

NORTHERN TERRITORY OF AUSTRALIA

LOCAL GOVERNMENT (ELECTORAL) REGULATIONS 2021

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Subordinate Legislation No. 11 of 2021

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# NORTHERN TERRITORY OF AUSTRALIA

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**Subordinate Legislation No. 11 of 2021\***

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## ***Local Government (Electoral) Regulations 2021***

I, Vicki Susan O'Halloran, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Local Government Act 2019*.

Responsible Minister:

C. J. Paech  
Minister for Local Government

V. S. O' Halloran  
Administrator

Date of making 29 June 2021

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\* Notified in the *Northern Territory Government Gazette* on 30 June 2021.

## Part 1 Preliminary matters

### 1 Title

These Regulations may be cited as the *Local Government (Electoral) Regulations 2021*.

### 2 Commencement

These Regulations commence on the day on which section 141 of the *Local Government Act 2019* commences.

### 3 Definitions

In these Regulations:

**approved form** means a form approved by the Electoral Commissioner.

**authorised officer**, see regulation 5.

**ballot paper** includes a declaration ballot paper.

**candidate square**, see regulation 12(2)(c).

**candidate statement** means a candidate statement that meets the requirements of regulation 35.

**declaration ballot paper** means a ballot paper on which a declaration vote is cast.

**declaration vote** means a vote cast under Part 3, Division 3.

**determination day**, for Part 3, Division 5, see regulation 33.

**early voting centre** means a place declared under regulation 14(1)(b) for voting before election day.

**election day voting centre** means a place declared under regulation 14(1)(a).

**electoral roll**, see section 139 of the Act.

**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.

**enrolled**, for a person, means the person's name is on an electoral roll.

**indication of preferences** means an indication of preferences that meets the requirements of regulation 36.

**infringement notice**, see regulation 79.

**infringement notice offence**, see regulation 78(1).

**mandatory postal vote election** means an election declared as a mandatory postal vote election under section 137(2) of the Act.

**mobile voting centre** means a place declared under regulation 44 or changed under regulation 45.

**mobile voting period**, for a mobile voting centre, means the period declared under regulation 44 for the centre or changed under regulation 45.

**nomination day** means:

- (a) for a general election – the 23rd day before election 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 election day.

**ordinary vote** means a vote cast under Part 3, Division 2, whether on or before election day.

**postal vote certificate** means:

- (a) for Part 3, Division 5 – see regulation 39(2); or
- (b) otherwise – see regulation 28(3).

**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 is lodged, under regulation 35; and
  - (ii) an indication of preferences for each candidate in relation to whom an indication of preferences is lodged, under regulation 36.

**prescribed amount**, see regulation 78(2).

**replacement postal voting papers**:

- (a) for Part 3, Division 5 – see regulation 38(2); or
- (b) otherwise – see regulation 27(2).

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

**scrutiny centre** means a place declared under regulation 14(1)(c).

**to sign** includes, for a person who is unable to sign the person's name, to make an identifying mark.

**voting centre** means an election day voting centre, a mobile voting centre and an early voting centre.

**voting period**, see regulation 4.

#### **4 Voting period**

- (1) The voting period for an election is as follows:
  - (a) for voting at an election day voting centre – from 8 am to 6 pm on election day;
  - (b) for voting at an early voting centre – the hours decided under subregulation (2);
  - (c) for voting at a mobile voting centre – the mobile voting period.



- (2) The returning officer must decide the days and the voting hours for voting at an early voting centre.
- (3) The hours decided under subregulation (2) must not end later than 6 pm on the day before election day.

## **5            Authorised officers**

- (1) The following are **authorised officers**:
  - (a) a returning officer, in relation to the election for which the person 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.
- (2) Without limiting subregulation (1)(b), an authorisation may specify that an authorised officer:
  - (a) is to be in charge of a specified voting centre or scrutiny centre; or
  - (b) is to be responsible for, or is to conduct, scrutiny as specified in the authorisation.
- (3) An authorised officer must be at least 18 years of age.
- (4) A candidate for election, or the spouse or de facto partner of a candidate for election, must not be an authorised officer for the election.

## **Part 2            Preparations for an election**

### **Division 1        Nominations**

#### **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 election 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 election 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 under regulation 8(1);
  - (d) the date and time of the closing of the electoral roll specified in regulation 11.

## **7 Form of nomination**

- (1) A nomination must:
- (a) be in the approved form; and
  - (b) state the name and residential address of the nominee; and
  - (c) state the office for which the nominee is a candidate; and
  - (d) include a statement that the nominee consents, if elected, to act in the capacity in which the nominee is nominated as a candidate for election; and
  - (e) be signed by the nominee; and
  - (f) be signed by at least one other person who is enrolled to vote in the local government area for which the nominee is nominating.

### *Examples for subregulation (1)(c)*

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

- (2) For subregulation (1)(b):
- (a) the name stated in the nomination must be the surname and the given name, or one or more of the given names, under which the nominee is enrolled; and

- (b) if the address of a nominee is suppressed – the nomination need not state the address but the nominee must give written notice to the returning officer of an address for correspondence.
- (3) For subregulation (2)(a), a given name may be stated by an initial standing for the name or a commonly accepted variation of the name, including an abbreviation, truncation or alternative form.
- (4) A nomination must be accompanied by:
  - (a) a declaration, in the approved form, to the effect that the nominee is eligible for election in the capacity in which the nominee is a candidate; and
  - (b) a recent photograph of the nominee that is a full faced vertical portrait of the nominee's head and shoulders.
- (5) The returning officer may accept a photograph of a nominee that does not comply with subregulation (4)(b) if the returning officer is satisfied the nominee is readily recognisable in the photograph.
- (6) If a local government area is divided into wards, the same person is not entitled to be a candidate for election in more than one ward.

## **8            Making and withdrawal of nomination**

- (1) A nomination must be lodged with the returning officer before 12 noon on nomination day.
- (2) A candidate may withdraw the candidate's nomination by giving written notice of the withdrawal to the returning officer before 12 noon on nomination day.
- (3) The lodgement of a nomination or the giving of a notice of withdrawal must be done by:
  - (a) hand delivery of the nomination or notice to an authorised officer at an office of the returning officer or another place approved by the returning officer; or
  - (b) an electronic means approved by the returning officer.

## **9            Rejection of nomination**

- (1) The returning officer may reject a nomination if:
  - (a) subject to subregulation (2), the nomination is not substantially in accordance with the requirements of regulation 7; or

- (b) the nominee is not enrolled at an address within the local government area at the close of the electoral roll for the election; or
  - (c) the name of the nominee is not that under which the nominee is enrolled or entitled to be enrolled; or
  - (d) the nominee's name is obscene, frivolous or has been assumed for a political purpose; or
  - (e) the nomination is not lodged in accordance with regulation 8(1).
- (2) The returning officer must not reject a nomination on the ground that it is not accompanied by a photograph under regulation 7(4)(b).
- (3) The returning officer must give a nominee whose nomination is rejected written notice of:
- (a) the rejection and the reasons for it; and
  - (b) the nominee's right to dispute the validity of the election under Part 8.5 of the Act.

