

# NORTHERN TERRITORY OF AUSTRALIA

## ELLIOTT DISTRICT COMMUNITY GOVERNMENT SCHEME

As in force at 2 June 2004

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## **Schedule 1**

## **Schedule 2**

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# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Community Government Scheme as in force at 2 June 2004. Any amendments that commence after that date are not included.

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## ELLIOTT DISTRICT 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 *Elliott District Community Government Scheme*.

##### 2 Repeal, replacement and transitional

- (1) This scheme repeals and replaces the *Elliott District Community Government Scheme* approved on 19 April 1988 by the Minister for Labour, Administrative Services and Local Government under section 250(1)(a) of the *Local Government Act* (as then in force) and notified in *Gazette* No. S22 dated 22 April 1988 (the **repealed scheme**).
- (2) The members of the Elliott District Community Government Council established under the repealed scheme who are in office immediately before the commencement of this scheme continue in office as if each member had been elected under this scheme.
- (3) Subject to this scheme, the term of office of a member continued under this clause expires on the declaration of the results of the next general election.

##### 3 Definitions

In this scheme, unless the contrary intention appears:

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a person whose nomination for election as a member of the council has been accepted under clause 18 and who has not withdrawn his or her consent to the nomination before the close of nominations.

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**clerk** for the purposes of Part 4 other than clause 40, includes the Electoral Commission.

**council** means the Elliott District Community Government Council.

**election** means a by-election referred to in clause 39 or a general election.

**election day** means a day fixed under clause 15, 21 or 39, as applicable, for the holding of an election.

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

**elector** means a person whose name is on the roll.

**general election** means an election for all the members of the council.

**member** means a member of the council and includes the President and Vice-President.

**ordinary member** means a member of the council other than the President.

**polling official** means an official appointed under clause 25.

**public place** includes:

- (a) every place to which free access is permitted to the public, with the express or tacit consent of the owner or occupier of the place;
- (b) every place to which the public is admitted on payment of money, the test of the admittance being the payment of the money only;
- (c) every road, street, footway, court, alley, thoroughfare or cul-de-sac which the public is allowed to use, notwithstanding that the road, street, footway, court, alley, thoroughfare or cul-de-sac may be formed on private property; and
- (d) land reserved under a law of the Territory for the use of the public or a member of the public;

**roll** means the electoral roll maintained under clause 14.

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

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**4 Community government area**

The community government area to which this scheme applies comprises all those parcels of land in and near the Town of Elliott in the Northern Territory of Australia described in Schedule 1.

**Part 2 Council****5 Name of council**

The name of the community government council that administers the community government area is the Elliott District Community Government Council.

**6 Members of council**

- (1) The council consists of the President and 6 ordinary members who are to be declared or elected in the manner provided by this scheme.
- (2) Subject to this scheme, the term of office of a member expires on the declaration of the results of the next general election.
- (3) The office of a member becomes vacant if the member:
  - (a) ceases to be an elector;
  - (b) ceases to be ordinarily resident in the community government area; or
  - (c) becomes an employee or officer of the council.

**7 Vice-President**

- (1) The council is to have a Vice-President, who is to be chosen by the members from among the ordinary members at the council's first meeting after a general election and, after that, as circumstances require.
- (2) Subject to subclause (3), the Vice-President holds office during the pleasure of the council.
- (3) The Vice-President may resign from office at any time by giving written notice to the clerk.
- (4) The office of Vice-President becomes vacant if the holder of the office ceases to be a member of the council.

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- (5) The Vice-President must act as President during a vacancy in that office and, subject to a contrary intention in this scheme, must perform the functions, exercise the powers and discharge the duties of the President when the President:

- (a) is absent from the community government area;
- (b) is absent from a meeting of the council; or
- (c) is unable to perform the functions of office.

## **8 Meetings of council**

- (1) The council must meet to transact its business not less than once each month.
- (2) The date, time and place, within the community government area, of a council meeting is to be as decided:
  - (a) by members at a previous meeting or, in default of that, by the clerk; or
  - (b) if necessary, by 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 2 days notice to the members.
- (4) If 3 or more members or 6 or more electors wish to have a special meeting called, they may give the President written notice requesting that he or she call the meeting, stating the reasons for the request.
- (5) The President must call a special meeting requested under subclause (4) for a date not later than 7 days after the day on which the President received the notice of request, and must notify the members of the meeting.
- (6) The clerk must cause a notice of a special meeting to be prominently displayed at the places the clerk considers likely to be frequented by residents.
- (7) A notice of a special meeting is to specify the date, time and place of the meeting and the reason it is called.
- (8) If a member is absent from 3 consecutive meetings of the council:
  - (a) without the prior consent of the council; or
  - (b) for reasons that the council does not accept as satisfactory,

the council may declare that person to be no longer a member and the office to be vacant.

