

NORTHERN TERRITORY OF AUSTRALIA

BINJARI COMMUNITY GOVERNMENT SCHEME

As in force at 17 March 2004

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Community Government Scheme as in force at 17 March 2004. Any amendments that commence after that date are not included.

BINJARI COMMUNITY GOVERNMENT SCHEME

Community Government Scheme under the *Local Government Act*

Part 1 Preliminary

1 Name of scheme

The name of this scheme is the *Binjari Community Government Scheme*.

2 Definitions

In this scheme, unless the contrary intention appears:

candidate means a person who has been nominated and accepted, under clause 18, as a candidate for election to the council and who has not withdrawn his or her consent to the nomination before the close of nominations.

clerk, for the purposes of Part 4, except clauses 37 and 38, includes the Electoral Commission and a person appointed under clause 37 to conduct an election.

council means the Binjari Community Government Council.

election day means a day specified in or fixed under clause 15(2) for the holding of an election.

election notice means a notice under clause 16(1).

electoral roll means a roll maintained in accordance with clause 14.

member means a member of the council and includes its President and Vice-President and a person authorised under clause 8.

polling official means an official appointed under clause 22.

polling place means a place set aside under clause 20 for the purpose of an election.

voter means a person intending and entitled to vote at an election.

3 Community government area

The community government area to which this scheme applies is all that parcel of land near the Town of Katherine in the Northern Territory of Australia indicated in the Schedule containing an area of 281.8 hectares more or less being Northern Territory Portion 3362 and being more particularly delineated on survey plan S87/213 lodged with the Surveyor General, Darwin.

Part 2 Council

4 Name of Council

The name of the community government council which administers the community government area is the Binjari Community Government Council.

5 Members of council

- (1) The council consists of 7 members, who shall be declared or elected in the manner provided by this scheme.
- (2) Subject to this scheme, the term of office of a member expires upon the declaration of the results of the next election (other than a by-election).
- (3) In addition to any other way that the office of a member may become vacant under the Act, the office of a member becomes vacant if the member ceases to be enrolled as an elector or if he or she ceases to be ordinarily resident in the community government area.

6 President and Vice-President

- (1) The council shall have a President and a Vice-President, who shall be chosen in that order by the members from among their own number at the council's first meeting after its election and, after that, as occasion may require.
- (2) Subject to subclause (3), the President and Vice-President each hold office during the pleasure of the council.

- (3) The President or Vice-President may resign as such at any time by giving notice in writing to the clerk, and the office of either becomes vacant if he or she ceases to be a member of the council.
- (4) The Vice-President shall act as President during any vacancy in that office and shall also perform the functions, exercise the powers and discharge the duties of the President when the President is absent from the community government area or a meeting of the council or is unable to perform the functions of office.

7 Meetings of council

- (1) The council shall meet to transact its business not less than once each month.
- (2) The date and time of a council meeting shall be as decided by a previous meeting or, in default of that, by the clerk or, where necessary, the Minister or a person authorised by the Minister for that purpose.
- (3) The President may call a special meeting of the council by giving at least 3 days notice to the members.
- (4) By giving the President notice in writing requesting a special meeting of the council and stating the reasons for the request, 3 or more members or 6 or more electors may require the President to call a special meeting of the council, and the President shall call that meeting for a date not later than 7 days after the day on which the notice is received, and shall notify the members accordingly.
- (5) Where, under subclause (3) or (4), a special meeting is to be held, the clerk shall cause written notice of the special meeting to be prominently displayed in a place which he or she considers likely to be frequented by residents.
- (6) A notice under subclause (5) shall specify the date, time and place of the special meeting and the reason for it being called.
- (7) Where a member is absent from 3 consecutive meetings of the council:
 - (a) without the prior consent of the council; or
 - (b) for reasons which the council does not accept as satisfactory,the clerk shall declare that person to be no longer a member, and the office to be vacant.