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

- (1) At the appropriate time, the returning officer must:
- (a) declare the names of the duly nominated candidates for election; and
  - (b) if a ballot paper is to be prepared for the election – determine by lot, in public at a place decided by the returning officer, the order of the candidates' names on the ballot paper.
- (2) As soon as practicable after the returning officer makes the declaration under subregulation (1), the returning officer must give public notice of the declaration.
- (3) The returning officer must rely on the declaration of eligibility accompanying the nomination of a candidate in deciding the candidate's eligibility to stand for the election.
- (4) Despite subregulation (3), the Electoral Commissioner may determine that a candidate is not eligible to stand for the election if there is evidence contrary to the candidate's declaration of eligibility.

- (5) If the number of candidates nominated does not exceed the number of offices to be filled, the returning officer must declare the relevant candidates elected.
- (6) Despite subregulation (5), if the same person is a candidate for election as the principal member and as an ordinary member of the council, the returning officer must not declare the candidate elected as an ordinary member of the council unless and until it is clear that the candidate has failed to secure election as the principal member of the council.
- (7) As soon as practicable after the returning officer makes the declaration under subregulation (5), the returning officer must give public notice of the declaration.
- (8) In this regulation:  
***appropriate time*** means:
  - (a) 3 pm on the day following nomination day; or
  - (b) some other time, not earlier than 12 noon on nomination day and not later than 6 pm on the third day after nomination day, fixed by the returning officer and notified to all nominees for election.

## **Division 2            Electoral roll**

### **11            Closing of electoral roll**

- (1) The electoral roll closes:
  - (a) for a general election – at 5 pm on the 32nd day before election day; or
  - (b) for a by-election:
    - (i) if the returning officer is the Electoral Commissioner – on a day as decided by the Electoral Commissioner; or
    - (ii) otherwise – at 5 pm on the 32nd day before election day.
- (2) The electoral roll re-opens at the close of voting for an election.

## **Division 3            Ballot papers**

### **12            Form of ballot paper**

- (1) A ballot paper must be in the approved form.

- (2) A ballot paper must have:
  - (a) the name of each candidate for election to the relevant office, as provided under regulation 7; and
  - (b) either:
    - (i) a photograph of each candidate adjacent to the candidate's name on the ballot paper; or
    - (ii) for a candidate for whom a photograph has not been supplied – the words "photograph not supplied"; and
  - (c) a square printed adjacent to the candidate's photograph or the words mentioned in paragraph (b)(ii).
- (3) The order in which the names of candidates appear on the ballot paper is to be as determined under regulation 10.
- (4) A candidate's name will appear on the ballot paper in an abbreviated form if that form of the name is in accordance with a preference expressed by the candidate on the nomination form.

## **Division 4 Administrative arrangements**

### **13 Administrative arrangements**

- (1) The returning officer must make appropriate administrative arrangements for the conduct of an election.
- (2) Without limiting subregulation (1), the returning officer must ensure each voting centre is properly equipped with the following:
  - (a) separate voting compartments constructed to screen voters from observation while marking ballot papers;
  - (b) ballot boxes capable of being securely sealed;
  - (c) a copy of the electoral roll for the election;
  - (d) ballot papers;
  - (e) any other required documents and stationery.

### **14 Voting centres**

- (1) The returning officer may declare a specified place to be any of the following in relation to an election:
  - (a) an election day voting centre;

- (b) an early voting centre;
  - (c) a scrutiny centre.
- (2) A part of premises licensed under the *Liquor Act 2019* must not be declared as a voting centre unless the returning officer is satisfied that, during the voting period:
- (a) liquor will not be available for sale or consumption on that part of the premises; and
  - (b) that part of the premises will be segregated from the part of the premises where liquor will be available for sale or consumption; and
  - (c) access to that part of the premises would not involve passing through a part of the premises where liquor will be available for sale or consumption.
- (3) The returning officer must give public notice of the following in relation to an election:
- (a) each election day voting centre and the voting period on election day;
  - (b) each early voting centre and the voting period for each centre.
- (4) If voting at an election day voting centre or early voting centre is to be limited to certain local government areas, the public notice under subregulation (3) must state those local government areas.
- (5) Subregulation (4) does not limit the local government areas for which a ballot paper may be issued under Part 3.

## **Division 5            Scrutineers**

### **15            Scrutineers – appointment**

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

**16            Scrutineers – presence at voting centre and scrutiny centre**

- (1) One scrutineer representing each candidate is entitled to be present at a particular voting centre while the voting centre is open for voting.
- (2) One scrutineer representing each candidate may enter or remain at a particular scrutiny centre at any time while the scrutiny is conducted at the centre.
- (3) Despite subregulation (2), if there is more than one counting table for a local government area or ward at the scrutiny centre, one scrutineer representing each candidate is entitled to be present at each counting table.
- (4) A scrutineer is entitled to observe the process of scrutiny and counting of ballot papers.

*Note for subregulation (4)*

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

- (5) A scrutineer who contravenes this regulation is no longer entitled to be at the voting centre or scrutiny centre.

**Part 3            Voting**

**Division 1        Entitlement to vote and other preliminary matters**

**17            Entitlement to vote**

- (1) An elector for a local government area is entitled to vote at an election for the relevant council as follows:
  - (a) if the council's principal member is to be elected at the election – the elector is entitled to cast one vote for the election of the principal member;
  - (b) if the local government area is divided into wards – the elector is entitled to cast one vote for the election of ordinary members representing the elector's ward;
  - (c) if the local government area is not divided into wards – the elector is entitled to cast one vote for the election of ordinary members representing the local government area as a whole.



- (2) The inclusion of the name of a person on an electoral roll as an elector for a local government area or ward is conclusive evidence that the person is entitled to vote at an election for the electorate comprising the local government area or ward.
- (3) The omission of the name of a person from an electoral roll, or any other error, omission or misdescription does not disqualify the person from voting.
- (4) In this regulation:  
  
***elector for a local government area*** includes a person who is entitled to be an elector for the local government area.

## **18            Method of voting**

- (1) A person's vote on a ballot paper must be marked in accordance with subregulation (2).
- (2) The person must:
  - (a) place the number "1" in the candidate square for the candidate of the person's first preference; and
  - (b) place consecutively increasing whole numbers in the candidate squares for the other candidates in the order of the person's preferences until a number is placed in all candidate squares.

*Note for regulation 18*

*See regulation 57(3) to (5).*

## **19            Voter's question**

The following question must be put to a person who claims to vote at an election:

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

## **Division 2            Ordinary voting at voting centre**

### **20            Issue of ballot paper**

- (1) If a person attends before an authorised officer at a voting centre during the voting period and claims to vote at an election, the officer must issue a ballot paper to the person if:
  - (a) the person states the person's full name and address; and

- (b) the officer is satisfied the electoral roll:
    - (i) includes the person's name and address (or indicates that the person's address is suppressed); and
    - (ii) has not been marked to indicate a ballot paper has already been issued to the person; and
  - (c) the person answers the voter's question in the affirmative.
- (2) Immediately before issuing the ballot paper to the person the authorised officer must:
- (a) place a mark against the voter's name on the electoral roll; and
  - (b) initial the ballot paper.