## **9 Meetings to be open**

Meetings of the council are to be open to persons who are not members, 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 are to be presided over:
  - (a) by the President;
  - (b) if the President is absent – by the Vice-President; or
  - (c) if the President and the Vice-President are absent – by a member chosen by the other members present from amongst their number.
- (2) The council is to determine its own procedure at meetings, subject to any standing orders it may make from time to time.
- (3) The council must keep a record of its proceedings.
- (4) The quorum for a meeting of the council is to be a majority of the members then in office.
- (5) Questions before a meeting of the council are to be decided by a majority of the votes of the members then in office and if there is an equality of votes the matter is to 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, development, operation and maintenance of communication, television and radio broadcasting facilities for the community government area and for that purpose the council may enter into a contract and may act, for reward, as the agent of a provider of those facilities;
- (b) the establishment and maintenance of parks, gardens and recreational areas and the carrying out of landscaping and other associated works;

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- (c) the establishment and maintenance of sports facilities, swimming pools, libraries, cinemas, museums, community halls, laundry facilities, public toilets and ablution blocks;
  - (d) the provision of a service for the collection and disposal of garbage, the provision and maintenance of particular places where garbage is to be dumped, and the control of litter generally;
  - (e) the provision and maintenance of sanitation facilities and the removal of health hazards;
  - (f) the provision and maintenance of sewerage, drainage and water supply facilities;
  - (g) the collection, as an agent and for reward, of water and sewerage charges;
  - (h) the supply of electricity by contracting with a government department or statutory authority responsible for providing electricity and the collection, as an agent and for reward, of electricity charges;
  - (i) the provision of adult education and of vocational and other training;
  - (j) the provision and maintenance of housing for residents and their families on the terms and conditions that the council thinks fit;
  - (k) the management of community employment programmes and the carrying out as an agent (whether or not for reward) of activities relating to the provision of social security services or other benefits;
  - (l) the promotion and provision of community welfare, health and care facilities for all age groups within the community government area and the provision of appropriately trained staff to provide counselling or temporary assistance;
  - (m) the maintenance of cemeteries;
  - (n) the control, prohibition and impounding of animals;
  - (o) 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;



- (p) the provision and maintenance of airstrips and related facilities;
- (q) 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;
- (r) the contracting of works projects (including the maintenance of capital works and undertakings), within or outside the community government area;
- (s) the establishment and operation of pastoral and commercial enterprises;
- (t) the selling of petroleum products;
- (u) the establishment and maintenance of a fire-fighting 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;
- (v) the promotion and development of tourist attractions and facilities within the community government area and the production of and selling of artefacts and souvenirs;
- (w) the management and control of sites of historic interest;
- (x) the support and encouragement of artistic, cultural and sporting activities;
- (y) the control of public places.

## **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 the land for the purpose of raising revenue for the performance of its functions.
- (2) Land is not ratable if it is land of a description that would be exempt from rating by a municipal council under section 58(2) of the Act.

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- (3) Without limiting the powers of charging conferred on the council by section 122(3)(a) of the Act, charges are payable for the reason that a person:
- (a) resides in the community government area;
  - (b) carries on a business in the community government area; or
  - (c) is the registered proprietor of an interest in ratable land in the community government area,
- whether or not that person uses any service provided by the council.
- (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 under this clause.
- (5) If a group gives its consent, the council may take control of and manage activities of the group that are consistent with the council's functions.

## **Part 4                      Elections**

### **13                      Eligibility to vote**

A person is eligible to vote at an election if that person:

- (a) is enrolled or is entitled to be enrolled as an elector within the meaning of the *Electoral Act*; and
- (b) has ordinarily resided in the community government area for not less than one month immediately before the date on which the election notice is given.

