count.

(6) The order of preference of the voter that is marked on a ballot paper referred to in subsection (5) is, on the count, to be ascertained by disregarding the number marked against the disqualified candidate and, as necessary, by adjusting the numbers placed in the squares opposite the names of the other candidates in accordance with the order of preference so marked.

*No nomination*

**64.**—(1) If no candidate is duly nominated for an election, the election has failed.

(2) If an election fails in the circumstances referred to in subsection (1), the returning officer for the constituency must—

(a) endorse on the writ that the election has failed; and

(b) return the writ to the Supervisor.

(3) Section 62(3), (4), (5) and (7) apply in relation to an election that fails under this section in the same way as they apply to an election that fails under section 62(1).

*Return or forfeiture of deposits*

**65.—**(1) In this section, "candidate" means a candidate whose nomination was accompanied by a deposit.

(2) If—

- (a) a candidate dies before the polling day;
- (b) a candidate is elected or would have been elected had he or she not died between the close of the poll and the declaration of the result of the poll; or
- (c) a candidate is not elected but the number of votes polled in the candidate's favour as first preferences is at least 5 % of the total number of votes polled in favour of all the candidates in the election as first preferences, the amount deposited in respect of the candidate under section 51(1)(a) must be returned, as soon as practicable, to the person by whom it was made or to his or her personal representative.

(3) The amounts deposited in respect of all other candidates, including candidates who cease to be qualified to be nominated as candidates, are forfeited to the State and must be paid into the Consolidated Fund.

*Presiding officers and clerics*

**66.—**(1) The returning officer for a constituency must appoint a presiding officer to preside at each polling station in the constituency and, if a polling station has more than one issuing point, may appoint an assistant presiding officer for each issuing point.

(2) Where an election is being held for more than one type of constituency, the same persons can be appointed as presiding officer and assistant or deputy presiding officer in respect of both types of constituency.

(3) A person appointed as a presiding officer or assistant presiding officer under subsection (1) must—

- (a) attend at the relevant polling station on the day or days and during the hours appointed for taking the poll at that station;
- (b) subject to this Act, receive the votes of all persons whose names are on the register of voters for the constituency concerned and who appear and apply for a ballot paper.



(4) The returning officer for a constituency may appoint a deputy presiding officer or deputy assistant presiding officer to perform the duties of a particular presiding officer or assistant presiding officer at a polling station in that constituency during the temporary absence of the presiding officer or assistant presiding officer.

(5) The returning officer for a constituency may appoint as many clerks as the Supervisor approves to effectually conduct an election in that constituency.

(6) A person must not be appointed under this section by a returning officer or by a presiding officer for any purpose connected with an election if that person has been employed by anyone other than an election officer in or about the election.

(7) A deputy presiding officer or assistant presiding officer may do any act that the presiding officer is authorised or required by or under this Act to do at a polling station or issuing point, respectively, other than ordering the arrest, exclusion or ejection from the polling station of any person.

(8) An election officer appointed under this section must not begin to perform his or her duties unless he or she has signed a declaration in the approved form.

#### *Facilities at polling stations*

**67.—**(1) The returning officer for a constituency must ensure that each polling station in the constituency is provided with—

- (a) polling booths with separate voting compartments and such other facilities as are necessary for carrying out the election;
- (b) an appropriate number of ballot boxes of convenient size provided with a lock and key and so constructed that the ballot papers can be placed in them but cannot be taken out without the boxes being unlocked;
- (c) a copy of the register of voters for each constituency concerned;
- (d) materials for voters to mark the ballot papers; and
- (e) written directions for the guidance of voters in a form approved by the Supervisor.

(2) Where a polling station will be receiving votes in more than one type of constituency, there must be separate ballot boxes in the polling station for each type of constituency.

(3) The voting compartments in a polling station must be so constructed and arranged that voters can mark their votes in private.

(4) The directions to voters referred to in subsection (1)(e) must be in such language or languages as the Supervisor considers appropriate.

*Polling agents*

**68.**—(1) Each candidate in a constituency may appoint not more than 7 polling agents for each issuing point of each polling station receiving votes in that constituency and must notify the presiding officer in writing of any appointment before polling opens at the polling station.

(2) A notice under subsection (1) must specify the names and addresses of the polling agents appointed for each issuing point.

(3) A polling agent must, before being allowed to act, make a declaration in the approved form before the presiding officer.

*Division 4 —The poll*

*Times for polling*

**69.**—(1) The poll at every polling station must take place on the day or days and during the hours appointed by the returning officer under section 56(2).

(2) Unless otherwise specified in the notice under section 56(2)(e), the poll at every polling station must open at 7.30 am and must not close until all voters present in the polling station at 5.30 pm, and desiring to vote, have voted.

(3) The doors of every polling station must be closed at the closing time specified under section 56(2)(e) and a person must not be admitted to a polling station after that time for the purpose of voting.

(4) Despite subsections (2) and (3), the presiding officer at a polling station may at his discretion extend the closing time of the poll at that polling station for an aggregate period not exceeding two hours immediately after the closing time specified in the notice.

*Ballot boxes to be shown empty before poll starts*

**70.**—(1) The presiding officer at a polling station must, immediately before the start of the poll at that polling station—

- (a) show each of the ballot boxes empty to the persons present at the polling station so that they may see that they are empty;
- (b) lock up and seal each box in such a way as to prevent it being opened without breaking the seal; and
- (c) place each ballot box within his or her view for the receipt of ballot papers.

(2) Each ballot box, after being locked and sealed in accordance with subsection (1) must not be opened until the time designated for counting the votes under section 110(2).

*When and when voters entitled to vote*

**71.**—(1) On polling day in an election a person who is registered as a voter in a constituency is, subject to subsection (2), entitled to vote at any polling station which is receiving votes for that constituency.

(2) Where an election is being held for more than one type of constituency, a person must vote at a polling station which is receiving votes for both the constituencies in which he or she is enrolled.

(3) The register of voters supplied under section 39 for the purpose of an election in any constituency is conclusive evidence of the right of each person registered on the register to vote at the election unless the person—

- (a) shows by his or her answers to the questions asked under section 72 that he or she is not entitled to vote;
- (b) refuses to answer those questions; or
- (d) at the time of presenting to vote has on a finger the indelible substance marked in the way directed by the Commission under subsection 72(6).

(4) The following matters do not warrant the rejection at a polling station or issuing point of a claim to vote if, in the opinion of the presiding officer, the voter is sufficiently identified in the register of voters supplied to that polling station—

- (a) omission in the register of any first or last name, address, date of birth or occupation;
- (b) entry of a wrong first or last name, address, date of birth or occupation;
- (c) mistake in spelling of any first or last name, address, date of birth or occupation; or
- (d) transposition of any first or last name, address, date of birth or occupation.

(5) If a registered voter has since the compilation of the register of voters changed his or her name by marriage or deed poll, he or she is not disqualified from voting under the name appearing on the register.

*Questions to be put to voter*

**72.**—(1) At a polling station, the presiding officer or a clerk may ask each person attending before him or her and claiming to vote the following—

- (a) What is your full name?
- (b) Where do you live?
- (c) Have you voted before in this election (or in these elections as the case may be)?
- (d) Any other question which the presiding officer or clerk considers relevant.

(2) If the person claiming to vote refuses to answer fully any of the questions set out in subsection (1) the person's claim to vote must be rejected unless he or she is physically disabled.

(3) If the person claiming to vote answers the question set out in subsection (1)(c) in the affirmative, his or her claim to vote must be rejected.

(4) If the presiding officer considers that one of the person's fingers is already marked with an indelible substance pursuant to subsection (6), his or her claim to vote must be rejected.

(5) In all other circumstances the person's claim to vote must be accepted and he or she must be given 1 or 2 ballot papers, according to the type of election.

(6) Each voter must, before being given a ballot paper or papers, have one finger marked with an indelible substance in the way the Commission directs.

*Voting procedure*

**73.**—(1) At the polling the presiding officer or a clerk must—

- (a) call out the name of each voter as he or she is given a ballot paper;
- (b) write the roll number of the voter on the counterfoil of the ballot paper;
- (c) mark the back of the ballot paper with the initials of the presiding officer or clerk, or with an official mark to be used only for the election in progress;
- (d) hand the ballot paper to the voter; and
- (e) immediately make a mark against or through the name of the voter on the relevant register of voters, to denote that the voter has received a ballot paper.

(2) The voter must—

- (a) upon receipt of the ballot paper, retire to a compartment or place within the polling station;

- (b) privately mark his or her vote on the paper in the way prescribed by section 75;
- (c) fold up the paper so as to conceal his or her vote but so as to show the initials of the presiding officer or clerk or the official mark on the back of paper;
- (d) show to the presiding officer or clerk the initials or mark on the back of the paper; and
- (e) place the paper in a ballot box in the presence of the presiding officer.

(3) The voter must vote without undue delay and must leave the polling station as soon as he or she has put the ballot paper in the ballot box.

(4) Where the election is being held for more than one type of constituency, the procedure described in subsections (1), (2) and (3) applies in respect of each ballot paper handed to the voter and the paper for each type of constituency must be placed in a separate ballot box designated for that type of constituency.

(5) Nothing in this section prevents the presiding officer or clerk from folding a ballot paper before handing it to the voter under subsection (1)(d).

#### *Number of votes*

**74.** Each voter is entitled to cast one vote in an election for each constituency in respect of which he or she is enrolled.

#### *Marking of votes*

**75.—**(1) If a ballot paper handed to a voter is a Part I ballot paper, the voter must mark his or her vote on the ballot paper by:

- (a) writing the number 1 in the square opposite the name of the candidate for whom the voter votes as his or her first preference; and
- (b) writing the numbers 2,3,4 (and so on, as the case requires) in the squares opposite the names of all the remaining candidates so as to indicate the order of the voter's preference for them.

(2) If a ballot paper handed to a voter is a Part II ballot paper, the voter may mark his or her vote on the ballot paper:

- (a) either in the manner described in subsection (1); or

- (b) by placing a tick in one of the boxes which appear at the top of the ballot paper opposite the name of a registered political party or independent candidate,

but, subject to section 116(3), may not do both.

