

NORTHERN TERRITORY OF AUSTRALIA

Regulations 1996, No. 12*

Regulations under the *Local Government Act*

I, KEITH JOHN AUSTIN ASCHE, the Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, hereby make the following Regulations under the *Local Government Act*.

Dated 29 February 1996.

K.J.A. ASCHE
Administrator

AMENDMENTS OF LOCAL GOVERNMENT
(ELECTORAL) REGULATIONS

1. PRINCIPAL REGULATIONS

The Local Government (Electoral) Regulations are in these Regulations referred to as the Principal Regulations.

2. INTERPRETATION

Regulation 2(1) of the Principal Regulations is amended -

(a) by inserting after the definition of "officer" the following:

"'petition' means a petition referred to in regulation 72B;" and

(b) by omitting the definition of "prisoner".

* Notified in the *Northern Territory Government Gazette* on 1 March 1996.

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3. PRINTING OF ROLLS

Regulation 8 of the Principal Regulations is amended by omitting paragraphs (a) and (b) and substituting the following:

- "(a) immediately after the close of the roll for the purposes of an election, as provided in regulation 10; and
- (b) at such other times as the Chief Electoral Officer thinks necessary in order to allow for the proper conduct of an election or by-election."

4. NOMINATIONS

Regulation 15 of the Principal Regulations is amended by omitting "The returning officer shall, at his office," and substituting the following:

"(1) The returning officer shall, as soon as practicable after their receipt, cause copies of all valid nominations to be displayed at the principal office of the council.

"(2) The returning officer shall, at his office,".

5. APPLICATION FOR POSTAL BALLOT-PAPER

Regulation 19 of the Principal Regulations is amended

- (a) by inserting in subregulation (1), after paragraph (c), the following:
 - "(ca) will, throughout the hours of polling, be unable to attend a polling place because the elector will be at a place caring for a person who is seriously ill or infirm or who is expected shortly to give birth;
 - (cb) is a person whose address has been excluded from the roll;
 - (cc) throughout the hours of polling, will be engaged in the elector's employment or occupation and
 - (i) if an employee, is not entitled to leave of absence under regulation 53; and
 - (ii) in any other case, the elector's absence for the purpose of attending at a polling place to vote would be likely to cause loss to the person in the person's occupation;"

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(b) by omitting from subregulation (2) paragraph (b) and substituting the following:

"(b) contain a declaration by the applicant that the applicant is entitled to a postal ballot-paper on grounds specified in subregulation (1);".

6. NEW REGULATION

The Principal Regulations are amended by inserting in Part VI, before section 29, the following:

"28A. PRE-POLL VOTING

"(1) At any time after the close of nominations for an election and before polling day, an elector entitled to vote at the election may apply to an officer appointed for that purpose by the returning officer, to vote at the election before 6.00 p.m. on the day before the polling day at a location determined by the returning officer.

"(2) Where the officer to whom an application under subregulation (1) is made is satisfied that the facilities for voting are presently available at the place the application is made and that the applicant satisfies the requirements for a postal vote under regulation 19(1), the applicant may there and then vote at the election.

"(3) In addition to any other question the officer issuing the ballot-paper to the applicant may ask under these Regulations in relation to the applicant's entitlement to vote at the election, the officer shall ask the applicant the following question: "Will you be able to attend a polling place on polling day during the hours of polling?" and shall not issue the ballot-paper unless the applicant answers the question in the negative.

"(4) Regulations 31 to 52 inclusive, with the necessary changes, apply to and in relation to an application to vote and voting under this regulation."

7. RETURNING OFFICER TO APPOINT POLLING PLACES, &c.

Regulation 29(1) of the Principal Regulations is amended by inserting after "officer may," the words "after consultation with the council if practicable,".

8. BALLOT-PAPERS

Regulation 33 of the Principal Regulations is amended by omitting from paragraph (c) "regulation 46(3)," and substituting "regulation 46(3) or a ballot-paper created for the purposes of allowing voting in accordance with regulation 21 or 28A, shall".

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9. PERSON CLAIMING TO VOTE TO GIVE NAMES AND OTHER PARTICULARS

Regulation 39(1) of the Principal Regulations is amended by omitting paragraph (b) and substituting the following:

"(b) has answered the following question in the absolute affirmative: "Is this the first time you have voted either here or elsewhere in this election?"".

