

# ELECTORAL backgrounder No. 18

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## Informal Voting

### Introduction

1. *Electoral Backgrounders* are published by the Australian Electoral Commission (AEC) to provide a basic introduction to electoral law, policy and procedures for the information and guidance of all interested parties.
2. The AEC administers the conduct of federal elections under the provisions of the *Commonwealth Electoral Act 1918* (the Act). The Act is available on the Attorney-General's Commonwealth Law website at [www.comlaw.gov.au](http://www.comlaw.gov.au). Unless otherwise specified, all references to sections are to sections of the Act. Also please note, the words 'voter' and 'elector' are used interchangeably throughout this publication.
3. The purpose of this *Backgrounder* is to provide introductory information in relation to formal and informal voting, and activities designed to encourage electors to vote formally.
4. The view of the operation of the law presented here is consistent with advice provided to the AEC by its legal advisers, but in the final analysis it is for the courts to decide upon the interpretation of the law in any particular case. Readers should not rely on the information in this document as a statement of how the law will apply in any particular case. Accordingly, if you are in doubt about the interpretation of the law in particular circumstances you should seek your own independent legal advice.

5. The information in this *Backgrounder* is set out under the following headings:
  - Formal voting requirements
  - Correct marking of ballot papers
  - How to vote (HTV) cards
  - Objection to and rejection of informal ballot papers
  - What makes a ballot paper informal?
    - For a House of Representatives ballot paper
    - For a Senate ballot paper
  - Historical background (including Langer-style voting)
  - Summary
  - Suggestions for further reading
  - Relevant provisions in the *Commonwealth Electoral Act 1918*.

### Formal voting requirements

6. The system of voting in Australian federal elections is known as 'full preferential voting' and is established by the provisions of the Act. The Act sets out how preferences are to be indicated on ballot papers in this system, and specifies the types of ballot paper markings that will mean the ballot paper will be accepted into, or excluded from, the election count.

*Electoral Backgrounders* are published for the general information of AEC staff and people interested in electoral issues. *Electoral Backgrounders* present and analyse the issues on various topics, but do not promote a particular position or represent legal advice, and should not be relied upon as such. Anyone requiring legal advice should consult their own legal advisers.

## Correct marking of ballot papers

7. Sections 239 and 240 of the Act respectively establish the system of ballot paper marking for Senate and House of Representatives election ballot papers. Both elections require full preferential voting, which means voters must indicate the order of their preference for election for each and every candidate on the ballot paper.
8. In House of Representatives elections, this requires voters to place a number '1' in the square beside the name of the candidate for whom the person votes as his or her first preference to be elected, and then must place consecutive numbers against the name of each and every other candidate on the ballot paper to show the order of the voter's preferences (s. 240 the Act).
9. For the Senate there are two options for the voters to indicate their full preferences. The first is to vote 'below the line'. Using this method voters write consecutive numbers of their preferences against each and every candidate on the ballot paper, as for House of Representatives ballot papers. Candidates' names are written below a black line printed across the ballot paper for this purpose (s. 239 the Act).
10. The second option is to vote 'above the line'. This option allows voters to put a single number '1' in only one box above the black line, which then indicates to election officials that the voter's preferences are to be allocated in accordance with a pre-registered group voting ticket under ss. 211 or 211A of the Act. Group voting tickets are lodged with the AEC by Senate groups shortly after the close of nominations, and show the full distribution of preferences directed by that group. For more information see [www.aec.gov.au](http://www.aec.gov.au).
11. The voting tickets lodged with the AEC are available in booklet form at every polling place, and on the AEC website at [www.aec.gov.au](http://www.aec.gov.au).

## How to vote (HTV) cards

12. Political parties, candidates and other interested parties issue electoral advertisements, known as how to vote (HTV) cards. HTV cards indicate a particular preference order for all of the candidates on a ballot paper as favoured by the person or group issuing the HTV card. HTV cards are designed to show voters how to number their preferences to vote for the candidates preferred by the person issuing the HTV card. Voters are not required to use a HTV card as a guide; voters may allocate their preferences in any order they choose. Voters who choose to use a HTV card as a guide to numbering the preferences on their ballot papers must still ensure they number each and every square on the ballot paper, as HTV cards are not equivalent to a group voting ticket for the Senate.

## Objection to and rejection of informal ballot papers

13. The 'officer-in-charge of each polling place is called the presiding officer during polling, from 8 am to 6 pm on election day. From 6 pm, however, during the counting of the votes (the scrutiny), this officer is called the assistant returning officer.
14. During the scrutiny of ballot papers, assistant returning officers are required by the Act to reject informal ballot papers from the scrutiny. Scrutineers (representatives of election candidates appointed to represent the candidate at the scrutiny) may object to ballot papers being included in, or excluded from, the scrutiny. The AEC officer conducting the scrutiny then decides whether to admit or reject a ballot paper (that is, whether the ballot paper is informal) and marks the ballot paper with 'accepted' or 'rejected' according to the AEC officer's decision. The effect of a ballot paper being informal and rejected from the scrutiny is that it is not included in the election count.

## What makes a ballot paper informal?

15. Sections 268 and 269 of the Act specify categories of ballot papers that are informal.

### For a House of Representatives ballot paper

16. A House of Representatives ballot paper is informal if:
- the ballot paper has no vote indicated on it; or
  - the ballot paper does not indicate the voter's first preference for 1 candidate and an order of preference for all the remaining candidates.
17. There are some exceptions.
- Where a voter has indicated a first preference for one candidate and an order of preference for all the remaining candidates except for one. If the square opposite that candidate has been left blank, the Act deems that the voter's preference for that candidate is the voter's last preference. The voter has accordingly indicated an order of preference for all candidates. This ballot paper will thus be counted as formal.
  - In a case where there are two candidates only and the voter has indicated the voter's first preference by placing a 1 beside one candidate, and either leaving the other square blank or placing any other figure (apart from '1') in the other square, the voter will be deemed to have indicated an order of preference for all candidates and the vote will be counted as formal.

### For a Senate ballot paper

18. A Senate ballot paper is informal if:
- the ballot paper has no vote indicated on it; or
  - the ballot paper does not have the voter's first preference for 1 candidate and the order of his or her preferences for all the remaining candidates indicated.