#### *Tendered ballot papers*

**76.**—(1) If a person, representing himself or herself to be a particular voter named on the register of voters, applies for a ballot paper or papers after another person has voted as that voter, the applicant is, upon duly answering the questions set out in section 72, entitled to mark a ballot paper or papers in the same manner as any other voter, but—

- (a) the ballot paper or papers (which will be known as "tendered ballot papers" ) must be of a different colour from the other ballot papers; and
- (b) instead of being put into a ballot box, the paper or papers must be sealed by the voter in an envelope and given to the presiding officer who must place the envelope in a separate packet for each constituency.

(2) Tendered ballot papers must not be counted under section 113 unless the Court so directs.

(3) Where subsection (1) applies in respect of any voter at a polling station, the name of the voter and his or her roll number must be entered on the tendered vote list for that polling station.

#### *Spoiled ballot papers*

**77.**—(1) A voter who has inadvertently dealt with a ballot paper in such a way that it cannot be conveniently used as a ballot paper may, on giving it to the presiding officer and establishing the inadvertence to the satisfaction of that officer, get another ballot paper to replace it.

(2) The spoiled ballot paper must be cancelled by the presiding officer by writing or stamping the word Cancelled across its face and initialling it.

#### *Illiterate or incapacitated voters*

**78.**—(1) If any voter at a polling station is illiterate or is incapacitated by blindness or other physical reason from voting in the manner prescribed by this Act, the presiding officer must, at the request of the voter made in the presence of the polling agents, if any, cause—

- (a) the voter's vote or votes to be marked by a clerk in the presence of another clerk on a ballot paper or papers in the manner directed by the voter; and
- (b) the ballot paper or papers so marked to be placed in the ballot box or boxes.

(2) The name and roll number of every voter whose vote is marked under subsection (1) must be entered on the illiterate or incapacitated voters list for the polling station.

(3) Nothing in this section entitles any polling agent to see or hear how a voter votes, unless the voter requests the assistance of a polling agent.

#### *Adjournment of poll*

**79.**—(1) If the polling at any polling station cannot start or has to be suspended because of—

- (a) riot or open violence, whether actual or imminent; or
- (b) storm, tempest, flood or other natural disaster,

the presiding officer must adjourn the taking of the poll at that polling station to the following day, and if necessary from day to day until the poll can be taken, and must notify the returning officer accordingly.

(2) The returning officer must give public notice of an adjournment under subsection (1) by radio and in any other way that, in his or her opinion, is desirable for the purpose of giving notice of the adjournment to those affected.

(3) If the poll is adjourned at any polling station—

- (a) the hours of polling on the day to which it is adjourned must be the same as for the original day; and
- (b) references in this Act to the close of the poll must be construed accordingly.

#### *Persons not to remain in polling stations*

**80.** Only the following persons not actually engaged in voting may remain in a polling station—

- (a) the returning officer for the constituency;
- (b) the assistant returning officers;
- (c) the presiding officer and assistant presiding officers (if any) for the polling station;
- (d) the deputy presiding officer and deputy assistant presiding officers (if any);
- (e) the clerks;

- (f) police officers on duty;
- (g) one polling agent of each candidate for each issuing point at which ballot papers for the constituency are being issued;
- (h) members of the Commission;
- (i) the Supervisor;
- (j) any person with the written permission of the Supervisor.

*Participation by candidates in conduct of poll prohibited*

**81.** A candidate in an election must not take part in the conduct of the poll in the election, other than to cast his or her own vote.

*Participation by polling agents*

**82.—**(1) The polling agents of the candidates in an election, if any, may sit where they are able to see each person who presents himself or herself as a voter in the election and hear the name as given by him or her, but must not be where they can see how a voter votes.

(2) A polling agent who—

- (a) interferes with or attempts to influence any voter within a polling station; or
- (b) communicates with any voter in the polling station except so far as is necessary in the circumstances referred to in subsection 78(3), commits an offence and is liable on conviction to a fine of \$1,000 and to imprisonment for 6 months.

(3) A polling agent must not be prevented from entering or leaving a polling station during the polling and, during the absence of a polling agent, a relieving polling agent may act, but so that only one polling agent for each candidate is present at each issuing point at which ballot papers for the constituency are being issued in the polling station.

(4) A person who is in a polling station in the capacity of a polling agent must—

- (a) wear a badge or other form of identification, supplied by the presiding officer, identifying the person as a polling agent;
- (b) upon leaving the polling station, return it to the presiding officer.

*Presiding officers to maintain order*

**83.—**(1) Every presiding officer in respect of the polling station where he or she is conducting a poll—

- (a) must maintain order and keep the peace;



- (b) must regulate the number of voters to be admitted at a time; and
- (c) may cause to be removed any person who—
  - (i) obstructs the approaches to the polling station;
  - (ii) wilfully and unnecessarily obstructs the proceedings at the polling;
  - (iii) conducts himself or herself in a disorderly way, or causes a disturbance;
  - (iv) wilfully acts in defiance of the lawful directions of the presiding officer; or
  - (v) is not lawfully within the polling station.

(2) All police officers must assist presiding officers in maintaining order at polling stations.

*Communication with voters in polling station prohibited*

**84.**—(1) A police officer or an official or unofficial person must not communicate with any voter in a polling station on a matter related to the election either before or after the voter has voted, except that—

- (a) the presiding officer may, either directly or through an assistant presiding officer or clerk—
  - (i) do anything that the presiding officer is authorised to do, ask the questions that the presiding officer is authorised to ask and give such general directions as may assist any voter to mark his or her vote;
  - (ii) on request inform a voter orally of the names of all the candidates in the order in which they appear on the ballot paper and of their symbols and of the order of preference in any list of preferences lodged under section 61; and
  - (iii) do what is necessary to keep order within the polling station;
- (b) a police officer or other person may act in pursuance of any lawful instructions of the presiding officer.

(2) A person who contravenes subsection (1) may be removed from the polling station by order of the presiding officer.

*Ballot paper account*

**85.**—(1) The presiding officer at each polling station must immediately after the close of the poll on each polling day prepare a statement in the approved form showing the number of ballot papers entrusted to him or her and accounting for them under the heads of—

- (a) total ballot papers in each ballot box;
- (b) unused ballot papers;
- (c) spoiled ballot papers; and
- (d) tendered ballot papers,

in respect of each constituency for which the polling station was receiving votes.

(2) The ballot paper account prepared under subsection (1) must include a copy of the initials or official mark put on the ballot papers at the polling station under section 73(1)(c).

*Sealing of ballot boxes and papers after the poll*

**86.**—(1) The presiding officer at a polling station must immediately after the close of the poll on each polling day in an election, in the presence of the polling agents, if any, make up into separate packets or parcels sealed and clearly labelled with the name of the polling station and constituency and a description of their contents—

- (a) the ballot boxes used at the polling station, unopened but with the key attached, and so sealed as to prevent the removal of ballot papers or the introduction of additional ballot papers;
- (b) the unused and spoiled ballot papers placed together;
- (c) the tendered ballot papers;
- (d) the counterfoils of all used, spoiled and tendered ballot papers;
- (e) the tendered votes list;
- (f) the list of illiterate or incapacitated voters; and
- (g) the ballot paper account prepared under section 85, and must, with all convenient speed and by trustworthy means, deliver the packets or parcels to the returning officer for the constituency or to a person designated by the Supervisor for the purpose of receiving such packets or parcels from that constituency.

(2) If the polling station was receiving votes in both types of constituency, the separate packets or parcels required by subsection (1) must be made up in respect of each type of constituency separately.

(3) The presiding officer at a polling station must, at the end of the last polling day in an election, make up into separate packets sealed and clearly labelled with the name of the polling station and constituency and a description of their contents—

(a) the marked copies of the registers of voters; and  
(b) the official stamp (if any) used at the polling station,  
and must deliver the packets to the returning officer, or the person designated under subsection (1), together with the packets or parcels described in subsection (1).

*Prevention of irregularities as to ballot papers*

**87.** In order to prevent any irregularities at an election in connection with the possession of ballot papers, the following steps must be taken—

- (a) the Supervisor must give to the person printing the ballot papers a receipt specifying the total number of ballot papers printed for each constituency and received by the Supervisor, and the printer must see that all copies of the ballot papers other than those delivered to the Supervisor are immediately destroyed;
- (b) every returning officer must give to the Supervisor a receipt specifying the total number of ballot papers received by the returning officer for each constituency, and must take personal responsibility for the safe custody of the ballot papers from the time they are received until they are issued or otherwise disposed of in accordance with this Act;
- (c) every presiding officer must give to the returning officer a receipt specifying the total number of ballot papers received by the presiding officer for each polling station, and must take personal responsibility for the safe custody of the ballot papers from the time they are received until they are issued or otherwise disposed of in accordance with this Act;
- (d) every presiding officer and assistant presiding officer must take personal responsibility for the safe custody of—
  - (i) each ballot paper used at the polling station or the issuing point at which he or she presides from the time the ballot paper was placed in the ballot box by the voter; and
  - (ii) all unused ballot papers and tendered ballot papers, until the parcels of ballot papers have been sent to the returning officer, or to a person designated under section 86(1);

- (e) in like manner every returning officer or person designated under section 86(1) must take personal responsibility for the safe custody of all ballot papers used at the polling stations in his or her constituency, and all unused and tendered ballot papers, until they have been sent to the Supervisor under section 122(3).

*Compulsory voting*

**88.**—(1) The Supervisor must, after the documents relating to the polling in a constituency have been sent to him or her under section 122(3), prepare for the constituency a list of the names and addresses of the registered voters who appear to have failed to vote at the election.

(2) Subject to subsection (3), within the period of 3 months after the polling day in an election, the Supervises must send by post to each registered voter whose name appears on the list prepared under subsection (1), at the address set out in that list, a penalty notice.

(3) The Supervisor is not required to send a penalty notice under subsection (2) if he or she is satisfied that the voter—

- (a) is dead;
- (b) was absent from the Fiji Islands on polling day;
- (c) was ineligible to vote at the election; or
- (d) had a valid and sufficient reason for failing to vote.

