

# First Nations Voice to Parliament Supplementary Election Rules

DETERMINED BY THE ELECTORAL COMMISSIONER

## DOCUMENT CONTROL

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2025v1		Jan 2025	Supplementary Elections	Minor changes to support delivery of March 2025 supplementary elections	Deputy Electoral Commissioner

# Supplementary Election Rules

## 1. FIRST NATIONS VOICE SUPPLEMENTARY ELECTION RULES

### 1. Context

Section 21 of the *First Nations Voice Act 2023* (Act) provides that an election of members of a Local First Nations Voice must be conducted in accordance with Schedule 1 of the Act, including for supplementary elections.

Section 14 of the Act requires a supplementary election to be held to fill a casual vacancy that occurs in the office of a member in certain circumstances.

Similarly, clause 17 of Schedule 1 of the Act provides that a supplementary election may be required by the Minister if an election of members of a Local First Nations Voice fails because:

- no person nominates for the office to which the election relates; or
- no votes are cast in the election.

Further, clause 17(3) of Schedule 1 provides that a supplementary election under Part 7 of Schedule 1 of the Act, must be held in accordance with Schedule 1 (with such modifications as the returning officer thinks fit).

The Electoral Commissioner has determined the following rules for the purposes of conducting a supplementary election of members of a Local First Nations Voice under section 14 of the Act and Clause 17 of Schedule 1 of the Act.

These rules are consistent with the rules made for the inaugural First Nations Voice to Parliament election in March 2024 with minor modifications to accommodate the specific requirements of a supplementary election including:

- specific rules confirming that for each supplementary election to be held, candidates will be able to nominate in circumstances where they meet the relevant gender representation requirements needed to fill the particular vacancy to ensure that the make-up of the Local First Nations Voice continues to meet the gender representation requirements under the Act. For example, in some cases, female only or male only candidates may be called to nominate and in other cases, candidates of any gender will be able to nominate (see Rules 3 and 4);
- minor changes to ensure that people can cast an absentee vote but recognising that we will not be able to provide polling booths in all 6 Regions across the State (Rule 16)
- minor changes to enable an application for fresh postal voting papers to be received by the Friday before polling day (to accommodate postal services) (Rule 25); and
- adjustments to the arrangements for distributing preferences for an excluded candidate for supplementary elections to fill a vacancy for a single gender position by combining all parcels of ballot papers (Rule 32).

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## Rule 1 – Application of Rules

For the absence of doubt, these Rules, as amended from time to time, apply to all Supplementary elections to be held under the Act, subject to any modifications as the returning officer thinks fit.

## 2. Casual Vacancies

### Rule 3 – Filling a casual vacancy by supplementary election

- (a) If a casual vacancy occurs in the office of a member of a Local First Nations Voice for a region, and a Supplementary election must be held under section 14(4)(b) of the Act, any supplementary election may only call for candidates of the appropriate gender to be elected to ensure that the membership of the Local First Nations Voice will continue to be consistent with the gender representation requirements specified in Clause 4 of Schedule 1 of the Act.
- (b) the supplementary election must be held as soon as practicable after the casual vacancy occurs.

## 3. Failure of supplementary election

### Rule 4 – Supplementary election failure

- (a) If an election of a member of a Local First Nations Voice fails, and the Minister requires that a Supplementary election be held under clause 17(1) of Schedule 1 of the Act, any supplementary election may only call for candidates of the appropriate gender to be elected to ensure that the membership of the Local First Nations Voice will continue to be consistent with the gender representation requirements specified in Clause 4 of Schedule 1 of the Act;
- (b) the supplementary election must be held as soon as practicable after the failed election.

## 4. Election timing

### Rule 5 – Election timetable

To avoid any doubt, the provisions under Schedule 1 clause 9(1)(2) and (4) do not apply to a Supplementary election.

Polling for a Supplementary election under this Act will occur -

- (a) on a date;
- (b) and at a time or times; and
- (c) at polling places;

determined by the returning officer in consultation with the Minister.

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## Rule 6 – Deemed closure of roll

For the purposes of determining the eligibility of a person to nominate for an office of member for a Local First Nations Voice under Schedule 1 clause 8(1) of the Act, or to vote in an election of members under Schedule 1 clause 7(1) of the Act, the State electoral roll will be treated as closed at 5pm on a date determined by the returning officer.

## Rule 7 – Close of nominations

For the purpose of Schedule 1 clause 8(3) of the Act, nominations will close at 5pm on the date of the close of nominations (which is 14 days after the date nominations are called by the returning officer).

## Rule 8 – Declaration of nominations

For the purpose of Schedule 1 clause 8(7) of the Act, the declaration in respect of each person who is eligible to stand for election to an office of member of a Local First Nations Voice will occur as soon as possible after 12 noon on the date determined by the returning officer for the declaration of candidates for the supplementary election.

