

NORTHERN TERRITORY OF AUSTRALIA

LOCAL GOVERNMENT (ELECTORAL) REGULATIONS 2021

As in force at 1 July 2021

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election day voting centre means a place declared under regulation 14(1)(a).

electoral roll, see section 139 of the Act.

electorate means:

- (a) for the election of ordinary members of a council:
 - (i) if the local government area of the council is not divided into wards – the local government area; or
 - (ii) otherwise – the whole area of each ward within the local government area of the council; or
- (b) for the election of the principal member of a council – the local government area.

enrolled, for a person, means the person's name is on an electoral roll.

indication of preferences means an indication of preferences that meets the requirements of regulation 36.

infringement notice, see regulation 79.

infringement notice offence, see regulation 78(1).

mandatory postal vote election means an election declared as a mandatory postal vote election under section 137(2) of the Act.

mobile voting centre means a place declared under regulation 44 or changed under regulation 45.

mobile voting period, for a mobile voting centre, means the period declared under regulation 44 for the centre or changed under regulation 45.

nomination day means:

- (a) for a general election – the 23rd day before election day; or
- (b) for a by-election:
 - (i) if the returning officer is the Electoral Commissioner – a day as decided by the Electoral Commissioner; or
 - (ii) otherwise – the 23rd day before election day.

ordinary vote means a vote cast under Part 3, Division 2, whether on or before election day.

postal vote certificate means:

- (a) for Part 3, Division 5 – see regulation 39(2); or
- (b) otherwise – see regulation 28(3).

postal voting papers, in relation to an election, means:

- (a) a postal ballot paper for the election; and
- (b) a postal vote certificate printed on an envelope addressed to the returning officer for the election; and
- (c) an explanation in writing of the procedure for postal voting under these Regulations; and
- (d) any other information that the returning officer considers appropriate; and
- (e) if the election is a mandatory postal vote election:
 - (i) a candidate statement for each candidate in relation to whom a candidate statement is lodged, under regulation 35; and
 - (ii) an indication of preferences for each candidate in relation to whom an indication of preferences is lodged, under regulation 36.

prescribed amount, see regulation 78(2).

replacement postal voting papers:

- (a) for Part 3, Division 5 – see regulation 38(2); or
- (b) otherwise – see regulation 27(2).

scrutineer means a person appointed by a candidate to represent the candidate during voting or at the scrutiny of ballot papers.

scrutiny centre means a place declared under regulation 14(1)(c).

to sign includes, for a person who is unable to sign the person's name, to make an identifying mark.

voting centre means an election day voting centre, a mobile voting centre and an early voting centre.

voting period, see regulation 4.

4 Voting period

- (1) The voting period for an election is as follows:
 - (a) for voting at an election day voting centre – from 8 am to 6 pm on election day;
 - (b) for voting at an early voting centre – the hours decided under subregulation (2);
 - (c) for voting at a mobile voting centre – the mobile voting period.
- (2) The returning officer must decide the days and the voting hours for voting at an early voting centre.
- (3) The hours decided under subregulation (2) must not end later than 6 pm on the day before election day.

5 Authorised officers

- (1) The following are **authorised officers**:
 - (a) a returning officer, in relation to the election for which the person is the returning officer;
 - (b) a person authorised in writing by the returning officer for an election to exercise specified powers or perform specified functions of an authorised officer under these Regulations in relation to the election.
- (2) Without limiting subregulation (1)(b), an authorisation may specify that an authorised officer:
 - (a) is to be in charge of a specified voting centre or scrutiny centre; or
 - (b) is to be responsible for, or is to conduct, scrutiny as specified in the authorisation.
- (3) An authorised officer must be at least 18 years of age.
- (4) A candidate for election, or the spouse or de facto partner of a candidate for election, must not be an authorised officer for the election.

Part 2 Preparations for an election

Division 1 Nominations

6 Returning officer to invite nominations of candidates

- (1) The returning officer for an election must invite nominations of candidates for the election as follows:
 - (a) for a general election – at least 43 days before election day;
 - (b) for a by-election:
 - (i) if the returning officer is the Electoral Commissioner – as decided by the Electoral Commissioner; or
 - (ii) otherwise – at least 43 days before election day.
- (2) Public notice must be given about the election that includes the following information:
 - (a) the date on which the election is to be held;
 - (b) the contact details of the returning officer;
 - (c) the nomination day for the election and the time by which nominations must be lodged under regulation 8(1);
 - (d) the date and time of the closing of the electoral roll specified in regulation 11.

