

Serial 116
Local Government Legislation Amendment Bill 2015
Mrs Price

A Bill for an Act to amend the *Local Government Act* and *Local Government (Electoral) Regulations*, and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

LOCAL GOVERNMENT LEGISLATION AMENDMENT ACT 2015

Act No. [] of 2015

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2015

An Act to amend the *Local Government Act* and *Local Government (Electoral) Regulations*, and for related purposes

[Assented to [] 2015]
[Second reading [] 2015]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Local Government Legislation Amendment Act 2015*.

2 Commencement

- (1) Part 4, Division 3 commences on the day fixed by the Administrator by *Gazette* notice.
- (2) The remaining provisions of this Act commence on the day on which the Administrator's assent to this Act is declared.

Part 2 Amendment of Local Government Act

3 Act amended

This Part amends the *Local Government Act*.

4 Section 3 amended

- (1) Section 3, definition ***Tribunal***

omit

- (2) Section 3

insert (in alphabetical order)

decision notice, for a decision, means a written notice setting out:

- (a) the decision and the reasons for it; and
- (b) any right the person to whom the notice is to be given has, under this or another Act, to apply for a review of, or to appeal, the decision.

mandatory postal vote election means a by-election declared to be a mandatory postal vote election under section 86A(2).

public notice means notice published in accordance with section 4A.

returning officer, for an election:

- (a) if the election is a by-election – see section 86(9); or
- (b) otherwise – means the Electoral Commissioner.

reviewable decision, see section 227(1).

- (3) Section 3, definition ***general election***, paragraph (a), after "84"

insert

or 226

5 Section 4A inserted

After section 4, in Part 1.2

insert

4A Public notice

- (1) If a provision of this Act or the regulations requires public notice to be given about a matter in relation to an election, notice about the matter must be published as follows:
 - (a) the returning officer for the election must publish information about the matter in a newspaper circulating in the relevant local government area;
 - (b) the returning officer for the election must direct the relevant council to make that information available on the council's website in accordance with sections 200 and 200A;
 - (c) the council must comply with the direction under paragraph (b).
- (2) This section does not prevent the giving of notice about the matter in another way (including, for example, by radio or television broadcast).
- (3) However, if under this Act, a stated period after a public notice is required or allowed for a matter, the period starts on the date the notice is first published under subsection (1).

6 Section 39 amended

- (1) Section 39(4)(a), (b), (c) and (e), after "Electoral Commissioner"

insert

and the council

- (2) Section 39(5)(a) and (b)

omit

12

insert

18

7 Section 40 amended

Section 40

omit

Tribunal may, on application by the CEO, the Electoral Commissioner

insert

Civil and Administrative Tribunal may, on application by the CEO, the returning officer

8 Section 44 amended

(1) Section 44(1)

omit, insert

(1) The principal member of a council is to be appointed or elected to the office.

(2) Section 44(2) and (3)

omit

regional council or a shire

(3) Section 44(5)

omit, insert

(5) If a change is made to the basis of filling the office:

(a) the change does not take effect until the next general election; and

(b) for the next general election, the change takes effect as follows:

(i) if the change is that the office is to be filled by election – the number of members of the council is increased by one;

(ii) if the change is that the office is to be filled by appointment – the number of members of the council is decreased by one.

- (4) Section 44(6)
omit
a shire is changed into a region or a region is changed into a shire
insert
there is a change in the classification of a local government area

- (5) Section 44(7)
omit

9 Section 46 amended

- (1) Section 46, note heading
omit, insert
Note for section 46
- (2) Section 46, note
omit (all references)
12 months
insert
18 months

10 Section 74 amended

- Section 74(6), after "If the"
insert
Civil and Administrative

11 Section 81 amended

- Section 81(4A)
omit
notify the complainant and the respondent without delay, in writing,
of the decision

insert

give a decision notice to each of the complainant and the respondent without delay

12 Section 82 replaced

Section 82

repeal, insert

82 Application for review of decision

A person to whom a decision notice has been given under section 81(4A) may apply to the Civil and Administrative Tribunal for a review of the decision.

13 Section 85 amended

(1) Section 85(1) and (2)

omit, insert

- (1) A periodic general election is to be held:
 - (a) on the 4th Saturday in August 2017; and
 - (b) after the periodic general election mentioned in paragraph (a) – on the 4th Saturday in August in the 4th year after the most recent previous periodic general election was held.
- (2) The Electoral Commissioner may, by *Gazette* notice, provide that a periodic general election be held on a date other than the date on which it is scheduled to be held under subsection (1) (the **nominal date**) if:
 - (a) the date for an election mentioned in section 394 of the *Commonwealth Electoral Act 1918* (Cth) is the same as the nominal date; or
 - (b) the date for a general election under the *Electoral Act* is the same as the nominal date.
- (2A) However, the new date on which the periodic general election is to be held under subsection (2) must not be:
 - (a) earlier than 2 months before the nominal date; or
 - (b) later than 2 months after the nominal date.

(2) Section 85(3)

omit

fixed

14 Section 86 amended

(1) Section 86(1)

omit, insert

(1) This section applies if a by-election must be held under section 39(5)(b).

(2) Section 86(3) to (5)

omit, insert

(3) A by-election is to be held on a date fixed by the returning officer.

(4) The date must fall within 4 months after the Electoral Commissioner is notified of the casual vacancy under section 39(4).

(5) Unless a person is appointed under subsection (6) to be the returning officer for a by-election, the by-election (including nomination of candidates and other related processes) is to be conducted as decided by the Electoral Commissioner.

