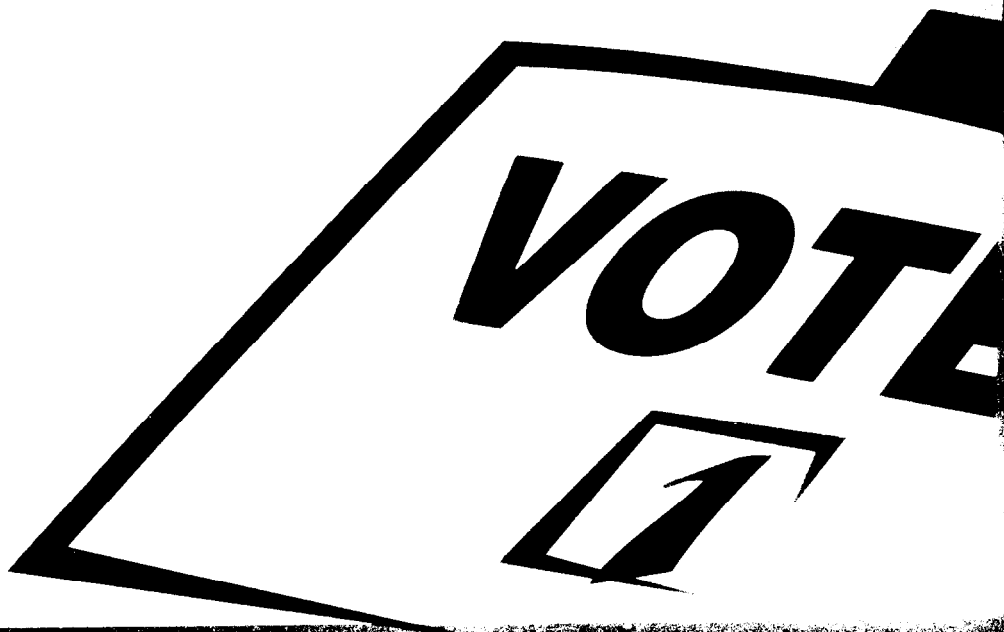




Candidates' Handbook

Election 96



Australian Electoral Commission

O Commonwealth of Australia 1996
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ABBREVIATIONS

AEC	Australian Electoral Commission
AEO	Australian Electoral Officer
CEA	<i>Commonwealth Electoral Act 1918</i>
DRO	Divisional Returning Officer
ERK	Electoral and Referendum Regulations
Const.	Constitution

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INTRODUCTION

This Handbook is intended as an information aid for candidates for the Senate and the House of Representatives. It is an updated version of the ***Candidates' Handbook*** used for the 1993 general election.

The Handbook explains in detail those aspects of electoral law which relate directly to candidates. However it is not a substitute for the law, and should be read in conjunction with the Constitution, the ***Commonwealth Electoral Act 1918*** (CEA) and the Electoral and Referendum Regulations.

There have been legislative changes to the CEA since 1993. Of particular interest to candidates will be the new procedures relating to election funding. All intending candidates are urged to read particularly carefully the chapter relating to election funding and financial disclosure and the ***Election Funding and Financial Disclosure Handbook*** for candidates, published by the Australian Electoral Commission (AEC).

Candidates are reminded that, while the AEC will assist them by providing information of a generalised nature in relation to nominations and campaign activity, it does not provide formal or informal legal advice. Candidates must satisfy themselves as to their legal positions and seek, as they consider necessary, the advice of their own legal counsel.

Addresses of the AEC's Central Office and State Head Offices are listed at the end of this booklet.

The information published in this Handbook is current as at 22 January 1996.

NB: At the time this Handbook went to print the Electoral and Referendum Amendment Bill 1995 was still before Parliament. This Bill proposes changes to the CEA resulting from the Government's Response to the Joint Standing Committee on Electoral Matters Report into the 1993 federal election. The AEC will issue an update to this Handbook if and when the Electoral and Referendum Amendment Bill 1995 becomes law.

QUALIFICATIONS

A candidate must be:

- at least 18 years old;
- an Australian citizen; and
- an elector entitled to vote, or a person qualified to become such an elector.
[CEA, ss.163,93]

The qualifications for a candidate for the Senate or the House of Representatives are the same. [Const. s.16] However, a member of either House cannot be chosen or sit as a member of the other House. [Const. s.43]

No member of a State Parliament, the Northern Territory Legislative Assembly or the Australian Capital Territory Legislative Assembly may be nominated as a candidate unless he or she has resigned before lodging a nomination. Members of State and Territory Parliaments and Assemblies must resign before the hour of nomination (at 12 noon). [CEA, s.164] However, the manner of resignation is governed by State and Territory law and intending candidates should check that their resignation is effective before the hour of nomination.

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

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

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

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

If intending candidates have any doubts as to their qualifications under the Constitution they should seek their own legal advice.

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

Commonwealth, State or Territory public servants who wish to nominate for election to the Commonwealth Parliament should resign from the relevant Service before nomination in order to comply with the Constitution. Conditions of reentry to the various Public Services by unsuccessful candidates are matters for the relevant Public Service authority.

Commonwealth public servants who resign to contest an election and who are unsuccessful may apply for re-appointment or re-engagement under sections 47C or 82B of the **Public Service Act 1922**. A former officer or former temporary employee is required to be re-appointed or re-engaged subject to certain conditions. Most States and Territories have comparable statutory or administrative provisions. Candidates should enquire about these from the relevant authorities before resigning or nominating.

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

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

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

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

No candidate may be appointed as an electoral officer of any description either as a permanent officer or as a polling official and if any electoral officer becomes a candidate he or she must vacate the electoral office. [CEA, s.36]

NOMINATION

All candidates must be duly nominated before they can be elected to either the House of Representatives or the Senate. [CEA, ss.162, 166]

When to nominate

It is not possible to nominate as a candidate for election until the writ for the election has been issued. The writ is deemed to have been issued at 6pm on the date of the issue of the writ. [CEA, s.152(2)] The date fixed for the close of nominations must be at least 11 days but not more than 28 days after the issue of the writ for the election and is specified in the writ. [CEA, s.156(1)] The dates fixed by the writ are published by the AEC in not less than two newspapers circulating generally in the State or Territory. [CEA, ss.153(2)(b), 154(4)(b)] Nominations may be made at any time after the issue of the writ, and before 12 noon on the day nominations close. [CEA ss.156, 167, 175]

Bulk nomination (see below) of endorsed candidates for the House of Representatives must be lodged with the Australian Electoral Officer (AEO) for the appropriate State or Territory 48 hours before the hour of nominations. [CEA, s.170(2)(a)(ii)]

Late nominations will not be accepted under any circumstances.