(4) A penalty notice is a notice in an approved form notifying a registered voter that—

- (a) he or she appears to have failed to vote at the election;
- (b) it is an offence to fail to vote at an election without a valid and sufficient reason for the failure; and
- (c) if the person does not wish to have the apparent failure to vote dealt with by a court, he or she must within 30 days—
  - (i) if he or she did vote as required by this Act—give the Supervisor particulars of the circumstances of the voting;
  - (ii) if he or she failed to vote—give the Supervisor a valid and sufficient reason for the failure; or
  - (iii) pay to the Supervisor a penalty of \$20.

(5) If, within 30 days of service of a penalty notice on a person under subsection (4)—

- (a) he or she responds in a way which complies with subsection (4)(c)(i) or (ii) and the Supervisor is satisfied—
  - (i) in the case of subsection (4)(c)(i)—that the person did vote as required by this Act; or
  - (ii) in the case of subsection (4)(c)(ii)—that the reason for the failure to vote is a valid and sufficient reason; or
- (b) he or she responds to a notice by paying the penalty of \$20; no proceedings against the person for a contravention of subsection (9) are to be instituted.

(6) If a registered voter does not respond to a penalty notice in one of the ways indicated in subsection (4)(c) within 30 days, the Supervisor must send by post to the person, at the address set out in the list prepared under subsection (1), a second penalty notice in the same form as the first notice but including a warning—

- (a) that a previous notice in the same terms was sent to the person;
- (b) that a response in one of the ways indicated in subsection (4)(c) was not received; and
- (c) that if no such response is received in a further 30 days, proceedings under subsection (9) will be instituted.

(7) If, upon receipt of a response to a first or second penalty notice in terms of subsection (4)(c)(i) or (ii), the Supervisor is not satisfied—

- (a) in the case of a response of the kind referred to in subsection (4)(c)(i)— that the person voted as required by this Act; or
- (b) in the case of a response of the kind referred to in subsection (4)(c)(ii)— that the reason for the failure to vote is a valid and sufficient reason: the Supervisor must send by post to the person, at the address set out in the list prepared under subsection (1), a notice in the approved form, notifying the person that;
- (c) the Supervisor is not so satisfied; and
- (d) if the person does not wish to have the apparent failure to vote without a valid and sufficient reason for such failure dealt with by a court, he or she must, within 30 days, pay to the Supervisor a penalty of \$20.

(8) If, in response to a notice under subsection (6) or (7) the penalty of \$20 is paid to the Supervisor within 30 days, no proceedings against the registered voter for a contravention of subsection (9) are to be instituted.

(9) A registered voter who—

(a) fails to vote at an election in a constituency of any type for which he or she is registered without a valid and sufficient reason for the failure; and

(b) fails to pay the penalty of \$20 in response to a notice under subsection (2), (6) or (7),

commits an offence and is liable on conviction to a fine of \$200 and to imprisonment for 1 month.

(10) If a person is unable, because of absence from his or her place of living or physical incapacity, to respond to a penalty notice or to a notice under subsection (7) within 30 days, any other person who has personal knowledge of the facts may respond to the notice within that time, and that response is to be treated as compliance by the first mentioned voter with the notice.

(11) Without limiting the circumstances that may constitute a valid and sufficient reason for not voting, the fact that a registered voter believes it to be part of his or her religious duty to abstain from voting constitutes a valid and sufficient reason for the failure of the voter to vote.

(12) A person who makes a statement in response to a penalty notice issued under subsection (2) or (6), or to a notice issued under subsection (7) that is, to his or her knowledge, false or misleading in a material particular, commits an offence and is liable on conviction to a fine of \$500 and to imprisonment for 3 months.

(13) Proceedings for an offence—

(a) under subsection (9) may be instituted by the Supervisor or by an officer authorised by him in writing;

(b) under subsection (12) may be instituted by the Supervisor with the consent of the Director of Public Prosecutions.

#### *Division 5—Voting by post*

##### *Interpretation*

**89.** In this Division, unless the contrary intention appears—

"appropriate returning officer", in relation to an application or anything to be done by a registered voter, means the returning officer for the constituency in respect of which the voter is enrolled;

"Register of Postal Voters", in relation to a constituency, means the Register of Postal Voters for the constituency;

"registered medical assistant" means a person registered as a medical assistant under the Medical Assistants Act (Cap. 255A);

"registered medical practitioner" means a person registered as a medical practitioner under the Medical and Dental Practitioners Act (Cap. 255) and includes any person who is conditionally registered;

"registered nurse" means a person registered as a nurse under the Nurses, and Nurses Practitioners Midwives Act (Cap. 256).

*Application for registration as postal voter*

**90.**—(1) A registered voter may apply to the Supervisor for registration as a postal voter.

(2) An application for registration as a postal voter may be made on one of the following grounds—

- (a) the applicant's place of living is not within 20 kilometres, by the nearest practicable route, of the nearest polling station in the constituency in respect of which the applicant is enrolled;
- (b) because of serious illness or infirmity, the applicant is unable to travel from his or her place of living to a polling station;
- (c) the applicant is under sentence of imprisonment;
- (d) because of the applicant's religious beliefs or membership of a religious order, he or she—
  - (i) is precluded from attending a polling station; or
  - (ii) for the greater part of the hours of polling is precluded from attending a polling station.

(3) An application in which the applicant claims to be prevented from voting in person on account of ill-health or infirmity must be accompanied by a certificate to that effect signed by a registered medical practitioner, a registered medical assistant or a registered nurse.

(4) An application in which the applicant claims to be prevented from voting in person on account of his or her undergoing a sentence of imprisonment must be accompanied by a certificate to that effect by the officer-in-charge of the prison.

*Register of postal voters*

**91.**—(1) The Supervisor must keep a Register of Postal Voters for each constituency.

(2) The Register of Postal Voters for each constituency must be available at the office of the Supervisor during ordinary office hours for inspection, without fee, by members of the public.

*Registration as postal voter*

**92.**—(1) If the Supervisor is satisfied that an application has been made in accordance with section 90, he or she must register the applicant as a postal voter on the Register of Postal Voters for the relevant constituency or constituencies.

(2) The Supervisor may, on his or her own motion, enter on the Register of Postal Voters for any constituency the names and particulars of any person whom the Supervisor has reasonable grounds to believe is qualified to be registered under section 90(2).

(3) If a person who is registered as a postal voter for a constituency applies for transfer of registration to another constituency, the Supervisor may cancel the entry in the Register of Postal Voters for the original constituency and enter the name and particulars of the person in the Register of Postal Voters for the new constituency.

(4) Registration of a person as a postal voter for a constituency is effected by entering in the Register of Postal Voters for the constituency the following particulars—

- (a) his or her full name;
- (b) the address shown on the electoral roll as the person's place of living;
- (c) his or her postal address;
- (d) his or her roll number;
- (e) such other particulars (if any) as the Commission determines.

(5) The Supervisor must, upon registering a person as a postal voter, notify the person in writing of the registration.

(6) If the Supervisor decides not to register a person as a postal voter, he or she must notify the person in writing of the decision and give the reasons for it.



*Limitation on effect of registration*

**93.** Registration under section 92 is not sufficient to entitle a person to the issue of a postal ballot paper but such entitlement depends on the person fulfilling the requirements of section 97.

*Review of Register of Postal Voters*

**94.** The Supervisor must, from time to time, review the Register of Postal Voters for each constituency and must make such alterations to it as are necessary to ensure that—

- (a) only persons entitled to be registered as postal voters for the constituency are so registered; and
- (b) the particulars entered in the Register are accurate.

*Cancellation of registration*

**95.—**(1) The Supervisor may cancel the registration of a person as a postal voter for a constituency if the Supervisor is satisfied that the ground on which the person was registered no longer exists.

(2) If the Supervisor cancels the registration of a person under subsection (1), the Supervisor must, unless the whereabouts of the person are not known, give to him or her, personally or by registered post, written notice of the cancellation.

*Dispatch of electoral materials to registered postal voters*

**96.—**(1) As soon as practicable after the issue of the writ for an election in a constituency, the Supervisor must send to each person registered as a postal voter for the constituency a form of application for a postal ballot and an envelope addressed to the appropriate returning officer.

(2) The Supervisor must notify the appropriate returning officer of the persons to whom a form of application for a postal ballot has been sent under this section.

*Applications for postal ballot*

**97.—**(1) Any person—

- (a) who is qualified under subsection 90(2) to be registered as a postal voter (whether or not he or she is so registered); or
- (b) who, for any good reason is or will be, in the opinion of the appropriate returning officer, unable to vote in person in the election,

may vote by post, and may apply in writing to the appropriate returning officer for the issue of a postal ballot paper.

(2) An application under this section must specify—

- (a) the full name of the applicant;
- (b) the address of the place of living of the applicant;
- (c) the roll number and serial number of the applicant, if known;
- (d) the constituency or constituencies in respect of which the applicant is enrolled, if known;
- (e) the postal address to which the postal ballot paper should be sent; and
- (f) the ground upon which the application is made.

(3) An application in which the applicant claims to be prevented from voting in person on account of ill health or infirmity must, unless the applicant is registered as a postal voter under section 92, be accompanied by a certificate to that effect signed by a registered medical practitioner, a registered medical assistant or a registered nurse.

(4) An application in which the applicant claims to be prevented from voting in person because he or she is undergoing a sentence of imprisonment must, unless the applicant is registered as a postal voter under section 92, be accompanied by a certificate to that effect by the officer-in-charge of the prison.

(5) A voter may deliver an application for a postal vote in person to the returning officer at any time before the polling day, or if the writ specifies dates between which the poll must be held, the last polling day, appointed for the election in the constituency in respect of which the voter is enrolled.

#### *Postal ballot papers*

**98.**—(1) If, upon receipt of an application for a postal ballot, a returning officer is satisfied that the applicant is entitled to vote by post, the returning officer must—

- (a) if the application was delivered in person—hand to the applicant; or
- (b) in any other case—send to the applicant by registered post or by courier, a postal ballot paper and an official paid envelope addressed to the appropriate returning officer, for each constituency for which the applicant is enrolled.

