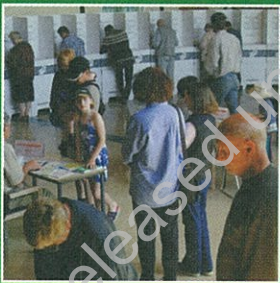
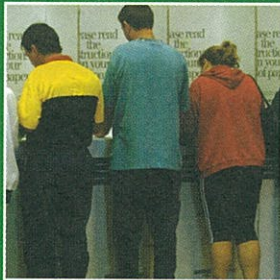


# ELECTION 2004



## CANDIDATES' HANDBOOK

Released under the Freedom of Information Act 1982



# Candidates' Handbook

**A handbook for candidates standing  
for election for the Senate and  
House of Representatives**

**August 2004**

**This publication supersedes that issued in June 2004**

**Australian Electoral Commission / AEC**

Released under the Freedom of Information Act 1982

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Published by the Australian Electoral Commission

## INTRODUCTION

### ABOUT THIS HANDBOOK

This handbook is published by the Australian Electoral Commission (AEC) to assist candidates standing for election to the Senate and House of Representatives of the Australian Parliament.

Please note that this handbook is current at 10 August 2004. Please check the AEC website [www.aec.gov.au](http://www.aec.gov.au) for further updates. The handbook explains in detail those aspects of electoral law which relate directly to candidates. It is not a substitute for the law, however, and should be read in conjunction with the Australian Constitution (the Constitution), the *Commonwealth Electoral Act 1918* (the Act), the Electoral and Referendum Regulations 1940, the *Crimes Act 1914* and the *Criminal Code*.

**Candidates are advised that, while the AEC can assist by providing information of a generalised nature in relation to the nomination process and campaign activity, it cannot provide formal or informal legal advice to candidates.**

**Candidates must satisfy themselves as to their own legal positions and if necessary refer to the exact provisions of the Constitution and the Act and consult their own lawyers.**

**The Candidates Handbook, the Constitution and the Act may be accessed through the AEC's website at [www.aec.gov.au](http://www.aec.gov.au)**

The AEC also publishes other publications detailing the responsibilities of candidates and others in relation to election funding and financial disclosure. In addition, *Electoral Backgrounders* are published on specific aspects of electoral law. Copies of these publications are available from the AEC by phoning 13 23 26 or can be accessed through the AEC's website at [www.aec.gov.au](http://www.aec.gov.au)

Candidate information sessions are provided by the AEC in most States and Territories prior to a federal election. Phone 13 23 26 for details.

## THE WRIT

This section is based on Part VIII of the Act entitled 'Enrolment', Part XIII entitled 'Writs for Elections' and Part XIX entitled 'The Return of the Writs'. Candidates are advised to refer to the Act for the exact provisions.

### ISSUE OF THE WRITS

To hold a general election for the House of Representatives, a Senate election, or a by-election, writs must be issued commanding the electoral officer to whom they are addressed to conduct the election. The issuing of the writ triggers the election process.

#### Senate

The writ for the election of Senators for a State is issued by the Governor of the State and is addressed to the Australian Electoral Officer (AEO) for the State.

The writ for the election of Senators for a Territory is issued by the Governor-General and is addressed to the AEO for the Territory.

#### House of Representatives

The writs for the election of Members of the House of Representatives are issued by the Governor-General and are addressed to the Electoral Commissioner, who advises each Divisional Returning Officer (DRO) of the dates and directs them to make the appropriate election arrangements.

Eight writs are issued for each general election of the House of Representatives: one for the election of all Members of the House of Representatives in each State, the Australian Capital Territory and the Northern Territory.

A writ for a House of Representatives by-election is issued by the Speaker of the House, or, in his or her absence, by the Governor-General. [ss. 32, 33 of the Constitution]

### DATES FIXED IN THE WRIT

The writ specifies the key dates of an election in accordance with the legislated election timetable. These dates are the close of the rolls, the close of nominations, the date of the polling and the date by which the writ must be returned.

#### Close of rolls

The date fixed for the close of rolls is seven days after the date of issue of the writ. The rolls close for the election at 8pm on this day.

Any claim for enrolment or transfer of enrolment received after this time cannot be registered until after polling day. A claim for enrolment or transfer of enrolment received between the close of rolls and polling day that was delayed in the post by an industrial dispute can be regarded as having been received before the rolls closed. [ss.102(4)-(4B) of the Act]

A facsimile of a claim for enrolment received prior to the close of rolls would also be acceptable.

By faxing the form you must agree that the time of receipt is the time when the message has completed printing from the relevant fax machine, and that you will not hold the AEC responsible for any deadlines missed or losses incurred. No other kind of electronic communication will be accepted.

### Close of nominations

The date for the close of nominations must be at least 10 days but not more than 27 days after the date of issue of the writ. Nominations close at 12 noon on this day. It is not possible to lodge a nomination as a candidate for election until the writ has been issued.

### Polling day

The date fixed for polling must be a Saturday and at least 23 days but not more than 31 days after the close of nominations.

### Return of the writ

In a Senate election, the AEO, as soon as convenient after the result of the election has been ascertained, publicly declares the result of the election and the names of the candidates elected, and then returns the writ to the Governor of the State, or, in the case of the Territories, to the Governor-General.

In a House of Representatives general election, the DRO, as soon as practicable after it has been ascertained that a candidate has been elected, publicly declares the name of the candidate elected. As soon as practicable after all votes have been dealt with, the DRO makes out a statement setting out the result of the election and transmits it to the Electoral Commissioner.

After receiving such a statement from every DRO, the Electoral Commissioner endorses on each of the eight writs the name of each candidate elected for each division in the State or Territory, and returns them to the Governor-General.

In a by-election the writ is returned to the Speaker or the Governor-General as the case requires.

**THE ELECTION TIMETABLE**Election timetable according to the Constitution and the *Commonwealth Electoral Act*

	<b>Minimum number of days</b>	<b>Maximum number of days</b>
<p style="text-align: center;"><b>Issue of writs</b></p> <p style="text-align: center;">Writs are issued within 10 days of dissolution of House of Representatives (Constitution s.12, 32) (s.151 of the Act)</p>	<i>0 days</i>	<i>10 days</i>
<p style="text-align: center;"><b>Close of rolls</b></p> <p style="text-align: center;">Rolls close at 8pm, 7 days after issue of writs (s.155 of the Act)</p>	<i>7 days</i>	<i>17 days</i>
<p style="text-align: center;"><b>Close of nominations</b></p> <p style="text-align: center;">Nominations close at 12 noon, between 10 &amp; 27 days after issue of writs. (s.156 of the Act)</p>	<i>10 days</i>	<i>37 days</i>
<p style="text-align: center;"><b>Declaration of nominations</b></p> <p style="text-align: center;">Declaration of nominations is 24 hours after nominations close (s.176 of the Act)</p>	<i>11 days</i>	<i>38 days</i>
<p style="text-align: center;"><b>Polling day</b></p> <p style="text-align: center;">Polling day is fixed between 23 &amp; 31 days after the date of nominations. (s.157 of the Act)</p>	<i>33 days</i>	<i>68 days</i>
<p style="text-align: center;"><b>Return of writs</b></p> <p style="text-align: center;">Writs must be returned within 100 days of their issue. (s.159 of the Act)</p>		<i>110 days</i>
<p style="text-align: center;"><b>Meeting of Parliament</b></p> <p style="text-align: center;">New Parliament meets within 30 days of the day appointed for the return of the writs. (s.5 of the Constitution)</p>		<i>140 days</i>

Note: The House of Representatives expires three years after its first meeting but can be dissolved earlier (s.28 of the Constitution). Senators for the States serve terms of six years which are staggered so that half of the 72 Senators retire every three years. The terms of Senators for the Territories coincide with those of the Members of the House of Representatives.

**NOMINATIONS**

This section is based on Part XIII of the Act entitled 'Writs for Elections', Part XIV entitled 'The Nominations' and Section 44 of the Constitution. Candidates are advised to refer to the Act and the Constitution for the exact provisions.

A person must be duly nominated as a candidate for election and have their nomination accepted before they can be elected to either the Senate or the House of Representatives.

**WHO IS QUALIFIED TO NOMINATE?**

To nominate for either the Senate or the House of Representatives, you must be:

- at least 18 years old;
- an Australian citizen; and
- an elector entitled to vote, or a person qualified to become such an elector.

The qualifications for nominating as a candidate for the Senate or the House of Representatives are the same. A Member of the Senate or the House of Representatives cannot be chosen or sit as a Member of the other House of Parliament.

You **cannot** nominate for the Senate or the House of Representatives if you:

- are currently a Member of a State Parliament or a Territory Legislative Assembly and have not resigned before the hour of nomination (at 12 noon on the Close of Nominations date). As the manner of resignation is governed by State and Territory law, intending candidates should check their resignation is effective before the hour of nomination.
- are disqualified by section 44 of the Constitution and have not remedied that disqualification before nomination.

**SECTION 44 OF THE CONSTITUTION**

Section 44 of the Constitution disqualifies certain persons from being elected to the Commonwealth Parliament. Section 44 of the Constitution is reproduced below:

44. *Any person who -*

- (i) *is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; or*
- (ii) *is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer; or*
- (iii) *is an undischarged bankrupt or insolvent; or*
- (iv) *holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth; or*
- (v) *has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons;*

shall be incapable of being chosen or of sitting as a Senator or a Member of the House of Representatives.

But sub-section (iv) does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.

**Candidates are required to sign a declaration on the nomination form that they are qualified under the Constitution and the laws of the Commonwealth to be elected to the Commonwealth Parliament.**

**If prospective candidates have any doubts as to their qualifications under the Constitution, the AEC recommends that they seek their own legal advice. The AEC is not qualified to provide specific legal advice to prospective candidates.**

The November 1992 High Court decision in *Sykes v Cleary*, which voided the election of Mr Phil Cleary as Member of the House of Representatives for the Division of Wills, should be noted. Mr Cleary was disqualified from being chosen as a Member of the House of Representatives under section 44(iv) of the Constitution on the grounds that, as a Victorian State school teacher on leave without pay, he held an office of profit under the Crown.

Commonwealth, State or Territory public servants who wish to nominate for election to the Commonwealth Parliament should resign from the relevant Service before nomination in order to comply with the Constitution. Conditions of re-entry to the various Public Services by unsuccessful candidates are matters for the relevant Public Service authority. The position of local government employees is not clear and it might be that such persons are vulnerable to the office of profit disqualification.

Commonwealth public servants who resign to contest an election and who are unsuccessful may apply for re-appointment or re-engagement under section 32 of the *Public Service Act 1999*. A former officer or former temporary employee is required to be re-appointed or re-engaged subject to certain conditions. Most States and Territories have comparable statutory or administrative provisions. Candidates should enquire about these from the relevant authorities before resigning or nominating.

