



Queensland

*Local Government (Community Government Areas) Act 2004*

# **Local Government (Community Government Areas) Regulation 2004**

Reprinted as in force on 9 November 2007

Reprint No. 1D

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This regulation is reprinted as at 9 November 2007. 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. Also see list of legislation for any uncommenced amendments.

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

**Also see endnotes for information about—**

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

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# **Local Government (Community Government Areas) Regulation 2004**

[as amended by all amendments that commenced on or before 9 November 2007]

## **Part 1 Preliminary**

### **1 Short title**

This regulation may be cited as the *Local Government (Community Government Areas) Regulation 2004*.

### **2 Commencement**

This regulation commences on 1 January 2005.

### **3 Dictionary**

The dictionary in schedule 3 defines particular words used in this regulation.

## **Part 2 Community governments**

### **Division 1 Number of councillors**

#### **4 Minimum number**

A community government consists of at least 5 councillors, including the mayor.

## **Division 2                      Qualifications and disqualifications**

### **5                      General qualifications**

- (1) A person is qualified to become a community government's councillor if the person is an Australian citizen who—
  - (a) lives in the community government area of the community government; and
  - (b) is, under the *Electoral Act 1992*, an elector for an electoral district, or a part of an electoral district, included in the community government area of the community government—
    - (i) for the person's election as a councillor of the community government—when the voters roll for the election is compiled under schedule 2, section 277 or 411;<sup>1</sup> or
    - (ii) for the person's appointment as a councillor of the community government under section 13<sup>2</sup>—for at least 30 days before the appointment.
- (2) A person who is a community government's councillor, whether elected or appointed, is qualified to be a councillor of the community government only while the person—
  - (a) lives in the community government area of the community government; and
  - (b) is, under the *Electoral Act 1992*, an elector for an electoral district, or a part of an electoral district, included in the community government area of the community government.
- (3) This section is subject to sections 6 and 7.

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1     Schedule 2 (Elections), section 277 (Cut off day for voters roll) or 411 (Voters roll for fresh election)

2     Section 13 (Filling of later vacancies by appointment)

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## **6 General disqualifications**

- (1) A person is not qualified to be or become a community government's councillor if—
- (a) the person is an undischarged bankrupt under the *Bankruptcy Act 1966* (Cwlth) or a corresponding law of another jurisdiction; or
  - (b) the person has executed a deed of arrangement under the *Bankruptcy Act 1966* (Cwlth), part X, or a corresponding law of another jurisdiction, 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, or a corresponding law of another jurisdiction, and a final payment has not been made under the composition; or
  - (d) the person is subject to a term of imprisonment or detention, periodic or otherwise; or
  - (e) the person has been convicted, and not pardoned, of treason, sedition or sabotage under the law of Queensland, another State or the Commonwealth; or
  - (f) for a candidate for an election of councillors, or of a councillor, of the community government, the person—
    - (i) has, within 2 years before the day of nomination, been convicted of an offence against the law of Queensland, another State or the Commonwealth, and been sentenced to more than 1 year's imprisonment; or
    - (ii) has, within 7 years before the day of nomination, been convicted of an offence against schedule 2, section 385;<sup>3</sup> or
    - (iii) has, within 10 years before the day of nomination, been convicted of—
      - (A) a disqualifying electoral offence; or

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<sup>3</sup> Schedule 2 (Elections), section 385 (Bribery)

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- (B) an offence that would be a disqualifying electoral offence, except that the conviction was recorded before the commencement of the *Electoral and Other Acts Amendment Act 2002*; or
- (g) for a councillor of the community government, the person is convicted of—
  - (i) an offence against schedule 2, section 385; or
  - (ii) a disqualifying electoral offence; or
- (h) the person is a member of an Australian Parliament; or
- (i) the person is elected or appointed as mayor or a councillor of a local government of another State.
- (2) For subsection (1)(d), the circumstances in which a person is subject to a term of imprisonment or detention—
  - (a) include circumstances in which the person is released from the term of imprisonment or detention on parole, home detention, leave of absence or otherwise without being discharged from all liability to serve all or part of the term; but
  - (b) do not include circumstances in which a person is subject to a term of imprisonment but is at liberty because the term of imprisonment has been suspended.
- (3) For subsection (1)(f)(i)—
  - (a) the provision does not apply if the sentence of imprisonment is suspended; but
  - (b) the provision applies if the sentence of imprisonment is suspended and the person is ordered at any time to actually serve more than 1 year of the term of imprisonment.
- (4) In this section—

***corresponding law of another jurisdiction*** means a corresponding law of another jurisdiction, whether inside or outside Australia.

***disqualifying electoral offence*** see the *Electoral Act 1992*, section 3.

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**7 Disqualification and vacation of office for certain offences**

- (1) This section applies if a person is convicted of an offence against the *Local Government Act 1993*, section 244,<sup>4</sup> or schedule 2, section 384, 399 or 401(a) or (b).<sup>5</sup>
- (2) The person is not qualified to become a community government's councillor for 4 years after the conviction.
- (3) If the person is a community government's councillor, the person vacates the office—
  - (a) if the person appeals against the conviction—on the appeal being dismissed, struck out or discontinued; or
  - (b) if the person does not appeal against the conviction—at the end of the time fixed by law within which an appeal must be started.
- (4) A court may, by order, direct that this section does not apply to a person if the court is satisfied it would be just to give the direction.

**8 Review of lawfulness of membership of community government**

- (1) This section applies to an application for review under the *Judicial Review Act 1991* of—
  - (a) the lawfulness of the election or appointment of a community government's councillor; or
  - (b) the continued eligibility of a person to act as a community government's councillor.
- (2) For the purposes of the *Judicial Review Act 1991*, any elector of the community government is a person who may make the application.

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4 *Local Government Act 1993*, section 244 (Exclusion from meeting of councillor with material personal interest)

5 Schedule 2 (Elections), section 384 (False, misleading or incomplete electoral documents), 399 (Influencing voting) or 401 (Voting if not entitled)

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- (3) However, subsection (2) does not limit the persons who may make the application.

**9 Councillor ceases to be councillor on becoming candidate for the Legislative Assembly**

A person who is a community government's councillor ceases to be a councillor if under the *Electoral Act 1992*, section 88(3), the person becomes a candidate for an election as a member of the Legislative Assembly.

**10 Termination of community government employment on becoming councillor**

- (1) This section applies to the following employees of a community government—
- (a) the chief executive officer, or acting chief executive officer, of the community government;
  - (b) a finance officer, financial controller, accountant, or holder of another position, whose primary responsibility is the administration of the community government's finances;
  - (c) the holder of a position with the community government that reports directly to a position mentioned in paragraph (a) or (b).
- (2) If the employee is elected or appointed as a councillor of the community government, the person is taken to have resigned as an employee on the day the person becomes a councillor.

**Division 3 Vacancies in office**

**11 When councillor's office becomes vacant**

- (1) A person's office as a community government's councillor becomes vacant if the person—
- (a) resigns as a councillor; or



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- (b) ceases to be qualified to be or become a councillor under division 2; or
  - (c) without the community government's leave, is absent from 3 or more consecutive ordinary meetings of the community government over at least 3 months; or
  - (d) 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
  - (e) becomes the chief executive officer, or acting chief executive officer, of the community government; or
  - (f) becomes a finance officer, financial controller, accountant, or holder of another position, whose primary responsibility is the administration of the community government's finances; or
  - (g) becomes the holder of a position with the community government that reports directly to a position mentioned in paragraph (e) or (f); or
  - (h) is elected to another office of the community government at a by-election; or
  - (i) otherwise ceases to hold the office before the end of the councillor's term of office.
- (2) This section does not apply if—
- (a) the office is the office of mayor of the community government; and
  - (b) the person was appointed to the office, other than under section 13.

## **12 Filling of earlier vacancies by by-election**

- (1) This section applies if a person's office as a community government's councillor becomes vacant before 1 March (the *cut-off date*) in the year before the year in which the next quadrennial elections for the community government are to be held.
- (2) The vacancy must be filled by a by-election.
- (3) This section does not apply if—

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- (a) the office is the office of mayor of the community government; and
- (b) the person was appointed to the office.

