

NORTHERN TERRITORY OF AUSTRALIA

LOCAL GOVERNMENT (ELECTORAL) REGULATIONS

As in force at 29 August 2008

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 29 August 2008

LOCAL GOVERNMENT (ELECTORAL) REGULATIONS

Regulations under the *Local Government Act*

Part 1 Preliminary matters

1 Citation

These Regulations may be cited as the *Local Government (Electoral) Regulations*.

2 Object

The object of these regulations is to provide for the conduct of council elections.

3 Definitions

In these Regulations:

approved form means a form approved by the Electoral Commissioner.

area means the area that candidates in an election are to be elected to represent and includes, if a council area is divided into wards, each ward for which representatives are to be elected.

authorised officer or ***officer***, see regulation 4.

authorised witness means:

- (a) for Australia or an external Territory – a person enrolled as an elector under the Commonwealth Act; or
- (b) for another place – a person who is at least 18 years old.

ballot box means a receptacle (that can be secured) suitable for the safe custody of ballot papers after they have been used for voting until the scrutiny.

ballot paper means a paper, prepared for an election in accordance with these regulations:

- (a) containing the names of the candidates for election; and
- (b) designed to allow a voter to vote by recording the order of the voter's preference for the candidates.

candidate square – the candidate squares are squares printed against the names of candidates on a ballot paper for the voter to record the order of the voter's preference for the candidates.

Commonwealth Act means the *Commonwealth Electoral Act 1918* (Cth).

council area means the whole area of the council.

declaration ballot paper, see regulation 23.

early voting centre means a polling place appointed by the returning officer as an early voting centre (see regulation 14(1)(b)).

early voting period means the period (ending no later than 6 pm on the day before polling day) fixed as the early voting period by the returning officer.

election campaign material means an advertisement or other material intended to promote the electoral prospects of a particular candidate or group of candidates (but does not include material prepared or published by the Electoral Commission or the returning officer).

Electoral Commission means the Northern Territory Electoral Commission established by section 307 of the *Electoral Act*.

fail – an election fails as follows:

- (a) it fails wholly if no candidate is elected;
- (b) it fails partially if 1 or more candidates are elected but not as many as required to fill all vacancies that were to be filled at the election.

mobile polling period means the period (ending no later than 6 pm on polling day) fixed as the mobile polling period by the returning officer.

mobile polling place means a polling place appointed by the returning officer for mobile polling.

nomination day means the 23rd day before polling day.

polling day means the day fixed by or under the Act for an election or poll.

polling place means a place appointed by the returning officer for voting.

polling hours means:

- (a) for a polling place (other than a mobile polling place) on polling day – the hours between 8 am and 6 pm on polling day; or
- (b) for an early voting centre – the dates and hours of polling at the centre fixed by the returning officer; or
- (c) for a mobile polling place – the dates and hours of polling at the mobile polling place fixed by the returning officer.

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

scrutiny centre means a place appointed by the returning officer for the scrutiny of ballot papers.

to sign includes, for a person who is unable to sign his or her name, to make an identifying mark.

4 *Authorised officers*

- (1) The following are ***authorised officers***:
 - (a) the returning officer;
 - (b) a person authorised by the returning officer to exercise the powers of an authorised officer under these regulations.
- (2) An authorised officer must be at least 18 years of age.
- (3) A candidate for election, or the spouse of a candidate for election, cannot be an authorised officer for the election.

5 *General directions*

- (1) The Electoral Commission may, by *Gazette* notice, give directions to returning officers about any aspect of the electoral process.

Example

The Commission might direct the carrying out of specified procedures to ensure that votes are correctly counted.

- (2) A returning officer must comply with a direction under subregulation (1).

Part 2 Preparations for an election

Division 1 Nominations

6 Returning officer to invite nominations of candidates

- (1) The returning officer must, at least 43 days before polling day, invite nominations of candidates for election.
- (2) The invitation is to be made:
- (a) by notice published in a newspaper circulating in the relevant local government area; and
 - (b) by any other means the returning officer considers appropriate.

7 Form of nomination

- (1) A nomination must:
- (a) be in an approved form; and
 - (b) set out the full name and residential address of the nominee and, if the nominee would prefer the name to appear in an abbreviated form on the ballot papers, the preferred form of the name; and
 - (c) state the office for which the nominee is a candidate; and

Example

If the principal member of the council is to be elected at the election, the form must state whether the nominee is a candidate for election as principal member or ordinary member of the council (or both) and, if the local government area is divided into wards and the nominee is a candidate for election as an ordinary member of the council, the nomination form must state the ward for which the nominee is a candidate.

- (d) contain 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 at least 3 other persons who are eligible to vote at the election.

- (2) A nomination must be accompanied by:
 - (a) a declaration, in the approved form, to the effect that the nominee is eligible for election in the capacity in which the nominee is a candidate; and
 - (b) a photograph of the nominee that complies with the requirements applicable to photographs of candidates for election under the *Electoral Act*; and
 - (c) a deposit of \$100 in cash or bank cheque.
- (3) If a local government area is divided into wards, the same person cannot be a candidate for election in more than 1 ward.

8 Making and withdrawal of nomination

- (1) A nomination must be lodged with the returning officer before 12 noon on nomination day.
- (2) A candidate may withdraw the candidate's nomination by giving written notice of the withdrawal to the returning officer before 12 noon on nomination day.