The Constitutional disqualification on the ground of office of profit applies to permanent members of the Australian Defence Force. The relevant Defence Force authority should be consulted on conditions of resignation and re-entry.

In the *Sykes v Cleary* decision the High Court also commented on the "foreign allegiance" disqualification in section 44(i) of the Constitution. The majority view of the Court was that naturalised Australian citizens who also have foreign citizenship and are standing as candidates should take "reasonable steps to renounce foreign nationality". The available steps may depend upon foreign law, and intending candidates should enquire of their relevant Embassy or High Commission.

In *Sue v Hill* in June 1999, the High Court decided that Ms Heather Hill, of Pauline Hanson's One Nation Party, was not duly elected as Senator for Queensland at the 1998 federal election, because she was disqualified by section 44(i) of the Constitution. Ms Hill was a

British subject, and an Australian citizen, at the time of her nomination. The United Kingdom is now regarded as a "foreign power" for the purposes of section 44(i). The Court ordered a recount of the Queensland Senate votes, and Mr Len Harris, of Pauline Hanson's One Nation Party, was declared elected in Ms Hill's place.

Section 172 of the Act provides that electoral officers can only reject a nomination if the nomination does not comply with certain technical provisions of the Act. Electoral officers are not generally empowered to question, challenge or provide advice on the declaration made by an intending candidate on the nomination form that they are qualified to be elected as a Member of Parliament under the terms of the Constitution and other laws of the Commonwealth.

The election of any Member of Parliament may be challenged within 40 days of the return of the writ, by petition in the High Court sitting as the Court of Disputed Returns under Part XXII of the Act. The *Common Informers (Parliamentary Disqualifications) Act 1975* provides penalties for ineligible Members of Parliament.

No candidate may be appointed as an electoral officer of any description either as a permanent officer or as a polling official and if any electoral officer becomes a candidate they must vacate the office [s.36 of the Act]. Candidates may scrutineer on behalf of other candidates at the counting provided ballot papers being scrutinised are not related to the election in which the scrutineer is a candidate. For example, a House of Representatives candidate in Division A may be a scrutineer in Division B. It would be advisable to check with the DRO or AEO (as appropriate) before such an appointment to scrutineer is made.

#### WHEN TO NOMINATE

It is not possible to nominate as a candidate until the writ for the election has been issued. The writ is deemed to have been issued at 6pm on the day on which it is issued. The government often announces the intention to hold an election some days before the writs are issued. If in doubt check with an AEC office.

You can nominate anytime after 6pm on the day the writ has been issued and until 12 noon on the day nominations close, during normal business hours.

The date fixed for the close of nominations must be at least 10 days but no more than 27 days after the issue of the writ and is specified in the writ. The AEC advertises the dates fixed in the writ in at least two major newspapers circulating in each State and Territory, or, if there is only one major newspaper circulating in the State or Territory, in that newspaper.

Single nominations must be received by 12 noon on the day nominations close. Bulk nominations of endorsed candidates for the House of Representatives must be lodged 48 hours before the close of nominations.

**Late nominations cannot be accepted under any circumstances.**

#### WHERE TO NOMINATE

Nominations for the Senate for a State or Territory must be made at the capital city office of the AEO for that State or Territory.

Single nominations for the House of Representatives must be made at the office of the DRO for that division.

Bulk nominations of all the candidates endorsed by a registered party for the House of Representatives in a particular State or Territory must be lodged with the AEO for the relevant State or Territory.

It is the candidate's responsibility to ensure that their nomination is completed and received by the AEO or DRO (as appropriate) by the close of nominations. Lodgement with Australia Post is not the equivalent of receipt by the AEO or DRO. In addition, for the nomination to be valid it must include both the completed nomination form and the nomination deposit.

The deposit required is \$350 for a House of Representatives candidate and \$700 for a Senate candidate.

It is in the candidate's interest to lodge their nomination as early as possible. Nominating on the last day may cause problems, particularly if there are deficiencies in the nomination form which require time to resolve.

#### **Faxed nominations**

While a facsimile of the nomination form is acceptable, it is the responsibility of the candidate to ensure that the fax is received by the AEO or DRO (as appropriate) before the close of nominations. Candidates are advised to telephone the relevant AEC officer to confirm receipt of the faxed nomination.

The possibility of transmission or print delays on receiving fax machines must be considered under such circumstances.

When faxing a nomination form, it is still necessary for both the form and the nomination deposit to be in the hands of the AEO or DRO (as appropriate) by the close of nominations, for the nomination to be valid.

By faxing the form you must agree that the time of receipt is the time when the message has completed printing from the relevant fax machine, and that you will not hold the AEC responsible for any deadlines missed or losses incurred.

No other kind of electronic communication will be accepted.

**To be a valid nomination, both the nomination form and deposit must be received before 12 noon on the day nominations close.**

#### **BULK NOMINATIONS**

The registered officer of a registered political party may make a bulk nomination of all their endorsed House of Representatives candidates for a particular State or Territory at the one time. Each of the candidates included in the bulk nomination must complete a separate Part B page of the Bulk Nomination Form.

Bulk nominations must be received by the AEO for the relevant State or Territory 48 hours before the close of nominations.

If a party chooses to lodge a bulk nomination it must include all the House of Representatives candidates that the party is endorsing for the particular State or Territory.

If a bulk nomination is lodged with the AEO and a single nomination for a candidate endorsed by the same party, being one of the candidates in the bulk nomination or not, is lodged with a DRO, the bulk nomination of all that party's candidates will be invalidated.

If a candidate who was included in a bulk nomination, resigns or dies after the cut-off date for bulk nominations and before the close of nominations, that withdrawal or death does not affect the nomination of the other candidates in the bulk nomination and the registered officer may substitute a new candidate at any time before the close of nominations.

**Details of AEC offices can be found in the telephone directory, on the AEC's website at [www.aec.gov.au](http://www.aec.gov.au) or by phoning the AEC on 13 23 26.**

#### **MULTIPLE NOMINATIONS**

A person cannot nominate as a candidate for more than one election held on the same day. Hence it is not possible to nominate for more than one division for the House of Representatives, or more than one State or Territory for the Senate, or for both the House of Representatives and the Senate.

If a person nominates more than once, all their nominations will be invalid.

#### **NOMINATION FORM**

When nominating for either the Senate or the House of Representatives, the following personal information of a candidate must be set out in the nomination form:

- **the name of the candidate**

The name of a candidate must be specified on the form and must include:

- their surname or family name and one or more of the given name/s under which the candidate is enrolled; or
- when a candidate is not enrolled, a surname and one or more of the given name/s, under which the candidate is entitled to be enrolled.

A given name may be specified by:

- an initial standing for that name; or
- a commonly accepted variation of that name (including an abbreviation or truncation of that name or an alternative form of that name).

The nomination must also include a statement of the form in which the candidate's given name/s are to be printed on the ballot paper.

- **the place of residence of the candidate**



**Candidates are required to set out their residential address on the nomination form.**

A candidate, or nominator of a candidate, who has 'silent' enrolment is not required to set out their address on the nomination form. A candidate with silent enrolment must supply the DRO or AEO (as appropriate) with a correspondence address. This address may be a postal address and is not made publicly available.

- **the occupation details of the candidate**

The Act requires these details to be provided.

- **contact numbers of the candidate**

A candidate should provide contact numbers, but can ask that these numbers are not publicly released. As nomination forms will become public documents after the close of nominations, the details not for public release must be disclosed separately to the nomination form.

- **a signed declaration**

Each candidate must sign a declaration that they:

- are an Australian citizen;
- are at least 18 years of age;
- are an elector or qualified to be an elector;
- are qualified under the Constitution and laws of the Commonwealth;
- are not and do not intend to be a candidate in any other election on the same day; and
- consent to act if elected.

A person must not make a statement in their nomination form that is false or misleading or omit from a statement any information, without which the statement is misleading in a material particular. The maximum penalty for this offence is imprisonment for 12 months.

All nomination forms are publicly produced at declaration time (12 noon, the day after nominations close) and remain public documents at the office of the relevant AEO or DRO until destroyed.

**Blank nomination forms for the Senate and the House of Representatives are available from AEC offices, the AEC website [www.aec.gov.au](http://www.aec.gov.au) or by phoning 13 23 26.**

**APPOINTMENT OF AGENT FORM**

An appointment of agent form must be lodged by the close of nominations if a candidate wants to appoint an agent. Further information is available from the *Funding and Disclosure Handbook for Candidates* at [www.aec.gov.au](http://www.aec.gov.au)

**CANDIDATES ENDORSED BY REGISTERED POLITICAL PARTIES**

The registered officer and the deputy registered officer of a registered political party have equal powers in relation to the nomination process. [s.4C of the Act].

An endorsed party candidate may be nominated for election by the registered officer of the party that is endorsing the candidate

If the registered officer nominates the candidate, the request for the party's registered name or abbreviation to be printed on the ballot paper can be made on the nomination form.

Alternatively, the registered officer may provide these details in writing to the appropriate DRO or AEO before the close of nominations.

If a candidate has been endorsed by two or more political parties, only one political party can be taken to have endorsed that candidate for the purpose of printing party affiliations on the ballot paper.

Only a political party registered by the AEC may request the name of their party to be printed next to their candidate(s) names on the ballot paper. Parties, however constituted, which are not registered with the AEC are not entitled to have a party name printed next to their candidate(s) name on the ballot paper.

**CANDIDATES NOT ENDORSED BY REGISTERED POLITICAL PARTIES**

Unless they are a sitting independent Member of Parliament, a candidate who is not endorsed by a party must be nominated by fifty (or more) electors, that is, fifty people entitled to vote at the election for which the candidate is standing.

**The fifty electors who nominate a Senate candidate MUST be enrolled for the State or Territory for which the candidate is standing. The fifty electors who nominate a House of Representatives candidate MUST be enrolled for the division for which the candidate is standing.**

**It is advisable to obtain the names of more than fifty electors in case, after the checking process, some of the fifty electors are found not to be enrolled.**

Candidates who are not endorsed by a registered political party may request that the word 'Independent' be printed adjacent to their names on the ballot paper provided they are not in a group of Senate candidates.

If a sitting independent Member of the House of Representatives wishes to renominate for the division for which he or she is a Member, they will only require one signature from an elector in that division for nomination.

If a sitting independent Senator wishes to renominate for the State or Territory for which he or she is a Senator, they will only require one signature from an elector in that State or Territory for nomination.

For the purposes of this nomination procedure, a sitting independent Member of Parliament is defined as someone who was not endorsed by a registered political party at the previous election.

**SENATE NOMINATIONS**

A candidate nominating for election to the Senate may be endorsed by a registered political party or may nominate as an independent.

