

NORTHERN TERRITORY OF AUSTRALIA

REFERENDUMS REGULATIONS 1998

As in force at 1 March 2011

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Schedule 1

ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 March 2011

REFERENDUMS REGULATIONS 1998

Regulations under the *Referendums Act 1998*

Part 1 Preliminary

1 Citation

These Regulations may be cited as the *Referendums Regulations 1998*.

Part 2 Ballot-papers and ballot-boxes

2 Postal ballot-paper

A postal ballot-paper is to be in accordance with Form 1 in Schedule 1.

3 Ballot-paper

A ballot-paper (other than a postal ballot-paper) is to be in accordance with Form 2 in Schedule 1.

4 Ballot-boxes

A ballot-box is to:

- (a) be constructed of durable material;
- (b) be capable of being securely fastened or sealed; and
- (c) have a cleft through which ballot-papers are to be deposited into the ballot-box.

Part 3 Polling

5 Incorrect details in roll

- (1) A claim to vote at a polling place is not to be rejected by reason only of the omission from the roll or a certified list of voters of the given name of a person or the entry of a wrong given name, address, occupation or spelling of a surname if, in the opinion of the presiding officer, the voter is sufficiently identified.
- (2) A voter is not to be disqualified from voting under the name appearing on the roll by reason only of the voter's surname having been changed by marriage.

6 Pre-poll voting

- (1) Unless the contrary intention appears, a reference in these Regulations to a claim to vote, a ballot-paper or voting includes a reference to:
 - (a) a claim to vote for the purpose of casting a vote under section 25 of the Act at a referendum before 6.00 p.m. on the day before the polling;
 - (b) a ballot-paper used in connection with casting a vote under section 25 of the Act; and
 - (c) voting under section 25 of the Act.
- (2) For the purposes of conducting voting at a referendum under section 25 of the Act, the Chief Electoral Officer may:
 - (a) divide the Territory into regions; and
 - (b) if he or she thinks fit, assign a name to each region.
- (3) If a voter casts his or her vote at a location that is not within the region in which the division for which he or she is enrolled is situated, the voter must, after complying with section 34(a), (b) and (c) of the Act:
 - (a) place the ballot-paper on which he or she has marked his or her vote in an envelope bearing the name of the division for which he or she is enrolled;
 - (b) seal the envelope; and
 - (c) in complying with section 34(d) of the Act, deposit the envelope in a ballot-box at the location.

(4) As soon as practicable after 6.00 p.m. on the day before polling day, the officer conducting polling at a location must send or deliver the ballot-box in which ballot-papers were deposited at the location to an officer conducting a determination of the results of the poll.

(5) In this regulation:

location means a location where a voter casts his or her vote under section 25(2) of the Act.

region means an area comprised of one or more divisions.

voter means an elector entitled to vote at a referendum who applies under section 25(1) of the Act to an officer conducting voting at a referendum before 6.00 p.m. on the day before the polling day and who there and then votes at the referendum.

7 Withholding of ballot-paper

The presiding officer of a polling place must refuse to issue a ballot-paper to a person required to answer a question put to him or her under section 31(2) of the Act (other than the question under section 31(2)(b) of the Act) if the person:

- (a) refuses to answer the question; or
- (b) fails to answer it in the affirmative.

8 Record of refusal to issue ballot-paper under section 36 of Act

A presiding officer of a polling place who refuses to issue a ballot-paper to a person who has made a declaration under section 36 of the Act must:

- (a) make a written note of the person's request to be issued with a ballot-paper and the presiding officer's reasons for refusing to issue it;
- (b) sign the note in the presence of those scrutineers that are present at the polling place; and
- (c) at the close of polling forward the note to the Divisional Returning Officer for the division in which the polling place is situated.

