



Candidate Handbook

House of Assembly Elections

 Tasmanian
Electoral Commission

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Introduction

This booklet provides an easy reading summary of important information that all intending Tasmanian House of Assembly ('State') election candidates should know.

The booklet has been organised in line with the following election stages:

- » Commencement – with the issue of the writ
- » The nomination period
- » The early voting period and polling day
- » The counting and declaration of the poll

While **candidate campaigning** flows across all of these stages, it has been treated as a separate area and combined towards the end of the booklet.

Additional electoral information, forms and election results are available on the Tasmanian Electoral Commission (TEC) website at tec.tas.gov.au. Please contact the TEC or your returning officer if you have any further queries.

Election rules

The rules for State elections are established by the *Electoral Act 2004* ("the Act") and approved¹ election forms and procedures.

Candidates should be aware that the role of the TEC and returning officers is to administer the election in accordance with the Act. While implementation of the Act forms part of the daily function of returning officers, it is not their role to provide legal advice to candidates, groups or parties.

For ease of reading, some sections of the Act have been paraphrased. However, this booklet has no legal status and should not be substituted for the Act itself.

How to access the Act and other legislation

The *Electoral Act 2004* and other up to date Tasmanian Acts and Regulations can be accessed online at legislation.tas.gov.au

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

Other quick points

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

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

Useful tip: Shaded boxes in the booklet highlight practical advice for candidates.

COVID Safe information

COVID Safe information for candidates is provided in Appendix A.

¹ Approved by the Tasmanian Electoral Commission. This allows electoral processes to incorporate the use of appropriate modern technology and practice as it becomes available.

House of Assembly divisions and returning officers

House of Assembly divisions



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

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

A House of Assembly term expires four years from the return of the previous election writs, but it can be dissolved earlier. Once the House of Assembly is dissolved or its term expires, the Governor will issue writs for a State election.

Due to the recent passing of the *Expansion of House of Assembly Act 2022*, there will now be 35 members elected to the House of Assembly. Each division will elect seven members using the Hare-Clark voting system. A summary of Hare-Clark appears later in this handbook.

Returning officers

Returning officers are statutory positions contained in the Act and have legislated powers and responsibilities. Prior to each election the TEC will formally appoint a person to hold the position of returning officer for each division.

The names and contact details for the returning officer for a particular division will be made available on the TEC website after an election is announced.

The writ

What is the writ?

