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Scrutineers Handbook

TSRA 2016



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About this handbook

Thank you for assisting with the Torres Strait Regional Authority (TSRA) electoral process by undertaking a scrutineer role. You are doing an extremely important job in ensuring that Australia's proud democratic tradition of transparent elections is maintained. Transparency and integrity in the conduct of elections have, after all, been the hallmarks of Australia's and the TSRA's electoral system.

As a scrutineer, you need a clear understanding of your role, including what you can and cannot do under the law. This handbook is designed to help you before, during and after polling day, to be an effective scrutineer. Remember, you can play a significant part in helping to ensure that every vote cast in the TSRA election counts.

What does a scrutineer do?

Candidates are not allowed to enter polling places, except in order to vote. They are also not permitted to observe the counting of votes (the scrutiny) for elections in which they are candidates. They have the right, however, to appoint a certain number of scrutineers to represent them during the polling and throughout the various stages of counting ballot papers.

As a scrutineer, you have the right to be present when the ballot boxes are sealed, when they are opened, when votes are being issued, and when the votes are sorted and counted so you may confirm the integrity of election processes on behalf of the candidate who has appointed you.

On behalf of candidates, scrutineers may observe:

- the polling,
- the preliminary scrutiny of declaration envelopes,
- the further scrutiny of all votes, and
- the counting of ballot papers

How do I become a scrutineer?

A candidate appoints you by completing a part of the Scrutineer Undertaking form (TSRA023), which can be obtained from the Returning Officer. The candidate must sign the form and give the name and address of the scrutineer.

You must sign the undertaking on the form stating you will not attempt to influence the vote of an elector and that you will not disclose any knowledge you may acquire concerning any elector's vote.

The form may be provided to the Returning Officer in person, or by email or fax.

The Scrutineers Handbook

This handbook is published by the Australian Electoral Commission (AEC), the Commonwealth agency that maintains the electoral roll and conducts federal elections, by-elections, referendums, TSRA elections and industrial and commercial elections. The handbook covers the stages for the electoral process relevant to a scrutineer for the 2016 Torres Strait Regional Authority Election.

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The AEC can help you by providing information of a general nature about the role and duties of a scrutineer. However, it cannot provide you with formal or informal legal advice.

Legislative provisions appear in this handbook in a paraphrased form only, unless otherwise indicated. Scrutineers must satisfy themselves about their own legal position and, if necessary, refer to the exact provisions of the *Aboriginal and Torres Strait Islander Act 2005 (Cth)* and the *Torres Strait Regional Authority Election Rules 1996* and consult their own lawyers.

Abbreviations and acronyms have been kept to a minimum. Five acronyms are used throughout the handbook:

AEC – Australian Electoral Commission

RO – Returning Officer

TSRA – Torres Strait Regional Authority

the Act – *Aboriginal and Torres Strait Islander (ATSI) Act 2005*

the Rules – *Torres Strait Regional Authority Election Rules 1996*.

The words ‘voter’ and ‘elector’ are used interchangeably.

At the end of this handbook you will find a glossary that explains terms that may be unfamiliar to you.

How the handbook can help you

The handbook explains what you will do as a scrutineer, and how to comply with the law during the election and throughout the vote counting process.

Offences relating to the TSRA election are listed in Appendix 1. Some electoral offences apply at all times, while others apply during the specific election period.

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As information can change during the life of a publication, the AEC website is the best source of up-to-date information.

Feedback welcome

The AEC welcomes your views on the usefulness of the Scrutineers Handbook and any specific information provided in these pages. We invite you to provide feedback via the AEC website.

What’s new at this election

Handling of declaration votes

In line with AEC policy changes to improve the handling of declaration votes, ballot boxes will not be opened at polling locations in 2016. Instead they will remain sealed and be transported to the Returning Officer where they will be stored securely until opened, and fully reconciled prior to the conduct of the scrutiny.

Timing of the election

The Act and the Rules determine both the election timetable and electoral processes.

The key dates in the election timetable are available on the AEC website.

Do's and Don'ts

Whenever you are acting in the role of scrutineer, you must wear the Identification Badge the AEC supplied to you.

When taking on your role as a scrutineer, you may:

- observe all voting procedures – except the elector actually voting, unless the elector has requested assistance (see 'Assisted Voting' on page 15 for more information),
- object to the right of any person to vote,
- be nominated by an elector to assist with the completion of a ballot paper,
- enter and leave the polling place at any time during voting,
- enter and leave the polling place at any time during the counts (your place may be taken by another appointed scrutineer), and
- inspect, but not touch, any ballot paper at the count.

