

NORTHERN TERRITORY OF AUSTRALIA

LOCAL GOVERNMENT (ELECTORAL) REGULATIONS

As in force at 9 January 2012

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 9 January 2012

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.

authorised 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.

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

electorate means:

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

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, see regulation 32(1).

mobile polling place means a mobile polling place declared under regulation 32.

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 specified in a declaration in force under regulation 32 for the place, and includes the dates and hours as changed under regulation 33.

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 in writing by the returning officer to exercise specified powers or perform specified functions of an authorised officer under these Regulations.

(1A) Without limiting subregulation (1)(b), an authorisation may specify that an authorised officer:

- (a) is to be in charge of a specified polling place or scrutiny centre; or
- (b) is to be responsible for, or is to conduct, scrutiny as specified in the authorisation.

(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 council 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 council 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*.
- (3) If a council 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.
- (3) The lodgement of a nomination or the giving of a notice of withdrawal must be done by:
 - (a) hand delivery of the nomination or notice to an authorised officer at an office of the returning officer or another place approved by the returning officer; or
 - (b) an electronic means approved by the returning officer.

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) The returning officer must rely on the declaration of eligibility accompanying the nomination of a candidate in deciding the candidate's eligibility to stand for the election.

(2A) Subregulation (2) does not apply if:

- (a) there is evidence contrary to that declaration; and
- (b) the returning officer accepts that evidence.

(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:
 - (a) for a general election – at 5 pm on the 32nd day before polling day; or
 - (b) otherwise – as decided by the returning officer.
- (1A) The Electoral Commissioner must give notice to the public of the decision under subregulation (1)(b) that is reasonable and practicable in the circumstances.
- (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 each council area, and by any other means that appears appropriate to the returning officer in the circumstances, giving particulars of the following in the council area:
 - (a) each early voting centre and the polling hours for each centre;
 - (b) the location of each mobile polling place, and the dates and polling hours at each location;
 - (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 authorised 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 a council area is entitled to vote at an election for the relevant council 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 council 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 council area is not divided into wards – the elector is entitled to cast 1 vote for the election of ordinary members representing the council area as a whole.
- (2) The inclusion of the name of a person on an electoral roll as an elector for a council area or ward is conclusive evidence that the person is entitled to vote at an election for the electorate comprising the council 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 consecutively increasing whole numbers in the candidate squares for the other candidates in the order of the person's preferences until a number is placed in all candidate squares.

Note for regulation 18

See regulation 45(3) to (3B).

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 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 authorised 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.

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) for a person mentioned in regulation 22(a) or (b) – the person declares to the officer that the person is in the situation mentioned in that regulation; and
 - (c) for a person mentioned in regulation 22(c) or (d) – the person:
 - (i) completes and signs, in the presence of the officer, a declaration in the approved form about the person being in the situation mentioned in that regulation; and

(ii) the officer signs the declaration as a witness.

(2) The authorised officer must:

- (a) immediately before issuing the ballot paper to the person, initial the ballot paper; and
- (b) immediately after issuing a ballot paper to the person:
 - (i) for a person mentioned in regulation 22(a) or (b) – mark the electoral roll to indicate the issue of the paper to the person; or
 - (ii) for a person mentioned in regulation 22(c) or (d) – make a record of the issue of the paper to the person.

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.
- (1A) For a person mentioned in regulation 22(a) who is voting at a polling place within the region for which the person is enrolled, after a ballot paper is issued to the person, the person must:
 - (a) 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
 - (iii) place the ballot paper in a ballot box at the polling place; and
 - (b) leave the polling place.
- (1B) For a person mentioned in regulation 22(a) who is voting at a polling place outside the region for which the person is enrolled, or a person mentioned in regulation 22(b), after a ballot paper is issued 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

