

Queensland



Community Services (Torres Strait) Act 1984

COMMUNITY SERVICES (TORRES STRAIT) REGULATION 1998

**Reprinted as in force on 6 April 2000
(includes amendments up to SL No. 49 of 2000)**

Reprint No. 1B

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Information about this reprint

This regulation is reprinted as at 6 April 2000. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland



COMMUNITY SERVICES (TORRES STRAIT) REGULATION 1998

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	11
2	Dictionary	11
3	Meaning of “conclusion” of election for Island council	11
PART 2—ISLAND COUNCILS		
<i>Division 1—Membership</i>		
4	Membership of Island councils	12
4A	Saibai Island council to have 7 councillors	12
5	Proposal to decide other number of councillors	13
6	Resolution of Island council	13
7	Petition by electors of area	14
8	Minister to make decision about resolution or petition	14
9	Change in membership takes effect at next quadrennial election	15
<i>Division 2—Qualifications and disqualifications for membership of Island council</i>		
10	Qualifications for councillors	15
11	Disqualification of councillors	16
<i>Division 3—Term of office and vacancies in office</i>		
12	Term of office as appointed councillor	17
13	When councillor’s office becomes vacant	18
14	Filling of earlier vacancies by by-election	18
15	Filling of later vacancies by appointment	18

*Community Services (Torres Strait)
Regulation 1998*

PART 3—CHAIRPERSON OF ISLAND COUNCIL

Division 1—Appointment of chairperson and related matters

16	Membership of Island councils	19
17	Duration of appointment of chairperson	20
18	Vacating office of chairperson	20
19	Office of chairperson may be declared vacant	20

Division 2—Direct election of chairperson

20	Process for direct election	21
21	Proposal for direct election	21
22	Resolution of Island council	21
23	Petition by electors of area	22
24	Minister to make decision about resolution or petition	22
25	Direct election of chairperson takes effect at next election	23

PART 4—ELECTIONS FOR ISLAND COUNCILS

26	Election of councillors	23
----	-----------------------------------	----

PART 5—ISLAND COUNCIL MEETINGS

Division 1—Post-election meetings

27	Post-election meetings	24
28	Agenda of post-election meetings	24
29	Clerk to preside at post-election meetings	24

Division 2—Meetings generally

30	Other meetings	25
31	Place of meetings	25
32	Quorum at meetings	25
33	Procedure at meetings	25
34	Minutes must be kept	26
35	Adjournment of meetings	26
36	Notice of meetings	26
37	Repeal or amendment of resolutions	27
38	Minutes to be kept and confirmed	27
39	Meetings in public unless otherwise resolved	28

*Community Services (Torres Strait)
Regulation 1998*

40	Meetings may be closed for limited reasons	28
41	Public notice of meetings	29
42	Public notice of resolution authorising remuneration	29
43	Inspection of minutes of meetings and their purchase	30
PART 6—FINANCIAL ADMINISTRATION		
<i>Division 1—Financial management of Island councils</i>		
44	Community funds	30
45	General fund of Island council	31
46	Trust fund of Island council	31
47	Administration and financial procedures manual	32
48	Financial information to be presented to post-election meeting	32
49	Approved forms for annual financial statements	33
<i>Division 2—Register of councillor’s pecuniary interests</i>		
50	Register of pecuniary interest disclosures	33
PART 7—CLERK OF ISLAND COUNCIL		
51	Employment of clerk	33
52	Role of clerk	34
53	Acting clerk	34
PART 8—ISLAND COURTS		
54	Procedures and enforcement of decisions of Island Courts	34
55	Jurisdiction of court includes power to make fine option order	35
56	Clerk of Island Court	35
57	Record of court proceedings	35
PART 9—ISLAND COORDINATING COUNCIL		
<i>Division 1—Chairperson and deputy chairperson of Island Coordinating Council</i>		
58	Appointment of chairperson and deputy chairperson	36
59	Vacating office of chairperson or deputy chairperson	36
60	Office of chairperson or deputy chairperson may be declared vacant	36
61	Quorum for meetings of executive committee	37

*Community Services (Torres Strait)
Regulation 1998*

***Division 2—Financial administration of Island Coordinating
Council***

62	Community funds of Island Coordinating Council	37
63	General fund of Island Coordinating Council	37
64	Trust fund of Island Coordinating Council	37

PART 10—ISLAND COUNCIL AREAS

64A	Declaration of council areas—Act, s 14	38
-----	--	----

PART 11—MISCELLANEOUS

65	Forms	38
----	-----------------	----

PART 12—TRANSITIONAL

66	Transitional provision for Community Services Legislation Amendment (No. 1) Regulation 2000	38
67	Transitional provision for Saibai Island council	39

SCHEDULE 1 40

ELECTIONS

PART 1—GENERAL

266	Quadrennial elections	40
267	Types of elections	40
268	Elections to be held on a Saturday	41
269	Date of quadrennial elections	41
270	Date of by-elections	41
271	Island councils responsible for expenditure for conducting elections	41

PART 2—RETURNING OFFICERS

272	Clerk is returning officer	42
273	Appointment of returning officer in place of the clerk	42
274	Returning officer's duty for by-election	43

PART 3—VOTERS ROLL

275	Returning officer must compile voters roll	43
276	Qualification for enrolment on voters roll	44
277	Cut-off day for voters roll	44
278	Use of electoral roll when practicable	44
279	Requirements of voters roll	45

*Community Services (Torres Strait)
Regulation 1998*

280	Voters roll to be open to inspection and purchase	45
281	Electoral registrars to help returning officers	45
PART 4—VOTING		
282	Compulsory voting	46
283	System of voting	46
PART 5—(omitted)		
PART 6—CONDUCT OF ELECTIONS		
<i>Division 1—Preliminary</i>		
289	Conduct of elections	46
<i>Division 2—Electoral officers</i>		
290	Returning officer	47
291	Assistant returning officers	47
292	Presiding officers	47
293	Issuing officers	47
294	Declaration by issuing officers	48
295	Returning officer may act through other officers	48
296	Assistant returning officer may act through certain authorised officers ...	49
297	Supply and use of voters rolls	49
<i>Division 3—Candidates for election or appointment</i>		
298	Qualification for nomination	49
299	Prohibition of dual candidature	49
300	Leave to Island council employee to contest election	50
<i>Division 4—Nominations of candidates for election</i>		
301	Calling for nominations	50
302	Who may nominate	51
303	How and when nomination is given	51
304	Nomination fee to accompany nomination	52
305	Special grounds for deciding a person is not properly nominated	52
306	Certificate of returning officer	52
307	Display of nominations	53
308	Termination of candidature before noon on nomination day	53

*Community Services (Torres Strait)
Regulation 1998*

309	Death of candidate	54
310	Procedure if number of candidates not more than number required	54
311	Procedure if number of candidates exceeds number required	55
312	Supply of voters roll	56
313	Procedure on death of candidate when poll to be conducted	56
314	Disposal of nomination fees generally	56
315	If successful candidate dies	57
316	Extension of times	57
<i>Division 5—(omitted)</i>		
<i>Division 6—Polling booths</i>		
319	Polling booths—general	58
320	Provision of ordinary polling booths	59
321	Declaration of mobile polling booths	59
322	Duty of person in charge of institution	60
323	Privacy of voting	61
<i>Division 7—Ballot boxes, papers and other documents</i>		
324	Ballot boxes generally	61
325	Requirements of ballot papers	61
326	Separate ballot papers for separate polls	62
327	Order of listing of candidates' names	62
328	Distribution of ballot papers	63
329	Correction of errors etc.	64
<i>Division 8—Scrutineers</i>		
330	Candidates' entitlement to scrutineers	65
331	Appointment of scrutineers	65
332	Proof of identification	65
333	Powers of scrutineers	65
<i>Division 9—Voting generally</i>		
334	Who may vote	66
335	When votes may be cast at an ordinary polling booth or mobile polling booth	66
336	Procedure for voting at a polling booth	67

*Community Services (Torres Strait)
Regulation 1998*

337	Duties of issuing officer for returned papers	68
338	Arrangements for electors with disability	68
339	Arrangements for electors at institutions	69
340	Arrangements for electoral visitor voting	70
341	Help for electors in voting	70
342	Adjournment of poll	71
<i>Division 10—Declaration voting</i>		
343	Who may cast a declaration vote	72
344	Who must cast a declaration vote in ordinary elections	73
345	Declaration voting for postal ballot elections	73
346	How declaration vote is cast	73
346A	Distribution of ballot papers to certain electors who may cast declaration vote	74
347	Distribution of ballot papers to electors who may or must cast declaration vote	75
348	How declaration vote may be cast at a polling booth	76
349	Distribution of ballot papers to electors for postal ballot election	77
350	Record of ballot papers given to postal voters	77
351	Casting a declaration vote by post	77
352	Declaration voting before polling day	78
353	Distribution of declaration envelopes when separate ballot papers or polls on same day	79
<i>Division 11—Marking of ballot papers</i>		
354	Optional-preferential voting	80
355	First-past-the-post voting	80
<i>Division 12—Replacement ballot papers</i>		
356	Use of replacement ballot papers	81
<i>Division 13—Effect of ballot papers</i>		
357	Effect of ballot papers—optional-preferential voting	83
358	Effect of ballot papers—first-past-the-post voting	83
359	Posted vote presumed valid until contrary proved	84
360	Formal and informal ballot papers	84
361	Ballot paper partly formal and partly informal	84

*Community Services (Torres Strait)
Regulation 1998*

Division 14—Counting of votes

362	Votes to be counted in accordance with this division	85
363	Preliminary counting by presiding officer	85
364	Preliminary processing of declaration votes by returning officer	87
365	Procedure for processing declaration envelopes	87
366	Official counting of votes	89
367	Treatment of ballot paper to which objection is made	90
368	Counting of votes for optional-preferential system	90
369	Counting of votes for first-past-the-post system	91
370	Returning officer’s duty after counting votes	91

Division 15—Actions following poll

371	Declaration of poll	92
372	Notice of final result of poll	93
373	Resolution about electors who fail to vote	93
374	List of electors failing to vote	93
375	Notice of failure to vote etc.	94
376	Payments for failure to vote	95
377	Recording response to notice	95
378	Evidentiary value of list under s 374	96
379	Disposal of material resulting from election	96
380	Ballot papers as evidence	97
381	Notice to electors whose ballot papers are not accepted	97
382	Notice to electoral commission of certain declaration votes	97

Division 16—Enforcement

Subdivision 1—Offences in general

383	False or misleading statements	98
384	False, misleading or incomplete electoral documents	98
385	Bribery	99
386	Providing money for illegal payments	99
387	Improperly influencing electoral officers	99
388	Interfering with election right or duty	100

*Community Services (Torres Strait)
Regulation 1998*

389	Forging or uttering electoral papers	100
390	Wilful neglect etc. of electoral officers	100
391	No record to be made of vote cast	100

Subdivision 2—Offences about electoral advertising and information

392	Responsibility for election matter	101
393	Headline to electoral advertisements	101
394	Misleading voters	102

Subdivision 3—Offences about voting

395	Failure to vote	102
396	Leave to vote	103
397	Canvassing in or near polling booths	104
398	Interrupting voting etc.	104
399	Influencing voting	105
400	Party badges not to be worn in polling booths	105
401	Voting if not entitled	105
402	Offences relating to ballot papers	105
403	Failure to deliver or post documents for someone else	106
404	Breach of confidentiality of vote	106
405	Breaking seals on parcels	107
406	Duty of witness to signing of declaration voting papers	107

Subdivision 4—(omitted)

PART 7—FRESH ELECTIONS

408	Requirements for fresh election	108
409	Time for fresh election	108
410	Returning officer for fresh election	108
411	Voters roll for fresh election	108
412	Other provisions of schedule apply	108
413	Extension of term of councillors	109

PART 8—(omitted)

	SCHEDULE 1A	110
--	------------------------------	-----

DECLARATION OF COUNCIL AREAS

*Community Services (Torres Strait)
Regulation 1998*

SCHEDULE 2 112
DICTIONARY

ENDNOTES

1 Index to endnotes 114
2 Date to which amendments incorporated 114
3 Key 115
4 Table of earlier reprints 115
5 List of legislation 115
6 List of annotations 116

*Community Services (Torres Strait)
Regulation 1998*

COMMUNITY SERVICES (TORRES STRAIT) REGULATION 1998

[as amended by all amendments that commenced on or before 6 April 2000]

PART 1—PRELIMINARY

Short title

1. This regulation may be cited as the *Community Services (Torres Strait) Regulation 1998*.

Dictionary

2.(1) The dictionary in schedule 2 defines particular words used in this regulation.

(2) Definitions used elsewhere in the regulation are signposted in the dictionary.

Meaning of “conclusion” of election for Island council

3. The “**conclusion**” of the election of a councillor is—

- (a) if the councillor is elected at an election of all councillors of the Island council—the day on which the last declaration of a poll conducted in the election is displayed as required under this regulation; or
- (b) if the councillor is elected at a by-election and—
 - (i) a poll is conducted—the day on which the declaration of the poll is displayed as required under this regulation; or
 - (ii) a poll is not conducted—the day after the nomination day for the by-election; or
- (c) if, because the number of candidates nominated for election is the

*Community Services (Torres Strait)
Regulation 1998*

same or less than the number of councillors to be elected, the councillor is elected (other than at a by-election) and—

- (i) 1 or more polls are conducted in the council's area—the day on which the last declaration of a poll is displayed as required under this regulation; or
- (ii) a poll is not conducted—6 p.m. on the day that a poll would otherwise have been required under this regulation to be conducted.

PART 2—ISLAND COUNCILS

Division 1—Membership

Membership of Island councils

4.(1) An Island council consists of 3 councillors, including the chairperson.

(2) Subsection (1) is subject to an approval, under this division, of another number of councillors.

(3) This section is subject to section 4A.

Saibai Island council to have 7 councillors

4A.(1) The purpose of this section is to provide for the composition of the Saibai Island council in a way that reflects—

- (a) the 2 buways on Saibai Island; and
- (b) the 7 clans, each of which belongs to a buway.¹

¹ Provisions in schedule 1 that change the way in which the *Local Government Act 1993*, chapter 5, applies to elections for Island councils also provide for the 2 buways and 7 clans on Saibai Island.

*Community Services (Torres Strait)
Regulation 1998*

(2) The Saibai Island council consists of 7 councillors, including the chairperson.

(3) There must be 1 councillor from each of the 7 clans.

Proposal to decide other number of councillors

5.(1) A proposal to decide the number of councillors for an Island council, other than 3, may be made by—

- (a) the Island council, by resolution, asking the Minister to approve a stated number of councillors for the council; or
- (b) the electors in the council's area giving the Minister a petition asking the Minister to approve a stated number of councillors for the council.

(2) This section does not apply to Saibai Island council.

Resolution of Island council

6.(1) If an Island council, by resolution, decides to ask the Minister to approve a stated number of councillors for the council, the council must consult with the electors of the council's area for at least 14 days.

(2) The consultation period must begin within 14 days after the date of the resolution.

(3) A notice about the resolution must be displayed in a conspicuous position in the council's area and in other ways the council considers appropriate.

(4) The notice must state the following—

- (a) the council has, by resolution, decided to ask the Minister to approve a stated number of councillors for the council's area;
- (b) the length of the consultation period and the first and last days of the consultation period;
- (c) an invitation for any person to give to the council's clerk, on or before the last day of the consultation period, a written submission about the resolution.

*Community Services (Torres Strait)
Regulation 1998*

(5) After considering submissions made about the resolution, the council must give a copy of the resolution to the Minister.

(6) The copy of the resolution must—

- (a) be given to the Minister at least 60 days before the next quadrennial election of the council; and
- (b) be accompanied by—
 - (i) a statement signed by the chairperson and the clerk certifying this section has been complied with; and
 - (ii) submissions received about the resolution; and
 - (iii) the council's response to the submissions.

Petition by electors of area

7.(1) A person may give a petition to the Minister asking the Minister to approve a stated number of councillors for an Island council only if—

- (a) it has been signed by a majority of the electors of the council's area; and
- (b) the name and address of each of the electors who signed the petition is clearly set out next to the signature.

(2) The petition must be given to the Minister at least 60 days before the next quadrennial election of the council.

Minister to make decision about resolution or petition

8.(1) This section applies if, no later than 60 days before the next quadrennial election of an Island council, the Minister is given—

- (a) under section 6—a copy of the council's resolution; or
- (b) under section 7—a petition about the membership of the council.

(2) The Minister must decide whether to approve the number of councillors for the Island council stated in the resolution or petition.