8 Proxies

- (1) A member proposing to be absent from a meeting of the council may authorise in writing an elector to attend the meeting in his or her place and, subject to and in accordance with any restrictions or instructions specified in the authorisation, to exercise the member's powers at the meeting (including the power to vote) on the member's behalf.
- (2) An authorisation under subclause (1) is valid for 1 meeting only, and:
 - (a) a purported authorisation relating to 2 or more consecutive meetings, in respect of the second and subsequent meetings; or
 - (b) a purported authorisation for a meeting next after a meeting already attended by an authorised person,has no effect.

9 Meetings to be open

Meetings of the council shall be open to persons who are not members or officers or employees of the council unless the council determines that a meeting, or part of a meeting, is to be closed.

10 Procedure at meetings of council

- (1) Meetings of the council shall be presided over by the President or, in the President's absence, by the Vice-President or, in the absence of both the President and Vice-President, by a member chosen by the other members.
- (2) The council shall determine its own procedure at meetings, subject to any standing orders it may make from time to time.
- (3) The council shall keep a record of its proceedings.
- (4) The quorum for a meeting of the council shall be a majority of the members then in office.
- (5) Questions before a meeting of the council shall be decided by a majority of the votes of the members then in office and, in the event of an equality of votes, the matter shall be taken to have been defeated.

Part 3 Functions and powers of council

11 Functions

The council may perform the following functions:

- (a) the establishment and maintenance of parks, gardens and recreational areas and the carrying out of landscaping and other associated works;
- (b) the establishment and maintenance of sports facilities, libraries, cinemas, community halls, public toilets, ablution blocks, laundry facilities, swimming pools and museums;
- (c) the provision of services for the collection and disposal of garbage, the provision and maintenance of particular places where garbage may be dumped, and the control of litter generally and the provision and maintenance of sanitation, sewerage, drainage and water supply facilities and the removal of health hazards;
- (d) the provision of adult education and vocational and other training;
- (e) the provision and maintenance of housing for residents and their families on such terms and conditions as the council thinks fit;
- (f) the management of community employment programs;
- (g) the promotion and provision of community welfare, health and care facilities for all age groups;
- (h) the prevention and control of substance abuse;
- (i) the provision and maintenance of cemeteries;
- (j) the control, prohibition or impounding of animals;
- (k) the development and maintenance of roads within the community government area (including the provision of street lighting and traffic control devices) and, for reward, the development and maintenance of roads outside the community government area;
- (l) the provision and maintenance of airstrips and related facilities;

- (m) the establishment and operation of a post office, an ADI or any other agency;
- (n) the hiring out, for reward, of any vehicle, plant, appliance or equipment belonging to the council and the repair and maintenance, for reward, of any vehicle, plant, appliance or equipment not owned by the council, and the selling of goods or equipment purchased by the council for or in connection with any enterprise and found to be in excess of the council's immediate needs;
- (o) the contracting of works projects (including the provision of services and the maintenance of capital works and undertakings) within or outside the community government area;
- (p) the establishment and operation of commercial enterprises;
- (q) the establishment and maintenance of a firefighting service, including the acquisition of property and equipment and training of personnel for the service, and the protection of the community government area from fire;
- (r) the promotion and development of tourist attractions and facilities within the community government area and the production and selling of artefacts and souvenirs;
- (s) the management and control of sites of historic interest; and
- (t) the support and encouragement of artistic, cultural and sporting activities.

12 Powers

- (1) Subject to subclause (2), all land within the community government area is ratable, and the council may declare and levy rates in relation to it for the purpose of raising revenue for the performance of its functions.
- (2) Land is not ratable if it is land of a description which would be exempt from rating by a council of a municipality under section 58(2) of the *Local Government Act*.
- (3) Without limiting the powers of charging conferred on the council by section 122(3)(a) of the Act, charges are payable by reason of a person's residence in the community government area, or his or her carrying on a business in the area or having an interest in ratable land in the area, whether or not that person uses any service provided.