9 Rejection of nomination

- (1) The returning officer may reject a nomination if (and only if):
 - (a) the nominee is not eligible for election; or
 - (b) the nominee's name is obscene, frivolous or has been assumed for a political purpose.
- (2) The returning officer:
 - (a) must, as soon as practicable after rejecting a nomination, inform the person whose nomination is rejected of the rejection and the reasons for it; and
 - (b) must give the person written notice of the rejection and the reasons for it.

10 Declaration of duly nominated candidates and determination of order of names on the ballot paper

- (1) At the appropriate time, the returning officer must:
 - (a) declare the names of the duly nominated candidates for election; and

- (b) if a ballot paper is to be prepared for the election – determine by lot the order of the candidates' names on the ballot paper.
- (2) In deciding whether a nominated candidate is eligible to stand for election, the returning officer is entitled (but not required) to rely on the declaration of eligibility accompanying the nomination.
- (3) 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.
- (4) However, if the same person is a candidate for election as the principal member, and as an ordinary member, of the council, the returning officer is not to 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.
- (5) In subregulation (1):

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 persons nominated as candidates for election.

Division 2 Electoral roll

11 Closing of the roll

- (1) The electoral roll closes for an election at 5 pm on the 32nd day before polling day.
- (2) The returning officer must allow access to the electoral roll in accordance with a policy determined by the Electoral Commission and notified to all councils and returning officers .

Division 3 Ballot papers

12 Form of ballot paper

- (1) A ballot paper must be in an approved form.
- (2) A ballot paper must have:
 - (a) the name of each candidate for election to the relevant office; and

- (b) a photograph of each candidate adjacent to the candidate's name on the ballot paper; and
 - (c) a candidate square printed adjacent to the candidate's photograph.
- (3) The order in which the names of candidates appear on the ballot paper is to be as determined under regulation 10.

Note

Under regulation 10, the returning officer is to determine the order of candidates' names on the ballot paper by lot.

- (4) A candidate's name will appear on the ballot paper in an abbreviated form if that form of the name:
- (a) is in accordance with a preference expressed by the candidate on the nomination form; and
 - (b) is not a nickname.

Division 4 Administrative arrangements

13 Administrative arrangements

The returning officer must make appropriate administrative arrangements for the conduct of an election.

14 Polling places etc.

- (1) The returning officer may:
- (a) appoint a specified place to be a polling place for an election; or
 - (b) appoint a specified polling place to be an early voting centre for an election; or
 - (c) appoint a specified place to be a scrutiny centre for an election.
- (2) A part of licensed premises may be appointed as a polling place only if the returning officer is satisfied that, during polling hours:
- (a) liquor will not be available for sale or consumption on that part of the premises; and
 - (b) the polling place will be segregated from the part of the premises where liquor will be available for sale or consumption; and

- (c) access to the polling place will not involve passing through a part of the premises where liquor will be available for sale or consumption.
- (3) The returning officer must ensure that each polling place is properly equipped with:
 - (a) separate voting compartments constructed to screen voters from observation while marking ballot papers; and
 - (b) ballot boxes capable of being securely sealed; and
 - (c) the relevant electoral roll, ballot papers and other documents and stationery.
- (4) The returning officer must publish a notice in a newspaper circulating in the area, and by any other means that appears appropriate to the returning officer in the circumstances, giving particulars of:
 - (a) each early voting centre and the polling hours for each centre; and
 - (b) the location of each mobile polling place, and the dates and polling hours at each location; and
 - (c) each polling place (other than a mobile polling place) and the polling hours on polling day.

Division 5 Scrutineers

15 Scrutineers – appointment

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

16 Scrutineers – presence at polling place and scrutiny centre

- (1) A scrutineer is entitled to be present at a polling place while the polling place is open for polling (but not more than 1 scrutineer representing the same candidate may be present at the same time at a particular polling place).

- (2) A scrutineer is entitled to be present at a scrutiny centre while the scrutiny and counting of ballot papers is conducted at the centre (but not more than 1 scrutineer representing the same candidate may be present at the same time at the scrutiny centre unless there is more than 1 counting table at the scrutiny centre, in which case there may be 1 scrutineer for each table).
- (3) A scrutineer is entitled to observe the process of scrutiny and counting of ballot papers.

Note

If votes are counted by computer, this means that the scrutineer must be allowed to observe the operation of the computer equipment and the progress of the count as indicated by that equipment.

Part 3 Voting

Division 1 Entitlement to vote and other preliminary matters

17 Entitlement to vote

- (1) An elector for an area is entitled to vote at an election as follows:
 - (a) if the council's principal member is to be elected at the election – the elector is entitled to cast 1 vote for the election of the principal member;
 - (b) if the area is divided into wards – the elector is entitled to cast 1 vote for the election of ordinary members representing the ward for which the elector is (or should have been) enrolled;
 - (c) if the area is not divided into wards – the elector is entitled to cast 1 vote for the election of ordinary members representing the area as a whole.
- (2) The inclusion of the name of a person on an electoral roll as an elector for an area or ward is conclusive evidence that the person is entitled to vote for the relevant area or ward.
- (3) The omission of the name of a person from an electoral roll, or any other error, omission or misdescription does not disqualify the person from voting.

18 Method of voting

- (1) A person's vote on a ballot paper must be marked in accordance with subregulation (2).

(2) The person must:

- (a) place the number "1" in the candidate square for the candidate of the person's first preference; and
- (b) place consecutive whole numbers in the candidate squares for the other candidates in the order of the person's preference until a sequential preference for all candidates has been shown.