## Rule 9 – Nominations outside of official nomination period

- (a) Where the Electoral Commissioner deems it to be necessary and appropriate to ensure the proper running of the election and/or to ensure proper representation in regional and remote areas, the Commissioner may approve the submission of nominations prior to the nomination period in particular areas or circumstances.
- (b) A nomination submitted in accordance with an approval under Rule 9(a) will be taken to be a valid nomination for the relevant election where:
  - (i) the nomination would (except for being submitted prior to the official nomination period) be otherwise regarded as a valid nomination; and
  - (ii) the person remains a person eligible to nominate for the relevant position at the conclusion of the nomination period.

## Rule 10 – Additional time to lodge criminal history report

A nomination by a person using the online candidate portal is taken to include a criminal history report or application for a criminal history report that is provided to the returning officer within 48 hours after the close of nominations.

## 5. Preliminary

### Rule 11 – Entitlement to vote

- (a) No voter is disqualified from voting –
  - (i) because of an error or omission in the State electoral roll; or

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- (ii) under the name appearing in the roll because the voter's name has been changed.
- (b) A person is not entitled to vote at an election if –
  - (i) the person was provisionally enrolled; and
  - (ii) has not, as at polling day, attained the age of 18 years.

## Rule 12 – Signatures

If a person who is unable to sign their name in writing makes a distinguishing mark as their signature on any voting material, the mark will be taken to be the person's personal signature if it is witnessed by an authorised witness who provides their signature to verify the mark.

## 6. Candidates

### Rule 13 – Withdrawal of nominations

- (a) A nominated candidate may at any time before the declaration of candidates, in a manner approved by the returning officer, withdraw their nomination.
- (b) A withdrawal under this Rule must be made by the nominee or by another person if the returning officer is satisfied on the evidence available that they have authority to act on the nominee's behalf.

### Rule 14 – Multiple nominations

If, at the close of nominations, a person has nominated for election to two or more Local First Nations Voices, the returning officer will treat all nominations by that person as void unless the returning officer or another electoral official authorised for the purpose is reasonably satisfied on the available evidence that one nomination was received before the other or others, in which case the first nomination will be admitted.

### Rule 15 – Death of a candidate or other person

The following rules apply to the exclusion of any Rule to the contrary if the returning officer is satisfied, on the evidence available, that a candidate has died between nominating for election and the declaration of the results:

- (a) if a candidate dies after nominating (whether or not nominations have closed) but before the declaration of candidates, the nomination is cancelled.
- (b) if a candidate dies after the declaration of candidates and ahead of the voting period, then:
  - (i) if reasonably practical in the circumstances, the returning officer will remove the name and images of the candidate from the ballot papers and voting material to the extent possible.

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- (ii) if it is not reasonably practical to remove the name and images of the candidate from the ballot papers and voting material, then any votes cast for that candidate are distributed and transferred in accordance with these Rules;
- (c) if a candidate dies during the voting period, then any votes cast for that candidate distributed and transferred in accordance with these Rules unless the number of remaining candidates of the deceased candidate's gender does not exceed the number of such positions to be elected, in which case the election for candidates of that gender will be treated as an uncontested election.
- (d) despite anything in paragraphs (a) to (c) above, the Electoral Commissioner may, in consultation with the Minister and the relevant Local First Nations Voice, declare new polling dates for the election for the relevant region, and may take any other steps necessary to conduct the election, which may include (but not be limited to):
  - (i) declaring an early voting period; and
  - (ii) declaring early voting places; and
  - (iii) determining times and places for voting at mobile polling booths; and
  - (iv) declaring polling places (including places outside the relevant region at which absentee votes may be cast); and
  - (v) re-issuing fresh postal voting papers to any person who:
    - A. had previously applied for them; or
    - B. who makes an application before the end of the period declared by the returning officer for returning postal voting applications; and
  - (vi) accepting a withdrawal of nomination from a candidate; and
  - (vii) on application by a candidate, approving the change of their name on electoral material in accordance with cultural tradition.

## 7. Manner of voting

### Rule 16 – Manner of voting in election

A voter may exercise their entitlement to vote in any one of the following ways:

- (a) by attending at a polling place on polling day in the region in which the person's principal place of residence is located and casting a declaration vote; or
- (b) by attending at a polling place on polling day in any other locations determined by the returning officer and casting a declaration vote (an **absentee vote**); or
- (c) by attending at a declared early voting polling place during the early voting period at the times declared by the returning officer and casting a declaration vote; or
- (d) by casting a declaration vote on papers for which the person has made an application under these Rules (a **postal vote**).

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## 8. Issue of voting papers

### Rule 17 – Questions to be put to person claiming to vote at a polling place

- (a) An electoral official, before issuing voting papers to a person who appears personally before them claiming to vote, must:
  - (i) ask the person such questions as are necessary to establish the identity and the address of the principal place of residence of the person; and
  - (ii) put the following question to the person: "Have you voted before in this election?"; and
  - (iii) ask the person if they are a First Nations person.
- (b) If a person claiming to vote –
  - (i) refuses to answer any question put under this Rule; or
  - (ii) answers any such question as to indicate that they are not entitled to vote,the person's claim to vote must be rejected.