Candidates running as independents may do so individually or as part of a group with other independent candidates.

If candidates are endorsed as part of a group by a registered political party, the name of that party will appear on the ballot paper both above the line and next to each of the candidate's names below the line.

If different parties combine to form a 'joint ticket' then the name of the relevant party will be placed beside each candidate below the line and a composite name will appear above the line.

Specific provisions for nominating apply to an incumbent Senator who is not grouped.

**Senate nomination forms**

There are three nomination forms for the Senate which cater for the various types of candidates:

- Form 1: Nomination of a single (ungrouped) Senate candidate
- Form 2: Nomination of grouped Senate candidates who are either all not endorsed or all endorsed by one registered political party
- Form 3: Nomination of grouped Senate candidates who are each endorsed by one registered political party, but not all by the same party.

When nominating **endorsed candidates** the Registered officer may:

- nominate endorsed party candidates, or verify a candidate's party endorsement;
- request that the party name or abbreviation appear beside a candidate's name on the ballot paper;
- request the name of the party be printed on the ballot paper beside the group voting square or a composite name if candidates in a group are endorsed by different parties.

When nominating as **grouped candidates** the candidates may:

- specify the ballot paper order of the candidates' names in the group;
- request that the name(s) of the registered political party or parties (if any) that endorsed the candidates, or a composite name formed from these names, be printed on the ballot paper.

**Grouped candidates not endorsed** by a political party cannot have the word 'Independent' printed adjacent to their names or against their box above the line.

When nominating as an **ungrouped (single) and not endorsed candidate**, the candidate may have the word 'Independent' printed beside their name on the ballot paper.

**Incumbent Senators** who may or may not be endorsed, and who wish to remain ungrouped and intend to lodge individual voting ticket(s) must include with their nomination a written declaration to that effect. [s.211A of the Act]

**HOUSE OF REPRESENTATIVES NOMINATIONS**

The same nomination form is issued for House of Representatives candidates whether they are endorsed by a registered political party (unless bulk nominated), or standing as an independent.

There is also a bulk nomination form to enable registered political parties to nominate all their candidates in a particular State or Territory at the one time. The form must be completed by the registered officer of the party, and each candidate being nominated must complete a separate Part B page of the Bulk Nomination Form. Bulk nominations of endorsed candidates for the House of Representatives must be lodged 48 hours before the close of nominations.

**NOMINATION DEPOSIT**

Each nomination for the Senate and the House of Representatives must be accompanied by a deposit paid by legal tender (cash) or a cheque drawn by a bank or other financial institution on itself. **Personal cheques cannot be accepted.**

**Both the nomination form and deposit must be received before 12 noon on the day nominations close.**

The deposit required is \$700 for each Senate candidate and \$350 for each House of Representatives candidate.

The deposit for a Senate candidate will be returned to the payee or someone authorised by the payee in writing if the candidate:

- is elected; or
- in the case of an ungrouped candidate, the candidate's total number of first preference votes is at least four per cent of the total number of formal first preference votes cast for all candidates in that State or Territory; or
- where the candidate's name is included in a group, the sum of the first preference votes polled by all the candidates in the group is at least four per cent of the total number of formal first preference votes in that State or Territory.

The deposit for a House of Representatives candidate will be returned to the payee or someone authorised by the payee in writing:

- if the candidate is elected; or
- if the candidate's total number of first preference votes is at least four per cent of the total number of formal first preference votes cast for all candidates in that division.

All other candidates forfeit their deposit. If a candidate dies before polling day their deposit is returned (see page 14).

**REJECTION OF NOMINATION**

A nomination shall be rejected if the provisions relating to:

- the mode of nominations; or
- to whom the nomination is made; or
- the requisites for nomination; or
- the form of consent to act

have not been complied with.

A nomination will not be rejected simply because of a formal defect or error in the nomination provided these provisions have been complied with.

**WITHDRAWAL OF NOMINATION**

A candidate may withdraw their nomination at any time up to the close of nominations.

The withdrawal notice can be obtained from any AEC office. Senate candidates must lodge their withdrawal with the AEO for the State or Territory for which they had nominated. House of Representatives candidates must lodge their withdrawal with the DRO for the division for which they had nominated, or the AEO for the State or Territory if they were one of a number of bulk nominated candidates. Further, the registered officer may substitute a new candidate in a bulk nomination, at any time before the close of nominations.

Once the withdrawal notice is in the hands of the relevant AEC officer, the nomination is cancelled and arrangements are initiated to refund the deposit.

**UNCONTESTED ELECTIONS**

In a Senate election, if the number of candidates nominated is no greater than the number of candidates to be elected, the AEO declares the candidate(s) duly elected at the declaration time.

In a House of Representatives election, if only one candidate is nominated, the DRO declares that candidate duly elected at the declaration time.

**DEATH OF A CANDIDATE**

For either the Senate or House of Representatives, if a nominated candidate dies before the close of nominations, the nomination period is extended by a day. If a candidate was part of a bulk nomination, the registered officer may substitute a new candidate before the close of nominations.

In a Senate election, if any candidate dies between the close of nominations and polling day and the number of remaining candidates is no greater than the number of candidates to be elected, those candidates are declared elected. If the remaining candidates are greater in number than the number of candidates to be elected, the election proceeds. A vote recorded on a Senate ballot paper for a deceased candidate is counted to the candidate for whom the voter has recorded the next preference and the numbers indicating subsequent preferences are regarded as being altered accordingly. [s.273(27) of the Act].

In a House of Representatives election, if a candidate dies between the declaration of nominations and polling day the election does not proceed. A new writ is issued for another election in the division, but this supplementary election is held using the electoral roll prepared for the original election.

**RETURN OF DEPOSIT ON THE DEATH OF A CANDIDATE**

If a nominated candidate for either the Senate or the House of Representatives dies before polling day, the deposit lodged is returned to the person who paid it or a person authorised in writing by the person who paid it or, if this was the candidate, to his or her personal representative.

**DECLARATION OF NOMINATIONS**

Declarations and the draws for positions on the ballot papers are to be held 24 hours after the close of nominations.

Candidates' nomination forms will be publicly disclosed prior to the conduct of the draw to determine the order of names on the ballot paper. Media may inspect nominations and print personal details of candidates. If, however, a silent address is given on the nomination form, the address will be deleted or covered up.

**BALLOT PAPERS**

This section is based on Part XVI of the Act entitled 'The Polling'. Candidates are advised to refer to the Act for the exact provisions.

**BALLOT PAPER FORMAT**

Senate and House of Representatives ballot papers show the name of candidates and, if applicable, the name of the registered political party which endorsed the candidate or the word 'Independent'.

Where the similarity in the names of two or more candidates is likely to cause confusion, the names of these candidates may be arranged with an additional description to distinguish them from one another.

**POLITICAL PARTY NAMES ON BALLOT PAPERS**

Only political parties registered with the AEC are able to have their registered party name or registered party abbreviation printed on the ballot papers adjacent to the names of candidates endorsed by that party. Parties, however constituted, which are not registered with the AEC are not entitled to have a party name printed next to their candidate(s) name on the ballot paper.

**Endorsed Senate candidates**

A group of endorsed Senate candidates of a registered political party may have either the registered name or the registered abbreviation of that party printed adjacent to their group voting ticket square on the upper section of the ballot paper, and adjacent to each of their names on the lower section of the ballot paper.

A composite group of candidates endorsed by more than one registered political party may have a composite party name printed adjacent to their group voting ticket square on the upper section of the Senate ballot paper. Each candidate will, however, have their own registered party name printed adjacent to their name on the lower section of the ballot paper.

**Endorsed House of Representatives candidates**

An endorsed candidate of a registered political party may have either the registered name or the registered abbreviation of that political party printed adjacent to their name on the ballot paper.

**INDEPENDENT CANDIDATES**

Only candidates not endorsed by a registered political party who have, on their nomination form, requested the word 'Independent', will have the word 'Independent' printed on the ballot paper adjacent to their names.

Candidates not endorsed by a registered political party who do not request the word 'Independent' will have nothing printed adjacent to their names.

Grouped Senate candidates may not use the word 'Independent' next to their name, or next to the group voting square.

**SENATE GROUP VOTING TICKETS**

Within 24 hours of the declaration of nominations, a Senate group may lodge with the AEO for the State or Territory a written statement setting out a preference order of all candidates in the election.

The preference ordering must be a fully formal vote and must place the candidates lodging the statement ahead of any other candidate.

The statement must be signed:

- where all the members of the group have been endorsed by the same registered political party, by the registered officer of the party;
- where the members of the group have been endorsed by different registered political parties, by the registered officers of all those parties;
- in a case not covered by either of the above, by the candidate whose name first appears in the group on the ballot paper; or
- in any case, by a person authorised by all the members of the group to sign such a statement on behalf of the group. This written instrument must be given to the AEO with the nomination or nominations of members of the group.

The preference ordering may be specified in the form of a how-to-vote card.

A group may lodge up to three such tickets, provided that the preference order shown places the candidates lodging the statement ahead of any other candidate, and gives the same order of preference for the members of the group on each ticket.

When a group lodges one or more voting tickets, a square will be printed above the group on the Senate ballot paper. Electors wishing to vote according to the group voting ticket simply fill in that square with the number '1' and their preferences will be allocated accordingly during the scrutiny. If a group does not lodge a voting ticket no square will be printed above the line on the ballot paper.

Where two tickets are lodged, one half of the votes are allocated to each of the preference orders.

Where three tickets are lodged, one third of the votes are allocated to each of the preference orders.

Posters or booklets setting out copies of all voting tickets which have been lodged in that State or Territory are available at every polling place on polling day and pre-poll centres prior to polling day.

#### **INCUMBENT SENATOR VOTING TICKETS**

An incumbent Senator may lodge with the AEO a written statement setting out up to three preference orders of all candidates in the election. The statement must be signed by the candidate and lodged with the appropriate AEO, and must show a first preference for the incumbent senator. The preference order may be specified in the form of a how-to-vote card.

#### **ORDER OF NAMES ON BALLOT PAPERS**

A system of double randomisation is used for determining the order of groups and ungrouped candidates on Senate ballot papers and the order of candidates on House of Representatives ballot papers.

All candidates and members of the public are welcome to attend the draw conducted to determine the order of names on the relevant ballot paper.

#### **Senate ballot papers**

The AEO declares the nominations received for the Senate in their State or Territory at 12 noon on the day after the nominations for the election close. Following the declaration, the AEO conducts the draw for positions on the ballot paper.

In Senate elections, the names of candidates included in groups are placed on the ballot paper before the names of candidates not included in groups.

For the purposes of the Senate draw and ballot paper printing, incumbent Senators who have given written notice of an intention to lodge a voting ticket are treated as a group.

The AEO determines the order of groups and ungrouped candidates on the ballot paper by conducting a public draw for positions. This draw is conducted in two parts, with each part consisting of two draws.