### **14                      Electoral roll**

- (1) The clerk must maintain, by the means that the clerk thinks fit (including by electronic means or the use of a 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 roll at the office of the council during the hours that the office is open for business.
- (3) A person whose name is not on the roll but who is otherwise eligible to vote at council elections may apply, in a manner approved by the clerk, to be enrolled as an elector.

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- (4) The clerk must close the roll at 12 noon on the day occurring 21 days before election day.
  - (5) Except as provided by clause 33(3)(a) or to correct an oversight in the making up of the roll, the clerk must not add any name to the roll in the period between its closure and the conclusion of the election.

## **15 Date of general election**

- (1) A general election is to be held on a day fixed by the council in accordance with this clause.
- (2) Subject to subclause (3), the first general election is to be held on a day in March 2003 and subsequent general elections are to be held on a day in March each third calendar year after the end of 2003.
- (3) If a general election is held under clause 21 or 40, subsequent general elections are to be held on a day in March in each third calendar year after the end of the year in which that election was held.

## **16 Election notice**

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

## **17 Content of election notice**

An election notice is to specify the following:

- (a) the date and time the roll is to be closed;
- (b) the persons who may nominate other persons, and who may be nominated, for election as members of the council;
- (c) the date and time before which nominations are to be lodged with the clerk;
- (d) the manner in which nominations are to be lodged;
- (e) the date of the election and time and place of polling;
- (f) that only persons whose names are on the roll are entitled to vote at the election.

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**18 Nominations**

- (1) A person is eligible for nomination for election as a member of the council if the person:
  - (a) is enrolled as an elector under clause 14;
  - (b) has ordinarily resided in the community government area for not less than 6 months immediately before the closure of the roll under clause 14(4); and
  - (c) is not an employee or officer of the council.
- (2) A person who is enrolled as an elector under clause 14 may, by lodging a written nomination with the clerk, nominate another person for election as President of the council, as an ordinary member of the council, or as both.
- (3) The clerk must accept the nomination of a person for election as a member of the council only if the clerk:
  - (a) is satisfied that the nomination sufficiently identifies the person;
  - (b) is satisfied that the person is eligible under subclause (1) for nomination and has consented to the nomination; and
  - (c) is supplied with a recent photograph of the person that, in the clerk's opinion, is suitable for display under subclause (6).
- (4) A person whose nomination is accepted under subclause (3) may withdraw consent to the nomination at any time before the close of nominations.
- (5) Nominations of persons for election as members of the council close at 12 noon on the day occurring 14 days before election day.
- (6) As soon as practicable after nominations have closed, the clerk must display, in the same places as the election notice, a list of the names of the candidates and the photograph of each candidate supplied under subclause (3)(c).

**19 Declaration or election of President**

- (1) If at the close of nominations under clause 18 there is only one candidate nominated for election as President, the clerk must:
  - (a) by a notice displayed in the same places as the election notice, declare that candidate to be President of the council; and

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- (b) forward a copy of the notice to the Minister not later than 10 days after the close of nominations.
  - (2) If the person who is declared to be President under subclause (1) is also nominated as an ordinary member of council, the nomination as an ordinary member lapses.
  - (3) If at the close of nominations under clause 18 there is more than one candidate nominated for election as President, an election to decide between the candidates is to be held on election day.

## **20 Declaration or election of ordinary members**

- (1) If at the close of nominations under clause 18:
  - (a) there are not more than 6 candidates (not including a candidate whose nomination has lapsed under clause 19(2)) nominated for election as ordinary members of the council; and
  - (b) none of those candidates is nominated for election as President,

the clerk must declare those candidates to be ordinary members of the council.

- (2) If at the close of nominations under clause 18:
  - (a) there are not more than 6 candidates nominated for election as ordinary members;
  - (b) an election for President is required to be held under clause 19(3); and
  - (c) at least one of the candidates nominated for election as ordinary members is also nominated for election as President,

the clerk must, after the election for President has been held, declare the candidates nominated for election as ordinary members (not including the candidate elected as President) to be ordinary members of the council.

- (3) If at the close of nominations under clause 18 there are more than 6 candidates (not including a candidate whose nomination has lapsed under clause 19) nominated for election as ordinary members of the council, an election to decide between them is to be held on election day.