### **13 Filling of later vacancies by appointment**

- (1) This section applies if a person's office as a community government's councillor becomes vacant on or after the cut-off date.
- (2) Within 14 days after the vacancy happens, the chief executive officer must—
  - (a) by notice displayed in a conspicuous position in the community government area of the community government and in other ways the community government considers appropriate, invite written nominations for appointment to the office from qualified persons; and
  - (b) by notice to each person who was a candidate for the office at the last quadrennial elections for the community government—
    - (i) inform the person of the vacancy; and
    - (ii) ask the person to give notice to the chief executive about whether the person is willing to accept the office if appointed.
- (3) If qualified persons nominate for appointment or notify a willingness to accept the office if appointed, the community government must fill the vacancy by appointment from among the persons.
- (4) If the vacancy is not properly filled within 2 months after the vacancy happens, the Governor in Council may appoint a qualified person to fill the vacancy.
- (5) This section does not apply if—
  - (a) the office is the office of mayor of the community government; and
  - (b) the person was appointed to the office, other than under this section.

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(6) In this section—

*qualified person* means a person who is qualified to become a councillor of the community government.

## **Division 4                  Appointment of financial     controllers—Act, section 22**

### **13A      Appointment of financial controller—Doomadgee                  Shire Council**

- (1) Graeme Pearson is appointed as a financial controller for the Doomadgee Shire Council.
- (2) The appointment is for the period starting on 27 July 2007 and ending on 18 March 2008.

### **13B      Appointment of financial controllers—Pormpuraaw                  Shire Council**

- (1) Lisa Niven and Graeme Pearson are each appointed as a financial controller for the Pormpuraaw Shire Council.
- (2) The appointment is for the period starting on 10 August 2007 and ending on 8 February 2008.

### **13C      Appointment of financial controllers—Napranum                  Shire Council**

- (1) Andrew Muir and Lisa Niven are each appointed as a financial controller for the Napranum Shire Council.
- (2) The appointment is for the period starting on 9 November 2007 and ending on 18 March 2008.



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**17 Vacating office of mayor**

A person's office as a community government's mayor becomes vacant if—

- (a) the person resigns as mayor; or
- (b) the person's office as a councillor of the community government becomes vacant under section 11; or
- (c) the person's office as mayor is declared vacant under section 18.

**18 Office of mayor may be declared vacant**

- (1) A community government, by resolution, may declare the office of mayor is vacant.
- (2) The resolution may be passed only if notice of the resolution has been given to the members of the community government at least 14 days before the meeting.
- (3) Subsection (2) has effect despite the *Local Government Act 1993*, section 450(1).<sup>6</sup>

## **Part 4 Elections for community governments**

**19 Election of councillors**

The *Local Government Act 1993*, chapter 5, as in force at the commencement of this section, applies to elections for community governments with the changes shown in schedule 2.

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<sup>6</sup> *Local Government Act 1993*, section 450 (Notice of meetings)

## Part 5 **Reviewable community government matters**

### 20 **Issues identified**

- (1) Subsections (2) and (3) identify issues that may be prescribed under section 18<sup>7</sup> of the Act.
- (2) The issue of *community of interest* is that the external boundaries of a community government area should be drawn in a way that has regard to community of interest, including that the community government area should generally—
  - (a) reflect local communities, for example, the geographical pattern of human activities (where people live, work and engage in leisure activities), and the linkages between local communities; and
  - (b) have a centre, or centres, of administration and service easily accessible to its population; and
  - (c) ensure effective elected representation for residents and ratepayers; and
  - (d) have external boundaries that—
    - (i) do not divide local neighbourhoods or adjacent rural and urban areas with common interests or interdependencies (including, for example, economic, cultural and ethnic interests or interdependencies); and
    - (ii) subject to the water catchment principle—follow the natural geographical features and non-natural features separating different communities; and
    - (iii) do not dissect properties.
- (3) The issue of *internal boundaries* is that the boundaries of the divisions of a community government area should be drawn in a way that has regard to the following—
  - (a) community and diversity of interest;

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7 Section 18 (Commissions must have regard to prescribed issues) of the Act

*Local Government (Community Government Areas)  
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- (b) ways of communication;
  - (c) physical features;
  - (d) population density;
  - (e) demographic trends;
  - (f) development trends.
- (4) In this section—

*water catchment principle* means the principle that water catchment areas should generally be included in the community government area they service.

**21 Prescribed issues—Act, s 18**

- (1) This section prescribes issues to which a commission must have regard under section 18 of the Act when considering a reviewable community government matter.
- (2) If the reviewable community government matter is a reviewable community government matter mentioned in section 14(1)(a) or (b)<sup>8</sup> of the Act (other than abolishing divisions of a community government area), the commission must have regard to the issue of internal boundaries.

## **Part 6 Working out quota for divided community government areas**

**22 Working out quota**

In applying the *Local Government Act 1993*, section 285, under section 20 of the Act, the quota is worked out by dividing the total number of electors, as nearly as can be found out—

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8 Section 14 (Meaning of *reviewable community government matter*) of the Act

*Local Government (Community Government Areas)  
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- (a) if the relevant community government's mayor is permitted, under the Act, to be directly elected—by the number of councillors (other than the mayor) of the community government; or
- (b) if the relevant community government's mayor is not permitted, under the Act, to be directly elected—by the number of councillors of the community government.



## **Schedule 2      Elections**

section 19

**(The Local Government Act 1993, chapter 5 applied to community governments)<sup>9</sup>**

### **Part 1                      General**

#### **266      Quadrennial elections**

Councillors of a *community* government are to be elected once every 4 years.

#### **267      Types of elections**

- (1) *If a community government's mayor is permitted under the Act to be directly elected, a quadrennial or fresh election of the mayor (words omitted) is an election for the whole of the community government area for the community government.*
- (2) A quadrennial or fresh election for another councillor of a *community* government is—
  - (a) *if the community government area for the community government does not have divisions—an election for the whole of the area; or*
  - (b) *if the community government area for the community government has divisions—an election for each division of the area.*
- (3) A by-election to fill a vacancy in the office of a *community* government councillor is an election for *the community government area for the community government*, or the division of *the community government area for the community government*, for which the councillor was elected.

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<sup>9</sup> Textual changes are indicated by italic script (other than the citations of Acts, definitions and examples).

### Schedule 2 (continued)

- (4) *Elections for an ISG community government are based on the recognised indigenous social groupings of the community government area of the ISG community government, despite subsections (2) and (3).*

#### **268 Elections to be held on a Saturday**

Every *community* government election must be held on a Saturday.

#### **269 Date of quadrennial elections**

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

#### **270 Date of by-elections**

- (1) A by-election to fill a vacancy in the office of a *community* government councillor is to be held on the date fixed by the returning officer for the election.
- (2) The date fixed must be within 10 weeks after the vacancy happens.

#### **271 Community governments responsible for expenditure for conducting elections**

A *community* government is responsible for expenditure incurred for the conduct of an election in its *community* government area.

Schedule 2 (continued)

**Part 2                      Returning officers**

**272      Chief executive officer is returning officer**

- (1) The chief executive officer of a *community* government is the returning officer for every election of a councillor of the *community* government.
- (2) This section is subject to section 273.

**273      Appointment of returning officer in place of the chief executive officer**

- (1) If the chief executive officer considers on reasonable grounds that it is appropriate to appoint another individual as returning officer for an election, the chief executive officer may make the appointment in the approved form.
- (2) An individual who is not a current employee of the *community* government can not be appointed as returning officer for an election unless the chief executive officer—
  - (a) has, *by notice displayed in a conspicuous position in the community government area of the community government and in other ways* the chief executive officer considers appropriate, invited expressions of interest from individuals who are suitably qualified to conduct elections; and
  - (b) if the chief executive officer considers it appropriate—has invited submissions for appointment as returning officer from any individual the chief executive officer 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

### Schedule 2 (continued)

- (iii) the cost of the individual providing the services required.
- (3) Subsections (4) to (6) apply if a returning officer appointed by the chief executive officer is, for any reason, unable to perform the duties of the returning officer.
- (4) If possible, the returning officer must immediately inform the chief executive officer.
- (5) The chief executive officer may become the returning officer or appoint another 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 *community* government.
- (7) If the chief executive officer believes he or she can not properly perform the duties of returning officer for an election because of a possible conflict of interest, the chief executive officer 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.

#### **274 Returning officer's duty for by-election**

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 community government area of the community government 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.

Schedule 2 (continued)

**Part 3**                      **Voters roll**

**275**      **Returning officer must compile voters roll**

- (1) The returning officer for a *community* government election 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 an ISG community government, the returning officer for the election must—*
  - (a) *compile the voters roll based on the recognised indigenous social groupings of the community government area of the ISG community government, to the extent necessary for the election; and*
  - (b) *if a person is not a member of a recognised indigenous social grouping of the community government area of the ISG community government—consult with the elders of the recognised indigenous social groupings of the community government area of the ISG community government about the way in which the person’s name should appear in the voters roll.*

**276**      **Qualification for enrolment on voters roll**

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

- (a) for an election for the whole of the *community government area for the community government*—in the area; or
- (b) for an election for a division of the *community government area for the community government*—in the division.