19. There are some exceptions.
- A ballot paper will not be regarded as informal if the voter has voted 'above the line' by putting a mark in one of the squares above the line on the ballot paper (s. 269 the Act).
  - A ballot paper will not be regarded as informal if the voter has voted 'below the line' and there are a minimal number of mistakes in the sequences of the numbers on the ballot paper as set out in s. 270 of the Act.
20. Section 270 is a 'saving' provision designed to allow for misnumbering of preferences on Senate ballot papers, which often have a very high number of candidates. This provision allows into the scrutiny, ballot papers where at least 90% of the preferences are expressed, but where some of the preferences are marked non-consecutively.
21. In these cases, in accordance with s. 270, the ballot paper will not be rejected from the scrutiny. However, the preferences on the ballot paper will only be allocated and counted up until the consecutive number sequence is interrupted. An example would be a ballot paper with 18 candidates on which the voter numbers all of the squares but repeats the number 16 or leaves out the number 16. In this case, the ballot paper will not be informal (that is, it will not be rejected from the scrutiny entirely), but only the preferences from 1 to 15 can be used in the scrutiny.

## Historical background (including Langer-style voting)

22. In 1983 the Joint Select Committee on Electoral Reform (now known as the Joint Standing Committee on Electoral Matters - JSCEM) undertook a wide-ranging review of the federal electoral system and made a number of recommendations for substantial legislative reform. Amongst other issues, the JSCEM considered whether voting should be full preferential or optional preferential for federal elections. Parliament decided that full preferential voting should continue to be required for both Houses of Parliament.

- However, the informality rate for Senate voting was of serious concern as many voters were making numbering errors (that is, not numbering their ballot papers with consecutive numbers) on Senate ballot papers that had higher numbers of candidates, apparently when following HTV cards.
23. The option of group ticket voting (voting 'above the line') was thus introduced for the Senate, as an alternative to copying the details from a HTV card into each square on the ballot paper. In order to assist those voters who still choose to express a full set of preferences below the line, rather than follow a group ticket, the 'saving' provision mentioned previously in s. 270(1) of the Act was introduced. This provision is discussed above.
  24. Although the informality rate for the House of Representatives on the basis of non-consecutive numbering errors on the ballot papers was not a serious problem, given the relatively small number of candidates in any division, the Parliament provided that s. 270 of the Act should also apply to House of Representatives ballot papers. The now repealed s. 270(2) of the Act therefore provided that in a House of Representatives election in which there were more than three candidates, and a full set of preferences was expressed on the ballot paper by the voter, but there were non-consecutive numbering errors, the preferences on such ballot papers would be counted up to the point at which the numbering errors began, at which point the preferences on the ballot paper were taken to have 'exhausted'.
  25. The Parliament recognised the possibility that the existence of this 'saving' provision might invite deliberate optional preferential voting for the House of Representatives, contrary to the requirement for full preferential voting in s. 240 of the Act. Section 329(3) of the Act was enacted to counteract this. The section made it an offence to print, publish and distribute electoral advertising, such as how-to-vote cards, that might induce electors to vote otherwise than in accordance with the instructions on the ballot paper.
- However, in 1987 the Victorian Supreme Court stated that as it was not an offence to vote informally and it was not an offence to advocate informal voting. Section 329(3) was subsequently repealed.
26. After the 1990 federal election, the JSCEM recommended to Parliament the enactment of a further offence provision designed to preserve the full preferential voting system. The now repealed s. 329A of the Act therefore came into force in 1992 and made it an offence to encourage voting otherwise than in accordance with s. 240 of the Act (which requires full preferential voting).
  27. One of the significant matters considered by the JSCEM as part of its inquiry into the 1996 federal election was the operation of ss. 270(2) and 329A. This particular area of inquiry was motivated by activities engaged in during the 1996 and 1993 federal election periods by Mr Albert Langer. Mr Langer advocated that electors mark their House of Representatives ballot papers in the pattern '1, 2, 3, 3, 3...' in order to stop the preferences flowing onto the major political parties. The JSCEM observed that s. 329A of the Act was an ineffective and heavy-handed provision. To vote informally, or to cast a formal Langer-style vote was not an offence under the Act at the time. The JSCEM therefore found it highly objectionable that under s. 329A someone could risk imprisonment for advocating such a vote.
  28. The JSCEM recommended, and the Government supported, the repeal of ss. 270(2), 329(3) and 329A of the Act and an amendment to s. 240 to clarify the requirement for full preferential voting.
  29. The 1998 Amendment Act, which arose out of the JSCEM recommendations, amended the Act so that, while it is no longer an offence to encourage or induce voting otherwise than in accordance with full preferential voting. Langer-style votes (that is, preferences marked in the pattern '1, 2, 3, 3, 3...') for the House of Representatives will no longer be counted as formal votes and will be rejected from the scrutiny.

## Summary

30. It is not an offence to vote informally in a federal election, nor is it an offence to encourage other voters to vote informally. However, anyone who encourages electors to vote informally, or to vote '1,2,3,3,3...' etc on a House of Representatives ballot paper, will be encouraging electors to waste their votes as no vote will be counted from these ballot papers.
31. If any person attempts to mislead electors as to the validity of the markings of their ballot papers, they may be in contravention of the offence provision in s. 329 of the Act. Where the Act appears to have been contravened, the AEC may refer the matter to the Australian Federal Police for investigation, and a brief of evidence may be referred to the Commonwealth Director of Public Prosecutions (DPP).
32. Readers should note that the AEC is able to assist political parties, intending candidates or other interested organisations or individuals by informing them of legislative requirements in relation to elections that are set out in the Act. However, the AEC is not able to provide legal advice. This includes advice as to whether particular circumstances breach the legislative requirements.
33. Anyone with an interest in the interpretation of the law in relation to formal voting requirements in particular circumstances should consult the exact provisions of the Act and seek their own legal advice. Anyone who believes there is a case for legislative amendment to the Act should lodge a submission with the Joint Standing Committee on Electoral Matters at Parliament House.

## Suggestions for further reading

34. The June 1997 Report of the Joint Standing Committee on Electoral Matters entitled "The 1996 Federal Election", as well as other JSCEM reports and submissions to JSCEM inquiries, are accessible on the JSCEM website at [www.aph.gov.au](http://www.aph.gov.au).
35. The AEC submission to the JSCEM on Langer-style voting, No 77 of 30 August 1996, as well as other AEC submissions

to the JSCEM, are accessible on the AEC website at [www.aec.gov.au](http://www.aec.gov.au).

36. The text of decisions made by the courts in the Langer cases, as well as other relevant legal cases, is accessible through the Australian Legal Information Institute website [www.austlii.edu.au](http://www.austlii.edu.au):
  - *Australian Electoral Commission v van Moorst and Langer*, No 2335 of 1987, Victorian Supreme Court, Murphy J, 26 June 1987; unreported
  - *Australian Electoral Commission v van Moorst and Langer*, No 2335 of 1987, Victorian Supreme Court, Vincent J, 2 July 1987, unreported
  - *Australian Electoral Commission v van Moorst and Langer*, No 2335 of 1987, Victorian Supreme Court, Murray J, 6 July 1987, unreported
  - *Langer v The Commonwealth* (1996) 70 ALJR 176
  - *Australian Electoral Commission v Langer* (1996) 126 FLR 346
  - *Australian Electoral Commission v Albert Langer* No 4287 of 1996, Victorian Supreme Court, Beach J, 14 February 1996, unreported
  - *Langer v Australian Electoral Commission* (1996) 59 FCR 450
  - *Langer v Australian Electoral Commission* (1996) 59 FCR 463.