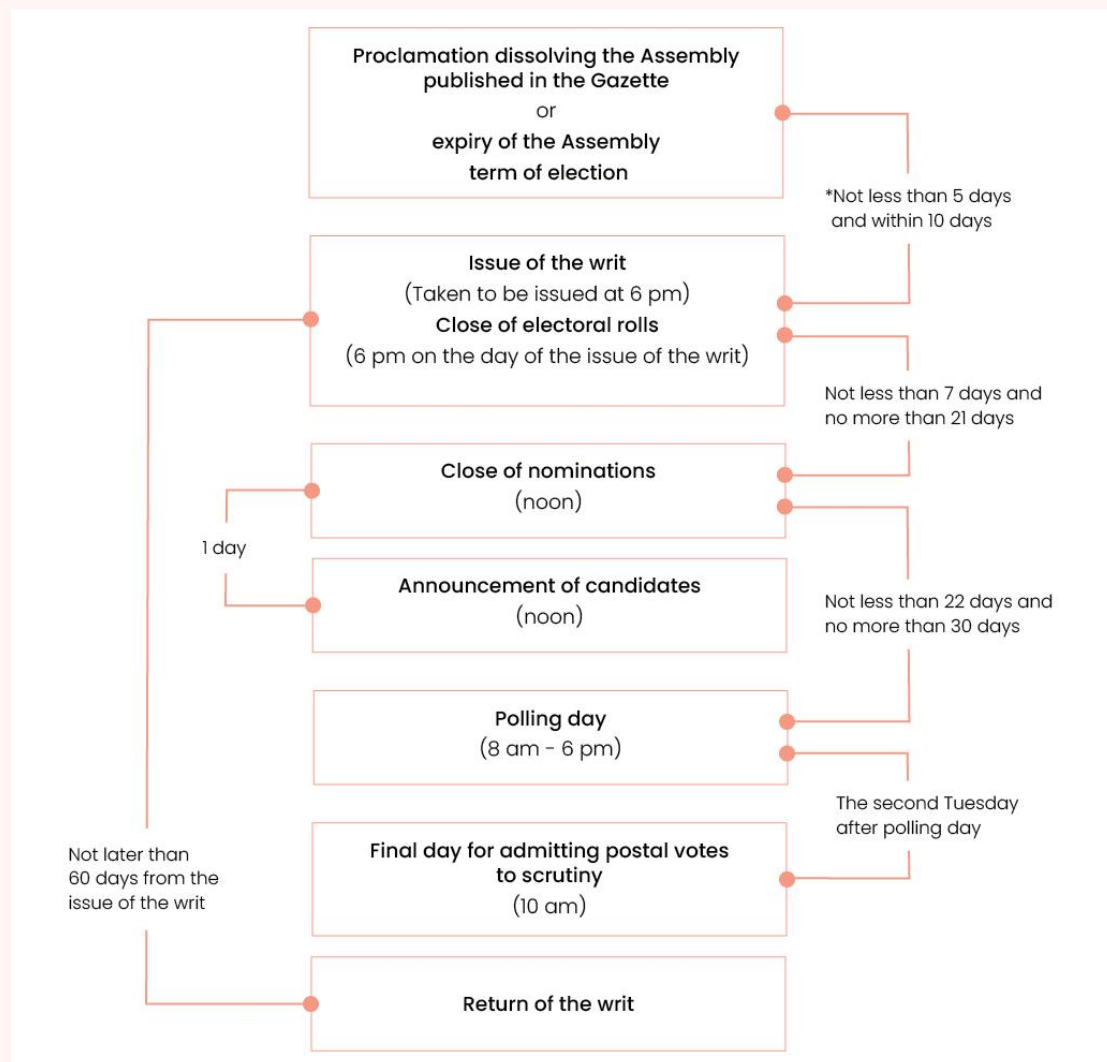
sections 63, 64, 67, 68, & 71

The writ is a document which carries the Governor's command to conduct an election, specifying key election dates: the close of nominations, polling day, and the return of the writ.

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

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

Election timetable (House of Assembly) sections 63, 64, 67-74, 77, 87, 94 & 139



*This period allows electors time to enrol or update their enrolment. All enrolment changes must be received by the Australian Electoral Commission before the close of rolls.

The nomination period

Note: The TEC cannot provide you with legal advice. The TEC can help by supplying general information about the nomination process. As a prospective candidate, you must satisfy yourself about your legal position including your eligibility under the *Electoral Act 2004* and section 14 and division 5 of the *Constitution Act 1934*. You should also consider obtaining your own legal advice.

Who can nominate?

Constitution Act 1934, section 14

To be elected as a Member of Parliament a person:

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

Persons ineligible for nomination

section 76

A person is ineligible to be nominated as a candidate for an Assembly election if they are:

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

How to nominate & nomination forms

sections 75, 76 & 77

There are three types of nominations for State elections. A nomination form must be accompanied by a \$400 deposit per candidate.

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

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

- » a statement by the registered officer of the political party that each candidate has been endorsed by the party and signed by the registered officer as nominator; and
- » the details, signature and a statement of consent of each candidate.

Non-party candidate

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

- » the candidate's details, signature and a statement of consent of the candidate; and
- » the details and signatures of at least 10 electors within the division who support the candidate's nomination.

Group candidate(s)

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

- » at least 100 nominators (electors within the division); and
- » the details, signature and a statement of consent of each candidate.

More nominators: Providing one or two extra nominators on the form may help avoid last minute difficulties for both individual candidate and group nominations.

Candidate's consent and declaration

section 77

Regardless of which nomination form is used, all candidates are also required to complete and sign a declaration on the nomination forms that:

- » they are qualified to be elected as a member of the House of Assembly; and
- » they are not disqualified from being elected under the *Constitution Act 1934*.

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

A candidate's ballot paper name

sections 80 & 99

Each candidate is required to provide a form of their name to appear on the ballot paper. The ballot paper name does not need to be the candidate's full name. For example, a person enrolled as Thomas James Citizen might request the ballot paper name "Tom Citizen" as that is how he is commonly known.

The Commissioner may approve a ballot paper name, other than a form of the candidate's name, if satisfied that the person is commonly known by that name².

Lodging the nomination

section 77

To formally lodge a nomination, the completed form and deposit must be received by the returning officer during the nomination period – from the issue of the writ until noon on nomination day.