## Schedule 2 (continued)

### 277 Cut off day for voters roll

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 *community* government councillor—at least 5 days, and not more than 7 days, after the *display*, under section 274, of notice of the day of the by-election.

### 278 Use of electoral roll when practicable

- (1) The voters roll for an election for a *community* government must consist of the persons enrolled on an electoral roll for an electoral district, or a part of an electoral district, included—
  - (a) for an election for the whole of the *community government area for the community government*—in the area; or
  - (b) for an election for a division of the *community government area for the community government*—in the division.
- (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 or its divisions are not identical with the boundaries of the electoral district.

### 279 Requirements of voters roll

- (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 an ISG community government only to the extent that it is*

### Schedule 2 (continued)

*consistent with a voters roll based on the recognised indigenous social groupings of the community government area of the ISG community government.*

- (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.

#### **280 Voters roll to be open to inspection and purchase**

- (1) A voters roll for an election is open to inspection.
- (2) Copies of the voters roll must be available for purchase at the *community* government's public office.
- (3) The price of a copy of the voters roll must be no more than the cost to the *community* government of having the copy available for purchase and, if the copy is posted to the purchaser, the postage cost.

#### **281 Electoral registrars to help returning officers**

An electoral registrar under the *Electoral Act 1992* must give a returning officer the assistance that the returning officer reasonably requires to compile a voters roll for a *community* government election.

## **Part 4 Voting**

#### **282 Compulsory voting**

Voting at an election for a *community* government is compulsory and each elector is entitled to 1 vote only.

#### **283 System of voting**

- (1) The system of voting at an election for a councillor is—

### Schedule 2 (continued)

- (a) for a *community* government area divided into single-member divisions—optional-preferential voting; and
  - (b) in any other case—first-past-the-post voting.
- (2) *For an ISG community government, subsection (1)(a) applies as if a reference in that paragraph to divisions were a reference to the recognised indigenous social groupings of the community government area of the ISG community government.*

## **Part 5**                      **(omitted)**

## **Part 6**                      **Conduct of elections**

### **Division 1**                **Preliminary**

#### **289**    **Conduct of elections**

An election must be conducted under this part.

### **Division 2**                **Electoral officers**

#### **290**    **Returning officer**

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



## Schedule 2 (continued)

### 291 Assistant returning officers

- (1) The returning officer for an election may appoint 1 or more assistant returning officers for the election.
- (2) An appointment under subsection (1) must be in the approved form.

### 292 Presiding officers

- (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.

### 293 Issuing officers

- (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 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.

### Schedule 2 (continued)

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

#### **294 Declaration by issuing officers**

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

#### **295 Returning officer may act through other officers**

If—

- (a) the returning officer may, under this part, do anything; and
- (b) the returning officer authorises an assistant returning officer, 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 For an election, if the returning officer authorises an assistant returning officer to conduct the election in a division, and the assistant returning officer does so, the returning officer is taken to have conducted the election in the division.
- 2 For an election, if the returning officer authorises an assistant returning officer to carry out the functions of the returning officer under section 366,<sup>10</sup> the returning officer is taken to have carried out those functions.
- 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.

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<sup>10</sup> Section 366 (Official counting of votes)

Schedule 2 (continued)

**296 Assistant returning officer may act through certain authorised officers**

If—

- (a) an assistant returning officer may, under this part, do anything; and
  - (b) the assistant returning officer authorises a presiding officer or issuing officer to do the thing; and
  - (c) the presiding officer or issuing officer does the thing;
- the thing is taken to have been done by the assistant returning officer.

**297 Supply and use of voters rolls**

- (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**

**298 Qualification for nomination**

- (1) Subject to subsection (3), a person who is qualified under *part 2, division 2 of this regulation*, to become a councillor of a *community* government may nominate for election or appointment to the *community* government.
- (2) A person is not disqualified from nominating because the person is a member of the Legislative Assembly or a *community* government employee.
- (3) A person who is a candidate for election as a member of an Australian Parliament, is not qualified to be nominated for

### Schedule 2 (continued)

election or appointed as a councillor of a *community* government until—

- (a) for an election under the *Electoral Act 1992*—the day the Electoral Commission is notified, under section 122(1) of that Act, of the candidate elected for the electoral district for which the person is a candidate; or
- (b) for an election under the *Commonwealth Electoral Act 1918* (Cwlth)—
  - (i) the day the result of the election and the candidates elected are declared under section 283 of that Act; or
  - (ii) the day the candidate elected for the division for which the person is a candidate is declared under section 284 of that Act.<sup>11</sup>

(4) (*omitted*)

### **299 Prohibition of dual candidature**

- (1) A person can not, at the same time, be a candidate—
  - (a) *if a community government's mayor is permitted, under the Act, to be directly elected*—for election as mayor of the *community* government and as another councillor of the *community* government; or
  - (b) for election as a councillor of a *community* government for more than 1 division of the *community* government area of the *community* government.
- (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*)

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<sup>11</sup> *Commonwealth Electoral Act 1918* (Cwlth), sections 283 (Return of writ for election of Senators) and 284 (Declaration of poll and return of writs for House of Representatives)

### Schedule 2 (continued)

- (4) *For an ISG community government, subsection (1)(b) applies as if a reference to a division of a community government area were a reference to a recognised indigenous social grouping of the community government area of the ISG community government.*

#### **300 Leave to *community* government employee to contest election**

- (1) A *community* government employee who nominates as a candidate for election as a *community* government councillor is entitled to leave of absence for a period of not more than 2 months to contest the election.
- (2) A *community* government 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 *community* government 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**

#### **301 Calling for nominations**

- (1) The returning officer must publish, *by displaying a notice in a conspicuous position in the community government area or division of the community government 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—

### Schedule 2 (continued)

- (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 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 *community* government's public office; or
  - (b) a place in its area convenient generally to persons in its area.

### 302 Who may nominate

- (1) A candidate for election as a councillor of a *community* government must be a person who is qualified under section 298 to nominate for the election.
- (2) (*omitted*)

### 303 How and when nomination is given

- (1) A person who wishes to be a candidate for election must be nominated by—
  - (a) (*omitted*)
  - (aa) *for an ISG community government—at least 2 electors for the recognised indigenous social grouping of the community government area of the ISG community government for which the election is to be held; or*
  - (b) *for a community government that is not an ISG community government—at least 2 electors for the community government area, or division of the community government area, for which the election is to be held.*
- (2) A nomination must be—
  - (a) in the approved form; and

## Schedule 2 (continued)

- (b) given to the returning officer after the nominations are invited for the election but before noon on the nomination day.

### **304 Deposit to accompany nomination**

- (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) \$150; or
  - (b) *(omitted)*
- (2) The deposit must be held in the trust fund of the *community* government until it is refunded, or becomes the property of the *community* government, under this part.

### **305 Special grounds for deciding a person is not properly nominated**

*(omitted)*

### **306 Certificate of returning officer**

- (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 to 304 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 does not apply to the person's nomination; and

### Schedule 2 (continued)

- (c) the nomination has not been withdrawn.
- (4) The returning officer is not obliged to look beyond—
  - (a) the form of nomination and payment of the deposit; 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 *community* government area of the *community* government.
- (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.

### **307 Display of nominations**

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 *community* government's public office, at the public office.

### **308 Termination of candidature before noon on nomination day**

- (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 deposit must be refunded to the person.



## Schedule 2 (continued)

### 309 Death of candidate

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 deposit must be refunded to the person's personal representative.

### 310 Procedure if number of candidates not more than number required

(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 *community* government area, or division of the *community* government area, 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; 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 *community* government, the number of persons necessary to constitute fully the *community* government.

- (3) Each person appointed as a councillor must be qualified to be elected as a councillor of the *community* government for the *community* government area, or division of the *community* government area, for which the election was to be held.
- (4) The persons appointed are taken to have been properly elected as councillors of the *community* government.

Schedule 2 (continued)

- (5) *For an ISG community government, subsections (1) and (2) apply as if references in those subsections to an election were a reference to an election relating to a recognised indigenous social grouping of the community government area of the ISG community government.*

**311 Procedure if number of candidates exceeds number required**

- (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; 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 8a.m. to 6p.m; and
  - (c) be displayed in a conspicuous position at the place of nomination and, if that place is not the *community* government's public office, displayed at the public office; and
  - (d) *(omitted)*
- (4) Display of a notice under subsection (3)(c) must—

### Schedule 2 (continued)

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

#### **312 Supply of voters roll**

- (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.