Note for subsection (5)

Because section 89(1) provides that regulations may provide for the conduct of elections, including by-elections for which the returning officer is appointed under subsection (6), those by-elections must be conducted in accordance with the regulations.

(6) The council may appoint the CEO or another person (other than the Electoral Commissioner) to be the returning officer for the by-election, by doing the following within 2 months after the Electoral Commissioner is notified of the casual vacancy under section 39(4):

(a) passing a resolution appointing the person;

(b) if the person is not the CEO – entering into a contract with the person for the performance of the functions of returning officer.

- (7) As soon as practicable after the council appoints a person to be the returning officer for a by-election under subsection (6), and in any event not later than 5 days after the appointment, the council must notify the Electoral Commissioner of the identity of the returning officer.
- (8) However, failure to notify the Electoral Commissioner under subsection (7) does not affect the validity of the appointment.
- (9) In this section:
- returning officer**, for a by-election, means:
- (a) if a resolution is passed under subsection (6) in relation to the by-election – the person appointed by the resolution; or
- (b) otherwise – the Electoral Commissioner.

15 Section 86A inserted

After section 86, in Part 8.2

insert

86A Resolution for mandatory postal vote election

- (1) A municipal council may decide that the only way to vote in a by-election (a **mandatory postal vote election**) is by postal vote.
- (2) If a municipal council does so, the municipal council must, within 2 months after it is notified of a casual vacancy under section 39(4), pass a resolution declaring the by-election to be a mandatory postal vote election.
- (3) As soon as practicable after the municipal council passes the resolution, and in any event not later than 5 days after the passage of the resolution, the council must notify the following persons that the resolution has been passed:
- (a) if the returning officer is the Electoral Commissioner – the Electoral Commissioner;
- (b) otherwise – the Electoral Commissioner and the returning officer.
- (4) Failure to notify a person as required by subsection (3)(a) or (b) does not affect the validity of the resolution.

16 Section 88 amended

After section 88(5)

insert

- (5A) As soon as practicable after an electoral roll closes for a by-election, the Electoral Commissioner must give a copy of the roll to the returning officer (unless the Electoral Commissioner is the returning officer).

17 Section 88A inserted

After section 88, in Chapter 8, Part 8.3

insert

88A Use of electoral roll for by-election

- (1) A returning officer for a by-election commits an offence if:
- (a) the returning officer has been given a copy of an electoral roll under section 88(5A); and
 - (b) the returning officer engages in conduct; and
 - (c) the result of the conduct is that information obtained from the copy of the roll is used otherwise than for a proper purpose connected with the by-election.

Maximum penalty: 80 penalty units.

- (2) A person, other than the returning officer for a by-election, commits an offence if:
- (a) the returning officer for the by-election has been given a copy of an electoral roll under section 88(5A); and
 - (b) the person engages in conduct; and
 - (c) the result of the conduct is that information obtained from the copy of the roll is used otherwise than for a proper purpose connected with the by-election.

Maximum penalty: 50 penalty units.

18 Section 89 amended

Section 89(1)

omit

An

insert

Subject to section 86(5), an

19 Section 90 amended

Section 90(2), after "Subject to"

insert

a resolution passed under section 86A and

20 Section 91 amended

(1) Section 91(1)

omit

Electoral Commissioner

insert

returning officer

(2) Section 91(1), (3)(a) and (4), before "Tribunal"

insert

Civil and Administrative

21 Section 92 amended

(1) Section 92(1)(a)

omit

Electoral Commissioner

insert

returning officer

- (2) Section 92(1)(c) and 92(3), before "Tribunal"

insert

Civil and Administrative

22 Section 93 repealed

Section 93

repeal

23 Section 94 amended

- (1) Section 94, heading

omit

Tribunal

insert

Civil and Administrative Tribunal

- (2) Section 94(1) to (3)

omit (all references)

Tribunal

insert

Civil and Administrative Tribunal

- (3) After section 94(3)

insert

- (4) The Civil and Administrative Tribunal cannot inquire into the correctness of an electoral roll.

24 Section 99 amended

- (1) Section 99(5)

omit

Electoral Commissioner

insert

returning officer for an election

- (2) Section 99(6)
omit (all references)
Electoral Commissioner
insert
returning officer

- (3) Section 99(6)(d)
omit
Commissioner
insert
returning officer

25 Section 200 amended

- (1) Section 200(q)
omit
227(2)).
insert
227(2));
- (2) After section 200(q)
insert
- (r) an invitation notice for nominations of candidates for an election (See any other material prescribed by regulation);
 - (s) a declaration of the names of the duly nominated candidates for an election (See any other material prescribed by regulation);
 - (t) a public notice of early voting centres, absentee voting centres, mobile polling places and other polling places for an election (See any other material prescribed by regulation);
 - (u) a declaration of the results of an election (See any other material prescribed by regulation).

26 Section 200A amended

- (1) Section 200A(1)
omit
when material need not be available
insert
the availability of material
- (2) Section 200A(1)(n)
omit
year.
insert
year;
- (3) After section 200A(1)(n)
insert
- (o) if the material is material mentioned in section 200(r) or (u), the material:
- (i) need not be available after the day that is 6 months before the polling day for the periodic general election next following the election to which the material relates (See any other material prescribed by regulation); and
 - (ii) must be removed as soon as practicable after the relevant returning officer directs the council to remove the material;
- (p) if the material is material mentioned in section 200(s) or (t), the material:
- (i) need not be available after the day on which the results of the election are declared; and
 - (ii) must be removed as soon as practicable after the relevant returning officer directs the council to remove the material.