A party nomination form can be lodged with either the returning officer or the Electoral Commissioner during the nomination period.

The nomination deposit of \$400 must be cash or a special bank cheque³.

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

² If two candidates have similar names that might cause confusion, the Electoral Commissioner may arrange the names with additional information so that each candidate can be distinguished.

³ A bank cheque being a cheque drawn by an authorised deposit-taking institution or other financial institution on itself.

Once a nomination has been received

section 77

When the nomination form and deposit are in the hands of the returning officer (or the Electoral Commissioner for party nominations), the form is notated as “received at [place, date and time]”.

The returning officer/Electoral Commissioner will:

- » check that the form is completed fully;
- » check that the form complies with the requirements of section 77 of the Act; and
- » confirm the full nomination deposit has been provided.

If the material lodged is satisfactory, the returning officer will formally accept the nomination. If the nomination is incomplete, the returning officer will contact the candidate to seek further information.

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

Access to the election roll

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

Once the returning officer has accepted a nomination, the candidate is sent a confirmation letter and an ‘election roll request form’. All candidates are entitled to a printed copy of the election roll⁴.

An election roll can only be used for a purpose connected with the election. It is otherwise an offence to use, without reasonable excuse, information from the roll.

Nominations invalid due to change of name

section 84 & 85

The Commission may determine that a nomination is invalid on the ground that the candidate has changed their name to a name which:

- » is a party name or the name of a public body, or so nearly resembles a party name or public body name that it is likely to be confused with, or mistaken for, the party name or public body name; or
- » includes the word “independent” or a word of similar meaning; or
- » is obscene or offensive.

The Commission may also determine that a nomination in respect of a person as a candidate is invalid on the ground that the person has changed their name to a name which the Commission considers could cause confusion.

If the Commission determines that a nomination is invalid on a ground mentioned above it must advise the person in writing of the reasons and of any right to appeal the determination.

A person may appeal to the Supreme Court in accordance with section 85, provided that their nomination was received before 5.00pm on the fourth business day before close of nominations.

⁴ It can take 3-4 days after the close of rolls for printed rolls to be prepared and distributed.

Withdrawal of nomination

section 83 & approved form

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

A 'party candidate' must also provide a signed statement by the registered officer of the party that they consent to the withdrawal of the nomination.

A 'group candidate' must also provide a signed statement from each other candidate nominated in the group, that they consent to the withdrawal of the nomination.

Close of nominations

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

Nominations must be received by the returning officer (or the Electoral Commissioner for party nominations) before noon on the day the nomination period closes – nomination day.

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

Announcement of candidates

The announcement

section 87

At noon on the day after the nomination period closes, the returning officer will publicly announce the names of all candidates.

Public announcement of the election details

Immediately following the announcement, candidates' names are published on the TEC website and in a media release. The media release also includes any phone number and email address candidates have agreed, on their nomination form, to make publicly available.

A notice specifying the date of the poll, and a list of candidates, will be published in a newspaper circulated in the division.

Ballot paper draw

sections 89 & 97, Schedule 3 & Regulations

Tasmanian Parliamentary and local government elections use 'Robson rotation' to enable candidate names to be rotated on versions of the ballot paper so that each candidate receives an equal share of the favoured positions at the top and bottom of each column.

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

Creation of election ballot papers

section 97

Once the announcement of candidates and draw for ballot paper positions has been conducted, the TEC will create and produce ballot papers for each election.

Ballot papers for State elections list the names of candidates in columns across the ballot paper, either under a registered party name, as a group, or in a column of ungrouped candidates. The order of party and group lists is determined by lot. The ungrouped candidates are always listed in the final column.

Each candidate's name on the ballot paper is identified by their 'ballot paper name' as specified on the nomination form.

Other nomination matters

Refunding the nomination deposit

sections 77(8) & 86

The returning officer will refund the nomination deposit (\$400) if the candidate has:

- » been elected;
- » not been elected but, at any stage of the scrutiny obtained a number of votes which is not less than 20% of a quota;
- » withdrawn their nomination as a candidate before the end of the nomination period⁵; or
- » died before polling day.

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

If an election fails, nomination deposits will be returned to all candidates.