#### **313 Procedure on death of candidate when poll to be conducted**

- (1) If a poll is to be conducted and a candidate dies after noon on the nomination day but before the polling day—
  - (a) for a candidate as mayor—the proceedings for the election of the mayor must start again; and
  - (b) for a candidate as councillor (other than mayor) if the *community* government area of the *community* government is undivided—the proceedings for the election of the councillors must start again; and
  - (c) for a candidate as a councillor for a division of the *community* government area of the *community* government—the proceedings for the election of councillors for the division must start again; *and*
  - (d) *for a candidate as a councillor for a recognised indigenous social grouping of the community government area of an ISG community government—the proceedings for the election of councillors for the indigenous social grouping must start again.*
- (2) The deceased candidate's deposit must be refunded to the candidate's personal representative.
- (3) The deposits of other candidates must be refunded to the candidates.

### Schedule 2 (continued)

- (4) Despite subsection (1), the Governor in Council may, by gazette notice, direct that proceedings for holding an election of all councillors of the *community* government start again.
- (5) If proceedings are started again, the Governor in Council must, by gazette notice, fix a new polling day for the election.

#### **314 Disposal of deposits generally**

- (1) As soon as practicable after the conclusion of an election, each candidate's deposit must be refunded to the candidate if—
  - (a) the candidate is elected; or
  - (b) if the system of voting at the election is optional-preferential voting—the number of first preference votes received by the candidate is more than 4% of the total number of formal first preference votes cast in the election *for the division or indigenous social grouping for which the candidate nominated*; or
  - (c) if the system of voting at the election is first-past-the-post voting—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' deposits become the property of the *community* government and must be paid into its operating fund.
- (4) *(omitted)*

#### **315 If successful candidate dies**

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.

## Schedule 2 (continued)

### 316 Extension of times

- (1) This section applies if—
  - (a) a nomination day is specified under section 301 for the election; or
  - (b) a polling day is specified under section 311 for the election.
- (2) The Governor in Council 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 *community* government area, or division of the *community* government area, for which the election is to be held giving any necessary directions to candidates for election, and to electors, about the procedures to be followed.

## Division 5 Ballots

### 317 Poll by ballot

A poll must be conducted by ballot taken under this part.

### 318 Direction that poll be conducted by postal ballot

- (1) If the *community* government area of the *community* government includes a large rural sector, the Governor in Council may, by gazette notice, direct that a poll be conducted by postal ballot.
- (2) The direction may be given for—
  - (a) the whole of its area; or
  - (b) 1 or more divisions of its area; or
  - (c) a part of its area marked on a map.
- (3) The map is open to inspection at the public office of the *community* government.

Schedule 2 (continued)

**Division 6                      Polling booths**

**319      Polling booths—general**

- (1) A place on or from which liquor may lawfully be sold can not be used as a polling booth.
- (2) However, a civic or cultural centre, community hall or similar place under the *community* government'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; and
  - (b) the *community* government 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 *community* government area, or division of the *community* government 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) The returning officer may arrange for all polling booths or specified polling booths for an election in a division of the *community* government area to also be used for any other election conducted at the same time for, or for a division of, the *community* government area.

## Schedule 2 (continued)

### 320 Provision of ordinary polling booths

- (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, 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 8a.m. to 6p.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.

### 321 Declaration of mobile polling booths

- (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 *community* government area or division of the *community* government

### Schedule 2 (continued)

area 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 6p.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 *community government 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 *community government 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 published under subsection (4).

### **322 Duty of person in charge of institution**

- (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



## Schedule 2 (continued)

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.

### **323 Privacy of voting**

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**

### **324 Ballot boxes generally**

- (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.

### **325 Requirements of ballot papers**

- (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

### Schedule 2 (continued)

- (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 the numeral 1 and proceeding by intervals of one whole numeral, so that each butt for the *community* government area, or division of the *community* government area, 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—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 community government area of an ISG community government as if, for each recognised indigenous social grouping of the community government area of the ISG community government, 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.
- (4) A ballot paper must not contain anyone else’s name.

### **326 Separate ballot papers for separate polls**

- (1) This section applies if a *community government’s mayor is permitted, under the Act, to be directly elected.*

### Schedule 2 (continued)

- (2) *If a poll for election of the mayor is to be conducted when a poll for election of another councillor of the community government is conducted, separate ballot papers must be used for the polls unless the returning officer decides to use a combined ballot paper.*

### **327 Order of listing of candidates' names**

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

### Schedule 2 (continued)

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

### **328 Distribution of ballot papers**

- (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 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—

### Schedule 2 (continued)

- (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.

### **329 Correction of errors etc.**

Any error, omission or delay in respect of any voters roll, ballot papers or other document to be used in a poll may be corrected by procedures directed by the Governor in Council, by gazette notice.

## **Division 8 Scrutineers**

### **330 Candidates' entitlement to scrutineers**

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.

### **331 Appointment of scrutineers**

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

### Schedule 2 (continued)

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

#### **332 Proof of identification**

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.

#### **333 Powers of scrutineers**

- (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
  - (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.

Schedule 2 (continued)

**Division 9                      Voting generally**

**334      Who may vote**

Only electors may vote in a ballot taken in a poll.

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

- (1) Voting at an ordinary polling booth must take place between 8a.m. and 6p.m. on polling day.
- (2) However, an elector who is in an ordinary polling booth at 6p.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.

**336      Procedure for voting at a polling booth**

- (1) Subject to sections 338 and 340, 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 *community* government area, or division of the *community* government 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;

### Schedule 2 (continued)

- 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); 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.
- (8) 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.
- (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; 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.

### **337 Duties of issuing officer for returned papers**

- (1) An issuing officer must—



### Schedule 2 (continued)

- (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); 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).

### **338 Arrangements for electors with disability**

- (1) This section applies if an elector can not 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—
  - (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—

### Schedule 2 (continued)

- (i) the vote is a declaration vote—put the sealed declaration envelope in the appropriate ballot box inside the polling booth; or
  - (ii) 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 is complied with when the elector votes; or
  - (b) for another vote—section 336 is complied with when the elector votes.
- (5) Subsections (2) and (3) apply to all types of voting under this division.

### **339 Arrangements for electors at institutions**

- (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 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.

### Schedule 2 (continued)

- (4) The issuing officer must ensure that, as far as practicable—
  - (a) for a declaration vote—section 348 is complied with when the elector votes; or
  - (b) for another vote—section 336 is complied with when the elector votes.

### **340 Arrangements for electoral visitor voting**

- (1) The following electors are entitled to be electoral visitor voters—
  - (a) electors who, because of illness, disability or advanced pregnancy, will be prevented from voting at a polling booth;
  - (b) electors who, because they are caring for a person who is ill, has a disability or is pregnant, will be prevented from voting at a polling booth.
- (2) An elector who is entitled to be an electoral visitor voter may apply to the returning officer to vote as an electoral visitor voter.
- (3) The application must be in the approved form.
- (4) If the application is received not later than 6p.m. on the Thursday before polling day, the returning officer must direct an issuing officer to visit the elector to enable the elector to vote.
- (5) As soon as practicable after the returning officer has directed an issuing officer to visit electors, the returning officer must inform each candidate for election of—
  - (a) the place from which the issuing officer proposes to start making visits; and
  - (b) the time or times on the day or days when the issuing officer proposes to start making visits.
- (6) The issuing officer must visit an elector at a reasonable hour before 6p.m. on polling day.
- (7) When visiting an elector, the issuing officer must—

### Schedule 2 (continued)

- (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.
- (8) The issuing officer must ensure that, as far as practicable—
- (a) for a declaration vote—section 348 is complied with when the elector votes; or
  - (b) for another vote—section 336 is complied with when the elector votes.

### **341 Help for electors in voting**

- (1) If an elector satisfies an issuing officer that the elector can not 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 about its marking;
  - (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.

### Schedule 2 (continued)

- (3) Subsections (1) and (2) apply to all types of voting.
- (4) This section applies despite any of the following provisions—
  - section 336(10)
  - section 348
  - section 351.

### **342 Adjourment of poll**

- (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 *community* government area; and
  - (b) in other ways the returning officer considers appropriate.