(3) The Minister may refuse to approve a resolution or petition only if the Minister is satisfied, on reasonable grounds, that—

*Community Services (Torres Strait)
Regulation 1998*

- (a) the number of councillors stated in the resolution or petition is out of proportion to the overall population of the council's area or is otherwise impracticable and unreasonable; or
- (b) for a resolution—the majority of electors in the council's area are opposed to the resolution; or
- (c) the process set out in this division for the resolution or petition has not been properly complied with.

(4) If the Minister approves the number of councillors stated in the resolution or petition, the Minister must, as soon as practicable, publish notice of the approval in the gazette.

(5) The approval is of no effect until it has been notified in the gazette.

Change in membership takes effect at next quadrennial election

9. If the Minister publishes a notice in the gazette approving a stated number of councillors for a council, the change to the number of councillors does not have effect until the next quadrennial election.

Division 2—Qualifications and disqualifications for membership of Island council

Qualifications for councillors

10.(1) A person is qualified to become a councillor of an Island council, other than Saibai Island council, if the person—

- (a) is a Torres Strait Islander or Aborigine; and
- (b) has lived continuously in the Island council's area for not less than 2 years before—
 - (i) for a person who is elected as a councillor—the nomination day for the election; or
 - (ii) for a person who is appointed as a councillor—the day the person is appointed; and
- (c) is entitled under this regulation to vote in the election.

*Community Services (Torres Strait)
Regulation 1998*

(2) A person is qualified to become a councillor of Saibai Island council if the person—

- (a) is a buway member; and
- (b) has lived continuously in the Saibai Island council's area for not less than 3 months before—
 - (i) for a person who is elected as a councillor—the nomination day for the election; or
 - (ii) for a person who is appointed as a councillor—the day the person is appointed; and
- (c) is entitled under this regulation to vote in the election.

(3) This section is subject to section 11.

Disqualification of councillors

11.(1) A person is not qualified to become a councillor if—

- (a) the person is an undischarged bankrupt under the *Bankruptcy Act 1966* (Cwlth); or
- (b) the person has executed a deed of arrangement under the *Bankruptcy Act 1966* (Cwlth), part X² and the terms of the deed have not been fully complied with; or
- (c) the person's creditors have accepted a composition under the *Bankruptcy Act 1966* (Cwlth), part X and a final payment has not been made under the composition; or
- (d) the person is in prison.

(2) Also, a person who has been convicted of an indictable offence under any of the following provisions of the Criminal Code in relation to an Aboriginal or Island council, is not qualified to become a councillor for 5 years after the conviction—

- part 3, chapter 13 or 15

² *Bankruptcy Act 1996* (Cwlth)—
Part X (Arrangements with creditors without sequestration)

*Community Services (Torres Strait)
Regulation 1998*

- part 6, division 1
- part 6, division 3.³

(3) A person who has been convicted by a court of an offence against section 25A⁴ of the Act is not qualified to become a councillor for 3 years after the conviction, unless the court, by order, directs this subsection does not apply to the person if the court is satisfied it would be just to give the direction.

(4) Subsections (2) and (3) do not apply to a person for a conviction for an offence before 1 October 1996.

(5) In this section—

“**conviction**” includes a plea of guilty or a finding of guilt by a court even though a conviction is not recorded.

Division 3—Term of office and vacancies in office

Term of office as appointed councillor

12.(1) If a councillor (the “**new councillor**”) is appointed to fill a vacancy in the office of a councillor (the “**former councillor**”), the new councillor is appointed for the balance of the former councillor’s term of office.

(2) The new councillor’s term of office starts on the day on which the councillor is appointed and ends on the day—

- (a) the next quadrennial election concludes; or
- (b) the Island council is dissolved; or
- (c) the new councillor’s office otherwise becomes vacant.

³ Criminal Code—

Part 3 (Offences against the administration of law and justice and against public authority), chapter 13 (Corruption and abuse of office), chapter 15 (Selling and trafficking in offices), part 6 (Offences relating to property and contracts), division 1 (Stealing and like offences) and division 3 (Forgery and like offences—personation)

⁴ Section 25A (Disclosure of interests at meetings) of the Act

*Community Services (Torres Strait)
Regulation 1998*

When councillor's office becomes vacant

13. A person's office as a councillor of an Island council becomes vacant if the person—

- (a) dies; or
- (b) resigns as a councillor; or
- (c) ceases to be qualified to be a councillor under section 10 or 11; or
- (d) is absent from 3 or more consecutive meetings of the council of which notice has been duly given, without the council's leave; or
- (e) is found to be unlawfully elected or appointed, or ineligible to continue to act, as a councillor, on a review under the *Judicial Review Act 1991*; or
- (f) becomes the clerk, or deputy clerk, of the council; or
- (g) becomes a finance officer, financial controller, accountant or other person (however described) whose primary responsibility is administering the council's finances; or
- (h) is elected to another office at a by-election; or
- (i) otherwise ceases to hold the office before the next quadrennial election concludes or the council is dissolved.

Filling of earlier vacancies by by-election

14.(1) This section applies if a person's office as a councillor of an Island council becomes vacant before 1 March (the "**cut-off date**") in the year before the year in which the next quadrennial elections for the council are to be held.

(2) The vacancy must be filled by a by-election.

Filling of later vacancies by appointment

15.(1) If the office of a person as a councillor of an Island council (the "**former councillor**") becomes vacant on or after the cut-off date, the Island council must fill the office by appointing a qualified person (the "**new councillor**") to the office.

*Community Services (Torres Strait)
Regulation 1998*

(2) If the vacancy is not properly filled within 2 months after the vacancy happens, the Governor in Council may appoint a person, who is qualified to become a councillor of the Island council, to fill the vacancy.

PART 3—CHAIRPERSON OF ISLAND COUNCIL

Division 1—Appointment of chairperson and related matters

Membership of Island councils

16.(1) An Island council must appoint a chairperson from its councillors, by resolution, at—

- (a) its first meeting after the conclusion of each quadrennial election; and
- (b) its first meeting after the conclusion of a fresh election of all of its councillors; and
- (c) its first meeting after the chairperson's office as councillor otherwise becomes vacant.

(2) If, within 21 days after the post-election meeting or the chairperson's office otherwise becomes vacant, the Island council has not appointed a chairperson, the Minister may, by written notice to the council, appoint a councillor as chairperson.

(2A) For the appointment of a chairperson of Saibai Island council under subsection (1) or (2)—

- (a) if the appointment is after a quadrennial or fresh election—the person appointed must not be a buway member of the same buway as the person who was the previous chairperson; and
- (b) otherwise—the person appointed must be a buway member of the same buway as the person who was the previous chairperson.

(3) Subsections (1) and (2) are subject to an approval, under division 2, of the direct election of the chairperson.

*Community Services (Torres Strait)
Regulation 1998*

Duration of appointment of chairperson

17. The chairperson's term of office begins on the day on which the chairperson is appointed and ends on the day—

- (a) the next quadrennial election concludes; or
- (b) the Island council is dissolved; or
- (c) the chairperson's office otherwise becomes vacant.

Vacating office of chairperson

18. A person's office as chairperson of an Island council becomes vacant if—

- (a) the person resigns as chairperson; or
- (b) the office of chairperson is declared vacant under section 19.

Office of chairperson may be declared vacant

19.(1) An Island council, by resolution, may declare the office of chairperson is vacant.

(2) The resolution may be passed only if written notice of the resolution has been given to the members of the council at least 14 days before the meeting.

(3) If the council declares the office of chairperson is vacant, it must immediately appoint a chairperson from its members.

(3A) However, for Saibai Island council, the chairperson appointed under subsection (3) must be a member of the same buway of which the immediately preceding chairperson was a member.

(4) Subsection (2) has effect despite section 36(1).⁵

⁵ Section 36 (Notice of meetings)

*Community Services (Torres Strait)
Regulation 1998*

Division 2—Direct election of chairperson

Process for direct election

20.(1) This division states the process to be used for approval of the direct election of the chairperson of an Island council.

(2) The Minister may approve the direct election of an Island council's chairperson only if the process is followed.

Proposal for direct election

21. A proposal for the chairperson of an Island council to be directly elected may be made by—

- (a) the Island council, by resolution, asking the Minister to approve the direct election of the chairperson; or
- (b) the electors in the council's area giving the Minister a petition asking the Minister to approve the direct election of the chairperson.

Resolution of Island council

22.(1) If an Island council, by resolution, decides to ask the Minister to approve the direct election of the council's chairperson, the council must consult with the electors of the council's area for at least 14 days.

(2) The consultation period must begin within 14 days after the resolution is passed.

(3) A notice about the resolution must be displayed in a conspicuous position in the council's area and in other ways the council considers appropriate.

(4) The notice must state the following—

- (a) the council has, by resolution, decided to ask the Minister to approve the direct election of the council's chairperson by the electors of the council's area;
- (b) the length of the consultation period and the first and last days of

*Community Services (Torres Strait)
Regulation 1998*

the consultation period;

- (c) an invitation for any person to give to the council's clerk, on or before the last day of the consultation period, a written submission about the resolution.

(5) After considering submissions made about the resolution, the Island council must give a copy of the resolution to the Minister.

(6) The copy of the resolution must—

- (a) be given to the Minister at least 60 days before the next quadrennial election of the council; and
- (b) be accompanied by—
 - (i) a statement signed by the chairperson and the clerk certifying this section has been complied with; and
 - (ii) submissions received about the resolution; and
 - (iii) the council's response to the submissions.

Petition by electors of area

23.(1) A petition asking the Minister to approve the direct election of the chairperson of an Island council's area may be given to the Minister only if—

- (a) it has been signed by a majority of the electors of the area; and
- (b) the name and address of each of the electors who signed the petition is clearly set out next to the signature.

(2) The petition must be given to the Minister at least 60 days before the next quadrennial election of the council.

Minister to make decision about resolution or petition

24.(1) If the Minister is given a copy of a resolution or a petition, the Minister must decide whether to approve the direct election of the chairperson of the Island council by the electors of the council's area.

(2) The Minister may refuse to approve a resolution or petition only if the Minister is satisfied, on reasonable grounds, that—

*Community Services (Torres Strait)
Regulation 1998*

- (a) for a resolution—the majority of electors in the council’s area are opposed to the resolution; or
- (b) the process set out in this part for the resolution or petition has not been properly complied with.

(3) If the Minister approves the direct election of the chairperson, the Minister must, as soon as practicable, publish notice of the approval in the gazette.

(4) The approval is of no effect until it has been notified in the gazette.

Direct election of chairperson takes effect at next election

25. If the Minister publishes a notice in the gazette approving the direct election of the chairperson of an Island council, the change to the direct election of the chairperson does not have effect until the next quadrennial election.

PART 4—ELECTIONS FOR ISLAND COUNCILS

Election of councillors

26. The *Local Government Act 1993*, chapter 5 applies to elections for Island councils with the changes shown in schedule 1.

PART 5—ISLAND COUNCIL MEETINGS

Division 1—Post-election meetings

Post-election meetings

27. An Island council must hold a meeting of its councillors within 14 days after the conclusion of each quadrennial election.

Agenda of post-election meetings

28.(1) An Island council must consider the following matters at a post-election meeting—

- (a) the day and time for holding other meetings;
- (b) if its chairperson is not directly elected—the appointment of its chairperson;
- (c) the appointment of its deputy chairperson;
- (d) the document about its financial operations, that the clerk must present to the meeting under section 48.⁶

(2) If the Island council does not, within 21 days after the post-election meeting, appoint a deputy chairperson, the Minister may, by written notice to the council, appoint a councillor as deputy chairperson.

Clerk to preside at post-election meetings

29.(1) This section applies if the chairperson of an Island council is not directly elected.

(2) The council's clerk presides at meetings of the council until a chairperson or deputy chairperson is appointed.

(3) However, the clerk must not vote on business before the council.

⁶ Section 48 (Financial information to be presented to post-election meeting)

*Community Services (Torres Strait)
Regulation 1998*

Division 2—Meetings generally

Other meetings

30.(1) Other meetings of an Island council are to be held at the times and places it decides.

(2) However, the council must meet at least once in each period of 3 months.

Place of meetings

31.(1) All meetings of an Island council must be held at its office.

(2) However, an Island council may, by resolution, fix another place for a particular meeting.

Quorum at meetings

32.(1) A quorum for a meeting of an Island council is a majority of its councillors.

(2) However, if the number of councillors is an even number, one-half of the number is a quorum.

Procedure at meetings

33.(1) Business may be conducted at a meeting of an Island council only if a quorum is present.

(2) At a meeting—

(a) voting—

(i) for the appointment of the chairperson or deputy chairperson may be open or by secret ballot as the councillors present may decide; and

(ii) otherwise, must be open; and

(b) a question is decided by a majority of the votes of the councillors present; and

*Community Services (Torres Strait)
Regulation 1998*

- (c) each councillor present has a vote on each question to be decided and, if the votes are equal, the councillor presiding has a casting vote; and
- (d) if a councillor present fails to vote, the councillor is taken to have voted in the negative.

Minutes must be kept

34.(1) An Island council must keep minutes of its proceedings.

(2) The minutes must be taken and confirmed under section 38.

Adjournment of meetings

35.(1) The majority of councillors present at a meeting of an Island council may adjourn the meeting to a later hour of the same day or to a later day.

(2) If a quorum for a meeting is not present within 30 minutes after the time appointed for the meeting, the meeting may be adjourned by—

- (a) a majority of the councillors present; or
- (b) if only 1 councillor is present—the councillor; or
- (c) if no councillors are present—the council’s clerk.

(3) The meeting may be adjourned to a later hour of the same day or another day within 14 days after the day of adjournment.

Notice of meetings

36.(1) Notice of each meeting of an Island council, including an adjourned meeting, must be given to each councillor at least 2 days before the day of the meeting unless it is impracticable to give the notice.

(2) The notice must be given in writing, unless each councillor has agreed, in writing, that notice of meetings under subsection (1) may be given orally.

(3) The notice must state—

*Community Services (Torres Strait)
Regulation 1998*

- (a) the day and time of the meeting; and
- (b) for a special meeting—the object of the meeting.

(4) Subsection (1) is subject to section 37.

Repeal or amendment of resolutions

37.(1) A resolution of an Island council may be repealed or amended only if written notice of intention to propose the repeal or amendment is given to each councillor at least 5 days before the meeting at which the proposal is to be made.

(2) At the meeting, the proposal is taken to have been defeated unless it is agreed to by—

- (a) if the number of councillors present at the meeting (the “**later meeting**”) is more than the number present at the meeting at which the resolution was adopted—a majority of the councillors present at the later meeting; or
- (b) in any other case—a majority of all councillors.

Example of subsection (2)(a)—

At a meeting of the XYZ Island council, 5 councillors are present. At the meeting a resolution about control of dogs in the area is passed. At the next meeting of the Island council, 7 councillors are present. The council may amend the resolution about dogs passed at the last meeting if 4 of the councillors present at the meeting agree to the amendment.

Example of subsection (2)(b)—

The ABC Island council has 7 councillors. At a meeting of the ABC Island council at which 6 of the councillors are present, a resolution about garbage collection in the council’s area is passed. At the next meeting of the ABC Island council, 5 councillors are present. The council may amend the resolution about garbage collection only if 4 of the councillors agree to the amendment.

Minutes to be kept and confirmed

38.(1) The clerk of an Island council must ensure minutes of each meeting are taken under the supervision of the person presiding at the meeting.

*Community Services (Torres Strait)
Regulation 1998*

- (2) Minutes of each meeting must include—
- (a) the names of councillors present at the meeting; and
 - (b) if a division is called on a question—the names of all persons voting on the question and how they voted or were taken to have voted.
- (3) At each meeting, the minutes of the previous meeting must be—
- (a) confirmed by the councillors present; and
 - (b) signed by the councillor presiding.

Meetings in public unless otherwise resolved

39. Meetings of an Island council must be open to the public unless—
- (a) the council has, by resolution under section 40(1), closed a meeting; or
 - (b) the chairperson, under section 40(3), closes the meeting.

Meetings may be closed for limited reasons

40.(1) An Island council may, by resolution, close a meeting to the public if the council considers it necessary to close the meeting to discuss any of the following—

- (a) the appointment, dismissal or discipline of a particular employee;
- (b) industrial matters affecting its employees;
- (c) its budget;
- (d) contracts proposed to be made by it;
- (e) legal proceedings involving it;
- (f) other business for which public discussion would be likely to prejudice the interests of the council or someone else, or enable a person to gain a financial advantage.

(2) A resolution closing a meeting must state the nature of the matters to be considered while the meeting is closed.

*Community Services (Torres Strait)
Regulation 1998*

(3) The chairperson of an Island council may also close a meeting to the public if the chairperson considers, on reasonable grounds, members of the public attending the meeting are unduly disrupting proceedings.

(4) An Island council must not make a resolution (other than a procedural resolution) in a closed meeting.