You must not:

- stay in a polling place unless you have provided a completed Scrutineer Undertaking form (TSRA023),
- go into a polling place without your scrutineer's badge,
- help with clearing voting booths or the removal of material from the polling place,
- touch ballot papers,
- interfere with a voter, or attempt to influence them,
- reveal anything you know about how someone has voted,
- wear a badge or emblem of a political party or candidate within the polling place,
- deliberately show or leave in the polling place any how-to-vote card or similar direction as to how an elector should vote,
- use an image recording device (such as a camera, a video recorder, or a camera or video-enabled mobile phone) in a polling place or counting centre, and
- unreasonably delay or interfere with the progress of counting the votes.

1. Becoming a scrutineer

This chapter gives you some essential background on who is responsible for conducting the election, the different roles of the people you are likely to meet on and after polling day, and expanded information on the appointment of scrutineers.

Australian Electoral Commission

The Act requires the AEC to conduct Torres Strait Regional Authority elections.

The RO is the Returning Officer for the election appointed by the Electoral Commissioner.

At the polling place

At the polling place, you are likely to come into contact with several people who have an official role.

For each election, the RO is responsible for making all necessary arrangements for taking the poll, such as providing and furnishing proper polling booths and ballot-boxes and appointing the polling officials.

Under the Rules:

- the officer-in-charge of each polling place is called the Presiding Officer during polling on polling day,
- the officer-in-charge of a mobile polling team is called the Leader, and
- the officer-in-charge of a pre-poll voting centre is called a Pre-poll Voting Officer.

To overcome confusion, the AEC commonly uses the term officer-in-charge to refer to the Presiding Officer, Mobile Polling Team Leaders, and the senior Pre-Poll Voting Officers. Officer-in-charge is the term you are most likely to hear in the polling place. Most other staff employed in polling places work as Issuing Officers or Liaison Officers. Issuing Officers issue ballot papers to voters.

Liaison Officers are appointed by the RO in consultation with the TSRA under Rule 4. Liaison Officers are Torres Strait Islanders or Aboriginal persons, who reside in the Torres Strait area. Liaison Officers must be present during polling at:

- a polling place, or
- a special hospital, or
- a prison, or
- a mobile polling station.

Liaison Officers must decide whether, on the balance of probability, the voter who has presented to him or her with their voter card envelope, is a Torres Strait Islander or an Aboriginal person.

The Rules, 62(2), 62(3)

Other than Polling Officials, Liaison Officers, Scrutineers and Electors intending to vote, no one is permitted in the polling place during the polling, except by permission of the officer-in-charge.

Appointment of scrutineers

Candidates are not permitted to take part in the actual conduct of the election as defined by Rule 62(1). Candidates are able to vote and distribute how-to-vote cards. Candidates may appoint scrutineers as personal representatives to observe, on their behalf, both the polling and the counting of votes (the scrutiny).

A candidate appoints a scrutineer by completing a part of the Scrutineer Undertaking form (TSRA023). The form must be signed by the candidate and give the name and address of the scrutineer. The form may be provided in person to the RO.

Scrutineers may be appointed to act as a scrutineer during both the polling and the scrutiny, or different people may be appointed for each process.

Please note that scrutineers are not polling officials and therefore do not receive payment from the AEC for their duties.



The Scrutineer Undertaking form is used to appoint scrutineers for early voting, polling day, and the scrutiny. Multiple forms are required if you are scrutineering at more than one venue or on more than one occasion.

Undertaking by scrutineers

Included on the Scrutineer Undertaking form is an undertaking that each scrutineer must sign.

Undertakings scrutineers are required to make include:

- not to divulge any information with respect to the vote of an elector
- not to interfere with or attempt to influence the vote of an elector
- not to communicate with any person in the polling place except so far as necessary in the discharge of their functions
- not to use any image-recording device to record images of ballot papers or declaration envelopes.

Only one scrutineer per candidate is allowed:

- for each early voting centre
- for each mobile polling team
- for each issuing point in a polling place on polling day
- for each officer counting the votes during the scrutiny.



Scrutineers attending any form of mobile polling must organise their own transportation.

Identification badge

When you attend a polling place or a counting centre, the AEC will supply you with a badge that identifies you as a scrutineer (the Identification Badge) and a scrutineer's lanyard. Whenever you are acting in the role of a scrutineer, you must hang the Identification Badge on the scrutineer's lanyard on the front of your body and above your waist.

2. During the polling

In this chapter, you will find a description of what you can do on polling day, and a summary of what you and others cannot do under the law. A full list of offences under the law, and the penalties these incur, is at Appendix 1.

The permissible behaviour of candidate supporters and others who are likely to be in the vicinity of the polling place, such as photographers or media representatives, is also described.

Rights of scrutineers

As a scrutineer, you have certain rights under the Rules, whether you are within the polling place or performing your duties as a scrutineer elsewhere. These rights are outlined below.

At the sealing of the ballot boxes

You can observe the officer-in-charge sealing the empty ballot box and recording the seal numbers before the poll commences at the polling place. You may also observe the sealing of the ballot box at the conclusion of any polling that extends over more than the one location or day i.e. mobile polling.