## **Division 10 Declaration voting**

### **343 Who may cast a declaration vote**

The following electors may cast a declaration vote—

### Schedule 2 (continued)

- (a) an elector who, during ordinary voting hours on polling day, will not be within 8km, 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; or
  - (ii) under an arrangement under the *Electoral Act 1992*, section 62 because of the *Commonwealth Electoral Act 1918* (Cwlth), section 104.

### **344 Who must cast a declaration vote in ordinary elections**

In an election (other than a postal ballot election), 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);

### Schedule 2 (continued)

- (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.

#### **345 Declaration voting for postal ballot elections**

An elector in a postal ballot election must cast a declaration vote.

#### **346 How declaration vote is cast**

Subject to section 336, an elector who may or must make a declaration vote must cast the vote by—

- (a) if the elector can not enter a polling booth because of illness, disability or advanced pregnancy—going to a place close to a polling booth and voting at that place; or
- (b) going to a polling booth in the *community* government area, or division of the *community* government area, during voting hours at the booth and following the procedures set out in section 348; or
- (c) going to the *community* government's public office before polling day and following the procedures set out in section 352; or
- (d) if the elector is an elector mentioned in section 343 or an elector for a postal ballot election—using the ballot paper and declaration envelope given to the elector by the returning officer, and following the procedures set out in section 351.

#### **346A Distribution of ballot papers to certain electors who may cast declaration vote**

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

### Schedule 2 (continued)

- (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—*Shire of (insert name of community government 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.

#### **347 Distribution of ballot papers to other electors who may or must cast declaration vote**

- (1) An elector mentioned in section 343(a) to (f) 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 6p.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, the officer—
  - (a) must not give a ballot paper to the applicant; but
  - (b) must give to the applicant an approved declaration form.



### Schedule 2 (continued)

- (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—*Shire of (insert name of community government 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 1992*, section 58(5), 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.

### **348 How declaration vote may be cast at a polling booth**

- (1) An elector who must cast a declaration vote, other than an elector for a postal ballot election, may cast the vote by—
  - (a) entering a polling booth in the *community* government area, or division of the *community* government 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—

### Schedule 2 (continued)

- (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; and
- (d) fold the ballot paper, put it in the envelope and seal the envelope; and
- (e) put the sealed envelope in the appropriate ballot box in the polling booth; and
- (f) leave the polling booth.

### **349 Distribution of ballot papers to electors for postal ballot election**

- (1) For a postal ballot election, the returning officer must post a ballot paper, the approved declaration envelope and written instructions in the approved form on how the vote may be cast to each elector for the postal ballot election as soon as practicable after the nomination day.
- (2) However, if—
  - (a) the issuing officer is satisfied a person is an elector mentioned in section 344(a), (b) or (c); or
  - (b) the issuing officer suspects, on reasonable grounds, that the person is not entitled to vote at the election;the officer—
  - (c) must not give a ballot paper and declaration envelope to the elector; and
  - (d) must give to the elector an approved declaration form.
- (3) If the returning officer is satisfied the elector has properly completed the declaration form, the officer must, as soon as practicable, give a ballot paper, the approved declaration

### Schedule 2 (continued)

envelope and written instructions in the approved form on how the vote may be cast to the elector.

- (4) The things posted to electors under subsection (1) or (3) must be accompanied by an unsealed *stamped or postage* paid post envelope addressed to the returning officer and bearing the words ‘Ballot paper—*Shire of (insert name of community government area).*’.
- (5) The returning officer may post the things to an elector under subsection (1), by posting them to the elector’s address stated in the voters roll or an electoral roll mentioned in the *Electoral Act 1992*, section 58(5).
- (6) The returning officer may give the things to a person to whom subsection (2) applies by posting them to the elector’s address stated in the voters roll or an electoral roll mentioned in the *Electoral Act 1992*, section 58(5), or to another address given by the person.
- (7) The returning officer may give the things to an elector under subsection (3), by posting them to the elector’s address stated in the voters roll, an electoral roll mentioned in the *Electoral Act 1992*, section 58(5) or the declaration form.

*Example of addresses for subsections (6) and (7)—*

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

- (8) If things for an elector mentioned in subsection (4) are posted to an address outside Australia, the envelope mentioned in subsection (4) need not be *stamped or postage* paid.

### **350 Record of ballot papers given to postal voters**

The issuing officer who gives a ballot paper and declaration envelope under section 346A, 347 or 349 must—

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

Schedule 2 (continued)

**351 Casting a declaration vote by post**

- (1) An elector who has received a ballot paper and declaration envelope under section 346A, 347 or 349 must, before 6p.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; 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 *stamped or postage* paid post envelope mentioned in section 346A(2), 347(6) or 349(4) and post or give the envelope to the returning officer for the election.
- (2) On receipt of the sealed envelope, the returning officer must put it in the appropriate ballot box.

**352 Declaration voting before polling day**

- (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(a) to (f) to cast a vote at the election before polling day—
  - (a) the *community* government's public office, or a part of the public office;
  - (b) (*omitted*)
  - (c) another convenient place in the *community* government area.
- (2) An elector mentioned in subsection (1) may, at any time during the relevant election period when the declared place is open for the conduct of business, ask an issuing officer at the declared place for a ballot paper.

### Schedule 2 (continued)

- (3) Subject to section 336(5) to (7), 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, 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) without delay.
- (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 community government area, or division of the community government area; and*
  - (b) not later than 6p.m. on the day before polling day.

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

- (1) This section applies if—
  - (a) under section 326, separate ballot papers are used in polls for elections of the mayor and another councillor conducted on the same day; or

### Schedule 2 (continued)

- (b) under this part, a *community* government conducts a poll under the *Local Government Act 1993*, chapter 6, part 2,<sup>12</sup> on the day of the poll for an election.
- (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.

## **Division 11            Marking of ballot papers**

### **354    Optional-preferential voting**

- (1) *If the system of voting in an election is optional-preferential voting*, a vote is validly cast if the elector votes in accordance with subsection (2) or (3).
- (2) An elector may vote by marking on a ballot paper the numeral 1, or a tick or a cross, in the square opposite the name of the candidate whom the elector prefers.
- (3) Instead of voting in accordance with subsection (2), an elector may vote by—
  - (a) marking on a ballot paper the numeral 1, or a tick or a cross, in the square opposite the name of a candidate to record the elector's first preference for the candidate; and
  - (b) marking—
    - (i) the numeral 2 in another square; or

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<sup>12</sup> *Local Government Act 1993*, chapter 6 (General operation of local governments), part 2 (Polls)

### Schedule 2 (continued)

(ii) the numerals 2, 3, and so on (in regular arithmetical sequence by intervals of 1 whole numeral) in other squares;

to record the order of the elector's preferences for 1 or more (but not necessarily all) of the other candidates.

### **355 First-past-the-post voting**

- (1) For an election other than one mentioned in section 354, a vote is validly cast if the elector votes in accordance with this section.
- (2) For an election of mayor, 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 2 (continued)

**Division 12            Replacement ballot papers**

**356    Use of replacement ballot papers**

- (1) If, while voting at a polling booth or voting under section 338 or 340, 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).
- (3) If a ballot paper given to an elector under section 346A, 347 or 349 is lost in transit or is accidentally defaced or destroyed, the returning officer for the election must, before 6p.m. on polling day, give to the elector a replacement ballot paper and the approved declaration envelope for use in the election.
- (4) However, before a replacement ballot paper can be given—



Schedule 2 (continued)

- (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).
- (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 or 10; and
  - (b) the vote cast must be dealt with under the appropriate provisions of division 14.

Schedule 2 (continued)

**Division 13                    Effect of ballot papers**

**357    Effect of ballot papers—optional-preferential voting**

- (1) This section applies to the election if the system of voting is optional-preferential voting.
- (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 354; or
    - (ii) must contain writing or marking, other than marks mentioned in the section, indicating the elector's intended preference, or intended order of preferences; and
  - (b) the ballot paper must not contain any writing or mark (other than one permitted 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 into 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—
    - (i) section 351(1) must have been complied with; and
    - (ii) if the elector is an elector mentioned in section 343(a) to (f) or 344,<sup>13</sup> or an applicant who is given an approved declaration form under section 347(4)<sup>14</sup> or an elector who is given an approved declaration form under section 349(2),<sup>15</sup> and the

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

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

15 Section 349 (Distribution of ballot papers to electors for postal ballot election)

### Schedule 2 (continued)

declaration 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, or the relevant elector under section 349; 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) If a ballot paper shows 2 or more squares in which the same numeral is marked, those numerals and any higher numerals marked in other squares must be disregarded.
- (4) If a ballot paper shows a break in the sequence of numerals marked in the squares on the ballot paper to indicate preferences, the numeral that breaks the sequence and any higher numerals marked in other squares must be disregarded.