## Endnotes

The *Commonwealth Electoral Act 1918* can be purchased over the counter in major cities, or accessed through any major public library, or the ComLaw website [www.comlaw.gov.au](http://www.comlaw.gov.au). For information about over the counter or mail order sales, ring CanPrint Information Services 1300 889 873.

Further information in relation to compliance with the Act is set out in the AEC's *Electoral Backgrounder* publications which can be found on the AEC's website at [http://www.aec.gov.au/About\\_AEC/Publications/Backgrounders/index.htm](http://www.aec.gov.au/About_AEC/Publications/Backgrounders/index.htm).

## **Relevant provisions of the Commonwealth Electoral Act 1918**

### **211 Group voting tickets**

- (1) Where the names of candidates nominated in a Senate election are included in a group in accordance with a request under section 168, the candidates may, after the determinations in relation to the election required by section 210 have been made and before the expiration of 48 hours after the closing of nominations for the election, lodge with the Australian Electoral Officer a written statement that they wish voters in the election to indicate their preferences in relation to all the candidates in the election in an order specified in the statement, being an order that gives preferences to the candidates lodging the statement before any other candidate.
- (2) Where candidates nominated for election to the Senate may lodge a statement referred to in subsection (1), they may, in lieu of lodging that statement, lodge a written statement that they wish voters in the election to indicate their preferences in relation to all the candidates in the election in either of 2 orders, or any of 3 orders, specified in the statement, being orders that:
  - (a) give preferences to the candidates lodging the statement before any other candidate; and
  - (b) give the preferences to the candidates lodging the statement in the same order.
- (3) Without limiting the generality of subsection (1) or (2), a statement for the purposes of either of those subsections may specify an order of preferences by setting out the names of all the candidates in the election in the groups, and in the order, in which they would be set out in a ballot paper with squares opposite to each name and with a number in each square showing that order of preferences.
- (4) Where a group of candidates in a Senate election lodges a statement in accordance with subsection (1) or (2) in relation to the election, that group of candidates shall be taken to have a group voting ticket, or 2 or 3 group voting tickets, as the case requires, registered for the purposes of the election, being the order of preferences, or the orders of preferences, given in that statement, as the case may be.
- (5) Where a group of candidates in a Senate election has a group voting ticket, or 2 or 3 group voting tickets, registered for the purposes of that election, a square shall be printed on the ballot papers for use in the election above the names of those candidates.
- (5A) A group of candidates who have lodged a statement under subsection (1) or (2) may, at any time before the period for lodging the statement expires, amend, withdraw or replace the statement by giving written notice to the Australian Electoral Officer.
- (6) A statement under subsection (1) or (2), or notice under subsection (5A) amending, withdrawing or replacing such a statement, may be signed:
  - (a) where all the members of the group have been endorsed by the same registered political party, by the registered officer of the party;
  - (b) where the members of the group have been endorsed by different registered political parties, by the registered officers of all those parties;
  - (c) in a case to which neither paragraph (a) nor paragraph (b) applies, by the candidate whose name first appears in the group on the ballot paper; or
  - (d) in any case, by a person authorised by all the members of the group, by written instrument given to the Australian Electoral Officer with the nomination or nominations of members of the group, to sign such a statement on behalf of the group.
- (7) A group that lodges a statement under subsection (2) shall indicate in the statement the order in which the voting tickets of the group are to be displayed in the poster or pamphlet prepared for the purposes of subsection 216(1).

**211A Individual voting tickets**

- (1) Where:
- (a) a candidate in a Senate election is:
    - (i) a Senator; or
    - (ii) in the case of an election following a dissolution of the Senate, a person who was, immediately before the dissolution, a Senator; and
  - (b) the candidate has not joined in a request under section 168 in relation to the election;
- the candidate may lodge with the Australian Electoral Officer a written statement that the candidate wishes voters in the election to indicate their preferences in relation to all the candidates in the election in an order specified in the statement, being an order that gives preference to the candidate lodging the statement before any other candidate.
- (2) A candidate who is entitled to lodge a statement under subsection (1) may, instead of lodging that statement, lodge a written statement that the candidate wishes voters in the election to indicate their preferences in relation to all the candidates in the election in either of 2 orders, or any of 3 orders, specified in the statement, being orders that give preference to the candidate lodging the statement before any other candidate.
- (3) A statement under subsection (1) or (2) shall:
- (a) be signed by the candidate; and
  - (b) be lodged with the Australian Electoral Officer for the State or Territory in which the election to which the statement relates is to be held.
- (4) A statement under subsection (1) or (2) shall be lodged after the determinations in relation to the election required by section 210 have been made and before the expiration of 48 hours after the closing of nominations for the election.
- (5) A candidate is not entitled to lodge a statement under subsection (1) or (2) unless there was lodged with the nomination of the candidate written notice by the candidate that the candidate proposed to lodge a statement under this section.
- (6) Where a candidate in a Senate election has lodged a statement under subsection (1) or (2), a square shall be printed on the ballot-papers for use in the election above the name of the candidate.
- (7) Where:
- (a) a candidate has lodged a statement under subsection (1) or (2); and
  - (b) subsection 214(1) requires that the name of a registered political party be printed adjacent to the name of the candidate on the ballot-papers;
- the name of that party shall also be printed on the ballot-papers adjacent to the square printed on the ballot-papers in relation to that candidate in accordance with subsection (6).
- (8) Where:
- (a) a candidate has lodged a statement under subsection (1) or (2); and
  - (b) subsection 214(3) requires that the word "Independent" be printed adjacent to the name of the candidate on ballot-papers;
- the word "Independent" and the name of the candidate must also be printed on the ballot-papers adjacent to the square printed on the ballot-papers in accordance with subsection (6).
- (9) Without limiting the generality of subsection (1) or (2), a statement for the purposes of either of those subsections may specify an order of preferences by setting out the names of all the

candidates in the election in the groups, and in the order, in which they would be set out in a ballot-paper with squares opposite to each name and with a number in each square showing that order of preferences.

