

# Legislative Council Elections 2024 Candidate Handbook

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**Your division.**



**Your vote.**

**Your voice.**



# Table of contents

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<b>Introduction</b>	<b>4</b>
Election rules.....	4
How to access the Act and other legislation.....	4
Other quick points.....	4
COVID-19 implications.....	4
<b>Legislative Council divisions</b>	<b>5</b>
Legislative Council divisions.....	5
The periodic election cycle of the Legislative Council.....	5
<b>The writ</b>	<b>6</b>
What is the writ?.....	6
Election timetable for the Legislative Council.....	6
Returning officers.....	6
<b>The nomination period</b>	<b>7</b>
Who can nominate?.....	7
How to nominate & nomination forms.....	7
A candidate's ballot paper name.....	8
Lodging the nomination.....	8
Once a nomination has been received.....	8
Access to the election roll.....	8
Nominations invalid due to change of name.....	9
Withdrawal of nomination.....	9
Close of nominations.....	9
<b>Announcement of candidates</b>	<b>10</b>
The announcement.....	10
Public announcement of the election details.....	10
Ballot paper draw.....	10
Creation of election ballot papers.....	10
Election awareness advertising campaign.....	10
<b>Other nomination matters</b>	<b>11</b>
If only one candidate is nominated.....	11
Refunding the nomination deposit.....	11
Death of a candidate at election.....	11
Holders of an office of profit under the Crown, State public servants & Government contractors.....	11
<b>Voting at Legislative Council elections</b>	<b>12</b>
Polling places.....	12
Assistance to certain electors.....	12

<b>Types of early voting</b>	<b>13</b>
Pre-poll voting.....	13
Interstate voting.....	13
Mobile voting.....	13
Postal voting.....	13
Telephone voting.....	13
<b>Polling day</b>	<b>14</b>
Hours of polling (8am - 6pm).....	14
Person not on roll or already marked off roll.....	14
After close of the poll.....	14
Campaigning restrictions on polling day and when voting is taking place.....	14
<b>Scrutineers during voting</b>	<b>15</b>
Role of the scrutineer.....	15
Appointment of scrutineers.....	15
<b>Close of the poll</b>	<b>16</b>
Formal votes.....	16
Informal votes.....	16
End of the evening.....	16
<b>Post-election and scrutiny timetable</b>	<b>17</b>
<b>Distribution of preferences</b>	<b>18</b>
Method of counting votes at a Legislative Council election.....	18
<b>Disputing elections and returns</b>	<b>19</b>
Application to dispute an election or return.....	19
Determination of a disputed election application.....	19
Immaterial errors not to void election.....	19
<b>Filling a vacancy in the Legislative Council</b>	<b>20</b>
What is a by-election?.....	20
Who can stand for a by-election.....	20
By-election timetable.....	20
<b>Candidate expenditure</b>	<b>21</b>
Candidate's expenditure limit.....	21
Election expenditure and expenditure period.....	21
Expenses not considered relevant electoral expenditure.....	21
Who can incur electoral expenditure?.....	21
Recycled election material.....	22
Lodgement of election expenditure return.....	22
Power of Commission to require information.....	22

<b>Campaigning and Advertising</b>	<b>23</b>
Campaign material to be authorised.....	23
Authorisation not required on specific items.....	24
The word ‘advertisement’ to appear at the top of paid advertisements or advertorials in newspapers and periodicals.....	24
Electoral matter on the internet.....	24
Use of published materials without permission.....	24
Consent required to use candidate name, photograph or likeness.....	24
Restrictions within 100 metres of a polling place.....	25
Polling day restrictions on electoral matter.....	25
Bribery and treating.....	25
Misleading and deceptive electoral matter.....	25
Justices of the Peace.....	26
Radio and television advertisements.....	26
Broadcasting blackout.....	26
Placement of posters and signs.....	27
Offence to place electoral matter on electricity poles.....	27
Electronic billboards.....	27
Electoral roadside signs.....	28
<b>Advertising and discourse on social media</b>	<b>29</b>
Authorisation of posts containing electoral matter.....	29
Political discourse on social media.....	29
Electoral Commissioner’s statement.....	29
<b>Appendix A – COVID Safe Information for Candidates</b>	<b>30</b>

# Introduction

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This booklet provides an easy reading summary of important information that all intending Tasmanian Legislative Council 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 as the final part of the booklet.