- (iii) give the ballot paper to an authorised officer at the polling place; and
 - (b) the officer must, in the presence of the person:
 - (i) without unfolding the ballot paper, place it in the envelope on which the declaration appears and seal the envelope; and
 - (ii) mark on the envelope the name of the area or ward for which the person is enrolled and the polling place at which the ballot paper is issued; and
 - (iii) place the envelope in a ballot box at the polling place; and
 - (c) the person must then leave the polling place.
- (2) For a person mentioned in regulation 22(c) or (d), 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 authorised 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 (other than a mobile polling place at which the person may vote); or
 - (ii) will be travelling under conditions that preclude voting at a polling place; or
 - (iii) will be unable to attend a polling place because of a physical or other disability, illness, advanced pregnancy or another condition of the person; or
 - (iv) will be unable to attend a polling place because of a reasonable fear for, or a reasonable apprehension about, his or her personal wellbeing or safety; or
 - (iva) will be unable to attend a polling place because the person will be at a place (other than a mobile polling place at which the person may vote) caring for another person who has a physical or other disability, illness, advanced pregnancy or another condition; 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) a postal vote certificate printed on an envelope addressed to the returning officer.
- (2) Subject to subregulations (3) and (4) 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) 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.
- (4) However, an authorised officer may send postal voting papers to the applicant whose application is received later than the time mentioned in subregulation (3)(a) or (b) if the officer considers doing so is appropriate, having regard to:
 - (a) the special circumstances of the applicant; and
 - (b) the need to allow sufficient time for the papers to be completed by the applicant by 6 pm on polling day; and
 - (c) any other matters the officer considers relevant.

28 Authorised officer to record applications

- (1) An authorised 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.
- (8) As soon as practicable after the 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 for the casting of ordinary votes and declaration votes by electors at a mobile polling place during the mobile polling period for the election.

32 Mobile polling place

- (1) The returning officer may, in writing, declare a specified place to be a mobile polling place for an election where votes may be taken by an authorised officer during a specified period (the ***mobile polling period***).
- (2) The declaration may specify:
 - (a) classes of electors who may vote at the mobile polling place; and
 - (b) dates and hours during which votes may be cast at the place during the mobile polling period.
- (3) In making the declaration, the returning officer must have regard to the following:
 - (a) whether or not there is a distinct community of electors who may be served by the mobile polling place;
 - (b) the practicality for those electors to attend another polling place for the election;
 - (c) the practicality of establishing the mobile polling place for those electors, having regard to their number and resources required for doing so.

- (4) If the declaration specifies a class of electors, only a person in that class may vote at the mobile polling place.
- (5) The returning officer must:
 - (a) give notice to the public of the declaration that is reasonable and practicable in the circumstances; and
 - (b) as far as practicable, notify the community or electors to be served by the mobile polling place in a way that is reasonable in the circumstances.

33 Change of mobile polling place, dates or hours for voting

- (1) The returning officer may substitute another polling place for the mobile polling place or change the dates or hours specified for the place if satisfied there are special circumstances requiring the substitution or change.
- (2) The returning officer must give notice to the public of the substitution or change that is reasonable and practicable in the circumstances.

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

Voting is to take place at a mobile polling place in the same way as at a polling place on polling day.

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 are to be as determined by the returning officer.
- (3) The times of polling at a mobile polling place are to be as specified in the declaration in force under regulation 32 for the place.

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 authorised officer.
- (3) An assistant may enter a voting compartment to assist a voter to vote, but an authorised officer must not do so except in the presence of:
 - (a) a scrutineer; or
 - (b) if no scrutineer is present – another authorised officer.
- (4) An 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 authorised officer, as required by these regulations.

39 Assistance to voters unable to enter polling place

- (1) This regulation applies if the authorised 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 authorised officer 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 authorised officer; and
 - (b) fold the ballot paper to conceal the names of the candidates; and
 - (c) give the ballot paper to the authorised officer.
- (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 authorised officer 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 authorised officer 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 authorised 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 authorised 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 authorised 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 authorised 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) An authorised 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) If the authorised officer is not the returning officer, the authorised 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 authorised officer and initialled by an authorised officer; or
 - (b) unless it is marked with a vote clearly indicating the order of the voter's preference for all candidates; or
 - (c) if an authorised officer is satisfied the voter can be identified because of a mark or other writing on it.
- (2) For subregulation (1)(b), a voter is taken to have indicated his or her order of preferences for all the candidates on a ballot paper in the circumstances mentioned in subregulation (3), (3A) or (3B).
- (3) If there are only 2 candidates and the voter placed a single "1", "✓" or "X" in one candidate square and either placed a "2" in the remaining candidate square or left it blank, then:
 - (a) the candidate whose candidate square is placed with a "1", "✓" or "X" is taken to be the voter's first preference; and
 - (b) the other candidate is taken to be the voter's last preference.
- (3A) If there are 3 or more candidates and the voter placed a single "1", "✓" or "X" in one candidate square and placed consecutively increasing whole numbers (starting with a "2") in the remaining candidate squares until a number is placed in each of those candidate squares, then:
 - (a) the candidate whose candidate square is placed with a single "1", "✓" or "X" is taken to be the voter's first preference; and
 - (b) the number placed in each of the other candidate squares is taken to indicate the rest of the voter's order of preferences.
- (3B) If there are 3 or more candidates and the voter placed a single "1", "✓" or "X" in one candidate square, left one candidate square blank and placed consecutively increasing whole numbers (starting with a "2") in the remaining candidate squares until a number is placed

in each of those candidate squares, then:

- (a) the candidate whose candidate square is placed with a single "1", "✓" or "X" is taken to be the voter's first preference; and
 - (b) the candidate whose candidate square is left blank is taken to be the voter's last preference; and
 - (c) each number placed in any other candidate square is taken to indicate the voter's order of preferences between the first and last preferences.
- (4) A ballot paper is not informal merely because of some other error or misdescription unless an authorised officer is satisfied that the error or misdescription is likely to have misled the voter, thus causing the vote to miscarry.

Note for subregulation (4)

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 an authorised 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

An authorised 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 an authorised officer conducting the scrutiny.
- (3) The authorised 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) An authorised 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 authorised officer must send the unopened envelope to an authorised officer for the relevant area so that that authorised 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 authorised officer must admit the envelope to the scrutiny.

- (4) When the authorised officer admits a declaration envelope to the scrutiny, the authorised 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 authorised 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 authorised officer must seal the parcels mentioned in subregulations (4)(c) and (5)(b) and endorse on each parcel a statement of its contents.
- (7) A candidate's scrutineer may sign a sealed parcel.

Division 4 Postal votes

50 Receipt of postal voting papers

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

- (a) note on the elector's postal vote certificate the date and time of receipt; and
- (b) 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) An authorised officer must reject postal voting papers if the authorised 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 authorised 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 authorised 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 authorised officer must admit the postal ballot paper for scrutiny.
- (5) When the authorised officer admits a postal ballot paper for scrutiny, the authorised 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 authorised 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

As soon as practicable after the close of poll for an electorate, an authorised officer must, in accordance with this Division and Schedule 1:

- (a) continue the scrutiny of all formal ballot papers for the electorate; and
- (b) proceed to determine the result of the election for the electorate.

Note for regulation 52

Under Schedule 1, clause 4, an authorised officer may be assisted by any other authorised officers in counting the votes.

53 Election of principal member of council

- (1) If the principal member of a council is to be elected, the authorised officer must determine the result of that election by counting the votes and filling the vacancy in accordance with Schedule 1.
- (2) The authorised officer must do so before determining the result of the election of ordinary members of the council.

Note for subregulation (2)

Regulation 54(2) applies in relation to a candidate for an election both as the principal member and as an ordinary member of a council.

54 Election of ordinary member of council

- (1) If ordinary members of a council are to be elected, the authorised officer must determine the result of the election by counting the votes and filling the vacancies in accordance with Schedule 1.
- (2) If a candidate for a position of ordinary member of a council has been elected as the principal member of the council under regulation 53, the authorised officer must determine the result of the election of ordinary members of the council as follows:
 - (a) a vote indicated on a ballot paper opposite the name of the candidate must be counted to the candidate next in the order of the voter's preference;
 - (b) the numbers indicating subsequent preferences are taken to have been altered accordingly.

54A Death of candidate

- (1) This regulation applies to:
 - (a) the election of the principal member of a council under regulation 53; or
 - (b) the election of ordinary members of a council under regulation 54.
- (2) If a candidate for an electorate dies before the end of polling day, the result of the election for the electorate must be determined as provided in Schedule 1, clause 18.
- (3) If a candidate for an electorate dies after polling day and before the result of the election for the electorate is declared under regulation 56 (the **deceased candidate**), the result must be determined under Schedule 1 as if the deceased candidate had not died.