Death of a candidate at election

section 90 & 86(3)

If a candidate dies:

- » before noon on nomination day – nominations may be lodged until noon on the day after nomination day and candidates are to be announced as soon as practicable thereafter;
- » after noon on nomination day and before polling day – and there are more than 7 candidates remaining, the election is to proceed and the votes cast for the deceased candidate are to be counted as votes cast for the candidate next in order of the elector's preference; or
- » on or after polling day – the count for the election is to be conducted, and if the deceased candidate receives sufficient votes to be elected, a vacancy is taken to have occurred.

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

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

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

Candidates are strongly advised to seek their own legal advice concerning their particular situation.

⁵ The withdrawal of a nomination must be in accordance with section 83 of the *Electoral Act 2004*.

Voting at State elections

Polling places

A polling place is a place appointed by the Commission where people listed on the election roll may vote.

Polling places are classified as:

- » an ordinary polling place – open on polling day;
- » a pre-poll polling place – open during the early voting period; or
- » a mobile polling place – where the electoral process goes to hospitals and other institutions during the early voting period and sometimes on polling day.

Polling places are located in community and town halls, school buildings and sometimes office buildings.

The early voting period usually commences on the first business day after the candidates are announced and concludes the day before polling day.

Polling place locations will be published on the TEC website and in the local daily newspaper on polling day.

These lists also indicate which polling places have better access for electors with a physical disability or who have mobility issues.

Assistance to certain electors

section 113 & 169

Electors requiring assistance in a polling place should ask for the polling place manager. An elector who is unable to vote without assistance:

- » may nominate another person to help them fill in a ballot paper at a voting screen if the elector is unable to do so without assistance;
- » the person assisting the elector is to mark the ballot paper in accordance with any directions whether in writing or otherwise presented; and
- » an election official may take ballot material outside a polling place (for example to a parked car) to assist a voter who can come near to a polling place but is unable, due to a disability, to enter the polling place.

If an elector is to be assisted, an electoral official is to advise any scrutineers present of the approved procedure by which the elector is voting.

Types of early voting

Under the Act, all persons listed on the election roll are entitled to vote at a polling place on polling day. Electors unable to attend a polling place on polling day may:

- » vote at a pre-poll polling place in Tasmania during the early voting period;
- » vote interstate at any other State or Territory Electoral Commission office;
- » be visited by a mobile polling team.
- » vote by postal vote; or
- » complete a telephone vote if interstate or overseas during the polling period.

Pre-poll voting

sections 108 & 115

To vote at a pre-poll centre, the elector must have their name marked off the roll and also complete a signed declaration that they will be unable to vote in a polling place on polling day.

Interstate voting

section 132(a)

An elector who is interstate may record an interstate vote at a pre-poll polling place arranged by the Commissioner and provided by another electoral authority.

Mobile voting

sections 108 & 114

Usually in the days leading up to polling day, mobile polling teams will visit appointed institutions such as hospitals and nursing homes. Hours of polling are determined by the Commissioner. Further details about mobile polling and a list of the dates and times institutions will be visited will be provided by the returning officer.

Postal voting

sections 125-130

An elector may vote by post if they are unable to attend a polling place on polling day or are a silent elector. Applications must reach the returning officer, or a person approved for the purpose, before 4.00pm on the 8th day before polling day.⁶

In 2024, postal vote applications must be with the Electoral Commission by 4.00pm Friday 15 March, 2024.

Telephone voting

The TEC now provides telephone voting for those electors who are interstate or overseas. Please see our website tec.tas.gov.au for further information.

⁶ Candidates and parties who wish to distribute bulk supplies of applications are requested to obtain these from the TEC. Postal vote applications must be accompanied by TEC reply paid envelopes, as a delay to the return of an application could jeopardise the timely receipt of the postal ballot pack by the elector and also may be a breach of section 128.

Polling day

Hours of polling (8.00am – 6.00pm)

sections 3 & 94

Each ordinary polling place is to be open for polling from 8.00am on polling day until the close of poll at 6.00pm. While electors may not be admitted after 6.00pm, if an elector is in line to vote before 6.00pm, and wishes to vote, the poll will not close until that elector has voted.

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

Person not on the roll or already marked off roll

sections 116, 117 & 118

If an elector's name cannot be found on the roll, or has already been marked on the roll, the elector may choose to complete a declaration vote.

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

After close of the poll

sections 140 & 141

After the close of the poll, a provisional count of the first preference votes is conducted at each polling place⁷. A thorough check of all votes takes place at the returning officer's office during the 10 days after polling day.

Progressive results will be available at tec.tas.gov.au, which also has previous election results.