Objections

You may object to the right of any person to vote. The officer-in-charge must record all such objections by scrutineers.

Helping voters

You may assist any voter if they ask you. You may observe and accompany the officer-in-charge when they are requested to assist a voter who is blind or has low vision, has low literacy skills or is otherwise incapable of marking the ballot paper without assistance. These voters may however, appoint another person to enter the voting booth with them to mark, fold and deposit the ballot paper in the ballot box. In this case, neither the officer-in-charge nor the scrutineer accompanies the voter into the voting booth.

You may also be present during the issuing of votes outside the polling place to any voter who has satisfied the officer-in-charge that they are unable to enter the polling place itself due to physical incapacity.

What about other situations?

You can be present during the polling at an early voting centre.

Mobile polling teams conduct mobile polling at any time on any of the twelve days preceding polling day, on polling day or on a day to which polling is adjourned.

You can be present during the conduct of mobile polling at locations including, but not limited to hospitals, prisons and remote areas. Mobile polling teams may carry how-to-vote material, but not openly display it. They must advise voters that the material is available and may distribute it at the request of a voter.

Offences by scrutineers

The ATSI Act states that the Rules can impose penalties for offences or breaches under the Rules. The Rules are specific about what constitutes an offence by a scrutineer. See Appendix 1 for more information. Penalties can involve a fine. This section summarises the various types of offences you need to be aware of as you perform your role as scrutineer.

If you are in any doubt about what constitutes an offence, you should seek independent legal advice.



Scrutineers may not use any image-recording device (including cameras, video recorders and camera or video-enabled mobile phones) to record images of ballot papers or declaration envelopes, or any other images that might identify an elector and how they have voted, in a polling place or counting centre.

Behaviour in the polling place

A scrutineer must not interfere with a voter, or attempt to influence any voter within the polling place. You must limit any communication you have with a voter to what is necessary for you to discharge your function as a scrutineer.

If the officer-in-charge considers you have committed a breach, or that you are guilty of misconduct, they may request that you be removed from the polling place by the police or by another authorised person. You may also be removed if you fail to obey the lawful directions of the officer-in-charge.

You must not disclose to anyone else any knowledge you may acquire as a scrutineer about how an elector has voted.

You must not exhibit or leave in the polling place any printed material – card or paper – that directs, instructs or is intended to influence an elector on how to vote.



You must not wear or display a badge or emblem of a candidate or political party in the polling place.

Other offences on polling day

Other than scrutineers, candidates may have people assist them by handing out how-to-vote cards to voters. Candidate supporters, other than those appointed as scrutineers, may only enter the polling place once, to record their own vote. The only exception is when an individual supporter is nominated by an incapacitated or illiterate elector to help that person cast their vote.

Scrutineers and other supporters of a candidate should also be aware of various other acts and omissions that constitute an offence on polling day.

The Rules, Part 6

In summary, these offences include:

- knowingly making a false or misleading statement about an elector's enrolment to them on polling day,
- marking a vote or making any other mark on any other person's ballot paper without authority,
- impersonating someone with the intention of securing a ballot paper to which the impersonator is not entitled,
- impersonating someone with the intention of voting in their name,

- fraudulently doing anything that results in a nomination paper or ballot paper being defaced or destroyed,
- fraudulently putting any ballot paper or other paper into the ballot box,
- fraudulently taking any ballot paper out of any polling place or counting centre,
- supplying ballot papers without authority, and
- interfering with or doing anything that results in the unlawful destruction, taking, or opening of the ballot boxes or ballot papers.

Other offences include:

- voting more than once in the same election, and
- defacing, mutilating, destroying or removing any kind of material displayed by or under the authority of the RO.

The six metre limit

Special prohibitions apply to the area within six metres of the entrance to a polling place (in the case of mobile polling locations, these provisions apply not only on polling day, but any of the twelve days preceding polling day or a day to which the polling is adjourned).

Party workers and candidate supporters must not:

- canvass for votes,
- solicit votes,
- induce any elector not to vote for any particular candidate,
- induce any elector not to vote at the election, or
- exhibit any notice or sign (other than an official notice) relating to the election.

The general prohibition on canvassing within six metres of an entrance to a polling place means that anyone distributing how-to-vote cards and other non-AEC notices can only hand out or display this material outside the six metre limit.

Note: Under the rules, when a building used as a polling place is situated in enclosed grounds and the officer-in-charge, with the authority of the RO, displays a signed notice at each entrance stating that the grounds are part of the polling place, those grounds are considered to be part of the polling place for purposes of the six metre rule.

3. Voting

Voting at TSRA elections is not compulsory. The AEC puts a great deal of effort into ensuring every qualified elector has the opportunity to vote. As a scrutineer, you will need to know about the voting process, including the different types of votes that can be cast and the various issues involved in the management of polling during an election. This chapter discusses these matters.