### **358 Effect of ballot papers—first-past-the-post voting**

- (1) This section applies to the election if the system of voting is first-past-the-post voting.
- (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; 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

### Schedule 2 (continued)

- (d) for a ballot paper put into a declaration envelope as required by section 351—
  - (i) section 351(1) must have been complied with; and
  - (ii) if the elector is an elector mentioned in section 343(a) to (f) or 344<sup>16</sup> or an applicant who is given an approved declaration form under section 347(4)<sup>17</sup> or an elector who is given an approved declaration form under section 349(2),<sup>18</sup> and the declaration 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, or the relevant elector under section 349; 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.

### **359 Posted vote presumed valid until contrary proved**

If a declaration envelope and ballot paper to which section 351 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.

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

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

18 Section 349 (Distribution of ballot papers to electors for postal ballot election)

### Schedule 2 (continued)

#### **360 Formal and informal ballot papers**

- (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.

#### **361 Ballot paper partly formal and partly informal**

- (1) This section applies if—
  - (a) an election for mayor and an election for the other councillors of the *community* government 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.
- (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.

### **Division 14 Counting of votes**

#### **362 Votes to be counted in accordance with this division**

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

#### **363 Preliminary counting by presiding officer**

- (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

Schedule 2 (continued)

- (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) if the system of voting is first-past-the-post voting—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) if the system of voting is optional-preferential voting—arrange all formal ballot papers under the names of the candidates by putting in a separate parcel all formal ballot papers on which a first preference vote is recorded for the same candidate; and
- (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 if subsection (1)(c)(ii) applies, or the number of first preference votes for each candidate if subsection (1)(c)(iii) applies; and
  - (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—

### Schedule 2 (continued)

- (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) or 356(2)(e) or (4)(d), for separate identification;
- and endorse on each parcel a description of its contents; and
- (h) endorse on each parcel—
    - (i) the name of the *community* government area, or division of the *community* government area, 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.
- (1A) *For an ISG community government, subsection (1)(h)(i) applies as if a reference to a division of the community government area were a reference to a recognised indigenous social grouping of the community government area of the ISG community government.*
- (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
    - (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.

### Schedule 2 (continued)

- (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.

#### **363A Preliminary processing of declaration votes by returning officer—postal ballot election**

- (1) This section applies to an election for which a direction has been given under section 318(2)(a).
- (2) After 8a.m. on the day before polling day, the returning officer may open all ballot boxes and examine the declaration envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.

#### **364 Preliminary processing of declaration votes by returning officer—other elections**

- (1) This section applies to an election other than an election for which a direction has been given under section 318(2)(a).
- (2) After 8a.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.
- (3) As soon as practicable after 6p.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.
- (4) 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.



## Schedule 2 (continued)

### 365 Procedure for processing declaration envelopes

- (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.
- (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(3) 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.

### Schedule 2 (continued)

- (5) If a declaration envelope is rejected, the returning officer must set it 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 elector's declarations that have been removed from declaration envelopes.

### **366 Official counting of votes**

- (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)—
  - (a) if the system of voting is first-past-the-post voting—the number of votes cast for each candidate; or
  - (b) if the system of voting is optional-preferential voting—the number of first preference votes cast for each candidate.
- (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) if the system of voting is first-past-the-post voting—count the number of votes cast for each candidate on formal ballot papers, and keep the ballot papers in a separate parcel; or
    - (ii) if the system of voting is optional-preferential voting—arrange all formal ballot papers under the names of the candidates by putting in a separate parcel the formal ballot papers on which a first

### Schedule 2 (continued)

preference vote is indicated for the same candidate, and count the number of first preference votes for each candidate on the formal ballot papers.

- (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 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) if the system of voting is first-past-the-post voting—count the number of votes cast for each candidate on the ballot papers, and keep the ballot papers in a separate parcel; or
    - (ii) if the system of voting is optional-preferential voting—arrange the ballot papers under the names of the candidates by putting in a separate parcel the ballot papers on which a first preference vote is recorded for the same candidate, and count the number of first preference votes for each candidate on the ballot papers.
- (5) Fourth, the returning officer must add together—
  - (a) if the system of voting is first-past-the-post voting—the number counted under subsections (3)(b)(i) and (4)(d)(i); or
  - (b) if the system of voting is optional-preferential voting—the number counted under subsections (3)(b)(ii) and (4)(d)(ii).
- (6) Fifth, the returning officer must reapply subsections (4) and (5) as more declaration envelopes are received by the returning officer under section 351 after close of the poll.

### Schedule 2 (continued)

#### **367 Treatment of ballot paper to which objection is made**

- (1) If, while a presiding officer or returning officer is complying with section 363 or 366, 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.

#### **368 Counting of votes for optional-preferential system**

- (1) This section applies to the counting of votes in an election in which the system of voting is optional-preferential voting.
- (2) If, on final counting under section 366, a majority of the first preference votes is for 1 candidate, that candidate is elected.
- (3) If not, a second count must take place.
- (4) On the second count—
  - (a) the candidate who has the fewest first preference votes must be excluded; and
  - (b) each ballot paper that records a first preference vote for the excluded candidate, and is not an exhausted ballot paper, must be transferred to the candidate next in the order of the elector's preference; and
  - (c) the ballot paper must be counted as recording a vote for the candidate to whom it is transferred.
- (5) If, on the second count, a candidate has a majority of the votes remaining in the count, the candidate is elected.
- (6) If not, the process of—
  - (a) excluding the candidate who has fewest votes; and
  - (b) transferring each ballot paper that records a vote for the excluded candidate, and is not an exhausted ballot paper,

### Schedule 2 (continued)

to the continuing candidate next in order of the elector's preference; and

- (c) counting the ballot paper as recording a vote for the candidate to whom it is transferred;

must be repeated until 1 candidate has a majority of the votes remaining in the count.

- (7) The candidate who under subsection (6) has a majority of the votes remaining in the count is elected.
- (8) If, 2 or more candidates have an equal number of votes and 1 of them must be excluded—
  - (a) if there has been an earlier count—the candidate who had the fewest votes at the last count at which the candidates did not have an equal number of votes must be excluded; or
  - (b) if there has not been an earlier count or the candidates had an equal number of votes at all earlier counts—the candidate whose name is on a slip chosen under subsection (9) must be excluded.
- (8) For the purposes of subsection (8)(b), the returning officer must—
  - (a) write the names of the candidates who have an equal number of votes on similar slips of paper; and
  - (b) fold the slips, concealing the names; and
  - (c) put the slips in an opaque container and shuffle them; and
  - (d) raise the container so that its contents can not be seen and choose a slip at random.
- (10) If, after a count at which the candidate with fewest votes must be excluded, 2 candidates have an equal number of votes and are the only candidates not excluded, the candidate whose name is recorded under subsection (11)(g) is elected.
- (11) The returning officer must, in the presence of 2 witnesses—
  - (a) prepare a list of the candidates; and

### Schedule 2 (continued)

- (b) assign a different number or colour to each candidate; and
  - (c) place only the marbles, balls or other similar things (*marbles*), complying with subsection (12), in an opaque container large enough to allow the marbles in it to move about freely when it is rotated; and
  - (d) rotate the container and permit another person present who wishes to do so to rotate it; and
  - (e) raise the container so that its contents can not be seen; and
  - (f) while the container is raised, take 1 of the marbles out of it or allow 1 of the marbles to come out of it; and
  - (g) record the name of the candidate assigned the numbered or coloured marble that, under paragraph (f), is taken or allowed to come out of the container.
- (12) For subsection (11)(c), the marbles must be—
- (a) the same size and weight; and
  - (b) the same colours or numbers as the colours or numbers assigned under subsection (11)(b) to the candidates.
- (13) The returning officer must allow each of the 2 candidates, or their representative, to be present for the process mentioned in subsection (11).