(2) An applicant whose application contains a signature by mark or thumb print or in characters other than English is not entitled to vote by post but must be informed in writing by the returning officer that he or she is eligible to record a vote as provided by section 103.

(3) The returning officer is not required under subsection (1)(b) to send a postal ballot paper to an applicant if the application for a postal ballot was received by the returning officer within 7 days before the polling day, or the first polling day, in the election.

*Form of postal ballot papers*

**99.**—(1) A postal ballot paper must be in the same form as a non-postal ballot paper, as described in section 57, and must be capable of being folded so that the counterfoil is visible.

(2) Each postal ballot paper must have attached a counterfoil with the number marked on it.

(3) The counterfoil of a postal ballot paper must contain a space for the signature of the voter and of the witness as provided by this Part.

*Postal voting*

**100.**—(1) A voter to whom a postal ballot paper has been issued must, in order to record his or her vote; produce the paper unmarked to a witnessing officer.

(2) The voter must then, in the presence of the witnessing officer but so that the witnessing officer does not see how the paper is marked, mark the voter's vote on the ballot paper in the manner prescribed in section 75(1) or (2), as the case may be.

(3) The voter must then fold the postal ballot paper so as to conceal his or her vote and must sign his or her name in English cursive script in the place provided on the counterfoil in the presence of the witnessing officer who must witness the signature by signing the counterfoil and printing his or her name.

(4) The voter must then enclose the postal ballot paper in the envelope provided in respect of the constituency to which it relates and send the envelope by registered post or by such other means as the returning officer approves to the appropriate returning officer, or must cause the envelope to be delivered by hand so as to be received by the appropriate returning officer before the polling day or, if the writ specifies dates between which the poll is to be held, the last polling day.

(5) Postage on a postal ballot paper posted in the Fiji Islands in an envelope provided pursuant to this Part is to be paid by the Government.

(6) In an election for more than one type of constituency, a voter entitled to vote by post will be given two postal ballot papers, and references in this section to a ballot paper must be read as references to each ballot paper separately.

*Persons authorised to witness postal ballots overseas*

**101.** Where the marking of a postal ballot paper is done at a place outside the Fiji Islands, the following persons at that place may witness the marking—

- (a) a public officer;
- (b) a member of the civil or public service of any other Commonwealth Country;
- (c) a notary public;
- (d) a judicial officer;
- (e) a legal practitioner;
- (f) a person approved in writing for the purpose by the Supervisor.

*Postal ballot officers*

**102.**—(1) A returning officer for a constituency may appoint in writing a person to be a postal ballot officer for the constituency.

(2) A postal ballot officer must, before entering into the duties of office, make a declaration in the approved form.

*Method of postal voting for voters illiterate in English*

**103.**—(1) Any person who would otherwise be entitled to vote by post but who is disqualified by subsection 98(2) from having a postal ballot paper sent to him or her by post may, before the polling day, or, if the writ specifies dates between which the poll is to be held, officer or postal ballot officer and request that he or she be handed a postal ballot paper for each constituency in respect of which he or she is enrolled and—

- (a) if the returning officer, assistant returning officer or postal ballot officer is such an officer for one of those constituencies, he or she must hand to the voter a postal ballot paper for the election in that constituency; or
- (b) in any other case, the returning officer, assistant returning officer or postal ballot officer must obtain a postal ballot paper from the returning officer of the constituency concerned and notify the voter of the time, date and place the voter should attend for the purpose of being handed the postal ballot paper.

(2) In the circumstances described in subsection (1), the following procedure must be followed—

- (a) if the postal ballot paper is a Part I ballot paper, the voter must, upon being handed the ballot paper—
  - (i) state the name of the candidate in each constituency for whom the voter wishes to vote as his or her first preference; and
  - (ii) state the names of all the remaining candidates so as to indicate the order of the voter's preference for them;
- (b) if the postal ballot paper is a Part II ballot paper, the voter must, upon being handed the ballot paper, either state the names of candidates as in paragraph (a) or state the name of the registered political party or independent candidate whose list of preferences he or she wishes to adopt;
- (c) the returning officer, assistant returning officer, or postal ballot officer must then, in the presence of one other assistant returning officer or postal ballot officer, mark the postal ballot paper as directed by the voter in the manner prescribed by section 75(1) or (2), as the case may be, and must fold the postal ballot paper so as to expose the counterfoil;
- (d) the voter must then place his or her thumb print in the place provided on the counterfoil in the presence of the returning officer, assistant returning officer or postal ballot officer and the other assistant returning officer or postal ballot officer each of whom must witness the placing of the thumb print by signing the counterfoil;
- (e) the returning officer, assistant returning officer or postal ballot officer must then enclose the postal ballot paper in the envelope provided in respect of the constituency concerned;
- (f) the returning officer must keep all envelopes containing completed postal ballot papers relating to all the constituencies for which he or she is appointed in safe custody and unopened until the time prescribed under section 106 for the verification of postal ballots and, in respect of other constituencies, must send any envelopes containing completed postal ballot papers to the respective returning officers of those constituencies;

- (g) the envelopes must be kept by the respective returning officers in safe custody unopened until the time prescribed under section 106 for the verification of postal ballots;
- (h) the returning officer, assistant returning officer or postal ballot officer for a constituency must keep separate lists in respect of each constituency of the names of the voters for whom he or she has marked votes, in the way described in this section, and specifying the name and description of, the witnessing officer, and must send a copy of the lists that relate to other constituencies to the returning officers concerned;
- (i) as soon as possible after the completion of the count, each list, to be known as the "Marked Postal Ballot List", must be sent to the Supervisor together with the other documents specified in section 122(1).

*Registers of voters to be noted*

**104.**—(1) As far as reasonably practicable, the issue of a postal ballot paper to a person must be noted on the relevant register of voters.

(2) If a register of voters is not noted as required by subsection (1), the appropriate returning officer must take such steps as he or she thinks reasonable to inform the presiding officer to whom the register was given of the issue of a postal ballot paper.

*Late postal ballot papers*

**105.** Postal ballot papers received by the returning officer on or after polling day or, if the writ specifies dates between which the polling is to be held, the last polling day for the election, must not be opened but the envelopes must be marked "late" by the returning officer, dated and initialled and sent to the Supervisor together with the other documents referred to in section 122(1).

*Verification of postal ballot papers*

**106.**—(1) The returning officer for a constituency must before the polling day for an election in that constituency, or, if the writ specifies dates between which the polling should be held, the last polling day for the election, cause to be prominently displayed within the place of nomination a notice in writing of the day, time and place at which postal ballots will be verified.

(2) After the close of the poll in a constituency, on the day and at the time and place referred to in subsection (1), the returning officer must produce unopened all envelopes

containing postal ballot papers received before the polling day or, if the writ specifies dates between which the poll is to be held, the last polling day for the election in the constituency to which the postal ballots relate, and those envelopes must be opened in the presence of the candidates or their counting agents (if any) if they wish to be present.

(3) The following persons and no others may be present at the verification of postal ballot papers—

- (a) the returning officer for the constituency and his or her clerks;
- (b) the assistant returning officers;
- (c) the candidates;
- (d) one counting agent of each candidate;
- (e) members of the Commission;
- (f) the Supervisor; and
- (g) any person with the written permission of the Supervisor.

(4) If postal ballot papers have been received in any constituency, the returning officer or an assistant returning officer for the constituency must—

- (a) have one or more ballot boxes for the placing of postal ballot papers;
- (b) show each of the ballot boxes empty to the persons present so that they may see that they are empty;
- (c) lock up and seal each box so that it cannot be opened without breaking the seal;
- (d) produce all applications for postal ballot papers;
- (e) open up each of the envelopes containing postal ballot papers;
- (f) without unfolding the postal ballot paper or allowing it to be inspected, compare the signature or thumb print of the voter on the counterfoil of the postal ballot paper with the signature or thumb print on the application;
- (g) determine whether or not the signature or thumb print on the counterfoil of the postal ballot paper is that of the applicant;
- (h) if the returning officer is of the view that the signature or thumbprint on the counterfoil of the postal ballot paper is that of the applicant, allow the postal ballot;
- (i) if the postal ballot paper is allowed, tear off the counterfoil containing the name of the voter, taking care not to see the name of the candidate or

candidates for whom the voter has voted, and thereupon place the ballot paper in the appropriate ballot box; and

- (j) if he or she is of the opinion that the signature or thumbprint is not that of the applicant or if the counterfoil of the postal ballot paper is filled up or otherwise dealt with in a manner contrary to this Act, reject the postal ballot and endorse or stamp on it and on the application relating to it the word "rejected".

(5) The returning officer or an assistant returning officer for a constituency must, after the verification of the postal ballots in that constituency is complete, seal up in separate parcels—

- (a) all postal ballot papers rejected under this section and the applications for postal ballot papers relating to them;
- (b) all counterfoils of the postal ballot papers allowed under this section and the applications for postal ballot papers relating to them; and
- (c) all other applications for postal ballot papers in the constituency,

and must endorse on each parcel a description of the contents, the name of the constituency to which the papers relate and the date, and must sign the endorsement and forward the parcels to the Supervisor together with the other documents referred to in section 122.

(6) The ballot boxes containing the postal ballot papers that have been allowed in a constituency must be kept in safe custody until the start of the count in that constituency.

*Finality of decision on postal ballot papers*

**107.** The decision of the returning officer or an assistant returning officer in respect of any postal ballot paper is final.

*Division 6—The count*

*Count officers*

**108.**—(1) The returning officer must appoint in writing for each constituency—

- (a) a team of clerks to assist with the count; and
- (b) a count leader for each such team.

(2) The count leader is responsible for coordinating the conduct of the count in a constituency on behalf of, and subject to the instructions of, the returning officer and references in this Division to the returning officer include references to the count leader or a clerk acting on behalf of the returning officer.



*Counting agents*

**109.**—(1) Each candidate may, in writing received by the returning officer at least one hour before the time appointed for the start of the count under subsection 110(2), appoint not more than 5 counting agents.