Public notice of meetings

41.(1) An Island council must display a notice of the days and times when its meetings, other than special meetings, will be held—

- (a) in a conspicuous place in its office; and
- (b) in another conspicuous place in its area.

(2) The council must immediately notify a change to the days and times for meetings, other than special meetings, in the same way as the information was previously notified.

(3) A list of the items to be discussed at a meeting must be open to inspection at the time the agenda for the meeting is made available to councillors.

(4) Subject to sections 37 and 42, subsection (3) does not affect the right at a meeting to discuss or deal with items arising after the agenda for the meeting is made available to councillors.

Public notice of resolution authorising remuneration

42.(1) A resolution authorising the payment or provision of remuneration to councillors of an Island council may be passed only if notice has been given of the proposed resolution.

(2) Notice must be given by displaying, at least 21 days before the meeting—

- (a) a notice stating the proposed resolution, and the day and time of the proposed meeting, in a conspicuous place in the council's area; and

*Community Services (Torres Strait)
Regulation 1998*

(b) a copy of the notice in a conspicuous place in the council's office on the day.

(3) The notice and its copy must be kept on display until after the meeting.

Inspection of minutes of meetings and their purchase

43.(1) A copy of the minutes of each meeting of an Island council—

- (a) must be available for inspection at the council's office within 21 days after the end of the meeting; and
- (b) when the minutes have been confirmed—must be available for purchase at the office.

(2) The price of a copy of confirmed minutes must not be more than—

- (a) the cost to the Island council of having the copy printed and made available for purchase; and
- (b) if the copy is supplied to a purchaser by post—the cost of postage.

PART 6—FINANCIAL ADMINISTRATION

Division 1—Financial management of Island councils

Community funds

44.(1) An Island council must establish and keep the following community funds—

- (a) a general fund;
- (b) a trust fund.

(2) An Island council may call its general fund an operating fund.

(3) A payment may be made from an account with a financial institution

*Community Services (Torres Strait)
Regulation 1998*

kept by an Island council in relation to a fund only by a cheque signed, or an electronic funds transfer authorised, by any 2 of the following—

- (a) the clerk;
- (b) the chairperson of the council;
- (c) another councillor of the council;
- (d) an employee of the council authorised by resolution of the council.

General fund of Island council

45.(1) An Island council's general fund must consist of all of its assets and liabilities, other than its trust assets and liabilities.

(2) The council must keep an account with a financial institution for amounts it receives for its general fund.

(3) However, subsection (2) does not prevent the council keeping more than 1 financial institution account within its general fund.

Trust fund of Island council

46.(1) An Island council must credit amounts it receives on trust to its trust fund.

(2) An amount credited to the trust fund must be applied—

- (a) in payment to or for the person entitled to the amount according to law; or
- (b) as required by the Act under which the amount was paid to the trust fund.

(3) An amount credited to the trust fund may, with the Minister's earlier agreement, be transferred to the general fund if the purpose for which the amount was credited has ceased to exist.

(4) An Island council must keep a separate account with a financial institution for its trust fund.

*Community Services (Torres Strait)
Regulation 1998*

Administration and financial procedures manual

47.(1) Each Island council must prepare a manual (an “**administration and financial procedures manual**”) about the accounting and financial procedures for the administration of the council’s community funds.

(2) Without limiting subsection (1), an Island council’s administration and financial procedures manual must include—

- (a) the council’s policies about financial administration; and
- (b) the procedures and internal controls for the council’s accounting, information and administrative systems; and
- (c) the corporate structure adopted by the council; and
- (d) position descriptions for all permanent employees employed by the council.

(3) The manual—

- (a) must be approved by resolution of the council; and
- (b) does not take effect until it has been approved by the council.

Financial information to be presented to post-election meeting

48.(1) At each post-election meeting of an Island council, the clerk must present to the council a document about the council’s financial operations.

(2) The document must—

- (a) relate to the council’s financial operations for the previous financial year; and
- (b) relate to the council’s financial operations for the financial year in which the meeting is held to the latest day to which the document can reasonably be compiled; and
- (c) contain an estimate of the council’s financial operations from the day to which the document is prepared to the end of the financial year in which the meeting is held.

*Community Services (Torres Strait)
Regulation 1998*

Approved forms for annual financial statements

49. When approving forms under section 30A⁷ of the Act, the chief executive must have regard to the need to provide for full disclosure of an Island council's financial operations during a financial year.

Division 2—Register of councillor's pecuniary interests

Register of pecuniary interest disclosures

50.(1) The clerk of an Island council must keep, at the council's office, a register of pecuniary interest disclosures.

(2) If a councillor makes a pecuniary interest disclosure to a council meeting, the clerk must record particulars of the disclosure in the register within 2 days after the day the minutes of the meeting are confirmed.

(3) The particulars recorded by the clerk must be the particulars of the disclosure recorded in the minutes of the meeting.

(4) The council must—

- (a)** keep the register open for inspection by members of the public during office hours on business days; and
- (b)** make copies available for purchase at a price not more than the cost to the council of producing the copy and, if a copy is given to a purchaser by post, the cost of postage.

PART 7—CLERK OF ISLAND COUNCIL

Employment of clerk

51. An Island council must appoint and employ an individual as its clerk.

⁷ Section 30A (Preparation of financial statements) of the Act

*Community Services (Torres Strait)
Regulation 1998*

Role of clerk

52.(1) The clerk of an Island council has the role of implementing the council's policies and decisions.

(2) On a day-to-day basis, the clerk's role includes managing the council's affairs.

(3) The clerk alone is responsible for—

- (a) organising the presentation of reports and reporting to the council; and
- (b) conducting correspondence between the council and other persons; and
- (c) managing and overseeing the administration of the council; and
- (d) coordinating the activities of all employees of the council.

(4) The clerk has—

- (a) all the powers necessary for performing the clerk's role; and
- (b) the powers the council specifically delegates to the clerk.

Acting clerk

53. An Island council may appoint an individual to act as its clerk during—

- (a) a vacancy, or all vacancies, in the position; or
- (b) a period, or all periods, when the clerk is absent from duty or can not, for any reason, perform as the clerk.

PART 8—ISLAND COURTS

Procedures and enforcement of decisions of Island Courts

54.(1) The procedures for, and the enforcement of decisions of, an Island Court are to be—

*Community Services (Torres Strait)
Regulation 1998*

- (a) if, but for the Act, an action would be brought under the *Justices Act 1886*—in accordance with the *Justices Act 1886*; and
- (b) if, but for the Act, an action would be brought under the *Penalties and Sentences Act 1992*—in accordance with the *Penalties and Sentences Act 1992*; and
- (c) if, but for the Act, an action would be brought under the *Magistrates Courts Act 1921*—in accordance with the *Magistrates Courts Act 1921*.

(2) For applying, under subsection (1), the *Justices Act 1886*, *Penalties and Sentences Act 1992* or *Magistrates Courts Act 1921*—

- (a) a reference in any of the Acts to a Magistrates Court is taken to be a reference to an Island Court; and
- (b) a reference in any of the Acts to a magistrate is taken to be a reference to the 2 justices constituting an Island Court; and
- (c) a reference in any of the Acts to a clerk of the court is taken to be a reference to the clerk of an Island Court.

Jurisdiction of court includes power to make fine option order

55. The jurisdiction of an Island Court includes power to make a fine option order as if the Island Court were a Magistrates Court.

Clerk of Island Court

56. An Island council must appoint an individual as clerk of the Island Court for its area.

Record of court proceedings

57. The clerk of an Island Court must keep all records and proceedings of the Island Court.

PART 9—ISLAND COORDINATING COUNCIL

Division 1—Chairperson and deputy chairperson of Island Coordinating Council

Appointment of chairperson and deputy chairperson

58.(1) The Island Coordinating Council must, by resolution, appoint a chairperson and deputy chairperson from its members at its first meeting after the conclusion of each of the quadrennial elections for Island councils.

(2) Also the Island Coordinating Council must, by resolution, appoint a chairperson or deputy chairperson from its members at its first meeting after the chairperson's or deputy chairperson's office otherwise becomes vacant.

(3) Subsection (2) has effect subject to section 60(3).

Vacating office of chairperson or deputy chairperson

59. A person's office as chairperson or deputy chairperson of the Island Coordinating Council becomes vacant if—

- (a) the person resigns as chairperson or deputy chairperson; or
- (b) the office of chairperson or deputy chairperson is declared vacant under section 60.

Office of chairperson or deputy chairperson may be declared vacant

60.(1) The Island Coordinating Council may, by resolution, declare the office of chairperson or deputy chairperson vacant.

(2) The resolution may be passed only if written notice of the resolution has been given to the members of the council at least 14 days before the meeting.

(3) If the council declares the office of chairperson or deputy chairperson

*Community Services (Torres Strait)
Regulation 1998*

is vacant, it must immediately appoint a chairperson or deputy chairperson from its members.

Quorum for meetings of executive committee

61.(1) A quorum for a meeting of the executive committee of the Island Coordinating Council is 2 members of the committee.

(2) Business may be conducted at a meeting of the executive committee only if a quorum is present.

Division 2—Financial administration of Island Coordinating Council

Community funds of Island Coordinating Council

62.(1) The Island Coordinating Council must establish and keep—

- (a) a general fund; and
- (b) if the council receives amounts on trust—a trust fund.

(2) The council may call its general fund an operating fund.

General fund of Island Coordinating Council

63.(1) The Island Coordinating Council's general fund must consist of all of its assets and liabilities, other than its trust assets and liabilities.

(2) The council must keep an account with a financial institution for amounts it receives in its general fund.

(3) However, subsection (2) does not prevent the council keeping more than 1 financial institution account within its general fund.

Trust fund of Island Coordinating Council

64.(1) If the Island Coordinating Council is required to keep a trust fund under section 62(1)(b), it must credit amounts it receives on trust to the trust fund.

(2) An amount credited to the trust fund must be applied in payment to or

*Community Services (Torres Strait)
Regulation 1998*

for the person entitled to the amount according to law.

(3) An amount credited to the trust fund may, with the Minister's earlier agreement, be transferred to the general fund if the purpose for which the amount was credited has ceased to exist.

(4) The council must keep a separate account with a financial institution for its trust fund.

PART 10—ISLAND COUNCIL AREAS

Declaration of council areas—Act, s 14

64A. The part of the State mentioned in schedule 1A, column 1, is declared to be the council area mentioned in column 2 of the schedule opposite the part.

PART 11—MISCELLANEOUS

Forms

65. The prescribed forms under the Act are the forms approved by the chief executive.

PART 12—TRANSITIONAL

Transitional provision for Community Services Legislation Amendment (No. 1) Regulation 2000

66.(1) A reference in this regulation to the next quadrennial election is to be read as a reference to the election under this regulation to be held on the

*Community Services (Torres Strait)
Regulation 1998*

same day as the 2000 quadrennial election to be held under the *Local Government Act 1993*.

(2) This section does not have effect after the quadrennial election under this regulation is held in 2000.

Transitional provision for Saibai Island council

67.(1) This section applies to Saibai Island council.

(2) Section 4A applies to the council for and after the 2000 quadrennial election to be held under the *Local Government Act 1993*.

(3) Section 16(2A) does not apply to the appointment of the chairperson of Saibai Island council appointed immediately after the 2000 quadrennial election.

SCHEDULE 1

ELECTIONS

section 26

(The Local Government Act 1993, chapter 5 applied to an Island council)⁸

PART 1—GENERAL

Quadrennial elections

266. Councillors of *an Island council* are to be elected once every 4 years.

Types of elections

267.(1) A quadrennial or fresh election of *a councillor of an Island council* is an election for the whole of the *council's* area.

(2) *(omitted)*

(3) A by-election to fill a vacancy in the office of a *councillor of an Island council* is an election for its area, *(words omitted)* for which the councillor was elected.

(4) *Elections for Saibai Island council are based on clans, despite subsections (1) and (3).*

(5) *For subsection (4)—*

⁸ Textual changes are indicated by italic script (other than the citations of the Electoral Acts).

The schedule as replaced by the *Community Services Legislation Amendment Regulation (No. 1) 1998* takes account of the renumbering of the *Local Government Act 1993*. The schedule has not otherwise been amended.

SCHEDULE 1 (continued)

- (a) *if an election is a quadrennial or fresh election—the election is for each of the clans; and*
- (b) *if an election is a by-election—the election is for the clan that is not represented on the council.*

Elections to be held on a Saturday

268. Every *election for an Island council* must be held on a Saturday.

Date of quadrennial elections

269.(1) *Quadrennial elections* must be held on the same day as *quadrennial elections under the Local Government Act 1993*.

(2) *(omitted)*

(3) *(omitted)*

Date of by-elections

270.(1) A by-election to fill a vacancy in the office of a *councillor of an Island council* is to be held on the date fixed by the returning officer for the election.

(2) The date fixed must be within 3 months after the vacancy happens.

Island councils responsible for expenditure for conducting elections

271. An *Island council* is responsible for expenditure incurred for the conduct of an election in its *(words omitted)* area.

SCHEDULE 1 (continued)

PART 2—RETURNING OFFICERS***Clerk is returning officer***

272.(1) The *clerk of an Island council* is the returning officer for every election of a councillor of the *Island council*.

(2) This section is subject to section 273 (Appointment of returning officer in place of the *clerk*).

Appointment of returning officer in place of the clerk

273.(1) If the *clerk* considers on reasonable grounds that it is appropriate to appoint another individual as returning officer for an election, the *clerk* may make the appointment in the approved form.

(2) An individual who is not a current employee of the *Island council* cannot be appointed as returning officer for an election unless the *clerk*—

- (a) has, *by displaying in a conspicuous position in the Island council's area and in other ways the clerk considers appropriate*, invited expressions of interest from individuals who are suitably qualified to conduct elections; and
- (b) if the *clerk* considers it appropriate—has invited submissions for appointment as returning officer from any individual the *clerk* considers may be suitably qualified to conduct elections; and
- (c) has taken into account—
 - (i) the individual's qualifications to be a returning officer; and
 - (ii) information supplied by the individual and any referees; and
 - (iii) the cost of the individual providing the services required.

(3) Subsections (4) to (6) apply if a returning officer appointed by the *clerk* is, for any reason, unable to perform the duties of the returning officer.

(4) If possible, the returning officer must immediately inform the *clerk*.

(5) The *clerk* may become the returning officer or appoint another

SCHEDULE 1 (continued)

individual to be the returning officer for the election.

(6) To the extent practicable, subsection (2) applies to the appointment of a returning officer under subsection (5) who is not a current employee of the *Island council*.

(7) If the *clerk* believes he or she cannot properly perform the duties of returning officer for an election because of a possible conflict of interest, the *clerk* must ask the Minister to appoint another individual as returning officer for the election.

(8) The Minister may appoint another individual as returning officer for the election.

Returning officer's duty for by-election

274. As soon as practicable after fixing the day for holding a by-election, the returning officer must—

- (a) *display in a conspicuous position in the Island council's area and in the other ways that the officer may consider appropriate, notice of—*
 - (i) the day fixed; and
 - (ii) the cut-off day for the voters roll for the by-election; and
- (b) take the steps required by this *regulation* for holding the by-election.

PART 3—VOTERS ROLL

Returning officer must compile voters roll

275.(1) The returning officer for *an election for an Island council* must compile the roll of persons entitled to vote at the election (the “**voters roll**”).

(2) *However, in compiling the voters roll for an election for Saibai Island*

SCHEDULE 1 (continued)

council, the returning officer for the election must—

- (a) compile the voters roll based on the clans, to the extent necessary for the election; and*
- (b) if, under Island custom on Saibai Island, a person is not a member of a clan—consult with the elders of the clans about the way in which the person’s name should appear in the voters roll.*

(3) For an election for Saibai Island council, if a person mentioned in subsection (2)(b) asks the returning officer, in writing, not to include the person’s name on the voters roll for the election, the returning officer must not include the person’s name on the voters roll for the election.

Qualification for enrolment on voters roll

276. A person is entitled to vote at *an election for an Island council* if the person is an elector under the *Electoral Act 1992* for an electoral district, or a part of an electoral district, included—

- (a) (words omitted) in the area; or*
- (b) (omitted)*

Cut-off day for voters roll

277. A voters roll must be compiled to 1 of the following dates—

- (a) for a quadrennial election—31 January in the year of the election;*
- (b) for a by-election to fill a vacancy in the office of a councillor of an Island council—at least 5 days, and not more than 7 days, after the display, under section 274 (Returning officer’s duty for by-election), of notice of the day of the by-election.*

Use of electoral roll when practicable

278.(1) The voters roll for an election for *an Island council* must consist of the persons enrolled on an electoral roll for an electoral district, or a part of an electoral district, included—

SCHEDULE 1 (continued)

- (a) (*words omitted*) in the area; or
- (b) (*omitted*)

(2) However, the returning officer may make the changes to the electoral roll, compiled to the cut-off day for the voters roll, that are necessary because the boundaries of the area (*words omitted*) are not identical with the boundaries of the electoral district.