10. BALLOT-PAPERS TO BE INITIALLED

Regulation 42 of the Principal Regulations is amended -

- (a) by omitting subregulation (2); and
- (b) by omitting from subregulation (3) "immediately on" and substituting "immediately before".

11. VOTE TO BE MARKED IN PRIVATE

Regulation 43(b) of the Principal Regulations is amended by omitting all words after "his vote".

12. VOTE OF UNLISTED PERSON

Regulation 46(1) of the Principal Regulations is amended -

- (a) by omitting paragraph (a) and substituting the following:

"(a) the person has complied with Part VIII of the *Commonwealth Electoral Act 1918* of the Commonwealth immediately before the close of the roll for the election in accordance with regulation 10 and in accordance with section 41 of the *Local Government Act*"; and

- (b) by omitting paragraph (d).

13. SPOILT AND DISCARDED BALLOT-PAPERS

Regulation 49 of the Principal Regulations is amended -

- (a) by omitting subregulation (1) and substituting the following:

"(1) If a person who has been issued with a ballot-paper satisfies the presiding officer of a polling place that the ballot-paper has been spoilt by mistake or accident, or the presiding officer or assistant officer finds a ballot-paper discarded in a polling booth or otherwise at the polling place, the presiding officer

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may, on receiving the spoilt ballot-paper or finding or being given the discarded ballot-paper, cancel the ballot-paper and, in the case of a spoilt ballot-paper, issue to that person to whom the ballot-paper was originally issued a new ballot-paper."; and

- (b) by omitting from subregulation (2) "spoilt ballot-paper under subregulation (1) shall write the word 'spoilt'" and substituting "spoilt or discarded ballot-paper under subregulation (1) shall write the word 'spoilt' or 'discarded' (as the case requires)".

14. OFFENCES IN RELATION TO ELECTIONS

Regulation 52 of the Principal Regulations is amended by adding at the end the following:

"(11) Where the presiding officer at a polling place believes, on reasonable grounds, that a person, by his conduct at the polling-place, is or is likely to disrupt the orderly conduct of voting or the counting of votes at the polling place, the presiding officer may, whether or not the person is a candidate or a candidate's representative or is entitled to vote at the polling place and has not voted, direct the person to leave and remain away from the polling place, and the person shall leave and remain away from the polling place in accordance with the direction.

Penalty: \$1,000 or imprisonment for 6 months."

15. RECONDUCTING DETERMINATION

Regulation 66 of the Principal Regulations is amended by omitting subregulation (3).

16. REPEAL AND SUBSTITUTION

Regulation 70 of the Principal Regulations is repealed and the following substituted:

"70. REFERRAL OF QUESTION TO RETURNING OFFICER

"(1) Where an officer conducting a re-count under regulation 68 is not the returning officer, he shall, if so required by a candidate's representative, refer a question relating to the formal or informal nature of a ballot-paper to the returning officer.

"(2) The returning officer shall decide any question referred for his decision under subregulation (1)."

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17. NEW PART

The Principal Regulations are amended by inserting after Part VII the following:

"PART VIIA - ELECTORAL DISPUTES

"72A. JURISDICTION OF TRIBUNAL

"In pursuance of section 226(1)(g) of the Act, there is hereby given to the Tribunal jurisdiction to hear and determine petitions under this Part.

"72B. METHOD OF DISPUTING VALIDITY OF ELECTION

"(1) The validity of an election may be disputed by petition addressed to the Tribunal, but not otherwise.

"(2) A petition shall, in respect of the election to which it relates -

- (a) set out the facts relied on to invalidate the election;
- (b) set out those facts with sufficient particularity to identify the specific matter or matters on which the petitioner relies as justifying the grant of relief;
- (c) contain a prayer asking for the relief the petitioner claims to be entitled to;
- (d) be signed by the person making the petition;
- (e) be attested by 2 witnesses whose occupations and addresses are stated; and
- (f) be filed with the Registrar of the Local Court not later than 21 days after the day of the public declaration under regulation 71 in relation to the election.