7 Form of nomination

- (1) A nomination must:
 - (a) be in the approved form; and
 - (b) state the name and residential address of the nominee; and
 - (c) state the office for which the nominee is a candidate; and
 - (d) include a statement that the nominee consents, if elected, to act in the capacity in which the nominee is nominated as a candidate for election; and
 - (e) be signed by the nominee; and

- (b) if a ballot paper is to be prepared for the election – determine by lot, in public at a place decided by the returning officer, the order of the candidates' names on the ballot paper.
- (2) As soon as practicable after the returning officer makes the declaration under subregulation (1), the returning officer must give public notice of the declaration.
- (3) The returning officer must rely on the declaration of eligibility accompanying the nomination of a candidate in deciding the candidate's eligibility to stand for the election.
- (4) Despite subregulation (3), the Electoral Commissioner may determine that a candidate is not eligible to stand for the election if there is evidence contrary to the candidate's declaration of eligibility.
- (5) If the number of candidates nominated does not exceed the number of offices to be filled, the returning officer must declare the relevant candidates elected.
- (6) Despite subregulation (5), if the same person is a candidate for election as the principal member and as an ordinary member of the council, the returning officer must not declare the candidate elected as an ordinary member of the council unless and until it is clear that the candidate has failed to secure election as the principal member of the council.
- (7) As soon as practicable after the returning officer makes the declaration under subregulation (5), the returning officer must give public notice of the declaration.
- (8) In this regulation:

appropriate time means:

- (a) 3 pm on the day following nomination day; or
- (b) some other time, not earlier than 12 noon on nomination day and not later than 6 pm on the third day after nomination day, fixed by the returning officer and notified to all nominees for election.

- (3) The returning officer must give public notice of the following in relation to an election:
 - (a) each election day voting centre and the voting period on election day;
 - (b) each early voting centre and the voting period for each centre.
- (4) If voting at an election day voting centre or early voting centre is to be limited to certain local government areas, the public notice under subregulation (3) must state those local government areas.
- (5) Subregulation (4) does not limit the local government areas for which a ballot paper may be issued under Part 3.

Division 5 Scrutineers

15 Scrutineers – appointment

- (1) A candidate for election may appoint a scrutineer to represent the candidate during voting or the scrutiny.
- (2) The appointment is made by giving written notice, in the approved form, of the appointment to:
 - (a) the returning officer; or
 - (b) the authorised officer in charge of the voting centre or the scrutiny centre.

16 Scrutineers – presence at voting centre and scrutiny centre

- (1) One scrutineer representing each candidate is entitled to be present at a particular voting centre while the voting centre is open for voting.
- (2) One scrutineer representing each candidate may enter or remain at a particular scrutiny centre at any time while the scrutiny is conducted at the centre.
- (3) Despite subregulation (2), if there is more than one counting table for a local government area or ward at the scrutiny centre, one scrutineer representing each candidate is entitled to be present at each counting table.

27 Application for replacement postal voting papers

- (1) A person may apply, in the approved form, to the returning officer for an election for replacement postal voting papers if the person claims that:
 - (a) the person has applied for, or is entitled to receive, postal voting papers under regulation 26; and
 - (b) the papers have been lost, damaged or destroyed.

- (2) When the application has been received by the returning officer:
 - (a) an authorised officer must make a notation, on the postal vote certificate, that the postal voting papers (the **replacement postal voting papers**) are issued in replacement of other postal voting papers; and
 - (b) the authorised officer must issue, or issue and send, the replacement postal voting papers to the applicant; and
 - (c) these Regulations apply in relation to the replacement postal voting papers as if they were the postal voting papers being replaced.

28 Issue of postal voting papers

- (1) An authorised officer must issue and send postal voting papers to each person who applies or is taken to have applied for postal voting papers under regulation 26 or 27(1).

- (2) An authorised officer may issue postal voting papers directly to the person if the authorised officer has the postal voting papers available.

- (3) The **postal vote certificate** printed on the envelope that is issued or issued and sent to an applicant under subregulation (1) or (2) must contain the following:
 - (a) if the person applied for replacement postal voting papers under regulation 27(1):
 - (i) the person's name; and
 - (ii) a space for the signature of the person; and
 - (iii) a space for inserting the date when the envelope bearing the certificate is received by the authorised officer; and
 - (iv) a space for inserting the person's address; and

33 Definition

In this Division:

determination day means the day on which the returning officer determines the order of the candidates' names on the ballot paper for an election under regulation 10(1).

34 Public notice of election

The public notice under regulation 6(2) must also include the following information:

- (a) the date of the resolution mentioned in section 137(2) of the Act;
- (b) the approximate date on which the postal voting papers are likely to be issued and sent to persons on the electoral roll;
- (c) an explanation of the procedures for postal voting;
- (d) any other information that the returning officer considers appropriate.