19 Voter's question

The voter's question to be put to a person who claims to vote at an election is as follows:

Is this the first time you have voted at this election?

Division 2 Ordinary voting at polling place

20 Issue of ballot paper

- (1) If a person attends before an authorised officer at a local polling place during polling hours on polling day and claims to vote at an election, the officer must issue a ballot paper to the person if:
 - (a) the person states the person's full name and address; and
 - (b) the officer is satisfied the electoral roll:
 - (i) includes the person's name and address (or indicates that the person's address is suppressed); and
 - (ii) has not been marked to indicate a ballot paper has already been issued to the person; and
 - (c) the person answers the voter's question in the affirmative.
- (2) The officer must, immediately before issuing the ballot paper to the person:
 - (a) place a mark against the voter's name on the electoral roll; and
 - (b) initial the ballot paper.
- (3) In subregulation (1):

local polling place means a polling place within the council area for which the election is being held (but, if the election is for a ward, not necessarily within that ward).

21 Voting in private

- (1) On receipt of the ballot paper, the person must, without delay:
 - (a) go to an unoccupied voting compartment at the polling place; and
 - (b) there, in private, mark his or her vote on the ballot paper; and
 - (c) fold the ballot paper to conceal the vote and, without unfolding it, place it in a ballot box at the polling place; and
 - (d) leave the polling place.
- (2) This regulation has effect subject to the provisions for assistance to voters who are unable to vote without assistance.

Division 3 Declaration voting

22 Right to declaration voting

A person may vote under this Division in 4 situations:

- (a) a person who is eligible for postal voting may, instead of voting by post, vote before polling day under this Division at an early voting centre; or
- (b) a person who is outside the council area on polling day may exercise an absentee vote under this Division at a polling place for another council area; or
- (c) a person who claims to be entitled to vote but whose name does not appear on the relevant electoral roll may vote under this Division; or
- (d) a person who claims to be entitled to vote but whose name has been marked on the relevant electoral roll as having already voted, may vote under this Division.

23 Issue of ballot paper for declaration voting

- (1) If a person attends before an authorised officer at a polling place during polling hours and claims to vote at an election, the officer must issue a ballot paper to the person if:
 - (a) the person states the person's full name and address; and
 - (b) the person completes and signs, in the presence of the officer, a declaration in the approved form that is appropriate to the situation in which the person claims to vote; and

- (c) the officer signs the declaration as witness.
- (2) The officer must:
 - (a) immediately before issuing the ballot paper to the person, initial the ballot paper; and
 - (b) immediately after issuing the ballot paper to the person, make a record of its issue.

24 Casting declaration vote

- (1) Subject to provisions for assistance to voters who are not able to vote without assistance, this regulation prescribes the requirements for casting a declaration vote under this Division.
- (2) After the issue of a ballot paper to the person:
 - (a) the person must go to an unoccupied voting compartment at the polling place and there, in private:
 - (i) mark his or her vote on the ballot paper; and
 - (ii) fold the ballot paper to conceal the vote; and
 - (b) the person must return the folded ballot paper to the officer who issued it; and
 - (c) the officer must, in the presence of the person, without unfolding the ballot paper, place it in the envelope on which the declaration appears, seal the envelope and place it in a ballot box at the polling place; and
 - (d) the person must then leave the polling place.

Division 4 Postal voting

Subdivision 1 Application for postal voting papers

25 Who may apply for postal voting papers

- (1) A person may apply for postal voting papers for an election if the person:
 - (a) is entitled to vote at the election; and
 - (b) is eligible for postal voting.

- (2) A person is eligible for postal voting if:
- (a) throughout polling hours on polling day, the person:
 - (i) will not be in the Territory or within 20 km of a polling place; or
 - (ii) will be travelling under conditions that preclude voting at a polling place; or
 - (iii) will be unable to attend at a polling place because of illness, infirmity or approaching maternity; or
 - (iv) will be unable to attend at a polling place because the person will be caring for another person who is seriously ill or infirm or who is expected shortly to give birth; or
 - (v) will be prevented from attending at a polling place because the person is a prisoner; or
 - (vi) will be engaged throughout polling hours in employment or an occupation and either the person is not entitled to leave of absence to vote or attending a polling place to vote would be likely to cause the person financial loss; or
 - (b) the person will, because of membership of a religious order or religious beliefs, be precluded from attending at a polling place during polling hours on polling day or the greater part of those hours; or
 - (c) the person's address has been suppressed.

26 Application for postal voting papers

- (1) Application for postal voting papers for an election must be made to the returning officer in the approved form within 3 months before the election is to be held.
- (2) An elector who is registered as a postal voter under the *Electoral Act* will be taken to have applied for postal voting papers for an election.

27 Issue of postal voting papers

- (1) An authorised officer must issue and send to an applicant (or an elector registered as a postal voter):
 - (a) a ballot paper (a ***postal ballot paper***); and

- (b) 2 envelopes as follows:
 - (i) 1 having a postal vote certificate printed on it;
 - (ii) the other being an outer envelope addressed to the returning officer.
- (2) The postal voting papers are to be sent as soon as practicable after the order of candidates' names on the ballot paper is determined or the receipt of the application (whichever is the later).
- (3) However, an authorised officer must not send postal voting papers to an applicant if:
 - (a) the application is received after 6 pm on the fourth day before polling day and the address to which the postal voting papers are to be sent is outside Australia; or
 - (b) the application is received after 6 pm on the second day before polling day and the address to which the postal voting papers are to be sent is within Australia.