Where to nominate

In an election of Senators for a State or Territory the office of the AEO for that State or Territory is the place of nomination for the election. [CEA, s.174(1)]

In an election for the House of Representatives the office of the Divisional Returning Officer (DRO) for the Division is the place of nomination. [CEA, s.174(2)]

Bulk nomination (see below) of endorsed candidates for the House of Representatives must be lodged with the AEO for the appropriate State or Territory. [CEA, s.167(3)]

Nominations must reach the DRO or AEO before the close of nominations. The onus is on candidates to ensure that their nominations are received by this time and lodgement with Australia Post is not the equivalent of receipt by the DRO or AEO. It is in a candidate's interest to lodge his or her nomination as early as possible. Leaving a nomination until the last day may be unwise, particularly if there are certain problems or deficiencies in the nomination form which may take some time to resolve. Similarly, a facsimile of the nomination paper is acceptable, but it is the responsibility of the candidate to ensure that the fax is received by the appropriate officer before the close of nominations. A telephone call to the relevant officer to confirm receipt of the fax would be appropriate in this case. [CEA, ss.170, 174, 175]. This is essential as a time record on a despatching fax machine is not a record of the receipt of the fax by the returning officer. For a nomination to be valid, it must be in the hands of the relevant officer by the hour of nomination, so the possibility of transmission or print delays on receiving fax machines needs to be taken into account.

Bulk nominations

The registered officer may make a bulk nomination of all endorsed House of Representatives candidates of a registered political party within a particular State or Territory. This allows all a party's candidates for each Division within a State or Territory to be nominated in one action. However, each candidate must complete a separate Part B form of the Bulk Nomination Form.

Nominations in this form must be made to the AEO for the appropriate State or Territory and must be received 48 hours before the hour of nomination. [CEA, ss.167(3) and 170(2)(a)(ii)]

If a bulk nomination is lodged with the relevant AEO, and a single nomination endorsed by the same party is lodged with a DRO, the bulk nomination of that party's candidates will be invalidated; if a candidate who was included on a bulk nomination resigns or dies after the cut-off for bulk nominations and before the close of nominations, that withdrawal or death does not affect the nomination of the other candidates so nominated. [CEA ss.177(4), 180(3)]

Multiple nominations prohibited

No one may nominate as a candidate for more than one election held on the same day. Hence it is not possible for anyone to nominate for more than one Division for the House of Representatives, or more than one State or Territory for the Senate, or for both the House and the Senate. [CEA, s.165].

Candidates endorsed by registered political parties

Registered political parties will have appointed a registered officer, who can in turn appoint a deputy registered officer with equal powers in relation to the nomination process. [CEA, s.4C]

The registered officer may nominate the endorsed party candidate or the endorsed candidate may be nominated by 6 electors, that is, 6 people entitled to vote at the election for which the candidate is standing. Thus, electors nominating a House of Representatives candidate must be enrolled for the Division for which the candidate is standing, while electors nominating a Senate candidate must be enrolled for the State or Territory for which the candidate is standing. [CEA, s. 166(1)(b)]

If an endorsed candidate is nominated by the 6 electors then the registered officer must verify that the candidate has been endorsed by the registered party. This can be done by either completing the appropriate section of the nomination form or by making a statement in writing and lodging it with the appropriate AEO before close of nominations. [CEA, s.169B]

If the registered officer nominates the candidate, the request for either the party's registered name or abbreviation to be printed on the ballot paper can be made on the nomination form. Alternatively, the registered officer may provide the details in writing to the appropriate DRO or AEO. [CEA, s.169(1)]

Where a candidate has been endorsed by two or more political parties, only one party can be taken to have endorsed that candidate for the purpose of printing party affiliations on ballot papers. [CEA, s.169B(2)]

Unendorsed candidates

An unendorsed candidate must be nominated by 6 electors, that is, 6 people entitled to vote at the election for which the candidate is standing. Thus, electors nominating a House of Representatives candidate must be enrolled for the Division for which the candidate is standing, while electors nominating a Senate candidate must be enrolled for the State or Territory for which the candidate is standing. [CEA, s.166(1)(b)]

Unendorsed candidates may request that the word 'Independent' be printed adjacent, to their names on the ballot paper. [CEA, s. 169A]

All candidates

The nomination form shall set out the name, place of residence and occupation details for the candidate. However, sitting Members may, if they prefer, set out their enrolled address (if they are enrolled in the Division, State or Territory they represent) rather than their residential address. [CEA, ss.166(1),(1B)] A nomination “checklist” is also printed on the back page of all nomination forms, and it is in the interests of all candidates to check that they have included all necessary information on their form.

A candidate or nominator of a candidate who has ‘silent’ enrolment is not required to set out his or her address on the nomination form. However, a candidate with silent enrolment must supply the appropriate DKO or AEO with an address for correspondence. This address for correspondence is not made publicly available and may be a postal address. [CBA ss.166(6),(7)]

A nomination may name a candidate by specifying:

- the surname and the Christian or given name, or one or more of the Christian or given names, under which the candidate is enrolled; or
- in a case where the candidate is not enrolled, a surname and the Christian or given name, or one or more of the Christian or given names, under which the candidate is entitled to be enrolled. [CEA, s.166(2)]

However, a Christian or given name may be specified by:

- an initial standing for that name; or
- a commonly accepted variation of that name (including an abbreviation or truncation of that name or an alternative form of that name). [CEA, s.166(3)]

A nomination shall include a statement of the form in which the candidate’s Christian or given name/s are to be printed on the ballot paper. [CEA, s.166(4)]

Each candidate must sign a declaration on the nomination form stating that he or she is qualified to be elected and consents to act if elected. [CEA, s.170]

offences

A person must not make a statement in his or her nomination form that is false or misleading or omit from a statement any information, without which the statement is misleading in a material particular.

PENALTY: Imprisonment for 6 months. [CEA, s.339(3)]

Nominations for the House of Representatives

There is a single nomination form for intending House of Representatives candidates which makes provision for candidates who are endorsed by a registered political party and those who are not endorsed.