"72C. PERSONS TO BE SERVED

"(1) A notice of the lodging of a petition and a copy of the petition shall be served on -

- (a) the returning officer; and
- (b) where the petition claims a seat for a candidate who has not been declared under section 48 of the Act as the mayor or an alderman or to fill the office of member which has become vacant, as the case may be - the candidate, if any, so declared,

which persons so served shall be parties to the proceedings under this Part.

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"(2) Where a petition disputes the validity of the election as mayor of a candidate for election as alderman as referred to in regulation 66(2), a notice of the lodging of the petition and the copy of the petition shall also be served on each person who was a candidate for election as alderman at the election and a person so served shall also be a party to the proceedings.

"(3) Where a person served in accordance with subregulation (1) or (2) with a petition proposes to contest the petition, the person shall, not later than 7 days after the service, or such further time as allowed by the Tribunal, lodge a reply to the petition with the Registrar and the petitioner.

"(4) A reply referred to in subregulation (3) shall -

- (a) set out the facts on which the person proposes to rely;
- (b) ask for the relief to which the person claims to be entitled;
- (c) be signed by the person; and
- (d) other than where the reply is by the returning officer, be attested by 2 witnesses whose occupations and addresses are stated.

"72D. NO PROCEEDINGS UNLESS REQUISITES COMPLIED WITH

"A petition shall not be proceeded with unless the requirements of regulations 72B and 72C are complied with.

"72E. POWERS OF TRIBUNAL

"(1) Subject to regulation 72G, the powers of the Tribunal shall include the power to -

- (a) declare that a person whose name was declared under section 48(2) of the Act was not duly elected (including as a consequence of a decision of the Tribunal relating to an election of mayor or an alderman in circumstances referred to in regulation 66(2));
- (b) declare under section 48(2) of the Act the name of the mayor or alderman or of the person to fill the office of a member, as the case may be;
- (c) declare an election void; and
- (d) dismiss or uphold a petition, in whole or in part.

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"(2) The Tribunal may exercise all or any of its powers under this section on such grounds as it thinks fit.

"(3) Without limiting the powers conferred by this regulation, the power of the Tribunal to declare that a person returned as elected was not duly elected or to declare an election void, may be exercised on the ground that illegal practices were committed in connection with the election.

"72F. INQUIRIES BY TRIBUNAL

"(1) The Tribunal shall inquire whether or not the requirements of regulations 72B and 72C have been complied with and, so far as voting is concerned, may inquire into the identity of persons and whether their votes were improperly admitted or rejected, and whether the result of the polling was correctly ascertained, but the Tribunal shall not inquire into the correctness of a roll and shall take the roll to be conclusive evidence that the persons enrolled were, at the time of the public declaration under regulation 71 in relation to the election, entitled to be enrolled.

"(2) The qualification of a person enrolled shall not be questioned, and an election shall not be declared void, on the ground that a person whose name appears on the roll for a municipality, and who has voted as an elector for the municipality, was not qualified to be enrolled or to continue to be enrolled as an elector for that municipality.

"72G. EXERCISE OF POWERS

"(1) The Tribunal shall not exercise the power referred to in regulation 72E(1)(a) or (b) on the ground of -

- (a) an action which occurred without the knowledge of the candidate declared elected at an election; or
- (b) the commission of an offence against the Act or these Regulations by the candidate declared elected at an election,

unless it is satisfied -

- (c) that the result of the election was likely to have been affected by that action or the commission of the offence; and
- (d) that it is just that the Tribunal exercise that power.

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"(2) The Tribunal shall not -

- (a) in determining whether the actions of a presiding officer affected the results of an election, admit evidence of the manner in which a person, who was wrongly prevented from voting at an election by a presiding officer, would have voted; or
- (b) admit evidence from a person referred to in paragraph (a) unless the person satisfies the Tribunal that the person was wrongly prevented from voting.

"72H. REPORTING OF OFFENCES

"Where the Tribunal finds that a person has committed an offence against the Act or these Regulations, the Registrar shall, as soon as practicable, report that finding to the Minister.