- (10) Where a candidate has lodged a statement under subsection (1) or (2), section 216 applies as if the candidate were a group that had a group voting ticket, or 2 or 3 group voting tickets, as the case requires, registered for the purposes of the election, being the order of preferences, or the orders of preferences, given in that statement, as the case may be, and as if the statement had been lodged under section 211.
- (11) A candidate who lodges a statement under subsection (2) shall indicate in the statement the order in which the voting tickets of the candidate are to be displayed in the poster or pamphlet prepared for the purposes of subsection 216(1).
- (12) A candidate who has lodged a statement under subsection (1) or (2) may, at any time before the period for lodging the statement expires, amend, withdraw or replace the statement by giving written notice to the Australian Electoral Officer. The notice must be signed by the candidate.

### **239 Marking of votes in Senate election**

- (1) Subject to subsection (2), in a Senate election a person shall mark his or her vote on the ballot paper by:
  - (a) writing the number 1 in the square opposite the name of the candidate for whom the person votes as his or her first preference; and
  - (b) writing the numbers 2, 3, 4 (and so on, as the case requires) in the squares opposite the names of all the remaining candidates so as to indicate the order of the person's preference for them.
- (2) A vote may be marked on a ballot paper by writing the number 1 in a square (if any) printed on the ballot paper under subsection 211(5) or 211A(6).
- (3) Where a voter has marked a tick or cross in a square printed on a ballot paper under subsection 211(5) or 211A(6), the voter shall be regarded as having written the number 1 in the square.
- (4) Where a candidate dies between the date of nomination and polling day, and the number of candidates remaining is greater than the number of candidates to be elected, a ballot paper shall not be informal by reason only:
  - (a) of the inclusion on the ballot paper of the name of the deceased candidate;
  - (b) of the marking of any consecutive number opposite that name; or
  - (c) of the omission to place any number opposite that name, or of any resultant failure to indicate in consecutive order the voter's preferences.

### **240 Marking of votes in House of Representatives election**

- (1) In a House of Representatives election a person shall mark his or her vote on the ballot paper by:
  - (a) writing the number 1 in the square opposite the name of the candidate for whom the person votes as his or her first preference; and
  - (b) writing the numbers 2, 3, 4 (and so on, as the case requires) in the squares opposite the names of all the remaining candidates so as to indicate the order of the person's preference for them.
- (2) The numbers referred to in paragraph (1)(b) are to be consecutive numbers, without the repetition of any number.

## **267 Action on objections to ballot papers**

- (1) If a scrutineer objects to a ballot paper as being informal, the officer conducting the scrutiny shall mark the ballot paper **admitted** or **rejected** according to the officer's decision to admit or reject the ballot paper.
- (2) Nothing in this section shall prevent the officer conducting the scrutiny from rejecting any ballot paper as being informal although it is not objected to.

## **268 Informal ballot papers**

- (1) A ballot paper shall (except as otherwise provided by section 239, and by the regulations relating to voting by post) be informal if:
  - (a) subject to subsection (2), it is not authenticated by the initials of the presiding officer or by the presence of the official mark;
  - (b) subject to section 269 and subsection 270(1), in a Senate election, it has no vote indicated on it, or it does not indicate the voter's first preference for 1 candidate and the order of his or her preference for all the remaining candidates;
  - (c) in a House of Representatives election, it has no vote indicated on it, or it does not indicate the voter's first preference for 1 candidate and an order of preference for all the remaining candidates:

Provided that, where the voter has indicated a first preference for 1 candidate and an order of preference for all the remaining candidates except 1 and the square opposite the name of that candidate has been left blank, it shall be deemed that the voter's preference for that candidate is the voter's last and that accordingly the voter has indicated an order of preference for all the candidates:

Provided further that, where there are 2 candidates only and the voter has indicated his or her vote by placing the figure 1 in the square opposite the name of 1 candidate and has left the other square blank or placed a figure other than 2 in it, the voter shall be deemed to have indicated an order of preference for all the candidates;

- (d) it has upon it any mark or writing (not authorized by this Act or the regulations to be put upon it) by which, in the opinion of the Divisional Returning Officer, the voter can be identified:

Provided that paragraph (d) shall not apply to any mark or writing placed upon the ballot paper by an officer, notwithstanding that the placing of the mark or writing upon the ballot paper is a contravention of this Act; or
  - (e) in the case of an absent vote—the ballot paper is not contained in an envelope bearing a declaration made by the elector under subsection 222(1).
- (2) A ballot paper to which paragraph (1)(a) applies shall not be informal by virtue of that paragraph if the Divisional Returning Officer responsible for considering the question of the formality of the ballot paper is satisfied that it is an authentic ballot paper on which a voter has marked a vote.
  - (3) A ballot paper shall not be informal for any reason other than the reasons specified in this section, but shall be given effect to according to the voter's intention so far as that intention is clear.

## **269 Formal votes according to group voting ticket**

- (1) A ballot paper in a Senate election shall not be informal by virtue of paragraph 268(1)(b) if the voter has marked a vote on the ballot paper in accordance with subsection 239(2).
- (2) If a ballot paper in a Senate election:
  - (a) has been marked in accordance with subsection 239(2); and

- (b) has been marked in accordance with paragraph 239(1)(a) so that, if it were not marked in accordance with subsection 239(2), it would not be informal by virtue of paragraph 268(1)(b); the ballot paper shall, for the purposes of sections 272 and 273, be deemed not to have been marked in accordance with subsection 239(2).
- (3) For the purposes of this section and sections 272 and 273, a voter shall not be taken to have marked a vote in accordance with subsection 239(2) if the voter has placed a preference mark in 2 or more of the squares printed on the ballot paper in accordance with subsection 211(5) or 211A(6).
- (4) In this section, **preference mark** means a tick, a cross or the figure 1.

## **270 Certain votes with nonconsecutive numbers to be formal**

- (1) Where a ballot paper in a Senate election:
  - (a) has the number 1 in the square opposite to the name of a candidate and does not have that number in the square opposite to the name of another candidate;
  - (b) has:
    - (i) in a case where there are more than 9 candidates in the election—in not less than 90% of the squares opposite to the names of candidates, numbers in a sequence of consecutive numbers commencing with the number 1 or numbers that with changes to no more than 3 of them would be in such a sequence; or
    - (ii) in any other case—in all the squares opposite to the names of candidates or in all those squares except one square that is left blank, numbers in a sequence of consecutive numbers commencing with the number 1 or numbers that with changes to no more than 2 of them would be in such a sequence; and
  - (c) but for this subsection, would be informal by virtue of paragraph 268(1)(b); then:
  - (d) the ballot paper shall not be informal by virtue of that paragraph;
  - (e) the number 1 shall be taken to express the voter's first preference;
  - (f) where numbers in squares opposite to the names of candidates are in a sequence of consecutive numbers commencing with the number 1—the voter shall be taken to have expressed a preference by the other number, or to have expressed preferences by the other numbers, in that sequence; and
  - (g) the voter shall not be taken to have expressed any other preference.
- (3) In considering, for the purposes of subsection (1) whether numbers are in a sequence of consecutive numbers, any number that is repeated shall be disregarded.