At the time of publication there has not been a decision as to whether a tally room will operate on polling night.

Campaigning restrictions on polling day and when voting is taking place

section 120

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

There are specific rules regarding campaigning both on polling day and near to any location where polling is taking place during the early voting period. See the *Campaign material* section on page 19 for further details.

⁷ In order to ensure the secrecy of the vote, the TEC may approve combining the ballot papers received at a small polling place with the ballot papers received at another polling place.

Photographers:

Prior arrangements to photograph or film inside a polling place should be made through the returning officer. Photographers are only permitted into a polling place at the discretion of the polling place manager.

Party workers or the press may take photographs of candidates casting their vote provided that ballot papers are folded over.

Scrutineers during voting

Role of the scrutineer

sections 105 & 106

The role of the scrutineer is to represent the candidate at the places where voting or counting take place.

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

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

If a scrutineer brings a matter to the attention of an election official, that official is to consider the request and take any action they consider appropriate. If requested by the scrutineer, the election official will record details of the request and action taken.

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

Entry to the polling place scrutiny: Scrutineers are entitled to enter or leave a polling place at any time, before or after 6.00pm.

Appointment of scrutineers

sections 104 & 172

The appointment of a scrutineer must be made in an approved form, signed by the candidate. This appointment must be provided to an election official by the scrutineer before commencing their functions as a scrutineer.

Further, the scrutineer is required to sign a declaration that they will perform their functions in accordance with the Act and preserve the secrecy of the voting.

A copy of this form will be provided by the returning officer.

In completing the form, a scrutineer must declare:

- » I will preserve the secrecy of the voting,
- » I will obey any lawful direction given by an election official or the returning officer,
- » I will not interfere with, or attempt to influence, an elector or other person,
- » I will not communicate with a person except as is necessary in undertaking my functions as a scrutineer,
- » I will not touch or interfere with any ballot materials except with the authority of an election official, and
- » I will not otherwise misconduct myself.

Close of the poll

The counting of ballot papers begins once the last elector (who has arrived before 6.00pm) has finished voting and left the polling place.

Polling place staff will unfold each ballot paper and – if the ballot paper is formal – distribute it to the candidate who received the elector's first preference.

This is a slow process due to the rotation of candidate names on the ballot paper. Any scrutineer questions or queries are to be made with the polling place manager.

Formal votes

section 102(1)

To cast a valid vote, an elector must record a preference for at least 7 candidates, by numbering boxes 1, 2, 3, 4, 5, 6 and 7.

Informal votes

section 103

A ballot paper is informal if:

- » no vote has been recorded on it;
- » it is not marked in accordance with section 102(1) (see above);
- » it contains any unauthorised marking or writing which will (in the opinion of the election officer responsible) enable a person to identify the elector concerned;
- » a number from 1-7 is repeated;
- » a number from 1-7 has been omitted; or
- » it has not been:
 - authenticated by the initials of the election official; or
 - authenticated by an approved mark.

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

A repetition or omission of a preference after the number 7 does not make the ballot paper informal. The preferences preceding the error on such ballot papers will be included in the scrutiny.

End of the evening

Polling place figures are phoned through to the TEC once the polling place manager has completed the initial scrutiny. At the end of the evening, all ballot papers and other polling material is securely packaged and returned to the returning officer.

The returning officer will supervise a full recheck of all first preferences and amalgamate candidates' parcels of ballot papers from each polling place before undertaking a provisional distribution of preferences.

Post-election and scrutiny timetable sections 145 & 148

The following tasks are undertaken in the returning officer's office following the return of ballot papers and other election material from polling places.

10 Day period for the return of postal votes

Postal vote declaration envelopes and
declaration vote envelopes
– declarations checked and eligible
ballot papers admitted to the scrutiny

Progressive counting of postal votes

Two re-checks of ordinary ballot papers

Amalgamation of first preference votes
for each candidate

Final check of the ballot papers

2nd Monday after polling day

Returning officers may commence a provisional
distribution of some ballot papers
(usually those held by candidates who have reached a
quota of votes on first preferences).

Scrutineers will be advised prior to the commencement
of any such provisional distribution.

Please note: due to this period clashing with Easter in 2024, the timetable for these processes may be delayed.

Commencing 2nd Tuesday after polling day

Distribution of preferences
(2 - 5 days)

Recount – if the returning officer decides
or the Commission directs

Declaration of the poll

Disputing elections and returns

Application to dispute an election or return sections 205, 206 & 209

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

An application may be made by a candidate at the election, an elector entitled to vote at the election, or the TEC.