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- (4) The council may exempt land or persons, or any class of land or persons, from all or part of the rates or charges for which they would otherwise have been liable by virtue of this clause.
 - (5) The council may, where a group gives its consent, take control of and manage activities of that group which are consistent with the council's functions.

Part 4 Elections

13 Eligibility to vote

A person is eligible to vote at a council election if that person is enrolled or is eligible to be enrolled as an elector within the meaning of the *Electoral Act* and has ordinarily resided in the community government area for not less than 12 months immediately before the closure of the electoral roll under clause 14(4).

14 Electoral roll

- (1) The clerk shall maintain, by such means as is thought fit (including by electronic means or the use of an electoral roll under the *Electoral Act*), an electoral roll of the full names and addresses of persons who are eligible to vote at elections.
- (2) A resident may inspect the electoral roll at the office of the council when it is open.
- (3) A person who is otherwise eligible to vote at a council election but is not enrolled may apply for enrolment in such manner as the clerk approves.
- (4) The clerk shall close the electoral roll at 12 noon on the day occurring 21 days before election day.
- (5) Except as provided by clause 25(2) or to correct an oversight in the making up of the electoral roll, the clerk shall not add any name to the electoral roll in the period between its closure and the conclusion of the election.

15 Date of election

- (1) For the purposes of this clause, ***election*** does not include a by-election.
- (2) The first election shall be held on a day to be determined by the Minister, within 2 months after the date of gazettal of the scheme,

and subsequent elections shall be held on a day, to be fixed by the council, in the same month as the first election was held in each second year after the end of the year in which the first election was held.

- (3) Where an election is held as required by clause 38, subsequent elections shall be held every second calendar year in the same month as the first election under subclause (2).

16 Notice of election

- (1) The clerk shall give not less than 28 days notice before election day that an election is to be held.
- (2) An election notice shall be prominently displayed at such places in the community government area as the clerk considers likely to reasonably ensure that all residents who are eligible to vote have notice of the election.

17 Content of election notice

An election notice shall specify:

- (a) the date and time of closure of the electoral roll;
- (b) the persons who may nominate other persons, and who may be nominated, as candidates;
- (c) the date and time by which nominations of candidates must be lodged with the clerk;
- (d) the manner in which nominations are to be lodged; and
- (e) the date of the election and time and place of polling,

and shall also contain a statement that only persons whose names are on the electoral roll are entitled to vote at the election.

18 Nominations

- (1) A person is eligible for nomination as a member of the council if he or she is enrolled under clause 14.
- (2) A person who is enrolled under clause 14 may, by lodging a written nomination with the clerk, nominate for election to the council another person or persons eligible for nomination under subclause (1).

- (3) The clerk shall not accept a nomination unless satisfied that:
 - (a) it sufficiently identifies the proposed candidate; and
 - (b) the proposed candidate is eligible under subclause (1) to be nominated and has consented to the nomination.
- (4) The clerk may, at any time before the close of nominations, accept a recent photograph of a proposed candidate, being a photograph which, in the opinion of the clerk, is suitable for the purposes of display under subclause (7) and clause 21(3).
- (5) A candidate may withdraw consent to his or her nomination at any time before the close of nominations.
- (6) Nominations of candidates for election shall close at 12 noon on the day occurring 14 days before election day.
- (7) As soon as practicable after nominations have closed, the clerk shall display a list showing the names of each candidate and the photograph of the candidate, in the same place as the election notice.

19 Declaration or election of members

- (1) Where, at the close of nominations under clause 18(6), not more than 7 persons have been nominated as candidates (disregarding any nomination that has lapsed), the clerk shall, by a notice displayed in the same places as the election notice, declare those persons to be members of the council.
- (2) Where at the close of nominations there are more than 7 persons as candidates, an election to decide among them shall be held on election day.
- (3) If a candidate dies between the close of nominations and election day, and the effect of the death is to reduce the number of candidates to not more than 7 persons, subclause (1) shall apply instead, as if the candidate had withdrawn before the close of nominations.