## **273 Scrutiny of votes in Senate elections**

- (1) Subject to section 273B, in a Senate election for a particular State or Territory, the scrutiny must be conducted, and the vacancies filled under this section or under section 273A.
- (2) Each Assistant Returning Officer shall, in the presence of a polling official, and of such authorized scrutineers as may attend:
  - (a) exhibit for the inspection of the scrutineers each ballot box received from a presiding officer, electoral visitor or mobile polling team leader;
    - (aa) record the condition of the ballot box when it was received;
    - (ab) check the accuracy of the statement forwarded with the ballot box by the presiding officer, electoral visitor or mobile polling team leader by:
      - (i) removing the ballot papers from the box;

- (ii) counting, but not inspecting, them; and
    - (iii) recording the number of ballot papers removed from the box;
  - (b) reject all informal ballot papers, and arrange the unrejected ballot papers under the names of the respective candidates by placing in a separate parcel all those on which a first preference is indicated for the same candidate;
  - (c) count the first preference votes given for each candidate on all unrejected ballot papers;
  - (d) make out and sign a statement (which may be countersigned by a polling official, and, if they so desire, by such scrutineers as are present) setting out the number of first preference votes given for each candidate, and the number of informal ballot papers;
  - (e) place in a separate parcel all the ballot papers which have been rejected as informal;
  - (f) transmit the following information, in an expeditious manner, to the Divisional Returning Officer:
    - (i) the number of first preference votes given for each candidate; and
    - (ii) the total number of ballot papers rejected as informal;
  - (g) seal up the parcels and indorse on each parcel a description of the contents thereof, and permit any scrutineers present, if they so desire, to countersign the indorsement; and
  - (h) transmit the parcels to the Divisional Returning Officer with the least possible delay, together with the statement specified in paragraph (d).
- (3) The Divisional Returning Officer shall open all ballot boxes not opened by an Assistant Returning Officer, and shall conduct the scrutiny of the ballot papers contained therein in the manner aforesaid as far as applicable.
- (4) The Divisional Returning Officer shall, in the manner prescribed by this Act or the Regulations, examine, count, and deal with all ballot papers used for casting declaration votes.
- (5) The Divisional Returning Officer for a Division shall:
- (a) open the sealed parcels of ballot papers received from the Assistant Returning Officers in or for the Division, and shall make a fresh scrutiny of the ballot papers contained in the parcels, and for this purpose the officer shall have the same powers as if the fresh scrutiny were the original scrutiny, and may reverse any decision given by an Assistant Returning Officer in relation to the original scrutiny;
  - (b) reject all informal ballot papers and place them in a separate parcel, together with all informal ballot papers rejected under subsections (3) and (4);
  - (c) arrange the unrejected ballot papers so scrutinized, together with the ballot papers scrutinized pursuant to subsections (3) and (4), under the names of the respective candidates by placing in one parcel under the name of each candidate all the ballot papers marked in accordance with subsection 239(2) on which a first preference is indicated for that candidate and in another parcel under the name of that candidate all the other ballot papers on which a first preference is indicated for that candidate;
  - (d) count the first preference votes given for each candidate on such ballot papers, and transmit the following information, in an expeditious manner, to the Australian Electoral Officer:
    - (i) the number of first preference votes given for each candidate:
      - (A) on ballot papers marked in accordance with subsection 239(2); and
      - (B) on all other ballot papers; and
    - (ii) the total number of ballot papers rejected as informal;
  - (e) seal up the parcels and indorse on each parcel a description of the contents thereof, and permit any scrutineers present, if they so desire, to countersign the indorsement (sic); and

- (f) transmit with the least possible delay the parcels of unrejected ballot papers marked otherwise than in accordance with subsection 239(2) to the Australian Electoral Officer and inform the Australian Electoral Officer, in an expeditious manner, of the transmission.
- (6) Nothing in this section shall be taken to require the Australian Electoral Officer to retain in separate parcels ballot papers received from different Divisional Returning Officers indicating first preferences for a particular candidate.
- (7) Where, for the purposes of the succeeding provisions of this section:
- (a) the number of ballot papers or votes in any category is required to be ascertained;
  - (b) a quota, a transfer value or the order of standing of continuing candidates in a poll is required to be determined; or
  - (c) a candidate is required to be identified;
- the Australian Electoral Officer for the State shall ascertain the number, determine the quota, transfer value or order, or identify the candidate, as the case may be.
- (8) The number of first preference votes given for each candidate and the total number of all such votes shall be ascertained and a quota shall be determined by dividing the total number of first preference votes by 1 more than the number of candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by 1, and any candidate who has received a number of first preference votes equal to or greater than the quota shall be elected.
- (9) Unless all the vacancies have been filled, the number (if any) of votes in excess of the quota (in this section referred to as **surplus votes**) of each elected candidate shall be transferred to the continuing candidates as follows:
- (a) the number of surplus votes of the elected candidate shall be divided by the number of first preference votes received by the candidate and the resulting fraction shall be the transfer value;
  - (b) the total number of ballot papers of the elected candidate that express the first preference vote for that candidate and the next available preference for a particular continuing candidate shall be multiplied by the transfer value, the number so obtained (disregarding any fraction) shall be added to the number of first preference votes of the continuing candidate and all those ballot papers shall be transferred to the continuing candidate;
- and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer shall be elected.
- (10) Unless all the vacancies have been filled, the surplus votes (if any) of any candidate elected under subsection (9), or elected subsequently under this subsection, shall be transferred to the continuing candidates in accordance with paragraphs (9)(a) and (b), and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer shall be elected.
- (11) Where a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under subsection (9) or (10) of the surplus votes of a particular elected candidate, no votes of any other candidate shall be transferred to the continuing candidate.
- (12) For the purposes of the application of paragraphs (9)(a) and (b) in relation to a transfer under subsection (10) or (14) of the surplus votes of an elected candidate, each ballot paper of the elected candidate that was obtained by the candidate on a transfer under this section shall be dealt with as if any vote it expressed for the elected candidate were a first preference vote, as if the name of any other candidate previously elected or excluded had not been on the ballot paper and as if the numbers indicating subsequent preferences had been altered accordingly.
- (13) Where, after the counting of first preference votes or the transfer of surplus votes (if any) of elected candidates, no candidate has, or fewer than the number of candidates required to be elected have,

received a number of votes equal to the quota:

- (a) the candidate who stands lowest in the poll must be excluded; or
- (b) if a bulk exclusion of candidates may be effected under subsection (13A), those candidates must be excluded; and the ballot papers of the excluded candidate or candidates must be distributed in accordance with subsection (13AA).