Determination of a disputed election application section 215

The Supreme Court may make an order that:

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

Immaterial errors not to void election section 238

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

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

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

Although the *Electoral Disclosure and Funding Act 2022* has recently been passed by Parliament, it has not yet come into effect, and therefore there are currently no expenditure regulations or restrictions on candidates for State elections.

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

TEC public awareness campaign

With the expansion to 35 members of the House of Assembly, the TEC will conduct two simultaneous election awareness campaigns:



PLEASE NOTE:

The TEC does not allow reproductions of the TEC public awareness campaign in any electoral advertising by external individuals or groups.

Campaign material

Campaign material to be authorised

sections 4, 190 & 191

Between the issue of the writ for an election and the close of poll for that election:

- » any printed electoral matter that is printed, published, kept on display or distributed must have the name and address of the responsible person printed at the end in legible characters; and
- » any electoral matter which is published on the internet must also have the name and address of the responsible person appearing at the end.

‘Electoral matter’ is defined in section 4 of the Act and means ‘matter which is intended to, is likely to or has the capacity to affect voting in an election’.

Without limiting the above definition, matter is taken to be intended or likely to affect voting in an election if it:

- (a) contains an express or implicit reference to, or comment on
 - (i) the election; or
 - (ii) the Government, the Opposition, a previous Government or a previous Opposition; or
 - (iii) the Government or Opposition, or a previous Government or Opposition, of the Commonwealth or a State or Territory; or
 - (iv) a member or former member of the Parliament of the Commonwealth or a State or of the legislature of a Territory; or
 - (v) a party, a branch or division of a party or a candidate or intending candidate or group of candidates or intending candidates in the election; or
 - (vi) an issue submitted to, or otherwise before, the electors in connection with the election; or
- (b) contains
 - (i) a photograph of a candidate or intending candidate in an election; or
 - (ii) a drawing or printed matter which purports to depict a candidate or intending candidate in an election or which purports to be a likeness or representation of any such candidate or intending candidate.

‘Address’ is defined in section 190 as the address, other than a post office box or an electronic address:

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

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

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

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

Examples of suitable authorisations

Authorised by: John Citizen, 1 Long Road, Hobart

or

Authorised by: John Citizen, Parliament House, Hobart

Authorisation not required on specific items sections 192, 193, & 194

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

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

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

Electoral matter on the internet section 191

Under section 191(1)(b) of the Act, all electoral matter published on the internet between the issue of the writ for an election and the close of poll at that election must contain the name and address of the responsible person at the end.

The Electoral Commissioner recommends that candidates and other persons with websites containing electoral matter should ensure that the name and address of the responsible person appears on each page.

For social media, such as Twitter and Facebook, an appropriate place to include authorisation would be in the about section, or as part of the profile.

Bribery and treating sections 187(1A) and 188(1A)

It is an offence for a person to, directly or indirectly –

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

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

Section 187(1A) provides that inexpensive items up to the value of three fee units are excluded from the offence of electoral bribery. A fee unit for 2023-2024 is \$1.78, so total cost of the item must not exceed \$5.34.

It is also an offence to, directly or indirectly, supply food, drink or entertainment, or offer, promise or give a gift, donation or prize to or for any person, club, association or body with the intention of influencing a person's election conduct at an election.

Under section 188(1A), inexpensive food, drink or entertainment, and gifts, donations and prizes up to the value of three fee units (again, currently \$5.34) are excluded from the offence of electoral treating.

Candidates are strongly advised to read these sections of the *Electoral Act 2004*.

Restrictions within 100 metres of a polling place

section 177

A person is not permitted to:

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

within 100 metres of a polling place.

Please note that legal advice on the interpretation of section 177 indicates that the 100 metre restriction does not apply to static signs in place before polling day. However, under section 198 it is an offence to distribute a poster on polling day, which would prevent the erection of signs on polling day.

Polling day restrictions on electoral matter

section 198

An additional restriction relating to the distribution of electoral matter applies for polling day.

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

Newspaper advertising on polling day: Following amendments in 2020 to the Act, the previous restrictions on publishing advertisements or comments relating to a candidate or election issue in a newspaper on polling day have been removed.