In the first part, the first draw allocates a number to each group and the second draw determines the order in which each group appears on the ballot paper.

This is followed by two draws for ungrouped candidates, with the first draw allocating a number to each ungrouped candidate and the second draw determining the order in which each ungrouped candidate appears on the ballot paper.

The Senate draws are conducted in this order because groups appear before ungrouped candidates on the ballot paper.

#### **House of Representatives ballot papers**

The DRO declares the House of Representatives nominations received for their division at 12 noon on the day after the nominations for the election close. Following the declaration, the DRO conducts the double randomisation draw for ballot paper position in the divisional office.

The first draw assigns a number to each candidate and the second draw determines the order in which each candidate appears on the ballot paper.

## VOTING

This section is extracted from Part XV of the Act entitled 'Postal Voting', Part XVI entitled 'The Polling', Part XVA entitled 'Pre-Poll Voting', Part XXI entitled 'Electoral Offences and Schedule 2 entitled 'Grounds of Application for Postal or Pre-Poll Vote'. Candidates are advised to refer to the Act for the specific provisions.

### ELECTORAL ROLLS

Before polling begins, each presiding officer is supplied with a copy of the certified list of voters for the division in which the polling place is located. The certified list is used in issuing ordinary votes to electors enrolled for that division.

Apart from certain declaration voters (see below), only those persons whose names are on the certified list are entitled to vote at a federal election or referendum.

### BALLOT PAPERS

An elector is issued with separate ballot papers for each election being held on that day. They are given a white ballot paper for the Senate election and a green ballot paper for the House of Representatives election.

### METHODS OF RECORDING A VOTE

- **ordinary voting**
- **declaration voting**
  - absent voting
  - provisional voting
  - postal voting
  - pre-poll voting
- **voting at mobile polling places**
  - hospital voting
  - prison voting
  - remote division voting
- **assisted voting**
  - voting inside polling place
  - voting outside polling place

### ORDINARY VOTING

An ordinary vote is a vote recorded by an elector on polling day at a polling place prescribed for the division for which they are enrolled. This is the simplest way to vote and the method used by the majority of electors.

### DECLARATION VOTING

Declaration votes include absent votes, provisional votes, postal votes and pre-poll votes. An elector who votes under one of these categories must fill in a declaration envelope, and put their completed ballot papers into this envelope.

#### Absent voting

An elector who is away from the division for which they are enrolled but still within the same State or Territory may, upon making a declaration, vote on polling day as an absent voter at any other polling place in that State or Territory.

### Provisional voting

An elector may be issued with a provisional vote if:

- their name cannot be found on the certified list of voters for the division;
- their name is on the certified list of voters but their address does not appear on the list (these may be electors with silent enrolment who for reasons of personal or family safety do not have their address shown);
- the presiding officer has asked the person one or more questions under subsection 229(4) about matters shown on the certified list of voters for a particular person to establish whether the person is that particular person and one of the following applies:
  - (i) the person's answers do not accord with the relevant information shown for that particular person on the list;
  - (ii) the person's answers accord with the relevant information shown for that particular person on the list but the officer is not satisfied that the person is that particular person;
  - (iii) the person refused to answer fully; or
- their name has been marked on the certified list of voters as having already voted at the polling place (and the voter claims not to have voted before).

### Postal voting

An elector may apply for a postal vote if he or she:

- during the hours of polling on polling day, will not be in the State or Territory for which he or she is enrolled;
- will not be, at any time during the hours of polling on polling day, within eight kilometres by the nearest practicable route of any polling place in the State or Territory for which he or she is enrolled;
- during the hours of polling on polling day, will be traveling under conditions that will prevent the elector attending a polling place in the State or Territory for which he or she is enrolled;
- will be precluded from attending a polling place on polling day because of serious illness, infirmity or approaching childbirth;
- will be, on polling day, at a place other than a hospital, caring for a person who is seriously ill or infirm or expected shortly to give birth, and therefore precluded from attending a polling place to vote;
- during the hours of polling on polling day, will be a patient in a hospital (other than a special hospital) and unable to vote at that hospital;
- during the hours of polling on polling day, will be a patient in a special hospital and unable to have his or her vote taken by an electoral visitor;
- is, by reason of religious belief, unable to attend a polling place;
- on polling day, is serving a sentence of imprisonment or otherwise under detention;
- has silent enrolment and thus his or her address does not appear on the roll;
- during the hours of polling on polling day, will be engaged in his or her employment or occupation and:
  - is not entitled to leave of absence, or

- absence would be likely to cause loss to the person in his or her occupation.

An application for a postal vote must contain a declaration by the applicant that he or she is entitled to apply for a postal vote. The application must be signed in the presence of an authorised witness, and be returned to a DRO. If the application is accepted, the elector is sent a postal vote certificate and postal ballot papers.

Electors who are registered general postal voters will automatically receive a postal vote certificate and postal ballot papers as soon as they become available after an election is called.

#### **Postal Vote application forms provided by political parties and candidates**

A once off allocation of 200 AEC printed postal vote applications are supplied to the electorate office of each Senator and Member of Parliament on announcement of the federal election. The forms are provided in order to cater for electors who may come to an electorate office seeking a postal vote application.

AEC policy is that quantities of AEC printed postal vote applications will not be supplied to political parties and candidates, other than to Senators and Members of Parliament, as outlined above.

**In October 2003 the AEC gazetted a new version of the postal vote application in the Commonwealth Gazette. Parties and candidates wishing to reproduce the postal vote application may obtain a camera ready copy of the approved postal vote application from the Director, Elections Systems and Policy in the AEC's Central Office (phone 02 6271 4466 or email to [Tim.Evans@aec.gov.au](mailto:Tim.Evans@aec.gov.au))**

#### **Pre-poll voting**

An elector may apply for a pre-poll vote on any of the grounds applicable to postal voting. If the application is accepted, the elector votes before, or on polling day at a pre-poll voting centre, or an AEC divisional office.

### **VOTING AT MOBILE POLLING PLACES**

#### **Hospital voting**

Mobile polling teams visit gazetted hospitals and similar institutions to enable patients and residents to cast their vote. At other hospitals and similar institutions at which there are appointed polling places, the presiding officer and a polling official take the necessary voting material and equipment to all rooms or wards where there are patients who are eligible voters and who wish to vote at the hospital, and take their votes in person.

Electors who are patients (excluding out-patients) at a hospital, nursing home or similar institution at which mobile polling facilities are not provided, may apply for a postal vote. Patients at polling place hospitals and declared special hospitals who will not be able to vote on polling day or when the electoral visitors call, are also entitled to a postal vote.

In relation to special hospitals, canvassing (as detailed in [s. 340 (1) of the Act]) is prohibited from the Monday before polling day until the end of polling day.

#### **Prison voting**

The AEC may make arrangements with prison authorities for electoral visitors to take voting material and equipment to prisons for the purpose of taking the votes of those prisoners who are eligible to vote. Prisoners who will not be able to vote through a mobile team are entitled to a postal vote.

#### **Remote Division Voting**

Electors living in remote areas of a division declared to be a remote division may be visited by mobile polling teams.

The AEC determines and publicises the places, days and times of visits, which may commence 12 days before polling day and conclude on polling day.

#### **ASSISTED VOTING**

##### **Voting inside the polling place**

Assisted voting is available at all polling places including hospital, prison and remote mobile polling teams.

The presiding officer may permit any vision impaired, physically incapacitated or illiterate voter to be accompanied by a person appointed by the voter so that the person can mark, fold and deposit the voter's ballot paper in the ballot box on behalf of the voter.

Where no such person is appointed, the same role may be performed by the presiding officer in the presence of any scrutineers present or, if no scrutineers are present, in the presence of a polling official or another person appointed by the voter.

##### **Voting outside the polling place**

The presiding officer may, if satisfied that an elector is unable to enter the polling place because of physical disability, illness, advanced pregnancy or other conditions, allow the elector to vote outside in close proximity to the polling place.

#### **HOW-TO-VOTE-CARDS**

Party workers may assist electors by handing them how-to-vote cards and if necessary explaining the card to them. Party workers are reminded that it is an offence to print, publish or distribute misleading or deceptive statements relating to the actual marking of a ballot paper. How-to-vote cards must also carry the name and address of the authoriser, and the name and place of business of the printer.

Quantities of how-to-vote cards for electors in remote areas and prisons may be supplied by party workers to the leader of a mobile polling team. It is not the responsibility of the team leader to arrange for or to remind party workers to do so. In prisons, electoral visitors will provide the electoral material to electors on their request.

Electoral material including how-to-vote cards may be supplied to the general office of hospitals where mobile polling will take place.

A presiding officer or electoral visitor who visits an elector in hospital must advise the elector what electoral material, including how-to-vote cards, is available and give any of the material to the elector on his/her request.

**For more information on voting procedures, check the AEC website [www.aec.gov.au](http://www.aec.gov.au) or contact us on 13 23 26.**

## ELECTION FUNDING AND FINANCIAL DISCLOSURE

This section is based on Part XX of the Act entitled 'Election Funding and Financial Disclosure'. Candidates should also consult the *Funding and Disclosure Handbook for Candidates* published by the AEC.

### AGENTS

Candidates and Senate groups have obligations to disclose election funding. Candidates and Senate groups may appoint agents to undertake these responsibilities on their behalf. If appointed, the agent is responsible for submitting the candidate's or group's election disclosure returns to the AEC and for receiving any election public funding due.

The appointment of an agent must be made in writing to the AEC by the close of nominations and:

- provide the name, address and signature of the agent;
- be signed by the candidate or each member of the group, as the case may be; and
- incorporate a form of consent to the appointment and a declaration of eligibility signed by the agent.

**The Appointment of Agent form will be available with the nomination form. Copies are available from AEC offices and the AEC website at [www.aec.gov.au](http://www.aec.gov.au)**

Completed forms provided to the AEC after the close of nominations cannot be accepted.

**A candidate who does not appoint an agent will be considered to be his or her own agent and will therefore be responsible for completing their own election returns.**

Candidates who are members of a Senate group may appoint their own agent as well as an agent for the group. The group member who appears first in the group on the Senate ballot paper is considered to be the agent for the group if a group agent has not been appointed.

A Party Agent is **not** automatically a candidate's or Senate group's agent. If a candidate or group wishes the relevant party agent to be their agent, then that person must be specifically appointed through the completion of the agent appointment form lodged with the AEC by the close of nominations.

### ELECTION FUNDING OF CAMPAIGN EXPENDITURE

Candidates endorsed by registered political parties do not personally receive election funding. Payment of election funding is made to agents of State or Territory branches of registered political parties, or to the 'national headquarters' of the party if so requested by the party.