(13AA) Where a candidate is, or candidates are, excluded in accordance with this section, the ballot papers of the excluded candidate or candidates must be transferred as follows:

- (a) the total number of ballot papers:
  - (i) expressing a first preference for an excluded candidate; or
  - (ii) received by an excluded candidate on distribution from another excluded candidate at a transfer value of 1 vote; being ballot papers expressing the next available preference for a particular continuing candidate must be transferred at a transfer value of 1 vote to the continuing candidate and added to the number of votes of the continuing candidate;
- (b) the total number (if any) of other ballot papers obtained by an excluded candidate or the excluded candidates, as the case may be, must be transferred beginning with the ballot papers received by that candidate or those candidates at the highest transfer value and ending with the ballot papers received at the lowest transfer value, as follows:
  - (i) the total number of ballot papers received by the excluded candidate or candidates, as the case may be, at a particular transfer value and expressing the next available preference for a particular continuing candidate must be multiplied by that transfer value;
  - (ii) the number so obtained (disregarding any fraction) must be added to the number of votes of the continuing candidate;
  - (iii) all those ballot papers must be transferred to the continuing candidate.

(13A) The procedure for a bulk exclusion, and the circumstances in which such an exclusion may be made, are as follows:

- (a) a continuing candidate (in this subsection called **Candidate A**) shall be identified, if possible, who, of the continuing candidates who each have a number of notional votes equal to or greater than the vacancy shortfall, stands lower or lowest in the poll;
- (b) a continuing candidate (in this subsection called **Candidate B**) shall be identified, if possible, who:
  - (i) stands lower in the poll than Candidate A, or if Candidate A cannot be identified, has a number of notional votes that is fewer than the vacancy shortfall;
  - (ii) has a number of notional votes that is fewer than the number of votes of the candidate standing immediately higher than him or her in the poll; and
  - (iii) if 2 or more candidates satisfy subparagraphs (i) and (ii)—is the candidate who of those candidates stands higher or highest in the poll;
- (c) in a case where Candidate B has been identified and has a number of notional votes fewer than the leading shortfall—Candidate B and any other continuing candidates who stand lower in the poll than that candidate may be excluded in a bulk exclusion; and
- (d) in a case where Candidate B has been identified and has a number of notional votes equal to or greater than the leading shortfall:
  - (i) a continuing candidate (in this subsection called **Candidate C**) shall be identified who:
    - (A) has a number of notional votes that is fewer than the leading shortfall; and
    - (B) if 2 or more candidates satisfy sub-subparagraph (A)—is the candidate who of those candidates stands higher or highest in the poll; and
  - (ii) Candidate C and all other continuing candidates who stand lower in the poll than that candidate may be excluded in a bulk exclusion.

- (13B) Where, apart from this subsection, the number of continuing candidates after a bulk exclusion under subsection (13A) would be fewer than the number of remaining unfilled vacancies, subsection (13A) shall operate to exclude only the number of candidates, beginning with the candidate who stands lowest in the poll, that would leave sufficient continuing candidates to fill the remaining unfilled vacancies.
- (13C) Notwithstanding any other provision of this section (other than subsection (18)), where a candidate or candidates has or have been elected and there are surplus votes as a result of that election, paragraphs (13A)(a), (b), (c) and (d) may be applied as if references in those paragraphs to notional votes were references to adjusted notional votes.
- (14) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer under subsection (13) or (15) of ballotpapers of an excluded candidate or candidates, as the case may be, shall be elected, and, unless all the vacancies have been filled, the surplus votes (if any) of the candidate so elected shall be transferred in accordance with paragraphs (9)(a) and (b), except that, where the candidate so elected is elected before all the ballotpapers of the excluded candidate or candidates, as the case may be, have been transferred, the surplus votes (if any) of the candidate so elected shall not be transferred until the remaining ballot papers of the excluded candidate or candidates, as the case may be, have been transferred in accordance with paragraphs (13AA)(a) and (b) to continuing candidates.
- (15) Subject to subsection (17) where, after the transfer of all of the ballot papers of an excluded candidate or the excluded candidates, as the case may be, no continuing candidate has received a number of votes greater than the quota:
- (a) the continuing candidate who stands lowest in the poll must be excluded; or
  - (b) if a bulk exclusion of candidates may be effected under subsection (13A), those candidates must be excluded; and the ballot papers of the excluded candidate or candidates must be transferred in accordance with subsection (13AA).
- (16) Where a candidate is elected during a transfer of ballot papers under subsection (13) or (15), no other ballot papers of an excluded candidate or candidates, as the case may be, shall be transferred to the candidate so elected.
- (17) In respect of the last vacancy for which two continuing candidates remain, the continuing candidate who has the larger number of votes shall be elected notwithstanding that that number is below the quota, and if those candidates have an equal number of votes the Australian Electoral Officer for the State shall have a casting vote but shall not otherwise vote at the election.
- (18) Notwithstanding any other provision of this section, where the number of continuing candidates is equal to the number of remaining unfilled vacancies, those candidates shall be elected.
- (19) At the conclusion of the scrutiny, the Australian Electoral Officer shall place in parcels all the ballot papers transmitted to the officer under subsection (5), seal up the parcels and indorse on each parcel a description of the contents thereof.
- (20) For the purposes of this Act and the Representation Act 1983:
- (a) the order of election of candidates in a Senate election shall be taken to be in accordance with the order of the count as a result of which they were elected, the candidates (if any) elected on the count of first preference votes being taken to be the earliest elected; and
  - (b) where 2 or more candidates are elected as a result of the same count, the order in which they shall be taken to have been elected shall be in accordance with the relative numbers of their votes, the candidate with the largest number of votes being taken to be the earliest elected, but if any 2 or more of those candidates each have the same number of votes, the order in which they shall be taken to have been elected shall be taken to be in accordance with the relative numbers of their votes at the last count before their election at which each of them had a different number of votes, the candidate with the largest number of votes at that count

being taken to be the earliest elected, and if there has been no such count the Australian Electoral Officer for the State shall determine the order in which they shall be taken to have been elected.