Consent required to use candidate name, photograph or likeness

section 196

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

Please refer to page 25 regarding the applicability of this section to political discourse on social media.

Misleading and deceptive electoral matter

section 197

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

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

How-to-vote material: Voters should not be misled into only voting 1 and having their votes rejected as informal. The requirements of a formal vote are discussed in the *Close of the Poll* section of this handbook (page 15) and under section 102(1) of the Act.

Justices of the Peace

Candidates who are Justices of the Peace are advised to take note of the Code of Conduct contained in the *Justices of the Peace (Code of Conduct) Regulations 2019* which includes the following provisions:

Reg. 7(5) An appointed justice must not convey, or permit another person to convey, the impression that the justice is in a special position or influence by reason of being a Justice of the Peace.

Reg. 7(6) An appointed justice must not use his or her office as Justice of the Peace for the purpose of benefitting his or her business, commercial or personal interests.

Mentioning JP status on campaign material may be considered to be an attempt to use the office for personal benefit, or simply imply a special position of influence.

Placement of campaign material

Placement of posters and signs

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

Before placing posters on public property (e.g. fences or trees) it is advisable to obtain permission from the responsible bodies such as local government (individual councils), the Department of State Growth, etc.

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

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

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

Offence to place electoral matter on electricity poles

It is an offence under section 109(1)(a) of the *Electricity Supply Industry Act 1995* to attach anything to a power pole without proper authority.

The penalty for an offence under this section is a fine not exceeding 50 penalty units for an individual or 100 penalty units for a body corporate.

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

Electronic billboards

It is an offence under section 78(1) of the *Traffic Act 1925* for a person to:

- a) place or leave an electronic billboard on a public street; or
- b) place or leave an electronic billboard in a public place if any occupant of any motor vehicle on any public street can, with the naked eye, read any words or make out any images being displayed by the electronic billboard.

Penalty: Fine not exceeding 20 penalty units.

Section 78(2)(a) provides that subsection 1(a) does not apply to electronic billboards that are:

- a) used for traffic management or road safety purposes by a road authority; or
- b) used for the purposes of a civil or other emergency by a statutory service within the meaning of the *Emergency Management Act 2006*; or
- c) placed or left on a public street with and in accordance with the written approval of the Transport Commission.

Further, Section 78(2)(b) provides subsection 1(b) does not apply to an electronic billboard that is placed or left in a public place by, or with the approval of, the owner or occupier of that public place.

Queries or complaints related to electronic billboards should be directed to the State Roads division of the Department of State Growth.

Electoral roadside signs

The Department of State Growth has produced the *Tasmanian Roadside Signs Manual* (June 2015). The manual contains the following information in relation to electoral signs:

The erection or display of electoral advertising signs within State and Local Government Roads is prohibited. The provisions of Local Authority Planning Schemes and Bylaws make adequate provision for such advertising.

(The *Tasmanian Roadside Signs Manual* can be accessed online at transport.tas.gov.au/___data/assets/pdf_file/0010/218566/Tasmanian_Roadside_Signs_Manual-Minor_amendment_-_September_2020.pdf)

Queries or complaints related to roadside signs should be directed to the Department of State Growth.

At the 2020 Legislative Council elections, a possible breach of section 196 of the Act in a Facebook post (where a candidate was mentioned without their consent) was brought to the attention of the Electoral Commissioner. After investigating the matter and referring it to the Director of Public Prosecutions, the Director advised there was no reasonable prospect of conviction and that he would not prosecute the matter.

In light of the process arising from this complaint and the advice received on this matter, the Electoral Commissioner noted the following:

- » This offence is largely a continuation/carry over of a very similar section in the preceding electoral act – section 243(4), *Electoral Act 1985*. The current Act became law before the development of social media and the use of social media for electoral and election discourse.
- » While the definition of ‘publish’ in the Act includes by publication on the internet, section 196(1) was written to primarily refer to physical actions (print, publish and distribute) with physical items (advertisement, ‘how to vote’ card, handbill pamphlet, poster or notice).
- » The Act does not establish any similar restrictions on the use of a candidate’s name in a political speech, personal conversation or on talk back radio. The relatively recent rise of social media appears to fall between the historical discourse of delivered material and verbal social/personal communication.
- » It may be arguable the Facebook post is political discourse that could be considered closer to a radio interview or public debate than a handbill, ‘how to vote’ card or notice.
- » A breach of section 196 is a criminal offence which has severe consequences: that is a ‘fine not exceeding 300 penalty units or imprisonment for a term not exceeding 12 months, or both.’
- » A wide interpretation of the term notice to include such comments could be seen as seriously infringing freedom of speech and political communications.