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

## Election rules

The rules for Legislative Council elections are established by the *Electoral Act 2004* ('the Act') and approved<sup>1</sup> 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](http://legislation.tas.gov.au)

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

## 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 tips: Shaded boxes in the booklet highlight practical advice for candidates.

## COVID-19 implications

COVID Safe information for candidates is provided in Appendix A.

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

# Legislative Council divisions

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## Legislative Council divisions

There are 15 Legislative Council divisions: Derwent, Elwick, Hobart, Huon, Launceston, McIntyre, Mersey, Montgomery, Murchison, Nelson, Pembroke, Prosser, Rosevears, Rumney and Windermere.

One member is elected for each division.

## The periodic election cycle of the Legislative Council

Elections for the Legislative Council are conducted on a six-year periodic cycle. Elections for three members are held in May every odd numbered year, with elections for two members held in May every even numbered year.

The following table outlines the divisions due for elections in the period 2024 – 2029.

2024	Hobart
	Prosser
	<i>Elwick<sup>2</sup></i>
2025	Montgomery
	Nelson
	Pembroke
2026	Huon
	Rosevears
2027	Derwent
	Mersey
	Windermere
2028	Elwick
	McIntyre
2029	Launceston
	Murchison
	Rumney

The map of each division can be viewed on the TEC website at [tec.tas.gov.au](http://tec.tas.gov.au), along with some history behind the name of each of the current divisions. Printed versions of these maps are available at the TEC. More detailed divisional boundaries can be accessed on the LIST (<https://maps.thelist.tas.gov.au/listmap/app/list/map>).

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<sup>2</sup> Following the resignation of Josh Willie on 27 February 2024, a by-election for the division of Elwick will be held in parallel with the 2024 periodic elections. The elected member for Elwick will serve until the 2028 periodic elections.

# The writ

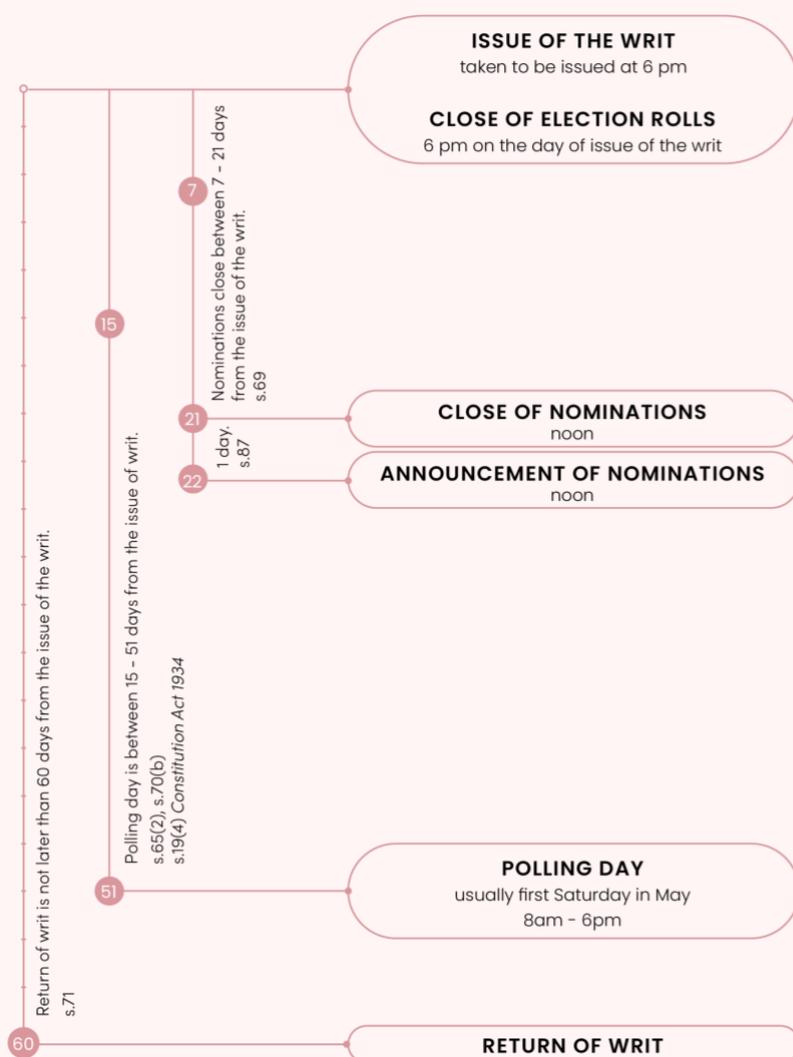
## What is the writ?