9 Spoilt or discarded ballot-papers

A presiding officer who receives a spoilt ballot-paper or finds a discarded ballot-paper referred to in section 38 of the Act must:

- (a) immediately write the word "spoilt" or "discarded", as the case may be, across the face of the ballot-paper;
- (b) place the ballot-paper in an endorsed envelope; and
- (c) at the close of polling forward the ballot-paper to the Divisional Returning Officer.

10 Postal ballot-box

The Divisional Returning Officer must:

- (a) keep a locked or sealed ballot-box with the words "Postal Ballot-box" marked on it; and
- (b) place and keep in the ballot-box until determination of the results of the poll all envelopes containing postal ballot-papers relating to his or her division that are received by the Divisional Returning Officer and not excluded under regulation 12.

Part 4 Examination of postal ballot-papers and ballot-papers issued under section 25 or 36 of Act

11 Definitions

In this Part:

ballot-paper means a ballot-paper issued under section 25 or 36 of the Act.

Divisional Returning Officer, in relation to voting on ballot-papers or postal ballot-papers, means the Divisional Returning Officer for the division in respect of which those votes are cast.

postal ballot-paper means a ballot-paper issued under section 26 of the Act.

12 Valid postal votes

- (1) A postal ballot-paper is not to be included in the determination of the results of the poll unless:
 - (a) the vote marked on the postal ballot-paper is marked before 6.00 p.m. on polling day; and
 - (b) the ballot-paper is:
 - (i) delivered to a presiding officer before the close of polling on polling day; or
 - (ii) received by a Divisional Returning Officer before 6.00 p.m. on the Friday next following polling day.
- (2) In the absence of evidence to the contrary, the time and date appearing in the postal vote certificate of an elector is to be taken as the time and date on which the elector's vote was marked on the postal ballot-paper.

13 Checking postal vote certificates

- (1) The checking of postal voting certificates is to be carried out in accordance with this regulation.
- (2) The checking of a postal voting certificate:
 - (a) may be carried out at any time that the Divisional Returning Officer considers practicable after receiving a postal vote; and
 - (b) is to be carried out in the presence of another officer or a person approved by the Chief Electoral Officer.
- (3) The Divisional Returning Officer must examine an elector's postal vote certificate and his or her application for a postal ballot-paper.
- (4) If satisfied that:
 - (a) the signature on the postal vote certificate is the same as that on the application for the postal ballot-paper;
 - (b) the signature on the postal vote certificate purports to be witnessed by an authorised witness; and
 - (c) the vote marked on the postal ballot-paper contained in the envelope purports to have been cast before 6.00 p.m. on polling day,

the Divisional Returning Officer must:

- (d) place a mark against the name of the elector on a certified list of voters to be used by him or her for the purposes of the determination of the results of the poll; and
 - (e) place the envelope unopened in the ballot-box referred to in regulation 10.
- (5) If the Divisional Returning Officer is not satisfied of the matters referred to in subregulation (4)(a), (b) and (c), he or she must mark the unopened envelope with the word "rejected" and place it in the ballot-box referred to in regulation 10.

14 Sorting of postal votes

- (1) Postal votes are to be sorted in accordance with this regulation.
- (2) The sorting of postal votes:
 - (a) may be carried out at any time that the Divisional Returning Officer considers practicable after 6.00 p.m. on the Friday next following polling day; and
 - (b) is to be carried out in the presence of those scrutineers that choose to attend and any other persons approved by the Divisional Returning Officer.
- (3) The Divisional Returning Officer must produce unopened all envelopes containing postal ballot-papers received by the Divisional Returning Officer not later than 6.00 p.m. on the Friday next following polling day.
- (4) The Divisional Returning Officer must:
 - (a) allow the scrutineers to inspect postal vote certificates marked with the word "rejected";
 - (b) exclude the postal ballot-papers contained in those unopened postal vote certificates from the determination of the results of the poll; and
 - (c) place those postal vote certificates, unopened, in a parcel.
- (5) The Divisional Returning Officer must:
 - (a) withdraw from the envelopes admitted to the determination of the results of the poll, the postal ballot-paper and, without inspecting or unfolding it or allowing any other person to do so, immediately deposit the folded postal ballot-paper in a

locked or sealed ballot-box; and

- (b) place the envelope from which the postal ballot-paper was withdrawn in a parcel together with all other envelopes from which postal ballot-papers were withdrawn in accordance with paragraph (a).
- (6) The Divisional Returning Officer must seal up the parcels referred to in subregulations (4) and (5) and endorse on each parcel a statement of its contents.