(2) A counting agent may, at any time during the hours of counting, leave and re-enter the count centre for which he or she is appointed.

*Appointment for the count*

**110.**—(1) The returning officer for a constituency must make arrangements for counting the votes for that constituency as soon as practicable after he or she has received all the ballot boxes, packets and parcels from all the different polling stations in the constituency.

(2) The returning officer for a constituency must appoint a day, time and place at which he or she will begin to count the votes for that constituency and must notify the candidates or their counting agents of the day, time and place so appointed.

(3) For the purpose of this section and of the remaining sections in this Part, where a returning officer has been appointed for more than one constituency, a reference to a returning officer may be read as a reference to the assistant returning officer for a particular constituency, and the count for a constituency may be conducted for that constituency by the assistant returning officer.

*Who may be present at the count*

**111.** On the day and at the time and place appointed for the count under section 110(2), the following persons only may be present at the opening of the ballot boxes and during the count of the votes—

- (a) the returning officer for the constituency;
- (b) the assistant returning officers';
- (c) legal advisers appointed by the Supervisor to assist the returning officer;
- (d) the count leader and clerks;
- (e) the candidates;
- (f) not more than 5 counting agents of each candidate;
- (g) police officers on duty;
- (h) members of the Commission;
- (i) the Supervisor;

- (j) any person with the written permission of the Supervisor.

*Verification of ballot paper accounts*

**112.**—(1) On the day and at the time and place appointed for the count in a constituency under section 110(2), the returning officer for the constituency must identify the ballot boxes and packets received from each polling station in the constituency, dealing with one station at a time.

(2) The returning officer for a constituency must open the ballot boxes received from each polling station in that constituency and count the total number of ballot papers in each box and the unused and spoiled ballot papers to ascertain whether those papers, together with those which, from the tendered votes list, appear to have been used for tendered votes, account for all ballot papers issued to the particular polling station for the purpose of the election and must record in writing the result of the examination.

*Counting the votes*

**113.**—(1) The returning officer for a constituency must mix together all the ballot the ballot papers from the different ballot boxes for the constituency and must —

- (a) reject all invalid ballot papers and arrange the unrejected ballot papers under the names of the respective candidates by placing in a separate parcel or group all those on which a first preference is marked for the same candidate;
- (b) count and record the number of first preference votes given for each candidate on all unrejected ballot papers; and
- (c) count and record the number of invalid ballot papers.

(2) If, following the ascertainment of the first preference votes given for each candidate, a candidate has an absolute majority of votes, that candidate is elected and counting therefore ceases.

(3) If, following the ascertainment of the first preference votes given for each candidate, no candidate has an absolute majority of votes, the returning officer must proceed with the counting of votes as follows—

- (a) the candidate who has received the fewest first preference votes is next in the order of each voter's preference;
- (b) the process of excluding the candidate who has the fewest votes, and counting each of his or her ballot papers to the unexcluded candidate next in

the order of each voter's preference, is repeated until only 2 candidates remain in the count;

- (c) if, following the exclusion of candidates under this subsection, a candidate has an absolute majority of votes, that candidate is elected and counting therefore ceases.

(4) A ballot paper must be set aside as exhausted if on a count it is found that it expresses no preference for any unexcluded candidate.

(5) If, on the count, 2 or more candidates have an equal number of votes and one of them has to be excluded, the returning officer must decide by lot which of them is to be excluded unless at the immediately preceding distribution of preferences (if any) one of those candidates had fewer votes than the others, in which case that candidate is excluded.

(6) If, on the final count, 2 or more candidates have an equal number of votes, any of the candidates, or his or her counting agents, may require the returning officer to have the votes recounted.

(7) On a recount pursuant to subsection (6), a ballot paper already rejected as invalid must not be counted.

(8) If, following the recount, an equality of votes still exists, the successful candidate is the candidate who, at the immediately preceding distribution of preferences, had the greater or greatest number of votes but, if an equality of votes also existed at that stage, the returning officer must decide between the candidates by lot.

(9) Subject to subsection (10), a reference in this section to an absolute majority of votes is a reference to a greater number than one-half of the whole number of ballot papers other than invalid ballot papers.

(10) For the purposes of subsection (9), if at any stage of a count ballot papers have been set aside under subsection (4), the whole number of ballot papers, at that stage, is taken to be reduced by the number of those ballot papers set aside.

(11) For the purposes of this section, but subject to section 116(3), in the case of a ballot paper in the form set out in part II of the Schedule, if a voter has ticked a box opposite the name of a registered political party or independent candidate who has lodged a list of preferences under section 61, the voting preference of the voter in

respect of each candidate is to be ascertained by reference to the list of preferences lodged by the political party or candidate.

*Counting to proceed continuously*

**114.** At the count in a constituency, the returning officer must, so far as practicable proceed continuously with the counting of the votes, allowing only time for refreshment.

*Counterfoils and tendered ballot papers not to be opened*

**115.** The returning officer for a constituency must not open the sealed packets of counterfoils from any polling station in the constituency or refer to the numbers on the counterfoils of the used ballot papers or open the sealed packets of tendered ballot papers

*Invalid ballot papers*

**116.—(1)** A ballot paper—

- (a) that does not have on its back the initials of the presiding officer or clerk or the official mark referred to section 73(1) (c);
- (b) on which anything is written or marked by which, in the opinion of the returning officer, the voter can be identified;
- (c) that has no vote indicated on it; or
- (d) that does not indicate the votes first preference for one candidate and the order of his or her preference for all the other candidates in accordance with section 75,

is, subject to this section, invalid and any votes marked on it must not be counted.

**(2)** In the case of a Part I ballot paper—

- (a) if a voter has indicated a first preference for one candidate and an order of preference for all the remaining candidates except one and the square opposite the name of that candidate has been left blank, the voter's preference for that candidate must be taken to be the voter's last and, accordingly, the voter is to be taken as having indicated an order of preference for all the candidates;
- (b) if there are 2 candidates only and the voter has indicated a first preference for one candidate and has left the other square blank or has placed a number other than 2 in it, the voter is to be taken as having indicated an order of preference for all the candidates;
- (c) if there are 3 candidates the provisions of (1) (d) and (2) (a) apply.

- (d) if there are 4 or more candidates and—
- (i) the voter has placed the number I in the square opposite the name of one candidate;
  - (ii) the voter has not placed the number I in the square opposite the name of another candidate; and
  - (iii) in not less than 75 % of the squares opposite the names of candidates the voter has placed numbers in a sequence of consecutive numbers starting with the number I,

then—

- (iv) the ballot paper is not invalid;
- (v) the number I is to be taken as indicating the voter's first preference; and
- (vi) the voter to be taken to have indicated an order of preference by the other numbers in that sequence.

(3) In the case of a Part II ballot paper—

- (a) if the voter has placed numbers opposite the names of individual candidates, the rules set out in subsection (2) apply for ascertaining whether the ballot paper is valid in respect of individual candidates;
- (b) if the voter has placed numbers as aforesaid and—
  - (i) by applying the rules set out in subsection (2) the ballot paper would be invalid in respect of individual candidates; but
  - (ii) there is a tick opposite the name of one, and only one, registered political party or independent candidate which or who has lodged a list of candidates under section 61,

the order of preference shown on that list in respect of individual candidates is to be treated as the voter's order of preference in respect of those candidates;

- (c) if the voter has placed numbers as aforesaid and by applying the rules set out in subsection (2) the ballot paper would be valid in respect of individual candidates, its validity will not be affected by the placing of a tick opposite the name of one or more registered political parties or independent candidates which or who have lodged a list of candidates under section 61;

- (d) if the voter has not placed numbers opposite the names of individual candidates, but has placed a tick as described in paragraph (b) (ii), the provisions of that paragraph apply;
- (e) if the voter has not placed numbers as aforesaid and has placed a tick opposite the name of more than one registered political party or independent candidate, the ballot paper is invalid and any votes marked on it must not be counted.

(4) In considering, for the purpose of this section, whether numbers are in a sequence of consecutive numbers, any number that is repeated must be disregarded and any preference after the repeated number is invalid.

*Action on objections to ballot papers*

**117.**—(1) If a candidate or counting agent for a constituency objects to a ballot paper as invalid, the returning officer must mark the ballot paper "admitted" or "rejected" according to the returning officer's decision to admit or reject the ballot paper.

(2) The returning officer must consider every objection raised by a candidate or a counting agent regarding the validity of a ballot paper or any marks on it and must, subject to subsection (4), decide the objection forthwith.

(3) Nothing in this section prevents a returning officer from rejecting any ballot paper as being invalid even though it is not objected to.

(4) Nothing in this section prohibits the returning officer from seeking and acting in accordance with legal advice from the Supervisor or from the persons referred to in section 111(c).

*Returning officer's decision final*

**118.** Subject to review on an election petition under Part 7, the decision of a returning officer on a question arising on any ballot paper is final.

*Declaration of result of poll*

**119.** As soon as practicable after it has been ascertained that a candidate has been elected in any constituency, the returning officer must publicly declare the name of the candidate.

*Supervisor to be informed*

**120.** When the result of the poll in a constituency has been ascertained, the returning officer must forthwith—

- (a) notify the Supervisor of the name of the elected candidate;
- (b) endorse the name of the elected candidate on the writ; and
- (c) forward the endorsed writ and a note of the result of the election to the Supervisor.

*Returning officer's report*

**121.**—(1) As soon as practicable after an election in any constituency, the returning officer must make a report to the Supervisor of the result of the election in the approved form.

(2) The Supervisor must cause all reports made under subsection (1) to be published in the *Gazette*.

*Documents to be sent to Supervisor*

**122.**—(1) As soon as practicable after the completion of the count in any constituency, the returning officer or a person designated under section 86(1) must seal up in separate packets in respect of the constituency—

- (a) the counted ballot papers;
- (b) the rejected ballot papers;
- (c) the unopened packets of tendered ballot papers;
- (d) the counterfoils;
- (e) the ballot paper accounts prepared under section 85;
- (f) the tendered votes lists;
- (g) the list of illiterate or incapacitated voters; and
- (h) the official stamps (if any) used.