Unendorsed candidates receive their payment of election funding direct, unless they have appointed an agent in which case the payment will be made to the agent.

To be entitled to election funding a candidate must have gained at least four per cent of the formal first preference votes in the election contested. The amount of entitlement is based on the total first preference vote gained multiplied by the rate of funding applicable at the time.

The AEC is required to calculate the first payment of election funding entitlements based on the number of votes counted as at the 20th day after polling day for the election and arrange payment of a minimum of 95 per cent of that amount as soon as possible thereafter. The remainder of the entitlement due is paid once **all** vote counting is finalised.

### DISCLOSURE OF ELECTION DONATIONS

All candidates, whether endorsed by a registered political party or not, must submit a return of election donations. The return must reach the AEC's central office in Canberra within 15 weeks after polling day. This requirement includes candidates who are members of a Senate group.

The return must show the total value of all election gifts received, the number of donors, and the name and address of any donor who gave a gift to the value of \$200 or more during the disclosure period. If one donor gave several gifts during the disclosure period which totalled \$200 or more the donor's details must be provided on the return.

#### Disclosure period

The commencement date of the disclosure period for donations varies according to whether or not a candidate has contested a previous Senate or House of Representatives election:

- for a person who was a candidate in a general election or by-election held within four years before the current election, or in a Senate election held within seven years before the current election - the disclosure period commences on the 31st day after polling day in the last such general election, by-election or Senate election in which the person was a candidate;
- for a candidate who has never contested an election, or who contested a House of Representatives election, held more than four years before polling day or a Senate election held more than seven years before polling day - the disclosure period commences on the day on which the person announced they would be a candidate or nominated as a candidate, whichever is earlier; or
- for a Senator appointed under section 15 (casual vacancies) of the Constitution who has not been a candidate for the House of Representatives within four years of polling day, or for the Senate within seven years of polling day - the disclosure period commences on the day of their appointment under section 15.

The disclosure period for all candidates ceases at the end of 30 days after polling day for the election.

Gifts to be reported include gifts-in-kind which should be valued at the normal commercial rate. Receipts should be issued for all gifts received including those less than \$200.

An endorsed candidate who passes all gifts received directly to the party organisation may submit a nil return. Details of these gifts must be passed on to the party agent as they must be included in the State or Territory branch annual return to be submitted at the end of the financial year.

Details of any gifts received by a campaign committee of a candidate endorsed by a registered political party should also be passed to the party agent. Any gifts received by a campaign committee working for an unendorsed candidate or a candidate endorsed by an unregistered political party must be included in the candidate's return.

### DISCLOSURE OF ELECTORAL EXPENDITURE

All candidates, except members of Senate groups (see below), must submit a return of Electoral Expenditure. The return must be submitted to the central office of the AEC within 15 weeks after polling day.

The return must show expenditure incurred on the goods or services listed below which are used during the election period (between the issue of the writ and the close of polling). The categories of electoral expenditure are:

- broadcasting of electoral advertisements;
- publishing of electoral advertisements;
- display of electoral advertisements at a place of entertainment (eg. a theatre);
- production (including printing) of any other electoral material that is required to be authorised (eg. how to vote cards, posters and pamphlets);
- production and distribution of direct mail campaigns; and
- conduct of an opinion poll or other research relating to the election.

These are the only categories of electoral expenditure which are required to be reported in the return and they relate only to expenditure on goods used or services provided during the period between the issue of the writ and the close of polling. For example, newspaper advertisements published before the writ is issued do not have to be included even if payment for the advertisements is made after the writ was issued, but advertisements published after the issue of the writ must be included regardless when payment is actually made.

#### SENATE GROUP RETURNS

Senate groups, except a Senate group where all members are endorsed by the same registered political party, must submit a return of Election Donations and a return of Electoral Expenditure on behalf of the group.

The disclosure period for Senate group donations covers the period from the date a claim to be grouped on the ballot paper was made until the end of 30 days after polling day. The Senate group Electoral Expenditure Return covers the election period, ie. the time between the issue of the writ and the close of polling. These two returns are due within 15 weeks from polling day.

#### RETURN FORMS

Thirty days after polling day, the AEC will send candidates and Senate groups (or agents) return forms for completion.

A covering letter will advise the due date for submitting the required donation and expenditure returns. Additional forms are available from the central office of the AEC. It is recommended that copies of returns sent to the AEC be retained. Forms may be submitted by fax [(02) 6271 4555] or by email (provided the original document can be scanned) to [fad@aec.gov.au](mailto:fad@aec.gov.au)

#### NIL RETURNS

If a candidate did not receive any gifts that are required to be disclosed and/or did not incur electoral expenditure in the categories listed above, the candidate or agent must submit a return showing nil gifts and/or nil expenditure.

#### FAILURE TO SUBMIT RETURNS

The Act provides penalties for failure to furnish returns and further penalties for continued failure to furnish returns. The AEC will provide the Commonwealth Director of Public Prosecutions with a list of candidates or agents who do not submit returns.

#### AMENDMENTS TO RETURNS

The Act provides penalties for furnishing an incomplete or inaccurate return. It is also an offence to knowingly providing false or misleading information in a return.

If, after submission of a return, it is realised that an error or omission has been made, a written request may be made to the AEC for a specified amendment to the return. The AEC will

advise if the request has been rejected, in which case a review of the decision may be requested within 28 days of the advice of rejection.

#### INVESTIGATIONS

The Act allows the AEC to conduct investigations to determine whether disclosure obligations have been met, which may require persons to produce documents and/or give evidence.

Records relating to matters contained in, or required to be contained in, returns must be kept for three years from the polling day of the election.

#### PUBLIC INSPECTION

All election returns received by the AEC must be made available for public inspection 24 weeks after polling day. Public inspection facilities are made available at the AEC's central office and, upon request, at State and Territory Head Offices. Returns may also be made available for inspection on the AEC's website. No election returns will be available for public inspection before the end of 24 weeks after polling day.



## ELECTORAL OFFENCES

This section is based on Part XXI of the Act entitled 'Electoral Offences'. Candidates are advised to refer to the Act for the exact provisions.

For the purposes of some of the offences outlined below, section 322 of the Act defines 'relevant period' in relation to an election under this Act as:

322. *the period commencing on the issue of the writ for the election and expiring at the latest time on polling day at which an elector in Australia could enter a polling booth for the purpose of casting a vote in the election.*

Note that some of the offences are only in force for the 'relevant period' (as indicated), while others are in force at all times.

### OFFENCES UNDER THE CRIMINAL CODE

The offence of knowingly making a false or misleading statement in any claim for enrolment, or in any declaration, application or return is prosecuted under Part 7.4 of the Criminal Code. The maximum penalty provided under the Criminal Code is 12 months imprisonment. The Criminal Code is contained in Schedule 1 of the *Criminal Code Act 1995*.

It is important to note that false or misleading statements made in relation to Part XX of the *Commonwealth Electoral Act 1918* (election funding and financial disclosure) will continue to be prosecuted under the specific offences contained in that Part of the Act.

The offence of forging and uttering a nomination paper or a ballot paper will be prosecuted under Part 7.7 of the Criminal Code. The maximum penalty provided under the Criminal Code is 10 years imprisonment.

The definition of "penalty unit" contained in s.4AA of the *Crimes Act 1914* is as follows:

One penalty unit = \$110 [s.4AA of the *Crimes Act 1914*]

### INFLUENCING VOTES OF HOSPITAL PATIENTS

The proprietor (or the employee of the proprietor or member of the body corporate) of a hospital or nursing home must not do anything for the purpose of influencing the vote of a patient in, or resident at, the hospital or nursing home.

PENALTY: \$1 000 or imprisonment for 6 months, or both. [s. 325A of the Act]

### BRIBERY

Election campaign declarations of public policy or promises of public action are not regarded as bribery. Section 326 of the Act is reproduced in full below.

- 326(1) *A person shall not ask for, receive or obtain, or offer or agree to ask for, or 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, group of candidates or a political party by the first-mentioned person;*
- (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 an elector; or*

- (e) *the order in which the names of candidates nominated for election to the Senate whose names are included in a group in accordance with section 168 appear on a ballot paper,*

*will, in any manner, be influenced or affected.*

PENALTY: \$5 000 or imprisonment for 2 years, or both.

- (2) *A person shall not, 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, group of candidates or a political party by another person;*
  - (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 an elector; or*
  - (e) *the order in which the names of candidates for election to the Senate whose names are included in a group in accordance with section 168 appear on a ballot paper;*

*give or confer, or promise or offer to give or confer, any property or benefit of any kind to that other person or to a third person.*

PENALTY: \$5 000 or imprisonment for 2 years, or both.

- (3) *This section does not apply in relation to a declaration of public policy or a promise of public action.*

### INTERFERENCE WITH POLITICAL LIBERTY

No person shall hinder or interfere with the free exercise or performance by any other person, of any political right or duty relevant to an election.

PENALTY: \$1 000 or imprisonment for 6 months, or both. [s.327(1) of the Act]

A person must not discriminate against another person for making a donation to a political party, to a candidate or to a group in an election or by-election by:

- denying them access to membership of any trade union, club or other body;
- not allowing them to work or continue to work;
- subjecting them to any form of intimidation or coercion;
- subjecting them to any other detriment.

PENALTY: \$5 000 or imprisonment for 2 years for an individual; \$20 000 for a body corporate.

### ELECTION ADVERTISING OFFENCES

Section 328(5) of the Act defines electoral advertising as:

.....**electoral advertisement, handbill, pamphlet, poster or notice**, means an advertisement, handbill, pamphlet, poster or notice that contains electoral matter, but

does not include an advertisement in a newspaper announcing the holding of a meeting.

For the purposes of the Act 'electoral matter' is defined as matter which is intended or likely to affect voting in an election. [s.4(1) of the Act] 'Matter' is taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on:

- the election;
- the Government, the Opposition, a previous Government or a previous Opposition;
- the Government or Opposition, or a previous Government or Opposition, of a State or Territory;
- a member or former member of the Parliament of the Commonwealth or a State or of the legislature of a Territory;
- a political party, a branch or division of a political party or a candidate or group of candidates in the election; or
- an issue submitted to, or otherwise before, the electors in connection with the election. [s.4(9) of the Act]

All printed or published electoral advertising, including handbills, pamphlets, posters and car stickers, must be authorised by showing the name and address (not being a post office box) of the person authorising it and the name and address of the printer. In the case of newspaper advertisements, the name and address of the printer is not required. [s.328(1) of the Act]

If a newspaper advertisement stretches across two opposing pages, each page must contain authoriser information, unless it is clear that the two pages relate to the one advertisement [s.328(1AB) of the Act]. In the case of an electoral video recording, this authoriser information must appear at the end of a recording. [s.328(1A) of the Act]

Authorisation is not required for a T-shirt, lapel button, lapel badge, pen, pencil or balloon, or for an advertisement announcing the holding of a campaign meeting [ss.328(3) and (5) of the Act] Nor is it required for business or visiting cards, or for letters and cards that bear the address (not a post office box) of the sender, and that do not contain a representation or purported representation of a ballot paper. [s.328 (3) of the Act]

PENALTY: \$1 000 for an individual; \$5 000 for a body corporate. [s.328 of the Act]

Section 328 is designed to avoid irresponsibility through anonymity in election advertising. This offence applies at all times.