Scrutineers are in a trusted position, so it is important you are aware of your legal obligation to observe the secrecy of the vote. You must not record any aspect of the voting process.

Remember, you must wear an official badge identifying you as a scrutineer at all times when you are in a polling place.

Certified list of voters

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

If a voter's name is not found on the certified list, they may still cast a declaration vote. Their entitlement to vote in the election will be verified before their ballot paper is added to the scrutiny.

Ballot papers

An elector is issued with a white, A4 sized TSRA ballot paper for the ward they are enrolled in.

Any elector who makes a mistake or 'spoils' a ballot paper before it is placed in a ballot box may receive a new one when they return the spoilt ballot paper to the issuing officer.

Pencils

Polling compartments are equipped with pencils. However, an elector may mark his or her ballot paper with a pen if they so wish.

Methods of voting

All TSRA votes are cast as declaration votes, meaning all ballot papers are sealed within a declaration envelope. The elector makes a signed declaration on an envelope and then puts their completed ballot paper inside. These votes are counted after polling day if the elector's entitlement to vote is verified using the information provided on the declaration envelope.

All TSRA votes are counted after polling day. No counting of votes occurs on election night.

As a scrutineer, you will observe electors using various methods to record their votes. You should therefore be aware of the different categories and methods of voting, as the rules differ slightly in the observation of each:

- ordinary voting,
- absent voting, and
- early voting.

Ordinary voting

An ordinary vote for the TSRA elections is a vote recorded by an elector at a polling place / mobile polling station within the ward they are enrolled in.

At the polling place, the elector must answer two questions:

1. Have you voted before in this election?
2. Which ward are you enrolled in? (for persons claiming an absent vote)

Issuing officers may ask other questions to identify particular electors. If the issuing officer is satisfied with these answers, the elector receives a Voter Card, and the relevant ward ballot paper. The issuing officer initials the ballot paper and marks the name of the voter off the certified list.

The elector must then proceed alone to a voting booth and:

- in private, mark their vote on the ballot paper,
- fold the ballot paper so the vote is concealed,
- place the ballot paper in the envelope and seal,
- present the sealed voter card envelope to the liaison officer present in the booth,
- answer any questions from the liaison officer to assist the liaison officer in their decision whether the elector is a Torres Strait Islander or Aboriginal person. The liaison officer will complete any records required as a result of that decision, and then hand the envelope back to the elector,
- deposit the envelope in the ballot box.

Absent voting

An absent vote for the TSRA elections is a declaration vote recorded by an elector at a polling place / mobile polling station outside of the ward they are enrolled in.

An elector who is away from the ward for which they are enrolled may, upon making a declaration, vote via a mobile polling team or, on polling day at any other polling place in the Torres Strait area.

Early voting

An elector may apply in person for an early vote at the early voting centre on Thursday Island or at the RO's Cairns office on any of the grounds applicable to pre-poll voting, and cast a pre-poll vote. Alternatively, they may apply for a postal vote or cast their vote with a mobile polling team.

Postal voting

You may observe the preliminary scrutiny of postal vote applications and the subsequent scrutiny, including counting of postal votes.

Electors who may be eligible for postal voting include those who will not be in their ward on polling day, are seriously ill, infirm or unable to leave work, or for religious reasons are unable to attend a polling place. The conditions for entitlement to a postal vote are given in detail in Appendix 2.

Voting at mobile polling places

Mobile polling provides the opportunity for electors who are unable to go to polling places to vote at an election. Mobile polling services may be delivered at any place where a Returning Officer determines they may be needed, and may commence up to 12 days before polling day, on polling day, or on a day to which polling is adjourned. The Electoral Commissioner can also make hospitals and prisons mobile polling places. Once determined, the places, days and times of mobile polling arrangements are published on the AEC website.

Assisted voting

Voting inside the polling place

As a scrutineer, you may assist any voter if they ask you. Assisted voting is available at all polling places including areas visited by mobile polling teams, such as hospitals, prisons and remote areas.

The officer-in-charge may permit any voter who is blind or has low vision, is physically incapacitated, or has low literacy skills, to be accompanied by a person appointed by the voter so that the person (in accordance with the voter's wishes) can mark, fold and deposit the voter's ballot paper in the ballot box on behalf of the voter.

Where no such person is appointed, the officer-in-charge may perform this role in the presence of scrutineers or, if no scrutineers are present, in the presence of a polling official or another person appointed by the voter.

The officer-in-charge at a hospital will inform the elector of their right to be assisted in casting a vote when necessary.

In any situation where a voter requires assistance, the voter may indicate a voting intention to the officer-in-charge with a written statement, including a how-to-vote card.

Voting outside the polling place

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

The officer-in-charge must inform any scrutineers at the polling place that an elector will vote outside the polling place and that one scrutineer per candidate is allowed to be present when the elector votes. As a scrutineer, you are entitled to observe the process (though not the marking of the ballot papers, unless the officer-in-charge is called on by the voter to assist in marking the ballot papers). The voter must mark their ballot papers in the presence of a polling official and then hand them, folded, to the polling official so that their vote is concealed.