### Rule 18 – Issue of voting papers at polling place

- (a) An electoral official authorised for the purpose who is satisfied that a person who claims to be entitled to vote at a polling place is so entitled must issue the person with –
  - (i) a ballot paper for the region in which the person's principal place of residence is located; and
  - (ii) an envelope on which is printed a form for the voter to complete –
    - A. their details; and
    - B. the declaration that must be made by the voter.
- (b) When a ballot paper is issued to a voter it must be authenticated –
  - (i) by the initials of the officer by whom it is issued; or
  - (ii) by a prescribed mark.
- (c) An exact record must be kept of all persons to whom ballot papers are issued under this Rule.
- (d) The declaration that must be made by a voter voting at a polling place is comprised of the following:
  - (i) the declaration of eligibility required by Schedule 1 clause 3 of the Act;
  - (ii) a declaration that, to the best of the person's knowledge, they are eligible to vote and have not already voted in the election; and
  - (iii) a declaration that the information contained in the form is complete and correct.

### Rule 19 – Issue of postal voting papers

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- (a) A person who is entitled to vote in the election may apply for postal voting papers by –
- (i) making an application in the form prescribed for the purpose by the returning officer; and
  - (ii) making the declaration that must be made by the applicant outlined in clause (b); and
  - (iii) subject to paragraph (c) and Rule 12, signing the application form; and
  - (iv) returning the application form to the returning officer personally or by post or other means of delivery including electronically such that it is received by the returning officer before the end of the period declared by the returning officer for returning postal voting applications.
- (b) The declaration that must be made by an applicant applying for postal voting papers is comprised of the following:
- (i) the declaration of eligibility required by Schedule 1 clause 3 of the Act.
  - (ii) a declaration that, to the best of the person's knowledge, they are eligible to vote and have not already voted in the election; and
  - (iii) a declaration that the information contained in the application form is complete and correct.
- (c) An application form may be signed by an authorised witness on the applicant's behalf if the applicant is unable to sign their name, provided that:
- (i) in the case of an applicant who is able to make a mark, the authorised witness saw the applicant make that mark in the space provided for the applicant's signature; or
  - (ii) in the case of an applicant who is unable to make a mark, the application is accompanied by a certificate from a medical practitioner to that effect.
- (d) An electoral official authorised for the purpose who is satisfied that a person who has made an application for postal voting papers that complies with this Rule is entitled to vote must issue the person with –
- (i) a ballot paper for the region in which the person's principal place of residence is located; and
  - (ii) an envelope on which is printed a form for the voter to complete –
    - A. their details; and
    - B. the declaration that must be made by the voter (the **postal voting declaration**).
- (e) When a ballot paper is issued to a voter it must be authenticated –
- (i) by the initials of the officer by whom it is issued; or
  - (ii) by a prescribed mark.
- (f) An exact record must be kept of all persons to whom ballot papers are issued under this Rule.



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- (g) Postal voting papers may be given to the person personally or sent to them by post.
- (h) The postal voting declaration is comprised of the following:
  - (i) a declaration that the person is entitled to a declaration vote; and
  - (ii) a declaration that the person has not already voted in the election; and
  - (iii) a declaration that the personal details contained in the form are correct; and
  - (iv) a declaration that the person completed their ballot paper and the declaration before 6pm (South Australian time) on polling day.

## 9. Method of voting

### Rule 20 – Method of voting at a polling place

A voter who receives voting papers at a polling place must without undue delay -

- (a) sign the declaration that must be made by the voter in the presence of an electoral official (who must sign the envelope as witness); and
- (b) retire to some unoccupied compartment of the booth, and there, in private, mark their vote in the manner prescribed by these Rules on the ballot paper supplied; and
- (c) fold the ballot paper so as to conceal the vote, place the folded ballot paper in the envelope and seal the envelope; and
- (d) deposit the envelope in the ballot box marked for that purpose; and
- (e) leave the booth (unless assisting another voter).

### Rule 21 – Voting near a polling booth in certain circumstances

- (a) If a voter satisfies the officer in charge that the voter is unable (because of illness, disability, advanced pregnancy or other condition) to enter the polling booth to vote, the officer in charge may allow the voter to vote at or near the polling place outside of the polling booth.
- (b) A voter to whom this Rule applies must:
  - (i) sign the declaration that must be made by the voter in the presence of an electoral official (who must sign the envelope as witness); and
  - (ii) mark their vote in the manner prescribed by this Act on the ballot paper supplied; and
  - (iii) fold the ballot paper so as to conceal the vote, place the folded ballot paper in the envelope and seal the envelope;

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and the officer in charge must then ensure that the envelope is deposited in the ballot box.

- (c) If a voter satisfies the officer in charge that the voter is unable to vote without assistance, the voter may be assisted in accordance with Rule 22 as if the voter were in the polling booth.