- (21) Subject to subsections (22) and (23), where, after any count under this section, 2 or more candidates have surplus votes, the order of any transfers of the surplus votes of those candidates shall be in accordance with the relative sizes of the surpluses, the largest surplus being transferred first.
- (22) Subject to subsection (23), where, after any count under this section, 2 or more candidates have equal surpluses, the order of any transfers of the surplus votes of those candidates shall be in accordance with the relative numbers of votes of those candidates at the last count at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count being transferred first, but if there has been no such count the Australian Electoral Officer for the State shall determine the order in which the surpluses shall be dealt with.
- (23) Where, after any count under this section, a candidate obtains surplus votes, those surplus votes shall not be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count.
- (25) Where a candidate is elected by reason that the number of first preference votes received by the candidate, or the aggregate of first preference votes received by the candidate and all other votes obtained by the candidate on transfers under this section, is equal to the quota, all the ballot papers expressing those votes shall be set aside as finally dealt with.
- (26) A ballot paper shall be set aside as exhausted where on a transfer it is found that the paper expresses no preference for any continuing candidate.
- (27) In any case to which subsection 239(4) applies, a vote indicated on a ballot paper opposite the name of a deceased candidate shall be counted to the candidate next in the order of the voter's preference, and the numbers indicating subsequent preferences shall be deemed to be altered accordingly.
- (28) For the purposes of this section:
- (a) a transfer under subsection (9), (10) or (14) of all the surplus votes of an elected candidate;
  - (b) a transfer under paragraph (13AA)(a) of all ballot papers of an excluded candidate or excluded candidates, received by that candidate, or one of those candidates:
    - (i) as the first preference vote; or
    - (ii) on distribution from another excluded candidate at a transfer value of 1 vote; or
  - (c) a transfer under paragraph (13AA)(b) of all ballot papers received by the excluded candidate or candidates, as the case may be, at a particular transfer value;

each constitutes a separate transfer.

- (29) In this section:

adjusted notional vote, in relation to a continuing candidate, means, in a case where a candidate or candidates has or have been elected, the sum of:

- (a) the number of notional votes of the continuing candidate; and
- (b) the number, before the transfer of any of the surplus votes, of those surplus votes.

**continuing candidate** means a candidate not already elected or excluded from the count.

**leading shortfall**, in relation to a particular stage during the scrutiny in a Senate election, means the shortfall of the continuing candidate standing highest in the poll at that stage.

**notional vote**, in relation to a continuing candidate, means the aggregate of the votes obtained by

that candidate and the votes obtained by each other candidate who stands lower in the poll than him or her.

**shortfall**, in relation to a continuing candidate at a particular stage during the scrutiny in a Senate election, means the number of votes that the candidate requires at that stage in order to reach the quota referred to in subsection (8).

**State** includes Territory.

**vacancy shortfall**, in relation to a particular stage during the scrutiny in a Senate election, means the aggregate of the shortfalls of that number of leading candidates equal to the number of remaining unfilled vacancies, the leading candidates being ascertained by taking the continuing candidate who stands highest in the poll, the continuing candidate who stands next highest in the poll, and so on in the order in which the continuing candidates stand in the poll.

- (30) In this section, a reference to votes, or ballot papers, as the case may be, of or obtained or received by a candidate includes votes, or ballot papers, as the case may be, obtained or received by the candidate on any transfer under this section.
- (31) For the purposes of this section, at any time after the counting of first preference votes the order of standing of the continuing candidates in the poll shall be determined as follows:
- (a) subject to paragraph (b), the continuing candidates shall stand in the poll in the order of the relative number of votes of each continuing candidate, with the continuing candidate with the greatest number of votes standing highest in the poll and the continuing candidate with the fewest number of votes standing lowest in the poll;
  - (b) if 2 or more continuing candidates have the same number of votes, those candidates shall stand in the poll in the order of the relative number of votes of each of those candidates at the last count at which each of them had a different number of votes, with the continuing candidate with the greater or greatest number of votes at that count standing higher in the poll and the continuing candidate with the fewer or fewest number of votes at that count standing lower in the poll, but if there has been no such count the Australian Electoral Officer for the State shall determine the order of standing of those candidates in the poll.
- (32) When the last vacancy is filled, the scrutiny shall immediately cease and any exclusion in progress shall not be completed.

## **274 Scrutiny of votes in House of Representatives elections**

- (1) In a House of Representatives election the scrutiny shall, subject to section 266, be conducted in the manner set out in this section.
- (2) Each Assistant Returning Officer shall, in the presence of a polling official, and of such authorized scrutineers as may attend:
- (a) exhibit for the inspection of the scrutineers each ballot box received from a presiding officer, electoral visitor, or mobile polling team leader; (aa) record the condition of the ballot box when it was received;
  - (aa) record the condition of the ballot-box when it was received;
  - (ab) check the accuracy of the statement of the presiding officer, electoral visitor or mobile polling team leader by:
    - (i) removing the ballot papers from the box;
    - (ii) counting, but not inspecting, them; and
    - (iii) recording the number of ballot papers removed from the box;
  - (b) reject all informal ballot papers, and arrange the unrejected ballot papers under the names of the respective candidates by placing in a separate parcel all those on which a first preference

is indicated for the same candidate;

- (c) count the first preference votes given for each candidate on all unrejected ballot papers;
  - (d) make out and sign a statement (which may be countersigned by a polling official, and, if they so desire, by such scrutineers as are present) setting out the number of first preference votes given for each candidate, and the number of informal ballot papers;
  - (e) place in a separate parcel all the ballot papers which have been rejected as informal;
  - (f) transmit the following information, in an expeditious manner, to the Divisional Returning Officer:
    - (i) the number of first preference votes given for each candidate; and
    - (ii) the total number of ballot papers rejected as informal;
  - (g) seal up the parcels and indorse on each parcel a description of the contents thereof, and permit any scrutineers present, if they so desire, to countersign the endorsement; and
  - (h) transmit the parcels to the Divisional Returning Officer with the least possible delay, together with the statement specified in paragraph (d).
- (2A) If, in a House of Representatives election, there are more than 2 candidates for a Division, the Australian Electoral Officer for the State or Territory that includes the Division must, in writing, direct each Assistant Returning Officer for the Division, and the Divisional Returning Officer for the Division, to conduct a count of preference votes (other than first preference votes) on the ballot papers that, in the opinion of the Australian Electoral Officer, will best provide an indication of the candidate most likely to be elected for the Division.
- (2B) An Assistant Returning Officer to whom a direction is given under subsection (2A) must:
- (a) count the preference votes in accordance with the direction; and
  - (b) transmit to the Divisional Returning Officer any information required by the direction; in the manner specified in the direction.
- (2C) A Divisional Returning Officer to whom a direction is given under subsection (2A) must count the preference votes in accordance with the direction:
- (a) at the time of the fresh scrutiny under subsection (7); and
  - (b) at the time at which the Divisional Returning Officer examines and counts ballot papers recording declaration votes other than ballot papers recording declaration votes that were examined and counted at the time of the fresh scrutiny.
- (3) The Divisional Returning Officer shall open all ballot boxes not opened by an Assistant Returning Officer, and shall conduct the scrutiny of the ballot papers contained therein in the manner aforesaid as far as applicable.
- (4) The Divisional Returning Officer shall, in the manner prescribed by this Act or the Regulations, examine, count, and deal with all ballot papers used for casting declaration votes.
- (7) The Divisional Returning Officer:
- (a) shall open the sealed parcels of ballot papers received from the Assistant Returning Officers in or for the Division;
  - (b) shall make a fresh scrutiny of the ballot papers contained in the parcels, and, for the purpose of that scrutiny, shall have the same powers as if it were the original scrutiny, and may reverse any decision given by an Assistant Returning Officer in relation to the original scrutiny;
  - (c) from the result of the scrutiny of the votes counted under the provisions of subsections (3) and (4), and the fresh scrutiny conducted under the provisions of this subsection, shall ascertain the total number of first preference votes given for each candidate and the number of informal ballot papers; and