15 Examination of section 36 declarations

- (1) The examination of declarations made under section 36 of the Act is to be carried out in accordance with this regulation.
- (2) The examination of declarations:
 - (a) is not be carried out until after the close of polling; and
 - (b) is to be carried out in the presence of those scrutineers that choose to attend and any other persons approved by the Divisional Returning Officer.
- (3) The Divisional Returning Officer must produce unopened all envelopes containing ballot-papers that bear declarations made under section 36 of the Act and must examine each envelope.
- (4) If satisfied that:
 - (a) the declaration on the envelope is properly signed and attested; and
 - (b) the person who made the declaration is entitled to vote in respect of, and, in the case of a person who made a declaration under section 36(2) or (3) of the Act, enrolled for, the division in respect of which the Divisional Returning Officer is appointed,the Divisional Returning Officer must:
 - (c) place a mark against the name of the person, other than a person who made a declaration under section 36(1) of the Act, on a certified list of voters to be used by the Divisional Returning Officer for the purposes of the determination of the results of the poll;

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- (d) withdraw from the envelope the ballot-paper and, without inspecting it or unfolding the ballot-paper or allowing any other person to do so, immediately deposit the folded ballot-paper in a locked or sealed ballot-box; and
 - (e) place the envelope from which the ballot-paper was withdrawn in a parcel together with all other envelopes from which ballot-papers were withdrawn in accordance with paragraph (d).
- (5) If the Divisional Returning Officer is not satisfied of the matters referred to in subregulation (4)(a) and (b) he or she must exclude the ballot-paper from the determination of the results of the poll without opening the envelope in which it is contained.
 - (6) The Divisional Returning Officer must place in a parcel the unopened envelopes bearing declarations made under section 36 of the Act of those persons whose ballot-papers have been excluded from the determination of the results of the poll.
 - (7) The Divisional Returning Officer must seal up the parcels referred to in subregulations (4)(e) and (6) and endorse on each parcel a statement of its contents.
 - (8) The Divisional Returning Officer must not exclude a ballot-paper from the determination of the results of the poll by reason only that the presiding officer of the polling place where the vote was cast omitted to attest the declaration of the voter if the voter's name appears on the record made and signed by the presiding officer in accordance with section 36(4) of the Act.

16 Part-counting of votes

- (1) It is not necessary for the Divisional Returning Officer, for the purposes of regulations 13, 14 and 15, to receive all envelopes containing postal ballot-papers or ballot-papers before he or she proceeds to deal with those postal ballot-papers or ballot-papers, as the case may be, in accordance with section 52(1) of the Act.
- (2) However, sufficient uncounted postal ballot-papers or ballot-papers must be kept in the ballot-box referred to in regulation 13(4)(e) or 15(4)(d) to ensure that any postal ballot-papers or ballot-papers that are taken from the ballot-box for the purpose of being counted are taken from a number sufficient to prevent the identity of the voters from being disclosed.

17 Omissions and errors in ballot-papers

Without limiting the Act or these Regulations:

- (a) a postal ballot-paper is not to be counted if it is received by the Divisional Returning Officer otherwise than in the envelope bearing the postal vote certificate; and
- (b) a ballot-paper is not to be counted if it is received by the Divisional Returning Officer otherwise than in the envelope bearing the declaration of the voter made under section 36 of the Act.