### **Rule 22 – Assistance with voting at a polling place**

- (a) If a voter satisfies the officer in charge that they are unable to vote without assistance, the voter may be accompanied by an assistant of their choice while in the polling booth.
- (b) The officer in charge may express disapproval of a person chosen to assist a voter under this section and, in that event, some other person, acceptable to the officer in charge, must be chosen by the voter.
- (c) The assistant may assist the voter in any of the following ways:
  - (i) by acting as an interpreter;
  - (ii) by explaining the ballot paper and voter's obligations under these Rules in relation to the marking of the ballot paper, to the voter;
  - (iii) by assisting the voter to complete the declaration that must be made by the voter;
  - (iv) by assisting the voter to mark the ballot paper, or by marking the ballot paper at the voter's direction;
  - (v) by folding and placing the ballot paper into the envelope and sealing the envelope;
  - (vi) if the voter is unable to do so - by completing and signing the declaration on the voter's behalf in the presence of an electoral official (who must sign the envelope as witness); or
  - (vii) by depositing the envelope in the ballot box.
- (d) A candidate or scrutineer must not act as an assistant under this Rule.

### **Rule 23 – Adjournment of polling or closure of polling place**

- (a) If for any reason it is not practicable to proceed with polling at a polling place on polling day, the Electoral Commissioner may adjourn polling at that polling place for a period not exceeding 21 days or close the polling place.
- (b) Where the polling is adjourned at a polling place, only those voters who are entitled to vote for the Local First Nations Voice of the relevant region and who have not already voted are entitled to vote at the adjourned polling.

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## Rule 24 – Method of voting by postal vote

- (a) A voter casts a postal vote by –
- (i) marking their vote in the manner prescribed by these Rules on the ballot paper supplied before an authorised witness; and
  - (ii) folding the ballot paper so as to conceal the vote, placing the folded ballot paper in the envelope and sealing the envelope; and
  - (iii) signing the postal voting declaration in front of an authorised witness (which must be signed by the authorised witness); and
  - (iv) having the authorised witness sign the relevant declaration; and
  - (v) delivering the sealed envelope to an electoral official (by post or personally) no later than the time and date declared by the returning officer for the return of postal votes.
- (b) A voter who satisfies the authorised witness that they are unable to vote without assistance may be assisted by –
- (i) the authorised witness; or
  - (ii) a person who is acceptable to the authorised witness.
- (c) The assistant may assist the voter in any of the following ways:
- (i) by acting as an interpreter;
  - (ii) by explaining the ballot paper, and the voter's obligations under these Rules in relation to the marking of the ballot paper, to the voter;
  - (iii) by assisting the voter to mark the ballot paper, or by marking the ballot paper at the voter's direction;
  - (iv) by folding and placing the ballot paper in the envelope and sealing the envelope;
  - (v) by assisting the voter to complete the postal voting declaration that must be made by the voter; or
  - (vi) if the voter is unable to do so - by completing and signing the declaration on the voters behalf; or
  - (vii) by lodging the envelope with, or forwarding it to, the returning officer.
- (d) A candidate or scrutineer must not act as an assistant under this Rule.

## Rule 25 – Issue of fresh voting papers

- (a) If the returning officer is satisfied that postal voting papers issued to a voter –
- (i) have not been received by the voter; or
  - (ii) have been lost; or
  - (iii) have been inadvertently spoiled,
- the returning officer may issue fresh postal voting papers to the voter.

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- (b) An application for the issue of fresh postal voting papers must be received by the returning officer no later than 5 pm on the eighth day before polling day.
- (c) If a person to whom voting papers have been issued at a polling place satisfies the electoral official by whom they were issued, or some other official with authority to issue voting papers, that the voting papers have been inadvertently spoiled, the person is, on delivering up the papers to the officer, entitled to fresh voting papers and the original voting papers are automatically cancelled.
- (d) The returning officer must keep a record of the issue of voting papers under this Rule.

### 10. Conduct during election

#### Rule 26 – Publication of electoral material

- (a) A person must not publish electoral material or cause electoral material to be published unless the material contains the name and address of the person who authorises publication of the material.
- (b) If –
  - (i) electoral material is published on the internet; and
  - (ii) the name and address of the person who authorises publication of the material is immediately accessible on the internet by viewers of the material,that name and address need not be contained in the electoral material.
- (c) If a person is a candidate in the election, they may satisfy the requirements of paragraphs (a) and (b)(ii) by including their name and the words "Candidate for election to the Local First Nations Voice for Region X" (where Region X is identified by either the name or number assigned to that Region in regulation 4 of the First Nations Voice Regulations 2023).
- (d) If the returning officer is satisfied that electoral material has been published contrary to paragraphs (a) or (b) above the returning officer may require the person who published, caused to be published or otherwise authorised publication of the electoral material to do one or more of the following:
  - (i) comply with the requirements of this Rule in respect of that electoral material;
  - (ii) withdraw the information from further publication;
  - (iii) issue a correction that provides the information prescribed under this Rule in a manner and form determined by the returning officer.
- (e) In this Rule –

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***electoral material*** means an advertisement, notice, statement or representation calculated to affect the result of an election.