**If there is any doubt as to whether a particular item of electoral advertising should be authorised, the AEC recommends that the best course of action is to have it authorised.**

No one shall, during the relevant period, print, publish, distribute, permit or authorise anything that is likely to mislead or deceive an elector in relation to the casting of their vote. This includes 'publishing' by radio or television. [s.329(1) of the Act] This offence applies during the election period.

PENALTY: \$1 000 or imprisonment for 6 months or both, for an individual; \$5 000 for a body corporate. [s.329(4) of the Act]

Note that 329(1) does not apply to "truth in political advertising". It only prohibits advertising that misleads or deceives electors in relation to obtaining, marking or depositing

their ballot paper. It does not apply to advertising that is "untrue" and might mislead or deceive electors in the formation of their political judgement.

The proprietor of a journal must ensure that all advertisements that contain electoral matter (whether or not they were inserted for payment) are headed by the word "advertisement" in letters not smaller than 10 point. This provision applies at all times.

PENALTY: \$550 or 5 penalty units. [s.331 of the Act]

For the purposes of the Act, a journal is defined as a newspaper, magazine or other periodical, whether published for sale or for distribution without charge. [s.331(3) of the Act]

No one shall write, draw or depict any electoral matter directly on any road, footpath, building, vehicle, vessel, hoarding or any other place, whether it is a public place or not and whether it is on land or water or in the air. It is understood that this provision is directed primarily at graffiti.

PENALTY: \$1 000 [s.334 of the Act]

Section 334 does not prohibit signs on or at the office or committee room of a candidate or political party, indicating that it is the office or committee room of the candidate or party, and specifying the name of the candidate or party, or the projection of electoral matter onto a screen in a cinema. [s.334(3) of the Act]

#### **PUBLIC MEETINGS**

No one shall disrupt a public electoral campaign meeting by disorderly behaviour.

PENALTY: \$500 [s.347(1) of the Act]

The chairperson of a public election campaign meeting may ask police to remove anyone who, in his or her opinion, is preventing the business of the meeting, and anyone removed from such a meeting who returns without the authority of the chairperson is guilty of an offence.

PENALTY: \$1 000 or imprisonment for 6 months, or both. [ss.347(3),(4) of the Act]

#### **OFFENCES ON POLLING DAY**

Candidates and their supporters should also be aware of the various acts and omissions that constitute an offence on polling day.

It shall be the duty of every elector to vote at each election.

PENALTY: \$50 [s.245(1) of the Act]

No one shall exhibit or leave a how-to-vote card in any polling booth.

PENALTY: \$500 [s.335 of the Act]

Except where expressly authorised by the AEC - for example, assistance to incapacitated or illiterate voters - no one shall mark a vote or make any other mark on a ballot paper issued to another elector.

PENALTY: \$1 000 or imprisonment for 6 months, or both. [s.338 of the Act]

No one shall:

- impersonate anyone in order to secure a ballot paper to which the impersonator is not entitled; or
- impersonate anyone in order to vote; or
- fraudulently destroy or deface any ballot paper; or
- fraudulently put any ballot paper or other paper in the ballot box; or

- fraudulently take any ballot paper out of any polling booth or counting centre; or
- supply ballot papers without authority; or
- unlawfully destroy, take, open or otherwise interfere with ballot boxes or ballot papers

PENALTY: Imprisonment for 6 months. [s.339(1) of the Act]

A person is guilty of an offence if they vote more than once in the same election.

PENALTY: 10 penalty units [s.339(1A) of the Act]

An offence against subsection (1A) is an offence of strict liability. [s.339(1B) of the Act]

No one shall deface, mutilate, destroy or remove any official electoral notice, list or document.

PENALTY: \$500 [s.339(2) of the Act]

The following acts are prohibited on polling day within six metres of an entrance of a polling booth:

- canvassing or soliciting for votes (consequently, supporters distributing how-to-vote cards must keep off polling booth premises or grounds, and only hand out how-to-vote cards to electors outside these limits);
- inducing any elector not to vote for any particular candidate;
- inducing any elector not to vote at the election; or
- exhibiting any notice or sign (other than an official one) relating to the election.

PENALTY: \$500 [s.340(1) of the Act]

The following acts are prohibited on polling day if they occur six metres or more from the entrance to a polling booth, they are broadcast by electronic equipment, and are clearly audible within six metres of the entrance to a polling booth:

- canvassing for votes;
- soliciting the vote of an elector;
- inducing an elector not to vote for a particular candidate; and
- inducing an elector not to vote at the election.

PENALTY: 5 penalty units [s.340(1A) of the Act]

When a building used as a polling booth is situated in enclosed grounds and the DRO has authorised the Officer in Charge to display at each entrance a notice signed by him or her stating that the grounds are part of the polling booth, those grounds are considered to be part of the polling booth for the purposes of the above offences. [s.340(2) of the Act]

No electoral official or scrutineer shall wear or display in a polling place any badge or emblem of a candidate or political party.

PENALTY: \$1 000 [s.341 of the Act]

A person in any pre-poll voting office, any polling booth on polling day or any counting centre shall not:

- engage in misconduct;
- disobey a lawful direction of the person in charge; or
- enter or remain in such a place without the permission of the person in charge.

An offender may be removed by the police or anyone else authorised by the person in charge.

PENALTY: \$500 [s.348 of the Act]

Candidates should note that photographers or their equipment are not to hinder or inconvenience any polling staff or voters at polling booths and no photographs are to be taken that would reveal how a person voted. Candidates arranging for photographers to visit polling places should seek permission from the DRO in sufficient time to enable arrangements to be made with the officer(s) in charge of the relevant polling places.

## SCRUTINEERS

This section is based on Part XVI of the Act entitled 'The Polling' and Part XVIII entitled 'The Scrutiny'. Candidates are advised to refer to the Act for the exact provisions.

### ROLE OF SCRUTINEERS

Scrutineers observe, on behalf of candidates:

- prepoll voting in prepoll voting centres;
- the polling in a polling place;
- the counting of ballot papers (the scrutiny) in a counting centre;
- the preliminary scrutiny of absent, prepoll, postal and provisional votes (declaration votes); and
- the further scrutiny of declaration votes.

The Act gives scrutineers legal rights and responsibilities. No candidate may in any way take part in the administrative conduct of an election.

Scrutineers are required to observe the secrecy of the vote. [s323 of the Act] There is a penalty of \$1 000 or 6 months imprisonment or both for failing to comply. Scrutineers may not use any image recording device (including cameras, video recorders and video enabled mobile phones) to record images of ballot papers or declaration envelopes, or any other images that might identify an elector and how they have voted, in a polling place or counting centre.

### APPOINTMENT OF SCRUTINEERS BY CANDIDATES

#### Scrutineers at the polling

Candidates may appoint scrutineers to represent them at every polling booth and prepoll voting centre, on the basis of no more than one scrutineer for each issuing point at a polling booth.

Candidates may appoint scrutineers to represent them at polling booths and prepoll voting centres by completing a Scrutineer Appointment Form which can be obtained from any of the AEC's divisional offices.

The form must be signed by the candidate (a facsimile of the signature is acceptable) and the name and address of the scrutineer must be given. Alternatively, candidates may appoint scrutineers by sending a facsimile to the DRO or the presiding officer of a polling booth, if such facilities are available.

Each scrutineer must sign the undertaking on the form that they will not attempt to influence the vote of an elector and that they will not disclose any knowledge acquired concerning the vote of any elector. [s.202A(3) of the Act] A scrutineer must wear a badge, supplied by the AEC, that identifies them as a scrutineer.

No one, other than polling officials, scrutineers and electors voting or about to vote, is permitted in the polling booth during the polling except by permission of the presiding officer. [s.348 of the Act]

Scrutineers attending mobile polling in remote areas of Australia must organise their own transportation.

### Scrutineers at the scrutiny

Candidates may also appoint scrutineers to represent them at the scrutiny. The number of scrutineers who may represent a candidate at each counting centre is limited to the number of officers engaged in the counting of ballot papers there.

The appointment of a scrutineer should be made in writing and given or sent to the officer conducting the scrutiny at the counting centre. It must be signed by the candidate (a facsimile of the signature is acceptable) and must provide the name and address of the scrutineer. Once again a facsimile is acceptable if such facilities are available.

**The same form may be used to appoint scrutineers for both the polling and scrutiny.**

Candidates may scrutineer on behalf of other candidates at the scrutiny provided ballot papers being scrutinised are not related to the election in which the scrutineer is a candidate. For example, a House of Representatives candidate in Division A may be a scrutineer in Division B. It would be advisable to check with the DRO or AEO (as appropriate) before such an appointment to scrutineer is made.

### Scrutineers at a Preliminary Scrutiny of Declaration Votes

The preliminary scrutiny of declaration votes is conducted by the DRO to determine those declaration votes which are admissible and which can proceed to the further scrutiny (ie. the examination of ballot papers).

The preliminary scrutiny of prepoll and postal votes will commence on the Monday prior to polling day. This will assist the DRO in commencing the further scrutiny of these types of declaration votes promptly after polling day.

Postal and prepoll votes will be checked to ensure that they have been signed by the voter. For prepoll votes names are marked off the certified list, while for postal votes names are marked off the electronic roll.

In both cases any envelopes requiring further investigation will be put aside until after polling day.

Declaration envelopes will not be opened in the week prior to polling day. No declaration vote envelope will be opened or ballot paper scrutinised prior to the close of the poll.

Candidates will be contacted by the DRO prior to the commencement of the preliminary scrutiny setting out the times, dates and places of the preliminary scrutiny.

It should be noted that the AEO for a State or Territory may, in exceptional circumstances, instruct a DRO not to commence the preliminary scrutiny on the Monday prior to polling day.

### Scrutineers at the Further Scrutiny of Declaration Votes

At the further scrutiny declaration vote envelopes which have passed the preliminary scrutiny are opened, and the ballot papers extracted and counted.

The further scrutiny is conducted by the DRO and will not commence prior to the close of the poll.

Candidates will be advised by the DRO prior to the commencement of the further scrutiny setting out the times, dates and places of the further scrutiny.

Scrutineers have the same rights and responsibilities at a further scrutiny that they have at the scrutiny of ballot papers in a counting centre.