*Constitution Act 1934* – section 19; *Electoral Act 2004* – sections 65–71

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.

A Legislative Council election commences when the Governor formally issues the writ to the returning officer and concludes when the writ, containing the name of the successful candidate, is returned to the Governor following the declaration of the Poll.

## Election timetable for the Legislative Council



## 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 going to election.

Contact details for each returning officer will be made available on the TEC website.

# The nomination period

## Who can nominate?

*Constitution Act 1934 – section 14, Electoral Act 2004 – sections 75 & 76*

To be elected as a Member, a person must:

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

A person is ineligible to be nominated if the person:

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

Also see information on page 11 if you are a holder of an office of profit under the Crown, a state public servant or a government contractor.

## How to nominate & nomination forms

section 77

Legislative Council candidates are nominated as individuals, or by a registered political party.

### Individual candidate

To nominate as an individual candidate, the nomination form must contain:

- » signed support from **at least 10 electors** who are entitled to vote at the election; and
- » a candidate signed declaration confirming that they:
  - are qualified to be elected as a member of the Legislative Council; and
  - are not disqualified from being elected under the *Constitution Act 1934*.

The individual candidate can also request the word 'independent' be included under their name on the ballot paper<sup>2</sup>.

Providing a few extra nominators will help avoid last minute difficulties.

### Candidate nominated by a political party

The party nomination form<sup>3</sup> consists of two elements:

- » a signed statement by the registered officer endorsing the candidate; and
- » the details, signature and a statement of consent of the candidate.

The candidate statement of consent confirms that they:

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

<sup>2</sup> To have the word 'independent', the candidate must declare that they are not a candidate nominated by a party.

<sup>3</sup> A party nomination should be organised by the registered officer of the political party.

## 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 name<sup>4</sup>.

## Lodging the nomination

section 77

To formally lodge a nomination, the completed nomination form and nomination 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 cheque<sup>5</sup>.

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

## Once a nomination has been received

section 77

When the nomination form and deposit are in the hands of the returning officer<sup>6</sup> (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 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 roll<sup>7</sup>.

<sup>4</sup> 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.

<sup>5</sup> A bank cheque being a cheque drawn by an authorised deposit-taking institution or other financial institution on itself.

<sup>6</sup> Election staff at the office of the returning officer can also receive the nomination if the returning officer is absent.

<sup>7</sup> It can take 3-4 days after the close of rolls for printed rolls to be prepared and distributed.

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

sections 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 that it is likely to be confused with, or mistaken for, the party name or public body; 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 grounds that the person has changed their name to a name which the TEC 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 this determination to the Supreme Court in accordance with section 85, provided that their nomination was received before 5pm on the fourth business day before nomination day.

## Withdrawal of nomination

section 83

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.

## Close of nominations

sections 3, 67(1), 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 any possible problems with your form.

# Announcement of candidates

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## 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 candidates have agreed, on their nomination form, to make publicly available.

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

An elector brochure, detailing the list of candidates, early voting services and polling places on polling day, is mailed to each elector on the election roll.

## Ballot paper draw

sections 89 & 98, 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 the 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 98

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 Legislative Council elections list the names of candidates in a single column with a box printed next to each name<sup>8</sup>. Each candidate's name on the ballot paper is identified by their 'ballot paper name' as specified on the nomination form.

## Election awareness advertising campaign

Under the Act, key stages of the election are required to be advertised in the daily Tasmanian newspapers circulating in the division: the notice of the writ, announcement of candidates, polling places and the return of the writ. In addition, the Commission conducts a comprehensive public awareness campaign including commercial television and radio, newspapers and digital (including social) media.

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<sup>8</sup> The short name of the political party will be listed below each party candidate name. The word 'independent' can be placed under the ballot name of non-party candidates if requested on the nomination form.

## Other nomination matters

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### If only one candidate is nominated

section 88

If only one candidate is nominated for an election<sup>9</sup>, the returning officer will announce that a poll will not take place and that the candidate will be declared elected unopposed on polling day. The declaration will be announced in a notice published in a newspaper circulated in the relevant division.