(4) After section 200A(2)

insert

(3) In this section:

relevant returning officer, in relation to material that relates to an election, means the returning officer for an election that is:

- (a) after the election to which the material relates but not after the next periodic general election; and
- (b) for a ward or local government area affected by the election to which the material relates.

27 Section 213 amended

Section 213(2) to (4)

omit, insert

- (2) The surcharge is imposed by giving the person a decision notice.
- (3) A person to whom a decision notice has been given may apply to the Civil and Administrative Tribunal for a review of the decision.

28 Section 226 amended

Section 226(1)

omit, insert

- (1) If the members of a council are dismissed from office under this Part, and a periodic general election is not to be held within 1 year after the dismissal, the Minister must fix a date for the holding of a general election to fill the vacancies created by the dismissal.

29 Section 230 amended

Section 230(3)

omit, insert

- (3) The CEO must give a decision notice to the applicant as soon as practicable after the council makes a final decision on the application.

30 Section 231 replaced

Section 231

repeal, insert

231 Review of council's decision

A person to whom a decision notice has been given under section 230(3) may apply to the Civil and Administrative Tribunal for a review of the decision.

31 Chapter 18, Part 18.2 replaced

Chapter 18, Part 18.2

repeal, insert

Part 18.2 Review of decisions**232 Jurisdiction of Civil and Administrative Tribunal**

The Civil and Administrative Tribunal has jurisdiction to deal with matters conferred in accordance with this Act.

Note for section 232

The Civil and Administrative Tribunal has jurisdiction in the following matters:

- (a) *to determine eligibility for membership of a council (Section 40);*
- (b) *to declare a decision of a council, local authority, local board or council committee void where it is vitiated by conflict of interest (Section 74);*
- (c) *to review a decision of a disciplinary committee (Section 82);*
- (d) *to determine an electoral dispute (Section 94);*
- (e) *to review a surcharge (Section 213);*
- (f) *to review a decision by a council on review of a reviewable decision.*

233 Review does not affect decisions and orders

- (1) An application for review of a decision or order to the Civil and Administrative Tribunal does not suspend the operation of the decision or order.
- (2) However, the Civil and Administrative Tribunal may make an order suspending an obligation arising from a decision or order to which a review relates, or prohibiting action to give effect to the decision or order, until the Civil and Administrative Tribunal makes its decision on the matter.

- (3) Section 44(2) of the *Northern Territory Civil and Administrative Tribunal Act* does not apply to a review of a decision or order made under this Act.

32 Chapter 20, Part 20.6 inserted

After section 278

insert

**Part 20.6 Transitional provisions for Local Government
Legislation Amendment Act 2015**

279 Definitions

In this Part:

amending Act means the *Local Government Legislation Amendment Act 2015*.

commencement means the commencement of the amending Act.

LGT means the Local Government Tribunal.

proceeding means a proceeding jurisdiction for which is conferred on the Civil and Administrative Tribunal under this Act.

280 Applications to LGT – pending decision

- (1) This section applies if:
- (a) before the commencement, an application was made to the LGT in a proceeding; and
 - (b) as at the commencement, the LGT had not determined the matter.
- (2) The LGT must deal with and determine the matter as if the amending Act had not commenced.
- (3) However, the LGT's determination is then taken to have been made by the Civil and Administrative Tribunal.

Part 3 Amendment of Local Government (Electoral) Regulations

33 Regulations amended

This Part amends the *Local Government (Electoral) Regulations*.

34 Regulation 3 amended

- (1) Regulation 3, definitions ***candidate square, council area, declaration ballot paper, early voting centre, early voting period, Electoral Commission, Electoral Commissioner, electorate, fail, nomination day, polling hours, polling place*** and ***scrutiny centre***

omit

- (2) Regulation 3

insert (in alphabetical order)

absentee voting centre, in relation to an election, means a polling place appointed, under regulation 14(1)(ba), by the returning officer for the election as an absentee voting centre.

candidate square, in relation to a candidate for an election, means the square printed adjacent to the name of the candidate on the ballot paper prepared for the election for the use of a voter to record the order of the voter's preference for the candidate.

candidate statement means a candidate statement that meets the requirements of regulation 10A.

declaration ballot paper means:

- (a) a ballot paper mentioned in regulation 23(1); or
- (b) a postal ballot paper mentioned in regulation 27 issued, or issued and sent, to a person further to an application made under regulation 26(2).

early voting centre, in relation to an election, means a polling place appointed, under regulation 14(1)(b), by the returning officer for the election as an early voting centre.

electorate means:

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

indication of preferences means an indication of preferences that meets the requirements of regulation 10B.

nomination day means:

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

polling period, see regulation 3A.

polling place, in relation to an election, means a place appointed for voting by the returning officer for the election.

postal ballot paper, in relation to an election, means a ballot paper that includes, if the election is a mandatory postal vote election, a statement of the offence against regulation 59(1).

postal vote certificate means a certificate that complies with regulation 27(1C).

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

- (a) a postal ballot paper for the election; and
- (b) a postal vote certificate printed on an envelope addressed to the returning officer for the election; and
- (c) an explanation in writing of the procedure for postal voting under these Regulations; and
- (d) any other information that the returning officer considers appropriate; and

- (e) if the election is a mandatory postal vote election:
 - (i) a candidate statement for each candidate in relation to whom a candidate statement was lodged, under regulation 10A; and
 - (ii) an indication of preferences for each candidate in relation to whom an indication of preferences was lodged, under regulation 10B.

replacement postal voting papers, see regulation 27A(2).