## **21        Voting in private**

- (1) On receipt of the ballot paper, the person must, without delay:
- (a) go to an unoccupied voting compartment at the voting centre; and
  - (b) there, in private, mark the person's vote on the ballot paper; and
  - (c) fold the ballot paper to conceal the vote and, without unfolding it:
    - (i) if there is a designated ballot box at the voting centre for the local government area or ward for which the person has cast a vote – place it in that ballot box; or
    - (ii) otherwise – hand the folded ballot paper to an authorised officer to be dealt with under subregulation (2); and
  - (d) leave the voting centre.
- (2) An authorised officer who is handed a ballot paper under subregulation (1)(c)(ii) must, in the presence of the person, without unfolding the ballot paper:
- (a) place it in an envelope bearing the name of the person's enrolled local government area or ward and the name of the voting centre; and
  - (b) seal the envelope and place it in a ballot box at the voting centre.

- (3) Subregulations (1) and (2) are subject to regulations 50 and 51.

### **Division 3            Declaration voting**

#### **22            Right to declaration voting**

A person may vote under this Division if the person claims to be entitled to vote but the person's name:

- (a) does not appear on the electoral roll; or
- (b) has been marked on the electoral roll as having already voted.

#### **23            Issue of ballot paper for declaration voting**

- (1) If a person attends before an authorised officer at a voting centre during the voting period and claims to vote at an election, the officer must issue a ballot paper to the person if:

- (a) the person:
  - (i) states the person's full name and address; and
  - (ii) completes and signs, in the presence of the officer, a declaration in the approved form about the person being in a situation referred to in regulation 22; and
- (b) the officer signs the declaration as a witness.

- (2) Before issuing a ballot paper to a person to whom regulation 22(a) applies, the authorised officer may require the person to provide proof of identity in accordance with section 98AA(2) of the *Commonwealth Electoral Act 1918* (Cth).

- (3) The authorised officer must:

- (a) immediately before issuing the declaration ballot paper to the person, initial the ballot paper; and
- (b) immediately after issuing the declaration ballot paper to the person, record the issue of the ballot paper to the person.

- (4) The declaration by a person to whom regulation 22(a) applies must state the following:

- (a) the person:
  - (i) has complied with Part VIII of the *Commonwealth Electoral Act 1918* (Cth) before the close of the electoral roll; or

- (ii) is eligible to enrol under Part VIII of the *Commonwealth Electoral Act 1918* (Cth);
  - (b) to the best of the person's knowledge no objection has been upheld in relation to the inclusion of the person's name on the electoral roll;
  - (c) the person is not qualified for enrolment in a local government area or ward other than the local government area or ward for which the person claims to vote;
  - (d) the person has not already voted at the election.
- (5) The declaration by a person to whom regulation 22(b) applies must state the person has not already voted at the election.

## **24            Casting declaration vote**

- (1) After the issue of a declaration ballot paper to a person:
- (a) the person must, without delay, go to an unoccupied voting compartment at the voting centre and there, in private:
    - (i) mark the person's vote on the ballot paper; and
    - (ii) fold the ballot paper to conceal the vote; and
  - (b) the person must return the folded ballot paper to the authorised officer who issued it; and
  - (c) the officer must, in the presence of the person, without unfolding the ballot paper, place it in the envelope on which the declaration appears, seal the envelope and place it in a ballot box at the voting centre; and
  - (d) the person must then leave the voting centre.
- (2) Subregulation (1) is subject to regulations 50 and 51.

## **Division 4            Optional postal voting**

### **25            Application of Division**

This Division applies to any election other than a mandatory postal vote election.

## **26            Application for postal voting papers**

- (1) A person who is on the electoral roll may apply, in the approved form, to the returning officer for an election for postal voting papers for the election:
  - (a) if the election is a general election – within the period that starts 3 months before the election day for the election; or
  - (b) otherwise – after the invitation for nominations of candidates has been made under regulation 6.
- (2) A person who is a registered postal voter within the meaning of the *Electoral Act 2004* is taken to have applied for postal voting papers for an election.

## **27            Application for replacement postal voting papers**

- (1) A person may apply, in the approved form, to the returning officer for an election for replacement postal voting papers if the person claims that:
  - (a) the person has applied for, or is entitled to receive, postal voting papers under regulation 26; and
  - (b) the papers have been lost, damaged or destroyed.
- (2) 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.

## **28            Issue of postal voting papers**

- (1) An authorised officer must issue and send postal voting papers to each person who applies or is taken to have applied for postal voting papers under regulation 26 or 27(1).
- (2) An authorised officer may issue postal voting papers directly to the person if the authorised officer has the postal voting papers available.

- (3) The **postal vote certificate** printed on the envelope that is issued or issued and sent to an applicant under subregulation (1) or (2) must contain the following:
- (a) if the person applied for replacement postal voting papers under regulation 27(1):
    - (i) the person's name; and
    - (ii) a space for the signature of the person; and
    - (iii) a space for inserting the date when the envelope bearing the certificate is received by the authorised officer; and
    - (iv) a space for inserting the person's address; and
    - (v) a space for inserting the person's date of birth;
  - (b) otherwise – the matters mentioned in paragraph (a)(i) to (iii).
- (4) Subject to subregulations (5) to (7), postal voting papers must be 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).
- (5) An authorised officer must not send postal voting papers to a person who did not apply in person for the postal voting papers if:
- (a) the application is received after 6 pm on the 4th day before election day and the address to which the postal voting papers are to be sent is outside Australia; or
  - (b) the application is received after 6 pm on the second day before election day and the address to which the postal voting papers are to be sent is within Australia.
- (6) An authorised officer may send postal voting papers to a person whose application is received later than a time mentioned in subregulation (5) if the officer considers doing so is appropriate, having regard to:
- (a) the special circumstances of the person; and
  - (b) the need to allow sufficient time for the papers to be completed by the person by 6 pm on election day; and
  - (c) any other matters the officer considers relevant.

- (7) An authorised officer may issue postal voting papers to a person who applies for postal voting papers in person under regulation 26(1) or 27(1) if the application is made by 6 pm on election day.

## **29            Records of applications for, and issue of, postal voting papers**

An authorised officer must:

- (a) carry out the following procedures with regard to the issue of postal voting papers:
- (i) number in consecutive order all applications for postal voting papers received by the officer;
  - (ii) endorse each application with the date of issue of the postal voting papers;
  - (iii) number each postal vote certificate issued by the officer with the number corresponding to the number on the application;
  - (iv) initial the ballot paper issued by the officer;
  - (v) record the issue of the postal voting papers to the person on the electoral roll; or
- (b) follow other procedures approved as an alternative by the Electoral Commissioner under regulation 86.