35 Lodgement of candidate statement

- (1) A candidate may lodge a candidate statement.
- (2) The candidate statement may only include the following:
 - (a) a statement of no more than 150 words;
 - (b) a photograph of the candidate that complies with regulation 7(4)(b).
- (3) The candidate statement must not include:
 - (a) a reference to another candidate in the election, unless that other candidate has consented in writing to the reference; or
 - (b) a claim of endorsement or support from a party, an organisation or a person, unless the party, organisation or person has consented in writing to the claim being included.
- (4) The following documents must be lodged before 12 noon on the second day after the determination day:
 - (a) the candidate's candidate statement;
 - (b) a signed declaration declaring the matters mentioned in subregulation (5);

- (c) if the documents are lodged by a person authorised in writing to do so by the candidate – the authorisation.
- (5) The declaration to be lodged must state that the candidate declares the following:
- (a) that the candidate statement is true and correct;
 - (b) that the candidate statement does not contain a defamatory statement;
 - (c) that the candidate statement does not contain material that may mislead or deceive a person in the casting of a vote;
 - (d) that the candidate understands that the candidate is liable to be prosecuted if the candidate statement contains:
 - (i) a defamatory statement; or
 - (ii) material that may mislead or deceive a person in the casting of a vote.
- (6) The lodgement of the documents under subregulation (4) must be done:
- (a) by the candidate personally or by a person authorised in writing to do so by the candidate; and
 - (b) either:
 - (i) by hand delivery of the documents to an authorised officer at an office of the returning officer or another place approved by the returning officer; or
 - (ii) by the electronic means approved by the returning officer.
- (7) The returning officer must reject a candidate statement if the returning officer is of the opinion that at least one of the following applies:
- (a) the candidate statement does not meet the requirements of subregulation (2) or (3);
 - (b) the candidate statement contains offensive or obscene material.
- (8) The returning officer may reject a candidate statement if the returning officer is of the opinion that the candidate statement does not comply with any other requirement of these Regulations.

- (b) subject to paragraph (c), these Regulations apply (with the necessary changes) to the amended indication of preferences as if it were an indication of preferences lodged under this regulation; and
- (c) if the amended indication of preferences is also rejected under subregulation (5) – the candidate is not entitled to lodge a further amended indication of preferences.

37 Application for postal voting papers

- (1) A person may apply to the returning officer for postal voting papers to be issued to the person if:
 - (a) the person claims to be entitled to vote in the election; and
 - (b) the person's name does not appear on the electoral roll; and
 - (c) the person makes the application:
 - (i) in the approved form; and
 - (ii) after the electoral roll closes under regulation 11(1); and
 - (iii) before election day.
- (2) A person whose name appears on the electoral roll is taken to have applied for postal voting papers.

38 Application for replacement postal voting papers

- (1) A person who claims to be entitled to vote in an election may apply to the returning officer, in the approved form, for replacement postal voting papers, if the person claims that the person applied, or is taken to have applied, for postal voting papers and:
 - (a) the person has not received postal voting papers, and the person's address stated in the application:
 - (i) is not the address that has previously been associated with the person, either on the electoral roll or in the application under regulation 37(1); and
 - (ii) is an address within the area of the election; or
 - (b) the person is not a person mentioned in paragraph (a) but has nevertheless not received postal voting papers; or
 - (c) the postal voting papers have been lost, damaged or destroyed.

40 Records of issue of postal voting papers

The authorised officer must:

- (a) carry out the following procedures in relation to the issue of postal voting papers:
 - (i) initial the ballot paper issued by the officer;
 - (ii) if postal voting papers were issued, or issued and sent, to a person mentioned in regulation 37(2) or 38:
 - (A) number each postal vote certificate with the number (if any) for the person on the electoral roll; and
 - (B) record the issue of the postal voting papers, or replacement postal voting papers, to the person on the electoral roll; or
- (b) follow other procedures approved as an alternative by the Electoral Commissioner under regulation 86.

41 Applications to be available for public inspection

The returning officer must keep the applications for postal voting papers and make them available for public inspection for 14 days from and including the 4th day after the declaration of the results of the election.

42 Casting postal vote

- (1) A person to whom postal voting papers have been issued casts a postal vote in accordance with the following provisions.
- (2) The person must sign the person's name and insert the date and time on the postal vote certificate.
- (3) The person must:
 - (a) mark the person's vote on the ballot paper; and
 - (b) fold the ballot paper and place it in the envelope bearing the postal vote certificate and seal the envelope.

Note for subregulation (3)

If a person needs assistance to cast a postal vote, see regulation 50.

50 Assistance to certain persons

- (1) A person who is unable to vote may be assisted in voting if the person would otherwise be unable to vote.
- (2) An assisting person must be a nominee of the person or, if there is no nominee, an authorised officer.
- (3) An assisting person may enter a voting compartment to assist a person to vote, but an authorised officer must not do so except in the presence of:
 - (a) a scrutineer; or
 - (b) if no scrutineer is present – another authorised officer.
- (4) An assisting person may assist a person in any of the following ways:
 - (a) by acting as an interpreter;
 - (b) for a declaration vote – by completing, or assisting the person to complete, the declaration;
 - (c) for a postal vote – by placing the ballot paper in the envelope bearing the postal vote certificate, sealing the envelope and sending or delivering the envelope to the returning officer;
 - (d) by explaining the ballot paper and the requirements of these Regulations relating to its marking;
 - (e) by marking, or assisting the person to mark, the ballot paper at the person's direction;
 - (f) by folding the ballot paper and placing it in a ballot box or declaration envelope, or giving it to an authorised officer, as required by these Regulations.