28 Returning officer to record applications

- (1) The returning officer must:
 - (a) carry out the following procedures with regard to the issue of postal voting papers:
 - (i) number in consecutive order all applications for postal voting papers received by the officer;
 - (ii) endorse each application with the date of issue of the postal voting papers;
 - (iii) number each postal vote certificate issued by the officer with the number corresponding to the number on the application for the postal voting papers;
 - (iv) initial the ballot paper issued by the officer;
 - (v) record the issue of the postal voting papers to the person on the electoral roll; or
 - (b) follow other procedures approved as an alternative by the Electoral Commission under subregulation (2).
- (2) The Electoral Commission may approve computer-based procedures as an alternative to all or any of the procedures prescribed in subregulation (1)(a).

29 Applications to be available for public inspection

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

Subdivision 2 Casting postal vote

30 Casting postal vote

- (1) An elector to whom postal voting papers have been issued casts a postal vote in accordance with the following provisions.
- (2) The elector must show the elector's unmarked postal voting papers to an authorised witness.
- (3) The elector must, in the presence of the witness, sign his or her name on the postal vote certificate.
- (4) The witness must:
 - (a) sign his or her name on the postal vote certificate; and
 - (b) insert the date and time.
- (5) The elector must, in the presence of the witness but so that the witness cannot see the vote:
 - (a) mark his or her 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.
- (6) However, if the elector is unable to vote without assistance, the witness must:
 - (a) mark the elector's ballot paper in accordance with the elector's instructions; and
 - (b) fold the ballot paper and place it in the envelope bearing the postal vote certificate and seal the envelope.
- (7) The envelope bearing the postal vote certificate must then be placed in the outer envelope and that envelope sealed.
- (8) As soon as practicable after the outer envelope is sealed, the elector, or the person to whom the elector has entrusted the envelope for posting or delivery, must post or deliver the sealed envelope to the returning officer.

Division 5 Mobile polling

31 Application of Division

This Division provides to the casting of ordinary votes and declaration votes by electors at a mobile polling place during the mobile polling period for the election.

32 Authorisation for mobile polling

- (1) The returning officer may authorise mobile polling for an election.
- (2) The authorisation must specify:
 - (a) the period (the ***mobile polling period***) over which mobile polling will be conducted; and
 - (b) the places (***mobile polling places***) at which votes will be taken; and
 - (c) the dates and hours of polling at each mobile polling place.
- (3) The authorisation may be limited to a stated class of voters.

Example

An authorisation might be limited to voters who are in-patients of a hospital or inmates of an institution.

- (4) The returning officer may vary an authorisation under this regulation.

33 Notice of authorisation or variation of authorisation

- (1) The returning officer must give notice of an authorisation for mobile polling, or the variation of such an authorisation, to the community to be served by the mobile polling place.
- (2) The notice must be given:
 - (a) as soon as is practicable in the circumstances; and
 - (b) in a manner the returning officer considers appropriate, given the nature and location of the community to be notified.

34 Authorised officers to be present during polling

At least 2 officers must be present at a mobile polling place when the place is open for polling.

35 Voting at mobile polling place

- (1) Voting is to take place at a mobile polling place in the same way as at a polling place on polling day.
- (2) However, if the authorisation is limited to a stated class of voters, only a person in that class may vote at the mobile polling place.

36 Dealing with ballot boxes

- (1) The authorised officer in charge of a mobile polling place must keep ballot boxes containing ballot papers in proper custody and must ensure that, when they are not in use, they are properly secured.
- (2) At the conclusion of mobile polling, the authorised officer must send the ballot boxes to the returning officer for safe custody, or make other provision as directed by the returning officer for the safe custody of the ballot boxes, pending the scrutiny.

Division 6 Miscellaneous

37 Polling times

- (1) On polling day:
 - (a) the poll must open at 8 am and close when all electors present in the polling place at 6 pm and desiring to vote have voted; and
 - (b) the polling place must be closed at 6 pm and no person is to be admitted after that time for voting.
- (2) The times of polling at an early voting centre or a mobile polling place are to be as determined by the returning officer.

38 Assistance to certain voters

- (1) A voter who is unable to vote may be assisted in voting if the voter would otherwise be unable to vote.
- (2) An assistant must be:
 - (a) if the voter is a postal voter – an authorised witness; or
 - (b) if paragraph (a) does not apply – a nominee of the voter or, if there is no nominee, an officer.

- (3) An assistant may enter a voting compartment to assist a voter to vote, but an officer must not do so except in the presence of:
 - (a) a scrutineer; or
 - (b) if no scrutineer is present – another officer.
- (4) An assistant may assist a voter in any of the following ways:
 - (a) by acting as an interpreter;
 - (b) for a declaration vote – by completing, or assisting the voter to complete, the declaration;
 - (c) by explaining the ballot paper and the requirements of these regulations relating to its marking;
 - (d) by marking, or assisting the voter to mark, the ballot paper at the voter's direction;
 - (e) by folding the ballot paper and placing it in a ballot box or declaration envelope, or giving it to an officer, as required by these regulations.