The polling official must ensure the folded ballot papers are immediately sealed in the relevant voter card envelope, returned to the polling place and put in the ballot box in the presence of any scrutineers who were present when the elector voted.

If the voter also satisfies the officer-in-charge that they are unable to vote without assistance, the officer-in-charge may, with the voter's consent, allow a polling official to mark and fold the ballot papers as the voter indicates. The voter may indicate a voting intention to the officer-in-charge with a written statement, including a how-to-vote card.

4. The Scrutiny

As a scrutineer, you may be present at the scrutiny. This chapter details what you can and cannot do as a scrutineer during this process. It also describes the AEC's procedures so you will know what to expect as you observe the counting of ballot papers.

What is 'the Scrutiny'

The scrutiny involves the checking and counting of the ballot papers. All proceedings at the count are open to you. The scrutiny may be adjourned from time to time as might be necessary until the counting of the votes is complete.

The RO and staff conduct the scrutiny in two stages:

- the preliminary scrutiny of postal votes (this can occur before polling closes) and initial scrutiny of all other declaration envelopes to determine whether each person is entitled to a vote, and
- the further scrutiny where the ballot papers admitted to the scrutiny are taken out of their envelopes and sorted into first preference piles and counted. Part of this process is to check that ballot papers are completed correctly. Any ballot papers not completed correctly are informal and are not counted.

What scrutineers do at the Scrutiny

As a scrutineer at the scrutiny, you have certain roles under the Rules. These roles are outlined below.

Counting ballot papers

You have the right to observe the counting of ballot papers. Candidates will be advised of planned scrutinies prior to commencement.

Objections

You may object to the admission or rejection of any ballot paper. The officer conducting the scrutiny will then decide whether the vote is formal or informal and mark the ballot paper as 'admitted' or 'rejected'. The officer may reject a ballot paper as informal even if no scrutineer has objected to it.

Countersigning endorsements

Where a RO has bundled ballot papers into sealed parcels of formal and informal votes, you may countersign the RO's description on the front of these parcels.

Coming and going

You may come and go during the scrutiny, provided there is never more than one scrutineer per candidate per polling official engaged in the scrutiny at any one time.

What scrutineers must not do

During the scrutiny, you must not:

- handle ballot papers in any way, or
- unreasonably delay or interfere with the counting of votes.



While you have the right to observe all stages of the scrutiny and challenge the formality decisions made by scrutiny staff, it is the duty of the RO to ensure the election results from the polling place are delivered in an orderly and timely way.

The Process of Scrutiny

Before Polling Closes

For postal declaration vote envelopes, preliminary scrutiny can begin on the Monday before polling day. As mentioned above, preliminary scrutiny of declaration vote envelopes determines which declaration votes are admissible and can proceed to further scrutiny. The RO will contact candidates to advise them of the times, dates and locations for this preliminary scrutiny.

At the preliminary scrutiny, the RO checks the following:

- that the signature of the elector on the postal voter card matches the signature of the elector on the application for the postal voter card;
- that the elector is enrolled (or entitled to be enrolled) for the division;
- that the vote contained in the envelope was recorded prior to the close of the poll (which is done by checking the date the witness has signed);
- that the signature on the postal vote certificate is valid; and
- that the signature is correctly witnessed.

The RO will then separate and bundle the postal voter cards, ballot papers and envelopes from the postal votes that meet these requirements. The postal votes that do not meet these requirements will also be separated and bundled.

You may observe this process.

Preliminary scrutiny of all other types of declaration envelopes occurs after polling closes.



No declaration vote envelopes can be opened or ballot papers scrutinised before the close of the poll (this happens at further scrutiny).

On election night

No TSRA election votes are counted on polling night. All TSRA election votes are declaration votes that need to go through scrutiny to ascertain the results of polling. Candidates will be advised of planned scrutinies prior to commencement.

After Polling Day

The RO can receive postal votes up to the end of the sixth day after polling. These votes are included in the count if they were cast before 6pm on polling day and are received within 6 days after the

close of the poll. For this reason, preliminary scrutiny of postal votes is an ongoing process for up to 6 days after polling day.

After polling day, preliminary scrutiny also starts for all non-postal declaration envelopes. This involves the RO opening ballot boxes and separating and bundling voter cards and voter card envelopes.

Further Scrutiny

Further scrutiny involves the counting of votes which happens in the scrutiny centre in the period following election night. It must begin within 13 days after polling day – but it must not start until all of the envelopes containing voter's ballot papers for the ward have been received. The RO will advise candidates of the times, dates and locations of the further scrutiny.