## **30            Applications to be available for public inspection**

The returning officer must keep the applications for postal voting papers and make them available for public inspection for 14 days from and including the 4th day after the declaration of the results of the election.

## **31            Casting postal vote**

- (1) A person to whom postal voting papers have been issued casts a postal vote in accordance with the following provisions.
- (2) The person must sign the person's name and insert the date and time on the postal vote certificate.
- (3) The person must:
- (a) mark the person's vote on the ballot paper; and

- (b) fold the ballot paper and place it in the envelope bearing the postal vote certificate and seal the envelope.

*Note for subregulation (3)*

*If a person needs assistance to cast a postal vote, see regulation 50.*

- (4) As soon as practicable after the envelope is sealed, the person, or a person to whom the person has entrusted the envelope for posting or delivery, must post or deliver the sealed envelope to the returning officer.

## **Division 5 Mandatory postal vote elections**

### **32 Application of Division**

This Division applies to a mandatory postal vote election.

### **33 Definition**

In this Division:

***determination day*** means the day on which the returning officer determines the order of the candidates' names on the ballot paper for an election under regulation 10(1).

### **34 Public notice of election**

The public notice under regulation 6(2) must also include the following information:

- (a) the date of the resolution mentioned in section 137(2) of the Act;
- (b) the approximate date on which the postal voting papers are likely to be issued and sent to persons on the electoral roll;
- (c) an explanation of the procedures for postal voting;
- (d) any other information that the returning officer considers appropriate.

### **35 Lodgement of candidate statement**

- (1) A candidate may lodge a candidate statement.
- (2) The candidate statement may only include the following:
  - (a) a statement of no more than 150 words;



- (b) a photograph of the candidate that complies with regulation 7(4)(b).
- (3) The candidate statement must not include:
- (a) a reference to another candidate in the election, unless that other candidate has consented in writing to the reference; or
  - (b) a claim of endorsement or support from a party, an organisation or a person, unless the party, 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 person 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 person in the casting of a vote.
- (6) The lodgement of the documents under subregulation (4) must be done:
- (a) by the candidate personally or by a person authorised in writing to do so by the candidate; and

- (b) either:
  - (i) by hand delivery of the documents to an authorised officer at an office of the returning officer or another place approved by the returning officer; or
  - (ii) by the 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 at least one 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 does not comply with any other requirement of these Regulations.
  
- (9) A rejection under subregulation (7) or (8) must:
  - (a) be made in writing before 12 noon on the 3rd day after the determination day; and
  - (b) state the following:
    - (i) the reason for the rejection;
    - (ii) which part of the candidate statement requires amendment;
    - (iii) that the candidate may lodge an amended candidate statement before 12 noon on the 4th 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 if it is lodged before 12 noon on the 4th 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 is not entitled to lodge a further amended candidate statement.

### **36            Lodgement of indication of preferences**

- (1) A candidate may lodge an indication of preferences.
- (2) The indication of preferences must:
  - (a) be substantially in the form of a ballot paper; and
  - (b) include the name of each duly nominated candidate for the election, in the order determined under regulation 10(1); and
  - (c) include the following in the candidate squares:
    - (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, 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) by the candidate personally or by a person authorised in writing to do so by the candidate; and
  - (b) either:
    - (i) by hand delivery of the documents to an authorised officer at an office of the returning officer or another place approved by the returning officer; or
    - (ii) by the 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:
- (a) be made in writing before 12 noon on the 3rd day after the determination day; and
  - (b) state the following:
    - (i) the reason for the rejection;
    - (ii) which part of the indication of preferences requires amendment;
    - (iii) that the candidate may lodge an amended indication of preferences before 12 noon on the 4th 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 if it is lodged before 12 noon on the 4th 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 is not entitled to lodge a further amended indication of preferences.

### **37            Application for postal voting papers**

- (1) A person may apply to the returning officer 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 electoral roll; and
  - (c) the person makes the application:
    - (i) in the approved form; and
    - (ii) after the electoral roll closes under regulation 11(1); and
    - (iii) before election day.
- (2) A person whose name appears on the electoral roll is taken to have applied for postal voting papers.

### **38 Application for replacement postal voting papers**

- (1) A person who claims to be entitled to vote in an election may apply to the returning officer, in the approved form, for replacement postal voting papers, if the person claims that the person applied, or is taken to have applied, for postal voting papers and:
  - (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 37(1); and
    - (ii) is an address within the area of the election; or
  - (b) the person is not a person mentioned in paragraph (a) but has nevertheless not received postal voting papers; or
  - (c) the postal voting papers have been lost, damaged or destroyed.
- (2) 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.

### **39 Issue of postal voting papers**

- (1) An authorised officer must issue, or issue and send, postal voting papers as follows:
  - (a) the authorised officer must issue postal voting papers directly to a person if:
    - (i) the person applies for the postal voting papers in person under regulation 37(1) or 38(1); and
    - (ii) the application is not made before the day mentioned in subregulation (5);

- (b) the authorised officer must issue and send the postal voting papers to each other person who is taken to have applied for postal voting papers under regulation 37(2).
- (2) The **postal vote certificate** printed on the envelope that is issued to an applicant under subregulation (1) must contain the following:
  - (a) if the person applied for postal voting papers under regulation 37(1) or replacement postal voting papers under regulation 38(1):
    - (i) the person's name; and
    - (ii) a space for the signature of the person; and
    - (iii) a space for inserting the date when the envelope bearing the certificate is received by the authorised officer; and
    - (iv) a space for inserting the person's address; and
    - (v) a space for inserting the person's date of birth; and
    - (vi) a space for inserting the basis on which the person claims to be entitled to vote in the election; and
  - (b) otherwise – the matters mentioned in paragraph (a)(i) to (iii).
- (3) A postal ballot paper issued under this Division must include a statement of the offence in regulation 74(1).
- (4) Subject to subregulations (5) to (8), postal voting papers must be 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).
- (5) Postal voting papers must be issued and sent not later than the day that is 15 days before election day, unless the person has made an application under regulation 37(1) or 38(1).
- (6) An authorised officer must not send postal voting papers to a person who did not apply in person for the postal voting papers if:
  - (a) the application is received after 6 pm on the 4th day before election day and the address to which the postal voting papers are to be sent is outside Australia; or
  - (b) the application is received after 6 pm on the second day before election day and the address to which the postal voting papers are to be sent is within Australia.

- (7) An authorised officer may send postal voting papers to a person whose application is received later than a time mentioned in subregulation (6) if the officer considers doing so is appropriate, having regard to:
- (a) the special circumstances of the person; and
  - (b) the need to allow sufficient time for the papers to be completed by the person by 6 pm on election day; and
  - (c) any other matters the officer considers relevant.
- (8) An authorised officer may issue postal voting papers to a person who applies for postal voting papers in person under regulation 37(1) or 38(1) if the application is made by 6 pm on election day.

#### **40            Records of issue of postal voting papers**

The authorised officer must:

- (a) carry out the following procedures in relation to the issue of postal voting papers:
  - (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 37(2) or 38:
    - (A) number each 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
- (b) follow other procedures approved as an alternative by the Electoral Commissioner under regulation 86.