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- (4) An election for ordinary members is not to be held under subclause (3) if:
    - (a) there are 7 candidates nominated for election as ordinary members;
    - (b) an election for President is to be held under clause 19; and
    - (c) after the election for President is held, it is certain that there will be 6 remaining candidates nominated for election as ordinary members.
  - (5) If subclause (4) applies, the clerk must declare that the 6 remaining candidates referred to in subclause (4)(c) are elected as ordinary members.
  - (6) If after:
    - (a) an election is held for both President and ordinary members; and
    - (b) the votes for President have been counted,there are not more than 6 remaining candidates nominated for election as ordinary members, the clerk must declare that the remaining candidates are elected as ordinary members without being required to count the votes for ordinary members.
  - (7) A declaration under this clause is to be by written notice displayed in the same places as the election notice.
  - (8) The clerk must forward a copy of the declaration notice to the Minister not later than 10 days after the close of nominations.

## **21 Failure of election**

- (1) An election fails if:
  - (a) there are no nominations at the close of nominations under clause 18(5);
  - (b) a candidate in the election dies between the close of nominations and the election day; or
  - (c) there is no candidate who may be declared elected.
- (2) A further election is to be held as soon as practicable after the failure of an election on a date (not later than 3 months after the failure) to be fixed by the council.

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**22 Ballot-papers**

- (1) If an election is to be held under clause 19 or 20, the clerk must cause ballot-papers to be prepared or printed in sufficient numbers for the purposes of the election.
- (2) If an election is to be held for both the President and ordinary members, the clerk must cause ballot-papers to be prepared or printed in a separate colour for each election.
- (3) The clerk must determine, by lot, the order of names of candidates on a ballot-paper.

**23 Polling places**

- (1) The clerk must set aside a polling place or polling places for the purposes of an election.
- (2) Each polling place is to have separate polling booths constructed so as to screen a voter from observation (other than by the clerk, a polling official or a person appointed under clause 31(8) to assist the voter) while marking a ballot-paper.

**24 Ballot-box**

The clerk must provide within each polling place a ballot-box that is to have a securely fitted or fastened lid and have a slit in the upper side through which ballot-papers may be placed into the ballot-box.

**25 Polling officials**

- (1) Subject to subclause (2), the clerk may, by written notice, appoint polling officials to assist in conducting an election.
- (2) The clerk must not appoint a member of the council, 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 must conduct the voting at the polling places.

**26 Scrutineers**

- (1) A candidate may, by written notice, 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 a polling place with the clerk or polling officials to observe the conduct of the voting and counting of votes.

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

## **27 Hours of polling**

- (1) Subject to subclause (2), the clerk must ensure that on election day each polling place is open and remains open for the period that the clerk considers sufficient to give voters who wish to vote the opportunity to do so.
- (2) A polling place is not to remain open after 6 pm on election day.

## **28 Exhibition of ballot-box**

- (1) The clerk or a polling official must, at a polling place:
  - (a) immediately before the polling place is opened for voting; and
  - (b) in the presence of a person who is eligible to vote but is not a candidate,exhibit the ballot-box empty and securely fit or fasten its lid.
- (2) The clerk must ensure that the lid of the ballot-box remains securely fitted or fastened during the hours of polling.

## **29 Presence in polling place**

A voter and any person appointed under clause 31(8) to assist a voter (other than the clerk, a scrutineer or a polling official) may remain in a polling place only for the time necessary for the voter to vote.

## **30 Entitlement to vote of person not on roll**

- (1) Subject to subclause (2), a person whose name is not on the roll is not entitled to vote at an election.
- (2) A person whose name is not on the roll may vote at an election if the person makes a statutory declaration, to be given to the clerk or a polling official, that the person:
  - (a) is eligible in accordance with clause 13 to vote; and
  - (b) made an application to be enrolled as an elector before the closure of the roll under clause 14(4).



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- (3) The clerk or polling official who receives a statutory declaration under subclause (2) must:
    - (a) initial the back of a ballot-paper; and
    - (b) hand to the voter the ballot-paper and an envelope marked with the voter's name and the words "Ballot-paper".
  - (4) A voter who has made a statutory declaration under subclause (2) must vote in accordance with clause 31(3) to (8) but, instead of placing the ballot-paper in the ballot-box, must:
    - (a) place the folded ballot-paper in the envelope handed to the voter and seal the envelope; and
    - (b) hand the envelope to the clerk or polling official.
  - (5) The clerk or polling official who receives an envelope under subclause (4) must, in the presence of the voter and a scrutineer (if one is present), place the sealed envelope in the ballot-box.
  - (6) This clause, with the necessary modifications, applies in relation to an election for both the President and ordinary members of the council as if a reference in this clause to a ballot-paper were a reference to 2 ballot-papers.