20 Voting tokens and ballot-papers

- (1) Where under clause 19(2) an election is to be held, the clerk shall cause to be prepared or printed in sufficient numbers for the purposes of the election tokens for use by those voting in person and ballot-papers for use in postal voting.

- (2) Where ballot-papers are required for use in postal voting, the names of candidates shall be set out in the order determined by the clerk by lot.

21 Polling places and voting containers

- (1) The clerk shall set aside a polling place for the purpose of an election.
- (2) The polling place shall have within it a voting area in which a voter is able to cast his or her votes without being observed otherwise than by the clerk, a polling official or a person appointed under clause 28(6) to assist the voter.
- (3) The clerk shall provide in a voting area, for each candidate, a voting container clearly marked with the name of the candidate which shall have affixed to it a photograph of the candidate if accepted under clause 18(4).
- (4) Subject to clause 26, each voting container shall have a securely fitted or fastened lid (which shall remain securely fitted or fastened during the hours of polling) and have a slit in the upper side through which voting tokens may be put into the container.
- (5) The clerk shall also provide in a voting area a receptacle in which voters may place unused voting tokens.

22 Polling officials

- (1) Subject to subclause (2), the clerk may, by notice in writing, appoint polling officials to assist in conducting an election.
- (2) The clerk shall not appoint a member of the council or a candidate, or a spouse or de facto partner of a member or candidate, to be a polling official.
- (3) The clerk and polling officials shall conduct voting at the polling place.

23 Scrutineers

- (1) Each candidate may, by notice in writing, appoint persons to be scrutineers for the candidate for the purposes of the election.
- (2) One scrutineer for each candidate is entitled to remain in the polling place with the clerk or polling officials to observe the conduct of the voting and counting of votes.

- (3) A scrutineer shall not disclose to any person anything relating to the vote of any voter.

24 Hours of polling

The clerk shall ensure that each polling place is open and remains open for voting between the hours of 9 am and 4 pm on the day of an election.

25 Entitlement to vote

- (1) Subject to subclause (2), a person whose name appears on the electoral roll shall vote and a person whose name does not appear on the roll shall not be entitled to vote at an election.
- (2) Where the clerk is satisfied that a person whose name has not been entered on the roll is eligible under clause 13 to vote the clerk shall, upon the person signing a declaration that an application for enrolment was made before the closure of the roll under clause 14(4):
- (a) alter the roll by entering the person's name on it;
 - (b) initial the alteration; and
 - (c) then permit that person to vote.

26 Exhibition of voting containers

The clerk or polling official shall, immediately before the polling place is opened for voting, demonstrate to a person who is eligible to vote but is not a candidate that there are no voting tokens in each voting container and then securely fit or fasten its lid.

27 Presence in polling place

A voter, and any person assisting the voter under clause 28(6), other than the clerk, a polling official or scrutineer, shall remain in the polling place only for the time necessary to vote.

28 Voting procedure

- (1) A voter shall state his or her name to the clerk or polling official, who shall:
- (a) check that the name appears on an electoral roll; and
 - (b) if a line has not been drawn through that name, draw a line through it and hand the voter 7 voting tokens.

- (2) The voter shall take the voting tokens into the voting area and vote by placing one token in the container relating to each candidate of the voter's choice.
- (3) A voter shall vote only once for each chosen candidate.
- (4) Subject to subclause (6), a voter shall enter the voting area alone.
- (5) Subject to subclause (6), no person other than a voter who has been issued with a voting token shall vote with the token.
- (6) Where the clerk or official in charge of the polling place is satisfied that a voter is, for any reason, unable to vote without assistance, the voter may appoint a person to assist him or her, and the clerk or official shall permit that person to accompany the voter into the voting area and vote on his or her behalf.
- (7) Before leaving the voting area, a voter shall place any unused voting tokens in the receptacle provided for that purpose.