18 Counting, &c., of postal votes and votes cast under sections 25 and 36 of Act

For the purposes of section 52(3) of the Act, except to the extent that a Divisional Returning Officer is required to comply with this Part, Part 4 of the Act applies to ballot-papers and postal ballot-papers within the meaning of regulation 11 as if:

- (a) a reference in Part 4 of the Act to a ballot-paper is a reference to a ballot-paper or a postal ballot-paper within the meaning of regulation 11; and
- (b) a reference in Part 4 of the Act to a ballot-box is a reference to a ballot-box in which is deposited envelopes:
 - (i) bearing postal vote certificates;
 - (ii) containing ballot-papers issued under section 25 of the Act; or
 - (iii) bearing declarations made under section 36 of the Act.

Part 5 Failure to vote**19 Reason for failure to vote**

- (1) As soon as practicable after a referendum, the Divisional Returning Officer must prepare a list of electors for his or her division who failed to vote at the referendum.
- (2) Subject to the directions of the Chief Electoral Officer, the Divisional Returning Officer must send a notice to each elector whose name appears on the list referred to in subregulation (1) within 3 months after the declaration of the poll.

- (3) The notice:
- (a) is to be sent by post; and
 - (b) is to require the elector to give an explanation of his or her reasons for failing to vote at the referendum within 21 days after receiving the notice.
- (4) If a person to whom a notice under subregulation (2) is sent:
- (a) does not give an explanation for not having voted within the time specified in the notice; or
 - (b) gives an explanation that the Divisional Returning Officer does not consider is a satisfactory explanation,
- the Divisional Returning Officer must, by notice posted to the person, advise the person accordingly and that legal proceedings may be commenced against the person.
- (5) If a person has not voted at a referendum because of his or her religious beliefs:
- (a) the person may give those religious beliefs as his or her explanation for not having voted at the referendum; and
 - (b) the explanation is to be taken to be a satisfactory explanation for not having voted at the referendum.
- (6) A Divisional Returning Officer must keep a register for the division for which he or she is appointed containing the name and address of each person who has given his or her religious beliefs as an explanation for not having voted at a referendum.
- (7) The Divisional Returning Officer must send the explanation, if any, of an elector given under this regulation to a court before which a charge against the elector for failing to vote at a referendum is to be heard.
- (8) The court must consider the contents of the written explanation of an elector given under this regulation as if it were given in evidence before the court, whether or not the elector is present.
- (9) If the elector attends the court and sets up a defence different in substance from the explanation contained in the elector's written explanation given under this regulation, the court must, if it dismisses the complaint, do so without awarding the elector the costs of his or her defence.

- (10) If polling day for a referendum is the same as that fixed as polling day for an election of a member of the Legislative Assembly, a Divisional Returning Officer is not required to comply with this regulation if he or she has complied with regulation 30 of the *Northern Territory Electoral Regulations 1995*.

20 Court hearing

- (1) A notice in accordance with this regulation is to be served on the defendant in any proceedings referred to in regulation 19.
- (2) The notice is to inform the defendant that he or she may:
- (a) attend the court and answer the charges in person; or
 - (b) at any time not less than 7 days before the date fixed for the hearing, lodge with or send by post to the prosecuting officer a statutory declaration setting out any matter he or she wants to set out in answer to the charge.
- (3) A notice referred to in subregulation (1) may be written on the summons or may be a separate document served with the summons.
- (4) If a statutory declaration is received by the prosecuting officer, he or she must, as far as it is practicable to do, inquire into the truth of its contents and must, unless the prosecution is withdrawn, bring the declaration to the notice of the court.
- (5) The court must consider the statutory declaration as if its contents were given in evidence before it, whether or not the defendant is present.
- (6) If the defendant attends the court and sets up a defence different in substance from the statement contained in the declaration, the court must, if it dismisses the prosecution, do so without awarding the defendant the costs of his or her defence.
- (7) On the application of the prosecuting officer, the court may adjourn the hearing for any period it thinks fit to enable the officer to answer the declaration of the defendant.