51 Assistance to persons unable to enter voting centre

- (1) This regulation applies if the authorised officer in charge of a voting centre is satisfied a person cannot enter the voting centre because of a physical or other disability, illness, advanced pregnancy or another condition.
- (2) The person may:
 - (a) vote outside the voting centre, but close to the voting centre; and
 - (b) be assisted in voting.

- (3) Before allowing the person to vote outside the voting centre, the authorised officer must:
- (a) tell any scrutineers at the voting centre that the person is to vote outside the voting centre; and
 - (b) allow, from the scrutineers present, one scrutineer representing each candidate to be present when the person votes.
- (4) The person must:
- (a) mark the person's vote on the ballot paper in the presence of the authorised officer; and
 - (b) fold the ballot paper to conceal the names of the candidates; and
 - (c) give the ballot paper to the authorised officer to be dealt with in accordance with subregulation (6) or (7) as appropriate.
- (5) The person must be allowed to mark the person's vote on the ballot paper in private.
- (6) If the person is casting an ordinary vote:
- (a) if there is a designated ballot box at the voting centre for the local government area or ward for which the person has cast a vote – the authorised officer must ensure the folded ballot paper is placed in the ballot box in the presence of any scrutineers who were present when the person voted; or
 - (b) otherwise – the authorised officer must, in the presence of the person, without unfolding the ballot paper:
 - (i) place it in an envelope bearing the name of the person's enrolled local government area or ward and the name of the voting centre; and
 - (ii) seal the envelope and place it in a ballot box at the voting centre.
- (7) If the person is casting a declaration vote, the authorised officer must:
- (a) in the presence of the person, without unfolding the ballot paper, place the ballot paper in the declaration envelope and seal the envelope; and
 - (b) place the envelope in a ballot box at the voting centre.

- (8) This regulation is subject to regulation 50.

52 Spoilt or discarded ballot paper

- (1) Subregulation (2) applies if an authorised officer at a voting centre:
- is satisfied a ballot paper given to the officer by a person has been spoilt by mistake or accident; or
 - finds a ballot paper discarded at the voting centre.
- (2) The authorised officer must:
- cancel the ballot paper by writing "spoilt" or "discarded" on it; and
 - place the ballot paper in an envelope, seal the envelope and endorse the envelope with a statement of its contents; and
 - for a spoilt ballot paper – issue to the person an unused ballot paper.
- (3) As soon as practicable after the close of voting, the authorised officer must place all envelopes mentioned in subregulation (2)(b) with unused ballot papers.

53 Dealing with ballot boxes and electoral papers

- (1) At the close of voting, the authorised officer in charge of a voting centre must, in the presence of any scrutineers:
- close and seal the ballot boxes containing ballot papers for ordinary voting or declaration voting; and
 - parcel and seal all unused ballot papers; and
 - parcel and seal all other electoral papers used at the voting centre (including spoilt and discarded ballot papers).
- (2) The authorised officer must send the ballot boxes and papers mentioned in subregulation (1) to the returning officer for the election for scrutiny.
- (3) Subregulations (1)(a) and (2) do not apply to ballot boxes if the voting centre is a scrutiny centre and scrutiny of voting is to proceed immediately after the close of voting at the voting centre.

54 Adjournment of voting

- (1) An authorised officer in charge of a voting centre may adjourn voting at the place on election day if, because of riot, violence, fire, storm, flood or another similar event, it is not practicable to proceed with voting.
- (2) If the authorised officer is not the returning officer for the election, the authorised officer must immediately notify the returning officer of an adjournment under subregulation (1).
- (3) The returning officer must decide a day as the day when voting is to resume if the returning officer believes it is not reasonably practicable for a person affected by the adjournment to cast a vote at another voting centre.
- (4) If it is impracticable to resume the voting at the same voting centre, the returning officer must decide the voting centre where voting may be resumed.
- (5) The day decided under subregulation (3) must be as soon as practicable and no later than 21 days after the adjournment.
- (6) The returning officer must, as soon as practicable, give such notice as is reasonable in the circumstances of the adjournment and any decision under subregulation (3) or (4).

55 Employee wishing to vote

- (1) A person commits an offence if the person:
 - (a) is an employer of another person (**employee**); and
 - (b) before election day the person receives an application from the employee for leave of up to 2 hours for the purpose of voting; and
 - (c) the person:
 - (i) declines or refuses to grant leave; or
 - (ii) imposes a penalty, disproportionate reduction of pay or other impediment or disadvantage on the employee.

Maximum penalty: for an individual – 5 penalty units; or

 for a body corporate – 25 penalty units.