29 Postal voting

- (1) A person whose name appears on the electoral roll who:
 - (a) is ill, infirm or for religious reasons unable to attend a polling place;
 - (b) will be absent from the community government area during the hours when the polling place will be open; or
 - (c) will be unable to attend a polling place in person on election day,may apply in person or in writing to the clerk for a postal ballot-paper.
- (2) An application in writing for a postal ballot-paper shall give an address to which the ballot-paper may be posted or delivered by hand in a sealed envelope.
- (3) Where, before election day, the clerk receives an application for a postal ballot-paper and the name of the applicant is on the electoral roll, the clerk shall:
 - (a) hand or send to the applicant a ballot-paper, initialled by the clerk, together with a self-addressed envelope marked with the words "Ballot-paper"; and
 - (b) write the letters "PBP" against the name of the applicant on the electoral roll.

- (4) An applicant who receives a postal ballot-paper shall vote by placing on it an "X" in the box opposite the names of the candidates of his or her choice equal in number to the number of members to be elected.
- (5) After an applicant for a postal ballot-paper has voted, the ballot-paper is to be returned in the marked self-addressed envelope to the clerk.
- (6) Where the clerk, on or before 4 pm on election day, receives an envelope apparently containing a postal ballot-paper, the clerk shall retain the envelope unopened and in safe custody until the counting of votes.
- (7) Where the clerk, after 4 pm on election day, receives an envelope apparently containing a postal ballot-paper, the clerk shall mark the envelope "rejected" and the envelope shall not be opened and the votes on that ballot-paper shall not be counted.

30 Counting of votes

- (1) After 4 pm on election day and as soon as voting has finished, the clerk and polling officials shall, in the presence of a scrutineer or at least one other person who is eligible to vote but is not a candidate:
 - (a) open any postal ballot-papers retained by the clerk under clause 29(6) and, subject to subclause (2), count and record the number of postal votes received by each candidate; and
 - (b) open the voting containers and count and record the number of voting tokens received by each candidate.
- (2) In carrying into effect subclause 1(a), the clerk shall set aside as an informal vote any ballot-paper where the voter has voted for more than 7 candidates or has failed to make his or her intentions clear; but a paper shall not be set aside by reason only that the voter has marked it otherwise than in accordance with clause 29(4), or has voted for fewer than 7 candidates.
- (3) After counting, voting tokens shall be replaced in the containers from which they came.
- (4) The clerk shall, immediately after counting the votes, sign a certificate stating:
 - (a) the names of the polling officials who assisted in the count;
 - (b) the names of the scrutineers who attended the count;

- (c) the total number of voting tokens received as votes by each candidate;
- (d) the total number of postal votes received by each candidate; and
- (e) the number of postal ballot-papers issued by the clerk, the number of them included in the count and the total number of informal votes.

31 Declaration of result

- (1) The clerk shall, as soon as practicable after the votes have been counted, declare the result of the election by a notice displayed in the same places as an election notice is or was displayed.
- (2) A notice under subclause (1) shall contain:
 - (a) a list of the names of candidates stating the number of votes received by each candidate; and
 - (b) subject to subclause (3), a statement declaring the 7 candidates with the most votes elected as members of the council.
- (3) To the extent that compliance with subclause (2)(b) is impossible by reason of an equality of votes between any 2 or more candidates the clerk shall arrange for lots to be drawn to decide which of them shall be declared elected, and the clerk's notice under subclause (1) shall record that the person or persons declared by virtue of this subclause was or were selected by lot.

32 Transmission of details to Minister

Not more than 10 days after an election day the clerk shall forward to the Minister:

- (a) the certificate signed by the clerk under clause 30(4);
- (b) a copy of the notice given by the clerk under clause 31(1); and
- (c) details of any declarations made by the clerk under clause 19(1).

33 Re-count

- (1) The clerk may, if the clerk thinks it desirable or on the written request of a candidate, re-count the votes at any time before a candidate is declared to be elected.

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- (2) A request under subclause (1) shall contain a statement of the reasons for the request.