## Rule 27 – Conduct of people at or near polling places

Despite any other Rule, the officer in charge of a polling place or the returning officer may:

- (a) direct –
  - (i) a person to leave a polling place if the officer considers that their conduct is interfering, or that may reasonably interfere, with the proper conduct of the election; or
  - (ii) a candidate or their representative not to canvass for votes or display signs or other notices relating to the election within 6 meters of the entrance to a polling place;

(and the person must comply with the direction as soon as is reasonably practicable);
- (b) suspend voting at a polling place if the officer considers that there is a reasonable risk to the safety of electoral officials, voters, or any other person attending the place.

## 11. Method of casting a formal vote in election

### Rule 28 – Method of casting a formal vote in election

- (a) A voter casts a formal vote by placing a number 1 in the square opposite the name of the candidate who is the voter's first preference.
- (b) The voter may indicate further preferences by placing consecutive numbers in the squares opposite the names of additional candidates in the order of the voter's preference.

### Rule 29 – Informal ballot papers

- (a) A ballot paper is informal if (and only if) -
  - (i) it is not authenticated by the initials of the official by whom it was issued; or
  - (ii) it has no vote on it, or does not otherwise clearly indicate the voter's first preference.
- (b) A ballot paper that is not duly authenticated by initials is not informal by reason of paragraph (a)(i) if the official responsible for considering whether the ballot paper should be admitted is satisfied that it is an authentic ballot paper on which a voter has marked his or her vote.
- (c) Despite anything in these Rules, a ballot paper is not informal if -

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- (i) a preference is given to a deceased candidate (but any preference given to that candidate will be dealt with in accordance with these Rules); or
- (ii) the voter's intention to express a preference or preferences is clearly indicated on the ballot paper; or
- (iii) a series of numbered preferences is not consecutive due to the omission or repetition of one or more number from the series (but the preferences indicated on the paper from the point at which the omission or repetition occurs will be disregarded); or
- (iv) it contains multiple crosses in combination with a single tick or single number 1 (in which case the voter's sole preference will be taken as being the candidate against whom the tick or the number 1 is recorded), but this provision will not apply if the ballot paper contains both a tick and a number 1 in squares opposite the names of different candidates; or
- (v) the voter has placed a single tick or cross on the ballot paper, either with or without further consecutive preferences, in which case the single tick or cross will be taken to be equivalent to the number 1.

## 12. Scrutiny of declarations

### Rule 30 – Preliminary scrutiny of postal declarations

- (a) For the purposes of the scrutiny of postal declaration envelopes, the returning officer or any other electoral official authorised for the purpose –
  - (i) must begin by producing the relevant applications for postal declaration envelopes and, unopened, the envelopes containing postal ballot papers that have been received by the returning officer or an electoral official no later than the time and date declared by the returning officer for the return of postal votes; and
  - (ii) must accept any postal declaration envelope for further scrutiny if satisfied –
    - A. that the signature of the declarant corresponds with the signature on the application for postal ballot papers; and
    - B. that the vote was recorded before the close of the poll.

### Rule 31 – Initial scrutiny of all declaration envelopes

- (a) The returning officer or any other electoral official authorised for the purpose will ensure that all declaration envelopes returned for the purposes of the election are made available for the purposes of these Rules.
- (b) For the purpose of the scrutiny of all declarations, the returning officer or any other electoral official authorised for the purpose will, in the presence of any scrutineers who may be present:
  - (i) examine the declarations used for voting (and validly returned) and determine which envelopes are to be accepted for further scrutiny and which rejected from further scrutiny, rejecting unopened –

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- A. any envelope that has been cancelled; and
  - B. any envelope where an envelope containing a vote cast by the voter has already been accepted; and
  - C. any envelope where the voter's name does not appear on the voters roll, unless the voter's name has been omitted from the roll in error; and
  - D. unsigned declaration envelopes; and
- (ii) count and seal all accepted envelopes in preparation for their transfer to the counting location.

## 13. Counting of votes

### Rule 32 – Process for counting votes

#### Note<sup>1</sup>:

This Rule sets out the steps taken by the returning officer when counting the votes in an election of members of a Local First Nations Voice, which steps can be briefly described as:

- (a) the initial count and first provisional declaration of elected candidates, and the elimination of any candidate who is not provisionally elected because the positions available for candidates of the relevant gender have already been filled (regardless of whether the quota has been met);
- (b) the transfer of surplus votes of the elected candidates to the continuing candidates;
- (c) the further elimination of candidates because the positions available for candidates of the relevant gender have already been filled, and the distribution of their votes;
- (d) the exclusion of the candidates with the fewest votes and the transfer of their votes to continuing candidates; and
- (e) the application of general rules as to the order of election of candidates and the order in which vote transfers are to be made to continuing candidates,

and, at each step, requires consideration of the gender representation requirement provided for in Schedule 1 clause 4 of the Act.

#### (a) *The initial count and provisional declaration*

The returning officer or any other electoral officer authorised for the purpose conducts the initial counting of the votes, in the presence of any scrutineers who may be present, by –

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<sup>1</sup> This Note is for explanatory purposes only and does not form part of these Rules.