- (4) If the deceased candidate would have been elected on that determination (the **original determination**), the result of the election for the electorate must be further determined as follows:
- (a) if there is only one unelected candidate remaining on the original determination (including an excluded candidate as defined in Schedule 1), that candidate is to be determined as elected;
 - (b) otherwise – the votes are to be recounted under Schedule 1 as provided in clause 18 of the Schedule as if the deceased candidate were a candidate who died as mentioned in that clause.
- (5) The recount under subregulation (4)(b) must:
- (a) not take into account the result of the original determination; and
 - (b) cease immediately after a candidate, other than a candidate who was determined to be elected on the original determination (a **previously elected candidate**), is determined to be the earliest elected.
- (6) The candidate who is determined as elected under subregulation (4)(a), or determined to be the earliest elected as mentioned in subregulation (5)(b), is to be elected in place of the deceased candidate for the electorate.
- (7) Despite the result of the original determination and the recount, each of the previously elected candidates is to be determined to be elected for the electorate.
- (8) If more than one candidate has died as mentioned in subregulation (2):
- (a) subregulations (2) to (7) operate separately for each death in the order of the deaths; and
 - (b) if 2 or more deaths occur at the same time – an older person is taken to have died earlier than a younger person.

55 Recount

- (1) An authorised 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 authorised 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 authorised officer's own initiative.
- (3) In the course of the recount the authorised 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, for an electorate.

- (2) The returning officer must give notice of the extension or change of time in a newspaper circulating in the relevant council 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 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 area of the council.
- (2) In carrying out an electoral review, a council must give proper consideration to the following matters:
 - (a) community of interests in the council area including economic, social and regional interests;
 - (b) types of communication and travel in the council area with special reference to disabilities arising out of remoteness or distance;
 - (c) the trend of population changes in the council area;
 - (d) the density of population in the council area;
 - (e) the physical features of the council area.
- (3) If a council 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.)*

64A Electoral Commissioner's power to approve electronic and other automated systems

- (1) The Electoral Commissioner may, in writing, approve the use of a specified electronic or other automated system (the **approved system**) for specified purposes relating to one or more of the following for specified elections or polls of electors:
 - (a) issuing and returning of ballot papers (including, for example, the confirmation and recording of the issuing of ballot papers);
 - (b) counting and processing of votes;
 - (c) voting by a specified group of electors (for example, electors in remote locations or interstate or overseas electors);
 - (d) assisting electors who have a physical or other disability, illness, advanced pregnancy or another condition.
- (2) The Electoral Commissioner must not give the approval unless he or she is satisfied:
 - (a) as far as practicable, the secrecy of the ballot will be maintained by the approved system; and
 - (b) the approval is warranted having regard to the practicality of the system and resources required to establish and maintain it; and
 - (c) the approved system would be supported by secure facilities; and
 - (d) if subregulation (1)(c) applies – there are exceptional circumstances relating to the specified group of electors.

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- (3) The Electoral Commissioner must, as soon as practicable after giving the approval, give notice to the public of the approved system that is reasonable and practicable in the circumstances.
 - (4) If the approval specifies that a thing covered by subregulation (1)(a) to (d) may be done in accordance with the approved system instead of a specified requirement under the Act or these Regulations, a thing done in accordance with the approval has effect as if that requirement had been met.

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
 - (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 Schedule 2 as an infringement notice offence.

infringement notice penalty means an amount fixed in Schedule 2 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 Storage and destruction of electoral papers

- (1) This regulation applies to electoral papers in the possession of the returning officer that were used for an election.
- (2) The returning officer must securely store the electoral papers until satisfied they are no longer required for exercising a power or performing a function under these Regulations.
- (3) The returning officer may destroy the electoral papers when they are no longer required as mentioned in subregulation (2).

Part 8 Transitional matters for Electoral and Other Legislation Amendment Act 2011

69 Application to election called before commencement

The amendments to regulation 7 and repeal of regulation 68 made by the *Electoral and Other Legislation Amendment Act 2011* do not apply in relation to an election if an invitation for nominations of candidates for the election is made under regulation 6 before the commencement of this regulation.

Schedule 1 Counting of votes and filling of vacancies

regulations 52 to 54

1 Definitions

In this Schedule:

continuing candidate means a candidate not already elected or excluded from a count under this Schedule.

elected, in relation to a candidate, means the candidate is to be elected as determined under this Schedule.

excluded candidate means a candidate who is excluded under clause 8 or 10.

quota means the quota worked out under clause 5(1)(d).

surplus, of an elected candidate, see clause 6(1).

transfer value:

- (a) for a transfer of the surplus of an elected candidate – see clause 6(1)(a) (including that clause as affected by clause 7); or
- (b) for a transfer of the votes of an excluded candidate – means the transfer value mentioned in clause 8(3) or (5).