- (2) A person does not commit an offence against subregulation (1) if the employee's absence is likely to:
 - (a) cause danger to the employer or other employees; or
 - (b) cause substantial loss to the employer.

Part 4 Scrutiny

Division 1 Preliminary

56 How scrutiny carried out

- (1) The result of voting at an election must be determined by scrutiny in accordance with this Part.
- (2) Proceedings at the scrutiny must be open to the inspection of scrutineers and other persons approved by the returning officer.
- (3) The returning officer may from time to time adjourn the scrutiny.

Division 2 Formality of ballot papers and related matters

57 Informal ballot paper

- (1) A ballot paper is informal:
 - (a) unless it is:
 - (i) printed by a printer authorised by the returning officer to print ballot papers for the election; or
 - (ii) created for the election by an authorised officer and initialled by an authorised officer; or
 - (b) unless it is marked with a vote clearly indicating the order of the voter's preference for all candidates; or
 - (c) if an authorised officer is satisfied the voter can be identified because of a mark or other writing on it.
- (2) For subregulation (1)(b), a voter is taken to have indicated the voter's order of preferences for all the candidates on a ballot paper in the circumstances mentioned in subregulation (3), (4) or (5).

- (3) If there are only 2 candidates and the voter placed a mark in one candidate square and either placed a "2" in the remaining candidate square or left it blank:
 - (a) the candidate whose candidate square is marked is the voter's first preference; and
 - (b) the other candidate is the voter's last preference.
- (4) If there are 3 or more candidates and the voter placed a mark in one candidate square and placed consecutively increasing whole numbers (starting with a "2") in the remaining candidate squares until a number is placed in each of those candidate squares:
 - (a) the candidate whose candidate square is marked is the voter's first preference; and
 - (b) the number placed in each other candidate square indicates the voter's order of preference for the remaining candidates.
- (5) If there are 3 or more candidates and the voter placed a mark in one candidate square, left one candidate square blank and placed consecutively increasing whole numbers (starting with a "2") in the remaining candidate squares until a number is placed in each of those candidate squares:
 - (a) the candidate whose candidate square is marked is the voter's first preference; and
 - (b) the candidate whose candidate square is left blank is the voter's last preference; and
 - (c) the number placed in each other candidate square indicates the voter's order of preferences between the first and last preference.
- (6) A ballot paper is not informal merely because of some other error or misdescription unless an authorised officer is satisfied that the error or misdescription is likely to have misled the voter, thus causing the vote to miscarry.

Note for subregulation (6)

If a candidate's name appears on a ballot paper in an incomplete form, or is misspelled, the ballot paper is not informal unless an authorised officer was satisfied that the deficiency or error is likely to have caused doubt or confusion about the identity of the candidate.

- (7) Subject to this regulation, a ballot paper must be given effect according to the voter's intention so far as the voter's intention is clear.

- (b) place the unopened envelopes in a parcel.
- (6) The authorised officer must seal the parcels mentioned in subregulations (4)(c) and (5)(b) and endorse on each parcel a statement of its contents.
- (7) A candidate's scrutineer may sign a sealed parcel.

Division 5 Postal votes

64 Receipt of postal voting papers

On receipt of postal voting papers, an authorised officer must:

- (a) note on the voter's postal vote certificate the date and time of receipt; and
- (b) place the postal voting papers in a secure receptacle.

65 Scrutiny of postal voting papers

- (1) The following provisions apply to the scrutiny of postal voting papers.
- (2) An authorised officer must reject postal voting papers if the authorised officer is satisfied that:
 - (a) the postal voting papers were signed after 6 pm on election day; or
 - (b) the postal voting papers were received after 12 noon on the 13th day after election day.
- (3) If postal voting papers are not rejected under subregulation (2), the authorised officer must, unless the election is a mandatory postal vote election, compare the signature of the voter on the voter's postal vote certificate with the signature of the voter on the voter's application for postal voting papers or for registration under the *Electoral Act 2004* as a postal voter.
- (4) Subject to subregulation (5), the authorised officer must admit a postal ballot paper for scrutiny if satisfied that:
 - (a) the voter has signed the postal vote certificate; and
 - (b) one of the following applies:
 - (i) the election is not a mandatory postal vote election and the signature is that of the elector who signed the application;

- (2) The infringement notice must include a statement to the effect of the following:
 - (a) the person may expiate the infringement notice offence and avoid any further action in relation to the offence by paying the prescribed amount within 28 days after the notice is given;
 - (b) the person may elect to have the matter dealt with by a court instead of paying the prescribed amount by completing a statement of election and returning it to the person stated in the notice;
 - (c) if the person does nothing in response to the notice, a summons may be issued requiring the alleged offender to appear before the Local Court to be dealt with for the offence.
- (3) The infringement notice must include an appropriate form for making the statement of election mentioned in subregulation (2)(b).