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

35 Regulation 3A inserted

After regulation 3

insert

3A Polling period

The ***polling period*** for an election is the period for voting established under this regulation as follows:

- (a) if the election is a by-election and the Electoral Commissioner is the returning officer – the period fixed by the Electoral Commissioner to be the polling period;
- (b) the period of one or more hours of polling, on one or more days, (which period must end not later than 6 pm on the day before polling day), fixed by the returning officer for the election to be the polling period for an early voting centre for the election;
- (c) if the election is a general election or a by-election the polling period is also:
 - (i) for a polling place for the election (other than a mobile polling place) on polling day for the election – the period starting at 8 am and ending at 6 pm on polling day;
 - (ii) for a mobile polling place – the dates and hours of polling specified in a declaration in force under regulation 32 for the place, including the dates and hours as changed under regulation 33.

36 Regulation 4 amended

Regulation 4(1)(a) and (b)

repeal, insert

- (a) a returning officer, in relation to the election for which he or she is the returning officer;
- (b) a person authorised in writing by the returning officer for an election to exercise specified powers or perform specified functions of an authorised officer under these Regulations in relation to the election.

37 Regulation 6 replaced

Regulation 6

omit, insert

6 Returning officer to invite nominations of candidates

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

- (3) The public notice must also include the following information if the election is a mandatory postal vote election:
- (a) the date of the resolution mentioned in section 86A(2) of the Act;
 - (b) the approximate date on which the postal voting papers are likely to be issued and sent to electors;
 - (c) an explanation of the procedures for postal voting;
 - (d) any other information that the returning officer considers appropriate.

38 Regulation 7 amended

- (1) Regulation 7(1), example

omit

council area

insert

local government area

- (2) Regulation 7(3)

omit

council

insert

local government

39 Regulation 8 amended

- (1) Regulation 8(1), (2) and (3)(a) and (b)

omit (all references)

Electoral Commissioner

insert

returning officer

- (2) Regulation 8(4) and (5)

omit

40 Regulation 10 amended

- (1) Regulation 10(1), (2) to (4) and (5), definition *appropriate time*, paragraph (b)

omit

Electoral Commissioner

insert

returning officer

- (2) After regulation 10(1)

insert

- (1A) As soon as practicable after the returning officer makes the declaration under subregulation (1), public notice of the declaration must be given.

- (3) Regulation 10(2A)(b), after "Electoral Commissioner"

insert

is the returning officer and

- (4) After regulation 10(4)

insert

- (4A) As soon as practicable after the returning officer makes the declaration under subregulation (3), public notice of the declaration must be given.

41 Regulations 10A and 10B inserted

After regulation 10, in Part 2, Division 1

insert

10A Lodgement of candidate statement

- (1) This regulation applies if a candidate for a mandatory postal vote election wishes to lodge a candidate statement.
- (2) The candidate statement must include only the following:
- (a) a statement of 150 words or less;

- (b) a photograph of the candidate that complies with the requirements applicable to photographs of candidates for election under section 32(1)(f) of the *Electoral Act*.
- (3) The candidate statement must not include:
 - (a) a reference to another candidate in the mandatory postal vote election, unless that other candidate has consented in writing to the reference; or
 - (b) a claim of endorsement or support from a party, organisation or person unless the organisation or person has consented in writing to the claim being included.
- (4) The following documents must be lodged before 12 noon on the second day after the determination day:
 - (a) the candidate's candidate statement;
 - (b) a signed declaration declaring the matters mentioned in subregulation (5);
 - (c) if the documents are lodged by a person authorised in writing to do so by the candidate – the authorisation.
- (5) The declaration to be lodged must state that the candidate declares the following:
 - (a) that the candidate statement is true and correct;
 - (b) that the candidate statement does not contain a defamatory statement;
 - (c) that the candidate statement does not contain material that may mislead or deceive a voter in the casting of a vote;
 - (d) that the candidate understands that the candidate is liable to be prosecuted if the candidate statement contains:
 - (i) a defamatory statement; or
 - (ii) material that may mislead or deceive a voter in the casting of a vote.
- (6) The lodgement of the documents under subregulation (4) must be done:
 - (a) only by the candidate, or a person authorised in writing to do so by the candidate; and

- (b) in both of the following ways:
 - (i) hand delivery of the documents to an authorised officer at an office of the returning officer or another place approved by the returning officer;
 - (ii) electronic means approved by the returning officer.
- (7) The returning officer must reject a candidate statement if the returning officer is of the opinion that one or more of the following applies:
 - (a) the candidate statement does not meet the requirements of subregulation (2) or (3);
 - (b) the candidate statement contains offensive or obscene material.
- (8) The returning officer may reject a candidate statement if the returning officer is of the opinion that the candidate statement may not meet the requirements of these Regulations.
- (9) A rejection under subregulation (7) or (8) must be made in writing before 12 noon on the third day after the determination day and must contain the following:
 - (a) a statement of the reason for the rejection;
 - (b) a statement of which part of the candidate statement requires amendment;
 - (c) a statement that the candidate may lodge an amended candidate statement before 12 noon on the fourth day after the determination day.
- (10) If a candidate statement is rejected under subregulation (7) or (8):
 - (a) a candidate who wishes to lodge an amended candidate statement may do so, but only if it is lodged before 12 noon on the fourth day after the determination day by the candidate, or a person authorised in writing by the candidate; and
 - (b) subject to paragraph (c), these Regulations apply (with the necessary changes) to the amended candidate statement as if it were a candidate statement lodged under this regulation; and
 - (c) if the amended candidate statement is also rejected under subregulation (7) or (8) – the candidate cannot lodge a candidate statement.