There is a bulk nomination form for endorsed candidates of a registered political party. This form allows for the nomination of all endorsed candidates of the particular party in the appropriate State or Territory. This form must be completed by the registered officer of the party, and by each candidate being nominated. [CEA, s. 167(30)]

Nominations for the Senate

A candidate nominated for a Senate election may be either endorsed by one or more registered political parties, or unendorsed; may be grouped or ungrouped; or may be an incumbent Senator who is not grouped.

Forms of nominations

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

- nomination of a single Senate candidate;

- nomination of Senate candidates who are not endorsed, or are endorsed by one registered political party, and who are to be grouped;

- nomination of Senate candidates who are endorsed by more than one registered political party and who are to be grouped.

Registered officers may:

- nominate endorsed party candidates, or verify a candidate's party endorsement [CEA, s. 166];

- request that the party name or abbreviation appear beside a candidate's name on the ballot paper [CEA, s169];

- request a composite name be printed on the ballot paper beside the group voting square if a group is endorsed by more than one party. [CEA, s.169(4)]

Candidates who are to be grouped:

- may specify the ballot paper order of the candidates' names in the group [CEA, s. 168(1)(b)]

- may request that the name(s) of the registered political party or parties (if any) that endorsed the candidates, or a composite name formed from these names, be printed on the ballot paper [CEA, s. 169(4)]

A candidate who is not endorsed by a registered political party and who does not wish to be grouped may have the word 'Independent' printed beside his or her name on the ballot paper. [CEA, s. 169A]

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

Deposit

Each nomination must be accompanied by a deposit which must be in cash or banker's cheque. A personal cheque is acceptable. [CEA, ss.170(2),(3)]

The deposit required is \$250 for a House of Representatives candidate, and \$500 for a Senate candidate. [CEA, s.170(3)]

The deposit lodged with a nomination will be returned to the payee or someone authorised by the payee in writing if he or she is elected, or:

- a) in a Senate election if:
 - (i) in the case of an ungrouped candidate, the candidate's total number of first preference votes is at least 4% of the total number of formal first preference votes; or
 - (ii) where the candidate's name is included in a group, the sum of the first preference votes polled by all the candidates in the group is at least 4% of the total number of formal first preference votes; and
- b) in a House of Representatives election, if the candidate's total number of first preference votes is at least 4% of the total number of formal first preference votes cast for all candidates in that Division.

All other candidates forfeit their deposit. [CEA, s.173]

Rejection of nomination

A nomination shall only be rejected if the provisions relating to the mode of nominations are not complied with. No nomination shall be rejected simply by reason of a formal defect or error in the nomination. [CEA, s.172]

Withdrawal of nomination

A candidate may withdraw his or her nomination up to the close of nominations but cannot do so after nominations have closed. The withdrawal notice, which can be obtained from any Divisional or Head Office of the AEC, must be lodged with the appropriate AEO by Senate candidates, and with the appropriate DRO by House of Representatives candidates. The nomination is then cancelled, and the deposit refunded. [CEA, s.177]

Uncontested elections

In a Senate election, if the number of candidates nominated is no greater than the number of candidates to be elected, the AEO on nomination day declares the candidate(s) duly elected. [CEA, s.179(1)]

In a House of Representatives election, if only one candidate is nominated, the DRO, on nomination day, declares that candidate duly elected. [CEA, s.179(2)]

Death of a candidate

If a nominated candidate dies before the close of nominations, the nomination period is extended by a day. [CEA, s.156(2)]

In a Senate election, if any candidate dies between the close of nominations and polling day and the number of remaining candidates is no greater than the number of candidates to be elected, those candidates are declared elected. However, if the remaining candidates are greater in number than the number of candidates to be elected, the election proceeds. A vote recorded on a Senate ballot paper for a deceased candidate is counted to the candidate for whom the voter has recorded the next preference and the numbers indicating subsequent preferences are regarded as altered accordingly. [CEA, ss.180(1), 273(27)]

In a House of Representatives election, if a candidate dies between the close of nominations and polling day, the election does not proceed. A new writ is issued for another election in the Division, but this supplementary election is held using the electoral roll prepared for the original election. [CEA, ss. 180(2), 181]

Return of deposit on the death of a candidate

If a nominated candidate dies before polling day, the deposit lodged is returned to the payee or a person authorised in writing by the payee or, if this was the candidate, to his or her personal representative. [CEA, s.178]

THE WRIT

When there is a general election for the House of Representatives or Senate or a by-election, writs are issued commanding the electoral officer to whom they are addressed to hold an election and specifying the relevant dates.

Issue of the Writ

The writ for the election of Senators for a State is issued by the Governor of the State and is addressed to the AEO for the State. [Const. s.12; CEA, ss.152, 153]

The writ for the election of Senators for a Territory is issued by the Governor-General and is addressed to the AEO for the Territory. [CEA, ss.151, 153]

Writs for the election of Members of the House of Representatives are issued by the Governor-General and are addressed to the Electoral Commissioner, who advises each DRO of the dates and directs them to make the appropriate election arrangements. Only 8 writs are issued for each general election: one for the election of all members in each State respectively, one for the Australian Capital Territory and **one** for the Northern Territory. A writ for a House of Representatives by-election is issued by the Speaker of the House, or, in his or her absence, by the Governor-General. [Const. ss.32, 33; CEA, s.154].

The writ specifies the date of the close of the rolls, the close of nominations, the date of the polling and the date of return of the writ. [CEA, s. 152]

The date fixed for the close of rolls is 7 days after the date of issue of the writ. [CEA, s.155]

The date for the close of nominations must be at least 11 days but not more than 28 days after the date of issue of the writ. [CEA, s.156]

The date fixed for polling must be a Saturday and at least 22 days but not more than 30 days after the date fixed for the close of nominations, and that is at least 33 days but not more than 58 days after the issue of the writ, [CEA, ss.157,158]

The date fixed for the return of the writ shall not be more than 100 days after its issue. [CEA, s. 159]

Close of the rolls

The rolls close for the election at 8pm, 7 days after the date of the issue of the writ. Any claim for enrolment or transfer of enrolment received after that time cannot be registered until after polling day. However, a claim for enrolment or transfer of enrolment received between the close of rolls and polling day that was delayed in the post by an industrial dispute can be regarded as having been received before the rolls closed. [CEA, ss.102(4)-(4B), 155] A facsimile of a claim for enrolment received prior to the Close of Rolls would also be acceptable.