In conducting the further scrutiny, the RO opens all declaration vote envelopes that have been accepted for the count, including postal votes, pre-poll votes, mobile polling votes and votes cast on polling day. The ballot papers are extracted, without being unfolded or inspected, and placed in a sealed ballot box. A separate process is then undertaken to sort ballot papers into informal and formal vote piles, and then the sorting of votes into first preference piles. At the further scrutiny you can challenge the votes on the grounds of formality or informality of the ballot paper. Information about this is contained in the next chapter, *Formality of Votes*.

5. Formality of votes

As a scrutineer, you can challenge the admission or rejection of any ballot paper at the further scrutiny. The grounds for a challenge may be the formality or informality of the ballot paper. You therefore need to know the difference between an informal vote and a formal vote.

Confirming formality

Formality is defined in the Act at subsection 143D(2) as:

- (a) an authorised electoral officer is satisfied that it is an authentic ballot paper; and
- (b) it indicates the voter's first preference for one, and only one, candidate; and
- (c) it does not have any identifying mark on it.



If the polling place officials conducting the further scrutiny are in doubt about the formality of a ballot paper they will put it in a separate pile. All ballot papers that have been put aside will be checked later.

Ballot paper formality tests

All ballot papers will be required to undergo two tests before progressing through formality checking. Failure of either of these tests will result in an informal ballot paper and no further formality checking will be required.

- Is the ballot paper authentic?
- Does the ballot paper identify the voter?

Authentic ballot papers

Generally a ballot paper will carry an official mark (watermark or printed security pattern) and the initials of the issuing officer. However, ballot papers that do not carry these markings are not necessarily informal.

If staff are unsure of the authenticity of a ballot paper, such ballot papers should be presented to the RO to decide on formality.

Identification of voter

A ballot paper that has been marked in a way that could identify the voter should be presented to the RO to decide on formality.

Staff who are unsure about the formality of a ballot paper due to identifying marks should consider it informal, allowing the RO to decide on formality.

TSRA ballot papers formality guidelines

Voter's first preference

A TSRA election ballot paper is only formal if the voter has indicated their first preference for one, and only one, candidate. The voter may also place the numbers 2, 3, 4 (and so on) in the squares opposite the names of some or all of the remaining candidates to indicate their preference for them.

Alterations to numbers will not make a ballot paper informal, provided the voter's intention is clear, for example a number can be crossed out and another number written beside it.

Overwriting

If a number is overwritten in a way that makes it impossible to read, and no first preference can be determined then the ballot paper is informal.

Placement of votes

The vote can be made inside the box or beside the box/candidate name, provided the intention of the voter is clear.

Variations in handwriting

Unconventional but recognisable variations in handwriting, such as placing a stroke through the vertical stem of the number '7' or an upward angular stroke before the familiar vertical stroke on the number '1', should not result in a ballot paper being informal, provided any variations result in a series of numbers and the voter's intention is clear.

Ballot paper formality principles

There are five overarching principles that must be considered when interpreting the numbers on any ballot paper that has passed the initial two tests. They are:

- **Start from the assumption that the voter has intended to vote formally**
The assumption needs to be made that an elector who has marked a ballot paper has done so with the intention to cast a formal vote.
- **Establish the intention of the voter and give effect to this intention**
When interpreting markings on the ballot paper, these must be considered in line with the intention of the voter.
- **Err in favour of the voter's intention**
In the situation where the voter has tried to submit a formal vote, i.e. the ballot paper is not blank or defaced, doubtful questions of form should wherever possible, be resolved to reflect the voter's intention.
- **Only have regard to what is written on the ballot paper**
The intention of the voter must be unmistakable, i.e. do not assume what the voter was trying to do if it's not clear – only consider what was written on the ballot paper.
- **The ballot paper should be construed as a whole**
By considering the number in each square as one in a series, not as an isolated number, a poorly formed number MAY be recognisable as the one missing from the series.

Counting the votes

The system of counting votes for the TSRA election is set out in the Act at Schedule 2A – *Method of Determining the Successful Candidate at an Election for a Single Member for a TSRA Ward*.

The Act requires a candidate to obtain an absolute majority of first preference votes (more than 50 per cent of the formal votes) to be elected.

Firstly, all the number '1' formal first preference votes are counted for each candidate. If no candidate has an absolute majority of first preference votes, counting of votes then proceeds as outlined below.

Step 1: The candidates are ranked according to how many formal first preference votes they have received in the election.

Step 2: If no candidate has an absolute majority, the candidate who has received the fewest first preference votes is excluded and all the ballot papers held by that candidate are transferred to the continuing candidates, according to the next available preference, if any, expressed on each ballot paper until the ballot paper is exhausted.

Step 3: The process of excluding the candidate who has the fewest votes continues until a single candidate has an absolute majority of the votes.

Step 4: The candidate who has an absolute majority of votes at any stage of the process described is elected.