(11) In this regulation:

determination day, in relation to a mandatory postal vote election, means the day on which the returning officer determines the order of the candidates' names on the ballot paper for the election under regulation 10(1).

10B Lodgement of indication of preferences

- (1) This regulation applies if a candidate for a mandatory postal vote election wishes to lodge an indication of preferences.
- (2) The indication of preferences must:
 - (a) be substantially in the form of a ballot paper; and
 - (b) contain the name of each duly nominated candidate for the election, in the order determined under regulation 10(1);
 - (c) contain the following in the candidate squares for the candidates in the mandatory postal vote election:
 - (i) in the candidate square for the candidate of the particular candidate's first preference, the number "1";
 - (ii) in each other candidate square, a whole number, starting at the number "2" and consecutively increasing in the order of the particular candidate's preferences.
- (3) The following documents must be lodged before 12 noon on the second day after the determination day:
 - (a) the indication of preferences;
 - (b) if the indication of preferences is lodged by a person authorised in writing to do so by the candidate – the authorisation.
- (4) The lodgement of the documents under subregulation (3) must be done:
 - (a) only by the candidate, or a person authorised in writing to do so by the candidate; and
 - (b) in both of the following ways:
 - (i) hand delivery of the documents to an authorised officer at an office of the returning officer or another place approved by the returning officer;
 - (ii) electronic means approved by the returning officer.

- (5) The returning officer must reject an indication of preferences if the returning officer is of the opinion that the indication of preferences does not meet the requirements of these Regulations.
- (6) A rejection under subregulation (5) must be made in writing before 12 noon on the third day after the determination day and must contain the following:
- (a) a statement of the reason for the rejection;
 - (b) a statement of which part of the indication of preferences requires amendment;
 - (c) a statement that the candidate may lodge an amended indication of preferences before 12 noon on the fourth day after the determination day.
- (7) If an indication of preferences is rejected under subregulation (5):
- (a) a candidate who wishes to lodge an amended indication of preferences may do so, but only if it is lodged before 12 noon on the fourth day after the determination day, by the candidate or a person authorised in writing by the candidate; and
 - (b) subject to paragraph (c), these Regulations apply (with the necessary changes) to the amended indication of preferences as if it were an indication of preferences lodged under this regulation; and
 - (c) if the amended indication of preferences is also rejected under subregulation (5) – the candidate cannot lodge an indication of preferences.
- (8) In this regulation:
- determination day***, see regulation 10A(11).

42 Regulation 11 replaced

Regulation 11

repeal, insert

11 Closing of electoral roll

The electoral roll closes:

- (a) for a general election – at 5 pm on the 32nd day before polling day; or

- (b) for a by-election:
- (i) if the returning officer is the Electoral Commissioner – a day as decided by the Electoral Commissioner; or
 - (ii) otherwise – at 5 pm on the 32nd day before polling day.

43 Regulation 12 amended

Regulation 12(3), note

omit

Electoral Commissioner

insert

returning officer

44 Regulation 13 amended

Regulation 13

omit

Electoral Commissioner

insert

returning officer

45 Regulation 14 amended

- (1) Regulation 14(1) and (3)

omit

Electoral Commissioner

insert

returning officer

- (2) After regulation 14(1)(b)

insert

(ba) appoint a specified polling place to be an absentee voting centre for an election; or

(3) Regulation 14(2)

omit

all words from "Electoral Commissioner" to "polling hours"

insert

returning officer is satisfied that, during the polling period

(4) Regulation 14(4)

omit, insert

(4) Public notice of the following, in relation to an election, must be given:

- (a) each early voting centre and the polling period for each centre;
- (b) each absentee voting centre and the polling period for each centre;
- (c) the location of each mobile polling place, and the polling period at each location;
- (d) each polling place (other than a mobile polling place) and the polling period on polling day.

46 Regulation 15 amended

Regulation 15(2)(a)

omit

Electoral Commissioner

insert

returning officer

47 Regulation 17 amended

Regulation 17(1) and (2)

omit (all references)

council area

insert

local government area

48 Regulation 20 amended

Regulation 20(1)

omit

polling hours

insert

the polling period

49 Regulation 22 replaced

Regulation 22

repeal, insert

22 Right to declaration voting

A person may vote under this Division as follows:

- (a) a person who wishes to vote before polling day under this Division at an early voting centre may do so;
- (b) a person who is outside the local government area on polling day may exercise an absentee vote under this Division at an absentee voting centre;
- (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;
- (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.