### **369 Counting of votes for first-past-the-post system**

- (1) This section applies to the counting of votes in an election in which the system of voting is first-past-the-post voting.
- (2) If the election is for mayor of the *community* government, the candidate who receives the greatest number of votes is elected.
- (3) If the election is for councillors (other than the mayor) of the *community* government—
  - (a) if 1 person only is to be elected—the candidate who receives the greatest number of votes is elected; and

### Schedule 2 (continued)

- (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) can not be applied, the candidate whose name is recorded under subsection (5)(g) is elected.
- (5) The returning officer must, in the presence of 2 witnesses—
  - (a) prepare a list of the candidates; and
  - (b) assign a different number or colour to each candidate; and
  - (c) place only the marbles, balls or other similar things (*marbles*), complying with subsection (6), in an opaque container large enough to allow the marbles in it to move about freely when it is rotated; and
  - (d) rotate the container and permit another person present who wishes to do so to rotate it; and
  - (e) raise the container so that its contents can not be seen; and
  - (f) while the container is raised, take 1 of the marbles out of it or allow 1 of the marbles to come out of it; and
  - (g) record the name of the candidate assigned the numbered or coloured marble that, under paragraph (f), is taken or allowed to come out of the container.
- (6) For subsection (5)(c), the marbles must be—
  - (a) the same size and weight; and

### Schedule 2 (continued)

- (b) the same colours or numbers as the colours or numbers assigned under subsection (5)(b) to the candidates.
- (7) The returning officer must allow each of the candidates, or their representative, to be present for the process mentioned in subsection (5).

### **370 Returning officer's duty after counting votes**

- (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 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.



Schedule 2 (continued)

**Division 15                      Actions following poll**

**371      Declaration of poll**

- (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 *community* government's public office; and
  - (b) *display* the notice in a *conspicuous place* in the *community* government area, or the division of the *community* government area, for which the election was held.
- (3) The returning officer must not delay complying with subsection (1) or (2) merely because some ballot papers have not been received by the returning officer, if it is clear the votes recorded on the ballot papers could not affect the result of the election.

**372      Notice of final result of poll**

- (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.

Schedule 2 (continued)

**373 Resolution about electors who fail to vote**

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

**374 List of electors failing to vote**

- (1) This section applies only if the *community* government 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 or electors for a postal ballot election—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 *community* government.
- (4) The list is to be held in the *community* government's public office, in the chief executive officer's custody.

**375 Notice of failure to vote etc.**

- (1) Subject to subsection (2), the *community* government—
  - (a) must, as soon as practicable after a resolution by the *community* government 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.

### Schedule 2 (continued)

- (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 *community* government by a specified day, not earlier than 21 days after the elector receives the notice (the *appropriate day*), and, if the *community* government 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 *community* government so it is received by the appropriate day; or
    - (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 *community* government so it is received by the appropriate day.
- (3) The elector must comply with the requirements of the notice.
- (4) If—

### Schedule 2 (continued)

- (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.

#### **376 Payments for failure to vote**

- (1) If the *community* government sends an elector a notice under section 375(1) for an election and payment is made to the *community* government under section 375(2) to (4), the *community* government 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.

#### **377 Recording response to notice**

The *community* government must record against the name of an elector who is given a notice under section 375 on the list made under section 374 whether the elector—

- (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.

Schedule 2 (continued)

**378 Evidentiary value of list under s 374**

In a proceeding, a document purporting to be a list, or a copy of or extract from a list, made under section 374, and to be certified by the *community* government's chief executive officer is evidence of the matters contained in the document.

**379 Disposal of material resulting from election**

- (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; and
  - (c) endorse on each packet—
    - (i) a description of its contents; and
    - (ii) the name of the *community* government area, or division of the *community* government area, for which the election was held; and
    - (iii) the polling day;
 and sign the endorsement; and
  - (d) if the returning officer is not the *community* government's chief executive officer—give each packet to the chief executive officer.
- (1A) *For an ISG community government, subsection (1)(c)(ii) applies as if a reference to a division of the community government area were a reference to a recognised indigenous social grouping of the community government area of the ISG community government.*
- (2) The chief executive officer must keep the packets in safe custody for 1 year.
- (3) At the end of the year, the chief executive officer must—
  - (a) destroy all ballot papers contained in the packets; and

### Schedule 2 (continued)

- (b) dispose of the other contents of the packets in the way the officer considers appropriate.
- (4) Each councillor of the *community* government may attend during the destruction of ballot papers by, or at the direction of, its chief executive officer to ensure the papers are destroyed.

#### **380 Ballot papers as evidence**

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 *community* government's chief executive officer under section 379 is evidence of the vote or votes cast in the election as recorded on the ballot paper.

#### **381 Notice to electors whose ballot papers are not accepted**

- (1) Subsection (2) applies if—
  - (a) in an election, a person makes a declaration vote under section 344(a);<sup>19</sup> and
  - (b) the person's ballot paper is not accepted for counting under section 365<sup>20</sup> 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 *community* government must send a notice in the approved form to the person advising the person why the ballot paper was not accepted for counting.

#### **382 Notice to electoral commission of certain declaration votes**

As soon as practicable after the election, the returning officer must give to the electoral commission notice of the names and

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

20 Section 365 (Procedure for processing declaration envelopes)

## Schedule 2 (continued)

addresses of all persons permitted to vote at the election whose names are not on the voters 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

##### 383    False or misleading statements

- (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—20 penalty units (*words omitted*).

- (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.

##### 384    False, misleading or incomplete electoral documents

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—20 penalty units (*words omitted*).

Schedule 2 (continued)

**385 Bribery**

(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) the person's support of, or opposition to, a candidate  
(*words omitted*) at an election.

(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—20 penalty units (*words omitted*).

**386 Providing money for illegal payments**

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—20 penalty units (*words omitted*).



Schedule 2 (continued)

**387 Improperly influencing electoral officers**

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

Maximum penalty—20 penalty units (*words omitted*).

**388 Interfering with election right or duty**

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—20 penalty units (*words omitted*).

**389 Forging or uttering electoral papers**

(1) A person must not—

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

Maximum penalty—20 penalty units (*words omitted*).

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

Maximum penalty for subsection (2)—20 penalty units.

**390 Wilful neglect etc. of electoral officers**

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

Maximum penalty—20 penalty units.

**391 No record to be made of vote cast**

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

### Schedule 2 (continued)

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

Maximum penalty—10 penalty units.

## **Subdivision 2      Offences about electoral advertising and information**

### **392      Responsibility for election matter**

- (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—20 penalty units.

- (2) The particulars are the name and address, other than a post office box or facility, of the person who authorised the advertisement, handbill, pamphlet or notice.
- (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)*
- (4) Also, subsection (1) does not apply to distributing, or permitting or authorising someone else to distribute, a how-to-vote card.

### **392A      Distribution of how-to-vote cards**

- (1) During the election period for an election, a person must not distribute, or permit or authorise someone else to distribute, a

### Schedule 2 (continued)

how-to-vote card that does not comply with subsections (2) to (5).

Maximum penalty—

- (a) for an individual—20 penalty units; or
  - (b) for a corporation—20 penalty units.
- (2) A how-to-vote card must state the name and address of the person who authorised the card.
- (3) For subsection (2)—
- (a) the address must not be a post office box; and
  - (b) if the card is authorised for a group of candidates or for a candidate who is a member of a group of candidates, the authorising person must be a member of the group.
- (4) A how-to-vote card must also state—
- (a) *(omitted)*
  - (b) *(omitted)*
  - (c) otherwise—the candidate's name and the word 'candidate'.
- (words omitted)*
- Example for paragraph (c)—*
- 'Authorised R. Jones, 1 Green Street Brisbane for R. Jones (candidate)'.
- (5) The particulars mentioned in subsections (2) and (4) must appear—
- (a) at the end of each printed face of the how-to-vote card; and
  - (b) in prominent and legible characters in print no smaller than—
    - (i) if the card is not larger than A6—10 point; or
    - (ii) if the card is larger than A6 but not larger than A3—14 point; or
    - (iii) if the card is larger than A3—20 point.

### Schedule 2 (continued)

- (6) During the election period for an election, a person must not distribute, or permit or authorise someone else to distribute, a how-to-vote card if the person knows, or ought reasonably to know, that the particulars, or any of the particulars, mentioned in subsections (2) and (4) on the card are false.

Maximum penalty—

- (a) for an individual—20 penalty units; or  
(b) for a corporation—20 penalty units.
- (7) (*omitted*)

### **393**    **Headline to electoral advertisements**

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 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—10 penalty units.

### **394**    **Misleading voters**

- (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.

### Schedule 2 (continued)

- (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—20 penalty units.

## Subdivision 3 Offences about voting

### 395 Failure to vote

- (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; or
  - (c) *in purporting* 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.

### 396 Leave to vote

- (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

### Schedule 2 (continued)

- (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—10 penalty units.

### **397 Canvassing in or near polling booths**

- (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—10 penalty units.

Schedule 2 (continued)

**398 Interrupting voting etc.**

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
  - (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—10 penalty units.