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- (i) opening the sealed containers of envelopes and displaying their contents before any scrutineers who may be present; and
  - (ii) tearing off the extensions to the envelope flaps on the envelopes that are accepted under subparagraph (i); and
  - (iii) rearranging the envelopes that no longer bear their tear-off extensions so that the anonymity of voters is maintained; and
  - (iv) removing the ballot papers from the accepted returned envelopes; and
  - (v) rejecting from further scrutiny any ballot paper contained in an accepted envelope –
    - A. to which the returning officer determines the voter was not entitled; or
    - B. that is contained in the same envelope as another ballot paper and is not the first ballot paper from the envelope that came into the officer's hands; and
  - (vi) rejecting all informal ballot papers and sorting the remaining ballot papers into parcels for each candidate according to first preference votes received; and
  - (vii) counting the first preference votes given for each candidate on all unrejected ballot papers; and
  - (viii) calculating the quota 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
  - (ix) making a provisional declaration that candidates who have received a number of first preference votes equal to or greater than the quota are elected in order of the number of first preference votes received, unless the positions available for candidates of the relevant gender have already been filled (in which case those candidates who are no longer eligible for the remaining positions will be **eliminated**); and
  - (x) where a tie occurs between two or more candidates who have received a number of first preference votes equal to or greater than the quota, and the number of candidates so tied exceeds the number of vacancies remaining to be filled by candidates of the relevant gender, a draw by lots should be conducted to determine which candidate or candidates will be provisionally elected to the available position or positions.
- (b) *The transfer to continuing candidates of the surplus votes of elected candidates following the counting of first preference votes.*
- (i) Unless all vacancies have been filled, the returning officer or any other electoral officer authorised for the purpose continues the counting of the votes by transferring the surplus votes (if any) of each elected candidate to the continuing candidates, as follows –
    - A. the number of surplus votes of the elected candidate will be divided by the number of first preference votes received by them and the resulting fraction will be the **transfer value**;
    - B. the total number of ballot papers of the elected candidate that express the first preference vote for them and a next available



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preference for a particular continuing candidate will be multiplied by the transfer value, the number so obtained (disregarding any fraction) will be added to the number of first preference votes of the continuing candidate and all those ballot papers will 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 will be elected, unless the positions available for candidates of the relevant gender have already been filled.

- (ii) A ballot paper that is required to be transferred to a continuing candidate must be set aside as finally dealt with if it does not indicate a next available preference for a continuing candidate.
- (iii) Following the initial transfer of surplus votes under subparagraph (i), the votes of any candidate who can no longer be elected because the positions available for candidates of the relevant gender have already been filled should be distributed to continuing candidates in accordance with paragraph (c) – this distribution should be completed before any transfer conducted under subparagraph (iv).
- (iv) Unless all the vacancies have been filled, subject to subparagraph (iii), the surplus votes (if any) of any candidate elected under subparagraph (i) will be transferred to the continuing candidates 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 will be elected, unless the positions available for candidates of the relevant gender have already been filled.
- (v) Where a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer of the surplus votes of a particular elected candidate, no votes of any other candidate will be transferred to the continuing candidate.
- (vi) For the purpose of the application of subparagraph (i) in relation to a transfer under subparagraphs (b)(iv) or (c)(iv) of the surplus votes of an elected candidate, each ballot paper of the elected candidate that was obtained by them on a transfer will be dealt with as if any vote is expressed for the elected candidate were a first preference vote, as if the name of any other candidate previously elected, eliminated or excluded had not been on the ballot paper and as if the numbers indicating subsequent preferences (if any) had been altered accordingly.

(c) *The elimination of candidates because the gender representation requirement has been met, and the distribution of their votes.*

Where a candidate can no longer be elected because the positions available for candidates of the relevant gender have already been filled, they are eliminated from the count and their votes are to be distributed as follows (an **elimination**):

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- (i) the total number of ballot papers for the eliminated candidate that express the first preference vote for them and the next available preference (if any) for a particular continuing candidate will be transferred, each ballot paper at a transfer value of 1, to the continuing candidate and added to the total number of votes for the continuing candidate and all those ballot papers will be transferred to the continuing candidate; and
  - (ii) the total number (if any) of other votes obtained by the eliminated candidate on transfers will be transferred from the eliminated candidate in the order of the transfers on which they obtained them, the votes obtained on the earliest transfer being transferred first, as follows:
    - A. the total number of ballot papers transferred to the eliminated candidate from a particular candidate and expressing the next available preference (if any) for a particular continuing candidate will be multiplied by the transfer value at which the votes were transferred to the eliminated candidate;
    - B. the number so obtained (disregarding any fraction) will be added to the number of votes of the continuing candidate;
    - C. all those ballot papers will be transferred to the continuing candidate.
  - (iii) A ballot paper that under this rule is required to be transferred to a continuing candidate following the elimination of a candidate must be set aside as finally dealt with if it does not indicate a next available preference for a continuing candidate.
  - (iv) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of the transfer of votes of an eliminated candidate is elected (providing the positions available for candidates of the relevant gender have not already been filled) and, unless all the vacancies have been filled, the surplus votes (if any) of the candidate so elected will be transferred in accordance with paragraph (b), subject to paragraph (c)(v).
  - (v) Where the candidate elected under subparagraph (iv) is elected before all the votes of the eliminated candidate have been transferred, the surplus votes (if any) of the candidate so elected will not be transferred until the remaining votes of the eliminated candidate have been transferred to continuing candidates.
  - (vi) Where one or more candidates are eliminated from the count, the order of distribution of their votes will be as follows: the candidate with the highest number of votes at the point of elimination will have their votes distributed first, and the candidate with the next highest number of votes at the point of elimination will have their votes distributed next, and so on, their votes being distributed in accordance with paragraph (c)(i) to (iii).
- (d) *The exclusion of the candidate with the fewest votes and the transfer of their votes to continuing candidates.*