### **31 Voting procedure**

- (1) A voter at a polling place, other than a person referred to in clause 30(2), must state his or her name to the clerk or a polling official.
- (2) The clerk or polling official must:
  - (a) check that the voter's name appears on the roll;
  - (b) if:
    - (i) a line has not been drawn through the name – draw a line through the name; or
    - (ii) if the clerk has provided for or prescribed another method of indicating that a ballot-paper has been issued, and that method has not been complied with – comply with that method; and
  - (c) initial the back of a ballot-paper and hand it to the voter.

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- (3) The voter must take the ballot-paper into an unoccupied booth and secretly vote:
    - (a) by writing the number "1" in the square on the ballot-paper opposite the name of the candidate who is the voter's first preference; and
    - (b) by writing consecutively increasing numbers in the squares opposite the names of the candidates in the order of the voter's preference until the voter has written a number in each square on the ballot-paper.
  - (4) If the voter spoils a ballot-paper or marks it in a way that was not intended, the voter may return it to the clerk or polling official who must:
    - (a) write "spoilt" across the front of the ballot paper and retain it to be dealt with under clause 37; and
    - (b) initial the back of a new ballot-paper and give that ballot-paper to the voter.
  - (5) Subject to subclause (8), when the voter has completed the ballot-paper the voter must fold it to conceal the names of the candidates and place it in the ballot-box.
  - (6) A voter may vote only once at an election.
  - (7) Subject to subclause (8), a voter must enter a booth alone and must not mark a ballot-paper issued to another person.
  - (8) If the clerk or polling 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 must permit that person to accompany the voter into a booth and mark the ballot-paper in accordance with the voter's instructions and place it in the ballot-box.
  - (9) This clause, with the necessary modifications, applies in relation to an election for both the President and ordinary members of the council as if a reference in this clause to a ballot-paper were a reference to 2 ballot-papers.

## **32 Postal voting**

- (1) A person whose name appears on the roll who:
  - (a) is ill, infirm or for religious reasons unable to attend a polling place;

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- (b) will be absent from the community government area during the hours when a polling place will be open; or
    - (c) will be unable to attend a polling place 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 is to give an address to which the postal ballot-paper is to be posted or delivered by hand in a sealed envelope.
  - (3) If before election day the clerk receives an application for a postal ballot-paper, and the name of the applicant is on the roll, the clerk must:
    - (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 roll or, if the clerk has provided for or prescribed another method of indicating that a postal ballot-paper or postal ballot-papers has been issued, comply with that method.
  - (4) An applicant who receives a postal ballot-paper must vote in accordance with clause 31(3) (other than the requirement to enter a booth).
  - (5) After an applicant has voted, the postal ballot-paper is to be returned in the marked, self-addressed envelope to the clerk.
  - (6) If the clerk receives an envelope apparently containing a postal ballot-paper at or before 6 pm on election day:
    - (a) the clerk must place that envelope, unopened, in the ballot-box; and
    - (b) the envelope is to be opened and the votes counted in accordance with clause 33.
  - (7) If the clerk receives an envelope apparently containing a postal ballot-paper after 6 pm on election day:
    - (a) the clerk must mark the envelope "rejected";
    - (b) the votes on the ballot-paper are not to be counted; and
    - (c) the clerk must retain the unopened envelope to be dealt with under clause 37.

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- (8) This clause, with the necessary modifications, applies in relation to an election for both the President and ordinary members of the council as if a reference in this clause to a ballot-paper were a reference to 2 ballot-papers.