**399 Influencing voting**

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

Maximum penalty—20 penalty units (*words omitted*).

**400 Party badges not to be worn in polling booths**

(*omitted*)

**401 Voting if not entitled**

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

### Schedule 2 (continued)

- (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—20 penalty units (*words omitted*).

#### **402 Offences relating to ballot papers**

- (1) A person must not—
  - (a) wilfully fail to comply with section 336 or 351; or
  - (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—20 penalty units (*words omitted*).

#### **403 Failure to deliver or post documents for someone else**

- (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.



### Schedule 2 (continued)

- (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 6p.m. on polling day.

Maximum penalty—20 penalty units (*words omitted*).

#### **404 Breach of confidentiality of vote**

- (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 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—20 penalty units (*words omitted*).

#### **405 Breaking seals on parcels**

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—20 penalty units (*words omitted*).

#### **406 Duty of witness to signing of declaration voting papers**

A person (the *witness*) must not sign a declaration envelope as witness under section 351 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—

### Schedule 2 (continued)

- (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—20 penalty units (*words omitted*).

## Subdivision 4 Injunctions

### 407 Injunctions to restrain contravention of *schedule*

- (1) An application may be made to the Supreme Court for an injunction if—
  - (a) either—
    - (i) a person (the *offending party*) has engaged, is engaging or proposes to engage in conduct; or
    - (ii) a person (also the *offending party*) has failed, is failing or proposes to fail to do anything; and
  - (b) the conduct or failure constituted, constitutes or would constitute a contravention of, or an offence against, this *schedule*.
- (2) Without limiting the operation of subsection (1), an application may also be made to the Supreme Court for an injunction if a returning officer for an election decides a person is not properly nominated for the election.
- (3) The application may be made by the returning officer or a candidate, or nominee as a candidate, for election.
- (4) The court may grant an interim injunction pending determination of the application.
- (5) If a returning officer makes the application, the court must not require the officer or anyone else to give an undertaking about damages as a condition of granting an interim injunction.
- (6) On consideration of the application, the court may—
  - (a) if subsection (1)(a)(i) applies—

Schedule 2 (continued)

- (i) grant an injunction restraining the offending party from engaging in the conduct concerned; and
    - (ii) also require the offending party to do anything to prevent or remedy the contravention; or
  - (b) if subsection (1)(a)(ii) applies—grant an injunction requiring the offending party to do the thing in question; or
  - (c) if subsection (2) applies—grant an injunction requiring the returning officer to accept the person’s nomination for the election.
- (7) The court may grant the injunction—
- (a) if the court is satisfied the offending party has engaged in the conduct, or failed to do the thing, mentioned in subsection (1)—whether or not it appears to the court that the offending party intends—
    - (i) to engage again or continue to engage in the conduct; or
    - (ii) to fail or continue to fail to do the thing; or
  - (b) if it appears to the court that, if the injunction is not granted, it is likely the offending party will engage in the conduct, or fail to do the thing, mentioned in subsection (1), whether or not—
    - (i) the offending party has previously engaged in the conduct or failed to do the thing; or
    - (ii) there is imminent danger of substantial damage to any person if the offending party engages in the conduct or fails to do the thing.
- (8) The court may refuse to grant an injunction if it appears to the court that application was not made to the court at the earliest possible opportunity.
- (9) The court may discharge or vary the injunction or an interim injunction.

### Schedule 2 (continued)

- (10) The powers conferred on the court by this section are in addition to, and do not limit, other powers of the court.

## Part 7                      Fresh elections

### 408 Requirements for fresh election

- (1) A regulation may direct that a fresh election of councillors of a *community* government be held if the Legislative Assembly ratifies the dissolution of the *community* government under the *Local Government Act 1993*, section 164(1).
- (2) A regulation may direct that a fresh election of councillors of a *community* government, or a division of a *community* government area, be held if—
- (a) *action is taken to implement a reviewable local government matter under the Local Government Act 1993, chapter 3, part 1; or*
- (b) *action is taken to implement a reviewable community government matter under the Local Government Act 1993, chapter 3, part 1, as applied by section 15(1) of the Act.*
- (3) *(omitted)*
- (4) A direction under subsection (1) may be given only after the ratification of the dissolution.
- (5) A direction under subsection (2) may be given at the time the action mentioned in that subsection is taken or at a later time.
- (6) *For an ISG community government, subsection (2) applies as if a reference to a division of a community government area were a reference to a recognised indigenous social grouping of the community government area of the ISG community government.*

Schedule 2 (continued)

**409 Time for fresh election**

The day on which a fresh election is to be held is a Saturday fixed by regulation made under section 408.

**410 Returning officer for fresh election**

The returning officer for a fresh election of councillors of a *community* government is the *community* government's chief executive officer or, if there is no chief executive officer, a person appointed by the Minister.

**411 Voters roll for fresh election**

A voters roll for a fresh election must be compiled under the regulation directing the holding of the fresh election.

**412 Other provisions of *schedule* apply**

The provisions of this *schedule* (other than this part) apply, with all necessary changes and any changes prescribed by regulation, to a fresh election as if the election were a quadrennial election.

**413 Extension of term of councillors**

In directing a fresh election, a regulation may declare that the councillors elected at the fresh election are elected for a term ending at the conclusion of the quadrennial elections after the next quadrennial elections.

**Part 8 (omitted)**

## **Schedule 3      Dictionary**

### section 3

***cut-off date*** see section 12(1).

***directly elected***, for a community government's mayor, means directly elected by the electors of the community government area of the community government.

***indigenous social grouping*** means a group of indigenous persons sharing a common basis of social affiliation, including family relationship, language, traditional land ownership and historical association.

***ISG community government*** means a community government for a community government area that has recognised indigenous social groupings.

***recognised indigenous social grouping***, of the community government area of a community government, means an indigenous social grouping of the community government area that is recognised for elections for the community government under the *Local Government Act 1993*, chapter 3, part 1, as applied by section 15(1) of the Act.

## Endnotes

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### 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 9 November 2007. Future amendments of the Local Government (Community Government Areas) Regulation 2004 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

**Key to abbreviations in list of legislation and annotations**

Key	Explanation	Key	Explanation
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	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	none	1 January 2005	
1A	2007 SL No. 72	27 April 2007	
1B	2007 SL No. 181	27 July 2007	
1C	2007 SL No. 195	10 August 2007	
1D	2007 SL No. 272	9 November 2007	

### 5 List of legislation

**Local Government (Community Government Areas) Regulation 2004 SL No. 319**

made by the Governor in Council on 16 December 2004

notfd gaz 17 December 2004 pp 1277–85

ss 1–2 commenced on date of notification

remaining provisions commenced 1 January 2005 (see s 2)



*Local Government (Community Government Areas)  
Regulation 2004*

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exp 1 September 2015 (see SIA s 54)

Note—The expiry date may have changed since this reprint was published. See the latest reprint of the SIR for any change.

amending legislation—

**Local Government (Community Government Areas) Amendment Regulation (No. 1)  
2007 SL No. 72**

notfd gaz 27 April 2007 pp 1887–90  
commenced on date of notification

**Local Government (Community Government Areas) Amendment Regulation (No. 2)  
2007 SL No. 181**

notfd gaz 27 July 2007 pp 1645–6  
commenced on date of notification

**Local Government (Community Government Areas) Amendment Regulation (No. 3)  
2007 SL No. 195**

notfd gaz 10 August 2007 pp 1901–2  
commenced on date of notification

**Local Government (Community Government Areas) Amendment Regulation (No. 4)  
2007 SL No. 272**

notfd gaz 9 November 2007 pp 1355–7  
commenced on date of notification

## 6 List of annotations

**Division 4—Appointment of financial controllers—Act, section 22**

**div hdg** ins 2007 SL No. 72 s 3  
sub 2007 SL No. 195 s 3

**Appointment of financial controller—Doomadgee Shire Council**

**s 13A** ins 2007 SL No. 72 s 3  
sub 2007 SL No. 181 s 3

**Appointment of financial controllers—Pormpuraaw Shire Council**

**s 13B** ins 2007 SL No. 195 s 4

**Appointment of financial controllers—Napranum Shire Council**

**s 13C** ins 2007 SL No. 272 s 3

**PART 7—AMENDMENT OF REGULATIONS**

**pt 7 (s 23)** om R1 (see RA ss 7(1)(k) and 40)

**SCHEDULE 1—CONSEQUENTIAL AND OTHER AMENDMENTS OF  
REGULATIONS**

om R1 (see RA s 40)