Requirements of voters roll

279.(1) A voters roll for an election must—

- (a) show the names of all persons entitled to vote at the election; and
- (b) be in the form of the electoral roll used for elections of the Legislative Assembly.

(1A) *Subsection (1)(b) applies to the voters roll for an election for Saibai Island council only to the extent that it is consistent with a voters roll based on the clans.*

(2) The returning officer must not include in a voters roll an elector's address that, under the *Electoral Act 1992*, is excluded from the publicly available part of an electoral roll.

Voters roll to be open to inspection and purchase

280.(1) A voters roll for an election is open to inspection.

(2) Copies of the voters roll must be available for purchase at the *Island council's office*.

(3) The price of a copy of the voters roll must be no more than the cost to the *Island council* of having the copy available for purchase and, if the copy is posted to the purchaser, the postage cost.

Electoral registrars to help returning officers

281. An electoral registrar under the *Electoral Act 1992* must give a

SCHEDULE 1 (continued)

returning officer the assistance that the returning officer reasonably requires to compile a voters roll for *an election for an Island council*.

PART 4—VOTING

Compulsory voting

282. Voting at an election for *an Island council* is compulsory and each elector is entitled to 1 vote only.

System of voting

283. The system of voting at an election for a councillor is—

- (a) *(omitted)*
- (b) *(words omitted)* first-past-the-post voting.

PART 5—(omitted)

PART 6—CONDUCT OF ELECTIONS

Division 1—Preliminary

Conduct of elections

289. An election must be conducted under this part.

SCHEDULE 1 (continued)

Division 2—Electoral officers

Returning officer

290. The returning officer for an election is responsible for its proper conduct.

Assistant returning officers

291. *(omitted)*

Presiding officers

292.(1) The returning officer—

- (a) may be presiding officer at a polling booth; and
- (b) must appoint an adult as presiding officer at each polling booth other than the booth where the returning officer is the presiding officer.

(2) A presiding officer at a polling booth is responsible for the proper conduct of the poll at the booth and for carrying out the other duties for the election that are required by the returning officer.

(3) If a person is unable to act as presiding officer at a polling booth, the returning officer, or someone else with the returning officer's approval, may appoint an adult as presiding officer at the booth while the person is unable to act.

(4) An appointment under subsection (1) or (3) must be in the approved form.

Issuing officers

293.(1) The returning officer, or a presiding officer with the returning officer's approval, may appoint adults (“**issuing officers**”) to—

- (a) give ballot papers, declaration envelopes and declaration forms to

SCHEDULE 1 (continued)

electors; and

(b) perform the other duties for the election that are required by the presiding officer.

(2) The appointment must be in the approved form.

(3) Anything done by an issuing officer under subsection (1)(b) is taken to be done by the returning officer or the presiding officer.

Declaration by issuing officers

294. An issuing officer must make a declaration in the approved form before acting as an issuing officer.

Returning officer may act through other officers

295. If—

(a) the returning officer may, under this part, do anything; and

(b) the returning officer authorises (*words omitted*) a presiding officer or issuing officer (the “**authorised officer**”) to do the thing; and

(c) the authorised officer does the thing;

the thing is taken to have been done by the returning officer.

Examples—

1. (*omitted*)

2. (*omitted*)

3. Under section 351, declaration envelopes are to be posted or given to the returning officer. For an election, the returning officer could authorise an issuing officer to receive declaration envelopes, to remove the declaration envelopes containing the ballot papers from the return address envelopes and place the declaration envelopes in a ballot box.

SCHEDULE 1 (continued)

Assistant returning officer may act through certain authorised officers

296. *(omitted)*

Supply and use of voters rolls

297.(1) The returning officer must give to the presiding officer at each polling booth enough copies of the voters roll certified in the approved form by the returning officer.

(2) An issuing officer must use a certified copy of the voters roll for taking the ballot in the election.

Division 3—Candidates for election or appointment

Qualification for nomination

298.(1) *(omitted)*⁹

(2) A person is not disqualified from nominating *for election or appointment to an Island council* because the person is a member of the Legislative Assembly or *an Island council* employee.¹⁰

(3) *(omitted)*

Prohibition of dual candidature

299.(1) A person cannot, at the same time, be a candidate—

(a) for election as *chairperson of an Island council* and as another councillor of the *Island council*; or

(b) *(omitted)*

⁹ See section 10 (Qualifications for councillors).

¹⁰ See section 13(g) and (h) which provides that a person can not be a member of an Island council and hold the position of clerk, deputy clerk, finance officer, financial controller, accountant or other person (however described) whose primary responsibility is administering the council's finances.

SCHEDULE 1 (continued)

(2) If, at noon on the nomination day, a person is nominated as a candidate in contravention of subsection (1), each of the nominations is of no effect.

(3) *(omitted)*

Leave to Island council employee to contest election

300.(1) *An Island council employee who nominates as a candidate for election as a councillor of an Island council is entitled to leave of absence for a period of not more than 2 months to contest the election.*

(2) *An employee may use any entitlement to accrued leave with pay as leave to which the employee is entitled under subsection (1).*

(3) *Unless leave is taken under subsection (2), the employee is not entitled to payment of salary or wages for any period of leave taken under subsection (1).*

(4) *(omitted)*

Division 4—Nominations of candidates for election

Calling for nominations

301.(1) *The returning officer must publish, by displaying a notice in a conspicuous position in the Island council's area and in other ways the returning officer considers appropriate, notice of the election (words omitted).*

(2) The notice must—

- (a) be in the approved form; and
- (b) specify a day as the nomination day—
 - (i) not less than 10, or more than 21, days after the day of publication of the notice; and
 - (ii) not less than 21, or more than 42, days before the day on

SCHEDULE 1 (continued)

which the election is to be held; and

- (c) specify a place of nomination; and
- (d) invite nominations of candidates for the election.

(3) The place of nomination must be—

- (a) the *Island council's* office; or
- (b) a place in its area convenient generally to persons in its area.

Who may nominate

302.(1) A candidate for election as a councillor of an *Island council* must be a person who is qualified under sections 298 (Qualification for nomination) and 10 (*Qualifications for councillors*) to nominate for the election.

(2) (*omitted*)

How and when nomination is given

303.(1) A person who wishes to be a candidate for election must be nominated by—

- (a) (*omitted*)
- (aa) for *Saibai Island council*—at least 2 electors for the clan for which the election is held; or
- (b) for *Island councils other than Saibai Island council*—at least 2 electors for the *Island council's* area (*words omitted*).

(2) A nomination must be—

- (a) in the approved form; and
- (b) given to the returning officer after the nominations are invited for the election but before noon on the nomination day.

SCHEDULE 1 (continued)

Nomination fee to accompany nomination

304.(1) Before noon on the nomination day, the person nominating as a candidate must deposit, in cash or by a cheque drawn by a financial institution, with the returning officer—

- (a) \$25; or
- (b) (*omitted*)

(2) The *nomination fee* must be held in the trust fund of the *Island council* until it is refunded, or becomes the property of the *Island council*, under this part.

Special grounds for deciding a person is not properly nominated

305. (*omitted*)

Certificate of returning officer

306.(1) If the returning officer is satisfied a person has been properly nominated for election, the returning officer must—

- (a) certify the nomination, in the approved form; and
- (b) give a copy of the certificate to the candidate.

(2) The certificate must specify the time, day and place proposed for a draw, if necessary, for the order of listing of candidates' names on the ballot paper.

(3) A person is properly nominated for election if—

- (a) sections 302 (Who may nominate) to 304 (*Nomination fee to accompany nomination*) have been complied with, or have been substantially complied with apart from a mere formal defect or error in the nomination; and
- (b) section 299 (Prohibition of dual candidature) does not apply to the person's nomination; and
- (c) the nomination has not been withdrawn.

SCHEDULE 1 (continued)

- (4) The returning officer is not obliged to look beyond—
- (a) the form of nomination and payment of the *nomination fee*; and
 - (b) the voters roll; and
 - (c) documentary evidence produced by the nominee or nominator that at the time the voters roll is compiled for the election—
 - (i) the nominator is an elector for the election (*words omitted*); or
 - (ii) the nominee is, under the *Electoral Act 1992*, an elector for an electoral district, or part of an electoral district, included in the *Island council's* area.

(5) If a nomination is wrongly certified by the returning officer, the certification, or the issue of a copy of the certificate, does not validate the nomination.

Display of nominations

307. As soon as practicable after receipt of a nomination, the returning officer must display a copy of the nomination in a conspicuous position at the place of nomination and, if that place is not the *Island council's office*, at the office.

Termination of candidature before noon on nomination day

308.(1) A person nominated as a candidate for election may withdraw the person's agreement to the nomination by signed notice given to the returning officer before noon on the nomination day.

- (2) If this happens—
- (a) the nomination is of no effect; and
 - (b) the person's *nomination fee* must be refunded to the person.

SCHEDULE 1 (continued)

Death of candidate

309. If a person nominated as a candidate for election dies before noon on the nomination day—

- (a) the nomination is of no effect; and
- (b) the person's *nomination fee* must be refunded to the person's personal representative.

Procedure if number of candidates not more than number required

310.(1) If the number of candidates properly nominated for election does not exceed the number required to be elected—

- (a) the nominees are taken to have been elected; and
- (b) the returning officer must, as soon as practicable after the nomination day, *display* a notice in the approved form in a *conspicuous position in the area of the Island council* for which the election was to be held, that the nominees are taken to have been elected.

(2) If—

- (a) no-one is nominated as a candidate for an election *and the council does not make an appointment under section 15(1) of the regulation*; or
- (b) the number of candidates nominated is less than the number required to be elected;

the Governor in Council may, by gazette notice, appoint as councillors of the *Island council*, the number of persons necessary to constitute fully the *council*.

(3) Each person appointed as a councillor must be qualified to be elected as a councillor of the *Island council for the council's area* for which the election was to be held.

(4) The persons appointed are taken to have been properly elected as councillors of the *Island council*.

SCHEDULE 1 (continued)

(5) *For Saibai Island council—*

- (a) *subsections (1) and (2) apply as if references in those subsections to an election were a reference to an election in relation to a clan; and*
- (b) *if the Governor in Council exercises power under subsection (2)—the power must be exercised subject to section 4A(3) of this regulation.*

Procedure if number of candidates exceeds number required

311.(1) If the number of candidates properly nominated for election exceeds the number required to be elected, a poll must be conducted under this part.

(2) The returning officer must give public notice that a poll will be conducted.

(3) The notice must—

- (a) be in the approved form; and
- (b) specify—
 - (i) the day the poll will be conducted; and
 - (ii) the names of all candidates properly nominated for election in the order decided under section 327 (Order of listing of candidates' names); and
 - (iii) the location of all ordinary polling booths to be used for taking the ballot in the poll; and
 - (iv) that the ordinary voting hours are from 8 a.m. to 6 p.m.; and
- (c) be displayed in a conspicuous position at the place of nomination and, if that place is not the *Island council's office, at the office*; and
- (d) *(omitted)*

(4) Display of a notice under subsection (3)(c) must—

SCHEDULE 1 (continued)

- (a) start as soon as practicable after noon on the nomination day; and
- (b) continue until the close of the poll.

Supply of voters roll

312.(1) If a poll is to be conducted in the election, the returning officer must give a copy of the voters roll to each candidate as soon as practicable after the nomination day.

(2) The copy of the roll must be certified by the returning officer in the approved form.

Procedure on death of candidate when poll to be conducted

313.(1) If a poll is to be conducted and a candidate dies after noon on the nomination day but before the polling day—

- (a) (*words omitted*) the proceedings for the election of the *councillors* must start again; and
- (b) (*omitted*)
- (c) (*omitted*)

(2) The deceased candidate's *nomination fee* must be refunded to the candidate's personal representative.

(3) The *nomination fees* of other candidates must be refunded to the candidates.

(4) Despite subsection (1), the *Minister* may, by gazette notice, direct that proceedings for holding an election of all councillors of the *Island council* start again.

(5) If proceedings are started again, the *Minister* must, by gazette notice, fix a new polling day for the election.

Disposal of *nomination fees* generally

314.(1) As soon as practicable after the conclusion of an election, each

SCHEDULE 1 (continued)

candidate's *nomination fee* must be refunded to the candidate if—

- (a) the candidate is elected; or
- (b) *(omitted)*
- (ba) for Saibai Island council—the number of votes received by the candidate is more than 4% of the total number of formal votes cast in the election for the clan for which the candidate nominated; or
- (c) *(words omitted)* for all other Island councils—the number of votes received by the candidate is more than 4% of the total number of formal votes cast in the election.

(2) *(omitted)*

(3) All other candidates' *nomination fees* become the property of the *Island council* and must be paid into its *general fund*.

(4) *(omitted)*

If successful candidate dies

315. If a candidate who is successful at the election dies before the final result of the poll is declared, the candidate must be declared elected to the office for which the person was a candidate.

Extension of times

316.(1) This section applies if—

- (a) a nomination day is specified (*words omitted*) for the election; or
- (b) a polling day is specified under section 311 (Procedure if number of candidates exceeds number required) for the election.

(2) The *Minister* may, by gazette notice, fix a later day as the nomination or polling day.

(3) The returning officer must *display* a notice in a *conspicuous position in the area of the Island council* for which the election is to be held giving

SCHEDULE 1 (continued)

any necessary directions to candidates for election, and to electors, about the procedures to be followed.

Division 5—(omitted)

Division 6—Polling booths

Polling booths—general

319.(1) A place on or from which liquor may lawfully be sold cannot be used as a polling booth.

(2) However, a civic or cultural centre, community hall or similar place under the *Island council's* control, may be used as a polling booth if—

- (a) the floor area for taking the ballot is designated in the notice of the conduct of the poll under section 311 (Procedure if number of candidates exceeds number required); and
- (b) the *council* ensures that no liquor will be sold or supplied in that area during the taking of the ballot.

(3) The returning officer—

- (a) may arrange for a polling booth within or outside the *council's* area to be used in an election; and
- (b) may arrange for 2 or more polling booths at any place if the number of electors likely to vote at the place is greater than could conveniently vote in 1 booth at the place; and
- (c) must ensure that each polling booth is provided with enough ballot boxes, ballot papers and materials to enable electors to mark the ballot papers.

(4) *(omitted)*

SCHEDULE 1 (continued)

Provision of ordinary polling booths

320.(1) For the purpose of taking a ballot in the election, the returning officer must arrange for places, or parts of places, to be used on polling day as ordinary polling booths to enable electors in general to vote.

(2) The returning officer may—

- (a) less than 3 days before polling day, arrange for an ordinary polling booth to be used; or
- (b) less than 6 days before polling day, cancel arrangements for the use of an ordinary polling booth;

only if it is necessary because of circumstances beyond the returning officer's control.

(3) If, after publication of the notice under section 311 (Procedure if number of candidates exceeds number required), the returning officer arranges for the use of an ordinary polling booth, the officer must give public notice—

- (a) of the location of the booth; and
- (b) that the ordinary voting hours of the booth are from 8 a.m. to 6 p.m.

(4) If the returning officer cancels arrangements for the use of an ordinary polling booth, the officer must give public notice of the cancellation.

(5) Notice under subsection (3) or (4) must be given in the way that the returning officer considers is the best way to inform electors generally.

Declaration of mobile polling booths

321.(1) If the returning officer is satisfied residents in an institution should be able to vote at the institution in a poll, the returning officer may arrange for the whole or a part of the institution to be available as a mobile polling booth to enable residents in the institution to vote there in the poll.

(2) If the returning officer is satisfied a part of the *Island council's* area

SCHEDULE 1 (continued)

does not have enough electors to justify the use of an ordinary polling booth in the part, the returning officer may arrange for the whole or part of any place in the part to be available as a mobile polling booth to enable electors in the part to vote in the poll.

(3) If the returning officer acts under subsection (1) or (2), the officer must fix the times, during the period starting 11 days before the polling day and ending at 6 p.m. on the polling day, when the mobile polling booth may be used for voting.

(4) The returning officer must, by *displaying a notice in a conspicuous position* in the relevant part of the *council's* area—

- (a) declare the whole or part of the relevant institution or place as a mobile polling booth for the election; and
- (b) specify the times at which votes may be cast at the booth.

(5) The notice must be in the approved form.

(6) The returning officer also must give written notice to the candidates for election of the declaration of the mobile polling booth and the times at which votes may be cast at the booth.

(7) On the declaration of a mobile polling booth for an election, the electors resident in the relevant institution or the electors resident in the part of the *council's* area in which the booth is situated, may vote in the election at the booth during the times specified for the booth in the notice *displayed* under subsection (4).