### **33 Counting of votes**

- (1) After 6 pm on election day, and as soon as practicable after voting has finished but before opening the ballot-box, the clerk must consider each statutory declaration made under clause 30(2) and decide whether the person who made it satisfies clause 30(2)(a) and (b).
- (2) After all statutory declarations have been dealt with in accordance with subclause (1), the clerk and polling officials must, in the presence of a scrutineer or at least one other person who is an elector but not a candidate:
- (a) open the ballot-box; and
  - (b) take from it each sealed envelope placed in the ballot-box under clause 30(5).
- (3) If, in the opinion of the clerk, a voter who made a statutory declaration satisfies clause 30(2)(a) and (b), the clerk or a polling official must:
- (a) enter the voter's name on the roll;
  - (b) draw a line through the name or, if the clerk has provided for or prescribed another method of indicating that a ballot-paper has been issued – comply with that method;
  - (c) open the envelope containing the voter's ballot-paper and place the ballot-paper, without unfolding it, into the ballot box; and
  - (d) retain the empty envelope to be dealt with under clause 37.
- (4) If, in the opinion of the clerk, a voter who made a statutory declaration does not satisfy the requirements of clause 30(2):
- (a) the clerk or a polling official must retain the unopened envelope containing the person's ballot-paper to be dealt with under clause 37; and
  - (b) the votes on that ballot-paper are not to be counted.

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- (5) The clerk and polling officials must then, in the presence of a scrutineer or at least one other person who is an elector but not a candidate:
- (a) count the number of ballot-papers, including postal ballot-papers;
  - (b) prepare a written statement that sets out the number of ballot-papers as compared with the number of names on the roll that have a line drawn through them, or against which is written "PBP", or are otherwise marked to indicate that a ballot-paper has been issued; and
  - (c) then, subject to clause 20(6) and in accordance with Schedule 2, count the votes received by each candidate.
- (6) During the counting of votes the clerk must, subject to subclause (7), set aside as an informal vote, to be dealt with under clause 37, a ballot-paper not marked in accordance with clause 31(3) or 32(4).
- (7) A ballot-paper is not to be set aside as an informal vote:
- (a) for the sole reason that the voter has marked it otherwise than in accordance with clause 31(3) or 32(4) if, in the opinion of the clerk, the voter has shown clearly the candidates for whom he or she intended to vote; or
  - (b) because the voter has voted for less than the required number of candidates.
- (8) Immediately after counting the votes, the clerk must 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 number of formal ballot-papers;
  - (d) the number of votes received by each candidate;
  - (e) the number of postal ballot-papers issued by the clerk and the number of them included in the count; and
  - (f) the number of informal votes.

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- (9) This clause, with the necessary modifications, applies in relation to an election for both the President and ordinary members of the council as if the references in subclauses (3) and (4) to a ballot-paper were references to 2 ballot-papers.

### **34 Re-count**

- (1) The clerk may re-count the votes at any time before declaring the result of the election under clause 35:
- (a) if the clerk thinks it desirable; or
  - (b) on the written request of a candidate.
- (2) A request under subclause (1)(b) is to contain a statement of the reasons for the request.

### **35 Declaration of result**

- (1) As soon as practicable after the votes have been counted, the clerk must declare the result of the election by a notice displayed in the same places as the election notice was displayed.
- (2) A notice under subclause (1) is to:
- (a) list the names of the candidates for election as President and for election as ordinary members in the same order as they appeared on the relevant ballot-paper and state the number of votes received by each candidate;
  - (b) subject to paragraph (c), declare that the candidate for President who has received an absolute majority of votes in accordance with clause 2 of Schedule 2 is elected as President and declare that the 6 candidates elected in accordance with clause 4 of Schedule 2 are elected as ordinary members; and
  - (c) if a candidate is elected in accordance with clause 5(2) of Schedule 2 – declare that the candidate was selected by lot.

### **36 Minister to be informed**

Not later than 10 days after an election day, the clerk must forward to the Minister:

- (a) the certificate signed by the clerk under clause 33(8); and
- (b) a copy of the notice displayed under clause 35.

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**37 Retaining ballot-papers**

- (1) After the counting of the votes is completed, the clerk must place in a sealed package, to be kept unopened for 6 months:
  - (a) the ballot papers, including spoilt and informal ballot-papers;
  - (b) the envelopes marked "rejected" under clause 32(7);
  - (c) the empty envelopes retained under clause 33(3)(d); and
  - (d) the unopened envelopes retained under clause 33(4)(a).
- (2) At the end of 6 months, the clerk must destroy the unopened package.