#### **41            Applications to be available for public inspection**

The returning officer must keep the applications for postal voting papers and make them available for public inspection for 14 days from and including the 4th day after the declaration of the results of the election.

## **42            Casting postal vote**

- (1) A person to whom postal voting papers have been issued casts a postal vote in accordance with the following provisions.
- (2) The person must sign the person's name and insert the date and time on the postal vote certificate.
- (3) The person must:
  - (a) mark the person's vote on the ballot paper; and
  - (b) fold the ballot paper and place it in the envelope bearing the postal vote certificate and seal the envelope.

*Note for subregulation (3)*

*If a person needs assistance to cast a postal vote, see regulation 50.*

- (4) As soon as practicable after the envelope is sealed, the person, or a person to whom the person has entrusted the envelope for posting or delivery, must post or deliver the sealed envelope to the returning officer.

## **Division 6            Mobile voting**

### **43            Application of Division**

- (1) This Division provides for the casting of ordinary votes and declaration votes by persons at a mobile voting centre during the mobile voting period for the election.
- (2) This Division does not apply to a mandatory postal vote election.

### **44            Mobile voting centre**

- (1) The returning officer may, in writing, declare a specified place to be a mobile voting centre for an election where votes may be taken by an authorised officer during a specified period.
- (2) The declaration may specify:
  - (a) classes of voters who may vote at the mobile voting centre; and
  - (b) dates and hours during which votes may be cast at the place during the specified period.



- (3) In making the declaration, the returning officer must have regard to the following:
  - (a) whether or not there is a distinct community of voters who may be served by the mobile voting centre;
  - (b) the practicality for those voters to attend another voting centre for the election;
  - (c) the practicality of establishing the mobile voting centre for those voters, having regard to their number and resources required for doing so.
- (4) If the declaration specifies a class of voters, only a person in that class may vote at the mobile voting centre.
- (5) The returning officer must:
  - (a) give notice to the public of the declaration that is reasonable and practicable in the circumstances; and
  - (b) as far as practicable, notify the community or voters to be served by the mobile voting centre in a way that is reasonable in the circumstances.

#### **45 Change of mobile voting centre, dates or hours for voting**

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

#### **46 Authorised officers to be present during voting**

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

#### **47 Voting at mobile voting centre**

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

**48            Dealing with ballot boxes**

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

**Division 7            Miscellaneous**

**49            Voting times**

On election day:

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

**50            Assistance to certain persons**

- (1) A person who is unable to vote may be assisted in voting if the person would otherwise be unable to vote.
- (2) An assisting person must be a nominee of the person or, if there is no nominee, an authorised officer.
- (3) An assisting person may enter a voting compartment to assist a person to vote, but an authorised officer must not do so except in the presence of:
  - (a) a scrutineer; or
  - (b) if no scrutineer is present – another authorised officer.
- (4) An assisting person may assist a person in any of the following ways:
  - (a) by acting as an interpreter;
  - (b) for a declaration vote – by completing, or assisting the person to complete, the declaration;

- (c) for a postal vote – by placing the ballot paper in the envelope bearing the postal vote certificate, sealing the envelope and sending or delivering the envelope to the returning officer;
- (d) by explaining the ballot paper and the requirements of these Regulations relating to its marking;
- (e) by marking, or assisting the person to mark, the ballot paper at the person's direction;
- (f) by folding the ballot paper and placing it in a ballot box or declaration envelope, or giving it to an authorised officer, as required by these Regulations.

**51 Assistance to persons unable to enter voting centre**

- (1) This regulation applies if the authorised officer in charge of a voting centre is satisfied a person cannot enter the voting centre because of a physical or other disability, illness, advanced pregnancy or another condition.
- (2) The person may:
  - (a) vote outside the voting centre, but close to the voting centre; and
  - (b) be assisted in voting.
- (3) Before allowing the person to vote outside the voting centre, the authorised officer must:
  - (a) tell any scrutineers at the voting centre that the person is to vote outside the voting centre; and
  - (b) allow, from the scrutineers present, one scrutineer representing each candidate to be present when the person votes.
- (4) The person must:
  - (a) mark the person's vote on the ballot paper in the presence of the authorised officer; and
  - (b) fold the ballot paper to conceal the names of the candidates; and
  - (c) give the ballot paper to the authorised officer to be dealt with in accordance with subregulation (6) or (7) as appropriate.

- (5) The person must be allowed to mark the person's vote on the ballot paper in private.
- (6) If the person is casting an ordinary vote:
  - (a) if there is a designated ballot box at the voting centre for the local government area or ward for which the person has cast a vote – the authorised officer must ensure the folded ballot paper is placed in the ballot box in the presence of any scrutineers who were present when the person voted; or
  - (b) otherwise – the authorised officer must, in the presence of the person, without unfolding the ballot paper:
    - (i) place it in an envelope bearing the name of the person's enrolled local government area or ward and the name of the voting centre; and
    - (ii) seal the envelope and place it in a ballot box at the voting centre.
- (7) If the person is casting a declaration vote, the authorised officer must:
  - (a) in the presence of the person, without unfolding the ballot paper, place the ballot paper in the declaration envelope and seal the envelope; and
  - (b) place the envelope in a ballot box at the voting centre.
- (8) This regulation is subject to regulation 50.

## **52            Spoilt or discarded ballot paper**

- (1) Subregulation (2) applies if an authorised officer at a voting centre:
  - (a) is satisfied a ballot paper given to the officer by a person has been spoilt by mistake or accident; or
  - (b) finds a ballot paper discarded at the voting centre.
- (2) The authorised officer must:
  - (a) cancel the ballot paper by writing "spoilt" or "discarded" on it; and
  - (b) place the ballot paper in an envelope, seal the envelope and endorse the envelope with a statement of its contents; and
  - (c) for a spoilt ballot paper – issue to the person an unused ballot paper.

- (3) As soon as practicable after the close of voting, the authorised officer must place all envelopes mentioned in subregulation (2)(b) with unused ballot papers.

### **53            Dealing with ballot boxes and electoral papers**

- (1) At the close of voting, the authorised officer in charge of a voting centre must, in the presence of any scrutineers:
- (a) close and seal the ballot boxes containing ballot papers for ordinary voting or declaration voting; and
  - (b) parcel and seal all unused ballot papers; and
  - (c) parcel and seal all other electoral papers used at the voting centre (including spoilt and discarded ballot papers).
- (2) The authorised officer must send the ballot boxes and papers mentioned in subregulation (1) to the returning officer for the election for scrutiny.
- (3) Subregulations (1)(a) and (2) do not apply to ballot boxes if the voting centre is a scrutiny centre and scrutiny of voting is to proceed immediately after the close of voting at the voting centre.