Electoral Commission

Return of the Writ

In Senate elections, the AEO, as soon as convenient after the result of the election has been ascertained, publicly declares the result of the election and the names of the candidates elected, and then returns the writ to the Governor of the State, or, in the case of Territories, to the Governor-General. [CEA, s.283].

In House of Representatives general elections, the DRO, as soon as practicable after it has been ascertained that a candidate has been elected, publicly declares the name of the candidate elected. As soon as practicable after all votes have been dealt with, the DRO makes out a statement setting out the result of the election and transmits it to the Electoral Commissioner who, after receiving such a statement from every DRO, endorses on the writ the name of each candidate elected for each Division in the State or Territory, and returns it to the Governor-General. [CEA, s.284].

In a by-election the writ is returned to the Speaker or the Governor-General as the case requires. (CEA, s.284).

BALLOT PAPERS

Ballot paper format

House and Senate ballot papers may display the political affiliations of candidates. Requests for affiliations to be printed on ballot papers are made before the close of nominations, usually on the nomination form.

Political party names on ballot papers

Only registered political parties are able to have their registered party name or registered party abbreviation printed on the ballot papers adjacent to the names of candidates endorsed by that party.

An endorsed candidate of a registered political party may have either the registered name or the registered abbreviation of that political party printed adjacent to his or her name on the ballot paper. [CEA, ss.210A, 214]

A group of Senate candidates of a registered political party may have either the registered name or the registered abbreviation of that party printed adjacent to their group voting ticket square on the upper section of the ballot paper, and adjacent to each of their names on the lower section of the ballot paper. [CEA, s.214].

A composite group of candidates endorsed by more than one registered political party may have a composite party name printed adjacent to their group ticket voting square on the upper section of the Senate ballot paper. However, each candidate will have his or her own registered party name printed adjacent to his or her name on the lower section of the ballot paper. [CEA, s.214].

Independent candidates

Only those non-endorsed candidates who have, on their nomination form, requested the word “Independent”, will have the word “Independent” printed on the ballot paper adjacent to their names. Non-endorsed candidates who do not request the word “Independent” will have nothing printed adjacent to their names. [CEA, s.214]

Senate group voting tickets

Within 24 hours of the close of nominations, a Senate group may lodge with the AEO for the State or Territory a written statement setting out a preference ordering of all candidates in the election which they wish voters to follow. The statement may be signed:

Where all the members of the group have been endorsed by the same registered political party, by the registered officer of the party;

Where the members of the group have been endorsed by different registered political parties, by the registered officers of all those parties;

In a case not covered by either of the above, by the candidate whose name first appears in the group on the ballot paper; or

In any case, by a person authorised by all the members of the group to sign such a statement on behalf of the group, by written instrument given to the AEO with the nomination or nominations of members of the group.

The preference ordering may be specified in the form of a how-to-vote card. [CEA, s.211].

The group may instead lodge 2 or 3 such tickets, provided that the preference orderings shown place the candidates lodging the statement ahead of any other candidate, and give the same order of preference for the members of the group on each ticket. Preferences can then be allocated accordingly during the scrutiny: if 2 tickets are lodged, one half of the votes are allocated in each order, and if 3 tickets are lodged, one third of the votes are allocated to each of the preference orderings. [CEA, s.211]

Where a group voting ticket or tickets are lodged, a square will be printed above the group on the ballot paper. Electors wishing to vote according to the group voting ticket simply fill in that group voting ticket square with the number “1” and their preferences will be allocated accordingly during the scrutiny. [CEA, s.239(2)]

A poster setting out copies of all voting tickets which have been lodged is displayed at every polling booth on polling day. [CEA, s.216]

Incumbent Senator voting tickets

An incumbent Senator may lodge with the AEO a written statement setting out up to three preference orderings of all candidates in the election which he or she wishes the voters to follow. The statement must be signed by the candidate and lodged with the appropriate AEO, and must show a first preference for the incumbent senator. The preference ordering may be specified in the form of a how-to-vote card. [CEA, s.21 1A]

Order of names on all ballot papers

A system of double randomisation is used for determining orders of candidates or groups on Senate ballot papers and orders of candidates on House of Representatives ballot papers. All candidates are welcome to attend the determination of the order of names on the relevant ballot paper. [CEA, s.213]

The double randomisation draw is conducted by the appropriate DRO (for House of Representatives elections) or AEO (for Senate elections) immediately after the close of nominations. [CEA, s.213]

Where the similarity in the names of two or more candidates is likely to cause confusion, the names of these candidates may be arranged with an additional description to distinguish them from one another. [CEA, ss.210(1)(e) 212(b)]

Order of names on Senate ballot papers

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

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

Where the AEO is required to determine the order of the groups on ballot papers he or she conducts a public draw for positions immediately after the close of nominations. A process of double randomisation firstly assigns a number to each group and then assigns to that number its place on the ballot paper.

A further double randomisation draw is made immediately to determine the order of names of the ungrouped candidates who have not lodged individual voting tickets. [CEA, ss.210,213]

ELECTION FUNDING AND FINANCIAL DISCLOSURE

Funding and disclosure provisions are in Part XX of the CEA. Candidates should also consult the relevant **Funding and Disclosure Handbook** published by the AEC.

Election funding of campaign expenditure

Candidates endorsed by registered political parties do not personally receive election funding. Payment of election funding is made to agents of State or Territory branches of registered political parties. Independent (unendorsed) candidates, however, receive their payment direct. Where an independent candidate has appointed an agent, payment will be made to the agent.

To be entitled to funding a candidate must have gained at least 4% of the formal first preference votes in the election contested. The amount of entitlement is based on the total first preference vote gained.

The AEC is required to calculate the funding entitlements on the 20th day after polling day in an election and arrange payment of a minimum of 95% of that amount as soon as possible thereafter. (Note: there is no longer any need to lodge a claim for reimbursement of expenses.)