Electoral Commissioner's statement:

The Electoral Commissioner has an important role to encourage and enforce compliance with all electoral laws and to review and respond to possible breaches. Therefore, while I will continue to ask individuals to refrain from actions that may breach section 196 of the Act, I am currently of the view that some publications on social media, including those in the nature of the Facebook post in question, are not likely to present a sufficiently compelling case to seek the commencement of criminal prosecution. However, I will continue to consider each case on its merits.

Traditional advertising

Radio and television advertisements

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

The Commonwealth *Broadcasting Services Act 1992* provides that broadcast political advertisements must include certain 'required particulars'. The Act can be found at legislation.gov.au/C2004A04401/latest/text

Queries concerning the Commonwealth provisions should be directed to Free TV Australia or Commercial Radio Australia through your local TV or radio station.

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

Guidelines on the requirements under the *Broadcasting Services Act 1992* in relation to broadcasting political and election matter are available from the ACMA website at acma.gov.au/publications/2019-08/guide/guidelines-broadcast-political-matter

Broadcasting blackout

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

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

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

section 195

If payment, reward or compensation is made, or is to be made for the insertion of an advertisement, article or paragraph published in a newspaper or periodical between the issue of the writ for an election and the close of poll at that election, the proprietor must cause the word 'advertisement' to be printed as a headline, in letters not smaller than 10 point.

Use of published materials without permission

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

The Hare-Clark electoral system

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

Where does the name Hare-Clark come from?

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

How is a candidate elected?

A candidate is elected when their total number of votes equals or exceeds the quota.

What is the quota?

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

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

For a State election in which seven members per division are elected, the quota is slightly greater than one eighth or 12.5% of the formal votes.

Need for parties to stand extra candidates

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

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

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

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

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

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

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

Do you always need a quota to be elected?

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

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

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

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

Filling a vacancy in the House of Assembly

House of Assembly vacancies are usually filled by recount.

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

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

Eligibility to contest a recount

section 227

A person is entitled to nominate themselves for the vacant seat so long as they:

- » were a candidate at the last State election; and
- » were not elected at that election; and
- » are still qualified under the *Constitution Act 1934* to be elected to the Assembly.

Nomination to contest a recount

sections 226 & 228

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

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

The nomination must be received by the Commissioner before noon, on the 14th day after the notice of vacancy was published.

By-elections

section 232

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

Appendix A – COVID Safe Information

Campaigning in a COVID Safe manner

It is recommended that all candidates follow any Public Health guidelines while campaigning.

Voting and scrutiny

The Commission continues to follow all Public Health advice and has implemented the following measures to keep staff and electors safe:

Training

- Additional training for staff that outlines how polling place managers are to manage people, resources and premises, using the simple principles of hygiene and distancing.

Hygiene measures

- Regular cleaning will be undertaken.
- Unwell electors will be expedited through a polling place, followed by cleaning.
- Hand-sanitiser dispensers at every polling place entrance, election office and scrutiny centre.
- Masks are available for both staff and scrutineers.

Distancing measures

- Queue controller at each polling place monitors density, distancing and encourages use of hand sanitiser.
- Voting screens set up to make it simple for staff and electors to maintain appropriate physical distancing.

Scrutineering in a COVID Safe manner

Scrutineers play an important role in the transparency of election processes. The following steps allow scrutineers to continue their role and they are expected to follow these measures:

- Do not attend if unwell.
- Hygiene protocols including sanitising hands upon entry and regular hand washing.
- During scrutiny, wear an appropriate mask provided by the TEC. This allows scrutineers to be closer than 1.5m to staff, in order to effectively carry out their role.
- When not closely scrutinising, maintain physical distance (1.5m) from other people.

Your notes





7 OR MORE
TO MAKE YOUR VOTE COUNT

You need to number at least
7 boxes when you vote.

YOUR VOTE IS **BIGGER** THAN YOU THINK. www.tec.tas.gov.au | 1800 801 701

 Tasmanian
Electoral Commission

TASMANIAN ELECTORAL COMMISSION

Level 3, 169 Main Road, Moonah (TasWater building)
PO Box 307, Moonah, 7009
1800 801 701
ballot.box@tec.tas.gov.au