Duty of person in charge of institution

322.(1) If the returning officer arranges for the whole or part of an institution to be used as an ordinary polling booth, the person in charge of the institution must allow electors and issuing officers to have access to the booth whenever votes may be cast at the booth.

(2) If the returning officer declares the whole or part of an institution as a mobile polling booth, the person in charge of the institution must allow residents in the institution and issuing officers to have access to the booth whenever votes may be cast at the booth.

SCHEDULE 1 (continued)

Privacy of voting

323. The returning officer must ensure that each polling booth is provided with enough voting compartments, or other adequate facilities, to allow the casting of votes in private.

Division 7—Ballot boxes, papers and other documents

Ballot boxes generally

324.(1) A ballot box used in a poll must be under the scrutiny and effective control of an issuing officer.

(2) A ballot box must—

- (a) have an opening of a size sufficient to allow folded ballot papers and declaration envelopes to be put in the box; and
- (b) be open to inspection by issuing officers, candidates for election at the poll, and scrutineers properly appointed for the poll, before the box is locked or sealed for receipt of ballot papers.

Requirements of ballot papers

325.(1) If a poll is to be conducted, the returning officer must arrange for the printing of all ballot papers to be used in taking the ballot in the poll.

(2) A ballot paper must—

- (a) be in the approved form; and
- (b) be of material that, when folded, the vote cast by the elector on the paper is effectively concealed; and
- (c) be attached to a butt that—
 - (i) is not part of the ballot paper; and
 - (ii) is perforated to allow the ballot paper to be easily detached from the butt; and
 - (iii) is numbered in regular arithmetical sequence, starting with

SCHEDULE 1 (continued)

the numeral 1 and proceeding by intervals of one whole numeral, so that each butt for the *area of the Island council* for which the poll is conducted has a unique number; and

- (d) show the name of each candidate for election as required by subsection (3); and
- (e) if the names of 2 or more candidates are so similar as to be likely to cause confusion to electors—must contain an appropriate description or addition, in the returning officer’s opinion, to distinguish the persons’ names; and
- (f) *(omitted)*

(2A) Subsection (2)(c)(iii) applies to the butts for the ballot papers for a poll for the Saibai Island council’s area as if, in relation to each clan, the poll were a separate poll.

(3) A ballot paper must—

- (a) contain the name of each candidate once only by showing first the surname followed by the given name or names; and
- (b) show the names of the candidates in the order decided under section 327 (Order of listing of candidates’ names).

(4) A ballot paper must not contain anyone else’s name.

Separate ballot papers for separate polls

326.(1) This section applies if a poll for the election of *chairperson* of the *Island council* is to be conducted when a poll for election of another councillor of the *Island council* is conducted.

(2) Separate ballot papers must be used for polls unless the returning officer decides to use a combined ballot paper.

Order of listing of candidates’ names

327.(1) The order in which names of candidates for election are to be listed on ballot papers and notices under section 311 (Procedure if number

SCHEDULE 1 (continued)

of candidates exceeds number required) is to be decided under this section.

(2) The order must be decided by the returning officer as soon as practicable after noon on the nomination day.

(3) The returning officer must, in the presence of 2 witnesses—

- (a) write the name of each candidate on a separate sheet of paper; and
- (b) ensure that each piece of paper is of the same kind, shape, size and colour; and
- (c) put each separate piece of paper in a separate envelope and, if it is necessary to fold the piece of paper to make it fit in the envelope, fold each piece of paper in the same way to make each the same size and thickness; and
- (d) ensure that each envelope is opaque and of the same kind, shape, size and colour; and
- (e) after each piece of paper has been placed in an envelope, seal the envelope; and
- (f) put all the envelopes in a container and shuffle them; and
- (g) draw out the envelopes, 1 at a time; and
- (h) as each envelope is drawn out, open it and record the name of the candidate shown on the piece of paper in the envelope.

(4) The order in which the names are recorded is the order in which the names are to appear on the ballot paper and notices under section 311 (Procedure if number of candidates exceeds number required).

(5) The returning officer must allow each candidate, or the candidate's representative, to be present when the order of candidates' names is decided.

Distribution of ballot papers

328.(1) The returning officer must ensure a sufficient number of ballot papers is available at all polling booths.

(2) The returning officer must prepare a delivery note in the approved form in triplicate for each parcel of ballot papers supplied by the returning

SCHEDULE 1 (continued)

officer to presiding officers at polling booths.

(3) The approved form must—

- (a) show details of the number of ballot papers supplied; and
- (b) show the range of numbers of the ballot papers; and
- (c) include a form of acknowledgment of receipt of the ballot papers.

(4) Two copies of the delivery note must be included in the parcel of ballot papers.

(5) As soon as practicable after a presiding officer receives a parcel of ballot papers, the presiding officer must—

- (a) check the contents against the details shown in the delivery note; and
- (b) complete the particulars prescribed by the delivery note; and
- (c) sign the form of acknowledgment included in the delivery note.

(6) If there is a discrepancy between the details shown in the delivery note and the contents of the parcel, the presiding officer must cause a countercheck to be made by—

- (a) if another presiding officer is available—the other presiding officer; or
- (b) if another presiding officer is not available—a responsible person.

(7) A discrepancy confirmed by a countercheck must be noted in the form of acknowledgment and the form must be signed by the presiding officer and the person who made the countercheck.

(8) The presiding officer must return 1 copy of the delivery note to the returning officer and retain the other copy of the delivery note until it is given to the returning officer with the sealed parcels of ballot papers under section 363 (Preliminary counting by presiding officer).

Correction of errors etc.

329. Any error, omission or delay in respect of any voters roll, ballot

SCHEDULE 1 (continued)

papers or other document to be used in a poll may be corrected by procedures directed by the *Minister*, by gazette notice.

Division 8—Scrutineers

Candidates' entitlement to scrutineers

330. A candidate for election is entitled to have 1 scrutineer present for each issuing officer at a polling booth or at a place for examination of declaration envelopes or counting of votes—

- (a) before and at all times when electors may vote in the booth; and
- (b) at all times during the examination or counting.

Appointment of scrutineers

331.(1) A candidate for election may, in the approved form, appoint adults as scrutineers for the candidate.

(2) On appointment, a scrutineer must make a declaration in the approved form before the returning officer or a presiding officer.

Proof of identification

332. A scrutineer must—

- (a) carry evidence of identification and of the person's appointment as a scrutineer; and
- (b) on demand, produce the evidence to an issuing officer.

Powers of scrutineers

333.(1) A scrutineer for a candidate for election is entitled to be present—

- (a) in a polling booth—before taking the ballot in the poll starts to inspect ballot boxes; and

SCHEDULE 1 (continued)

- (b) in a polling booth and any office of the presiding officer at the booth—when electors may vote in the booth; and
 - (c) in a polling booth or other place—to watch the examination of declaration envelopes and counting of votes.
- (2) A scrutineer may—
- (a) object to an issuing officer’s decision on a person’s entitlement to vote at the election; and
 - (b) object to the acceptance or rejection of a ballot paper by the returning or presiding officer; and
 - (c) record details of persons who vote at the election at a polling booth and remove the record from the booth.

Division 9—Voting generally

Who may vote

- 334.(1)** Only electors may vote in a ballot taken in a poll.
- (2) The returning officer must not vote in the election.

When votes may be cast at an ordinary polling booth or mobile polling booth

- 335.(1)** Voting at an ordinary polling booth must take place between 8 a.m. and 6 p.m. on polling day.
- (2) However, an elector who is in an ordinary polling booth at 6 p.m. on polling day, for the purpose of voting in the poll, must be allowed to vote.
- (3) Voting at a mobile polling booth must take place during the times fixed for the booth by the returning officer.
- (4) However, an elector who is in a mobile polling booth at the time of the close of voting at the booth, for the purpose of voting in the poll, must be allowed to vote.

SCHEDULE 1 (continued)

Procedure for voting at a polling booth

336.(1) Subject to *section 338* (Arrangements for electors with disability) (*words omitted*), an elector, other than a declaration voter, must vote at a polling booth under the procedures set out in this section.

(2) The elector must enter a polling booth for the *Island council's* area during voting hours at the booth.

(3) In the polling booth, the elector must give the elector's full name and address to an issuing officer.

(4) If the elector—

- (a) has a ballot paper and declaration envelope for the election; and
- (b) does not intend to cast a declaration vote;

the elector must return the ballot paper and declaration envelope to the issuing officer.

(5) The issuing officer must give a ballot paper to a person asking for it if the issuing officer is satisfied the person is entitled to vote at the election.

(6) The issuing officer may ask a person questions to decide whether the person is entitled to vote at the election.

(7) If, because of the answers to the questions—

- (a) the issuing officer is satisfied the person is an elector mentioned in *section 344(a), (b) or (c)* (Who must cast a declaration vote in ordinary elections); or
- (b) the issuing officer suspects, on reasonable grounds, that the person is not entitled to vote at the election;

the person may only cast a declaration vote.

(8) The issuing officer must place a mark, in ink, on the officer's copy of the voters roll against the name of each person given a ballot paper by the officer.

(9) An issuing officer who gives a ballot paper to a person must, if asked by a scrutineer, keep a record of the objection by the scrutineer to the entitlement of the person to vote.

SCHEDULE 1 (continued)

- (10) On being given the ballot paper, the elector must, without delay—
- (a) go alone into an unoccupied voting compartment in the polling booth; and
 - (b) there, in private, mark a vote on the ballot paper in accordance with division 11 (Marking of ballot papers); and
 - (c) fold the ballot paper, concealing the vote, and put it in the appropriate ballot box in the polling booth; and
 - (d) leave the polling booth.

Duties of issuing officer for returned papers

337.(1) An issuing officer must—

- (a) record in the approved form the giving of a ballot paper to a person who has returned a ballot paper and declaration envelope to the officer under section 336(4) (Procedure for voting at a polling booth); and
- (b) attach to the form all ballot papers and declaration envelopes returned to the officer; and
- (c) give the form and the attached documents to the presiding officer.

(2) The presiding officer must set aside the form and attached documents in the officer's custody for separate identification under section 363(1)(g)(ii) (Preliminary counting by presiding officer).

Arrangements for electors with disability

338.(1) This section applies if an elector cannot enter a polling booth because of illness, disability or advanced pregnancy, but is able to come to a place (the “**voting place**”) close to the polling booth.

(2) The issuing officer may perform the issuing officer's functions, and the elector may vote at the voting place, as if it were the polling booth.

(3) However, the issuing officer must—

SCHEDULE 1 (continued)

- (a) before taking any action under subsection (2), inform the scrutineers present of the proposed action; and
 - (b) allow 1 scrutineer for each candidate to be present at the voting place; and
 - (c) ensure that after the ballot paper is marked, it is—
 - (i) folded to conceal the vote; and
 - (ii) put in an envelope or, if the vote is a declaration vote, a declaration envelope; and
 - (d) seal the envelope; and
 - (e) if—
 - (i) the vote is a declaration vote—put the sealed declaration envelope in the appropriate ballot box inside the polling booth; or
 - (ii) if the vote is not a declaration vote—open the envelope inside the polling booth in the presence of any scrutineers, ensuring the ballot paper remains folded, and put the folded ballot paper in the appropriate ballot box.
- (4)** The issuing officer must ensure that, as far as practicable—
- (a) for a declaration vote—section 348 (How declaration vote may be cast at a polling booth) is complied with when the elector votes; or
 - (b) for another vote—section 336 (Procedure for voting at a polling booth) is complied with when the elector votes.
- (5)** Subsections (2) and (3) apply to all types of voting under this division.

Arrangements for electors at institutions

339.(1) If a polling booth is an institution or part of an institution, an issuing officer may visit electors resident in the institution, or part of the institution, for the purpose of enabling them to vote.

- (2)** Before taking action under subsection (1), the issuing officer must

SCHEDULE 1 (continued)

inform the scrutineers present of the proposed action.

- (3) When visiting an elector in an institution, the issuing officer must—
- (a) take to the elector—
 - (i) a ballot paper or a declaration form, ballot paper and declaration envelope; and
 - (ii) a ballot box; and
 - (iii) anything else necessary to enable the elector to vote; and
 - (b) if a scrutineer wishes—be accompanied by the scrutineer.
- (4) The issuing officer must ensure that, as far as practicable—
- (a) for a declaration vote—section 348 (How declaration vote may be cast at a polling booth) is complied with when the elector votes; or
 - (b) for another vote—section 336 (Procedure for voting at a polling booth) is complied with when the elector votes.

Arrangements for electoral visitor voting

340. *(omitted)*

Help for electors in voting

341.(1) If an elector satisfies an issuing officer that the elector cannot vote without help, the elector may be accompanied into an unoccupied voting compartment in a polling booth, or be otherwise helped, by someone chosen by the elector.

- (2) The person may help the elector in any of the following ways—
- (a) if asked by the elector—stating the names of candidates;
 - (b) acting as interpreter;
 - (c) explaining the ballot paper and the requirements of division 11 (Marking of ballot papers) about its marking;

SCHEDULE 1 (continued)

- (d) marking, or helping to mark, the ballot paper in the way the elector wishes;
 - (e) folding the ballot paper and putting it into a ballot box or a declaration envelope;
 - (f) sealing a declaration envelope or putting it into a ballot box.
- (3) Subsections (1) and (2) apply to all types of voting.
- (4) This section applies despite any of the following provisions—
- section 336(10) (Procedure for voting at a polling booth)
 - section 348 (How declaration vote may be cast at a polling booth)
 - section 351 (Casting a declaration vote by post).

Adjournment of poll

342.(1) If the conduct of a poll is, or is likely to be, obstructed or interrupted from any cause, the returning officer may adjourn the conduct of the poll generally or at a particular polling booth.

(2) If the conduct of a poll at a particular polling booth is, or is likely to be, obstructed or interrupted from any cause, the presiding officer at the booth may adjourn the conduct of the poll at the booth.

(3) If a poll is adjourned under subsection (1) or (2), the returning officer must fix a day (not later than 34 days after the day on which the poll is adjourned) for conducting the adjourned poll.

- (4)** The returning officer must give public notice of the day fixed—
- (a) *by displaying a notice in a conspicuous position* in the relevant part of the *Island council's* area; and
 - (b) in other ways the returning officer considers appropriate.

SCHEDULE 1 (continued)

Division 10—Declaration voting**Who may cast a declaration vote**

343. The following electors may cast a declaration vote—

- (a) an elector who, during ordinary voting hours on polling day, will not be within 8 km, by the nearest practicable route, from a polling booth;
- (b) an elector who, during ordinary voting hours on polling day, will be working or travelling under conditions that prevent voting at a polling booth;
- (c) an elector who, because of illness, disability or advanced pregnancy, will be prevented from voting at a polling booth;
- (d) an elector who, because the elector is caring for a person who is ill, has a disability or is pregnant, will be prevented from voting at a polling booth;
- (e) an elector who, because of membership of a religious order or because of religious beliefs, will be prevented from voting at a polling booth for all, or most, of the ordinary voting hours on polling day;
- (f) an elector who, on polling day, will be serving a sentence of imprisonment, or under other detention;
- (g) an elector whose address has been omitted from a voters roll—
 - (i) because of the *Electoral Act 1992*, section 58;¹¹ or
 - (ii) under an arrangement under the *Electoral Act 1992*,

¹¹ *Electoral Act 1992*, section 58 (Commission to keep electoral rolls)

SCHEDULE 1 (continued)

section 62¹² because of the *Electoral Act 1918* (Cwlth),
section 104.¹³

Who must cast a declaration vote in ordinary elections

344. In an election (*words omitted*), the following persons must cast a declaration vote—

- (a) an elector whose name is not on the voters roll apparently because of an official error;
- (b) an elector who is not enrolled on the voters roll, but is entitled to be enrolled, because of the *Electoral Act 1992*, section 64(1)(a)(ii);¹⁴
- (c) an elector who appears, from a record apparently made in error, to have already voted in the election;
- (d) a person who is given a ballot paper and declaration envelope for voting because an issuing officer suspects, on reasonable grounds, that the person is not entitled to vote at the election.

Declaration voting for postal ballot elections

345. (*omitted*)

How declaration vote is cast

346. Subject to section 336 (Procedure for voting at a polling booth), an elector who may or must make a declaration vote must cast the vote by—

- (a) if the elector cannot enter a polling booth because of illness, disability or advanced pregnancy—going to a place close to a

¹² *Electoral Act 1992*, section 62 (Joint roll arrangement with Commonwealth)

¹³ *Electoral Act 1918* (Cwlth), section 104 (Request for address not to be shown on Roll)

¹⁴ *Electoral Act 1992*, section 64 (Entitlement to enrolment)

SCHEDULE 1 (continued)

- polling booth and voting at that place; or
- (b) going to a polling booth in the *Island council's* area during voting hours at the booth and following the procedures set out in section 348 (How declaration vote may be cast at a polling booth); or
 - (c) going to the *council's office* before polling day and following the procedures set out in section 352 (Declaration voting before polling day); or
 - (d) if the elector is an elector mentioned in section 343 (Who may cast a declaration vote) (*words omitted*)—using the ballot paper and declaration envelope given to the elector by the returning officer, and following the procedures set out in section 351 (Casting a declaration vote by post).