Disclosure of election donations

All candidates, whether endorsed by a registered political party or not, must submit a return of Election Donations. The return must reach the ACE's Central Office in Canberra within 15 weeks after polling day. This requirement includes candidates who are members of a Senate group. [CEA, s.304(2)]

The return must show the total value of all election gifts received, the number of donors, and the name and address of any donor who gave a gift to the value of \$200 or more during the disclosure period. If one donor gave several gifts during the disclosure period which totalled \$200 or more the donor's details must be provided on the return. [CEA, s.304]

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

For a person who was a candidate in a general election or by-election held within 4 years before the current election, or in a Senate election held within 7 years before the current election, the disclosure period commences on the 31st day after polling day in the last such general election, by-election or Senate election in which the person was a candidate.

For a candidate who has never contested an election, or a House of Representatives election held more than 4 years before polling day or a Senate election held more than 7 years before polling day, the day on which the person announced they would be a candidate or nominated as a candidate, whichever is earlier.

For a Senator appointed under section 15 of the Constitution who has not been a candidate for the House of Representatives within 4 years of polling day, or for the Senate within 7 years of polling day, the period commences on the day of the appointment under section 15.

The disclosure period for all candidates ceases at the end of 30 days after polling day for the election. [CEA, s.287(1)]

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

An endorsed candidate who passes all gifts received directly to the party organisation may submit a nil return. Details of those gifts must be passed on to the party agent as they must be included in the State or Territory branch annual return to be submitted at the end of the financial year. Details of any gifts received by a campaign committee of a candidate endorsed by a registered political party should also be passed to the party agent. [CEA, s.287A] Any gifts received by a campaign committee working for an unendorsed candidate or a candidate endorsed by an unregistered political party should be included in the candidate's return.

Disclosure of electoral expenditure

All candidates, except members of Senate groups, must submit a return of Electoral Expenditure. The return must be submitted to the Central Office of the AEC within 15 weeks after polling day. [CEA, s.309(2)] The return must show expenditure incurred on the goods or services listed below which are used during the election period (between the issue of the writ and the close of polling). The categories are:

- broadcasting of electoral advertisements;
- publishing of electoral advertisements;
- display of electoral advertisements at a place of entertainment;
- production (including printing) of any other electoral material that is required to be authorised (for example: how to vote cards, posters and pamphlets);
- production and distribution of direct mail campaigns;
- conduct of an opinion poll or other research relating to the election. [CEA, s.308]

These are the only categories of expenditure which are required to be reported in the return and they relate only to expenditure on goods used or services provided during the period between the issue of the writ and the close of polling. For example, newspaper advertisements published before the writ is issued do not have to be included even if payment for the advertisements is made after the writ was issued, but advertisements published after the issue of the writ must be included no matter when payment is actually made.

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Senate group returns

All Senate groups, except a Senate group all of whose members are endorsed by the same registered political party, must submit a return of Election Donations and a return of Electoral Expenditure on behalf of the group. The disclosure period for a Senate group donations covers the period from the date a claim to be grouped on the ballot paper was made until 30 days after polling day. The Senate group Electoral Expenditure Return **covers** the election period, ie the time between the issue of the writ and the close of polling. These two returns are due within 15 weeks from polling day.

In the case of a Senate group all of whose members are endorsed by the same registered political party, the agent of the State/Territory branch of the party is automatically the agent of the group.

Agents

A candidate may appoint an agent. [CEA, s.289(1)] If appointed, the agent is responsible for submitting the candidate's returns to the AEC. An appointment must be made before the close of nominations, and is made by giving notice in writing to the AEC providing the name and address of the agent, signed by the candidate, and incorporating a form of consent to the appointment and a declaration of eligibility signed by the agent. [CEA, s.290] Notice of Appointment of Agent forms are available from the AEC.

A candidate who does not appoint an agent will be considered to be his or her own agent. [CEA, s.289(3)]

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

Return forms

Thirty days after polling day the AEC will send candidates (or agents) return forms for completion. A covering letter will advise the due date for submitting returns. Additional forms are available from the Central Office of the AEC. It is recommended that copies of returns sent to the AEC be retained and that forms submitted by post be sent by certified mail.

Nil returns

If a candidate did not receive any gifts that are required to be disclosed and/or did not incur electoral expenditure in the categories listed above, the candidate, or agent, must submit a return showing nil gifts and/or nil expenditure. [CEA, ss.307(1), 313(1)]

Failure to submit returns

The CEA provides penalties for failure to furnish returns and further penalties for continued failure to furnish returns. [CEA, s.315(1), (8)-(10)] The AEC will provide the Director of Public Prosecutions with a list of candidates or agents who do not submit returns.

Amendments to returns

The CEA provides penalties for furnishing an incomplete return and for knowingly providing false or misleading information in a return. [CEA, s.315(2),(4)] If, after submission of a return, it is realised that an error or omission has been made, a written request may be made to the AEC for a specified amendment to the return. The AEC will advise if the request has been rejected, in which case a review of the decision may be requested within 28 days of the advice of rejection. [CEA, s.319A]

Investigations

The CEA allows the Commission to conduct investigations requiring persons to produce documents and/or give evidence for the purposes of finding out whether Part XX of the CEA has been complied with. [CEA, s.316] Records relating to matters contained in returns must be kept for three years from the polling day of the election. [CEA, s.317]

Public inspection

All election returns received by the AEC must be made available for public inspection. Public inspection facilities are made available at the AEC's Central Office and, upon request, at State and Territory Head Offices. No election returns will be available for public inspection before the end of 24 weeks after polling day. [CEA, s.320]

ELECTORAL OFFENCES

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

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

NOTE: “During the election period” means, for the purposes of these offences, the period between the issue of writs for an election and the latest time within Australia for the close of polls.

Postal voting offences

No one may witness a postal vote application by an elector unless the witness:

- (a) is satisfied of the identity of the elector;
- (b) has seen the elector sign the application; and
- (c) knows that the statements in the application are true, or is satisfied by asking the elector or otherwise that the statements are true.

PENALTY: \$500 [CEA, s.187(1)]

No candidate may witness the signature of an elector applying for a postal vote. [CEA, s.193(3)]

Influencing votes of hospital patients

The proprietor (or the employee of the proprietor) of a hospital or nursing home must not attempt to influence the vote of a patient.