**38 Adjournment of polling in emergency**

- (1) The clerk may adjourn polling at an election from day to day, to a maximum of 21 days, if it appears to the clerk to be necessary or desirable for any of the following reasons:
  - (a) riot or open violence;
  - (b) fire, storm, tempest or flood or a similar occurrence;
  - (c) any other event that, 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.
- (2) The clerk must take the steps that the clerk considers necessary and practicable to inform persons entitled to vote of an adjournment under subclause (1).
- (3) If polling is adjourned under this clause, clauses 32(6) and (7), 33(1) and 36 have effect as if a reference to election day were a reference to the day on which voting is finally concluded.

**39 Vacancy in membership and by-elections**

- (1) If the office of a member is or becomes vacant for a reason other than those referred to in clause 40, a by-election is to be held to fill the vacant office unless a general election is required to be held not later than 6 months after the office became vacant.
- (2) Subject to this scheme, the date fixed by the council for the holding of a by-election is to be as soon as practicable, but not later than 3 months, after the office of the member becomes vacant.

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- (3) This Part, with the necessary modifications, applies to the calling and conduct of a by-election.

#### **40        Resignation of council etc**

- (1) If all the members of the council cease to be members, or a quorum is not present at 2 consecutive meetings at the place and within one hour after the time specified for each council meeting, the clerk is to be taken 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 declaration of the results of that election.
- (2) Subject to this scheme, the date of an election determined under subclause (1)(a) is to be as soon as is practicable after the event giving rise to the determination but not later than 3 months after the event.
- (3) If the 3 months referred to in subclause (2) expires during the same month in which a general election would otherwise be held under clause 15, the clerk must determine the date of the election to be a day of that month.
- (4) The term of office of a council elected under this clause expires on the declaration of the result of the next general election held under clause 15.
- (5) For the purposes of exercising a power of the council under subclause (1)(b), the clerk may appoint an elector as an assistant to the clerk.



## Schedule 1

clause 4

### DESCRIPTION OF LAND TO WHICH SCHEME APPLIES

Firstly:

All that parcel of land near the Town of Elliott in the Northern Territory of Australia containing an area of 312.3 hectares more or less and bounded by lines described as follows:

Commencing at a point bearing 303 degrees 28 minutes 30 seconds for 21.265 metres from the northernmost corner of the Town of Elliott as proclaimed in *Northern Territory Government Gazette* No. 35 dated 30 August 1950; thence southeasterly to the northernmost corner of the Town of Elliott; thence southeasterly by the northeastern boundary of the Town of Elliott to the westernmost corner of Northern Territory Portion 1462; thence northeasterly, southeasterly and southwesterly by a northwestern, a northeastern and a southeastern boundary of Northern Territory Portion 1462 to the northeastern boundary of the Town of Elliott; thence southeasterly and southwesterly by a northeastern and a southeastern boundary of the Town of Elliott to its southernmost corner; thence northwesterly by the southwestern boundary of the Town of Elliott and its prolongation northwesterly to the eastern boundary of Perpetual Pastoral Lease 947 (Newcastle Waters); thence northerly by part of that boundary to a point bearing 330 degrees 43 minutes from the point of commencement; thence southeasterly to the point of commencement.

Secondly:

The whole of Northern Territory Portion 2450 containing an area of 1.2 hectares more or less and more particularly delineated on Survey Plan S86/29 lodged with the Surveyor General, Darwin.

Thirdly:

The whole of the Town of Newcastle Waters in the Northern Territory of Australia containing an area of 23.59 hectares more or less as proclaimed in *Northern Territory Government Gazette* No. 3 dated 22 January 1964.

Fourthly:

The whole of Northern Territory Portion 3624 containing an area of 214 hectares more or less and more particularly delineated on Survey Plan s89/37 lodged with the Surveyor General, Darwin.

## Schedule 2

clause 33(5)(c)

### METHOD OF COUNTING VOTES AT CONTESTED ELECTIONS

#### 1 Definitions

In this Schedule:

***absolute majority of votes*** means votes equalling a greater number than one-half of the unrejected ballot-papers that have not become exhausted at any count.

***continuing candidate*** means a candidate not already elected or excluded from the count.

***exhausted***, in relation to a ballot-paper, means not indicating a preference for any of the continuing candidates.

***next preference*** includes the first of the subsequent preferences marked on the ballot-paper that is not given to an elected or excluded candidate.