"72I. TRIBUNAL MAY HAVE REGARD TO CERTAIN REJECTED BALLOT-PAPERS

"In making its decision on a petition, the Tribunal may have regard to -

- (a) ballot-papers used for voting under Division 3 of Part 3 of the Act or these Regulations rejected at the determination, if satisfied that the votes marked on the ballot-papers were recorded before the close of the poll; and
- (b) any ballot-paper for voting under regulation 28A or 46 rejected at the determination if of the opinion that the ballot-papers should not have been rejected.

"72J. IMMATERIAL ERRORS NOT TO VITIATE ELECTION

"An election shall not be voided on account of a delay in the declaration of nominations, the polling or the public declaration under regulation 71 in relation to the election.

"72K. RETURNING OFFICER TO RECEIVE COPY OF PETITION AND DECISION

"The Registrar shall -

- (a) as soon as practicable after the issue of a petition; and
- (b) after the determination of the petition,

forward to the returning officer a copy of the petition and a copy of the order of the Tribunal made after the determination."

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18. PRINTING OF ADVERTISEMENTS

Regulation 74 of the Principal Regulations is amended by adding at the end the following:

"(2) In subregulation (1) 'publish' and 'distribute' include publish and/or distribute by electronic means and that subregulation applies whether or not the electronic means results in the production of printed matter."

19. PROHIBITION OF CANVASSING NEAR POLLING BOOTHS

Regulation 80 of the Principal Regulations is amended by omitting "polling place -" and substituting "polling place, or by means of sound amplification with the intention that the message is audible in or within 10 metres of the entrance of a polling place -".

20. FAILURE TO VOTE

Regulation 84 of the Principal Regulations is amended by adding at the end the following:

"(8) A complaint for an offence against section 42 of the Act may be made within 12 months from the time when the matter of the complaint arose."

21. REPEAL AND SUBSTITUTION

Regulation 89 of the Principal Regulations is repealed and the following substituted:

"89. REGULATORY OFFENCES

"An offence against or contravention or failure to comply with regulation 19(5), 25(13), 26, 31(2), 35, 37, 51(2) or 79 is a regulatory offence."

22. SCHEDULE 1

Schedule 1 to the Principal Regulations is amended -

- (a) by omitting from Form 3 clause (2);
- (b) by inserting after paragraph (c) of clause (3) in Form 3 the following:
 - "(ca) that I will, throughout the hours of polling, be unable to attend a polling place because I will be at a place caring for a person who is seriously ill or infirm or who is expected shortly to give birth;
 - (cb) that my address has been excluded from the roll;

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- (cc) that, throughout the hours of polling, I will be engaged in employment or occupation and -
 - (i) I am not entitled to leave of absence under regulation 53; or
 - (ii) my absence for the purpose of attending at a polling place to vote would be likely to cause loss to me in my occupation;";
- (c) omitting from paragraph (a) of the note at the end of Form 3, "*Trade Commissioners Act 1933*" and substituting "*Trade Representatives Act 1933*";
- (d) by omitting from Form 4 "my real place of residence is in the above-named municipality/ward, that";
- (e) by omitting from Form 7 paragraph (a) and substituting the following:
 - "(a) I have posted or delivered a duly completed claim for enrolment (or transfer of enrolment) to the divisional returning officer in compliance with Part VIII of the *Commonwealth Electoral Act 1918* of the Commonwealth;"; and
 - (b) by omitting from paragraph (e) of Form 7 "section 27" and substituting "section 28".

23. FURTHER AMENDMENTS

The Principal Regulations are further amended as set out in the Schedule.

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SCHEDULE

Regulation 23

FURTHER AMENDMENTS

Provision	Amendment	
	omit	substitute
Regulation 2 - definition of "authorized witness"	"Trade Commissioners Act 1933"	"Trade Representatives Act 1933"
- definition of "nomination"	"section 52"	"section 47"
- definition of "roll"	"section 49"	"section 43"
Regulation 6	"section 49"	"section 43"
Regulation 10(a)	"section 44"	"section 37"
	"section 44(1)"	"section 37(1)"
Regulation 10(b)	"section 45"	"section 38"
Regulation 11(1)	"21 Days"	"45 days"
Regulation 11(2)	"section 51(b)"	"section 46(b)"
Regulation 12(2)(e)	"section 15"	"section 9"
Schedule - Form 1	"section 15"	"section 9"