PENALTY: \$1000 or imprisonment for 6 months, or both. [CEA, s.325A]

Bribery

No election campaign declaration of public policy or promise of public action is regarded as bribery. [CEA, s.326(3)] There is a comprehensive definition of bribery in section 326 of the CEA, which is reproduced below:

- 326(1) *A person shall not ask for, receive or obtain, or offer or agree to ask for, or receive or obtain, any property or benefit of any kind for himself or any other person, on an understanding that*
- (a) *any vote of the first-mentioned person;*
 - (b) *any candidature of the first-mentioned person*
 - (c) *any support of; or opposition to, a candidate, a group of candidates or a political party by the first-mentioned person;*
 - (d) *the doing of any act or thing by the first-mentioned person the purpose of which is, or the effect of which is likely to be, to influence the preferences set out in the vote of an elector; or*
 - (e) *the order in which the names of candidates nominated for election to the Senate whose names are included in a group in accordance with section 168 appear on a ballot paper, will, in any manner, be influenced or affected.*

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

- (2) *A **person** shall not, in order to influence or affect*
- (a) *any vote of another person;*
 - (b) *any candidature of another person;*
 - (c) *any support of or opposition to, a candidate, a group of candidates or a political party by another person;*
 - (d) *the doing of any act or thing by another person the purpose of which is, or the effect of which is likely to be, to influence the preferences set out in the vote of an elector; or*
 - (e) *the order in which the names of candidates for election to the Senate whose names are included in a group in accordance with section 168 appear on a ballot paper, give or confer, or promise or offer to give or confer, any property or benefit of any kind to that other person or to a third person.*

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

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

If any successful candidate is found guilty of bribery or undue influence, the election is declared void. However, if these offences were committed by anyone other than the candidate without his or her knowledge or authority the election shall not be declared void by the Court of Disputed Returns unless the result of the election was likely to be affected. [CEA, s.362]

Any candidate found guilty of bribery or undue influence or interference with political liberty may not be elected to or sit as a Member of either House for 2 years from the date of conviction. [CEA, s.386]

The Constitution, s.44, provides that anyone convicted and under sentence, or subject to be sentenced, for any offence punishable by Commonwealth or State law by a sentence of one year or more is barred from being elected to either the Senate or the House of Representatives.

Interference with political liberty

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

PENALTY: \$1000 or imprisonment for 6 months, or both. [CEA, s.327]

Election campaign advertising offences

All printed or published electoral advertising must be authorised, and the name and locality address of the person authorising it and the printer and place of business, except in the case of newspaper advertisements, must appear on it. If the advertisement stretches across two opposing pages, each page must contain this information, unless it is clear that the two pages relate to the *one* advertisement. In the case of an electoral video recording, this information must appear at the end of a recording. [CEA, s.328(1)]

This provision is designed to avoid 'irresponsibility through anonymity' in the conduct of election advertising.

However, authorisation is not required for a car sticker, T-shirt, lapel button, lapel badge, pen, pencil or balloon, or for an advertisement announcing the holding of a campaign meeting. (CEA, s.328(3)) Nor is it required for business cards, or for letters and cards that bear the address (not a post office box) of the sender, and that do not contain a representation of a ballot paper. [ERR, r.87]

PENALTY: \$1000 for an individual; \$5000 for a body corporate. [CEA, s.328]

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

PENALTY: \$1000 or imprisonment for 6 months or both, for an individual; \$5000 for a body corporate. [CEA, s.329(4)]

No one shall, during the election period, authorise the printing, publishing or distribution of any electoral advertisement containing a statement that is untrue, is or is potentially misleading and/or deceptive. This includes "publishing" by any print or electronic media. [CEA, s.329(2)]

PENALTY: \$1000 for an individual; \$5000 for a body corporate; [CEA, ss.329(4), 329(4A)]

No one shall, during the election period, print, publish, distribute, permit or authorise anything with the intention of encouraging persons voting at the election to fill in a ballot

paper otherwise than fully preferentially, in accordance with s.240 of the CEA. This includes “publishing” by radio or television.

PENALTY: Imprisonment for 6 months. [CEA, s.329A]

No one shall during the election period, print, publish, distribute, permit or authorise anything that contains a representation of a ballot paper (for example, a how-to-vote card) that is likely to induce an elector to mark his or her vote otherwise than in accordance with the directions on the ballot paper. This includes “publishing” by radio or television. [CEA, s.329(3)]

PENALTY: \$1000 or imprisonment for 6 months or both, for an individual; \$5000 for a body corporate [CEA, s.329(4)]

Newspaper proprietors must ensure that all paid electoral advertisements contained in articles or paragraphs in their newspapers are headed by the word “Advertisement” in letters not smaller than 10 point to the article or paragraph.

PENALTY: \$500. [CEA, s.331]

All articles printed, published or distributed during the election period in a newspaper, circular, pamphlet or dodger containing electoral matter must include the name and locality address of the author at the end. This address must not be a post office box. This section does not apply to a newspaper leading article, an article which is solely a report of a meeting, or to letters to the editor. Letters to the editor require the inclusion of city/town/area.

PENALTY: \$500 for an individual; \$2500 for a body corporate. [CEA, s.332]

No one shall write, draw or depict any electoral matter directly on any road, footpath, building, vehicle, vessel, hoarding or any other place, whether it is a public place or not and whether it is on land or water or in the air.

PENALTY: \$1000 [CEA, s.334]

Signs are permissible on or at the office or committee room of a candidate or political party, indicating that it is the office or committee room of the candidate or party, and specifying the name of the candidate or party. [CEA, s.334]

Evidence of authorship

Where a statement of authorisation appears in an electoral advertisement, handbill, pamphlet, notice or video recording, or a name purporting to be that of the author of an article, or part of an article, containing electoral matter appears in a newspaper, circular, pamphlet or dodger, that fact can be used as prima facie evidence in proceedings against that person. [CEA, s.385A(1)]

Public meetings

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

PENALTY: \$500 [CEA, s.347(1)]

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

PENALTY: \$1000 or imprisonment for 6 months, or both. [CEA, ss.347(3),(4)]

Offences on polling day

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

Voting is compulsory for all electors, including candidates, with the exception of Antarctic electors, eligible overseas electors and itinerant electors.

PENALTY: \$50 [CEA, s.245]

Anyone who, on polling day, makes a statement to an elector concerning his or her enrolment, that he or she knows to be false or misleading, is guilty of an offence.