### **54            Adjournment of voting**

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



## **Division 2           Formality of ballot papers and related matters**

### **57           Informal ballot paper**

- (1) A ballot paper is informal:
  - (a) unless it is:
    - (i) printed by a printer authorised by the returning officer to print ballot papers for the election; or
    - (ii) created for the election by an authorised officer and initialled by an authorised officer; or
  - (b) unless it is marked with a vote clearly indicating the order of the voter's preference for all candidates; or
  - (c) if an authorised officer is satisfied the voter can be identified because of a mark or other writing on it.
- (2) For subregulation (1)(b), a voter is taken to have indicated the voter's order of preferences for all the candidates on a ballot paper in the circumstances mentioned in subregulation (3), (4) or (5).
- (3) If there are only 2 candidates and the voter placed a mark in one candidate square and either placed a "2" in the remaining candidate square or left it blank:
  - (a) the candidate whose candidate square is marked is the voter's first preference; and
  - (b) the other candidate is the voter's last preference.
- (4) If there are 3 or more candidates and the voter placed a mark in one candidate square and placed consecutively increasing whole numbers (starting with a "2") in the remaining candidate squares until a number is placed in each of those candidate squares:
  - (a) the candidate whose candidate square is marked is the voter's first preference; and
  - (b) the number placed in each other candidate square indicates the voter's order of preference for the remaining candidates.

- (5) If there are 3 or more candidates and the voter placed a mark in one candidate square, left one candidate square blank and placed consecutively increasing whole numbers (starting with a "2") in the remaining candidate squares until a number is placed in each of those candidate squares:
- (a) the candidate whose candidate square is marked is the voter's first preference; and
  - (b) the candidate whose candidate square is left blank is the voter's last preference; and
  - (c) the number placed in each other candidate square indicates the voter's order of preferences between the first and last preference.
- (6) A ballot paper is not informal merely because of some other error or misdescription unless an authorised officer is satisfied that the error or misdescription is likely to have misled the voter, thus causing the vote to miscarry.

*Note for subregulation (6)*

*If a candidate's name appears on a ballot paper in an incomplete form, or is misspelled, the ballot paper is not informal unless an authorised officer was satisfied that the deficiency or error is likely to have caused doubt or confusion about the identity of the candidate.*

- (7) Subject to this regulation, a ballot paper must be given effect according to the voter's intention so far as the voter's intention is clear.
- (8) In this regulation:

**mark** means a single "1", tick, cross or any other writing or mark that indicates the voter's intention.

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

- (1) Postal voting papers must not be accepted for scrutiny unless the envelope bearing the postal vote certificate is received by the returning officer before 12 noon on the 13th day after election day.
- (2) A declaration ballot paper must not be accepted for scrutiny if:
- (a) it is not received for scrutiny in a sealed envelope; and
  - (b) the sealed envelope is not signed as required under these Regulations.



**59           Rejection of informal ballot papers**

An authorised officer responsible for the scrutiny must:

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

**60           Objections by candidate's scrutineer**

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

**61           Dealing with certain votes cast by absent voters**

- (1) If the authorised officer in charge of a scrutiny centre finds an unenclosed absent ballot paper in a ballot box at a voting centre, the officer must not reject the ballot paper from scrutiny merely because it is not in an envelope.
- (2) The officer must:
  - (a) place the unenclosed absent ballot paper in an envelope bearing the name of the local government area or ward and the name of the voting centre; and
  - (b) send it to the authorised officer for the local government area or ward to which it relates.
- (3) In this regulation:

***unenclosed absent ballot paper*** means a ballot paper to which regulation 21(1)(c)(ii) applies that is not contained in an envelope bearing the name of the local government area or ward stated on the ballot paper.

### **Division 3           Ordinary votes**

#### **62           Examination of voting papers for certain ordinary votes**

- (1) An authorised officer must examine each unopened envelope placed in a ballot box under regulation 21(2) or 51(6)(b).
- (2) If it appears that an envelope contains a vote for an election for another local government area, the authorised officer must send the unopened envelope to an authorised officer for the relevant area for determination whether the vote should be admitted to the count for that area or a ward within that area.
- (3) For each local government area or ward, an authorised officer must:
  - (a) open the envelopes containing ballot papers; and
  - (b) take the ballot papers out of the envelopes; and
  - (c) place the envelopes in a parcel with all other envelopes from which ballot papers have been taken under paragraph (b).
- (4) The authorised officer must seal the parcel referred to in subregulation (3)(c) and endorse on it a statement of its contents.
- (5) A candidate's scrutineer may sign the sealed parcel.

### **Division 4           Declaration votes**

#### **63           Examination of voting papers for declaration voting**

- (1) An authorised officer must examine each unopened envelope containing a declaration ballot paper.
- (2) If it appears from the declaration that an envelope contains a vote for an election for another local government area, the authorised officer must send the unopened envelope to an authorised officer for the relevant area for determination whether the vote should be admitted to the count for that area or a ward within that area.
- (3) The authorised officer must admit the envelope to the scrutiny if the returning officer is satisfied that:
  - (a) the declaration on the envelope is properly signed; and
  - (b) the person who made the declaration is entitled to vote and:
    - (i) the person does not appear to have voted more than once at the election; or

- (ii) in the case of a person marked as having already voted – there is a reasonable possibility that the mark was inserted in error.
- (4) In deciding under subregulation (3)(b) whether a person who made a declaration is entitled to vote, the authorised officer may have regard to an electoral roll or extract as in force at an earlier time and any other matters the officer considers appropriate.
- (5) When the authorised officer admits a declaration envelope to the scrutiny, the authorised officer must:
  - (a) make a record of:
    - (i) the fact that the voter has voted by placing a mark against the voter's name on an electoral roll or in some other appropriate way; or
    - (ii) in the case of a person whose name is not on an electoral roll but who the authorised officer is satisfied is entitled to vote in accordance with Part VIII of the *Commonwealth Electoral Act 1918* (Cth) – that entitlement in some appropriate way; and
  - (b) take the ballot paper out of the envelope; and
  - (c) place the envelope in a parcel with all other envelopes from which ballot papers have been taken under paragraph (b).
- (5) If the authorised officer is not satisfied of the matters mentioned in subregulation (3), the officer must:
  - (a) exclude the ballot paper from further scrutiny without opening the envelope in which it is contained; and
  - (b) place the unopened envelopes in a parcel.
- (6) The authorised officer must seal the parcels mentioned in subregulations (4)(c) and (5)(b) and endorse on each parcel a statement of its contents.
- (7) A candidate's scrutineer may sign a sealed parcel.

## **Division 5       Postal votes**

### **64       Receipt of postal voting papers**

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

- (a) note on the voter's postal vote certificate the date and time of receipt; and
- (b) place the postal voting papers in a secure receptacle.

### **65       Scrutiny of postal voting papers**

- (1) The following provisions apply to the scrutiny of postal voting papers.
- (2) An authorised officer must reject postal voting papers if the authorised officer is satisfied that:
  - (a) the postal voting papers were signed after 6 pm on election day; or
  - (b) the postal voting papers were received after 12 noon on the 13th day after election day.
- (3) If postal voting papers are not rejected under subregulation (2), the authorised officer must, unless the election is a mandatory postal vote election, compare the signature of the voter on the voter's postal vote certificate with the signature of the voter on the voter's application for postal voting papers or for registration under the *Electoral Act 2004* as a postal voter.
- (4) Subject to subregulation (5), the authorised officer must admit a postal ballot paper for scrutiny if satisfied that:
  - (a) the voter has signed the postal vote certificate; 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 37(1) and the number on the postal vote certificate corresponds with the number of the person on the electoral roll.