50 Regulation 23 amended

(1) Regulation 23(1)

omit

polling hours

insert

the polling period

(2) Regulation 23(2)(a), after "issuing the"

insert

declaration

(3) Regulation 23(2)(b)

omit

a ballot

insert

the declaration ballot

51 Regulation 24 amended

(1) Regulation 24(1A) and (1B), after "after a"

insert

declaration

(2) Regulation 24(1B)(b)(i)

omit

the envelope on which the declaration appears

insert

an envelope

(3) Regulation 24(2), after "issue of a"

insert

declaration

52 Regulations 25 and 26 replaced

Regulations 25 and 26

repeal, insert

26 Application for postal voting papers

- (1) An elector who wishes to apply for postal voting papers for an election, other than a mandatory postal vote election, must make an application to the returning officer for the election, in the approved form:
 - (a) if the election is a general election – within the period that starts 3 months before the polling day for the election; or
 - (b) otherwise – after the invitation for nominations of candidates has been made under regulation 6.
- (2) A person may make an application to the returning officer for a mandatory postal vote election to be an elector in the election, and for postal voting papers to be issued to the person, if:
 - (a) the person claims to be entitled to vote in the election; and
 - (b) the person's name does not appear on the relevant electoral roll; and
 - (c) the person makes the application:
 - (i) in the approved form; and
 - (ii) after the electoral roll closes under regulation 11; and
 - (iii) before polling day for the election.
- (3) The following persons are taken to have applied for postal voting papers for an election:
 - (a) an elector who is registered as a postal voter under the *Electoral Act*;
 - (b) an elector in a mandatory postal vote election whose name appears on the relevant electoral roll.

53 Regulation 27 amended

(1) Regulation 27(1) and (2)

omit, insert

- (1) An authorised officer must issue, or issue and send, postal voting papers to an applicant in accordance with subregulation (1A).

(1A) Postal voting papers must be issued, or issued and sent, as follows:

- (a) the authorised officer must issue the postal voting papers directly to an applicant for postal voting papers for a mandatory postal vote election if:
- (i) the applicant applies for the postal voting papers in person under regulation 26(2) or 27A; and
 - (ii) the application is not made before the day mentioned in subregulation (2A);
- (b) the authorised officer must issue and send the postal voting papers to each other applicant who applies (or is taken to have applied) for postal voting papers under regulation 26 or 27A.

Note for subregulation (1A)

Since an applicant under regulation 26(2) or 27A for postal voting papers in a mandatory postal vote election may apply in person for postal voting papers, the authorised officer may issue or issue and send the postal voting papers to the applicant, depending on the method and timing of the application.

(1B) An authorised officer may issue postal voting papers directly to an applicant if:

- (a) the application is made under regulation 26(2) or 27A before the day mentioned in subregulation (2A); and
- (b) the authorised officer has the postal voting papers available.

(1C) The postal vote certificate printed on the envelope that is issued, or issued and sent, to an applicant under subregulation (1A) or (1B) must contain the following:

- (a) if the person applied for the postal voting papers under regulation 26(2) or replacement postal voting papers under regulation 27A:
- (i) the person's name;
 - (ii) a space for the signature of the person;

- (iii) a space for the name of the witness;
 - (iv) a space for the signature of the witness certifying that the matters in the certificate are true and correct;
 - (v) a space for inserting the date and time when the witness signs the certificate;
 - (vi) a space for inserting the date when the envelope bearing the certificate is received by the authorised officer;
 - (vii) a space for inserting the person's address;
 - (viii) a space for inserting the person's date of birth;
 - (ix) a space for inserting the basis on which the person claims to be entitled to vote in the mandatory postal vote election;
- (b) otherwise – the matters mentioned in paragraph (a)(i) to (vi).
- (2) Subject to subregulations (2A) to (5), postal voting papers must be issued, or issued and sent, as soon as practicable after the order of candidates' names on the ballot paper is determined or, if applicable, the receipt of the application (whichever is the later).
- (2A) Postal voting papers must be issued and sent not later than the day that is 15 days before polling day for a mandatory postal vote election, unless the person to whom they are to be sent has made an application under regulation 26(2) or 27A.
- (2) Regulation 27(3), after "applicant"
- insert*
- who did not apply in person for the postal voting papers
- (3) After regulation 27(4)
- insert*
- (5) An authorised officer may issue postal voting papers to a person who applies for postal voting papers in person under regulation 26(2) or 27A, but only if the application is made by 6 pm on the day that the returning officer has fixed as the polling day.

54 Regulation 27A inserted

After regulation 27

insert

27A Application for replacement postal voting papers

- (1) A person who claims to be entitled to vote in a mandatory postal vote election may apply to the returning officer, in the approved form, for replacement postal voting papers, if the person claims that:
 - (a) the person has not received postal voting papers, and the person's address stated in the application:
 - (i) is not the address that has previously been associated with the person, either on the electoral roll or in the application under regulation 26(2); and
 - (ii) is an address within the area of the mandatory postal vote election; or
 - (b) the person is not a person mentioned in paragraph (a) but has nevertheless not received postal voting papers; or
 - (c) postal voting papers have been issued, or issued and sent, to the person and the papers have been lost, damaged or destroyed.
- (2) A person may apply, in the approved form, to the returning officer for an election, other than a mandatory postal vote election, for replacement postal voting papers, if the person claims that:
 - (a) postal voting papers have been issued, or issued and sent, to the person; and
 - (b) the papers have been lost, damaged or destroyed.
- (3) When the application has been received by the returning officer:
 - (a) an authorised officer must make a notation, on the postal vote certificate, that the postal voting papers (the **replacement postal voting papers**) are issued in replacement of other postal voting papers; and
 - (b) the authorised officer must issue, or issue and send, the replacement postal voting papers to the applicant; and

- (c) these Regulations apply in relation to the replacement postal voting papers as if they were the postal voting papers being replaced.