## SCRUTINEERS HANDBOOK

More detailed information concerning the rights, duties, powers and functions of scrutineers during polling and scrutiny is contained in the *Scrutineers Handbook*.

The *Scrutineers Handbook* also explains the different methods of voting, matters relating to the formality and informality of Senate and House of Representatives ballot papers and the Senate and House of Representatives scrutines.

The *Scrutineers Handbook* is available from all AEC offices or by ringing 13 23 26.

## ELECTION NIGHT COUNTING

This section is based on Part XVIII of the Act entitled 'The Scrutiny'. Candidates are advised to refer to the Act for the exact provisions.

### THE SCRUTINY ON POLLING NIGHT

The counting of ordinary votes commences in each polling place immediately after the poll closes at 6pm on polling day. Ordinary votes are defined as votes cast by electors at a polling place within their division on polling day. At the 2001 federal election approximately 84 per cent of votes cast were ordinary votes.

At a general election, the House of Representatives ballot papers are scrutinised before Senate ballot papers.

The officer in charge of each polling place is called the Presiding Officer during polling, from 8am to 6pm. However, during the counting of the votes (the scrutiny) he/she is called the Assistant Returning Officer.

### HOUSE OF REPRESENTATIVES COUNT

The House of Representatives ballot papers are first sorted by the polling officials into first preference votes for each candidate and informal ballot papers. The results are then tabulated and the first preference vote figures for each candidate are telephoned to the relevant DRO.

The DRO, in turn, enters these figures for each polling place in their division into the national computerised Election Information System. The system electronically transmits these figures to the National Tally Room in Canberra, where the Election Information System displays these progressive first preference results and associated swings. These results are also available from the AEC website's virtual tally room at [www.aec.gov.au](http://www.aec.gov.au)

### Indicative two candidate preferred vote for House of Representatives

At the completion of the count of first preferences for the House of Representatives at each polling place, the Assistant Returning Officer must, as directed by the relevant AEO, conduct an indicative distribution of preferences on a two candidate preferred basis.

Like the count of first preference votes, this result is telephoned through to the DRO, where it is progressively entered into the Election Information System and transmitted to the National Tally Room in Canberra. These results are also available from the AEC website's virtual tally room at [www.aec.gov.au](http://www.aec.gov.au)

### SENATE COUNT ON ELECTION NIGHT

The counting of Senate ballot papers also begins on polling night. All Senate ballot papers are counted and a single figure for each group and ungrouped candidate is reported.

Because Senate results cannot be calculated until the State-wide total of votes used to determine the 'quota' is known, it is usually not possible to get more than a general impression of the Senate results on election night.

The Senate count on election night commences at the same time as the two candidate preferred count for the House of Representatives. Results from the Senate count are telephoned through to the DRO, and Group totals and Ungrouped results are entered into the Election Information System in the same way as House of Representatives votes.

The AEC is able to conduct Senate scrutines by a computer process. The computer process, known as the Easy Count Senate system, involves data entry of all ballot papers marked below the line. Ballot papers marked above the line only are entered as a single total for each group voting ticket. The Easy Count Senate system calculates the quota and distributes

preferences and produces the result of the election. This system provides full accountability and an 'audit trail' including reports for inspection by scrutineers. Using this system, the AEC expects to be able to declare all Senate election results no later than the fourth week after polling day.

#### **FRESH SCRUTINY**

The initial scrutiny conducted at the polling place on polling night is followed by a 'fresh scrutiny' conducted by the DRO in the days following polling day. The exact time will be advised by each DRO.

At this stage, some ballot papers earlier treated as informal may be admitted to the scrutiny by the DRO, and similarly some ballots originally treated as formal may be classified as informal.

Any person approved by the officer conducting the scrutiny may be present at the scrutiny, as well as duly appointed scrutineers.

## **RECOUNTS AND DISPUTED RETURNS**

This section is based on Part XVIII of the Act entitled 'The Scrutiny' and Part XXII entitled 'Court of Disputed Returns'. Candidates are advised to refer to the Act for the exact provisions.

#### **RECOUNTS**

A recount usually occurs when the result of an election is very close. A recount may be undertaken, approved or directed at any time before the declaration of the result of an election. It should not be confused with the routine recheck (fresh scrutiny) of the House of Representatives votes counted on polling night, which is automatically carried out by the DRO in the days following polling day.

Only candidates are entitled to request a recount, although the electoral official conducting the scrutiny may also direct a recount. The electoral officer is not obliged to conduct a recount automatically on the request of a candidate.

#### **Senate recounts**

When requesting a recount, Senate candidates must write to the AEO for the State or Territory giving their reasons for the request.

If the AEO for the State or Territory refuses a request from a candidate to direct a recount of any Senate ballot papers, the candidate may appeal in writing to the Electoral Commissioner to direct a recount of the ballot papers. The Electoral Commissioner is empowered to either direct or refuse a recount.

#### **House of Representatives recount**

When requesting a recount, House of Representatives candidates must write to the DRO giving their reasons for the request.

DROs may be directed by the Electoral Commissioner or the AEO at any time before the declaration of a result of a House of Representatives election to recount all or some ballot papers.

The DRO is required to notify each candidate of the time and place of any recount.

Candidates should note that the DRO conducting a recount has the same powers as if the recount were the original scrutiny, and may reverse any decision in the scrutiny to admit or reject a ballot paper.

The DRO may, and at the request of a scrutineer must, reserve any ballot paper for the decision of the AEO. The AEO must decide whether any ballot paper reserved for his or her decision is to be admitted or rejected. If a ballot paper is considered admitted by the AEO, the DRO will determine to whom the first preference has been allocated, if it is unclear.

If an election result is challenged the Court of Disputed Returns may consider any ballot paper reserved for the decision of the AEO but may only order a further recount if it is satisfied that a recount is justified.

#### **SCRUTINY FOR INFORMATION**

After the election of a member of the House of Representatives, the Electoral Commissioner may direct the DRO to carry out, for information purposes, a scrutiny of the second and later preferences of the candidates, and may specify a distribution of those preferences. This information is used to calculate a 'two party preferred' figure for all divisions.

**COURT OF DISPUTED RETURNS**

The validity of any election may only be disputed by a petition to the Court of Disputed Returns. The High Court of Australia sits as the Court of Disputed Returns.

The Court of Disputed Returns sits as an open court and its powers include the following:

- (i) to adjourn;
- (ii) to compel the attendance of witnesses and the production of documents;
- (iii) to grant to any party to a petition leave to inspect in the presence of a prescribed officer the rolls and other documents (except ballot papers) used at or in connection with any election and to take, in the presence of the prescribed officer, extracts from those rolls and documents;
- (iv) to examine witnesses on oath;
- (v) to declare that any person who was returned as elected was not duly elected;
- (vi) to declare any candidate duly elected who was not returned as elected;
- (vii) to declare any election absolutely void;
- (viii) to dismiss or uphold the petition in whole or part;
- (ix) to award costs;
- (x) to punish any contempt of its authority by fine or imprisonment.

[s.360(1) of the Act]

Procedures for disputing an election are laid down in Part XXII of the Act. Those contemplating a challenge should consult their own legal advisers.

It has been held by the High Court that petitioners, other than candidates and the AEC itself, must be qualified to vote by being enrolled on the date on which the election was held. Petitioners cannot challenge the election at large but only those elections for which they were qualified to vote. Petitions must set out the facts relied on to invalidate the election and if alleging illegal practices, must show how these could have affected the election result. Only illegal practices within the meaning of that term under the Act can invalidate an election.

**Requisites of petition**

A petition must:

- (i) set out the facts relied on to invalidate the election;
- (ii) 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 (the Court may at any time after the filing of the petition relieve the petitioner from complying with this);
- (iii) contain a prayer asking for the relief the petitioner claims to be entitled to;
- (iv) be signed by a candidate at the election in dispute or by a person who was qualified to vote at the election;
- (v) be attested by two witnesses whose occupations and addresses are stated; and
- (vi) be filed in the Registry of the High Court within 40 days after the return of the last returned writ of an election; or in the choice of a person to hold the place of a Senator, within 40 days after the notification of that choice.

[s.355 of the Act]

When filing the petition the petitioner must deposit \$500 security for costs. [s.356 of the Act]  
There may be other filing fees and charges under the High Court Rules.

**Note that the AEC is not able to assist petitioners in preparing petitions as there would be a conflict of interest in that the AEC is usually a party to any petition before the Court of Disputed Returns.**

**VOIDING ELECTION FOR ILLEGAL PRACTICES**

Section 362 of the Act which details when an election is declared void due to illegal practices is reproduced below:

- 362(1) *If the Court of Disputed Returns finds that a successful candidate has committed or has attempted to commit bribery or undue influence, the election of the candidate shall be declared void.*
- (2) *No finding by the Court of Disputed Returns shall bar or prejudice any prosecution for any illegal practice.*
- (3) *The Court of Disputed returns shall not declare that any person returned as elected was not duly elected, or declare any election void:*
- (a) *on the ground of any illegal practice committed by any person other than the candidate and without the knowledge or authority of the candidate; or*
  - (b) *on the ground of any illegal practice other than bribery or corruption or attempted bribery or corruption;*

*unless the Court is satisfied that the result of the election was likely to be affected, and that it is just that the candidate should be declared not to be duly elected or that the election should be declared void.*

- (4) *The Court of Disputed Returns must not declare that any person returned as elected was not duly elected, or declare any election void, on the ground that someone has contravened the Broadcasting Services Act 1992 or the Radiocommunications Act 1992.*

Any candidate found guilty of bribery or undue influence or interference with political liberty may not be elected to or sit as a Member of either House of Parliament for two years from the date of conviction or finding by the Court. [s.386 of the Act]

## LEGAL PROCEEDINGS INVOLVING CANDIDATES

This section is based on Part XXI of the Act entitled 'Electoral Offences' and Part XXIII entitled 'Miscellaneous'. Candidates are advised to refer to the Act for the exact provisions.

### DEFAMATION OF CANDIDATES

No one may make or publish any false and defamatory statement about the personal character or conduct of a candidate. However, it is a defence to a prosecution if the defendant who made the statement proves he or she had reasonable ground for believing and did in fact believe the statement to be true.

**PENALTY:** \$1 000 or imprisonment for 6 months or both, for an individual. [s.350(1) of the Act] Penalties for bodies corporate are determined under the formula set out in section 4B(3) of the *Crimes Act 1914* and may be 5 times the amount of the maximum fine that could be imposed on a natural person convicted of the same offence.

Anyone who makes a false and defamatory statement about the personal character or conduct of a candidate may be restrained by injunction by the aggrieved candidate from repeating the statement or any similar false and defamatory statement. [s.350(2) of the Act]

As candidates and their legal advisers are in the best position to know whether statements made about them constitute defamation, the AEC recommends that candidates seek their own legal advice if these circumstances arise, and initiate their own legal action to seek an injunction or other remedy as appropriate.