81 Expiation of offence

If the prescribed amount for the infringement offence is paid in accordance with the infringement notice, the alleged offence is expiated and no further proceedings can be taken in relation to the offence.

82 Electronic payment and payment by cheque

- (1) If the person uses electronic means to pay the prescribed amount, payment is not effected until the amount is credited to the payee's bank account.
- (2) If the person tenders a cheque in payment of the prescribed amount, payment is not effected unless the cheque is cleared on first presentation.

83 Withdrawal of infringement notice

- (1) An authorised officer may withdraw the infringement notice by written notice given to the person.
- (2) The notice must be given:
 - (a) within 28 days after the infringement notice is given to the person; and
 - (b) before payment of the prescribed amount.

84 How service effected

Service of an infringement notice or a notice of withdrawal of an infringement notice must be effected by:

- (a) delivering it to the person personally; or
- (b) posting it to the person at the person's last known address; or
- (c) leaving it for the person at the person's last known place of residence or business with someone who appears to be at least 16 years old and resident or employed there.

85 Application of Part

- (1) This Part does not prejudice or affect the start or continuation of proceedings for an infringement notice offence for which an infringement notice has been given unless the offence is expiated.
- (2) This Part does not:
 - (a) require an infringement notice to be given; or
 - (b) affect the liability of a person to be prosecuted in a court for an offence for which an infringement notice has not been given; or
 - (c) prevent more than one infringement notice for the same offence being given to a person.
- (3) If more than one infringement notice for the same offence has been given to a person, the person may expiate the offence by paying the prescribed amount in accordance with any of the notices.

Part 7 Miscellaneous**86 Electoral Commissioner's power to approve electronic or other automated systems**

- (1) The Electoral Commissioner may, in writing, approve the use of a specified electronic or other automated system (***approved system***) for specified purposes relating to any of the following:
 - (a) issuing and returning of ballot papers;
 - (b) counting and processing of votes;
 - (c) voting by a specified group of persons;

(2) It is a defence to a prosecution for an offence against subregulation (1) if the defendant has a reasonable excuse.

(3) In this regulation:

relevant person means:

(a) a person authorised under regulation 5(1)(b) to be an authorised officer by the returning officer, other than the Electoral Commissioner, for an election; or

(b) an employee of the returning officer, other than the Electoral Commissioner, for an election.

91 Storage and destruction of electoral papers

(1) A returning officer, other than the Electoral Commissioner, must:

(a) securely store electoral papers in the returning officer's possession; and

(b) give the electoral papers to the Electoral Commissioner on the earlier of the following days:

(i) the day on which the returning officer ceases to be a returning officer;

(ii) the day on which the returning officer is first satisfied that the electoral papers are no longer required for exercising a power or performing a function under these Regulations.

(2) Until the Electoral Commissioner is satisfied that electoral papers in the Electoral Commissioner's possession are no longer required for exercising a power or performing a function under these Regulations, the Electoral Commissioner must securely store:

(a) the electoral papers in the Electoral Commissioner's possession as returning officer for an election; and

(b) the electoral papers that came into the Electoral Commissioner's possession under subregulation (1)(b).

(3) The Electoral Commissioner may destroy the electoral papers when they are no longer required to be stored under subregulation (2).

(4) A returning officer for an election commits an offence if:

(a) the returning officer engages in conduct; and

(b) the conduct results in electoral papers that were used for the election being damaged or destroyed; and

(c) the returning officer is reckless in relation to that result.

Maximum penalty: 100 penalty units.

(5) A returning officer for an election commits an offence if:

(a) the returning officer engages in conduct; and

(b) the conduct results in electoral papers that were used for the election not being given to the Electoral Commissioner as required by subregulation (1)(b); and

(c) the returning officer is reckless in relation to that result.

Maximum penalty: 20 penalty units.

(6) An offence against subregulation (4) or (5) does not apply to the Electoral Commissioner.

(7) It is a defence to a prosecution for an offence against subregulation (4) or (5) if the defendant has a reasonable excuse.

(8) In this regulation:

electoral papers means papers in the possession of the Electoral Commissioner or another returning officer that were used for an election, including postal voting papers that were not delivered and have been returned to the returning officer.

4 Roles of authorised officer, other officers and scrutineers

The counting of votes for an electorate must be conducted by an authorised officer (*the authorised officer*) with the assistance of any other authorised officers, and in the presence of any scrutineers, under this Schedule.

5 Determination of quota and election of candidate on first preference votes

- (1) The authorised officer must:
 - (a) ascertain the number of first preference votes given to each candidate in the electorate; and
 - (b) ascertain the total number of all first preference votes given in the electorate (the amount **A**); and
 - (c) add 1 to the number of candidates required to be elected for the electorate (the amount **B**); and
 - (d) determine the *quota* for each electorate, which is worked out as follows:
 - (i) divide A by B (disregarding any fraction);
 - (ii) add 1 to the amount worked out under subparagraph (i).
- (2) Any candidate who has received a number of first preference votes equal to or greater than the quota is elected.
- (3) For this Schedule, if the total number of all first preference votes given in the electorate is 150 or less, the number of votes of any kind contained in the ballot papers are taken to be the amount worked out by multiplying the number of votes of that kind contained in the ballot papers by 100.