After the counting of first preference votes or the transfer of surplus votes (if any) of elected candidates and the votes of any candidates eliminated because the positions available for candidates of the relevant gender have already been filled, if no candidate has, or less than

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the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes will be excluded and all their votes will be transferred to the continuing candidates as follows (an **exclusion**):

- (i) the total number of ballot papers of the excluded candidate that express the first preference vote for them and the next available preference (if any) for a particular continuing candidate will be transferred, each ballot paper at a transfer value of 1, to the continuing candidate and added to the number of votes of the continuing candidate and all those ballot papers will be transferred to the continuing candidate; and
- (ii) in an election to fill multiple offices of member of a Local First Nations Voice, the total number (if any) of other votes obtained by the excluded candidate on transfers will be transferred from the excluded candidate in the order of the transfers on which they obtained them, the votes obtained on the earliest transfer being transferred first, as follows:
  - A. the total number of ballot papers transferred to the excluded candidate from a particular candidate and expressing a next available preference for a particular continuing candidate will be multiplied by the transfer value at which the votes were transferred to the excluded candidate;
  - B. the number so obtained (disregarding any fraction) will be added to the number of votes of the continuing candidate;
  - C. all those ballot papers will be transferred to the continuing candidate.
- (iii) A ballot paper that under this paragraph is, pursuant to the exclusion of a candidate, required to be transferred to a continuing candidate must be set aside as finally dealt with if it does not indicate a next available preference for a continuing candidate.
- (iv) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer of votes of an excluded candidate is elected (providing the positions available for candidates of the relevant gender have not already been filled), and unless all the vacancies have been filled, the surplus votes (if any) of the candidate so elected will be transferred in accordance with subparagraphs (i) and (ii), except that, where the candidate so elected is elected before all the votes of the excluded candidate have been transferred, the surplus votes (if any) of the candidate so elected will not be transferred until the remaining votes of the excluded candidate have been transferred to continuing candidates.
- (v) After the transfer of all the votes of an excluded candidate, if no continuing candidate has received a number of votes greater than the quota, the continuing candidate who has the fewest votes is excluded and their votes transferred in accordance with an exclusion in accordance with subparagraphs (i) and (ii).

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- (vi) At the conclusion of the count, if there is a single vacancy remaining for which 2 continuing candidates remain, the continuing candidate who has the most votes will be elected, despite the fact that the number may be below the quota.
  - (vii) However, if the continuing candidates referred to in subparagraph (vi) have an equal number of votes, the candidate with the larger number of votes at the last preceding count or transfer will be taken to be elected, and if the number of votes at that count or transfer was equal, the returning officer must draw lots to determine which of the candidates is to be elected.
- (e) *General rules as to the order of election of candidates and the order in which transfers are made to continuing candidates.*
- (i) The order of election of candidates will be –
    - A. in accordance with the order of the count or transfer 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 or transfer, in accordance with the relevant 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 will be taken to have been elected will be taken to be in accordance with the relative numbers of their votes at the last count or transfer 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 or transfer being taken to be the earliest elected, and there has been no such count or transfer the returning officer will determine by conducting a draw by lots the order in which they will be taken to have been elected.
  - (ii) Subject to subparagraphs (iii) and (iv), where, after any count or transfer, 2 or more candidates have surplus votes, the order of any transfers of surplus votes of those candidates will be in accordance with the relative sizes of the surpluses, the largest surplus being transferred first.
  - (iii) Subject to subparagraph (iv), where, after any count or transfer, 2 or more candidates have equal surpluses, the order of any transfers of the surplus votes of those candidates will be in accordance with the relative numbers of votes of those candidates at the last count or transfer 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 or transfer being transferred first, but if there has been no such count or transfer the returning officer must determine by conducting a draw by lots the order in which the surpluses are to be dealt with.
  - (iv) Where, after any count or transfer, a candidate obtains surplus votes, those surplus votes must not be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count or transfer.
  - (v) Where the candidate who has the fewest votes is required to be excluded and 2 or more candidates each have the fewest votes, whichever of those candidates had the fewest votes at the last count or transfer at which each of those candidates had a different number of votes will be excluded, but if there