39 Assistance to voters unable to enter polling place

- (1) This regulation applies if the officer in charge of a polling place is satisfied a voter cannot enter the polling place because of a physical disability, illness, advanced pregnancy or another condition.
- (2) The voter may vote outside the polling place, but close to the polling place, and may be assisted in voting.
- (3) Before allowing the voter to vote outside the polling place, the officer in charge must:
 - (a) tell any scrutineers at the polling place that the voter is to vote outside the polling place; and
 - (b) allow 1 scrutineer for each candidate to be present when the voter votes.
- (4) The voter must:
 - (a) mark his or her vote on the ballot paper in the presence of the officer in charge; and
 - (b) fold the ballot paper to conceal the names of the candidates; and

- (c) give the ballot paper to the officer in charge.
- (5) The voter must be allowed to mark his or her vote on the ballot paper in private.
- (6) If the voter is casting an ordinary vote, the officer in charge must ensure the folded ballot paper is placed in the ballot box at the polling place in the presence of any scrutineers who were present when the voter voted.
- (7) If the voter is casting a declaration vote, the officer in charge must:
 - (a) in the presence of the voter, 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 polling place.

40 Spoilt or discarded ballot paper

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

41 Dealing with ballot boxes and electoral papers

- (1) At the close of polling, the officer in charge of a polling place must, in the presence of any scrutineers:
 - (a) close and seal the ballot boxes containing ballot papers for ordinary voting or declaration voting; and
 - (b) parcel and seal all unused ballot papers; and

- (c) parcel and seal all other electoral papers used at the polling place (including spoilt and discarded ballot papers).
- (2) The officer must send the ballot boxes and papers mentioned in subregulation (1) to the returning officer for scrutiny.
- (3) However, subregulations (1)(a) and (2) do not apply to ballot boxes if the polling place is a scrutiny centre and scrutiny of the poll is to proceed immediately after the close of polling at the polling place.

42 Adjournment of polling

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

43 Employee wishing to vote

- (1) On notice by an employee before a polling day, the employee's employer must allow the employee, without penalty or any disproportionate deduction of pay, to take any necessary leave (not exceeding 2 hours) for the purpose of voting.
- (2) However, subregulation (1) does not apply if the employee's absence may cause danger or substantial loss.
- (3) An employee must not seek leave from an employer under subregulation (1) unless the employee genuinely intends to vote during the leave.

Fault element: An intention to deceive.

Maximum penalty: 5 penalty units.

Part 4 The Scrutiny

Division 1 Preliminary

44 How scrutiny carried out

- (1) The result of polling 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

45 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 officer and initialled by an 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 the returning officer is satisfied the voter can be identified because of a mark or other writing on it.
- (2) However, a voter is taken to have indicated the order of the voter's preference for all candidates if:
 - (a) the voter has placed consecutive whole numbers in candidate squares indicating the voter's first preference for 1 candidate and other preferences for all remaining candidates except 1 whose candidate square has been left blank; or
 - (b) there are 2 candidates only and the voter has placed the number "1" in 1 candidate square and left the other candidate square blank.
- (3) The candidate whose candidate square has been left blank is taken to be last in the voter's order of preference.

- (4) A ballot paper is not informal merely because of some other error or misdescription unless the returning officer is satisfied that the error or misdescription is likely to have misled the voter, thus causing the vote to miscarry.

Note

It follows that if a candidate's name appears on a ballot paper in an incomplete form, or is misspelled, the ballot paper would not be informal unless the returning officer were satisfied that the deficiency or error is likely to have caused doubt or confusion about the identity of the candidate.

46 Postal and declaration voting papers to be rejected on basis of time or manner of receipt

- (1) Postal voting papers must not be accepted for scrutiny unless the envelope bearing the postal vote certificate is received by the returning officer before 6 pm on the sixth day after polling day.
- (2) Declaration voting papers must not be accepted for scrutiny unless:
 - (a) they are received for scrutiny in the form of a sealed envelope containing the ballot paper; and
 - (b) the elector's declaration on the envelope is signed and witnessed as required under these regulations.

47 Rejection of informal ballot papers

The officer responsible for the scrutiny must:

- (a) examine each ballot paper (except those not accepted for scrutiny) to determine whether it is formal; and
- (b) set aside all informal ballot papers, count them and place them in a parcel.

48 Objections by candidate's scrutineer

- (1) A candidate's scrutineer may object to the admission or rejection of a ballot paper as a formal ballot paper.
- (2) The objection must be made to the officer conducting the scrutiny.
- (3) The officer must decide the objection by admitting or rejecting the ballot paper the subject of the objection as a formal ballot paper and must mark the ballot paper "admitted" or "rejected" according to the decision.

Division 3 Declaration votes

49 Examination of voting papers for declaration voting

- (1) The returning officer must examine each unopened envelope containing a ballot paper used for declaration voting.
- (2) If it appears from the declaration that the envelope contains an absentee vote for an election for another council area (or a ward of another council area), the returning officer must send the unopened envelope to the returning officer for the relevant area so that that returning officer may determine whether the vote should be admitted to the count.
- (3) If the declaration envelope is not for an absentee vote and the returning officer is satisfied that:
 - (a) the declaration on the envelope is properly signed and witnessed; and
 - (b) the person who made the declaration is entitled to vote and:
 - (i) the person does not appear to have voted more than once at the election; or
 - (ii) in the case of a person marked as having already voted – there is a reasonable possibility that the mark was inserted in error;

the returning officer must admit the envelope to the scrutiny.