6 Transfer of surplus from elected candidates

- (1) Unless all the vacancies for the electorate have been filled, the number (if any) of votes in excess of the quota (the *surplus*) of each elected candidate must be transferred to the continuing candidates as follows:
 - (a) the surplus must be divided by the number of first preference votes received by the elected candidate (the resulting fraction is the *transfer value*);

- (b) the total number of ballot papers of the elected candidate that both express the first preference vote for that candidate and the next available preference for a particular continuing candidate must be multiplied by the transfer value;
- (c) the number so obtained (disregarding any fraction) must be added to the number of first preference votes of the continuing candidate and all those ballot papers must be transferred to the continuing candidate.

Note for subclause (1)

Under clause 7, the transfer value for an elected candidate's surplus is calculated by dividing the surplus by the total number of ballot papers received by the elected candidate, including those expressing votes that are taken to be first preference votes for the elected candidate under clause 7(a).

- (2) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any transfer under subclause (1) is elected.
- (3) Unless all the vacancies for the electorate have been filled:
 - (a) the surplus (if any) of any candidate elected under subclause (2), or elected subsequently under this subclause, must be transferred to the continuing candidates in accordance with subclause (1); and
 - (b) any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer is elected.

Note for subclause (3)

See clause 7.

- (4) If 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 of a particular elected candidate because of subclause (1) or (3), no votes of any other candidate are to be transferred to the continuing candidate.

7 How to deal with ballot papers on transfer of surplus

For the purpose of applying clause 6(1) to a transfer of the surplus of an elected candidate because of clause 6(3)(a) or 9(2), each ballot paper of the elected candidate that was obtained on a transfer under this Schedule must be dealt with as if:

- (a) any vote it expressed for the elected candidate were a first preference vote; and

- (b) any other candidate previously elected or excluded had not been a candidate; and
- (c) the subsequent preferences of the voter had been altered accordingly.

8 Transfer of ballot papers on exclusion of candidate

- (1) This clause applies if no candidate has, or fewer than the number of candidates required to be elected have, received a number of votes equal to or greater than the quota after:
 - (a) the counting of first preference votes; or
 - (b) the election of a candidate and the transfer of the surplus (if any) of the elected candidate that are capable of being transferred.
- (2) If this clause applies:
 - (a) the candidate who has the fewest votes must be excluded; and
 - (b) the excluded candidate's votes and ballot papers must be transferred to the continuing candidates as provided in subclauses (3) to (6).
- (3) The total number of first preference votes for the excluded candidate contained in ballot papers that express the next available preference for a particular continuing candidate must be transferred (each first preference vote at a transfer value of one) to the continuing candidate.
- (4) The transferred votes must be added to the number of votes of the continuing candidate and all the ballot papers containing those votes must be transferred to the continuing candidate.
- (5) The total number (if any) of other votes obtained by the excluded candidate on transfers under this Schedule must be transferred from the excluded candidate in the order of the transfers on which they were obtained (the votes obtained on the earliest transfer being transferred first) as follows:
 - (a) the total number of ballot papers of the excluded candidate received from a particular candidate that express the next available preference for a particular continuing candidate must be multiplied by the transfer value at which the votes contained in those papers were transferred to the excluded candidate;

- (b) the number so obtained (disregarding any fraction) must be added to the number of votes of the continuing candidate;
 - (c) all those ballot papers must be transferred to the continuing candidate.
- (6) However, the total number of ballot papers of the excluded candidate received from all candidates may be amalgamated if:
- (a) those ballot papers have the same transfer value; and
 - (b) the election was for a single vacancy.

9 Election of candidate on transfer of excluded candidate's votes and transfer of surplus of elected candidate

- (1) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer under clause 8 of votes of an excluded candidate is elected.
- (2) Unless all the vacancies for the electorate have been filled, the surplus (if any) of the candidate so elected must be transferred in accordance with clause 6.

Note for subclause (2)

See clause 7.

- (3) Despite subclause (2), if the candidate so elected is elected before all the votes of the excluded candidate have been transferred, the surplus (if any) of the candidate so elected must not be transferred until the remaining votes of the excluded candidate have been transferred as provided in clause 8(3) to (5) to continuing candidates.

10 Further exclusion of candidate

Subject to clause 12, if after the exclusion of a candidate and the transfer of the votes (if any) of the excluded candidate that are capable of being transferred, no continuing candidate has received a number of votes greater than the quota:

- (a) the continuing candidate who has the fewest votes must be excluded; and
- (b) that continuing candidate's votes and ballot papers must be transferred in accordance with clause 8(3) to (5).