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- has been no such count or transfer, the returning officer must determine by conducting a draw by lots which candidate to be excluded.
- (vi) Where 2 or more candidates are required to be eliminated because the positions available for candidates of the relevant gender have already been filled and the candidates have the same number of votes, whichever of those candidates had the highest votes at the last count or transfer at which each of those candidates had a different number of votes will be eliminated first, but if there has been no such count or transfer, the returning officer must determine the order in which candidates are to be eliminated by conducting a draw by lots.
  - (vii) Notwithstanding any other provision of these rules, where the number of continuing candidates is equal to the number of remaining unfilled vacancies for which those candidates are eligible under the gender representation requirements, those candidates are elected (regardless of whether those candidates have received a number of votes equal to or greater than the quota).
  - (viii) If, as a result of a candidate being eliminated or excluded, another candidate or candidates are elected to a remaining unfilled vacancy or vacancies, no votes should be distributed to that candidate or candidates during the transfer of the eliminated or excluded candidate's votes.
  - (ix) Where a candidate is elected by reason that the number of first preference votes received by the candidate, or aggregate of first preference votes received by the candidate and all other votes obtained by the candidate on transfers, is equal to the quota, all the ballot papers expressing those votes must be set aside as finally dealt with.
  - (x) Where a candidate has died between the date of nomination and polling day, a vote indicated on a ballot paper opposite the name of the deceased candidate must be counted to the candidate next in order of the voter's preference (if any), and the numbers indicating subsequent preferences (if any) will be taken to be altered accordingly.
  - (xi) Any transfer under these Rules constitutes a separate transfer.
- (f) The Electoral Commissioner may determine that a computer program be used to assist in the scrutiny and count of votes in an election if satisfied that the computer program will produce the same result as a count conducted under these rules would without computer assistance.
- (g) The returning officer or any other electoral officer authorised for the purpose must, on the completion of the last count –
- (i) make out and sign a statement setting out the number of ballot papers and votes counted to each candidate at each count and the number of informal ballot papers; and
  - (ii) place in a separate parcel all the ballot papers which have been rejected as informal; and
  - (iii) place in a separate parcel all the unrejected ballot papers; and
  - (iv) seal up the parcels and endorse on each parcel a description of its contents, and permit any scrutineers present, if they so desire, to countersign the endorsement.

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- (h) For the purposes of this Rule –
  - (i) a **continuing candidate** at any stage during the count is a candidate who has not already been elected, eliminated or excluded;
  - (ii) the **next available preference** for a continuing candidate refers to the next preference in consecutive numerical order that is not expressed to be for a candidate who has been elected, eliminated or excluded;
  - (iii) **surplus votes** are the votes in excess of the quota (if any).

## 14. Scrutineers

### Rule 33 – Appointment and conduct of scrutineers

- (a) Each candidate may appoint 1 or more scrutineers for the purposes of an election.
- (b) A person must provide written notice of appointment of the person as a scrutineer, authorised or signed by the candidate, to the officer in charge of the scrutiny and counting location.
- (c) All proceedings at the scrutiny are open to the inspection of the scrutineers.
- (d) If a scrutineer objects to a ballot paper as being informal, the officer conducting the scrutiny must mark the ballot paper "admitted" or "rejected" according to their decision to admit or reject the ballot paper.
- (e) A candidate may be represented by a maximum of two scrutineers at a polling place or declared early voting polling place.
- (f) A candidate may be represented by a maximum of two scrutineers at a scrutiny and counting location.
- (g) Despite paragraph (f), if counting is being conducted at multiple places in a scrutiny and counting location, a candidate may be represented by a maximum of one scrutineer at each place.
- (h) The returning officer or an electoral official in charge of a polling place or counting location, may direct a scrutineer to leave a polling place or scrutiny and counting location if the officer considers that their conduct is interfering, or that it may reasonably interfere, with the proper conduct of the election, and the scrutineer must comply with the direction as soon as is reasonably practicable.

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## 15. Definitions

Subject to anything in the Act, for the purposes of these Rules the following definitions apply:

**authorised witness** means a person (other than a candidate or scrutineer in the election) who is at least 18 years of age;

**declaration envelope** means the envelope endorsed with the declaration to be made by the voter;

**declaration vote** means a vote cast under the written declaration that is required by the Act and these Rules to be made by the voter;

**electoral officer** means a person appointed by the returning officer to assist in the conduct of the election (and includes the returning officer);

**polling place** includes a mobile polling booth

**postal declaration envelope** means the declaration envelope to be used by a voter when exercising a postal vote;

**region**, in relation to a voter, means the region of the Local First Nations Voice the members of which the voter is entitled to vote;

**scrutineer** means a person who has been appointed as a scrutineer by a candidate under these Rules;

**the Act** refers to the *First Nations Voice Act 2023*;

**voting papers** means voting papers, in relation to an election, means any ballot paper or declaration voting papers required by a voter for the purpose of voting at the election;

**voting period** means the period beginning at the opening of the early voting period declared by the returning officer under Rule 16 and ending at 6pm on polling day.