PENALTY: \$1000 or imprisonment for 6 months, or both. [CEA, s.330]

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

PENALTY: \$500 [CEA, s.335]

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

PENALTY: \$1000 or imprisonment for 6 months, or both. [CEA, s.338]

No one shall:

impersonate anyone in order to secure a ballot paper to which the impersonator is not entitled;

impersonate anyone in order to vote;

fraudulently destroy or deface any ballot paper;

fraudulently put any ballot paper or other paper in the ballot box;

fraudulently take any ballot paper out of any polling booth or counting centre;

forge any ballot paper;

supply ballot papers without authority;

unlawfully destroy, take, open or otherwise interfere with ballot boxes or ballot papers;

wilfully vote more than once at the same election;

make a deliberately false or misleading statement about any claim, application, return, declaration or answer to a question concerning the election.

PENALTY: Imprisonment for 6 months. [CEA, s.339(1)]

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

PENALTY: \$500 [CEA, s.339(2)]

The following acts are prohibited on polling day within 6 metres of an entrance of a polling booth:

canvassing or soliciting for votes (consequently, supporters distributing how-to-vote cards must keep off polling booth premises or grounds, and only hand out how-to-vote cards to electors outside these limits);

inducing any elector not to vote for any particular candidate;

inducing any elector not to vote at the election; or

exhibiting any notice or sign (other than an official one) relating to the election.

PENALTY: \$500 [CEA, s.340(1)]

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

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

PENALTY: \$1000 [CEA, s.341]

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

engage in misconduct;

disobey a lawful direction of the person in charge;

enter or remain in such a place without the permission of the person in charge.

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

PENALTY: \$500 [CEA, s.348]

Candidates should note that photographers or their equipment are not to hinder or inconvenience any polling staff or voters and no photographs are to be taken that would reveal how a person voted. Candidates arranging for photographers to visit polling places should notify the DRO to enable arrangements to be made with the officers in charge of the relevant polling places.

SCRUTINEERS

Role of scrutineers

Scrutineers observe on behalf of the candidates the polling and scrutiny conducted by electoral officials and are given legal rights and obligations under the CEA. No candidate may in any way take part in the conduct of an election. [CEA, s.219]

Appointment of scrutineers by candidates

Candidates may appoint scrutineers to represent them at the polling at every polling booth, but not more than one scrutineer for each polling booth or issuing point at a polling booth. [CEA, s.217(1)]

Candidates may appoint scrutineers to represent them at polling booths by completing a Scrutiner Appointment Form which can be obtained from any of the AEC's Divisional Offices. The form must be signed by the candidate (a facsimile of the signature is acceptable). Alternatively, candidates may appoint scrutineers by sending a telegram to the DRO or Presiding Officer in charge of a polling booth. The name and address of the scrutineer must be given. CEA, s.217]

Each scrutiner must sign the undertaking on the Form that he or she will not attempt to influence the vote of an elector and that he or she will not disclose any knowledge acquired concerning the vote of any elector. [CEA, s.202A(3)] A scrutineer must wear a badge, supplied by the AEC that identifies him or her as a scrutineer. [CEA, s.218(2A)]

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

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

Candidates may also appoint scrutineers to represent them at the scrutiny (the counting of the ballot papers). The number of scrutineers who may represent a candidate at each counting centre is limited to the number of officers engaged in the counting of ballot papers there. [CEA, s.264]

The appointment of a scrutineer should be made in writing and signed by the candidate, or by telegram, and given or sent to the officer conducting the scrutiny at the counting centre. The name and address of the scrutineer must be provided. [CEA, s.264]

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

Scrutineers Handbook

More detailed information concerning the rights, duties, powers and functions of scrutineers during polling and scrutiny is contained in the *Scrutineers Handbook*. This Handbook is available from all Offices of the AEC.

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

ELECTION NIGHT COUNTING

The scrutiny on polling night

Counting of ordinary votes commences immediately after the poll closes at 6pm on polling day. At simultaneous elections, House of Representatives ballot papers are scrutinised before Senate ballot papers. The ballot papers are first sorted by the polling officials into first preference votes and informal ballot papers. The results are then tabulated and the first preference vote figures for each candidate are telephoned to the appropriate DRO.

The DRO will, in turn, enter the figures for each polling place into the national computerised Election Night System. These figures are transmitted to the National Tally Room in Canberra, where the Election Night System will display these progressive first preference results and associated swings. [CEA, s.274(2)]

Indicative two-candidate preferred vote for House of Representatives

At the completion of the count of first preferences for the House of Representatives at each polling place, the Assistant Returning Officer must, as directed by the appropriate AEO, conduct an indicative distribution of preferences on a two-candidate preferred basis. [CEA, s.274(2A)]

Like the count of first preference votes, this result is telephoned through to the DRO, where it is progressively entered into the Election Night System and transmitted to the National Tally Room in Canberra.

Senate count on election night

The counting of Senate ballots also begins on election night. However, because Senate results cannot be calculated until the State-wide total of votes used to determine the 'quota' is known, it is usually not possible to get more than a general impression of the Senate results on election night itself.

The Senate count on election night commences at the same time as the two-candidate preferred count. Results from the Senate count are telephoned through to the DRO, and Group totals and Independents' results are input to the Election Night System in the same way as House of Representatives votes.

RECOUNTS AND DISPUTED RETURNS

Recounts

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

Only candidates are entitled to request a recount, although the electoral official conducting the scrutiny may also direct a recount. The electoral officer is not obliged to conduct a recount automatically on the request of a candidate. [CEA, ss.278, 279]

When requesting a recount, Senate candidates must write to the AEO for the State or Territory and House of Representatives candidates to the DRO, giving their reasons for the request. [CEA, ss.278, 279]

If the AEO for the State or Territory refuses a request from a candidate to direct a recount of any Senate ballot papers, the candidate may appeal in writing to the Electoral Commissioner to direct a recount of the ballot papers. The Electoral Commissioner is empowered to either direct or refuse a recount. [CEA, s.278]

DROs may be directed by the Electoral Commissioner or the AEO for the State at any time before the declaration of a result of a House of Representatives election to recount all or some ballot papers. [CEA, s.279]

The DRO is required to notify each candidate of the time and place of any recount. [CEA, s.279A]

Candidates should note that the DRO conducting a recount has the same powers as if the recount were the original scrutiny, and may reverse any decision in the scrutiny to admit or reject a ballot paper. [CEA, s.280]

The DRO may, and at the request of a scrutiner must, reserve any ballot paper for the decision of the AEO. [CEA, s.281] The AEO must decide whether any ballot paper reserved for his or her decision is to be admitted or rejected. [CEA, s.281]