- (4) When the returning officer admits a declaration envelope to the scrutiny, the returning officer must:
 - (a) record the fact that the voter has voted by placing a mark against the voter's name on an electoral roll or in some other appropriate way; and
 - (b) take the ballot paper out of the envelope; and
 - (c) place the envelope in a parcel with all other envelopes from which ballot papers have been taken under paragraph (b).
- (5) If the returning officer is not satisfied of the matters mentioned in subregulation (2), the officer must:
 - (a) exclude the ballot paper from further scrutiny without opening the envelope in which it is contained; and
 - (b) place the unopened envelopes in a parcel.

- (6) The 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 4 Postal votes

50 Receipt of postal voting papers

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

- (a) remove the envelope bearing the elector's postal vote certificate (the ***certificated envelope***) from the outer envelope; and
- (b) note on the certificated envelope the date and time of receipt; and
- (c) place the postal voting papers in a secure receptacle.

51 Scrutiny of postal voting papers

- (1) The following provisions apply to the scrutiny of postal voting papers.
- (2) The returning officer must reject postal voting papers if the returning officer is satisfied that:
 - (a) the postal voting papers were witnessed after 6 pm on polling day; or
 - (b) the postal voting papers were received after 6 pm on the 6th day after polling day.
- (3) If postal voting papers are not rejected under subregulation (2), the returning officer must compare the signature of the elector on the elector's postal vote certificate with the signature of the elector on the elector's application for postal voting papers or for registration under the *Electoral Act* as a postal voter.
- (4) If the returning officer is satisfied that:
 - (a) the elector's signature on the postal vote certificate is that of the elector who signed the application; and
 - (b) the signature purports to be witnessed by an authorised witness;

the returning officer must admit the postal ballot paper for scrutiny.

- (5) When the returning officer admits a postal ballot paper for scrutiny, the returning officer must:
 - (a) place a mark against the voter's name on the electoral roll; and
 - (b) take the ballot paper out of the envelope and, without unfolding it, place it in a ballot box; and
 - (c) place the envelope in a parcel with all other envelopes from which ballot papers have been taken under paragraph (b).
- (6) If the returning officer is not satisfied of the matters mentioned in subregulation (2), the officer must mark the unopened envelope with the word "rejected" before placing it in a parcel of rejected postal voting papers.

Division 5 Determining and declaring result of election

52 Determination of result of election

- (1) As soon as practicable after the close of poll, the returning officer must proceed to determine the result of the election.
- (2) If a person is a candidate for election both as the principal member and as an ordinary member, the returning officer must determine the result of the election for principal member before determining the result of the other election.

53 Election for principal member of the council

- (1) If the principal member is to be elected, the returning officer will proceed as follows:
 - (a) the first preference votes are counted;
 - (b) if, after first preference votes are counted, it appears that 1 candidate has achieved more than 50% of the formal votes, the returning officer will declare that candidate to have been elected;
 - (c) if, after first preference votes are counted, it appears that no candidate has achieved more than 50% of the formal votes, the candidate with the lowest number of first preference votes is excluded from the count and the votes cast in favour of that candidate are counted to the remaining candidates according to the next preference expressed by the voter;
 - (d) if, following the distribution of preferences under paragraph (c), a candidate has achieved more than 50% of

the formal votes, the returning officer will declare that candidate to have been elected but, if not, the candidate with the lowest number of votes is excluded from the count and the votes formerly counted to that candidate are counted to the remaining candidates according to the next available preference expressed by the voter;

- (e) the process of exclusion and preference distribution continues until a candidate achieves more than 50% of the formal votes;
 - (f) when a candidate achieves more than 50% of the formal votes, the returning officer will declare the candidate to have been elected.
- (2) If there are 2 or more candidates with the lowest number of votes and 1 (or more) of them is to be excluded from the count, the returning officer must decide, by lot, which candidate is to continue in the count.
- (3) If there are 2 candidates remaining in the count with the same number of votes, the returning officer must:
- (a) have a recount of all ballot papers carried out; and
 - (b) if, after the recount, the votes remain equal – decide by lot which is to be the successful candidate.

54 Election of ordinary members of council

- (1) If ordinary members of the council are to be elected for an area or a ward, the returning officer will proceed in accordance with this regulation.
- (2) First, if a candidate for election as an ordinary member has been elected in the contemporaneous election for principal member as the principal member:
- (a) the candidate is excluded from the count; and
 - (b) if the number of continuing candidates then equals the number of vacancies to be filled, the returning officer will declare the continuing candidates to have been elected, but if not, the count will proceed in accordance with subregulation (3).

(3) The count will proceed as follows:

- (a) the formal ballot papers are first counted according to the first available preference expressed by the voter;

Note

It should be noted that, if a candidate has already been elected, a preference expressed by a voter in favour of that candidate ceases to be an available preference. So if, for example, 2 candidates have been elected and the voter's first and second preference were for those candidates, the voter's first available preference, on a count conducted to decide the third candidate to be elected, will be the highest preference expressed by the voter for a candidate who is as yet unelected i.e. the voter's third preference.

- (b) if, after the counting of votes under paragraph (a), it appears that 1 candidate has achieved more than 50% of the formal votes, the returning officer will declare that candidate to have been elected;
- (c) if, after the counting of votes under paragraph (a), it appears that no candidate has achieved more than 50% of the formal votes, the candidate with the lowest number of votes is excluded from the count and the votes formerly counted to that candidate are counted to the remaining candidates according to the next available preference expressed by the voter;
- (d) if, following the distribution of preferences under paragraph (c), a candidate has achieved more than 50% of the formal votes, the returning officer will declare that candidate to have been elected but, if not, the candidate with the lowest number of votes is excluded from the count and the votes formerly counted to that candidate are counted to the remaining candidates according to the next available preference expressed by the voter;
- (e) the process of exclusion and preference distribution continues until a candidate achieves more than 50% of the formal votes;
- (f) when a candidate achieves more than 50% of the formal votes, the returning officer will declare the candidate to have been elected;
- (g) if there is a further vacancy, or further vacancies, to be filled, the formal ballot papers are recounted and the process described above is repeated for each remaining vacancy and, on the first and each successive recount, the following candidates are excluded from the count:
 - (i) any candidate excluded under subregulation (2);

(ii) the candidate or candidates already elected.