### 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 an absolute majority of votes;
- » withdrawn their nomination as a candidate before the end of the nomination period<sup>10</sup>; 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

sections 86(3) & 90

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** – the election fails; 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 & 33), 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.

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<sup>9</sup> This last occurred in 2021.

<sup>10</sup> The withdrawal of a nomination must be in accordance with section 83 of the *Electoral Act 2004*.

# Voting at Legislative Council elections

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## Polling places

sections 91 & 92

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;
- » in the elector brochures; 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 have mobility issues.

## Assistance to certain electors

sections 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

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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

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 can 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 4pm on the 8<sup>th</sup> day before polling day.<sup>11</sup>

In 2024, postal vote applications must be with the Electoral Commission by  
**4pm Friday 26 April, 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](http://tec.tas.gov.au) for further information.

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<sup>11</sup> 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

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## Hours of polling (8am – 6pm)

sections 3 & 94

On polling day, all polling places are open from 8am until 6pm.

While electors may not be admitted after 6pm, if an elector is in line to vote before that time, the polling place will not formally close until that elector has voted.

With the use of computers to mark electors off the roll, electors can vote simply at any polling place open on polling day in Tasmania. This has superseded absent voting.

## Person not on 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 place<sup>12</sup>. A thorough check of all votes takes place at the returning officer's office in the following days.

Progressive results will be available on the TEC website. Previous Legislative Council results are also available at the website.

## 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 *Campaigning and Advertising* section on page 23 for further details.

**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.

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<sup>12</sup> 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.

## Scrutineers during voting

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### Role of the scrutineer

sections 105 & 106

Candidates are not permitted to take part in the conduct of polling other than by casting their own vote. 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 scrutiny 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 6pm.

### 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.

Copies of these forms are available from the returning officer or the TEC.

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

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The counting of ballot papers begins once the last elector (who arrived before 6pm) 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(2)

To cast a valid vote an elector must initially mark the ballot paper as follows:

- » where there are more than 3 candidates – by placing the numbers 1, 2 and 3 in the boxes next to the names of the candidates in order of preference; or
- » where there are 3 candidates – by placing the numbers 1 and 2 in the boxes next to the names of the candidates in order of preference; or
- » where there are 2 candidates – placing the number 1 in the box next to the name of the candidate of first preference.

The elector may then place further consecutive numbers in any or all of the remaining boxes next to the names of the other candidates.

### 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(2) (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;
- » 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 minimum number required does not make the ballot paper informal. The preferences preceding the error on such ballot papers will be included in the count.

### End of the evening

At the end of the evening, all ballot papers and other polling material is securely packaged and taken to a scrutiny centre. Polling place figures are phoned through to the TEC once the polling place manager has completed their duties.

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

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

### Throughout the 10-day period after polling day

Division 12

Re-check preferences on all returned ballot papers

Amalgamation of candidates' parcels of ballot papers from each polling place

Provisional distribution of preferences  
*(where the election result can be determined)*

Returned postal votes counted

Declaration vote envelopes processed  
*(dec envelopes checked and eligible ballot papers admitted to the count)*

Progressive counting of postal votes

Final check of the ballot papers

### Commencing 2<sup>nd</sup> Tuesday after polling day

Division 12

Final distribution of preferences

Recount  
*(if returning officer decides or Commission directs)*

The declaration of the poll may take place prior to the final distribution of preferences if the returning officer and the Commissioner are satisfied that any votes not yet counted could not affect the result of the election.

# Distribution of preferences

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## Method of counting votes at a Legislative Council election section 145 & Schedule 5

For a candidate to be elected at a Legislative Council election, they must obtain an absolute majority of votes, where:

**absolute majority** is more than one half of the total number of formal votes (less exhausted votes).

The method of counting votes is as follows:

- » All ballot papers are examined with all formal ballot papers being included in the count (each paper = 1 vote) and informal ballot papers being rejected.
- » Each formal ballot paper is distributed to the candidate allocated the 1st preference.
- » Once all formal ballot papers are allocated, the first preference total for each candidate is counted.
- » If a candidate has received the same or more votes than the absolute majority, they are elected.
- » If no candidate has an absolute majority, then the candidate with the fewest votes is excluded (removing them from the count), and each ballot paper they received is distributed to the continuing candidate with the next earliest preference on the ballot paper.
- » Where none of the continuing candidates have been allocated a preference, the ballot paper drops out of the count and the vote associated with that ballot paper is declared 'exhausted'.
- » If no candidate has an absolute majority of votes at this stage, then the process of excluding the candidate with the fewest votes is repeated, until one candidate reaches the absolute majority.