55 Regulation 28 amended

- (1) Regulation 28, heading

omit, insert

28 Records of applications for, and issue of, postal voting papers

- (2) Regulation 28(a)

omit, insert

- (a) carry out the following procedures with regard to the issue of postal voting papers other than those for a mandatory postal vote election:
- (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;
 - (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
- (aa) carry out the following procedures in relation to the issue of postal voting papers for a mandatory postal vote election:
- (i) initial the ballot paper issued by the officer;
 - (ii) if postal voting papers were issued, or issued and sent, to a person mentioned in regulation 26(3)(b) or 27A:
 - (A) number the postal vote certificate with the number (if any) for the person on the electoral roll; and
 - (B) record the issue of the postal voting papers, or replacement postal voting papers, to the person on the electoral roll; or

56 Regulation 29 amended

Regulation 29

omit

Electoral Commissioner

insert

returning officer

57 Regulation 30 amended

Regulation 30(8)

omit

Electoral Commissioner

insert

returning officer

58 Regulation 32 amended

(1) Regulation 32(1)

omit

all words from "Electoral Commissioner" to "election"

insert

returning officer may, in writing, declare a specified place to be a mobile polling place for an election (other than a mandatory postal vote election)

(2) Regulation 32(3) and (5)

omit

Electoral Commissioner

insert

returning officer

59 Regulation 33 amended

Regulation 33(1) and (2)

omit

Electoral Commissioner

insert

returning officer

60 Regulation 37 replaced

Regulation 37

repeal, insert

37 Polling times

On polling day:

- (a) the poll must open at the start of the polling period and close when all electors present in the polling place at the end of the polling period and desiring to vote have voted; and
- (b) the polling place must be closed at the end of the polling period and no person is to be admitted after that time for voting.

61 Regulation 41 amended

Regulation 41(2)

omit

Electoral Commissioner

insert

returning officer for the election

62 Regulation 42 amended

(1) Regulation 42(2)

omit, insert

- (2) If the authorised officer is not the returning officer for the election, the authorised officer must immediately notify the returning officer of an adjournment under subregulation (1).

- (2) Regulation 42(3) to (5)
omit (all references)
Electoral Commissioner
insert
returning officer

63 Regulation 44 amended

- Regulation 44(2) and (3)
omit
Electoral Commissioner
insert
returning officer

64 Regulation 45 amended

- Regulation 45(1)(a)(i)
omit
Electoral Commissioner
insert
returning officer

65 Regulation 46 amended

- (1) Regulation 46(1)
omit
Electoral Commissioner before 6 pm
insert
returning officer before 12 noon

(2) Regulation 46(2)

omit, insert

(2) A declaration ballot paper must not be accepted for scrutiny:

(a) if it is a declaration ballot paper issued under regulation 27 after an application made under regulation 26(2) or issued under regulation 23 and cast under regulation 24(1B) or (2) – if it is not received for scrutiny in a sealed envelope; and

(b) if it is a declaration ballot paper issued under regulation 27 after an application made under regulation 26(2) or issued under regulation 23 and cast under regulation 24(2) – if the elector's declaration on the envelope is also not signed and witnessed as required under these Regulations.

66 Regulation 47 amended

Regulation 47, after "authorised"

insert

officer

67 Regulation 49 amended

(1) Regulation 49(1)

omit

a ballot paper used for declaration voting

insert

a declaration ballot paper

(2) Regulation 49(2)

omit

council area (or a ward of another council area)

insert

local government area (or a ward of another local government area)

(3) Regulation 49(3)

omit

Electoral Commissioner

insert

returning officer

68 Regulation 51 amended

(1) Regulation 51(2)(b)

omit

6 pm

insert

12 noon

(2) Regulation 51(3), after "must"

insert

, unless the election is a mandatory postal vote election,

(3) Regulation 51(4)

omit, insert

(4) Subject to subregulation (4A), the authorised officer must admit a postal ballot paper for scrutiny if satisfied that:

(a) the elector's signature on the postal vote certificate purports to be witnessed by an authorised witness; and

(b) one of the following applies:

(i) the election is not a mandatory postal vote election and the signature is that of the elector who signed the application;

(ii) the election is a mandatory postal vote election, the postal voting papers were issued to a person other than a person who applied for postal voting papers under regulation 26(2) and the number on the postal vote certificate corresponds with the number of the person on the electoral roll.

- (4A) If replacement postal voting papers have been issued, or issued and sent, to an elector and the authorised officer receives both the replacement postal voting papers and the other voting papers replaced by the replacement postal voting papers, the authorised officer must admit only the replacement postal ballot paper for scrutiny.
- (3) Regulation 51(5)
- omit*
- a postal ballot paper for scrutiny
- insert*
- for scrutiny a postal ballot paper issued or issued and sent to an elector, other than an elector who applied for postal voting papers under regulation 26(2),
- (4) Regulation 51(6)
- omit*
- is not satisfied of the matters mentioned in
- insert*
- rejects postal voting papers under

69 Regulation 56 replaced

Regulation 56

repeal, insert

56 Declaration of result of election

As soon as practicable after the results of an election have been determined:

- (a) public notice must be given of the results of the election and the name of the candidate or candidates returned as elected; and
- (b) the returning officer must:
- (i) certify the results of the election to the CEO of the council; and
 - (ii) notify the Minister of the results of the election; and

- (c) if the returning officer is not the Electoral Commissioner – the returning officer must notify the Electoral Commissioner and the Chief Executive Officer of the results of the election.

70 Regulation 57 amended

Regulation 57(2)

omit, insert

- (2) Public notice of the extension or change of time must be given.