- (4) If there are 2 or more candidates with the lowest number of votes and 1 of them is to be excluded from the count, then:
- (a) if on an earlier count (for the same vacancy), 1 of the candidates was excluded before the other or others, that candidate will be excluded; but
 - (b) if not, the returning officer must decide, by lot, which candidate is to be excluded.

55 Recount

- (1) The returning officer may, at any time before the declaration of the result of an election, recount all or a particular class of the ballot papers.
- (2) The returning officer may conduct a recount:
- (a) on receipt of a written request from a candidate stating the reasons why a recount is sought; or
 - (b) on the returning officer's own initiative.
- (3) In the course of the recount the returning officer may reconsider any decision made earlier in the scrutiny relating to the admission or rejection of a ballot paper as a formal ballot paper and may reverse the decision.
- (4) However, if:
- (a) on an earlier count the question of which of 2 or more candidates with an equal number of votes is to be excluded arose; and
 - (b) that question was resolved by lot; and
 - (c) the same question arises on the recount;
- the same candidate is to be excluded on the recount.

56 Declaration of result of election

- (1) As soon as practicable after the results of an election have been determined, the returning officer must:
- (a) publicly declare the results of the election and the name of the candidate or candidates returned as elected; and
 - (b) certify the results of the election to the CEO of the council; and

- (c) notify the Minister of the results of the elections.
- (2) The results of the election must be accessible on the council's website as soon as practicable after the declaration of the result of the election.

Division 6 Miscellaneous

57 Time

- (1) If the Minister is satisfied there is good reason to do so, the Minister may, by *Gazette* notice, extend or change the time for holding an election or for taking a step in an election.
- (2) The returning officer must give notice of the extension or change of time in a newspaper circulating in the area and by other means the returning officer considers appropriate.

58 New election on failure of election

- (1) If an election fails wholly or in part, the returning officer must, as soon as practicable, fix a date for a new election to fill any resulting deficiencies in the membership of the council.
- (2) The electoral roll prepared for the failed election must be used for the new election.

Part 5 Electoral Offences

59 Dishonesty

- (1) A person must not claim, or purport, to exercise voting or other rights in relation to an election to which the person is not entitled.

Fault element: Dishonesty.

Maximum penalty: 50 penalty units.

- (2) A person must not make a misleading statement to an authorised officer in connection with an election.

Fault element: Dishonesty.

Maximum penalty: 50 penalty units.

60 Interference with electoral materials

A person must not, without proper authority, damage, destroy or interfere with voting papers, or other materials prepared for official use in an election.

Fault element: Intention.

Maximum penalty: 50 penalty units.

61 Duty of those who assist voters

- (1) A person who assists a person who is unable to vote without assistance must ensure that the assisted person's ballot paper is marked in accordance with the instructions of the assisted person.

Fault element: Knowledge that the vote as recorded does not conform with the instructions.

Maximum penalty: 50 penalty units.

- (2) A person who accepts an application for postal voting papers, or completed postal voting papers, for posting or delivery to the returning officer must immediately post or deliver them to the returning officer.

Fault element: This is an offence of strict liability.

Maximum penalty: 50 penalty units.

62 Conduct at polling place

- (1) A person must not canvass for votes within, or within 10 metres of the entrance to, a polling place while the polling place is open for voting.

Fault element: Intention.

Maximum penalty: 50 penalty units.

- (2) A person must not wear or display election campaign material at a polling place while the polling place is open for voting.

Fault element: Intention.

Maximum penalty: 50 penalty units.

- (3) A person (including a scrutineer) must comply with directions given by the authorised officer in charge of a polling place in relation to the person's conduct while at the polling place.

Fault element: Intention.

Maximum penalty: 50 penalty units.

Part 6 Review of electoral representation

63 Assessment of the effectiveness of constitutional arrangements for electoral representation of the council's area

- (1) A council ***carries out an electoral review*** when it makes or revises an assessment under section 23(2) of the Act of whether the constitutional arrangements presently in force for electoral representation provide the most effective possible representation for the council's area.
- (2) In carrying out an electoral review, a council must give proper consideration to the following matters:
- (a) community of interests in the area including economic, social and regional interests;
 - (b) types of communication and travel in the area with special reference to disabilities arising out of remoteness or distance;
 - (c) the trend of population changes in the area;
 - (d) the density of population in the area;
 - (e) the physical features of the area.
- (3) If an area is divided into wards, the council must also consider the following matters:
- (a) the desirability of the number of electors for each ward being as near to equal as practicable at the next general election;
 - (b) the desirability of keeping the area of each ward containing rural and remote areas as small as practicable;
 - (c) the desirability of keeping the demographic and geographic nature of each ward as uniform as practicable;
 - (d) the desirability of including an identifiable community wholly within 1 ward if practicable.

- (4) In carrying out its electoral review, the council must consult with the Electoral Commission.
- (5) The council should complete its electoral review at least twelve months before the next general election.