If at any count, two or more candidates have the fewest number of votes, then whichever of those candidates was recorded as having the fewer number of votes at the last count at which they were unequal is to be excluded.

If those candidates have had an equal number of votes for all preceding counts the returning officer decides by an approved method which candidate will be excluded.

The process of determining the excluded candidate is the same for the final count if the remaining two candidates have an equal number of votes and one has to be excluded. In this case the unexcluded candidate is elected.

# Disputing elections and returns

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## 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 Legislative Council 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 Commission.

## 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;
- » 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.

# Filling a vacancy in the Legislative Council

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When a vacancy occurs in the Legislative Council, a by-election for that seat is held.

## What is a by-election?

section 66

A by-election is an election held to elect a Member of the Legislative Council, in circumstances where a seat becomes vacant other than by the expiry of a Member's six-year term of office (for example, a vacancy caused by the resignation or death of a Member).

By-elections are conducted in a similar manner to normal periodic elections.

## Who can stand for a by-election

The qualifications for nomination as a candidate for a Legislative Council by-election are the same as those for a normal periodic election, as outlined in *The Nomination Period* section.

## By-election timetable

sections 66, 69 & 70

When a seat becomes vacant on or after 1 January and before the issue of the writs for the periodic Legislative Council elections for that year, the by-election is deferred and held in conjunction with the periodical elections.

When a by-election is not held concurrently with the periodical elections:

- » The writ for holding a by-election is to be issued within 40 days of the vacancy occurring, except in the case below.
- » The period between the issue of the writ and nomination day for a by-election is not less than 7 days nor more than 21 days (the same as for normal periodic elections).
- » The period between nomination day and polling day for a by-election is not less than 22 days nor more than 30 days.

# Candidate expenditure

*Please note: Although the Electoral Disclosure and Funding Act 2022 has recently been passed by Parliament, it has not yet come into effect.*

## Candidate's expenditure limit

sections 160 & 199

The expenditure limit for 2024 and the next 4 years is shown below:

Year	Permitted maximum amount
2024	\$19 500
2025	\$20 000
2026	\$20 500
2027	\$21 000
2028	\$21 500

It is an offence for a candidate or their election agent to exceed the expenditure limit on their election campaign within the expenditure period.

Candidates spending more than the permitted maximum amount will be liable to a penalty. In addition, if an elected candidate exceeds the permitted maximum amount by more than \$1,000, **a court may declare their election void.**

## Election expenditure and expenditure period

sections 3 and 5

Election expenditure means expenditure that relates to promoting or procuring the election of the candidate, and is incurred by or with the authority of the candidate within the expenditure period.

This includes expenditure incurred **before** the expenditure period in respect of goods and services which are supplied or provided to or made use of **during** the expenditure period.

The expenditure period is defined to be:

- » in the case of a periodic election, the period beginning on 1 January in the year in which the election is to be held and ending at the close of poll; or
- » in the case of a by-election, the period beginning on the day on which the seat of a Member of the Council becomes vacant and ending at the close of poll.

## Expenses not considered relevant electoral expenditure

section 5(2)

This includes:

- » personal and reasonable living and travelling expenses of the candidate and their employed agent;
- » renting or hiring of premises for the campaign;
- » appointment of scrutineers; and
- » conveying electors to and from a polling place on polling day.

## Who can incur electoral expenditure?

sections 158, 159 & 162

Expenditure may be incurred by a candidate, an intending candidate, and their election agent.

It is an offence for a candidate or intending candidate to authorise anyone other than their election agent to incur expenses on their behalf and it is also an offence for a person other than a candidate or their election agent to incur any electoral expenditure with the intention of promoting or procuring the election of that candidate.

This does not prevent the payment or giving of any money, security or equivalent of money **directly** to a candidate or their election agent for that campaign.

No political party expenditure is allowed at Legislative Council elections.

## Recycled election material

In regard to previously used election campaigning material, TEC policy requires reporting of expenses incurred **only for this election**. This means:

- » Only expenditure incurred in relation to the particular Legislative Council election should be included in a return. In other words, if a candidate is re-using material from a previous election campaign, they should not include a value for that re-used material in their return.
- » Expenditure incurred to update old advertising material, such as stickers to overlay on old signs, should be included as it is expenditure incurred for this election.