(2) Each packet prepared under subsection (1) must be endorsed with a description of its contents, the name of the constituency to which the contents relate and the date of the election.

(3) All the packets, together with the parcels referred to in section 106(5), must then be made up into one parcel, sealed so that the parcel cannot be opened without breaking the seal, endorsed with a note of the election to which the parcel refers and sent to the Supervisor who must keep the parcel in safe custody and not allow any person to have access to it, except for the purposes of ascertaining the names and addresses of voters who appear to have failed to vote at the election.

(4) If an election petition has been presented questioning the validity of any election or return, or a criminal prosecution arising out of any election has been instituted, the Supervisor

must, if so ordered by a court or the Court, deliver to the proper officer of the court or the Court the papers relating to the election or return involved.

(5) At the end of 12 months after an election, unless a court or the Court otherwise orders, the Supervisor must destroy by burning the papers used at that election.

(6) Subject as aforesaid, the Commission may, after giving 2 weeks' notice in the *Gazette* of its intention to do so, shorten the time specified in subsection (5) to a period of not less than 6 months.

#### *Return of writ*

**123.** As soon as the Supervisor has received a writ endorsed under section 120, he or she must return it to the President and must publish in the *Gazette* the result of the election to which the writ relates and the name of the elected member.

#### *Special procedure for counting votes*

**124.** Despite anything in this Act, the Commission may, by order published in the *Gazette*, apply the following provisions to any place or area where circumstances do not permit the delivery of ballot papers to the returning officer in time for the count—

- (a) the person specified in the order must as soon as possible after the close of the poll, and in the presence of the polling agents of the candidates who wish to be present (if any), count the votes cast in the place or area and must send by radio, telephone, facsimile transmission or other expeditious means to the returning officer details of the number of first preference and second and subsequent preference votes given for each candidate;
- (b) the returning officer must include the votes counted under paragraph (a) in the count made under the provisions of this Part and the decision of the returning officer on any question arising in respect of those votes is final.

### PART 6—ELECTORAL OFFENCES

#### *Accomplices*

**125.** For the purposes of this Part, a person who aids, abets, counsels or procures, or by any act or omission or is directly or indirectly knowingly concerned in, or party to, the contravention of a provision of this Act, is deemed to have contravened that provision.



*Offences in connection with registration*

**126.** A person who—

- (a) knowingly and wilfully makes a false statement or declaration in connection with an application for registration as a voter or any other application or declaration for the purposes of this Act;
- (b) knowingly and wilfully makes a second application for registration as a voter if he or she is already registered as a voter, other than as provided for by regulations made under section 18(3);
- (c) applies to be registered as a voter, or induces or procures another person to apply to be registered as a voter, knowing that he or she or the other person is not entitled to be so registered;
- (d) knowingly and wilfully misleads the Supervisor or an election officer in the compilation, maintenance or revision of an electoral roll or any list required to be compiled under this Act, or wilfully enters or causes to be entered on any such roll or list any false or fictitious name or the name of any person whom he or she knows to be dead; or
- (e) signs the name of any other person, whether requested to do so or not, or any false or fictitious name, to any form of application or objection for the purposes of this Act, whether as applicant, objector or witness, commits an offence and is liable on conviction to a fine of \$1,000 and to imprisonment for 12 months.

*Offences in connection with forms, etc*

**127.—(1)** A person who—

- (a) publishes, issues, prints, or makes a copy of a ballot paper or a form prepared for the purposes of this Act without the authority of the Supervisor and without printing on the copy the words "copy only" or "specimen only" in letters at least one centimetre high;
- (b) forges, counterfeits, fraudulently defaces or destroys a nomination form or ballot paper or a form prepared for the purposes of this Act;
- (c) without due authority supplies to any person a ballot paper or a form prepared for the purposes of this Act;

- (d) without due authority removes, alters, obliterates, mutilates or destroys a ballot paper or a form prepared for the purposes this Act;
  - (e) without due authority publishes, issues or prints, or makes a copy of, an adhesive label in use for the purpose of section 29; or
  - (f) forges or counterfeits an adhesive label in use for the purpose of section 29, commits an offence and is liable on conviction to a fine of \$1,000 and to imprisonment for 12 months.
- (2) Subsection (1)(a) does not apply to a card or paper prepared on behalf of a candidate or registered political party having on it an instruction as to how a voter should vote or as to the method of voting, or listing the preferences lodged by a registered political party or by a candidate under section 61.
- (3) A person other than an enumerator or an election officer who—
- (a) affixes to a home an adhesive label in use for the purpose of section 29; or
  - (b) without reasonable excuse, removes, alters, obliterates, defaces or destroys such a label within 30 days after it was affixed to a home,
- commits an offence and is liable on conviction to a fine of \$500 and to imprisonment for 6 months.
- (4) A person who, having obtained possession of an application for registration as a voter signed by another person, for the purpose of it being delivered to a registration officer or the Supervisor, fails without reasonable excuse to deliver it, with the result that the applicant's name is not entered on the appropriate electoral roll, commits an offence and is liable on conviction to a fine of \$500 and to imprisonment for 3 months.

*Offences in relation to electoral information*

- 128.**—(1) A person who processes, manipulates or changes by electronic, mechanical or other means any information contained on an electoral roll or a habitation index for a purpose other than—
- (a) a purpose related to an election or poll; or
  - (b) a purpose of study or research,
- commits an offence and is liable on conviction to a fine of \$1,000 and to imprisonment for 12 months.

(2) A person who uses any information contained on an electoral roll or a habitation index for a commercial purpose commits an offence and is liable on conviction to a fine of \$1,000 and to imprisonment for 12 months.

*Offences in relation to ballot papers*

**129.**—(1) A person who induces or attempts to induce another person—

- (a) to obtain a postal ballot paper with the intention of influencing the other person by bribery or intimidation to record a vote in favour of a particular candidate; or
- (b) to hand over to the first mentioned person a postal ballot paper whether or not a vote has been recorded on it, commits an offence and is liable on conviction to a fine of \$1,000 and to imprisonment for 12 months.

(2) Except as otherwise expressly authorised by this Act, a person (other than the voter to whom the ballot paper has been lawfully issued) who mark a vote or make any other mark on the ballot paper of a voter commits an offence and is liable on conviction to a fine of \$1,000 and to imprisonment for 12 months.

(3) A person who prints, publishes or distributes or causes, permits or authorises to be printed, published or distributed, any matter or thing with the intention of encouraging any voter to fill in a ballot paper otherwise than in accordance with section 75, commits an offence and is liable on conviction to a fine of \$1,000 and to imprisonment for 12 months.

(4) A person who by any spoken word or by any gesture, publicly encourages any voter to fill in a ballot paper otherwise than in accordance with section 75 commits an offence and is liable on conviction to a fine of \$1,000 and to imprisonment for 12 months.

(5) A person who—

- (a) fraudulently puts into a ballot box a paper other than the ballot paper that he or she is authorised by this Act to put into the ballot box;
- (b) fraudulently take any ballot paper out of a polling station or counting centre; or
- (c) without due authority, destroys, takes, opens or otherwise interferes with a ballot box or packet or parcel of ballot papers in use for the purposes of an election, commits an offence and is liable on conviction to a fine of \$1,000 and to imprisonment for 12 months.

### *Bribery*

**130.**—(1) A person who asks for, receives or obtains, or offers or agrees to ask for, or to receive or obtain, any property or benefit of any kind, whether for the same or any other person, on an understanding that—

- (a) any vote of the first mentioned person;
- (b) any candidature of the first mentioned person;
- (c) any support of, or opposition to, a candidate or a political party by the first mentioned person; or
- (d) the doing of any act or thing by the first mentioned person the purpose of which is, or the effect of which is likely to be, to influence the preferences set out in the vote of a voter,

will, in any way, be influenced or affected, commits an offence and is liable on conviction to a fine of \$10,000 and to imprisonment for 2 years.

(2) A person who, in order to influence or affect—

- (a) any vote of another person;
- (b) any candidature of another person;
- (c) any support of, or opposition to, a candidate or a political party by another person; or
- (d) the doing of any act or thing by another person the purpose of which is, or the effect of which is likely to be, to influence the preferences set out in the vote of a voter.

gives or confers, or promises or offers to give or confer directly or through any other person, any property or benefit of any kind to that other person or to a third party, commits an offence and is liable on conviction to a fine of \$10,000 and to imprisonment for 2 years.

(3) This section does not apply in relation to —

- (a) a declaration of public policy or a promise of public action;
- (b) any action leading to the lodging of a declaration of preferences by a registered political party or by an independent candidate under section 61.

*Undue influence*

**131.** A person who binders or interferes with the free exercise or performance, by any other person, of any political right or duty that is relevant to an election commits an offence and is liable on conviction to a fine of \$2,000 and to imprisonment for 18 months.

*Personation*

**132.**—(1) A person who—

- (a) applies for a ballot paper in the name of —
  - (i) another person, whether the name is that of a person living or dead; or
  - (ii) a fictitious person;
- (b) has already voted in an election again applies for a ballot paper at the same election in his or her own name; or
- (c) knowingly and wilfully impersonates an election officer, commits an offence and is liable on conviction to a fine of \$1,000 and to imprisonment for 12 months.

*Heading to electoral advertisements in newspapers*

**133.** A proprietor of a newspaper who fails to cause the word "advertisement" to be printed as a headline to each article, advertisement or notice in the newspaper—

- (a) that contains electoral matter; and
- (b) that is, or is to be, paid for or for which any reward or compensation or promise of reward or compensation is or is to be made,

ommits an offence and is liable on conviction to a fine of \$1,000.

*Printing and publishing of electoral advertisements, notices, etc.*

**134.**—(1) A person who prints, publishes or distributes or causes, permits or authorises to be printed, published or distributed, an electoral advertisement, handbill, pamphlet or notice in which—

- (a) the name and address (not being a post-office box) of the person who authorised the advertisement, handbill, pamphlet or notice does not appear at the end of it; and
- (b) in the case of an electoral advertisement, handbill, pamphlet or notice that is printed otherwise than in a newspaper—the name and place of business of the printer does not appear at the end of it,

commits an offence and is liable on conviction to a fine of \$1,000 and to imprisonment for 12 months.