- (5) If replacement postal voting papers have been issued, or issued and sent, to a voter 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.
- (6) When the authorised officer admits for scrutiny a postal ballot paper issued or issued and sent to a voter, other than a voter who applied for postal voting papers under regulation 37(1), the authorised officer must:
  - (a) place a mark against the voter's name on the electoral roll; and
  - (b) take the ballot paper out of the envelope and, without unfolding it, place it in a ballot box; and
  - (c) place the envelope in a parcel with all other envelopes from which ballot papers have been taken under paragraph (b).
- (7) If the authorised officer rejects postal voting papers under subregulation (2), the officer must mark the unopened envelope with the word "rejected" before placing it in a parcel of rejected postal voting papers.

## **Division 6           Determining and declaring result of election**

### **66           Determination of result of election**

As soon as practicable after the close of voting 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.

### **67           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 68(2) applies in relation to a candidate for an election both as the principal member and as an ordinary member of a council.*

## **68 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 67, 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.

## **69 Death of candidate – election of ordinary members**

- (1) This regulation applies to the election of ordinary members of a council under regulation 68.
- (2) If a candidate for an electorate dies before the end of election 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 election day and before the result of the election for the electorate is declared under regulation 71 (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, clause 18 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.

## **70       Recount**

- (1) At any time before the declaration of the result of an election, the returning officer may direct an authorised officer to recount all or a specified class of the ballot papers.
- (2) The returning officer may give the direction:
- (a) on receipt of a written request from a candidate stating the reasons why a recount is sought; or
  - (b) on the returning officer's own initiative.
- (3) In the course of the recount the authorised officer may reconsider any decision made earlier in the scrutiny relating to the admission or rejection of a ballot paper as a formal ballot paper and may reverse the decision.

- (4) If on an earlier count the question of which of 2 or more candidates with an equal number of votes is to be excluded arose and that question was resolved by lot, if the same question arises on the recount the same candidate must be excluded.

## **71           Declaration of result of election**

As soon as practicable after the results of an election have been determined the returning officer must do the following:

- (a) give public notice of the results of the election and the name of the candidate or candidates returned as elected;
- (b) certify the results of the election to the CEO of the council;
- (c) notify the Minister of the results of the election;
- (d) if the returning officer is not the Electoral Commissioner – notify the Electoral Commissioner and the Chief Executive Officer of the Agency of the results of the election.

## **Division 7           Miscellaneous**

### **72           Extension or change of time**

The Minister, by *Gazette* notice, may extend or change the time for holding an election, or for taking a step in an election, for an electorate if the Minister is satisfied there is good reason to do so.

### **73           New election on failure of election**

- (1) An election fails if any of the following occur:
- (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;
  - (c) an election for the principal member of a council fails wholly if any candidate for principal member dies before the end of election day.
- (2) If an election fails wholly or in part, the returning officer must, as soon as practicable, fix a date for a new election to fill any resulting deficiencies in the membership of the council.
- (3) The electoral roll prepared for the failed election must be used for the new election.



## Part 5 Electoral offences

### 74 Dishonesty

(1) A person commits an offence if:

- (a) the person intentionally claims, or purports, to exercise a voting or other right in relation to an election; and
- (b) the person is not entitled to exercise that right; and
- (c) the person has knowledge of that circumstance.

Maximum penalty: 20 penalty units.

(2) A person commits an offence if:

- (a) the person makes a misleading statement to an authorised officer in connection with an election; and
- (b) the person knows the statement is misleading.

Maximum penalty: 5 penalty units.

### 75 Interference with electoral materials

A person commits an offence if the person:

- (a) intentionally damages, destroys or interferes with voting papers or other materials prepared for official use in an election; and
- (b) does not have proper authority to do so.

Maximum penalty: 50 penalty units.

### 76 Duty of those who assist voters

(1) A person commits an offence if:

- (a) the person (the ***assisting person***) intentionally assists a person to vote who is unable to vote without assistance; and
- (b) the assisted person's ballot paper is not marked in accordance with the instructions of the assisted person and the assisting person has knowledge of that result.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if the person:
- (a) accepts an application for postal voting papers, or completed postal voting papers, for posting or delivery to a returning officer; and
  - (b) fails to immediately post or deliver them to the returning officer.

Maximum penalty: 50 penalty units.

- (3) An offence against subregulation (2) is an offence of strict liability.

## 77 Conduct at voting centre

- (1) A person commits an offence if the person intentionally canvasses for votes in, or within 10 metres of the entrance to, a voting centre while the voting centre is open for voting.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if the person intentionally wears or displays campaign material in a voting centre while the voting centre is open for voting.

Maximum penalty: 5 penalty units.

- (3) A person commits an offence if:
- (a) the person is at a voting centre; and
  - (b) the authorised officer in charge of the voting centre gives a direction to the person; and
  - (c) the direction relates to the person's conduct; and
  - (d) the person intentionally fails to comply with the direction.

Maximum penalty: 50 penalty units.

## Part 6 Infringement notice offences

### 78 Infringement notice offence and prescribed amount payable

- (1) An ***infringement notice offence*** is an offence against a provision specified in Schedule 2.
- (2) The ***prescribed amount*** for an infringement notice offence is the amount specified in Schedule 2 for the offence.

**79 When infringement notice may be given**

If an authorised officer believes on reasonable grounds that a person has committed an infringement notice offence, the authorised officer may give a notice (an ***infringement notice***) to the person.

**80 Contents of infringement notice**

- (1) The infringement notice must specify the following:
  - (a) the name and address of the person to whom it is issued, if known;
  - (b) the date the infringement notice is given or sent to the person and:
    - (i) if the offence consists of a failure to vote at an election – the date of the election; or
    - (ii) in any other case – the date, time and place of the alleged offence;
  - (c) a description of the offence;
  - (d) the prescribed amount payable for the offence;
  - (e) that the prescribed amount is payable to:
    - (i) for a by-election and if the returning officer is not the Electoral Commissioner – the relevant council; or
    - (ii) otherwise – the Electoral Commission.
- (2) The infringement notice must include a statement to the effect of the following:
  - (a) the person may expiate the infringement notice offence and avoid any further action in relation to the offence by paying the prescribed amount within 28 days after the notice is given;
  - (b) the person may elect to have the matter dealt with by a court instead of paying the prescribed amount by completing a statement of election and returning it to the person stated in the notice;

- (c) if the person does nothing in response to the notice, a summons may be issued requiring the alleged offender to appear before the Local Court to be dealt with for the offence.
- (3) The infringement notice must include an appropriate form for making the statement of election mentioned in subregulation (2)(b).