## Lodgement of election expenditure return

sections 161, 164 & 199

All candidates must file an accurate return of their electoral expenditure with the TEC, within 60 days of the result of the election being declared. This return must show:

- » all election expenditure paid by the candidate (or by their election agent) relating to the campaign; and
- » all disputed claims, and all unpaid claims in respect of any election expenditure.

Please note: returns are required to be signed before a Justice of the Peace or Commissioner for Declarations.

Receipts in respect of each item of election expenditure that exceeds \$20 are to accompany the return.

If a candidate does not file their return within the time specified, they are subject to a penalty. In addition, elected candidates who do not file their returns on **time may have their election declared void**.

The TEC may allow an extension of this period by up to 30 days. A candidate will need to make a written request to the Commission for consideration of an extension.

The TEC keeps all returns for a period of 12 months after filing, and they are open to public inspection during this time.

**Electoral expenditure return forms** are available from the TEC or from the returning officer and are included with the acceptance of nomination email for candidates that have had their nomination accepted by the returning officer.

## Power of Commission to require information

section 165

The Commission has the power to require information, records, explanation of records and answers to questions relating to candidate expenditure where it believes that a person is in possession of relevant information.

# Campaigning and Advertising

## Campaign material to be authorised

sections 4, 190 & 191

Between the issue of the writ and the close of poll for an 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’.

Further 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.

Examples of suitable authorisations:

Authorised by: John Citizen, 1 Long Road, Hobart

or

Authorised by: John Citizen, Parliament House, Hobart

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

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

## 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.

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 & 194 of the Act.

## The word ‘advertisement’ to appear at the 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, the proprietor must cause the word ‘advertisement’ to be printed as a headline, in letters not smaller than 10 point.

## 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 and the close of poll at an 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, possibly in the footer**. 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.

## 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*.

## Consent required to use candidate name, photograph or likeness

section 196

Between the issue of the writ 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 29 regarding the applicability of this section to political discourse on social media.

## Restrictions within 100 metres of a polling place

section 177

A person is not permitted (within 100 metres of a polling place) to:

- » canvass for votes;
- » solicit the vote of an elector; or
- » induce or attempt to induce an elector not to vote for a particular candidate or particular candidates.

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.

## Bribery and treating

sections 187 and 188

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 Act.**

## 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, likely to or has the capacity to mislead or deceive an elector in recording their vote.

This section applies to the mechanics of obtaining and marking a ballot paper and placing 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 campaign material is not covered by this section.**

**How-to-vote material:** Voters should not be misled into making an informal vote. The requirements of a formal vote are discussed in the *Close of the Poll* section of this handbook (page 16).

## 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:

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 of 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 imply a special position of influence.

## Radio and television advertisements

There are Commonwealth requirements in relation to radio or television advertising, but no additional restrictions in the *Electoral Act 2004*, except in relation to false information (see above).

The Commonwealth *Broadcasting Services Act 1992* provides that broadcast political advertisements must include certain 'required particulars'. The Act can be found at [austlii.edu.au](http://austlii.edu.au)

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 Communication and Media Authority (ACMA).

Guidelines on the requirements under the *Broadcasting Services Act 1992* in relation to broadcasting political matter are available from the ACMA website at [acma.gov.au](http://acma.gov.au)

## 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, nor does the blackout include online services or print media.

## Placement of posters and signs

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

Before placing posters on public property (eg. 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 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 attention of road users could be distracted.

## 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's *Tasmanian Roadside Signs Manual* (©September 2020) 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.

(accessed online at [transport.tas.gov.au](http://transport.tas.gov.au))

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

# Advertising and discourse on social media

## Authorisation of posts containing electoral matter

section 191

All 'electoral matter' published on the internet between the issue of the writ and close of poll at an election must contain the name and address of the responsible person. For social media, the Electoral Commissioner recommends that an appropriate place to include authorisation would be in the 'about' section, or as part of the profile.

## Political discourse on social media

section 196

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 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.

# Appendix A – COVID Safe Information for Candidates

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## Campaigning during the COVID-19 pandemic

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

## Voting and scrutiny during the COVID-19 pandemic

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 during the COVID-19 pandemic

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.

## Notes

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## Notes

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