(2) Subsection (1)(b) does not apply in relation to a car sticker, T-shirt, lapel badge, pen, pencil or balloon.

(3) A person who produces, publishes or distributes or causes, permits or authorises to be produced, published or distributed an electoral video recording on which the name and address (not being a post-office box) of the person who authorised the video recording does not appear at the end of it, commits an offence and is liable on conviction to a fine of \$1,000 and to imprisonment for 12 months.

(4) A person who—

(a) at any time between writ day and the close of the poll in any election, prints, publishes or distributes, or causes, permits or authorises to be printed, published or distributed, any matter or thing that is likely to mislead or deceive a voter in relation to the casting of a vote;

(b) at any time between writ day and the close of the poll in any election publishes or exposes, or causes to be published or exposed, to public view any document or writing or printed matter containing any untrue and defamatory statement in relation to the person, character or conduct of any candidate in the election and calculated to influence the vote of any voter; or

(c) before, or during an election in any constituency, knowingly publishes any false statement of the withdrawal of a candidate at the election, for the purpose of promoting or procuring the election of another candidate, commits an offence and is liable on conviction to a fine of \$1,000 and to imprisonment for 12 months.

(5) In a prosecution of a person for an offence against subsection (4)(a), it is a defence if the person proves that he did not know, and could not reasonably be expected to have known, that the matter or thing was likely to mislead a voter in relation to the casting of a vote.

(6) It is a defence to a prosecution for an offence against subsection (4)(b) if the defendant proves that he or she had reasonable ground for believing and did in fact believe the statement to be true.

(7) In this section—

"electoral advertisement, handbill, pamphlet or notice" means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper or any other medium announcing the holding of a meeting;

"electoral video recording" means a video recording that contains electoral matter;

"publish" includes publish by radio or television.

*Badges or emblems in polling stations*

**135.** A person who wears or displays in a polling station on a polling day in any election any badge or emblem of a candidate in the election or of a political party, commits an offence and is liable on conviction to a fine of \$500.

*Campaigning prohibited during poll*

**136.** A person who on a polling day and on any day to which the polling is adjourned—

- (a) in, or in view or hearing of, any public place, holds or takes part in any meeting, demonstration or procession having direct or indirect reference to the poll;
- (b) either in a polling station or within 50 metres of a polling station in any way interferes or attempts to interfere with any voter, with the intention of—
  - (i) canvassing for votes;
  - (ii) soliciting the vote of the voter;
  - (iii) inducing the voter not to vote for a particular candidate;
  - (iv) inducing the voter not to vote at the election; or
  - (v) ascertaining for whom the voter intends to vote or has voted;
- (c) either in a polling station or within 50 metres of a polling station conducts a public opinion poll in relation to the election; or
- (d) exhibits or leaves in a polling station any card or paper containing a direction or indication as to how any person should vote or as to the method of voting,

commits an offence and is liable on conviction to a fine of \$500 and to imprisonment for 3 months.

(2) Subsection (1) does not apply to an official statement or announcement made by an election officer or exhibited pursuant to this Act.

*Power to remove statements, etc.*

**137.**—(1) The returning officer, or assistant returning officer for a constituency may at any time on any polling day before the close of the poll at any polling station in that constituency cause to be removed or obliterated or concealed—

(a) any statement or other thing advising or intended or likely to influence any voter as to the candidate or party for whom he or she should or should not vote; or

(b) any statement or other thing advising or intended or likely to influence any voter to abstain from voting,

that is exhibited in or in view of a public place in that constituency or in any polling station in that constituency or within 50 metres of such a polling station.

(2) The presiding officer of a polling station may in respect of that polling station, exercise similar powers as are conferred on a returning officer by subsection (1).

(3) All expenses incurred in exercising a power under subsection (1) may be recovered from the persons by whom or by whose direction the statement was exhibited as a debt due by them jointly and severally to the State.

(4) Subsection (1)(a) does not apply to the list of preferences lodged by a registered political party or independent candidate and exhibited outside a polling station pursuant to section 61 (5)(b).

*Disobeying lawful directions, etc*

**138.**—(1) This section applies to the following premises—

(a) a polling station;

(b) a count centre.

(2) A person who—

(a) while in premises to which this section applies, disobeys a lawful direction given by the person in charge of the premises; or

(b) enters or remains in premises to which this section applies without the permission of the person in charge of the premises,

commits an offence and is liable on conviction to a fine of \$500.



- (3) Paragraph (2)(b) does not apply to—
- (a) a person specified in section 80;
  - (b) a person acting at the request of the person in charge of the premises; or
  - (c) if the premises are a polling station - a voter who is there for n longer than is reasonably necessary to vote.
- (4) A reference in this section to the person in charge of premises is a reference—
- (a) in the case of a polling station - to the presiding officer; and
  - (b) in the case of a counting centre - to the returning officer or a count leader

*Breaches of official duty*

**139.** An election officer who contravenes—

- (a) a provision of this Act for which no other penalty is provided; or
- (b) a direction given to him or her under this Act,

commits an offence and is liable on conviction to a fine of \$1,000.

(2) A person who is or has been an election officer who, directly or indirectly divulges or communicates any information with respect to the vote of a voter acquired by him or her in the performance of functions, or in the exercise of powers, under this Act in a way that could lead to the identification of the voter, commits an offence and is liable on conviction to a fine of \$1,000 and to imprisonment for 6 months.

(3) An election officer who, before the close of the poll in any election, make known the state of the poll or gives or purports to give any information by which the state of the poll may be known, commits an offence and is liable on conviction to a fine of \$500 and to imprisonment for 3 months.

(4) Subsection (3) does not apply to the provision of general information as to the number of voters who have voted in an election and the number who have yet to cast their vote, either in a particular polling station, or in one or more constituencies.

(5) An election officer must not do any act or thing for the purpose of influencing the vote of any person.

*Disqualification*

**140.**—(1) Where a court convicts a person of an offence under this Part it may, in addition to any other penalty it imposes under this Part, disqualify the person from the date of conviction from being registered as a voter or from voting in any election.

(2) A disqualification imposed under subsection (1) will be for such period, not exceeding 6 years, as the court thinks fit.

## Part 7—COURT OF DISPUTED RETURNS

### *Interpretation*

**141.** In this Part—

"bribery" means a contravention of section 130;

"corrupt practice" means bribery or undue influence;

"illegal practice" means a contravention of this Act or the Regulations;

"undue influence" means a contravention of section 131;

"petition" means a petition referred to in section 73 of the Constitution.

### *Filing of petition*

**142.**—(1) A petition must be presented by filing it in any registry of the High Court. (2) A petition must be served in the way in which a writ of summons is served or in such other manner as is prescribed by the relevant Rules of Court.

### *Respondent to petition*

**143.** The member whose election or return is complained of must be the respondent to the petition, and if the petition complains of the conduct of a returning officer or the Supervisor, the returning officer or the Supervisor, as the case may be, must also be a respondent.

### *Requisites of petition*

**144.** Every petition must—

(a) set out the facts relied on to invalidate the election or return;

(b) set out those facts with sufficient particularity to identify the specific matter or matters on which the petitioner relies as justifying the grant of relief;

(c) contain a prayer asking for the relief the petitioner claims to be entitled to;

(d) subject to section 146(2) be signed by the petitioner; and

(e) be filed in the registry of the Court within the period specified in section 73(3)(b) of the Constitution.

*Deposit as security/or costs*

**145.**—(1) At the time of filing a petition the petitioner must deposit with the Registrar of the Court or a Deputy Registrar of the Court \$500 as security for costs.

(2) Where more than one petitioner is named on a petition, the Court may waive the requirement of a deposit in respect of all but one of the petitioners.

*Intervention by Attorney-General or Supervisor*

**146.**—(1) The Attorney General may file a petition disputing an election or return.

(2) Section 144(d) does not apply in relation to a petition referred to in subsection (1) but such a petition must be signed by the Solicitor-General for and on behalf of the Attorney-General.

(3) Section 145 does not apply to a petition referred to in subsection (1).

(4) The Attorney General or the Supervisor may—

- (a) intervene and enter an appearance in any proceedings in which the validity of any election or return is disputed;
- (b) be represented and heard on any such intervention, in which case he or she shall be a respondent to the petition.

*No proceedings unless requirements complied with*

**147.**—(1) Subject to this Act, proceedings must not be had on a petition unless the requirements of sections 144 and 145 are complied with.

(2) The Court may, at any time after the filing of a petition and on such terms (if any) as it thinks fit, relieve the petitioner wholly or in part from compliance with section 144(b).

(3) The Court must not grant relief under subsection (2) unless it is satisfied that—

- (a) in spite of the failure of a petition to comply with section 144(b), the petition sufficiently identifies the specific matters on which the petitioner relies; and
- (b) the grant of relief would not unreasonably prejudice the interests of another party to the petition.

*Powers of the Court*

**148.**—(1) The Court must sit as an open court and its powers include the following—

- (a) to adjourn;
- (b) to compel the attendance of witnesses and the production of documents;

- (c) to grant to a party to the petition leave to inspect, in the presence of the Supervisor or an officer of the Court, the registers and other documents used at or in connection with any election and to take, in the presence of the Supervisor or the officer of the Court, extracts from those registers and documents;
- (d) to examine witnesses on oath;
- (e) to declare that any person who was returned as elected was not duly elected;
- (f) to declare any candidate duly elected who was not returned as elected;
- (g) to declare an election to be absolutely void;
- (h) to dismiss or uphold the petition in whole or in part;
- (i) to award costs;
- (j) to punish any contempt of its authority by fine or imprisonment.

(2) If more petitions than one are presented relating to the same election or return, the Court may direct that all those petitions be dealt with as one petition.

(3) Where a petitioner withdraws, or applies to withdraw from proceedings on a petition, the Court may permit any other person who was entitled to present the same petition but choose not to do so to be substituted for the petitioner who withdraws.