Part 6 Miscellaneous**21 Deferred counting of ballot-papers**

- (1) An officer conducting the determination of the results of a poll must defer the counting of ballot-papers if the number of ballot-papers, other than those referred to in section 52(1) of the Act, in a ballot-box received by the officer is less than 100.
- (2) The officer conducting the determination must place the ballot-papers in a locked or sealed ballot-box kept for that purpose at the place where the results of the poll are to be determined.
- (3) Subject to subregulation (4), the ballot-papers are to be taken out of the ballot-box referred to in subregulation (2) and counted when the ballot-papers taken from 2 or more ballot-boxes and placed in that ballot-box exceeds 100.
- (4) If no more ballot-boxes are to be received at the place where the results of a poll are to be determined, the ballot-box referred to in subregulation (2) is to be opened and the ballot papers taken out and counted.

22 Declaration of officers and scrutineers

- (1) Each officer who assists in the conduct of a referendum and each scrutineer must make and subscribe a declaration in accordance with Form 3 in Schedule 1 before an adult witness.
- (2) The omission of an officer or a scrutineer to make and subscribe a declaration under this regulation is not grounds for setting aside a referendum.

Schedule 1

FORM 1

regulation 2

NORTHERN TERRITORY OF AUSTRALIA

Referendums Act 1998

POSTAL BALLOT-PAPER

(Your vote must not be marked hereon until you have first shown the ballot-paper, unmarked, to the authorised witness)

Directions

Mark your vote on this ballot-paper by placing the word "YES" or " NO" in the square opposite the question set out below; fold the ballot-paper, place it in the envelope addressed to the Divisional Returning Officer and seal the envelope.

(Here set out the question)

NOTE:

Unless:

- (a) you have marked your vote on the ballot-paper before 6.00 p.m. on polling day; and
- (b) the postal ballot-paper is either delivered to a presiding officer before 6.00 p.m. on polling day or received by a Divisional Returning Officer before 6.00 p.m. on the Friday next following polling day,

it will be excluded from the determination of the results of the poll.

FORM 2

regulation 3

NORTHERN TERRITORY OF AUSTRALIA

Referendums Act 1998

BALLOT-PAPER

Directions

Mark your vote on this ballot-paper by placing the word "YES" or "NO" in the square opposite the question set out below. Fold the ballot-paper and place it in the ballot-box.

(Here set out the question)

FORM 3

regulation 22

NORTHERN TERRITORY OF AUSTRALIA

Referendums Act 1998

DECLARATION TO BE MADE BY OFFICERS AND SCRUTINEERS

I,.....,
of
occupation

promise and declare that I will faithfully perform the duties of *officer/
scrutineer to the best of my understanding and ability, and that I will not
directly or indirectly attempt to influence the vote of any elector or, except by
recording my vote as permitted by law, the result of any referendum, and that I
will not disclose any knowledge in respect of the vote of an elector acquired
by me by reason of the performance of my duties, except in reply to a
question that I am legally bound to answer.

.....
(signature of *officer/scrutineer)

.....
(signature of witness)

Date, 19 .

(*strike out which inapplicable)

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2**LIST OF LEGISLATION*****Referendums Regulations (SL No. 35, 1998)***

Notified	3 September 1998
Commenced	3 September 1998

Statute Law Revision Act (No. 2) 2003 (Act No. 44, 2003)

Notified	7 July 2003
Commenced	7 July 2003

Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 (Act No. 40, 2010)

Assent date	18 November 2010
Commenced	1 March 2011 (s 2, s 2 <i>Oaths, Affidavits and Declarations Act 2010</i> (Act No. 39, 2010) and <i>Gaz G7</i> , 16 February 2011, p 4)

3**GENERAL AMENDMENTS**

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: rr 1 and 19 and sch 1.

4**LIST OF AMENDMENTS**

r 12	amd Act No. 44, 2003, s 6
r 22	amd Act No. 40, 2010, s 202