Distribution of ballot papers to certain electors who may cast declaration vote

346A.(1) This section applies to an elector mentioned in section 343(g).

(2) As soon as practicable after the nomination day for an election, the returning officer for the election must give the following things to the elector—

- (a) a ballot paper;
- (b) the approved declaration envelope;
- (c) written instructions in the approved form on how the vote may be cast;
- (d) an unsealed *stamped or postage* paid post envelope addressed to the returning officer and bearing the words 'Ballot paper—(*insert name of Island council area*)'.

(3) However, if the things mentioned in subsection (2) are posted to an address outside Australia, the envelope mentioned in subsection (2)(d) need not be *stamped or postage* paid.

SCHEDULE 1 (continued)

Distribution of ballot papers to electors who may or must cast declaration vote

347.(1) An elector mentioned in section 343 (Who may cast a declaration vote) may apply to the returning officer, or a presiding officer for the election, for a ballot paper and a declaration envelope.

(2) The application must be in the approved form.

(3) The returning officer or presiding officer must, as soon as practicable, give a ballot paper, the approved declaration envelope and written instructions in the approved form on how the vote may be cast to the applicant if—

- (a) the application is received by the officer not later than 6 p.m. on the Thursday before polling day; and
- (b) the officer is satisfied the applicant is entitled to vote and make the application.

(4) If the returning officer or presiding officer is satisfied the applicant is an elector mentioned in section 344 (Who must cast a declaration vote in ordinary elections), the officer—

- (a) must not give a ballot paper to the applicant; but
- (b) must give to the applicant an approved declaration form.

(5) If the returning officer or presiding officer is satisfied the applicant has properly completed the declaration form, the officer must, as soon as practicable, give a ballot paper, the approved declaration envelope and written instructions in the approved form on how the vote may be cast to the applicant.

(6) The things given to an applicant under subsection (3) or (5) must be accompanied by an unsealed *stamped or postage* paid post envelope addressed to the returning officer and bearing the words ‘Ballot paper—(words omitted) (insert name of Island council’s area)’.

(7) The returning officer may give things to be given to an applicant under subsection (3) or (5) by posting the things to the applicant’s address stated in the voters roll, an electoral roll mentioned in the *Electoral Act*

SCHEDULE 1 (continued)

1992, section 58(5),¹⁵ the application or the declaration form.

Example of addresses—

An applicant's address could be stated as a residential address, post office box number, mail service number or in another appropriate way.

(8) If things mentioned in subsection (6) are posted to an address outside Australia, the envelope mentioned in subsection (6) need not be stamped or postage paid.

How declaration vote may be cast at a polling booth

348.(1) An elector who must cast a declaration vote (*words omitted*) may cast the vote by—

- (a) entering a polling booth in the *Island council's* area during voting hours at the booth; and
- (b) completing the declaration form given to the elector by an issuing officer.

(2) If the issuing officer is satisfied the elector has properly completed the declaration form, the officer must give a ballot paper and the approved declaration envelope to the elector.

(3) On being given the ballot paper and the declaration envelope, the elector must, without delay—

- (a) sign the appropriate declaration on the declaration envelope before the issuing officer and have the officer sign the envelope as witness; and
- (b) go alone into an unoccupied voting compartment in the polling booth; and
- (c) there, in private, mark a vote on the ballot paper in accordance with division 11 (Marking of ballot papers); and
- (d) fold the ballot paper, put it in the envelope and seal the envelope;

¹⁵ An electoral roll mentioned in the *Electoral Act 1992*, section 58(5) may be in a form other than a printed form.

SCHEDULE 1 (continued)

and

- (e) put the sealed envelope in the appropriate ballot box in the polling booth; and
- (f) leave the polling booth.

Distribution of ballot papers to electors for postal ballot election

349. *(omitted)*

Record of ballot papers given to postal voters

350. The issuing officer who gives a ballot paper and declaration envelope under section 347 (Distribution of ballot papers to electors who may or must cast declaration vote) (*words omitted*) must—

- (a) keep a record of the ballot paper and envelope given; and
- (b) sign the record.

Casting a declaration vote by post

351.(1) An elector who has received a ballot paper and declaration envelope under section 347 (Distribution of ballot papers to electors who may or must cast declaration vote) (*words omitted*) must, before 6 p.m. on polling day—

- (a) sign the declaration on the declaration envelope in the presence of an adult, and have the adult sign the envelope as witness; and
- (b) in private, mark a vote on the ballot paper in accordance with division 11 (Marking of ballot papers); and
- (c) fold the ballot paper, put it in the declaration envelope and seal the envelope; and
- (d) put the sealed declaration envelope containing the ballot paper in the prepaid post envelope mentioned in section 347(6) (*words omitted*) and post or give the envelope to the returning officer for

SCHEDULE 1 (continued)

the election.

(2) On receipt of the sealed envelope, the returning officer must put it in the appropriate ballot box.

Declaration voting before polling day

352.(1) The returning officer must declare at least 1 of the following places as a polling booth to enable electors entitled to cast a declaration vote under section 343 (Who may cast a declaration vote) to cast a vote at the election before polling day—

- (a) the *Island council's office, or a part of the office*; or
- (b) (*omitted*)
- (c) another convenient place in the *Island council's* area.

(2) An elector mentioned in subsection (1) may, at any time during the relevant election period when the *council's* office is open for the conduct of business, ask an issuing officer at the office for a ballot paper.

(3) Subject to section 336(5) to (7) (Procedure for voting at a polling booth), the issuing officer must comply with the request.

(4) An elector who wishes to vote under subsection (1)—

- (a) must complete and sign the approved application form; and
- (b) must comply with section 336; and
- (c) need not complete a declaration envelope.

(5) If an elector is an elector who must cast a declaration vote under section 344 (Who must cast a declaration vote in ordinary elections), the elector—

- (a) must complete and sign the approved application form and declaration form; and
- (b) on being given a ballot paper and the approved declaration envelope, must comply with section 348(3) (How declaration vote may be cast at a polling booth) without delay.

SCHEDULE 1 (continued)

(6) In subsection (2)—

“**relevant election period**” means the period—

- (a) not earlier than—
 - (i) 14 days before polling day; or
 - (ii) the longer period that the returning officer fixes and notifies *by displaying a notice in a conspicuous position in the Island council’s area*; and
- (b) not later than 6 p.m. on the day before polling day.

Distribution of declaration envelopes when separate ballot papers or polls on same day

353.(1) This section applies if—

- (a) under section 326,¹⁶ separate ballot papers are used in polls for elections of the *chairperson* and another councillor conducted on the same day; or
- (b) (*omitted*)

(2) In the conduct of the polls—

- (a) only 1 declaration envelope may be distributed to a declaration voter with the ballot papers for use in the polls; and
- (b) this part, other than this section, applies (with any necessary changes) as if the references to the distribution, marking and other dealing with a ballot paper were a reference to all or each of the ballot papers in the polls, as the case requires.

¹⁶ Section 326 (Separate ballot papers for separate polls)

SCHEDULE 1 (continued)

*Division 11—Marking of ballot papers***Optional-preferential voting**

354. (omitted)

First-past-the-post voting

355.(1) (*words omitted*) A vote is validly cast if the elector votes in accordance with this section.

(2) For an election of *chairperson*, the elector must mark on the ballot paper the numeral 1, or a tick or cross, in the square opposite the name of the candidate whom the elector prefers.

(3) For an election of other councillors, the elector must mark on the ballot paper—

- (a) if 1 candidate is to be elected—the numeral 1, or a tick or cross, in the square opposite the name of the candidate whom the elector prefers; or
- (b) if 2 or more candidates are to be elected—
 - (i) the numeral 1, or a tick or a cross, in the square opposite the name of 1 candidate for whom the elector wishes to vote; and
 - (ii) the numeral 2, or the numerals 2, 3 and so on (in regular arithmetical sequence by intervals of 1 whole numeral), as the case may be, in the squares opposite the names of the other candidate or candidates for whom the elector wishes to vote, up to the number of candidates to be elected.

SCHEDULE 1 (continued)

Division 12—Replacement ballot papers**Use of replacement ballot papers**

356.(1) If, while voting at a polling booth or voting under section 338 (Arrangements for electors with disability) (*words omitted*), a ballot paper given to an elector is accidentally defaced or destroyed, an issuing officer must give to the elector a replacement ballot paper for use in the poll.

(2) However, before a replacement ballot paper can be given—

- (a) the ballot paper it replaces (the “**replaced ballot paper**”) must not have been already put in a ballot box in use in the poll; and
- (b) the elector must declare, in the approved declaration form, before the issuing officer that—
 - (i) the replaced ballot paper has been accidentally defaced or destroyed; and
 - (ii) the elector has not voted in the election; and
- (c) if the replaced ballot paper has been accidentally defaced—the elector must give the defaced ballot paper to the issuing officer; and
- (d) if the replaced ballot paper has been accidentally destroyed—the elector must give to the issuing officer, if practicable, the remains of the ballot paper; and
- (e) the issuing officer must put the defaced ballot paper, or any remains of the destroyed ballot paper, in an envelope, seal the envelope and set it aside in the officer’s custody for separate identification under section 363(1)(g)(ii) (Preliminary counting by presiding officer).

(3) If a ballot paper given to an elector under section 347 (Distribution of ballot papers to electors who may or must cast declaration vote) (*words omitted*) is lost in transit or is accidentally defaced or destroyed, the returning officer for the election must, before 6 p.m. on polling day, give to the elector a replacement ballot paper and the approved declaration envelope

SCHEDULE 1 (continued)

for use in the election.

(4) However, before a replacement ballot paper can be given—

- (a) the elector must declare, in the approved declaration form, before the issuing officer or an adult witness that—
 - (i) the ballot paper it replaces (the **“replaced ballot paper”**) has not been received by the elector or has been accidentally defaced or destroyed; and
 - (ii) the elector has not voted in the election; and
- (b) if the replaced ballot paper has been accidentally defaced—the elector must put the defaced ballot paper into the elector’s original declaration envelope or a replacement declaration envelope, seal the envelope and give the envelope to the issuing officer; and
- (c) if the replaced ballot paper has been accidentally destroyed—the elector must, if practicable, put the remains of the destroyed ballot paper into the elector’s original declaration envelope or a replacement declaration envelope, seal the envelope and give the envelope to the issuing officer; and
- (d) the issuing officer must set aside the elector’s declaration envelope in the officer’s custody for separate identification under section 363(1)(g)(ii) (Preliminary counting by presiding officer).

(5) The returning officer must record, in the approved form, the name and place of residence of each person to whom a replacement ballot paper is given.

(6) If a replacement ballot paper is used for voting—

- (a) the voting must take place under the appropriate provisions of division 9 (Voting generally) or 10 (Declaration voting); and
- (b) the vote cast must be dealt with under the appropriate provisions of division 14 (Counting of votes).

SCHEDULE 1 (continued)

Division 13—Effect of ballot papers**Effect of ballot papers—optional-preferential voting**

357. *(omitted)*

Effect of ballot papers—first-past-the-post voting

358.(1) *(omitted)*

(2) For a ballot paper to have effect as recording a vote in the election—

- (a) the ballot paper—
 - (i) must be completed in accordance with section 355 (First-past-the-post voting); or
 - (ii) must contain writing or marking indicating the elector's intended preference, or intention to vote for any particular candidate or candidates; and
- (b) the ballot paper must not contain any writing or mark (other than one authorised by this part) by which the elector can, in the returning officer's opinion, be identified; and
- (c) the ballot paper must have been put in the appropriate ballot box as required by this part; and
- (d) for a ballot paper put into a declaration envelope as required by section 351 (Casting a declaration vote by post)—
 - (i) section 351(1) must have been complied with; and
 - (ii) if the elector is an elector mentioned in section 343 or 344¹⁷ or an applicant who is given an approved declaration form under section 347(4)¹⁸ (*words omitted*), and the declaration

¹⁷ Section 343 (Who may cast a declaration vote) or 344 (Who must cast a declaration vote in ordinary elections)

¹⁸ Section 347 (Distribution of ballot papers to electors who may or must cast declaration vote)

SCHEDULE 1 (continued)

on the envelope is witnessed by a person other than an issuing officer—the signature of the person making the declaration must correspond to the signature of the relevant applicant under section 347 (*words omitted*); and

- (iii) if the declaration envelope is posted to the returning officer—it must be received by the returning officer within 10 days after polling day.

(3) A ballot paper must not be rejected merely because it indicates the elector's intention to vote for a number of candidates greater than the number to be elected.

Posted vote presumed valid until contrary proved

359. If a declaration envelope and ballot paper to which section 351 (Casting a declaration vote by post) applies is received by a returning officer by post, it must be presumed the provisions of section 351(1) have been complied with in relation to the declaration on the envelope until the contrary is proved.

Formal and informal ballot papers

360.(1) A ballot paper that has effect to record a vote is a formal ballot paper.

(2) A ballot paper that has no effect to record a vote is an informal ballot paper.

Ballot paper partly formal and partly informal

361.(1) This section applies if—

- (a) an election for *chairperson* and an election for the other councillors of the *Island council* are held at the same time and 1 ballot paper is used for both elections; and
- (b) the ballot paper, as completed for an election, is informal but, as completed for the other election, is formal.

SCHEDULE 1 (continued)

(2) The informal part of the ballot paper must be rejected and the formal part of the ballot paper must be counted under division 14 (Counting of votes).

Division 14—Counting of votes

Votes to be counted in accordance with this division

362. Votes cast in an election are to be counted as required by this division.

Preliminary counting by presiding officer

363.(1) As soon as practicable after the end of ordinary voting hours on polling day, the presiding officer for a polling booth, at a place nominated by the presiding officer, in the presence of another issuing officer and any candidates and scrutineers who wish to attend, must—

- (a) open all ballot boxes used at the polling booth; and
- (b) identify, and keep in a separate parcel, all declaration votes; and
- (c) examine all ballot papers that are not in declaration envelopes, and—
 - (i) identify, and keep in a separate parcel, all informal ballot papers; and
 - (ii) (*words omitted*) count the number of votes for each candidate marked on all formal ballot papers, and keep the ballot papers in a separate parcel; *and*
 - (iii) (*omitted*)
- (d) prepare a written statement in duplicate in the approved form that—
 - (i) sets out, in words and numerals, the number of votes for each candidate (*words omitted*); and

SCHEDULE 1 (continued)

- (ii) sets out the number of declaration envelopes and informal ballot papers; and
- (iii) is signed by the presiding officer, and the issuing officer and any scrutineers who are present and wish to sign; and
- (e) seal up in separate parcels all formal and informal ballot papers, declaration envelopes and unused ballot papers; and
- (f) endorse on each parcel a description of its contents, sign the endorsement and allow any scrutineers, who wish to do so, to countersign the endorsement; and
- (g) put into separate parcels—
 - (i) the voters roll and all books and papers used by the presiding officer in the poll with 1 copy of the statement prepared under paragraph (d); and
 - (ii) all ballot papers or remains of ballot papers set aside, under section 337(2) (Duties of issuing officer for returned papers) or 356(2)(e) or (4)(d) (Use of replacement ballot papers), for separate identification;and endorse on each parcel a description of its contents; and
- (h) endorse on each parcel—
 - (i) the name of the *area of the Island council* for which the election was held; and
 - (ii) the name of the polling booth from which the parcel has come; and
- (i) sign each endorsement.

(2) The presiding officer must then, if the officer is not the returning officer, give to the returning officer, or to a person nominated by the returning officer, as soon as practicable—

- (a) the parcels mentioned in subsection (1); and
- (b) the copy of the statement prepared under subsection (1)(d) (other than the copy mentioned in subsection (1)(g)); and

SCHEDULE 1 (continued)

- (c) a reconciliation statement in the approved form for all ballot papers given out at the presiding officer's polling booth and all votes put in ballot boxes at the booth.

(3) The returning officer or other person who receives things from the presiding officer under subsection (2) must give to the presiding officer a receipt for the things.

(4) The presiding officer may do anything required under subsection (1) or (2) through an issuing officer authorised by the presiding officer for that purpose.

Example for subsection (4)—

An issuing officer could be authorised to sort and bundle ballot papers and prepare a reconciliation statement for the presiding officer.

Preliminary processing of declaration votes by returning officer

364.(1) After 8 a.m. on polling day, the returning officer may open all ballot boxes containing only declaration votes and examine the declaration envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.