2 Interpretation – references to votes for a candidate

A reference to votes of, or obtained or received by, a candidate includes votes obtained or received by the candidate on any transfer under this Schedule.

3 Interpretation – what constitutes a separate transfer

For this Schedule, each of the following constitutes a separate transfer:

- (a) a transfer under clause 6 or 9(2) of the surplus of any elected candidate;
- (b) a transfer under clause 8(3) of all first preference votes of an excluded candidate;
- (c) a transfer under clause 8(5) of all the votes of an excluded candidate that were transferred from another candidate.

4 Roles of authorised officer, other officers and scrutineers

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

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

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

6 Transfer of surplus from elected candidates

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

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

Note for subclause (1)

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

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

Note for subclause (3)

See clause 7.

- (4) If a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer of the surplus of a particular elected candidate because of subclause (1) or (3), no votes of any other candidate are to be transferred to the continuing candidate.

7 How to deal with ballot papers on transfer of surplus

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

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

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

8 Transfer of ballot papers on exclusion of candidate

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

- (b) the number so obtained (disregarding any fraction) must be added to the number of votes of the continuing candidate;
- (c) all those ballot papers must be transferred to the continuing candidate.

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

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

Note for subclause (2)

See clause 7.

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

10 Further exclusion of candidate

- (1) If after the exclusion of a candidate and the transfer of the votes (if any) of the excluded candidate that are capable of being transferred, no continuing candidate has received a number of votes greater than the quota:
 - (a) the continuing candidate who has the fewest votes must be excluded; and
 - (b) that continuing candidate's votes and ballot papers must be transferred as provided in clause 8(3) to (5).
- (2) Subclause (1) has effect subject to clause 12.

11 No further transfer of votes

- (1) This clause applies if a candidate is elected as a result of:
 - (a) a transfer of the first preference votes of an excluded candidate; or

- (b) a transfer of all the votes of an excluded candidate that were transferred to the excluded candidate from a particular candidate.
- (2) No other votes of the excluded candidate may be transferred to the candidate so elected.

12 Election of candidate out of 2 continuing candidates

- (1) For the last vacancy for which 2 continuing candidates remain, the continuing candidate who has the larger number of votes is elected even if that number is below the quota.
- (2) If those candidates have the same number of votes, the candidate with the larger number of votes at the last preceding count or transfer is taken to be elected.
- (3) If the number of votes at that count or transfer was equal, the authorised officer must, in the presence of any scrutineers who may be present, draw lots to determine which of the candidates is to be elected.

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

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

14 Order of election

- (1) For this Schedule, the order of election of candidates must be:
 - (a) in accordance with the order of the count or transfer as a result of which they were elected; and
 - (b) on the basis that the candidates (if any) elected on the count of first preference votes are to be the earliest elected.
- (2) If 2 or more candidates are elected as a result of the same count or transfer, the order in which they will be taken to have been elected must be:
 - (a) in accordance with the relative numbers of their votes; and
 - (b) on the basis that the candidate with the largest number of votes is to be the earliest elected.

- (3) However, if 2 or more of those candidates each has the same number of votes, the order in which they are taken to have been elected must be:
 - (a) in accordance with the relative numbers of their votes at the last count or transfer before their election at which each of them had a different number of votes; and
 - (b) on the basis that the candidate with the largest number of votes at that count or transfer is to be the earliest elected.
- (4) Furthermore, if there has been no such count or transfer, the authorised officer must, in the presence of any scrutineers who may be present, draw lots to determine the order in which the candidates are taken to have been elected.

15 Order of transfer

- (1) Subject to subclauses (2) to (4), if after any count or transfer under this Schedule, 2 or more candidates each has a surplus, the order of any transfers of those surpluses must be:
 - (a) in accordance with the relative sizes of the surpluses; and
 - (b) on the basis that the surplus of the candidate having the largest surplus is to be transferred first.
- (2) Subject to subclause (4), if after any count or transfer under this Schedule, 2 or more candidates have equal surpluses, the order of any transfers of those surpluses must be:
 - (a) in accordance with the relative numbers of votes of those candidates at the last count or transfer at which each of those candidates had a different number of votes; and
 - (b) on the basis that the surplus of the candidate with the largest number of votes at that count or transfer is to be transferred first.
- (3) However, if there has been no such count or transfer, the authorised officer must, in the presence of any scrutineers who may be present, draw lots to determine the order in which the surpluses are to be dealt with.
- (4) If a candidate obtains a surplus after any count or transfer under this Schedule, the surplus must not be transferred before the transfer of any surplus obtained by any other candidate on an earlier count or transfer.