(4) Where a sole petitioner, or the sole survivor of several petitioners, dies, the Court may treat the petition as abated and take no further action on it, unless the Attorney General or the Supervisor or both have intervened under section 146(4) and one or the other wishes the proceedings on the petition to be heard.

(5) The Court may exercise all or any of its powers under this section on such grounds as the Court in its discretion thinks just and sufficient.

*Evidence that person not permitted to vote*

**149.**—(1) On the trial of a petition the Court must not admit the evidence of a witness that the witness was not permitted to vote in any election unless the witness satisfies the Court that—

- (a) the witness claimed to vote in the election pursuant to a provision of the Constitution or this Act under which he or she was entitled to vote; and

(b) the witness complied with the requirements of the Constitution and this Act relating to voting by voters so far as he or she was permitted to do so.

(2) If any voter, on account of the absence or error of, or omission by, an election officer, is prevented from voting in an election, the Court must not, for the purpose of determining whether the absence or error of, or omission by, the officer did or did not affect the result of the election, admit any evidence of the way in which the voter intended to vote in the election.

*Irregularities not to invalidate election*

**150.**—(1) An election must not be declared invalid because of a failure to comply with this Act if the Court is satisfied that the failure did not affect the result of the election, and that the election was conducted in a manner substantially in accordance with the requirements of the Constitution and this Act.

(2) Without limiting the effect of subsection (1), an election must not be declared invalid because of—

- (a) any failure to comply with the time prescribed for doing any act;
- (b) any omission or irregularity in filling up a form prescribed by or under this Act (other than a ballot paper);
- (c) any defect or invalidity in the appointment of an election officer or polling or counting agent or any failure by any such person to sign or make a declaration; or
- (d) any absence of, or mistake or omission or breach of duty by, an election officer, whether before, during or after the polling, if the Court is satisfied that the failure, omission, irregularity, defect, invalidity, absence, mistake or breach did not affect the result of the election, and that the election was conducted in a manner substantially in accordance with the provisions of the Constitution and this Act.

*Voiding election for illegal practices, etc*

**151.**—(1) If the Court finds that a person returned as elected, or some other person with the knowledge and consent of the person returned as elected, has committed or has attempted to commit a corrupt practice, the election of the person returned as elected must be declared void.

(2) The Court may not declare that any person returned as elected was not duly elected, or declare any election to be void—

- (a) on the ground of any illegal practice committed by a person other than the person returned as elected and without the knowledge and consent of the person; or
- (b) on the ground of any illegal practice other than a corrupt practice, unless the Court is satisfied that the result of the election was likely to be affected, and that it is just that the person should be declared not to be duly elected or that the election should be declared void.

*Finding of illegal practice no bar to prosecution*

**152.** A finding by the Court in respect of any conduct or matter does not bar or prejudice any prosecution for an illegal practice in respect of the same conduct or matter.

*Disposal of petition*

**153.**—(1) The Court must give its decision and make an order on a petition as soon as practicable.

(2) The right of appeal against any decision of the Court is governed by section 73(7) of the Constitution.

*Effect of decision*

**154.** Effect must be given to decisions of the Court as follows—

- (a) if any person returned is declared not to have been duly elected, the person ceases to be a member of the House of Representatives;
- (b) if any person not returned is declared to have been duly elected, the person may take his or her place in the House accordingly;
- (c) if any election is declared void in respect of any constituency, a new election must be held for that constituency.

*Copies of petition and order of Court to be sent to House,*

*Attorney-General etc.*

**155.** The Registrar of the Court must as soon as possible after the filing of a petition forward to the Speaker of the House of Representatives, to the Attorney-General, if he or she is not a petitioner, and to the Supervisor a copy of the petition, and, after the trial of the petition, must forward to each of them a copy of the decision and order of the Court.

*Costs*

**156.** Subject to section 157, the costs of and incidental to proceedings under this Part must be defrayed by the parties to the petition in such manner and in such proportions as

the Court determines, and, in particular, any costs that in the opinion of the Court have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or of any respondent, and any needless expenses incurred or caused on the part of the petitioner or a respondent, may be ordered to be defrayed by the parties by whom they were caused or incurred, whether those parties are or are not on the whole successful.

*Costs payable by persons proved guilty of illegal practices*

**157.**—(1) If on the trial of a petition the Court finds that a person committed any illegal practice, the Court may, after giving that person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to the proceedings before the Court to be paid by that person to such other person or persons as the Court thinks fit.

(2) All costs ordered to be paid under this section or section 156 may be recovered as a debt due by the person by whom they are ordered to be paid to the person or persons to whom they are ordered to be paid.

*Deposit applicable for costs*

**158.** If costs are awarded to any party against the petitioner, the deposit made by the petitioner under section 145 must be applied towards payment of the costs but otherwise the deposit must be repaid to the petitioner.

*Withdrawal of petitions*

**159.**—(1) A petitioner may not withdraw a petition without the leave of the Court.

(2) If there are more petitioners than one, an application to withdraw the petition may not be made except with the consent of all the petitioners.

(3) If a petition is withdrawn, the petitioner is liable to pay the costs of the respondent.

(4) On the withdrawal of a petition, notice of the withdrawal must be given by the Registrar of the Court in the *Gazette* and in a daily newspaper.

*Rules of Court*

**160.**—(1) The Chief Justice may make Rules of the Court, not inconsistent with this Part, to give effect to this Part and, in particular, for regulating the practice and procedure of the Court, the forms to be used and the fees to be paid by parties in proceedings on an election petition.

(2) Until Rules of Court are made pursuant to subsection (1), the Rules of the High Court applicable to ordinary civil actions apply, with all necessary changes, for the purposes of this Part.

## Part 8—MISCELLANEOUS

### *Power to destroy records*

#### **161.** If—

- (a) the Supervisor considers that records held by him or her, being—
  - (i) applications for registration as voters; or
  - (ii) other applications or forms completed under this Act, are no longer required; and
- (b) two general elections have taken place since those records were made, the Supervisor may destroy those records or cause them to be destroyed.

### *Extension of time for election*

**162.**—(1) Despite any other provision of this Act, the President may, on the advice of the Commission, by notice published in the Gazette, extend the time for the receipt of nominations in any constituency, for holding the election or for returning the writ in that constituency, in order to overcome any difficulty that might otherwise interfere with the due course of the election.

(2) A notice under subsection (1) may be given before or after the day appointed for the election.

(3) Upon the publication of a notice under subsection (1), the Supervisor must immediately give public notice in the constituency for which the election is to be held of any extension of time under that subsection.

### *Electoral Decree 1991 repealed*

**163.** – (1) The Electoral Decree 1991 is repealed.

(2) Despite the repeal of the Electoral Decree 1991, the Electoral (Registration of Political Parties) Regulations 1991 made under it continue in force as if made by the Commission under this Act and, for that purpose, references in those regulations to the Electoral Decree 1991 are to be read as references to this Act.



(3) Regulations made under the Electoral Decree 1991, except the Electoral(Registration of Political Parties) Regulations, are repealed.

*Regulations*

**164.**—(1) Subject to this Act, the Commission may make regulations prescribing all matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Commission may make regulations—

- (a) relating to the registration of political parties, election funding and financial disclosure by political parties and candidates;
- (b) relating to the lodging by a registered political party of its list of preferences in any election, pursuant to section 61;
- (c) prescribing the procedure in relation to the imposition and recovery of penalties for offences against the compulsory registration or compulsory voting provisions of this Act;
- (d) prescribing fees for the purposes of this Act; and
- (e) prescribing penalties not exceeding \$ 1,000 and 12 months imprisonment for any contravention of the regulations

SCHEDULE

(Section 57(4) and (5))

FORM OF BALLOT PAPER

PART I

Form of ballot paper in an election where no preferences have been lodged under section 61 by a registered political party or independent candidate.

HOUSE OF REPRESENTATIVES .....CONSTITUENCY			
A	[Party symbol]	<input type="checkbox"/> *	<input type="checkbox"/>
B		<input type="checkbox"/> +	<input type="checkbox"/>
C		<input type="checkbox"/> X	<input type="checkbox"/>
D		<input type="checkbox"/> 0	<input type="checkbox"/>

Number the boxes from 1 – your order of preference.  
Number every box to make your vote count.

PART II

Form of a ballot paper in an election where no preferences have been lodged under section 61 by a registered political party or an independent candidate.

HOUSE OF REPRESENTATIVES ..... CONSTITUENCY											
<table style="margin: auto;"> <tr> <td style="text-align: center;"><input type="checkbox"/> *</td> <td style="text-align: center;"><input type="checkbox"/> +</td> <td style="text-align: center;"><input type="checkbox"/> x</td> <td style="text-align: center;"><input type="checkbox"/> 0</td> </tr> <tr> <td style="text-align: center;">UVW</td> <td style="text-align: center;">XYZ</td> <td style="text-align: center;">etc.</td> <td></td> </tr> </table>		<input type="checkbox"/> *	<input type="checkbox"/> +	<input type="checkbox"/> x	<input type="checkbox"/> 0	UVW	XYZ	etc.		<p>You may vote in one of two ways.</p> <p>EITHER, place a tick in <b>one</b> of these boxes to indicate which party's or candidate's preference you wish to adopt as your vote.</p> <p>.....</p> <p>OR number the boxes from 1 - in your order of preference. In this case number every box to make your vote count.</p> <p>Do <b>not</b> do both.</p>	
<input type="checkbox"/> *	<input type="checkbox"/> +	<input type="checkbox"/> x	<input type="checkbox"/> 0								
UVW	XYZ	etc.									
A		<input type="checkbox"/> *	<input type="checkbox"/>								
B		<input type="checkbox"/> +	<input type="checkbox"/>								
C		<input type="checkbox"/> X	<input type="checkbox"/>								
D		<input type="checkbox"/> 0	<input type="checkbox"/>								

~~Passed by the House of Representatives this Twenty Sixth day of March, in the year of our Lord, One Thousand Nine Hundred and Ninety Eight.~~

~~Passed by the Senate this Eighth day of April, in the year of our Lord One thousand, Nine Hundred and Ninety Eight.~~

*Controlled by the Office of the Prime Minister*