34 Retaining postal ballot-papers and voting tokens

- (1) After the counting of the votes has been completed, the clerk shall keep the postal ballot-papers (including the envelopes marked "rejected" under clause 29(7)) in a sealed package unopened for 6 months and shall then destroy that unopened package.
- (2) After the counting of the votes has been completed and the relevant candidates declared elected, the clerk shall keep the voting tokens in a secure place.

35 Adjournment of polling in emergency

- (1) If it appears to the clerk to be necessary or desirable to do so by reason of:
- (a) riot or open violence;
 - (b) fire, storm, tempest or flood or a similar occurrence; or
 - (c) any other event which, in the opinion of the clerk, may temporarily prevent or discourage significant numbers of voters from voting on a day set aside for an election,

the clerk may adjourn polling at an election from day to day to a maximum of 21 days.

- (2) The clerk shall take such steps as the clerk considers necessary and practicable to inform persons entitled to vote of an adjournment under subclause (1).
- (3) Where polling has been adjourned under subclause (1), clause 29(6) and (7) and clause 30(1) shall have effect as if the reference to election day were a reference to the day on which voting is finally concluded.

36 Vacancies in membership

- (1) Subject to clause 38, where the office of a member becomes vacant for any reason, a person who:
- (a) was the highest polling unsuccessful candidate in the most recent election (including a by-election); and
 - (b) is eligible and willing to be a member,
- is, subject to subclause (2)(b), a member of the council.

(2) Where:

- (a) no person fulfills the requirements of subclause (1); or
- (b) 2 or more people fulfill the requirements of subclause (1),

a by-election for the vacant office shall be held in accordance with this clause unless an election is required, under clause 15, to be held within the 6 month period after the date the office became vacant.

(3) Where a by-election is to be held, the provisions of this scheme, with any necessary changes, shall apply to the conduct of that election.

37 Conduct of elections where clerk a member

Where a new council is to be elected under this scheme and the clerk is also a member of the existing council, the Minister may appoint another person to perform the functions of the clerk in relation to that election.

38 Resignation of council

(1) If all the members of the council cease to be members, or a quorum is not present on 2 consecutive occasions at the place and within 1 hour after the time specified for a council meeting, the clerk shall be deemed to constitute the council for the purposes of:

- (a) determining the date of an election of a new council; and
- (b) exercising a power of the council under this scheme until the election of the new council.

(2) Subject to this scheme, when the clerk determines under subclause 1(a) the date of an election of a new council, the date determined shall be as soon as is practicable and, in any case, not later than 3 months after the event giving rise to the determination.

(3) Notwithstanding subclause (2), if the period of 3 months referred to in that subclause expires during the same month in which a general election of members would otherwise be held, the clerk shall determine the date of the election to be on a day of that month.

(4) The term of office of a council elected under this clause shall expire on the declaration of the result of the next election (not being a by-election) held on a day fixed under clause 15(2).

- (5) For the purposes of exercising a power of the council referred to in subclause (1)(b), the clerk shall appoint a person whose name appears on the electoral roll as an assistant to the clerk.

Schedule

Clause 3

ENDNOTES
1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION***Binjari Community Government Scheme***

Notified	9 June 1995
Commenced	9 June 1995

Statute Law Revision (Financial Provisions) Act 2002 (Act No. 38, 2002)

Assent date	13 September 2002
Commenced	30 October 2002 (<i>Gaz G43</i> , 30 October 2002, p 3)

Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 Act 2003 (Act No. 1, 2004)

Assent date	7 January 2004
Commenced	17 March 2004 (<i>Gaz G11</i> , 17 March 2004, p 8)

Electoral (Consequential Amendments) Act 2004 (Act No. 12, 2004)

Assent date	1 March 2004
Commenced	15 March 2004 (s 2, s 2 Electoral Act 2004 (Act No. 11, 2004) and <i>Gaz S6</i> , 15 March 2004)

3 LIST OF AMENDMENTS

cl 2	amd Act No. 12, 2004, s 7
cl 11	amd Act No. 38, 2002, s 7
cl 22	amd Act No. 1, 2004, s 63