Part 7 Miscellaneous

64 Appointment of returning officer

A council may appoint a returning officer at any time and must ensure that the council has appointed a returning officer by 1 July of the calendar year preceding the calendar year in which the next general election is to be held.

Note

*The Minister may appoint a returning officer for an election (or by-election) under section 96(2) of the Act. This power may well be exercised if the council fails to make an appointment. If there is no appointed returning officer, the council's CEO is the returning officer. (See the definition of **returning officer** in section 3 of the Act.)*

65 Electoral costs and expenses

- (1) The reasonable costs and expenses of conducting an election (including the returning officer's remuneration) are payable from the funds of the relevant council and may be recovered from the council as a debt.
- (2) The reasonable costs and expenses of conducting an election are to be determined in accordance with an agreement between the council and the returning officer or, if there is no such agreement, by the court in which an action for recovery of the costs and expenses is brought.

66 Immunity from personal liability

- (1) No civil or criminal liability attaches to the returning officer or any other authorised officer for an honest act or omission in the performance, or purported performance, of functions related to the conduct of an election.
- (2) A civil liability that would, but for this regulation, attach to the returning officer or another authorised officer, attaches instead to the council.

67 Infringement notice offences

- (1) An authorised officer may serve an infringement notice on a person if the officer believes that the person has committed an infringement notice offence.
- (2) An infringement notice must contain the following particulars:
 - (a) the name and address of the alleged offender, if known;
 - (b) the date of the infringement notice and:
 - (i) if the offence consists of a failure to vote at an election – the date of the election; or
 - (ii) in any other case – date, time and place of the alleged offence;
 - (c) the nature of the offence, the amount of the infringement notice penalty for the offence and a statement that the offence may be expiated by payment of the infringement notice penalty to a person whose name and address are stated in the notice within 28 days of the date of the notice;
 - (d) a statement that the alleged offender may elect to be charged with, and dealt with by a court for, the alleged offence by completing and returning the relevant part of the notice to a person whose name and address are stated in the notice within 28 days of the date of the notice.
- (3) If the infringement notice penalty for an alleged offence is paid under this section, the alleged offender is not liable to any further proceedings for the alleged offence unless the infringement notice is withdrawn under subregulation (4).
- (4) An authorised officer may withdraw the infringement notice by serving a written notice of withdrawal (accompanied, if the infringement notice penalty has been paid, by the amount of the penalty) within 28 days of the date of the infringement notice.
- (5) Service of an infringement notice, or a notice of withdrawal of an infringement notice, is effected:
 - (a) by serving it personally on the alleged offender; or
 - (b) by posting it to the alleged offender at his or her last known address; or

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- (c) by leaving it for the alleged offender at his or her last known place of residence or business with a person who appears to be at least 16 years of age and to be resident or employed there.
 - (6) The *Fines and Penalties (Recovery) Act* applies to an infringement notice issued under this regulation if the amount payable under the infringement notice is not paid within the time specified in the notice.
 - (7) In this regulation:

infringement notice offence means an offence designated in the Schedule as an infringement notice offence.

infringement notice penalty means an amount fixed in the Schedule as the infringement notice penalty for an infringement notice offence.

paid – if a cheque is given in purported payment of an infringement notice penalty, the penalty is not paid unless and until the cheque is honoured.

68 Return of candidate's deposit

- (1) A candidate's deposit is to be returned if:
 - (a) the candidate is elected or polls more than 20% of the number of first preference votes cast in favour of:
 - (i) in the case of an election for the principal member or an election to fill a single vacancy in the council's membership – the successful candidate; or
 - (ii) in the case of an election to fill 2 or more vacancies in the council's membership – the candidate first elected; or
 - (b) the election fails; or
 - (c) the candidate dies before the result of the election has been declared.
- (2) In any other case, the deposit is forfeited to the council.

69 Destruction of electoral papers

- (1) The returning officer must retain ballot papers and other electoral papers used for the purposes of an election in safe custody until the result of the election is no longer liable to challenge.

- (2) When the result of the election can no longer be challenged, the returning officer may destroy the papers referred to in subregulation (1), and must destroy them within 12 months of that date.

Schedule Infringement notice offences and infringement notice penalties

regulation 67

<i>Local Government Act – Infringement notice offences</i>	Infringement notice penalties
section 90(3) (Failure to vote without reasonable excuse)	\$50.00
section 99(1) (Publication of electoral campaign material without name of person who authorises publication at end of the material)	\$100.00
section 99(2) (Publication of untrue or misleading electoral campaign material)	\$100.00
<i>Local Government (Electoral) Regulations – Infringement notice offences</i>	
reg 43(3) (Seeking leave from employer without genuinely intending to vote)	\$100.00
reg 59(1) (Dishonest claim etc. to exercise voting rights)	\$100.00
reg 59(2) (Misleading statement to authorised officer)	\$100.00
reg 60 (Interference with electoral materials)	\$100.00
reg 61(1) (Failure of duty to assisted voter)	\$100.00
reg 61(2) (Failure to deal properly with postal voting papers)	\$100.00
reg 62(1) (Unlawful canvassing for votes)	\$100.00
reg 62(2) (Wearing or displaying electoral campaign material at polling place)	\$100.00
reg 62(3) (Non-compliance with direction)	\$100.00

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

Local Government (Electoral) Regulations (SL No. 24, 2008)

Notified	29 August 2008
Commenced	29 August 2008