### UNAUTHORISED ANNOUNCEMENT OF CANDIDATE SUPPORT FOR ORGANISATIONS

No one may, on behalf of any association, league, or organisation, without the written authority of the candidate, claim publicly that a candidate is associated with or supports the policy of that association, league or organisation.

**PENALTY:** \$1 000 for an individual; \$5 000 for a body corporate. [s.351 of the Act]

Where any public claim by or on behalf of an organisation is made that a candidate supports that organisation, without the written authority of the candidate, all office holders of that organisation are also guilty of the above offence. [s.351 of the Act]

These provisions do not apply to any announcement or publication by a political party or any of its branches when the candidate has publicly declared himself or herself a candidate of that particular party [s.351 of the Act].

### INJUNCTIONS

There is extensive provision for candidates or the AEC to be able to seek injunctions from the Federal Court to restrain breaches or anticipated breaches of any Commonwealth law relating to elections [s.383 of the Act].



## ADDITIONAL ASSISTANCE AVAILABLE TO CANDIDATES

The AEC produces a range of information materials for candidates in addition to the *Candidates' Handbook*.

Some of the information materials available are

- *Scrutineers' Handbook*: information for scrutineers in the election
- *Electoral Pocketbook*: a concise handbook of electoral data and statistics
- *Nominations Pamphlet*: concise information for people interested in standing as a candidate
- *Electoral Backgrounders*: backgrounders discussing particular issues in the electoral process
- *Election Funding and Financial Disclosure Handbook*

Other information materials such as *Electoral Newsfile* editions will be available during the election campaign.

A copy of the *Scrutineers' Handbook* is given to each candidate when they nominate at a divisional office. A copy of the relevant Election Funding and Financial Disclosure Handbook is sent to each candidate after nomination. Additional copies are available on request.

General information leaflets on a range of topics are available from all AEC offices or by phoning 13 23 26.

### OFFICIAL MATERIAL AVAILABLE TO CANDIDATES

Subject to availability, all relevant official electoral forms (except in relation to funding and disclosure) may be obtained from AEC State or Territory head offices and local divisional offices.

Funding and disclosure forms are sent direct to candidates' agents. Additional copies can be obtained from the Funding and Disclosure Section at the AEC's central office in Canberra.

All House of Representatives candidates will receive a hard copy of the certified list of voters for the Division for which they are seeking election, as soon as they are produced after the close of the rolls for the election. [s. 91C of the Act] The Act does not provide for electronic versions of the certified list to be made available to House of Representative candidates. Senate candidates are not entitled to copies of the certified list.

The *Candidates' Handbook* and other electoral information are also available on the AEC's website at [www.aec.gov.au](http://www.aec.gov.au)

## AEC ADDRESSES

postal address	locality address	phone and fax
<b>Electoral Commissioner</b>		
Mr Andy Becker		
PO Box 6172	Central Office	ph: (02) 6271 4411
KINGSTON ACT 2604	West Block Offices	fx: (02) 6271 4558
	Queen Victoria Terrace	
	PARKES ACT 2600	
<b>Australian Electoral Officer for NEW SOUTH WALES</b>		
Mr David Farrell		
PO Box K778	Level 1	ph: (02) 9375 6333
HAYMARKET NSW 1240	Roden Cutler House	fx: (02) 9212 7659
	24 Campbell St	
	SYDNEY NSW 2000	
<b>Australian Electoral Officer for VICTORIA</b>		
Mr Daryl Wight		
GPO Box 768G	Level 22	ph: (03) 9285 7100
MELBOURNE VIC 3001	Casselden Place	fx: (03) 9285 7174
	2 Lonsdale St	
	MELBOURNE VIC 3000	
<b>Australian Electoral Officer for QUEENSLAND</b>		
Ms Anne Bright		
GPO Box 2590	7 <sup>th</sup> Floor	ph: (07) 3834 3440
BRISBANE QLD 4001	Collection House	fx: (07) 3832 3058
	488 Queen St	
	BRISBANE QLD 4000	
<b>Australian Electoral Officer for SOUTH AUSTRALIA</b>		
Dr Chris Drury		
GPO Box 344	9 <sup>th</sup> Floor	ph: (08) 8237 6555
ADELAIDE SA 5001	Origin Energy Building	fx: (08) 8231 2664
	1 King William St	
	ADELAIDE SA 5000	

postal address	locality address	phone and fax
<b>Australian Electoral Officer for WESTERN AUSTRALIA</b>		
Ms Jennie Gzik		
PO Box 9867 PERTH WA 6848	Level 3 AXA Building 111 St Georges Tce PERTH WA 6000	ph: (08) 6363 8080 fx: (08) 6363 8016
<b>Australian Electoral Officer for TASMANIA</b>		
Mr Alex Stanelos		
GPO Box 520 HOBART TAS 7001	2 <sup>nd</sup> Floor AMP Building 86 Collins St HOBART TAS 7000	ph: (03) 6235 0501 fx: (03) 6234 4268
<b>Australian Electoral Officer for the NORTHERN TERRITORY</b>		
Mr Bill Shephard		
GPO Box 21 DARWIN NT 0801	Level 7 TCG Centre 80 Mitchell St DARWIN NT 0800	ph: (08) 8982 8000 fx: (08) 8981 7964
<b>Australian Electoral Officer for the AUSTRALIAN CAPITAL TERRITORY</b>		
Mr Jeff Howarth		
<i>Please note Mr Howarth will take up this position on the announcement of the next federal election.</i>		
GPO Box 1824 CANBERRA ACT 2601	1st Floor 8-10 Hobart Place CANBERRA ACT 2601	ph: (02) 6249 7908 fx: (02) 6248 7559

**Divisional offices:**

- direct phone numbers can be provided by calling 13 23 26
- addresses can be found in the White Pages under *Australian Electoral Commission* or by contacting the appropriate AEC State or Territory head office
- addresses can be accessed on the AEC's website at [www.aec.gov.au](http://www.aec.gov.au)

**GLOSSARY**

AEC	⇒	Australian Electoral Commission.
AEO	⇒	Australian Electoral Officer; the AEC's chief manager in each State and the Northern Territory. An AEO for the Australian Capital Territory is only appointed for each election period. The AEO is the returning officer for the Senate in their State or Territory.
candidate	⇒	a person standing for election to the Senate or House of Representatives.
<i>Commonwealth Electoral Act 1918 ("the Act")</i>	⇒	the legislation governing the Commonwealth electoral process. Referred to as the Act in this handbook.
Constitution	⇒	Australian Constitution
counting centre	⇒	means any premises at which a scrutiny or counting of ballot papers is to be, or is being, conducted.
divisions (electorates)	⇒	Australia is divided into voting areas, which are known as divisions. One Member is elected from each division to the House of Representatives.
DRO	⇒	Divisional Returning Officer; the AEC officer responsible for conducting the election in each division. The DRO is the returning officer for the House of Representatives in his/her division.
Electoral Commissioner	⇒	the officer who performs the functions of the chief executive officer of the AEC.
electoral matter	⇒	matter which is intended or likely to affect voting in an election.
informal	⇒	a ballot paper is generally considered informal if it is not filled out correctly in accordance with the Act and the instructions on the ballot paper. It cannot therefore be included in the Scrutiny.
nomination form	⇒	the approved form which must be used by a candidate nominating for election. There are three forms for the Senate. There are two forms for the House of Representatives, one being the bulk nomination form.
ordinary vote	⇒	a vote cast at a polling place in the elector's home division on polling day. At the 2001 election 84 per cent of electors voted this way.
penalty unit	⇒	defined in section 4AA of the <i>Crimes Act 1914</i> (\$110).

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presiding officer	⇒	the officer in charge of each polling place is called the presiding officer during polling (8am to 6pm). From 6pm, during the scrutiny they are called the Assistant Returning Officer.
quota	⇒	to be elected to the Senate, a candidate needs to gain a quota or proportion of the first preference votes. The quota is determined by dividing the total number of formal ballot papers in the State or Territory by one more than the number of Senators to be elected and adding 'one' to the result.
registered officer	⇒	a person nominated by a registered political party to be the registered officer for the purposes of the <i>Commonwealth Electoral Act 1918</i> .
registered political party	⇒	a party registered with the AEC under Part XI of the <i>Commonwealth Electoral Act 1918</i> .
regulations	⇒	<i>Electoral and Referendum Regulations 1940</i>
scrutineers	⇒	Scrutineers are appointed by candidates to be their representative at polling booths, or at any place at which the scrutiny of votes is being conducted. Scrutineers have the right to be present when the ballot boxes are sealed and opened and when the votes are sorted and counted so that they may check any possible irregularities, but they may not touch any ballot paper.
scrutiny	⇒	the counting of votes which leads to the election result.
TCP count (Two candidate preferred)	⇒	these figures show where preferences have been distributed to the likely final two candidates in an election. In most cases, but not all, these will be from the two major sides of politics - the ALP and the Liberal and National Party Coalition.
TPP count (Two party preferred)	⇒	these figures indicate results where preferences have been distributed to the major sides of politics - the ALP and the Coalition. In most cases TCP and TPP are the same because the final two candidates are ALP and Coalition. In an independently held seat the TCP differs from the TPP.

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**Senate Candidate Refunds**

Candidate	Pay to	Receipt no.	Amount	% of votes
s22 - irrelevant material (code 17)				
s22 - irrelevant material (code 17)				
s22 - irrelevant material (code 17)				
Barnaby Joyce [REDACTED] [REDACTED]	National Party Australia Queensland PO Box 5940 West End QLD 4101	A51702	\$2,100	6.61
s22 - irrelevant material (code 17)				
<b>Total refunds</b>			<b>\$10,500</b>	

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## **REDACTION CODES**

- 1 Personal Information (name) redacted.
- 2 Personal Information (date of birth) redacted.
- 3 Personal Information (photograph) redacted
- 4 Personal Information (facsimile of signature) redacted.
- 5 Personal Information (facsimile of manuscript initialling) redacted.
- 6 Personal Information (Individual's address) redacted.
- 7 Personal Information (individual's telephone number) redacted.
- 8 Personal Information (individual's opinion) redacted.
- 9 Personal Information (opinion about individual) redacted.
- 10 Personal Information (employment history) redacted.
- 11 Personal Information (qualifications) redacted.
- 12 Personal Information (health) redacted.
- 13 Business information (Bank Account details) redacted.
- 14 Business information (Billing Account details) redacted.
- 15 Legal Professional Communication redacted.
- 16 Deliberative material redacted.
- 17 Irrelevant material redacted.
- 18 Electoral Roll material redacted.
- 19 Tests, examinations or audits material redacted.
- 20 Management or assessment of personnel material redacted.
- 21 Proper and efficient conduct of the operations of AEC material redacted.