11 No further transfer of votes

If a candidate is elected as a result of either of the following, no other votes of the excluded candidate may be transferred to the candidate so elected:

- (a) a transfer of the first preference votes of an excluded candidate;
- (b) a transfer of all the votes of an excluded candidate that were transferred to the excluded candidate from a particular candidate.

12 Election of candidate out of 2 continuing candidates

- (1) For the last vacancy for which 2 continuing candidates remain, the continuing candidate who has the larger number of votes is elected even if that number is below the quota.
- (2) If those candidates have the same number of votes, the candidate with the larger number of votes at the last preceding count or transfer is taken to be elected.
- (3) If the number of votes at the last preceding count or transfer was equal:
 - (a) the candidate with the larger number of votes at the last preceding count or transfer at which those candidates had a different number of votes is taken to be elected; or
 - (b) if there is no preceding count or transfer at which those candidates had a different number of votes – the authorised officer must, in the presence of any scrutineers who may be present, draw lots to determine which of the candidates is to be elected.

13 Election of candidates if number of vacancies equal to number of continuing candidates

Despite anything to the contrary in this Schedule, if on the completion of a transfer of votes under this Schedule the number of continuing candidates is equal to the number of remaining unfilled vacancies, those continuing candidates are elected.

14 Order of election

- (1) For this Schedule, the order of election of candidates must be:
 - (a) in accordance with the order of the count or transfer as a result of which they were elected; and

- (b) on the basis that the candidates (if any) elected on the count of first preference votes are to be the earliest elected.
- (2) If 2 or more candidates are elected as a result of the same count or transfer, the order in which they will be taken to have been elected must be:
 - (a) in accordance with the relative numbers of their votes; and
 - (b) on the basis that the candidate with the largest number of votes is the earliest elected.
- (3) Despite subclause (2), if 2 or more of those candidates each has the same number of votes, the order in which they are taken to have been elected must be:
 - (a) 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; and
 - (b) on the basis that the candidate with the largest number of votes at that count or transfer is the earliest elected.
- (4) If there has been no count or transfer, the authorised officer must, in the presence of any scrutineers who may be present, draw lots to determine the order in which the candidates are taken to have been elected.

15 Order of transfer

- (1) Subject to subclauses (2) to (4), if after any count or transfer under this Schedule, 2 or more candidates each has a surplus, the order of any transfers of those surpluses must be:
 - (a) in accordance with the relative sizes of the surpluses; and
 - (b) on the basis that the surplus of the candidate having the largest surplus is to be transferred first.
- (2) Subject to subclause (4), if after any count or transfer under this Schedule, 2 or more candidates have equal surpluses, the order of any transfers of those surpluses must be:
 - (a) 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; and
 - (b) on the basis that the surplus of the candidate with the largest number of votes at that count or transfer is to be transferred first.

- (3) However, if there has been no such count or transfer, the authorised officer must, in the presence of any scrutineers who may be present, draw lots to determine the order in which the surpluses are to be dealt with.
- (4) If a candidate obtains a surplus after any count or transfer under this Schedule, the surplus must not be transferred before the transfer of any surplus obtained by any other candidate on an earlier count or transfer.

16 Order of exclusion

- (1) If the candidate who has the fewest votes is required to be excluded and there are 2 or more candidates each having 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.
- (2) Despite subclause (2), if there has been no count or transfer, the authorised officer must, in the presence of any scrutineers who may be present, draw lots to determine which candidate will be excluded.

17 Setting aside of ballot papers

- (1) If the total number of votes of an elected candidate is equal to the quota, the ballot papers expressing those votes must be set aside as finally dealt with.
- (2) In subclause (1):

ballot papers include:

- (a) ballot papers expressing first preference votes received by the candidate; and
- (b) ballot papers obtained by the candidate on transfers under this Schedule.

18 Death of candidate

If a candidate dies before the end of election day in relation to an election that does not fail:

- (a) a vote indicated on a ballot paper opposite the name of the candidate must be counted to the candidate next in the order of the voter's preference; and

- (b) the numbers indicating subsequent preferences are taken to have been altered accordingly.

Note for clause 18

See regulation 69.

Schedule 2 Infringement notice offences and prescribed amounts

regulation 78

Infringement notice offence	Prescribed amount
An offence against section 142(3) of the Act	\$25.00
An offence against section 164(1) or (3) of the Act	\$100.00
An offence against regulation 55, 74(1) or (2), 75, 76(1) or (2) or 77(1), (2) or (3) of these Regulations	\$100.00

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

Local Government (Electoral) Regulations 2021 (SL No. 11, 2021)

Notified	30 June 2021
Commenced	1 July 2021 (r 2, s 2 <i>Local Government Act 2019</i> (Act No. 39, 2019) and <i>Gaz S27</i> , 30 June 2021)