Appendix 1: Offences

Scrutineer offences and other offences

The TSRA Election Rules describe certain offences that relate particularly to scrutineers.

Scrutineers, and other supporters of the candidate should also be aware of various other acts and omissions that constitute an offence during the polling period.

Refer to the Act and the Rules for full details of electoral offences.

Offence	Penalty
<p>Interfering with or attempting to influence any elector within the polling place or communicating with any person in the polling place except as is necessary in the discharge of the scrutineer's functions.</p> <p>A scrutineer who commits such a breach, or is guilty of misconduct or fails to obey the lawful directions of the officer-in-charge may be removed from the polling place by the police or a person authorised by the officer-in-charge</p>	10 penalty units
Disclosing any information acquired concerning the vote of any elector in a manner that is likely to enable identification of the elector	10 penalty units
Engaging in conduct that interferes with the free exercise or performance, by another person, of a political right or duty that is relevant to an election under these Rules.	10 penalty units
Printing, publishing or distributing or authorising to be printed, published or distributed, an electoral advertisement, handbill, pamphlet or notice without the name and address (not being a post-office box) of the person who authorised the electoral advertisement, handbill, pamphlet or notice appearing at the end of it; and for an electoral advertisement, handbill, pamphlet or notice that is printed otherwise than in a newspaper — the name and place of business of the printer appearing at the end of it.	10 penalty units
Publishing, printing or distributing a misleading or deceptive publication that is likely to mislead or deceive an elector in relation to the casting of their vote.	10 penalty units
Wearing or displaying any badge or emblem of a candidate or political party in a polling booth on polling day.	10 penalty units
Engaging in conduct that disrupts, or tends to disrupt, the operation of the poll.	5 penalty units
Not obeying a direction of the Presiding Officer	5 penalty units
Making or publishing a false and defamatory statement in relation to the personal character or conduct of a candidate.	10 penalty units

Polling place offences

Under the Rules, the following acts are not permitted within six metres of the entrance of a polling place on polling day or within six metres of a mobile polling station:

Offence	Penalty
<ul style="list-style-type: none">• Canvassing for votes• Soliciting the vote of any elector• Inducing an elector not to vote for a particular candidate• Inducing an elector not to vote at the election• Exhibiting any notice or sign (other than an official notice) relating to the election	5 penalty units

Scrutineers and candidates' representatives must observe these Rules.

Under the rules, when a building used as a polling place is situated in enclosed grounds and the officer-in-charge, with the authority of the RO, displays a signed notice at each entrance stating that the grounds are part of the polling place, those grounds are considered to be part of the polling place for purposes of the six metre rule.

Offences under crime legislation

There are also offence provisions in the *Criminal Code Act 1995* (Cth) ('the Criminal Code') and the *Crimes Act 1914* (Cth) (the Crimes Act) that are relevant to the election process. These include forgery (Criminal Code, Part 7.7), false or misleading statements (Criminal Code, Part 7.4) and unlawful destruction or damage of Commonwealth property (Crimes Act, s29).

Appendix 2: Postal and Pre-Poll Voting

Eligibility

The Rules, Schedule 1 - Grounds on which to apply for postal or pre-poll vote

(rules 25 and 40)

The Rules state that an elector is entitled to apply for a postal vote or pre-poll vote if:

- throughout the hours of polling on polling day, the elector will not be in the ward for which the elector is enrolled,
- the elector will not, at any time during the hours of polling on polling day, be within eight (8) kilometres by the nearest practicable route of any polling place or station at which a mobile polling team is scheduled to visit (either before or on polling day) in the ward for which the elector is enrolled,
- throughout the hours of polling on polling day, the elector will be travelling under conditions that will prevent the elector attending a polling place in the ward for which the elector is enrolled,
- the elector will be unable to attend a polling place on polling day because of:
 - serious illness,
 - infirmity,
 - approaching childbirth.
- on polling day, the elector will be unable to attend a polling place because the elector will be at a place (other than a hospital) caring for a person who is seriously ill or infirm or who is expected shortly to give birth,
- throughout the hours of polling on polling day, the elector will be a patient at a hospital and unable to vote at the hospital,
- because of the elector's religious beliefs or membership of a religious order, the elector:
 - is precluded from attending a polling place, or
 - for the greater part of the hours of polling on polling day, is precluded from attending a polling place
- on polling day, the elector is in prison serving a sentence or otherwise in lawful custody or detention,
- throughout the hours of polling on polling day, the elector will be engaged in their employment or occupation, and
 - if the elector is an employee, the elector is not entitled to leave of absence, and
 - in any other case, the absence of the elector for the purpose of attending polling place to vote would likely to cause loss to the person in their occupation.

Application for postal vote

The Rules, rule 26

An application for a postal vote must be made in writing in the approved form, and must:

- contain a declaration by the applicant that they are an elector entitled to apply for a postal vote, and
- be signed by the applicant in the presence of an authorised witness.