***unrejected ballot-papers*** means all ballot-papers not rejected as informal.

#### 2 Election of one candidate

If only one candidate is to be elected at an election, the votes are to be counted and the result of the election ascertained by the clerk, or under the clerk's direction and supervision, in accordance with the following provisions:

- (a) the unrejected ballot-papers are to be arranged under the names of the respective candidates by placing in a separate parcel all those on which a first preference is indicated for the same candidate;
- (b) the total number of first preferences given for each candidate on each ballot-paper is then to be counted;
- (c) the candidate who has received the largest number of first preference votes is, if that number constitutes an absolute majority of votes, to be elected;
- (d) if no candidate has received an absolute majority of first preference votes, a second count is to be made;

- (e) on the second count the candidate who has received the least number of first preference votes is to be excluded, and each ballot-paper counted to that candidate is to be counted to the candidate next in the order of the voter's preference;
- (f) if:
  - (i) a candidate then has an absolute majority of votes, he or she is to be declared elected; or
  - (ii) no candidate then has an absolute majority of votes, the process of excluding the candidate who has the least number of votes and counting each of his or her ballot-papers to the continuing candidate next in the order of the voter's preference is to be repeated until one candidate has received an absolute majority of votes;
- (g) the candidate who is first to receive an absolute majority of votes is to be declared elected.

### **3 Election of 2 candidates**

If 2 candidates are to be elected at an election, the votes are to be counted and the result of the election ascertained by the clerk, or under the clerk's direction and supervision, in accordance with the following provisions:

- (a) one of the candidates is to be elected in accordance with the provisions of clause 2 of this Schedule;
- (b) all the unrejected ballot-papers are to be rearranged under the names of the respective candidates in accordance with the first preference indicated thereon, except that each ballot-paper on which a first preference for the elected candidate is indicated is to be placed in the parcel of the candidate next in the order of the voter's preference;
- (c) the number of ballot-papers in the parcel of each candidate is then to be counted and the total number of votes so counted to each candidate are to be ascertained; and
- (d) if:
  - (i) a candidate then has an absolute majority of votes he or she is to be declared elected; or
  - (ii) no candidate then has an absolute majority of votes, the count is to proceed as provided in clause 2(d), (e) and (f) of this Schedule until one candidate has received an absolute majority of votes but in the application of those

subclauses a reference to first preference votes is to be read as a reference to all the votes counted to a candidate in pursuance of this clause;

- (e) the candidate who is first to receive an absolute majority of votes is to be declared elected.

#### **4 Election of 3 or more candidates**

- (1) If 3 or more candidates are to be elected at an election, 2 of the candidates are to be elected in accordance with clauses 2 and 3 of this Schedule.
- (2) The third and every subsequent candidate is to be elected in the manner provided for the election of the second candidate, except that a ballot-paper on which a first preference for any elected candidate is marked is to be placed in the parcel of the continuing candidate next in the order of the voter's preference.

#### **5 Procedure if candidates receive equal number of votes**

- (1) If, on a count at which the candidate with the least number of votes has to be excluded, 2 or more candidates have an equal number of votes (that number being less than the number of votes that any other candidate has or those candidates being the only continuing candidates):
  - (a) the candidate who had the least number of votes at the last count at which they did not have an equal number of votes is to be excluded; or
  - (b) if they had an equal number of votes at all preceding counts, the candidate whose name is on a slip drawn in accordance with subclause (2) is to be excluded.
- (2) For the purposes of subclause (1)(b), the clerk must write the names of the candidates who have an equal number of votes on similar slips of paper, fold the slips so as to prevent the names being seen, mix them and draw at random one of those slips.

#### **6 Procedure if one continuing candidate**

Despite anything to the contrary in this Schedule, the process of counting each of the ballot-papers of an excluded candidate to the continuing candidate next in the order of the voter's preference is not to be repeated if there is only one continuing candidate, but that continuing candidate is to be declared elected.

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## 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
<b>Gaz</b> = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

### 2 LIST OF LEGISLATION

#### ***Elliott District Community Government Scheme***

Notified	12 June 2002
Commenced	12 June 2002

#### ***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 (Gaz G11, 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 Gaz S6, 15 March 2004)

### 3 LIST OF AMENDMENTS

cl 3	amd Act No. 12, 2004, s 7
cl 13 – 14	amd Act No. 12, 2004, s 7
cl 25	amd Act No. 12, 2004, s 63