71 Regulation 58 amended

- (1) Regulation 58(1)

omit

Electoral Commissioner

insert

returning officer

- (2) After regulation 58(2)

insert

- (3) For this regulation, an election **fails** as follows:

(a) it fails wholly if no candidate is elected;

(b) it fails in part if one or more candidates are elected but not as many as required to fill all vacancies that were to be filled at the election.

72 Regulation 61 amended

- (1) Regulation 61(2)

omit

delivery to the Electoral Commissioner

insert

delivery to a returning officer

(2) Regulation 61(2)

omit

them to the Electoral Commissioner

insert

them to the returning officer

73 Regulation 63 amended

Regulation 63(1), (2)(a) to (e) and (3)

omit

council area

insert

local government area

74 Regulation 65 amended

Regulation 65(1) and (2), after "election"

insert

if the returning officer is the Electoral Commissioner

75 Regulation 66 amended

Regulation 66(1) and (2)

omit

Electoral Commissioner

insert

returning officer

76 Regulation 67 amended

Regulation 67(3)

omit

section

insert

regulation

77 Regulation 68 replaced

Regulation 68

repeal, insert

67A Contravention of Part 4, Division 5

A returning officer for an election, other than the Electoral Commissioner, commits an offence if:

- (a) the returning officer engages in conduct; and
- (b) the result of the conduct is that the results of the election are determined or declared otherwise than in accordance with Part 4, Division 5.

Maximum penalty: 100 penalty units.

67B Contravention of regulations – returning officer

A returning officer for an election, other than the Electoral Commissioner, commits an offence if:

- (a) the returning officer engages in conduct; and
- (b) the conduct results in a contravention of a regulation, other than a regulation for which another penalty is prescribed.

Maximum penalty: 30 penalty units.

67C Contravention of regulations – authorised officer or employee

- (1) A person who is or was a relevant person in relation to an election commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct results in a contravention of a regulation, other than a regulation for which another penalty is prescribed.

Maximum penalty: 15 penalty units.

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

(3) In this regulation:

relevant person means:

- (a) a person authorised, under regulation 4(1)(b), to be an authorised officer by the returning officer, other than the Electoral Commissioner, for an election; or
- (b) an employee of the returning officer, other than the Electoral Commissioner, for an election.

68 Storage and destruction of electoral papers

- (1) This regulation applies to electoral papers in the possession of the Electoral Commissioner or another returning officer that were used for an election, including postal voting papers that were not delivered and have therefore been returned to the returning officer.
- (2) A returning officer, other than the Electoral Commissioner, must:
 - (a) securely store the electoral papers in the returning officer's possession; and
 - (b) give the electoral papers to the Electoral Commissioner on the earlier of the following days:
 - (i) the day on which the returning officer ceases to be a returning officer;
 - (ii) the day on which the returning officer is first satisfied that the electoral papers are no longer required for exercising a power or performing a function under these Regulations.
- (3) Until the Electoral Commissioner is satisfied that electoral papers in the Electoral Commissioner's possession are no longer required for exercising a power or performing a function under these Regulations, the Electoral Commissioner must securely store:
 - (a) the electoral papers in the Electoral Commissioner's possession as returning officer for an election; and
 - (b) the electoral papers that came into the Electoral Commissioner's possession under subregulation (2)(b).
- (4) The Electoral Commissioner may destroy the electoral papers when they are no longer required to be stored under subregulation (3).

(5) A returning officer for an election, other than the Electoral Commissioner, commits an offence if:

- (a) the returning officer engages in conduct; and
- (b) the conduct results in electoral papers that were used for the election being damaged or destroyed.

Maximum penalty: 100 penalty units.

(6) A returning officer for an election, other than the Electoral Commissioner, commits an offence if:

- (a) the returning officer engages in conduct; and
- (c) the conduct results in electoral papers that were used for the election not being given to the Electoral Commissioner as required by subregulation (2)(b).

Maximum penalty: 20 penalty units.

(7) It is a defence to a prosecution for an offence against subregulation (5) or (6) if the defendant has a reasonable excuse.

78 Schedule 1 amended

(1) Schedule 1, reference heading

omit

54

insert

54A

(2) Schedule 1, clause 8(2)(b)

omit

(5)

insert

(6)

- (3) Schedule 1, after clause 8(5)
insert
- (6) However, the total number of ballot papers of the excluded candidate received from all candidates may be amalgamated if:
- (a) those ballot papers have the same transfer value; and
 - (b) the election was for a single vacancy.

Part 4 Consequential amendments

Division 1 Darwin Waterfront Corporation Act

79 Act amended

This Division amends the *Darwin Waterfront Corporation Act*.

80 Section 70 amended

Section 70(3) and (4)

omit, insert

- (3) The CEO must give a decision notice to the applicant without delay after the Corporation makes a final decision on the application, setting out:
- (a) the final decision and the reasons for it; and
 - (b) the right the applicant has, under this or another Act, to apply for a review of the decision to the Civil and Administrative Tribunal.
- (4) A person to whom a decision notice has been given under subsection (3) may apply to the Civil and Administrative Tribunal for review of the decision.

Division 2 Kava Management Act

81 Act amended

This Division amends the *Kava Management Act*.

82 Section 58C amended

Section 58C(3)(c)

omit (all references)

council area

insert

local government area

Division 3 Court Security Regulations

83 Regulations amended

This Division amends the *Court Security Regulations*.

84 Regulation 2 amended

Regulation 2(2)(e)

omit

Part 5 Expiry of Act

85 Expiry of Act

This Act expires on the day after it commences.