

NORTHERN TERRITORY OF AUSTRALIA

LOCAL GOVERNMENT (ELECTORAL) AMENDMENT REGULATIONS 2011

Subordinate Legislation No. 50 of 2011

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 50 of 2011*

Local Government (Electoral) Amendment Regulations 2011

I, Sally Gordon Thomas, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Local Government Act*.

Dated 15 November 2011

S. G. THOMAS
Administrator

By Her Honour's Command

C. B. BURNS
Minister for Education and Training
acting for
Minister for Local Government

* Notified in the *Northern Territory Government Gazette* on 23 November 2011.

1 Citation

These Regulations may be cited as the *Local Government (Electoral) Amendment Regulations 2011*.

2 Commencement

These Regulations commence on 9 January 2012.

3 Regulations amended

These Regulations amend the *Local Government (Electoral) Regulations*.

4 Regulation 3 amended

- (1) Regulation 3, definitions **area** and **authorised officer** or **officer**
omit

- (2) Regulation 3
insert (in alphabetical order)
authorised officer, see regulation 4.

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.

5 Regulation 4 amended

- (1) Regulation 4(1)(b)
omit, insert
- (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.

-
- (2) After regulation 4(1)

insert

- (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.

6 Regulation 14 amended

- (1) Regulation 14(4)

omit

the area

insert

each council area

- (2) Regulation 14(4), after "particulars of"

insert

the following in the council area

- (3) Regulation 14(4)(a) and (b)

omit

; and

insert

;

7 Regulation 17 amended

- (1) Regulation 17(1)

omit

for an area is entitled to vote at an election

insert

for a council area is entitled to vote at an election for the relevant council

- (2) Regulation 17(1)(b) and (c)

omit (all references)

the area

insert

the council area

- (3) Regulation 17(2)

omit, insert

- (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.

8 Regulation 42 amended

- (1) Regulation 42(1)

omit

The officer in charge of a polling place

insert

An authorised officer in charge of a polling place

- (2) Regulation 42(2)

omit, insert

- (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).

9 Regulations 52, 53 and 54 replaced

Regulations 52, 53 and 54

repeal, insert

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.

10 Regulation 57 amended

- (1) Regulation 57(1)

omit

an election or for taking a step in an election

insert

an election, or for taking a step in an election, for an electorate

- (2) Regulation 57(2)

omit

area

insert

relevant council area

11 Regulation 67 amended

Regulation 67(7), definitions ***infringement notice offence*** and ***infringement notice penalty***

omit

the Schedule

insert

Schedule 2

12 Schedule 1 inserted

Before the Schedule

insert

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.

13	Schedule heading amended
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Schedule, heading

omit

Schedule Infringement

insert

Schedule 2 Infringement

14	Regulations further amended
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The Schedule has effect.

Schedule Regulations further amended

regulation 14

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
regulations 6(2)(a) and 7(3)	local government area	council area
regulation 7(1)(c), example	<i>local government area</i>	<i>council area</i>
regulation 15(2)(b)	officer in charge	authorised officer in charge
regulations 20(2) and 23(2)	The officer	The authorised officer
regulation 24(2)(b)	the officer	the authorised officer
regulation 28, heading	Returning officer	Authorised officer
regulation 28(1)	The returning officer	An authorised officer
regulation 38(2)(b), (3) and (4)(e)	officer (<i>all references</i>)	authorised officer
regulation 39(1)	officer in charge	authorised officer in charge
regulation 39(3), (4)(a) and (c), (6) and (7)	officer in charge	authorised officer
regulation 40(2)	The officer	The authorised officer
regulation 40(3)	the officer	the authorised officer
regulation 41(1)	officer in charge	authorised officer in charge
regulation 41(2)	The officer	The authorised officer
regulation 45(1)(a)(ii)	an officer (<i>all references</i>)	an authorised officer
regulation 45(1)(c) and (4)	the returning officer	an authorised officer

regulation 45(4), note	<i>the returning officer</i>	<i>an authorised officer</i>
regulation 47	The officer	An authorised officer
regulation 48(2)	the officer conducting the scrutiny	an authorised officer conducting the scrutiny
regulation 48(3)	The officer	The authorised officer
regulation 49(1)	The returning officer	An authorised officer
regulation 49(2)	returning officer (<i>first and third references</i>)	authorised officer
	the returning officer (<i>second reference</i>)	an authorised officer
regulation 49(3) to (5)	the returning officer (<i>all references</i>)	the authorised officer
regulation 49(6)	The officer	The authorised officer
regulation 51(2)	The returning officer	An authorised officer
	the returning officer	the authorised officer
regulation 51(3) to (6)	the returning officer (<i>all references</i>)	the authorised officer
regulation 55(1)	The returning officer	An authorised officer
regulation 55(2)	The returning officer	The authorised officer
regulation 55(2)(b)	the returning officer's	the authorised officer's
regulation 55(3)	the returning officer	the authorised officer
regulation 63(1)	council's area	council area of the council
regulation 63(2)(a) to (e)	area	council area
regulation 63(3)	an area	a council area