### **81 Expiation of offence**

If the prescribed amount for the infringement offence is paid in accordance with the infringement notice, the alleged offence is expiated and no further proceedings can be taken in relation to the offence.

### **82 Electronic payment and payment by cheque**

- (1) If the person uses electronic means to pay the prescribed amount, payment is not effected until the amount is credited to the payee's bank account.
- (2) If the person tenders a cheque in payment of the prescribed amount, payment is not effected unless the cheque is cleared on first presentation.

### **83 Withdrawal of infringement notice**

- (1) An authorised officer may withdraw the infringement notice by written notice given to the person.
- (2) The notice must be given:
- (a) within 28 days after the infringement notice is given to the person; and
  - (b) before payment of the prescribed amount.

### **84 How service effected**

Service of an infringement notice or a notice of withdrawal of an infringement notice must be effected by:

- (a) delivering it to the person personally; or
- (b) posting it to the person at the person's last known address; or
- (c) leaving it for the person at the person's last known place of residence or business with someone who appears to be at least 16 years old and resident or employed there.

**85 Application of Part**

- (1) This Part does not prejudice or affect the start or continuation of proceedings for an infringement notice offence for which an infringement notice has been given unless the offence is expiated.
- (2) This Part does not:
  - (a) require an infringement notice to be given; or
  - (b) affect the liability of a person to be prosecuted in a court for an offence for which an infringement notice has not been given; or
  - (c) prevent more than one infringement notice for the same offence being given to a person.
- (3) If more than one infringement notice for the same offence has been given to a person, the person may expiate the offence by paying the prescribed amount in accordance with any of the notices.

**Part 7 Miscellaneous****86 Electoral Commissioner's power to approve electronic or other automated systems**

- (1) The Electoral Commissioner may, in writing, approve the use of a specified electronic or other automated system (**approved system**) for specified purposes relating to any of the following:
  - (a) issuing and returning of ballot papers;
  - (b) counting and processing of votes;
  - (c) voting by a specified group of persons;
  - (d) assisting persons to vote who have a physical or other disability, illness, advanced pregnancy or another condition.

*Example for subregulation (1)(a)*

*The confirmation and recording of the issuing of ballot papers.*

*Examples for subregulation (1)(c)*

*Voters in remote locations or interstate or overseas voters.*

- (2) The Electoral Commissioner must not give the approval unless the Electoral Commissioner is satisfied:
  - (a) as far as practicable, the secrecy of the ballot will be maintained by the approved system; and

- 
- (b) the approval is warranted having regard to the practicality of the system and resources required to establish and maintain it; and
  - (c) the approval is consistent with the Electoral Commissioner's functions under these Regulations; and
  - (d) the approved system would be supported by secure facilities; and
  - (e) if subregulation (1)(c) applies – there are exceptional circumstances relating to the specified group of persons.
- (3) As soon as practicable after giving the approval, the Electoral Commissioner must give notice to the public of the approved system that is reasonable and practicable in the circumstances.
  - (4) If the approval specifies that a matter covered by subregulation (1) may be done in accordance with the approved system instead of a specified requirement under these Regulations, a thing done in accordance with the approval has effect as if that requirement had been met.

#### **87 Electoral costs and expenses**

- (1) If the returning officer for an election is the Electoral Commissioner, the reasonable costs and expenses of conducting the election, including the costs and expenses incurred by the Electoral Commissioner, are payable from the funds of the relevant council and may be recovered from the council as a debt.
- (2) The reasonable costs and expenses of conducting an election are to be determined in accordance with an agreement between the council and the Electoral Commissioner.
- (3) If there is no agreement under subregulation (2), the Electoral Commissioner may commence a proceeding in a court to recover the reasonable costs and expenses incurred by the Electoral Commissioner as a debt due to the Electoral Commission.

#### **88 Contravention of Part 4, Division 6**

- (1) A returning officer for an election commits an offence if:
  - (a) the returning officer engages in conduct; and

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(b) the conduct results in the election being determined or declared otherwise than in accordance with Part 4, Division 6; and

(c) the returning officer is reckless in relation to that result.

Maximum penalty: 100 penalty units.

(2) An offence against subregulation (1) does not apply to the Electoral Commissioner.

### **89 Contravention of regulations – returning officer**

(1) A returning officer for an election 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; and

(c) the returning officer is reckless in relation to that result.

Maximum penalty: 30 penalty units.

(2) An offence against subregulation (1) does not apply to the Electoral Commissioner.

### **90 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; and

(c) the person is reckless in relation to that result.

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 5(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.

## **91 Storage and destruction of electoral papers**

- (1) A returning officer, other than the Electoral Commissioner, must:
  - (a) securely store 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.
- (2) 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 (1)(b).
- (3) The Electoral Commissioner may destroy the electoral papers when they are no longer required to be stored under subregulation (2).
- (4) A returning officer for an election 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; and
  - (c) the returning officer is reckless in relation to that result.

Maximum penalty: 100 penalty units.
- (5) A returning officer for an election 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 not being given to the Electoral Commissioner as required by subregulation (1)(b); and

(c) the returning officer is reckless in relation to that result.

Maximum penalty: 20 penalty units.

(6) An offence against subregulation (4) or (5) does not apply to the Electoral Commissioner.

(7) It is a defence to a prosecution for an offence against subregulation (4) or (5) if the defendant has a reasonable excuse.

(8) In this regulation:

***electoral papers*** means 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 been returned to the returning officer.

## Schedule 1 Counting of votes and filling of vacancies

regulations 66 to 69

### 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 calculated 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 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 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)*

*Under clause 7, the transfer value for an elected candidate's surplus is calculated 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 the purpose of 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 fewer 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 (6).
- (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.
- (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.

**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) Despite subclause (2), 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**

Subject to clause 12, 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 in accordance with clause 8(3) to (5).

**11 No further transfer of votes**

If a candidate is elected as a result of either of the following, no other votes of the excluded candidate may be transferred to the candidate so elected:

- (a) a transfer of the first preference votes of an excluded candidate;
- (b) a transfer of all the votes of an excluded candidate that were transferred to the excluded candidate from a particular candidate.

**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 the last preceding count or transfer was equal:
  - (a) the candidate with the larger number of votes at the last preceding count or transfer at which those candidates had a different number of votes is taken to be elected; or
  - (b) if there is no preceding count or transfer at which those candidates had a different number of votes – 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 anything to the contrary 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 the earliest elected.
- (3) Despite subclause (2), 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 the earliest elected.
- (4) If there has been no 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) Despite subclause (2), if there has been no 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) In subclause (1):

***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 election day in relation to an election that does not fail:

- (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 69.*

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**Schedule 2    Infringement notice offences and prescribed amounts**

regulation 78

<b>Infringement notice offence</b>	<b>Prescribed amount</b>
An offence against section 142(3) of the Act	\$25.00
An offence against section 164(1) or (3) of the Act	\$100.00
An offence against regulation 55, 74(1) or (2), 75, 76(1) or (2) or 77(1), (2) or (3) of these Regulations	\$100.00