(2) As soon as practicable after 6 p.m. on polling day, the returning officer may open all other ballot boxes containing declaration votes and examine the declaration envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.

(3) As soon as practicable after receipt by the returning officer of a parcel of declaration votes from a polling booth, the returning officer may open the parcel and examine the declaration envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.

Procedure for processing declaration envelopes

365.(1) The returning officer must inform all candidates for election of the times when, and the places where, declaration envelopes will be examined by the returning officer and allow them, or their scrutineers, to attend at the processing of declaration votes.

SCHEDULE 1 (continued)

(2) On examining the declaration envelopes, if the returning officer is satisfied the declaration has been properly completed, the envelope is sealed and the declarant on the envelope is entitled to cast a declaration vote, the returning officer must—

- (a) detach the elector’s declaration from the envelope; and
- (b) either—
 - (i) place a mark in ink against the declarant’s name on the voters roll; or
 - (ii) if the voters roll is kept in an electronic form—record in a way approved by the returning officer that the declarant has voted; and
- (c) place the envelope containing the ballot paper (the **“accepted envelope”**) in a locked or sealed ballot box; and
- (d) keep the accepted envelope in the ballot box until dealt with under subsection (3) or section 366.

(3) The returning officer may take the accepted envelopes from the locked or sealed ballot box and remove the ballot papers from the envelopes, without unfolding them, or allowing anyone else to unfold them, and keep them in a locked or sealed ballot box until dealt with under section 366.

(4) The returning officer must—

- (a) put all ballot papers (not in declaration envelopes) that are in a ballot box opened under section 364(2) (Preliminary processing of declaration votes by returning officer) into a locked or sealed ballot box, without unfolding them, or allowing anyone else to unfold them; and
- (b) keep them there until they are dealt with in the official counting of votes.

(5) If a declaration envelope is rejected, the returning officer must set it

SCHEDULE 1 (continued)

aside in the officer's custody for separate identification.

(6) The returning officer must seal up in separate parcels, and keep in the officer's custody for separate identification, all rejected declaration envelopes, accepted envelopes from which ballot papers have been removed and electors' declarations that have been removed from declaration envelopes.

Official counting of votes

366.(1) As soon as practicable after close of the poll in an election, the returning officer must follow the procedures set out in this section, in the presence of candidates for election, or scrutineers, who wish to attend.

(2) First, the returning officer must ascertain from the presiding officers' statements under section 363(2) (Preliminary counting by presiding officer)—

- (a) (*words omitted*) the number of votes cast for each candidate; or
- (b) (*omitted*)

(3) Second, the returning officer must—

- (a) open all sealed parcels of ballot papers given to the returning officer under section 363(2); and
- (b) examine all ballot papers that are not in declaration envelopes and—
 - (i) (*words omitted*) count the number of votes cast for each candidate on formal ballot papers, and keep the ballot papers in a separate parcel; or
 - (ii) (*omitted*)

(4) Third, the returning officer must—

- (a) open all other ballot boxes on hand; and
- (b) open all accepted envelopes mentioned in section 365(2)(d) that

SCHEDULE 1 (continued)

- have not yet been opened and remove the ballot papers; and
- (c) identify, and keep in a separate parcel, all informal ballot papers; and
 - (d) examine all formal ballot papers and—
 - (i) (*words omitted*) count the number of votes cast for each candidate on the ballot papers, and keep the ballot papers in a separate parcel; or
 - (ii) (*omitted*)
- (5) Fourth, the returning officer must add together—
- (a) (*words omitted*) the number counted under subsections (3)(b)(i) and (4)(d)(i); or
 - (b) (*omitted*)
- (6) Fifth, the returning officer must reapply subsections (4) and (5) as more declaration envelopes are received by the returning officer under section 351 (Casting a declaration vote by post) after close of the poll.

Treatment of ballot paper to which objection is made

367.(1) If, while a presiding officer or returning officer is complying with section 363 (Preliminary counting by presiding officer) or 366 (Official counting of votes), a candidate or scrutineer objects to treatment of a ballot paper as informal, the officer must mark on the back of it ‘formal’ or ‘informal’ according to whether the officer’s decision is to treat it as formal or informal.

(2) If, while a presiding officer or returning officer, is complying with section 363 or 366, a candidate or scrutineer objects to the counting of a vote for a particular candidate, the officer must mark on the back of the relevant ballot paper the name of the candidate for whom it is counted.

Counting of votes for optional-preferential system

368. (*omitted*)

SCHEDULE 1 (continued)

Counting of votes for first-past-the-post system

369.(1) (*omitted*)

(2) If the election is for *chairperson of the Island council*, the candidate who receives the greatest number of votes is elected.

(3) If the election is for councillors (other than the *chairperson*) of the *Island council*—

- (a) if 1 person only is to be elected—the candidate who receives the greatest number of votes is elected; and
- (b) if 2 or more persons are to be elected—the candidates elected are—
 - (i) the candidate who receives the greatest number of votes; and
 - (ii) the candidate who receives the next highest number of votes; and
 - (iii) the candidate who receives the next highest number of votes; and so on, up to the number of persons to be elected.

(4) If 2 or more candidates receive the same number of votes so that subsection (2) or (3)(a) or (b) cannot be applied, the returning officer must decide, by way of a casting vote, which candidate is elected.

(5) In casting a vote under subsection (4), the returning officer need not complete a ballot paper.

(6) Subsection (4) has effect despite section 334 (Who may vote).

Returning officer's duty after counting votes

370.(1) When the result of the poll for the election is known, the returning officer must—

- (a) seal up all of the formal ballot papers, informal ballot papers, rejected declaration envelopes, accepted envelopes from which ballot papers have been removed, electors' declarations that have been removed from declaration envelopes, defaced ballot papers, remains of destroyed ballot papers, unused ballot papers, books

SCHEDULE 1 (continued)

and papers (other than the voters roll) of each presiding officer used in the poll; and

- (b) endorse on each parcel a description of its contents and sign the endorsement; and
- (c) allow any scrutineers, who wish to do so, to countersign the endorsement.

(2) The returning officer must then—

- (a) examine the voters rolls used in the election and marked by issuing officers to ascertain whether any elector has voted more than once; and
- (b) make a list in the approved form of the names and numbers on the voters roll of all electors who appear to have voted more than once in the election, enclose the original of the list with the voters rolls in a sealed up parcel, and give a copy of the list to each person who was a candidate in the election.

Division 15—Actions following poll

Declaration of poll

371.(1) As soon as practicable after the result of a poll for the election is known, the returning officer must, by notice in the approved form, declare—

- (a) the result of the poll; and
- (b) the names of each candidate who has been elected.

(2) The returning officer must—

- (a) display the notice in a conspicuous place in the *Island council's* office; and
- (b) *(omitted)*

(3) The returning officer must not delay complying with subsection (1) or (2) merely because some ballot papers have not been received by the

SCHEDULE 1 (continued)

returning officer, if it is clear the votes recorded on the ballot papers could not affect the result of the election.

Notice of final result of poll

372.(1) The returning officer must give notice of the final result of the poll to each candidate as soon as practicable after—

- (a) all ballot papers used in the poll have been examined; and
- (b) all votes cast in the poll on ballot papers that appear to be formal have been counted.

(2) The notice must be in the approved form.

Resolution about electors who fail to vote

373. As soon as practicable after the conclusion of the election, the *Island council* must make a resolution deciding whether to take action under section 375 about electors who failed to vote in the election.

List of electors failing to vote

374.(1) This section applies only if the *Island council* makes a resolution under section 373 deciding to take action under section 375 about electors who failed to vote in the election.

(2) The returning officer must make a list of the names and addresses, and the numbers shown on the voters roll, of all electors who—

- (a) have not been issued with ballot papers for the election; or
- (b) in the case of electors mentioned in section 343 (Who may cast a declaration vote) (*words omitted*)—have not given their ballot papers to the returning officer.

(3) The returning officer must—

- (a) certify the list by declaration in the approved form; and
- (b) deposit the list with the *Island council*.

SCHEDULE 1 (continued)

(4) The list is to be held in the *Island council's* office, in the *clerk's* custody.

Notice of failure to vote etc.

375.(1) Subject to subsection (2), the *Island council*—

- (a) must, as soon as practicable after a resolution by the *council* to take action under this section, send a notice in the approved form to each elector shown on the list deposited under section 374 at the elector's address shown on the list; and
- (b) must record on the list, against the elector's name, the fact that the notice has been given.

(2) The notice must—

- (a) show the elector's full name and address and number on the voters roll; and
- (b) state that—
 - (i) the elector appears to have failed to vote at the election; and
 - (ii) it is an offence to fail, without a valid and sufficient reason, to vote at an election; and
 - (iii) the elector may, if the elector considers the elector has committed the offence, pay one-half of a penalty unit (the "**penalty**") to the *council* by a specified day, not earlier than 21 days after the elector receives the notice (the "**appropriate day**"), and, if the *council* receives the payment by the appropriate day, no further steps will be taken against the elector about the offence; and
- (c) require the elector—
 - (i) if the elector intends paying the penalty by the appropriate day—to sign the approved form about payment of the penalty included in or with the notice and post or give the form, together with the amount of the penalty, to the *council* so it is received by the appropriate day; or

SCHEDULE 1 (continued)

- (ii) if the elector does not intend paying the penalty by the appropriate day—to state, in the approved form included in or with the notice, whether the elector voted and, if not, the reason for failing to vote and to sign the form and post or give it to the *council* so it is received by the appropriate day.

(3) The elector must comply with the requirements of the notice.

(4) If—

- (a) the elector is absent, or unable, because of physical incapacity, to comply with the requirements of the notice; and
- (b) another elector who has personal knowledge of the facts complies with the requirements and in doing so also has his or her signature on the form witnessed;

the first elector is taken to have complied with the notice’s requirements.

Payments for failure to vote

376.(1) If the *Island council* sends an elector a notice under section 375(1) for an election and payment is made to the *council* under section 375(2) to (4), the *council* must—

- (a) accept the payment; and
- (b) give the person a receipt for the payment; and
- (c) not take any proceeding against the elector for failing to vote at the election.

(2) In this section—

“**proceeding**” includes serving an infringement notice.

Recording response to notice

377. The *Island council* must record against the name of an elector who is given a notice under section 375 (*Notice of failure to vote etc.*) on the list made under section 374 (List of electors failing to vote) whether the elector—

SCHEDULE 1 (continued)

- (a) has complied with the requirements of the notice under section 375(2)(c); and
- (b) had a valid and sufficient reason for failing to vote at the election.

Evidentiary value of list under s 374

378. In a proceeding, a document purporting to be a list, or a copy of or extract from a list, made under section 374 (List of electors failing to vote), and to be certified by the *Island council's clerk* is evidence of the matters contained in the document.

Disposal of material resulting from election

379.(1) As soon as practicable after giving notice of the final result of the poll to candidates, the returning officer must—

- (a) destroy all unused ballot papers; and
- (b) seal up in packets all other parcels sealed up under section 370 (Returning officer's duty after counting votes); and
- (c) endorse on each packet—
 - (i) a description of its contents; and
 - (ii) the name of the *area of the Island council* for which the election was held; and
 - (iii) the polling day;and sign the endorsement; and
- (d) if the returning officer is not the *council's clerk*—give each packet to the *clerk*.

(2) The *clerk* must keep the packets in safe custody for 1 year.

(3) At the end of the year, the *clerk* must—

- (a) destroy all ballot papers contained in the packets; and
- (b) dispose of the other contents of the packets in the way the *clerk*

SCHEDULE 1 (continued)

considers appropriate.

(4) Each councillor of the *Island council* may attend during the destruction of ballot papers by, or at the direction of, its *clerk* to ensure the papers are destroyed.

Ballot papers as evidence

380. In a proceeding, a ballot paper apparently used at an election and identified by evidence as 1 of the ballot papers given to, or held by, the *Island council's clerk* under section 379 (Disposal of material resulting from election) is evidence of the vote or votes cast in the election as recorded on the ballot paper.

Notice to electors whose ballot papers are not accepted

381.(1) Subsection (2) applies if—

- (a) in an election, a person makes a declaration vote under section 344(a);¹⁹ and
- (b) the person's ballot paper is not accepted for counting under section 365²⁰ because the returning officer is not satisfied that the declarant on the declaration envelope is entitled to cast a declaration vote in the election.

(2) As soon as practicable after an election, the *Island council* must send a notice in the approved form to the person advising the person why the ballot paper was not accepted for counting.

Notice to electoral commission of certain declaration votes

382. As soon as practicable after the election, the returning officer must give to the electoral commission notice of the names and addresses of all persons permitted to vote at the election whose names are not on the voters

¹⁹ Section 344 (Who must cast a declaration vote in ordinary elections)

²⁰ Section 365 (Procedure for processing declaration envelopes)

SCHEDULE 1 (continued)

roll, apparently because of official error, if the error relates to the keeping of an electoral roll under the *Electoral Act 1992*.

Division 16—Enforcement

Subdivision 1—Offences in general

False or misleading statements

383.(1) A person must not—

- (a) state something under this *schedule* that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made under this *schedule* anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—*4 penalty units*.

(2) A complaint against a person for a contravention of subsection (1) is sufficient if it states that the statement was false or misleading to the person's knowledge.

False, misleading or incomplete electoral documents

384. A person must not give a document under this *schedule* containing information that the person knows is false, misleading or incomplete in a material particular without—

- (a) indicating that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
- (b) giving the correct information if the person has, or can reasonably obtain, the correct information.

Maximum penalty—*4 penalty units*.

SCHEDULE 1 (continued)

Bribery

385.(1) In this section—

“**election conduct**”, of a person, means—

- (a) the way in which the person votes at an election; or
- (b) the person’s nominating as a candidate for an election; or
- (c) *(omitted)*

(2) A person must not—

- (a) ask for or receive; or
- (b) offer, or agree, to ask for or receive;

property or a benefit of any kind (whether for the person or someone else) on the understanding that the person’s election conduct will be influenced or affected.

(3) A person must not, in order to influence or affect another person’s election conduct, give, or promise or offer to give, property or a benefit of any kind to anyone else.

Maximum penalty—*4 penalty units.*

Providing money for illegal payments

386. A person must not knowingly give money for—

- (a) any payment that is contrary to law relating to elections; or
- (b) replacing any money that has been spent in making a payment mentioned in paragraph (a).

Maximum penalty—*4 penalty units.*

Improperly influencing electoral officers

387. A person must not improperly influence an electoral officer in the performance of the officer’s duties under this *regulation.*

Maximum penalty—*4 penalty units.*

SCHEDULE 1 (continued)

Interfering with election right or duty

388. A person must not hinder or interfere with the free exercise or performance, by another person, of another right or duty under this regulation that relates to an election.

Maximum penalty—4 *penalty units*.

Forging or uttering electoral papers

389.(1) A person must not—

- (a) forge an electoral paper; or
- (b) utter a forged electoral paper knowing it to be forged.

Maximum penalty—4 *penalty units*.

(2) A person must not make someone else's signature on an electoral paper.

Maximum penalty—4 *penalty units*.

Wilful neglect etc. of electoral officers

390. An electoral officer must not wilfully neglect or fail to perform a duty under this *regulation*.

Maximum penalty—4 *penalty units*.

No record to be made of vote cast

391. An electoral officer, or scrutineer, must not make a mark, memorandum or note on a voters roll or other list of voters or otherwise—

- (a) that indicates for whom a person has cast a vote; or
- (b) that would enable the officer or scrutineer to know or remember for whom a person has cast a vote.

Maximum penalty—4 *penalty units*.

SCHEDULE 1 (continued)

Subdivision 2—Offences about electoral advertising and information

Responsibility for election matter

392.(1) A person must not, during the election period for an election—

- (a) print, publish, distribute or broadcast; or
- (b) permit or authorise someone else to print, publish, distribute or broadcast;

any advertisement, handbill, pamphlet or notice containing election matter unless there appears, or is stated, at its end the particulars required by subsection (2).

Maximum penalty—*4 penalty units.*

(2) The particulars are—

- (a) in any case—the name and address (other than a post office box or facility) of the person who authorised the advertisement, handbill, pamphlet or notice; and
- (b) for an advertisement or notice printed except in a newspaper—the name and place of business of the printer.

(3) Subsection (1) does not apply to an advertisement that—

- (a) is printed, published or distributed on a car sticker, T-shirt, lapel badge, pen, pencil or balloon; or
- (b) *(omitted)*

Headline to electoral advertisements

393. The proprietor of a newspaper commits an offence if—

- (a) an article, or a paragraph, containing matter about an election is printed in the newspaper; and
- (b) either—
 - (i) the insertion of the article or paragraph is, or is to be, paid

SCHEDULE 1 (continued)

for; or

- (ii) any reward or compensation, or promise of reward or compensation, is, or is to be, made for the insertion of the article or paragraph; and
- (c) the proprietor does not cause the word ‘advertisement’ to be printed as a headline to the article or paragraph in letters not smaller than 10 point or long primer.