16 Order of exclusion

- (1) If the candidate who has the fewest votes is required to be excluded and there are 2 or more candidates each having the fewest votes, whichever of those candidates had the fewest votes at the last count or transfer at which each of those candidates had a different number of votes will be excluded.
- (2) However, if there has been no such count or transfer, the authorised officer must, in the presence of any scrutineers who may be present, draw lots to determine which candidate will be excluded.

17 Setting aside of ballot papers

- (1) If the total number of votes of an elected candidate is equal to the quota, the ballot papers expressing those votes must be set aside as finally dealt with.
- (2) For subclause (1), the **ballot papers** include:
 - (a) ballot papers expressing first preference votes received by the candidate; and
 - (b) ballot papers obtained by the candidate on transfers under this Schedule.

18 Death of candidate

If a candidate dies before the end of polling day:

- (a) a vote indicated on a ballot paper opposite the name of the candidate must be counted to the candidate next in the order of the voter's preference; and
- (b) the numbers indicating subsequent preferences are taken to have been altered accordingly.

Note for clause 18

See regulation 54A.

Schedule 2 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 = <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

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

Notified	29 August 2008
Commenced	29 August 2008

Statute Law Revision Act 2009 (Act No. 25, 2009)

Assent date	1 September 2009
Commenced	16 September 2009 (<i>Gaz</i> G37, 16 September 2009, p 3)

Electoral and Other Legislation Amendment Act 2011 (Act No. 40, 2011)

Assent date	21 December 2011
Commenced	pts 4, 6 and 7: 1 May 2012; rem: 21 December 2011 (s 2)

Local Government (Electoral) Amendment Regulations 2011 (SL No. 50, 2011)

Notified	23 November 2011
Commenced	9 January 2012 (r 2)

3 LIST OF AMENDMENTS

r 3	amd Act No. 40, 2011, s 51; No. 50, 2011, r 4
r 4	amd No. 50, 2011, r 5
r 6	amd No. 50, 2011, r 14
r 7	amd Act No. 40, 2011, s 52; No. 50, 2011, r 14
r 8	amd Act No. 40, 2011, s 53
r 10	amd Act No. 40, 2011, s 54
r 11	amd Act No. 40, 2011, s 55
r 14	amd No. 50, 2011, r 6
r 15	amd No. 50, 2011, r 14
r 17	amd No. 50, 2011, r 7
r 18	amd Act No. 40, 2011, s 56
r 20	amd Act No. 40, 2011, s 57; No. 50, 2011, r 14
r 23	amd Act No. 40, 2011, s 58; No. 50, 2011, r 14
r 24	amd Act No. 40, 2011, s 59; No. 50, 2011, r 14
r 25	amd Act No. 40, 2011, s 60

r 27	amd Act No. 40, 2011, s 61
r 28	amd No. 50, 2011, r 14
r 30	amd Act No. 40, 2011, s 62
r 31	amd Act No. 25, 2009, s 11
rr 32 – 33	sub Act No. 40, 2011, s 63
r 35	amd Act No. 40, 2011, s 64
r 37	amd Act No. 40, 2011, s 65
rr 38 – 41	amd No. 50, 2011, r 14
r 42	amd No. 50, 2011, r 8
r 45	amd Act No. 40, 2011, s 66; No. 50, 2011, r 14
rr 47 – 49	amd No. 50, 2011, r 14
r 50	amd Act No. 40, 2011, s 67
r 51	amd No. 50, 2011, r 14
rr 52 – 54	sub No. 50, 2011, r 9
r 54A	ins No. 50, 2011, r 9
r 55	amd No. 50, 2011, r 14
r 57	amd No. 50, 2011, r 10
r 62	amd Act No. 40, 2011, s 68
r 63	amd No. 50, 2011, r 14
r 64A	ins Act No. 40, 2011, s 69
r 67	amd No. 50, 2011, r 11
r 68	sub Act No. 40, 2011, s 70
pt 8 hdg	ins Act No. 40, 2011, s 70
r 69	sub Act No. 40, 2011, s 70
sch 1	ins No. 50, 2011, r 12
sch 2 hdg	amd No. 50, 2011, r 13
(former sch hdg)	