An application must not be made until after the publication in the Gazette of the notice setting the date for the TSRA election.

Completion and return of postal vote

The Rules, rule 31

On receipt of the postal vote material, which comprises a postal voter card and postal ballot paper, the elector should substantially observe the requirement to:

- show the unmarked ballot paper and unsigned postal voter card to an authorised witness;
- sign the postal voter card in the presence of the authorised witness;
- have the authorised witness sign and date the postal voter card;
- cast a vote in the presence of the authorised witness, but so that the authorised witness cannot see the vote, fold the ballot paper, place it in the envelope and seal it;
- have the postal voter card certified by an Aboriginal person or Torres Strait Islander who is an office bearer of an Aboriginal or Torres Strait Islander Corporation, or a member of the staff of the TSRA to the effect that the elector is an Aboriginal person or a Torres Strait Islander;
- enclose the:
 - envelope containing the ballot paper, and
 - the postal voter card

in the outer envelope and post or deliver the outer envelope containing the postal voting papers to the RO.

A person who is a candidate at an election must not certify a postal voter card.

Postal vote envelopes containing the ballot papers need to be received by the RO within 6 days after polling day. The envelope containing the ballot paper should be posted before polling day, but can be delivered to:

- the RO,
- a pre-poll voting officer; or
- the presiding officer at any polling place on polling day before the close of the poll.

Glossary

Australian Electoral Commission (AEC)	The independent statutory authority established in 1984 to maintain and update the Commonwealth electoral roll, raise public awareness and conduct elections and referendums.
Certified list of voters	The official electoral roll used to mark off electors' names. Polling officials place a mark against an elector's name when the elector is issued with a ballot paper at a polling place, or where appropriate during early voting, to indicate that the elector has voted.
Close of rolls period	The roll closes at 5pm on the 15 th day before the day of the poll.
<i>Commonwealth Electoral Act 1918</i>	The legislation governing the Commonwealth electoral process.
Counting centre	Any site at which a scrutiny or counting of votes is to be, or is being, conducted.
Declaration vote	The voter makes a signed declaration on an envelope and then puts their completed ballot paper inside. These votes are counted after polling day if the voter's entitlement to vote is verified using the information provided on the declaration envelope.
Returning Officer (RO)	The AEC officer responsible for conducting the TSRA election.
Early vote	A postal vote or a vote cast at an early voting centre, or via a mobile polling team in the lead-up to polling day. They are cast by electors who will not be able to get to a polling place on polling day.
Electoral Commissioner	The officer who performs the functions of the chief executive officer of the AEC.
How-to-vote cards	Cards provided to voters by candidates showing how a candidate would like voters to fill in their ballot papers.
Informal	A ballot paper is generally considered informal if it is not filled out correctly in accordance with the Act/Rules and the instructions on the ballot paper. It cannot therefore be included in the scrutiny.
Issuing point	The part of the polling place where ballot papers are issued to electors.
Mobile polling team	A team of polling officials who bring the polling to the elector. They visit electors in locations including nursing homes, prisons and remote locations to enable them to vote.
Nomination form	The approved form which must be used by a candidate nominating for election.
Officer-in-charge	The officer who is in charge at a polling place. They are called:

	<ul style="list-style-type: none"> • Presiding Officers' at static polling places on polling day, • 'Leader' of Mobile Polling Teams, and • 'Pre-Poll Voting Officers' at early voting centres.
Penalty unit	Section 4AA of the <i>Crimes Act 1914</i> determines the dollar (\$) value of a penalty unit.
Polling Official	There are two categories of polling officials, those who are required to work in the period before polling day to assist with mobile and early voting, and those who are required to work in a polling place on polling day only.
Polling Place	A place appointed to take the votes of electors on polling day.
Polling place hospital	A hospital at which a polling place is established to take the votes of electors. Polling officials may provide stationary and mobile polling services.
Voter Card / Postal Voter Card	The AEC uses this term to describe the declaration vote envelope specific to voting on which the elector declares their entitlement to vote.
Scrutineers	People appointed by candidates to be their representatives at polling places, or at any place at which the scrutiny of votes is being conducted. Scrutineers have the right to be present when the ballot boxes are sealed and opened and when the votes are sorted and counted so that they may check any possible irregularities, but they may not touch any ballot paper.
Scrutiny	The process of checking and counting of the ballot papers, voter cards and voter card envelopes.
Silent elector	An elector who has applied to have their address not appear on the roll for reasons of personal safety or safety of their family members.
The Act	<i>Aboriginal and Torres Strait Islander Act 2005</i> – This Act establishes the Torres Strait Regional Authority, and provides for TSRA elections.
The Rules	The <i>Torres Strait Regional Authority Elections Rules 1996</i> as made under section 143G of The Act, set out the manner in which TSRA elections should be conducted.
TSRA	Torres Strait Regional Authority, as established under section 142 of The Act.