If an election result is challenged the court of Disputed Returns may consider any ballot paper reserved for the decision of the AEO but may only order a further recount if it is satisfied that a recount is justified. [CEA, s.281]

Scrutiny for information

After the election of a member of the House of Representatives, the Electoral Commissioner may direct the DRO to carry out, for information purposes, a scrutiny of the second and later preferences of the candidates, and may specify a distribution of those preferences. This information is used to calculate a “two-party preferred” figure for all divisions. [CEA, s.277]

Court of Disputed Returns

The validity of any election may only be disputed by a petition to the Court of Disputed Returns. [CEA, s.353]

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

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

[CEA, s.360(1)]

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

Following the 1993 federal election there were seven petitions filed with the High Court disputing various aspects of the election. All seven petitions were eventually dismissed. As a consequence of this litigation there is now a greater degree of certainty than in the past on how election petitions must be prepared and presented in order that any allegations of illegal practices may be properly considered by the court. It has been held by the High Court that petitioners, other than candidates and the AEC itself, must be qualified to vote by being enrolled on the date on which the election was held. Petitioners cannot challenge the election at large but only those elections for which they were qualified to vote. Petitions must set out the facts relied on to invalidate the election and if alleging illegal practices, must show how these could have affected the election result. Only illegal practices within the meaning of that term under the CEA can invalidate an election.

Requisites of petition

A petition must be filed in the Registry of the High Court within 40 days after the return of the writ. The petition must:

- (i) set out the facts relied on to invalidate the election;
- (ii) set out those facts with sufficient particularity to identify the specific matter or matters on which the petitioner relies as justifying the grant of relief (the Court may at any time after the filing of the petition relieve the petitioner from complying with this);
- (iii) contain a prayer asking for the relief the petitioner claims to be entitled to;
- (iv) be signed by a candidate at the election in dispute or by a person who was qualified to vote at the election; and
- (v) be attested by 2 witnesses whose occupations and addresses are stated.

(CEA, s.355]

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

LEGAL PROCEEDINGS INVOLVING CANDIDATES

Defamation of candidates

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

PENALTY: \$1000 or imprisonment for 6 months or both, for an individual;
5000 for a body corporate [CEA, s.350(1)]

Anyone who makes a false and defamatory statement about the personal character or conduct of a candidate may be restrained by injunction by the aggrieved candidate from repeating the statement or any similar false and defamatory statement. [CEA, s.350(2)] Note that the Free Speech cases in the High Court have widened the defences to political defamation.

Unauthorised announcement of candidate support for organisations

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

PENALTY: \$1000 for an individual; \$5000 for a body corporate [CEA, s.351]

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

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

Injunctions

There is extensive provision for candidates or the AEC to be able to seek injunctions from the Supreme Court of a State or Territory to restrain breaches or anticipated breaches of any Commonwealth law relating to elections. Provision is made for appeal from the relevant Supreme Court to the Federal Court of Australia. [CEA, s.383]

ASSISTANCE AVAILABLE TO CANDIDATES

The AEC has prepared reference handbooks for candidates in addition to the *Candidates Handbook*; these are the *Scrutineers Handbook* and the *Election Funding and Financial Disclosure Handbooks*. A copy of the *Scrutineers Handbook* is given to each candidate when he or she nominates at a Divisional Office. A copy of the relevant *Election Funding and Financial Disclosure Handbook* is sent to each candidate after nomination.

Also, general information leaflets on a range of topics are available from all Divisional Offices. Some of these leaflets have been translated into various community languages.

Official material available to candidates

Subject to availability, all relevant official electoral forms (except in relation to funding and disclosure) may be obtained from State Head Offices and Divisional Offices of the ACE. Funding and disclosure forms can be obtained from the Funding and Disclosure Section at the ACE's Central Office, Canberra.

House of Representatives candidates will receive a copy of the certified list of voters for the Division for which he or she is seeking election, as soon as they are produced after the close of the rolls for the election. [CEA, s.91c]

AUSTRALIAN ELECTORAL COMMISSION ADDRESSES

Central and Head Offices

Electoral Commissioner	PO Box E201 Queen Victoria Terrace CANBERRA ACT 2600 ph: (06) 2714411 fax: (06) 271 4556	West Block PARKES ACT 2600
Australian Electoral Officer for New South Wales	PO Box K778 HAYMARKET NSW 2000 ph: (02) 375 6333 fax: (02) 281 9378	4th Floor Roden Cutler House 24 Campbell St SYDNEY NSW 2000
Australian Electoral Officer for Victoria	GPO Box 768G MELBOURNE VIC 3001 ph: (03) 9285 7171 fax: (03) 9285 7167	Level 22 Casselden Place 2 Lonsdale St MELBOURNE VIC 3000
Australian Electoral Officer for Queensland	GPO Box 2590 BRISBANE QLD 4001 ph: (07) 3834 3400 fax: (07) 3832 3058	CM Place 484 Queen St BRISBANE QLD 4000
Australian Electoral Officer for Western Australia	PO Box 78 1 VICTORIA PARK WA 6979 ph: (09) 470 7299 fax: (09) 472 355 1	28 Thorogood St BURSWOOD WA 6100

Australian Electoral Officer for South Australia	GPO Box 344 ADELAIDE SA 5001	5th Floor Cmnwlth Centre 55 Currie St ADELAIDE SA 5000
	ph: (08) 237 6555 fax: (08) 231 2664	
Australian Electoral Officer for Tasmania	GPO Box 520E HOBART TAS 7001	8th Floor AMP Building 86 Collins St HOBART TAS 7000
	ph: (002) 350 500 fax: (002) 344 268	
Australian Electoral Officer for the Northern Territory	GPO Box 21 DAR WIN NT 0801	9th Floor MLC Building 79-81 Smith St DARWIN NT 0800
	ph: (089) 811477 fax: (089) 817 964	
Australian Electoral Officer for the Australian Capital Territory	PO Box E201 Queen Victoria Terrace CANBERRA ACT 2600	West Block PARKES ACT 2600
	ph: (06) 2714411 fax: (06) 217 4556	

NOTE: Divisional Offices can be contacted on 13 23 26. Addresses can be found in the White Pages under “Australian Electoral Commission”, or by contacting the appropriate State Head Office.