- (ca) must then proceed with the scrutiny and the counting of the votes as follows:
  - (i) if, after ascertaining the first preference votes given for each candidate, no candidate has an absolute majority of votes, the Divisional Returning Officer must apply subsection (7AA);
  - (ii) if, after ascertaining the first preference votes given for each candidate, a candidate has an absolute majority of votes, that candidate is elected; and
- (d) if, after applying subsection (7AA), subparagraph (7AA)(b)(i) applies, shall proceed with the scrutiny and the counting of the votes as follows:
  - (i) the candidate who has received the fewest first preference votes shall be excluded, and each ballot paper counted to the candidate shall be counted to the candidate next in the order of the voter's preference;
  - (ii) the process of excluding the candidate who has the fewest votes, and counting each of his or her ballot papers to the unexcluded candidate next in the order of the voter's preference, shall be repeated until only 2 candidates remain in the count; and
  - (iii) if, following the exclusion of candidates under this paragraph, a candidate has an absolute majority of votes, that candidate shall be elected.

- (7AA) If, after ascertaining the total number of first preference votes for each candidate under paragraph (7)(ca), no candidate has an absolute majority of votes, the Divisional Returning Officer must take the following steps:
- (a) rank the candidates consecutively in order of their standing in the poll as set out in subsection (7AB);
  - (b) then:
    - (i) if the total number of first preference votes for all the candidates, other than the first and second ranked candidates, is equal to or more than the number of first preference votes for the second ranked candidate—proceed with the scrutiny as set out in paragraph (7)(d); or
    - (ii) if the total number of first preference votes for all the candidates, other than the first and second ranked candidates, is less than the number of first preference votes for the second ranked candidate—exclude all the candidates other than the first and second ranked candidates;
  - (c) if subparagraph (b)(ii) applies—count each ballot paper of an excluded candidate to whichever of the first or second ranked candidates is earlier in the order of preference expressed on the ballot paper.

(7AB) The ranking of candidates under paragraph (7AA)(a) is to be done as follows:

- (a) the candidate with the highest number of first preference votes is to be the first ranked candidate, the candidate with the second highest number of votes is to be the second ranked candidate, and so on;
- (b) if 2 or more candidates have an equal number of first preference votes, the ranking as between those candidates is to be decided, by lot, by the Divisional Returning Officer.

(7AC) If, following the exclusion of candidates under subparagraph (7AA)(b)(ii) and the count of ballot papers under paragraph (7AA)(c), a candidate has an absolute majority of votes, that candidate is elected.

(7A) The fresh scrutiny referred to in paragraph (7)(b) shall, if the Australian Electoral Officer for the State or Territory that includes the relevant Division so directs in writing, include a scrutiny of such preferences (other than first preferences), on such of the ballot papers, as are required by the direction, and shall be conducted in the manner specified in the direction.

- (9) If, on any count other than the final count:
- (a) 2 or more candidates (**lowest ranking candidates**) have an equal number of votes; and
  - (b) one of them has to be excluded; the candidate to be excluded is the candidate with less votes than any of the other lowest ranking candidates at the last count at which one of those candidates had less votes than any of the others, but,
- if there has been no such count, the Divisional Returning Officer must decide by lot which of them is to be excluded.
- (9A) If, in the final count, 2 or more candidates have an equal number of votes, the Divisional Returning Officer shall make a fresh scrutiny of the votes scrutinised under subsection (7) and a fresh scrutiny of all declaration ballot papers rejected at the preliminary scrutiny.
- (9B) If, after the fresh scrutines referred to in subsection (9A), a candidate has received an absolute majority of votes, that candidate shall be elected.
- (9C) If, after the fresh scrutines referred to in subsection (9A), 2 or more candidates have an equal number of votes, the Divisional Returning Officer shall give to the Electoral Commissioner written notice that the election cannot be decided.
- (10) Subject to subsection (11), in this section an absolute majority of votes means a greater number than one half of the whole number of ballot papers other than informal ballot papers.
- (12) The Divisional Returning Officer shall:
- (a) place in a separate parcel all the ballot papers which have been rejected as informal;
  - (b) place in a separate parcel all the unrejected ballot papers; and
  - (c) seal up the parcels and indorse on each parcel a description of the contents thereof, and permit any scrutineers present, if they so desire, to countersign the indorsement (sic).

### **329 Misleading or deceptive publications etc.**

- (1) A person shall not, during the relevant period in relation to an election under this Act, print, publish or distribute, or cause, permit or authorize to be printed, published or distributed, any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote.
- (4) A person who contravenes subsection (1) is guilty of an offence punishable on conviction:
- (a) if the offender is a natural person—by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both; or
  - (b) if the offender is a body corporate—by a fine not exceeding \$5,000.
- (5) In a prosecution of a person for an offence against subsection (4) by virtue of a contravention of subsection (1), it is a defence if the person proves that he or she did not know, and could not reasonably be expected to have known, that the matter or thing was likely to mislead an elector in relation to the casting of a vote.
- Note: A defendant bears a legal burden in relation to the defence in subsection (5) (see section 13.4 of the Criminal Code).
- (6) In this section, publish includes publish by radio or television. Members of the media are asked to use the Media Liaison contact numbers listed rather than the general enquiry number 13 23 26 which appears on AEC advertising.

## AEC Publications

The AEC has available a number of publications for people interested in the electoral process including:

- *Electoral Pocketbook*: a concise handbook of electoral facts and statistics
- *Electoral Boundaries Maps*: maps showing the geographic boundaries of the 150 electoral divisions
- *Nominations Pamphlet*: key facts for people considering standing for election
- *Electoral Newsfile series*: editions are produced on various electoral events
- *Candidate's Handbook*: a handbook to assist candidates standing for election to the Senate or House of Representatives
- *Scrutineer's Handbook*: an information handbook for scrutineers at federal elections and referendums
- *Election Funding and Financial Disclosure Handbooks*: handbooks of funding and disclosure requirements of candidates and political parties.

Copies of these and other publications are available from [www.aec.gov.au](http://www.aec.gov.au), by phoning 13 23 26 or at AEC national, state, territory and divisional offices.

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**AEC**

**Australian Electoral Commission**

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