Maximum penalty—*4 penalty units.*

Misleading voters

394.(1) During an election period, a person must not print, publish, distribute or broadcast anything that is intended or likely to mislead an elector about the way of voting at the election.

(2) A person must not, for the purpose of affecting the election of a candidate, knowingly publish a false statement of fact about the personal character or conduct of the candidate.

(3) During an election period, a person must not print, publish, distribute or broadcast by television anything that purports to be a representation of a ballot paper for use in the election, if it is likely to induce an elector to vote other than in accordance with this part.

Maximum penalty—*4 penalty units.*

Subdivision 3—Offences about voting

Failure to vote

395.(1) An elector must not—

- (a) fail to vote at an election without valid and sufficient reason; or
- (b) fail to comply with the requirements of a notice given to the elector under section 375 (Notice of failure to vote etc.); or

SCHEDULE 1 (continued)

- (c) purport to comply with the requirements of a notice given to the elector under section 375, make a statement the elector knows to be false or misleading in a material particular.

Maximum penalty—1 penalty unit.

(2) An elector's belief that it is part of the elector's religious duty not to vote at elections is valid and sufficient reason for the elector's failure to vote in a particular election.

(3) A complaint against a person for a contravention of subsection (1)(c) is sufficient if it states that the statement was false or misleading to the person's knowledge.

Leave to vote

396.(1) This section applies if—

- (a) an employee who is an elector asks his or her employer, before polling day for an election, for leave of absence to vote at the election; and
- (b) the absence is necessary to enable the employee to vote at the election.

(2) The employer must allow the employee leave of absence for a reasonable period (not more than 2 hours) to enable the employee to vote at the election, unless the absence is reasonably likely to cause danger or substantial loss to the employer in relation to the employment concerned.

(3) The employer must not impose any penalty or disproportionate deduction of pay for the leave of absence.

(4) An employee must not ask for leave of absence under subsection (1) to vote at an election unless the employee genuinely intends to vote at the election.

Maximum penalty—4 *penalty units*.

SCHEDULE 1 (continued)

Canvassing in or near polling booths

397.(1) During an election period, a person must not do any of the things mentioned in subsection (2)—

- (a) inside a polling booth; or
- (b) within 6 m of an entrance to a building if—
 - (i) the building is, or is part of, a polling booth; and
 - (ii) either a ballot box is in the building for use in the election, or a person is in the building for the purpose of casting a vote in the election.

(2) The things are—

- (a) canvassing for votes; or
- (b) inducing an elector not to—
 - (i) vote in a particular way; or
 - (ii) vote at all in the election; or
- (c) loitering; or
- (d) obstructing the free passage of a person seeking to vote.

Maximum penalty—4 *penalty units*.

Interrupting voting etc.

398. A person must not—

- (a) enter or remain in a polling booth other than under this *regulation*; or
- (b) wilfully interrupt, obstruct or disturb any proceeding at an election; or
- (c) enter a voting compartment other than under this *regulation*; or
- (d) prevent a scrutineer from entering or leaving a polling place—
 - (i) during voting hours for the polling place; or

SCHEDULE 1 (continued)

- (ii) while votes are being counted at the polling place; or
- (e) obstruct or wilfully mislead an electoral officer in the performance of a duty.

Maximum penalty—*4 penalty units.*

Influencing voting

399. A person must not, by violence or intimidation, influence a person's vote at an election.

Maximum penalty—*4 penalty units.*

Party badges not to be worn in polling booths

400. *(omitted)*

Voting if not entitled

401. A person must not, at an election—

- (a) vote in someone else's name (including a dead or fictitious person); or
- (b) vote more than once; or
- (c) cast a vote that the person knows the person is not entitled to cast; or
- (d) if the person knows someone else is not entitled to vote at the election, procure the other person to vote.

Maximum penalty—*4 penalty units.*

Offences relating to ballot papers

402.(1) A person must not—

- (a) wilfully fail to comply with section 336 (Procedure for voting at a polling booth) or 351 (Casting a declaration vote by post); or

SCHEDULE 1 (continued)

- (b) take a ballot paper out of a polling booth other than under this part; or
- (c) place in a ballot box a ballot paper that has not been—
 - (i) given to an elector under this part; or
 - (ii) marked by the elector.

(2) A person must not, without lawful excuse, obtain possession of or have in the person's possession—

- (a) a ballot paper that has been marked by anyone else; or
- (b) a declaration form or envelope that has been signed by anyone else.

Maximum penalty—*4 penalty units.*

Failure to deliver or post documents for someone else

403.(1) If a person is given, for delivery or posting to the returning officer—

- (a) an application by someone else to be treated as a declaration voter; or
- (b) a declaration form that appears to be completed;

the person must promptly deliver or post it to the returning officer.

(2) If a person is given, for delivery or posting to the returning officer, a declaration envelope that appears to be completed, the person must give or post it to the returning officer before 6 p.m. on polling day.

Maximum penalty—*4 penalty units.*

Breach of confidentiality of vote

404.(1) A person must not examine a ballot paper used in the election to ascertain the candidates for whom an elector has voted.

(2) Subsection (1) does not apply to a proceeding in a court or a person in

SCHEDULE 1 (continued)

the performance of functions under this *regulation*.

(3) If, in performing a function for an election, a person has ascertained the candidates for whom an elector has cast a vote, the person must not disclose, or assist in disclosing, that fact, unless the person is required by law to make the disclosure.

Maximum penalty—4 *penalty units*.

Breaking seals on parcels

405. A person must not wilfully open or break the seal of a parcel or packet sealed under this part unless the person is authorised under this regulation or ordered by a court to open or break the seal.

Maximum penalty—4 *penalty units*.

Duty of witness to signing of declaration voting papers

406. A person (the “**witness**”) must not sign a declaration envelope as witness under section 351 (Casting a declaration vote by post) unless—

- (a) the witness is satisfied of the identity of the elector who signs the declaration before the witness; and
- (b) the witness has seen the elector sign the declaration; and
- (c) either—
 - (i) the witness knows that the declaration made by the elector is true; or
 - (ii) the witness is satisfied that the declaration is true because of inquiries of the elector or otherwise.

Maximum penalty—4 *penalty units*.

SCHEDULE 1 (continued)

*Subdivision 4—(omitted)***PART 7—FRESH ELECTIONS****Requirements for fresh election**

408. *(omitted)*

Time for fresh election

409. *(omitted)*

Returning officer for fresh election

410. The returning officer for a fresh election of councillors of *an Island council* is the *council's clerk* or, if there is no *clerk*, a person appointed by the Minister.

Voters roll for fresh election

411. A voters roll for a fresh election must be compiled under the *order in council* directing the holding of the fresh election.

Other provisions of *schedule* apply

412. The provisions of this *schedule* (other than this part) apply, with all necessary changes (*words omitted*) to a fresh election as if the election were a quadrennial election.

SCHEDULE 1 (continued)

Extension of term of councillors

413. *(omitted)*

PART 8—*(omitted)*

SCHEDULE 1A

DECLARATION OF COUNCIL AREAS

section 64A

Column 1

Part of the State

The land mentioned in the first and second schedules of deed of grant reference number 21328057

The land mentioned in the first and second schedules of deed of grant reference number 21296126

The land mentioned in the first and second schedules of deed of grant reference number 21296127

The land mentioned in the first and second schedules of deed of grant reference number 21296128

The land mentioned in the first and second schedules of deed of grant reference number 21296129

The land mentioned in the first and second schedules of deed of grant reference number 21296130

The land mentioned in the first and second schedules of deed of grant reference number 21296131

The land mentioned in the first and second schedules of deed of grant reference number 21296132

Column 2

Council area

Bamaga Island council area

Badu Island council area

Boigu Island council area

Coconut Island council area

Darnley Island council area

Dauan Island council area

Hammond Island council area

Kubin Island council area

SCHEDULE 1A (continued)

The land mentioned in the first and second schedules of deed of grant reference number 21296133	Mabuiag Island council area
The land mentioned in the first and second schedules of deed of grant reference number 21296134	Saibai Island council area
The land mentioned in the first and second schedules of deed of grant reference number 21352022	Seisia Island council area
The land mentioned in the first and second schedules of deed of grant reference number 21296136	St Pauls Island council area
The land mentioned in the first and second schedules of deed of grant reference number 21296135	Stephen Island council area
The land mentioned in the first and second schedules of deed of grant reference number 21296137	Sue Island council area
The land mentioned in the first and second schedules of deed of grant reference number 21296138	Yam Island council area
The land mentioned in the first and second schedules of deed of grant reference number 21296139	Yorke Island council area

SCHEDULE 2

DICTIONARY

section 2

“buway” means one of the following tribal groups under Island custom on Saibai Island—

- Koeybuway
- Moegibuway.

“buway member” means a person who, under Island custom on Saibai Island, is a member of a buway.

“clans” means the following—

- Ait Koedal
- Dhoeybaw
- Saibai Koedal
- Samu
- Sui-Baydam
- Thabu
- Umay.

“clerk” means the person appointed by an Island council, under section 51, as the clerk of the council.

“conclusion”, of an election for an Island council, see section 3.

“councillor”, of an Island council, includes the chairperson.

“cut-off date” see section 14.

“directly elected”, for a chairperson of an Island council, means directly elected by the electors of the council’s area.

SCHEDULE 2 (continued)

“elders”, of the clans, means the persons who, under Island custom on Saibai Island, are the elders of the clans.

“elector” means a person entitled to vote under this regulation.

“fine option order” has the meaning given by the *Penalties and Sentences Act 1992*.²¹

“pecuniary interest disclosure” means a disclosure made under section 25A²² of the Act.

“post-election meeting” means a meeting held under section 27.

“trust money”, of an Island council or the Island Coordinating Council, means—

- (a) an amount paid to the council—
 - (i) by way of deposit; or
 - (ii) in trust for a person; or
- (b) an amount paid to the council that is required by an Act to be paid into its trust fund.

²¹ Under the *Penalties and Sentences Act 1992*, section 4, a fine option order means a fine option order made under part 4, division 2 of the Act. Under a fine option order an order that an offender pay a fine may be suspended to allow the offender to perform community service in place of payment of the fine. The number of hours of community service that may be required in place of a fine must not be more than 10 hours for each penalty unit, or part of a penalty unit, that was imposed as a fine under the original order.

²² Section 25A (Disclosure of interests at meetings) of the Act

ENDNOTES

1 Index to endnotes

		Page
2	Date to which amendments incorporated	114
3	Key	115
4	Table of earlier reprints	115
5	List of legislation	115
6	List of annotations	116

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 6 April 2000. Future amendments of the Community Services (Torres Strait) Regulation 1998 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

*Community Services (Torres Strait)
Regulation 1998*

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to SL No. 274 of 1998	21 October 1998
1A	to SL No. 5 of 2000	8 February 2000

5 List of legislation

Community Services (Torres Strait) Regulation 1998 SL No. 193

made by the Governor in Council on 23 June 1998

notfd gaz 26 June 1998 pp 1036–7

commenced on date of notification

exp 1 September 2008 (see SIA s 54)

*Community Services (Torres Strait)
Regulation 1998*

as amended by—

Community Services Legislation Amendment Regulation (No. 1) 1998 SL No. 274 pts 1, 3

notfd gaz 9 October 1998 pp 489–91
commenced on date of notification

Community Services Legislation Amendment Regulation (No. 1) 2000 SL No. 5 pts 1, 3

notfd gaz 21 January 2000 pp 192–3
commenced on date of notification

Community Services Legislation Amendment Regulation (No. 2) 2000 SL No. 49 pts 1, 3

notfd gaz 24 March 2000 pp 1130–31
commenced on date of notification

6 List of annotations

Membership of Island councils

s 4 amd 2000 SL No. 5 s 18

Saibai Island council to have 7 councillors

s 4A ins 2000 SL No. 5 s 19

Proposal to decide other number of councillors

s 5 amd 2000 SL No. 5 s 20

Resolution of Island council

s 6 amd 2000 SL No. 5 s 21

Petition by electors of area

s 7 amd 2000 SL No. 5 s 21

Minister to make decision about resolution or petition

s 8 amd 2000 SL No. 5 s 21

Change in membership takes effect at next quadrennial election

prov hdg amd 2000 SL No. 5 s 21

s 9 amd 2000 SL No. 5 s 21

Qualifications for councillors

s 10 amd 2000 SL No. 5 s 22; 2000 SL No. 49 s 5

Disqualification of councillors

s 11 amd 2000 SL No. 5 s 23

Term of office as appointed councillor

s 12 amd 2000 SL No. 5 s 21

When councillor's office becomes vacant

s 13 amd 2000 SL No. 5 s 21

*Community Services (Torres Strait)
Regulation 1998*

Filling of earlier vacancies by by-election

s 14 amd 2000 SL No. 5 s 21

Membership of Island councils

s 16 amd 2000 SL No. 5 s 24

Duration of appointment of chairperson

s 17 amd 2000 SL No. 5 s 21

Office of chairperson may be declared vacant

s 19 amd 2000 SL No. 5 s 25

Resolution of Island council

s 22 amd 2000 SL No. 5 s 21

Petition by electors of area

s 23 amd 2000 SL No. 5 s 21

Direct election of chairperson takes effect at next election

s 25 amd 2000 SL No. 5 s 21

Post-election meetings

s 27 amd 2000 SL No. 5 s 21

Procedure at meetings

s 33 amd 2000 SL No. 49 s 6

Approved forms for annual financial statements

s 49 amd 2000 SL No. 5 s 26

Appointment of chairperson and deputy chairperson

s 58 amd 2000 SL No. 5 s 21

PART 10—ISLAND COUNCIL AREAS

pt hdg ins 2000 SL No. 5 s 28

Declaration of council areas—Act, s 14

s 64A ins 2000 SL No. 5 s 28

PART 11—MISCELLANEOUS

pt hdg prev pt 11 hdg exp 26 June 1998 (see s 68)
pres pt 11 hdg (prev pt 10 hdg) renum 2000 SL No. 5 s 27

PART 12—TRANSITIONAL

pt hdg ins 2000 SL No. 5 s 29

**Transitional provision for Community Services Legislation Amendment (No. 1)
Regulation 2000**

s 66 prev s 66 exp 26 June 1998 (see s 68)
pres s 66 ins 2000 SL No. 5 s 29

Transitional provision for Saibai Island council

s 67 prev s 67 exp 26 June 1998 (see s 68)
pres s 67 ins 2000 SL No. 5 s 29

Expiry of part

s 68 exp 26 June 1998 (see s 68)

SCHEDULE 1—ELECTIONS

sub 1998 SL No. 274 s 5

PART 1—GENERAL**Quadrennial elections**

prov hdg sub 2000 SL No. 5 s 30(1)

s 266 amd 2000 SL No. 5 s 30(2)

Types of elections

s 267 amd 2000 SL No. 5 s 31

Date of quadrennial elections

prov hdg sub 2000 SL No. 5 s 32(1)

s 269 amd 2000 SL No. 5 s 32(2)

PART 3—VOTERS ROLL**Returning officer must compile voters roll**

s 275 amd 2000 SL No. 5 s 33

Cut-off day for voters roll

s 277 amd 2000 SL No. 5 s 34

Requirements of voters roll

s 279 amd 2000 SL No. 5 s 35

PART 6—CONDUCT OF ELECTIONS**Division 4—Nominations of candidates for election**

div hdg amd 2000 SL No. 5 s 36

How and when nomination is given

s 303 amd 2000 SL No. 5 s 37

Procedure if number of candidates not more than number required

s 310 amd 2000 SL No. 5 s 38

Disposal of nomination fees generally

s 314 amd 2000 SL No. 5 s 39

Requirements of ballot papers

s 325 amd 2000 SL No. 5 s 40

Separate ballot papers for separate polls

s 326 amd 2000 SL No. 5 s 41

Distribution of ballot papers to certain electors who may cast declaration vote

s 346A ins 2000 SL No. 5 s 42

**Distribution of declaration envelopes when separate ballot papers
or polls on same day**

s 353 amd 2000 SL No. 5 s 43

PART 7—FRESH ELECTIONS**Other provisions of schedule apply****s 412** amd 2000 SL No. 5 s 21**SCHEDULE 1A—DECLARATION OF COUNCIL AREAS**

ins 2000 SL No. 5 s 44

SCHEDULE 2—DICTIONARYdef **“buway”** ins 2000 SL No. 5 s 45(1)def **“buway member”** ins 2000 SL No. 5 s 45(1)def **“clans”** ins 2000 SL No. 5 s 45(1)def **“elders”** ins 2000 SL No. 5 s 45(1)def **“pecuniary interest disclosure”** amd 2000 SL No. 5 s 45(2)